

## Islamic Legal Review on Granting a Surname to an Illegitimate Child (Case Study in Pangururan Village, Sumbul District)

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### Abstract

This study aims to examine the Islamic legal perspective on the practice of granting clan names to children born out of wedlock in Pangururan Village, Sumbul District. This phenomenon is noteworthy because the granting of a clan name is part of the Batak Toba tradition, which holds social, kinship, and identity values, while in Islamic law, the lineage of a child born out of wedlock is subject to specific regulations. The study employs a qualitative method with a case study approach, using in-depth interviews, observation, and document analysis. The findings reveal that the granting of a clan name to children born out of wedlock in Pangururan Village is carried out to preserve family dignity, strengthen social relations, and prevent discrimination against the child. However, from an Islamic legal perspective, the lineage of a child born out of wedlock can only be attributed to the mother and her family, not to the biological father or his family. Therefore, granting a clan name that implies lineage to the biological father is not in accordance with the principles of lineage in Islamic law. The study recommends dialogue between traditional leaders and local scholars to find solutions that respect cultural values while adhering to the provisions of Islamic law.

**Keywords:** Islamic Law, Clan Name, Children Born out of Wedlock, Batak Toba Customary Law, Lineage.



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## INTRODUCTION

The identity of a child constitutes an essential element within the social structure of society. In Batak communities, one of the most significant aspects of such identity is the attribution of a marga (clan name), which is not merely symbolic but also signifies a person's social, cultural, and genealogical affiliation within the community (Haryadmo et al., 2025). The marga serves as the foundation for the formation of self-identity, the inheritance of rights, and the observance of customary traditions. In this context, a critical issue arises when a child is born outside a marriage recognized as lawful both by the state and by religious law (an illegitimate child). The fundamental question is: does an illegitimate child have the right to receive the marga from his or her biological father?

Within Batak society, which continues to uphold customary values, a child without a marga often faces social discrimination, whether in interpersonal relations, marriage, or matters concerning inheritance and customary obligations. Consequently, certain parties have sought to resolve this issue by conferring a marga upon illegitimate children. However, this practice becomes problematic when viewed from the perspective of Islamic law, which strictly regulates matters of lineage (nasab), inheritance, and the rights of children born

outside wedlock. According to Islamic law, an illegitimate child does not have a lineage (nasab) relationship with the man who committed fornication with his or her mother. As stated in the following ḥadīth:

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا، قَالَتْ: فَضَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: الْوَلَدُ لِلْفَرَّاشِ، وَلِلْعَاهِرِ الْحُجْرُ. (رواه بخاري، 2053،  
ومسلم 1457).

translation: From ‘Ā’ishah (may Allah be pleased with her), she reported: The Messenger of Allah ﷺ ruled, “The child belongs to the (lawful) bed, and for the fornicator there is only stone (i.e., punishment or no claim of lineage).” (Narrated by al-Bukhārī, 2053; Muslim, 1457).

A marga (clan name) does not merely function as a marker of lineage but also determines social rights and obligations within communal life. One of the compelling issues to be examined is how the system of granting a marga to children born out of wedlock is practiced and how it is perceived from the perspective of Islamic law. Lineage (nasab) can only be ascribed to the father through a legitimate marriage. Therefore, the conferral of a marga which in Batak society is identical to establishing lineage upon an illegitimate child by his or her biological father is considered problematic within the framework of Islamic law (Khairuddin, 2020). This aligns with the opinion of the majority of scholars, who hold that a child born of fornication has a lineage only through the mother, and not through the biological father.

In Pangururan Village, Sumbul Subdistrict, Dairi Regency, the Batak people continue to firmly uphold their customary traditions, including those concerning the attribution of a marga. Within Batak customary practice, a child born from a relationship outside a lawful marriage often faces difficulties in obtaining the father’s marga. This is because the marga is generally passed down through the paternal line (patrilineal), while in the case of illegitimate children, the legitimacy of their relationship with the father is often questioned. This problem extends beyond social and cultural dimensions, as it also carries significant legal implications that warrant deeper examination.

The marga represents a lineage that constitutes identity within Batak society and tradition. It is inherited from father to children. The function of the marga serves as a fundamental basis in Batak society, governing all types of relationships between individuals, between individuals and groups, and beyond (Ismail, 2025). On the other hand, there are also social, cultural, and humanitarian considerations that seek to provide an identity for such children in order to secure their future and social standing. For this reason, this study is significant in analyzing how the community particularly in Pangururan Village, Sumbul Subdistrict practices the attribution of a marga to children born out of wedlock, and how this practice can be evaluated within the framework of Islamic law.

