

Family Law Reform on Out-of-Wedlock Children: Dignified Justice and Human Rights in Indonesia and Georgia

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Abstract

The legal status of children born out of wedlock remains a significant issue in family law because it raises tensions between the principle of marriage legitimacy and the protection of children's human rights. This study aims to compare the family law systems of Indonesia and Georgia and to formulate a reform model grounded in Human Rights and Dignified Justice. This normative legal research employs comparative and conceptual approaches using primary, secondary, and supporting legal materials. The findings reveal that Indonesia faces normative inconsistency, while Georgia encounters implementation challenges. Balanced legal reform integrating substantive harmonization and institutional improvement is essential to ensure equal legal protection for children born out of wedlock.

Keywords: *Children Born Out of Wedlock, Family Law Reform, Human Rights, Dignified Justice.*

A. INTRODUCTION

Children born outside marriage have long been recognized as a classical issue in family law, as it is closely related to the protection of human rights and the principle of non-discrimination against children (Widowati & Vu Le Giang, 2025). The Convention on the Rights of the Child (CRC), under Article 2(2), provides that: “States

Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members." This provision affirms that States are obligated to protect every child without distinction based on the circumstances of their birth. Accordingly, a child's rights must not be affected by the legal relationship between his or her parents. Likewise, the International Covenant on Civil and Political Rights (ICCPR), under Article 24(1), states that: "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State." These international instruments demonstrate that the protection of children born outside marriage constitutes a legal obligation of States, which must be realized through a family law framework capable of ensuring equal rights for every child.(Nurlaelawati & van Huis, 2019).

In Indonesia, the legal regulation of children born outside marriage continues to reflect legal pluralism, which affects the certainty of their legal status and civil rights. Law Number 1 of 1974 on Marriage (the Marriage Law), under Article 42, provides that "A legitimate child is a child born within or as a result of a lawful marriage," while Article 43(1) originally stipulated that "A child born outside marriage shall have a civil legal relationship only with his or her mother and the mother's family." This provision was subsequently reinterpreted by Constitutional Court Decision Number 46/PUU-VIII/2010, which held that a child born outside marriage also has a civil legal relationship with his or her biological father, provided that the biological relationship can be established through scientific and technological evidence or other legally

recognized means of proof.(Hamid & Fakhyadi, 2022). However, Article 100 of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) continues to provide that “A child born outside marriage shall have a nasab relationship only with his or her mother and the mother’s family.” Consequently, a distinction remains between civil legal relationships and nasab (lineage) relationships. This distinction has significant implications for the realization of children’s rights in the areas of civil registration, maintenance, and inheritance, with the application of the law continuing to depend largely on the interpretation adopted by the competent authorities.

In contrast to Indonesia, Georgia has developed a family law framework that places greater emphasis on the establishment of the legal parent–child relationship (filiation) rather than making legal protection contingent upon the marital status of the parents.(Drobnič et al., 2024). Articles 1187–1196 of Book Five (Family Law), Chapter One, “Establishing the Parentage of Children,” of the Civil Code of Georgia provide that the legal parent–child relationship may be established through civil registration, voluntary acknowledgment, or a court determination. Accordingly, the establishment of a child’s parentage constitutes the primary basis for extending legal protection. This framework demonstrates that the Georgian legal system has shifted from the traditional concept of legitimacy toward the establishment of parentage, under which both biological and legal relationships serve as the foundation for protecting children’s rights. (Rahbari, 2022). These reforms have evolved alongside the harmonization of Georgia’s domestic legal framework with the European Convention on Human Rights (ECHR), particularly Article 14, which prohibits discrimination, and Protocol No. 12, which expands the principle of equal treatment. Nevertheless, in practice, Georgia continues to face significant challenges, including procedural gaps

between the establishment of biological paternity and the acquisition of parental legal status (legitimation), as well as weaknesses in the enforcement of child financial maintenance obligations. (Banks & Johnson, 2025).

Indonesia and Georgia represent two fundamentally different models of family law. Indonesia exemplifies a family law system that is strongly influenced by religious values and legal pluralism, characterized by tensions among colonial law, Islamic law, and progressive constitutional jurisprudence. In contrast, Georgia represents a secular civil law system that has undergone extensive post-Soviet reforms and is increasingly aligned with European human rights standards. Although both countries are engaged in ongoing family law reforms, these processes remain incomplete due to internal normative inconsistencies in Indonesia and procedural and enforcement-related obstacles within Georgia's judicial practice. This cross-jurisdictional comparison offers a prescriptive contribution by identifying pathways for harmonizing constitutional norms with implementing legislation while improving the effectiveness of procedural legal mechanisms in both legal systems.

The significance of this study lies in the normative inconsistencies and procedural barriers that hinder the realization of the civil rights of children born outside marriage in both Indonesia and Georgia. In Indonesia, these challenges stem from the inconsistency between Constitutional Court Decision Number 46/PUU-VIII/2010 and the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), as well as the disproportionate burden placed on mothers and children to establish biological parentage through scientific evidence. In Georgia, the principal challenge lies in judicial procedures that separate a child's economic rights from the biological father's parental legal status. These legal differences and regulatory gaps in both jurisdictions

have the potential to create long-term legal uncertainty regarding lineage, maintenance, inheritance, and the inclusive registration of a child's legal identity. The Dignified Justice Theory developed by Teguh Prasetyo asserts that the law must safeguard the dignity of every individual without exception. (Disantara, 2021) This protection extends to children born outside marriage, who must be recognized as legal subjects that bear no responsibility for the circumstances of their birth. Accordingly, a comprehensive analysis is required to conceptualize a family law reform model capable of addressing Indonesia's normative dualism while simultaneously resolving procedural legal obstacles within the Georgian legal system.

Sarmadi et al., in *Syariah: Jurnal Hukum dan Pemikiran*, examined the recognition of the civil legal relationship, lineage (nasab), and inheritance rights of children born outside marriage from the perspectives of Islamic law and Indonesian positive law following Constitutional Court Decision Number 46/PUU-VIII/2010. The study found that the Constitutional Court's decision expanded the child's civil legal relationship with the biological father. However, it also revealed persistent differences in the interpretation of the concepts of nasab and inheritance rights under Islamic law, indicating that harmonization between state law and Islamic law has not yet been fully achieved. (Sarmadi et al., 2026). Rohmawati and Syahril Siddik, in *Al-'Adalah*, focused their study on the role of judicial decisions in providing legal protection for children born outside marriage based on the principle of the best interests of the child. Their findings indicate that judges play a strategic role in filling legal gaps and overcoming normative limitations through progressive interpretation that is oriented toward safeguarding the best interests of the child (Rohmawati & Siddik, 2022). Ilham Tohari et al., in the *International Journal of Current Science Research and Review*,

conducted a comparative study on the protection of the rights of children born outside marriage in Indonesia and Malaysia. The study concluded that differences in the two countries' legal systems and the application of Islamic law significantly influence the scope of protection afforded to the civil rights of children born outside marriage (Tohari et al., 2024). Although these three studies make important contributions to the existing literature, they remain limited to analyses within the Indonesian context or comparisons with countries that share similar legal characteristics. Moreover, they do not examine comparisons with a modern civil law system such as Georgia, which has adopted the concept of the establishment of parentage, nor do they integrate international human rights analysis with the Dignified Justice Theory as a conceptual foundation for family law reform.

The novelty of this study lies in comparative legal approach between Indonesia, which adopts a pluralistic family law system, and Georgia, which applies a modern codified civil law system, to examine the regulation of the civil rights of children born outside marriage from a human rights perspective. This study not only compares the substantive legal frameworks of both jurisdictions but also identifies the normative tensions and procedural obstacles that arise within each legal system. Furthermore, it conceptualizes the direction of family law reform based on the principle of the best interests of the child and the Dignified Justice Theory. Accordingly, this research offers a novel perspective on a family law reform model that integrates human rights protection with the distinctive characteristics of each country's national legal system. The objective of this study is to analyze the regulation of the civil rights of children born outside marriage under the family law systems of Indonesia and Georgia and to examine the conceptualization of family law reform in both countries in order to realize

the protection of human rights and Dignified Justice for children born outside marriage.

This study employs a normative legal research method to examine the regulation of the civil rights of children born outside marriage under the family law systems of Indonesia and Georgia (Masnun, Muh. Ali, Prasetyo, Dicky Eko, 2025). It adopts a functional comparative approach to analyze the similarities, differences, and normative tensions between the two jurisdictions, as well as a conceptual approach to examine the principles of the best interests of the child, non-discrimination, human rights, and the Dignified Justice Theory. The primary legal materials consist of Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019; Constitutional Court Decision Number 46/PUU-VIII/2010; the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI); the Civil Code of Georgia; the Convention on the Rights of the Child; the International Covenant on Civil and Political Rights; and the European Convention on Human Rights. The secondary legal materials include books, scholarly articles, and relevant research findings, while non-legal materials consist of legal dictionaries. The legal materials were collected through library research and subsequently organized through inventorying and systematization techniques. The data were analyzed qualitatively using a prescriptive method based on legal interpretation and comparative legal analysis to formulate a family law reform model capable of ensuring the protection of human rights and realizing Dignified Justice for children born outside marriage.

B. RESULTS AND DISCUSSION

1. Regulation of the Rights of Children Born Outside Marriage and Normative Tensions in Indonesia and Georgia

A comparison of the legal regulation governing the civil rights of children born outside marriage in Indonesia and Georgia reveals fundamentally different family law paradigms in determining the legal relationship between a child and his or her parents. The Indonesian legal system continues to adhere to the traditional concept of legitimacy, under which a child's legal status is linked to the validity of the parents' marriage. (Ershad uddin, 2023), In contrast, Georgia has adopted the concept of filiation, under which the legal parent–child relationship is established on the basis of biological parentage and legal recognition, without being contingent upon the marital status of the parents (Azwar et al., 2024). This distinction affects not only the technique of legal norm formation but also determines the scope of the civil rights that a child may enjoy from birth. As a result, the legal protection afforded to children in the two countries has evolved along different reform trajectories, despite both legal systems being influenced by international human rights instruments.

Indonesia has developed its legal framework governing children born outside marriage through several legal instruments that have evolved incrementally and remain only partially harmonized. Article 43(1) of the Marriage Law, as amended by Law Number 16 of 2019, expressly provides that “A child born outside marriage shall have a civil legal relationship only with his or her mother and the mother's family.” The use of the word “only” precludes an expansive interpretation of the civil legal relationship between the child and his or her biological father. Constitutional Court Decision Number 46/PUU-VIII/2010 subsequently altered this legal framework by holding that a child also has a civil legal relationship with his or her biological father, provided that

the biological relationship can be established through scientific and technological evidence or other legally recognized means of proof. This shift transformed the evidentiary regime from an automatic presumption of exclusion to one that recognizes the possibility of establishing legal rights on the basis of proven biological parentage.(Ghapa et al., 2026) into a conditional rebuttable evidentiary standard. (Chunyan, 2022), Accordingly, the legal relationship between a child and his or her biological father no longer arises automatically but must first be established through legally recognized evidence.

Article 100 of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) provides that a child born outside marriage has a nasab (lineage) relationship only with his or her mother and the mother's family. Consequently, the concept of nasab remains confined to the maternal line of descent. Under Islamic law, nasab signifies not merely a biological relationship but also serves as the legal basis for determining rights and obligations relating to marriage guardianship (*wilāyah al-nikāḥ*) and inheritance(Khairizzaman et al., 2026) Accordingly, nasab encompasses a broader legal dimension than the concept of a civil legal relationship under positive law. As a result, a child may be recognized as having a civil legal relationship with his or her biological father pursuant to Constitutional Court Decision Number 46/PUU-VIII/2010, while simultaneously being denied a nasab relationship under the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI).

The Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), promulgated through Presidential Instruction Number 1 of 1991, has a formal legal status that differs from that of a statute (Prima Angkupi & Muhammad Shofwan Taufiq, 2025), Nevertheless, in substantive terms, it is binding within the jurisdiction of the Religious

Courts pursuant to the Law on Religious Courts (Syamsarina et al., 2025). This hybrid status creates a unique normative position, as the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) is not a formal statute but nonetheless possesses binding legal force in judicial practice for Muslims. The tension between the Constitutional Court Decision, which is final and binding, and Article 100 of the KHI creates a judicial dilemma in cases involving children born outside marriage to Muslim families. Judges within the General Courts are guided by the Marriage Law as interpreted by the Constitutional Court Decision, whereas judges within the Religious Courts rely on the KHI, which explicitly denies the recognition of a nasab relationship between a child and his or her biological father. This dual judicial framework exacerbates legal uncertainty because the forum chosen by the applicant determines the legal regime applicable to children born outside marriage.

The theory of legal pluralism developed by John Griffiths distinguishes between weak legal pluralism, under which non-state legal systems are subordinated within a single hierarchical legal order, and strong legal pluralism, under which multiple normative orders are permitted to coexist autonomously (Al-Astewani, 2025). Indonesia exemplifies weak legal pluralism (Nurul Hikmah, Syahid Akhmad Faisol, Dicky Eko Prasetyo, Kamaluddin Nurdin Marjuni, 2026), as the State formally endorses legal unification through the Marriage Law, while in practice allowing the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) and the Constitutional Court Decision to operate as competing normative frameworks without an explicit mechanism for resolving normative conflicts.

The pluralistic character of Indonesia's family law cannot be separated from the legal policy underlying the enactment of the Marriage Law. Mahfud MD explains that

legal policy (politik hukum) refers to the direction of legal development formulated in accordance with the prevailing configuration of political power, social conditions, and societal values at a particular point in time (A'yun, 2022). This perspective is reflected in Article 2(1) of the Marriage Law, which provides that a marriage is considered valid if it is performed in accordance with the laws of the parties' respective religions and beliefs. Consequently, the legal validity of marriage continues to rest upon religious norms. Furthermore, Indonesian culture regards marriage as a sacred institution that signifies not merely the union of two individuals but also the unification of two extended families (Novianti et al., 2025). This cultural perception reinforces normative resistance to the full legal recognition of children born outside marriage, as such recognition is often viewed as indirectly diminishing the moral sanctions traditionally associated with non-marital relationships. From a sociocultural perspective, Indonesian society generally disapproves of cohabitation outside marriage. Consequently, the birth of a child outside marriage is frequently regarded as bringing dishonor to the family and may expose both the child and the family to social stigma and exclusion (Horii & Wirastri, 2022). These characteristics demonstrate that the development of child protection in Indonesia is influenced not only by the evolution of positive law but also by the need to balance constitutional values, religious teachings, and societal acceptance of legal reform.

Indonesia has incorporated the principles of child protection through Law Number 35 of 2014 amending Law Number 23 of 2002 on Child Protection, which establishes the principles of non-discrimination and the best interests of the child as the fundamental basis for the implementation of child protection. Nevertheless, the practical implementation of these principles continues to encounter challenges arising

from legal rules governing nasab (lineage), guardianship, and inheritance, which still differentiate children on the basis of their birth status. Consequently, the protection afforded to children born outside marriage remains conditional, as civil legal rights vis-à-vis the biological father may only be exercised once the biological relationship has been legally established. Moreover, in Muslim families, inheritance rights are, in practice, frequently addressed through the mechanism of mandatory bequests (*wasiat wajibah*), as reflected in the evolving jurisprudence of the Supreme Court of Indonesia following Fatwa of the Indonesian Ulema Council (*Majelis Ulama Indonesia/MUI*) Number 11 of 2012 (Dupret et al., 2023). Within the framework of the three fundamental values of law formulated by Gustav Radbruch (Adachi, 2023), Indonesia appears to sacrifice legal certainty in order to accommodate particularistic notions of religious justice. As a consequence, children face uncertainty regarding which legal regime governs their status, while the value of legal expediency (utility) in ensuring effective child protection is likewise not fully realized.

The issue of legal protection for children born outside marriage in Indonesia is also closely associated with procedural barriers that restrict access to justice. Although the Constitutional Court Decision requires proof of a biological relationship through scientific and technological evidence, there is still no explicit procedural legal mechanism authorizing courts to compel an alleged biological father to undergo DNA testing when he refuses to do so voluntarily (Disantara, Fradhana Putra et al., 2024). Furthermore, the relatively high cost of DNA testing constitutes a significant practical obstacle for single mothers and children from economically disadvantaged backgrounds (Willie, 2025). As a result, the constitutional rights recognized by the Constitutional Court cannot always be effectively realized in practice. On the other

hand, civil registration practices administered by the Civil Registry Office (Dinas Kependudukan dan Pencatatan Sipil) continue to assign certain administrative classifications to the birth certificates of children born outside marriage (Nur et al., 2023). Although Law Number 23 of 2006 on Population Administration, as amended by Law Number 24 of 2013, provides no normative basis for discriminatory treatment, such administrative practices persist (Dicky Eko Prasetyo, Muh. Ali Masnun, Arinto Nugroho, Denial Ikram, 2024). From the perspective of access to justice, as advanced by Mauro Cappelletti and Bryant Garth, the protection of rights cannot be achieved solely through their formal legal recognition. Rather, it also requires procedural mechanisms capable of ensuring that every individual has effective access to legal remedies and justice (Garth, 2025).

In contrast to Indonesia, Georgia's family law system adopts a doctrinally more progressive approach by no longer establishing the legal relationship between a child and his or her parents on the basis of the legitimacy of the parents' marriage. Instead, it embraces the concept of the establishment of parentage as the foundation for creating the legal parent-child relationship. Articles 1187–1196 of Book Five (Family Law), Title Two, Chapter One, "Establishing the Parentage of Children," of the Civil Code of Georgia provide that the legal parent-child relationship may be established through either voluntary acknowledgment or a judicial determination, without distinguishing between children born within or outside marriage. Under this framework, biological parentage and legal recognition constitute the primary basis for the establishment of civil legal rights, rendering the marital status of the parents no longer determinative of the child's legal protection (Sosson & Willems, 2019). Georgian law provides two mechanisms for establishing the legal parent-child relationship. The first is voluntary

acknowledgment, whereby both parents jointly register the child's parentage with the civil registration authority without the need for litigation. The second is judicial determination, under which parentage is established through court proceedings on the basis of scientific evidence and other legally admissible forms of proof (Banks & Johnson, 2025). Once the legal parent-child relationship has been established through either of these mechanisms, its legal consequences arise comprehensively and automatically, encompassing inheritance rights, maintenance obligations, and all other civil rights, without distinguishing between children born within marriage and those born outside marriage.

The Georgian legal framework has evolved in parallel with the harmonization of its domestic legislation with European human rights standards. More broadly, the development of family law across European jurisdictions demonstrates a clear trend toward abolishing the doctrine of illegitimacy and replacing it with a legal framework governing the parent-child relationship that no longer depends on the marital status of the parents (Koivula, 2024). Georgia's success in eliminating the legitimacy-illegitimacy dichotomy cannot be separated from its historical and legal-political context as a post-Soviet state that has undertaken the reception of Continental European civil law, particularly the influence of the German Civil Code (*Bürgerliches Gesetzbuch/BGB*) (Zarandia, 2026). The Civil Code of Georgia recognizes only marriages that have been officially registered with the State as giving rise to civil legal consequences (Gegenava & Okropiridze, 2023). In contrast, a religious marriage that has not been officially registered does not give rise to legal consequences under the State's legal system. Nevertheless, the Constitutional Agreement between the State and the Georgian Orthodox Church demonstrates that religious values continue to

exert a significant influence on family life (Khakhutaishvili, 2024) However, such religious values do not constitute the primary source for the creation of civil legal rights. This condition is consistent with Eugen Ehrlich's concept of living law, which posits that social behavior is often influenced more profoundly by the social norms that exist within society than by the formal rules embodied in statutory legislation (Tan, 2022).

Nevertheless, the normative equality established under the Georgian legal framework has not entirely eliminated practical challenges in family law. Although the establishment of paternity may be achieved through biological evidence, including DNA testing, thereby giving rise to legal consequences such as the obligation to provide child maintenance, the recognition of the biological father's custody and visitation rights remains subject to separate legal proceedings and distinct judicial mechanisms (Banks & Johnson, 2025). This situation demonstrates a separation between paternity establishment and legitimation, which has the potential to create an imbalance in the rights of the mother and the father, notwithstanding the fact that legal parenthood has already been formally recognized. Furthermore, the enforcement of child maintenance obligations continues to encounter significant challenges at the execution stage (Banks & Johnson, 2025). The practice of conducting religious marriages without official civil registration in certain regions, such as Adjara, Kvemo Kartli, and Samtskhe-Javakheti (Aydingün et al., 2021) results in children born from such unions being, in practice, unable to effectively access the State's legal system. Accordingly, although the Georgian legal system has succeeded in reducing discrimination at the level of substantive law, it continues to face significant challenges in ensuring that this formal equality is effectively realized in practice.

Table 1. Comparison of the Rights of Children Born Outside Marriage in Indonesia and Georgia

Dimension	Indonesia	Georgia
Legal Basis	Law Number 1 of 1974 on Marriage (Articles 42–43); Constitutional Court Decision No. 46/PUU-VIII/2010; Article 100 of the Compilation of Islamic Law (KHI).	<i>Civil Code of Georgia (1997), Book Five, Title Two, Chapter One, Articles 1187–1196.</i>
Conceptual Basis of Legal Status	Legitimacy-based dichotomy, characterized by a dualism between civil legal relationships (Marriage Law/Constitutional Court Decision) and nasab (lineage) under the KHI.	Filiation-based framework, marked by the complete abolition of the legitimacy–illegitimacy dichotomy.
Mechanism for Establishing the Legal Relationship with the Father	Establishment through scientific evidence in judicial proceedings; the resulting legal rights differ under secular civil law and Islamic law.	Establishment through voluntary acknowledgment before the Civil Registry or through judicial determination of paternity.
Rights of Children Born Outside Marriage	Fragmented protection: economic civil rights (inheritance and maintenance) are recognized by the State following the Constitutional Court Decision, whereas non-material rights (lineage (nasab) and marriage guardianship) are denied under the KHI; Islamic inheritance rights are, in practice, reduced to mandatory bequests (wasiat wajibah).	Unified protection: material rights (inheritance and maintenance) arise automatically upon the establishment of paternity, whereas the biological father's non-material rights (custody and guardianship) remain subject to separate legitimation proceedings.
Procedural Challenges	High costs of DNA testing, the absence of compulsory procedural mechanisms (coercive procedural law) to compel DNA testing, and	Separation between paternity establishment and legitimation procedures, weak enforcement of child maintenance obligations, and

administrative stigma in civil registration records.	social resistance in certain minority regions.
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Sources: Author, 2026

The comparison between Indonesia and Georgia demonstrates that both countries pursue the same objective—namely, the protection of children born outside marriage—but employ fundamentally different legal frameworks to achieve that objective. Indonesia retains the dichotomy between children born within marriage and those born outside marriage while expanding the child’s civil legal relationship with the biological father through the Constitutional Court Decision. In contrast, Georgia abolished this dichotomy from the outset by adopting the concept of filiation, which is neutral with respect to the marital status of the parents. Consequently, the challenges faced by each jurisdiction differ significantly. Indonesia continues to experience normative conflicts at the level of substantive law, whereas Georgia primarily encounters implementation-related challenges after the legal parent–child relationship has been established. This finding is consistent with Roscoe Pound’s distinction between law in books and law in action, which emphasizes that the effectiveness of a legal system depends not only on the quality of its legal norms but also on the capacity of legal institutions to implement those norms consistently (Shiina, 2023). In this context, Indonesia continues to face challenges at the level of law in books due to normative inconsistencies, whereas Georgia primarily encounters difficulties at the level of law in action, as obstacles to effective implementation have not yet been fully resolved.

The Georgian model offers valuable lessons for the reform of Indonesian family law, particularly in developing a more coherent legal framework for protecting the

rights of children without disregarding the distinctive characteristics of Indonesia's national legal system. Nevertheless, this model cannot be adopted wholesale, as Indonesia's family law has evolved within a pluralistic legal environment in which religious values constitute one of the principal foundations of legal development. The Dignified Justice Theory developed by Teguh Prasetyo provides a conceptual foundation by asserting that the purpose of law extends beyond the creation of normative certainty; it must also safeguard human dignity as a fundamental value that should be realized through every legal policy (Prasetyo & Kameo, 2024). From this perspective, family law reform should integrate normative reform, procedural improvement, and institutional strengthening in order to ensure the protection of human rights while simultaneously realizing Dignified Justice for children born outside marriage.

2. Conceptualizing Family Law Reform Based on Human Rights Protection and Dignified Justice in Indonesia and Georgia

Family law reform concerning the civil rights of children born outside marriage should be understood as a process of legal renewal that not only revises legal norms but also adapts the legal system to the evolving values of justice within society. The challenges encountered by Indonesia and Georgia demonstrate that the protection of children can no longer be assessed solely by reference to compliance with normative legal provisions, but must also be evaluated in terms of the legal system's capacity to effectively realize children's rights. In this context, the theory of responsive law advanced by Philippe Nonet and Philip Selznick provides a relevant analytical framework, as it conceptualizes law as an instrument that preserves legal certainty while remaining responsive to the demands of social justice (Muh. Ali Masnun, 2026).

Nonet and Selznick distinguish legal development into three models—repressive law, autonomous law, and responsive law—with responsive law regarding the protection of society as the primary benchmark for assessing the effectiveness of a legal system (Sukmana, 2023). Based on this framework, family law reform in Indonesia and Georgia should be directed toward establishing a legal system capable of protecting the dignity and rights of children without becoming trapped in formalism that perpetuates discrimination based on birth status.

In Indonesia, the need for reform should first be directed toward resolving the normative disharmony that continues to exist in the regulation of the civil rights of children born outside marriage. The inconsistency between the amended Marriage Law, Constitutional Court Decision Number 46/PUU-VIII/2010, and Article 100 of the Compilation of Islamic Law (KHI) demonstrates that the relationship among legal norms governing the same legal subject has not yet formed a coherent and integrated legal framework. Through the concept of law as integrity, Ronald Dworkin explains that law must be understood as a unified and coherent narrative (Asa, 2025). Accordingly, every new legal norm should reinforce the consistency of the principles that have already been established within the legal system. This perspective indicates that the Constitutional Court Decision should not be regarded merely as a judicial correction of Article 43(1) of the Marriage Law, but rather should be explicitly codified through legislative reform to ensure consistency with the provisions contained in the Compilation of Islamic Law (KHI). Such harmonization would strengthen legal certainty while preventing divergent interpretations of children's civil rights across different judicial institutions (Purwanto et al., 2024).

Family law reform in Indonesia should also address institutional aspects, as the protection of children's rights cannot be effective if the evidentiary mechanisms required to enforce those rights remain inaccessible. The Constitutional Court Decision has recognized the possibility of establishing biological relationships through scientific and technological evidence; however, this recognition has not yet been accompanied by procedural rules granting courts the authority to order DNA testing against an alleged biological father who refuses to cooperate. Consequently, rights that have been normatively recognized often remain unrealized due to procedural barriers and the high costs of obtaining evidence. The access to justice theory developed by Mauro Cappelletti and Bryant Garth emphasizes that effective legal protection requires the elimination of economic and procedural obstacles that prevent individuals from obtaining justice (Garth, 2025). Meanwhile, Satjipto Rahardjo's theory of progressive law views law as a means to serve human beings (Herlindah, 2022). Meanwhile, Satjipto Rahardjo's theory of progressive law views law as an instrument designed to serve human beings (Prasetio et al., 2025). Based on these two approaches, the provision of subsidized DNA testing for vulnerable groups and the establishment of procedural mechanisms that enable courts to order biological examinations in a proportionate manner constitute part of the State's positive obligations in fulfilling children's rights.

Such reform should subsequently be directed toward a more fundamental philosophical objective so that legal reform does not merely stop at resolving normative conflicts. Dignified Justice places human dignity as the primary value in the formation and application of law, meaning that birth status cannot be used as a basis for reducing a person's rights as a legal subject. This perspective demonstrates that

limiting the rights of children born outside marriage solely due to the marital status of their parents contradicts the principle of the best interests of the child as provided in Article 3 of the CRC and the principle of non-discrimination under Article 2(2) of the CRC.

Accordingly, family law reform should be directed toward reconstructing the concept of nasab by distinguishing between biological lineage and theological lineage, whereby scientifically proven biological relationships may establish civil legal relationships, including inheritance rights from the biological father, without altering religious provisions concerning marriage guardianship (*wali nikah*) that remain within the domain of Islamic law. This reconstruction offers a middle ground between the protection of children's rights and respect for religious values, allowing legal reform to proceed in a manner more adaptive to the characteristics of Indonesia's legal system.

Unlike Indonesia, family law reform in Georgia is no longer directed toward recognizing the civil relationship between children and their biological fathers, as this issue has already been addressed through the concept of filiation under the Civil Code of Georgia. The primary challenge instead lies in the separation between paternity establishment and legitimation procedures, which results in the establishment of biological parentage not automatically leading to the fulfillment of the biological father's custody and visitation rights. This condition demonstrates that formal equality in the recognition of a child's legal status has not yet fully produced substantive equality in the exercise of family rights. Sandra Fredman explains that substantive equality requires not merely equal treatment within legal norms, but also guarantees that every individual can effectively enjoy their rights without facing structural barriers (Fredman, 2024). Based on this approach, family law reform in Georgia should be

directed toward integrating the procedures for establishing paternity and determining family law consequences, so that child protection does not cease at the recognition of civil legal status but also guarantees the comprehensive fulfillment of family rights and obligations.

Family law reform in Georgia should also focus on strengthening the effectiveness of law enforcement, as the normative recognition of rights has not yet been fully accompanied by effective protection in practice. This issue is reflected in the weak enforcement of decisions concerning child maintenance obligations and the limited access to the State legal system among communities in regions such as Adjara, Kvemo Kartli, and Samtskhe-Javakheti, where religious marriages without civil registration remain prevalent. Consequently, some children experience difficulties in obtaining legal recognition because socially recognized family relationships have not been fully integrated into the State's legal mechanisms.

The perspective of John Griffiths' legal pluralism theory remains relevant in analyzing this situation; however, the direction of reform in Georgia differs from that of Indonesia. Georgia does not need to accommodate religious norms within the formal family law system but rather should strengthen weak legal pluralism through mechanisms that enable local communities to access the State legal system without eliminating their sociocultural characteristics. The development of community-based mediation mechanisms followed by civil registration may serve as an instrument to maintain legal effectiveness while preventing children from losing legal protection due to social practices that have not yet been integrated into the State administrative system.

The differing characteristics of reform in Indonesia and Georgia demonstrate that comparative legal analysis cannot be understood as a process of simply transplanting legal norms from one country to another. The doctrine of legal transplant proposed by Alan Watson explains that legal rules may be transferred to another jurisdiction as part of the development of a legal system (Trikoz & Gulyaeva, 2023). However, Otto Kahn-Freund cautions that the success of legal transplantation is largely determined by the compatibility of the social, political, and cultural structures between the originating country and the receiving jurisdiction (Breda, 2019). This perspective is relevant because the concept of filiation developed in Georgia cannot be directly implemented in Indonesia, where religion remains one of the foundations of family law. Therefore, comparative legal analysis should be directed toward adopting the underlying values and principles, while the specific legal arrangements must be adapted to the characteristics of legal pluralism that have developed in Indonesia.

Although both countries pursue different reform pathways, the protection of children born outside marriage remains within the same framework of international human rights obligations. The CRC, through Article 2, establishes the prohibition of discrimination based on birth status; Article 3 provides that the best interests of the child shall be a primary consideration in all actions concerning children; and Article 7 guarantees the child's right to identity and recognition of relationships with his or her parents. The ICCPR, through Article 24, also requires States to provide protection for every child without discrimination. Meanwhile, for Georgia, these obligations are further reinforced by Article 14 of the ECHR, which prohibits discrimination in the enjoyment of rights guaranteed under the Convention. Collectively, these instruments establish a common normative floor as the minimum standard for child rights

protection. Therefore, national legal reform should move toward fulfilling international obligations without eliminating the distinctive characteristics of each country's legal system. This perspective demonstrates that harmonization with international law does not constitute a rejection of national legal identity, but rather forms part of the State's responsibility to guarantee human rights.

The direction of family law reform in Indonesia and Georgia should be developed through different priorities according to the structural problems faced by each country. Indonesia requires reform at the level of substantive law through the harmonization of the Marriage Law, Constitutional Court Decision Number 46/PUU-VIII/2010, and the Compilation of Islamic Law (KHI) in order to eliminate the dualism concerning the legal status of children born outside marriage. Conversely, Georgia requires primarily institutional reform through the simplification of paternity establishment and legitimation procedures, as well as the strengthening of enforcement mechanisms concerning maintenance obligations and custody rights. These differences demonstrate that legal reform cannot be pursued through a uniform approach, as each legal system possesses distinct structural challenges. A balanced reform model is therefore more relevant, combining normative renewal with institutional strengthening so that legal protection does not remain merely conceptual but can also be effectively realized in practice.

The conceptualization of family law reform concerning children born outside marriage should ultimately be understood as a gradual and continuous process that develops in accordance with social dynamics. The concept of law as an instrument of social engineering developed by Mochtar Kusumaatmadja demonstrates that legal change does not occur instantaneously but rather through a process of adjustment that

considers social needs, cultural conditions, and evolving conceptions of justice (Zaid et al., 2024). In this context, Georgia's success in developing a filiation system that is neutral toward the marital status of parents may serve as an important source of inspiration for Indonesia; however, its implementation must remain attentive to the pluralistic characteristics of Indonesia's national family law system. The entire reform process ultimately reflects the Dignified Justice Theory developed by Teguh Prasetyo, as the ultimate objective of legal reform is not merely to establish normative certainty but to ensure that every child receives legal protection that respects his or her dignity as a human being, regardless of birth status. Therefore, the reform of family law in both Indonesia and Georgia should not be measured by the uniformity of their regulatory models, but by their ability to guarantee human rights protection through legal systems that are just, consistent, and effective.

C. CONCLUSION

The regulation of the civil rights of Children born outside marriage in Indonesia and Georgia is constructed upon different family law paradigms, resulting in different legal consequences. Indonesia continues to maintain a legitimacy-based paradigm, which creates disharmony between the Marriage Law, Constitutional Court Decision Number 46/PUU-VIII/2010, and the Compilation of Islamic Law (KHI). In contrast, Georgia has adopted a filiation-based paradigm that recognizes parent-child relationships without distinguishing between the marital status of parents, although it continues to encounter challenges at the implementation level. This comparison demonstrates that the protection of children's rights depends not only on the substance of legal norms but also on the coherence of the legal system and the effectiveness of its implementation.

The conceptualization of family law reform in Indonesia should be directed toward normative harmonization, procedural legal reform, and the strengthening of child rights protection based on human rights principles and the Dignified Justice Theory. Meanwhile, reform in Georgia should prioritize the simplification of paternity establishment procedures, the strengthening of maintenance enforcement mechanisms, and the substantive protection of family rights. These different reform priorities demonstrate that legal reform cannot be achieved through direct legal transplantation but must be adapted to the legal, social, and cultural characteristics of each country. Accordingly, the objective of child rights protection can be achieved more effectively through reforms that remain grounded in international human rights standards while responding to the needs of national legal systems.

Indonesian legislators should promptly harmonize the Marriage Law, Constitutional Court Decision Number 46/PUU-VIII/2010, and the Compilation of Islamic Law (KHI), while establishing procedural mechanisms that ensure effective and affordable proof of biological relationships. The Georgian government should also strengthen law enforcement effectiveness and simplify procedures for determining family rights so that legal protection for children can be optimally realized. Future research is recommended to expand comparative studies by involving a wider range of countries and integrating both normative and empirical approaches in order to develop a more comprehensive and applicable model of family law reform.

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