A marga is the ancestral name that is passed down to descendants. It represents a group of people united by kinship and lineage. In contrast, an ethnic group (suku) is a social community that is consciously bound by culture as well as by shared identity. The conferral of a marga constitutes a formal acknowledgment by the mangain (the party who grants the marga) to act as the guardian or parental figure of the one being granted (diain). The process of mangain must not be equated or misinterpreted as adoption. Through the ratification or official conferral of a marga according to Batak Toba customary law, a woman who does not

originally belong to the Batak ethnic group is formally recognized as a member of Batak customary society and becomes part of the kinship association of the chosen marga. Consequently, the attribution of a marga entails two legal implications: first, from the moment the marga is granted, a non-Batak woman who is formally inducted is considered a member of the Batak Toba community in accordance with the legitimized marga; second, she attains equal status, rights, and obligations as other members of the customary community.

As members of the Batak community acknowledge, their social life cannot be separated from the culture they possess, for the cultural concepts of this society have been extensively examined from the perspective of Anthropology. A number of scholarly works that describe and analyze Batak Toba culture reveal consistent definitions, indicating that Batak culture encompasses two dimensions: form and substance. This view is in line with Koentjaraningrat's conception of culture as the expression of human ideas, thoughts, and actions in meeting the necessities of daily life, which are acquired through processes of learning and teaching. A cultured society is shaped by various factors that determine its way of life. In addition to environment and technology, other influential factors include social and political organization, which play significant roles in fulfilling daily needs. These elements constitute what is referred to as the core of culture, which includes a community's capacity for knowledge in managing available resources. This cultural core provides a broader explanation of how cultural elements influence patterns of life within the local environment of the Batak Toba people. Ethnoscience scholars believe that a society's ideology concerning such principles is generally aimed at ensuring the continuity and survival of the community itself (Sakirman, 2015).

The basis for determining status and social relations of this kind is referred to as the system of analogy. This means that the Batak people do not only consider kinship relations through their own marga, but also seek analogies from the marga of other family members. Thus, if there is no direct or close connection through one's own marga, kinship can be established by referring to the marga of other relatives (Fadah et al., 2025). In this way, stronger social bonds are fostered within Batak society. The precise origin of the marga in Batak communities remains uncertain; however, it is often said that the marga has existed since the very beginning of Batak society itself. The marga is inherently democratic in nature, meaning that it functions as a symbol of identity not conferred by any authority figure but rather acquired automatically by birth.

From the perspective of Islamic law, however, the status of children born out of wedlock is governed by explicit regulations. In Islamic jurisprudence (fiqh), the lineage (nasab) of an illegitimate child is attributed only to the mother, and no lineage relationship is recognized with the biological father. This ruling is based on the Prophet Muḥammad's ḥadīth, which stipulates that a child is ascribed to the mother who gives birth to him or her. Consequently, in Islam, an illegitimate child does not have inheritance rights from the biological father, and the legal relationship between them is not acknowledged in the same manner as that of a child born within a lawful marriage (Fadah et al., 2025).

The regulation concerning the legal status of children born out of wedlock as stipulated in Article 43 of Law Number 1 of 1974 has long been considered inadequate in providing legal protection and is often viewed as discriminatory. Under this provision, the status of a

child born outside a lawful marriage is recognized only in relation to the mother and her family, without any legal responsibility assigned to the biological father. In Islamic teaching, a child's lineage (*nasab*) is ascribed to the rightful possessor of the seed (*ṣāhib al-nasl*) or the lawful bed (*firāsh*). The term "possessor of the seed" refers to the father, meaning that within a legitimate marriage, the man whose seed results in conception is regarded as the biological father. Islam strictly prohibits fornication, as it disrupts and confuses lineage, particularly in cases where a woman engages in illicit relations with multiple men and subsequently conceives, making it impossible to determine the child's paternity with certainty. In this regard, the Prophet ﷺ emphasized to whom a child's lineage should be attributed. This is illustrated in the well-known ḥadīth regarding the dispute between Sa'd ibn Abī Waqqāṣ and 'Abd ibn Zam'ah concerning the status of a child. As narrated by 'Ā'ishah (may Allah be pleased with her):

"Sa'd ibn Abī Waqqāṣ and 'Abd ibn Zam'ah disputed over a boy. Sa'd said: 'O Messenger of Allah, this is my brother's son, Utbah ibn Abī Waqqāṣ. He entrusted me to claim that this child is his, so observe his resemblance.' Meanwhile, 'Abd ibn Zam'ah said: 'This is my brother, O Messenger of Allah, for he was born on my father's bed from his slave woman.' The Messenger of Allah ﷺ examined the boy and noted his strong resemblance to Utbah. Yet he declared: 'The boy belongs to you, O 'Abd ibn Zam'ah; the child is for the owner of the bed, while for the fornicator there is only stone. And you, O Sawdah bint Zam'ah, must observe ḥijāb from him.' 'Ā'ishah then reported: 'From that day onward, the boy never saw Sawdah again.'"

## RESEARCH METHODS

This study employs a qualitative method with a case study approach, as the topic under investigation concerns a complex and sensitive social phenomenon—namely, the conferral of a *marga* (clan name) upon children born out of wedlock from the perspective of Islamic law (Oktavia, 2011). The qualitative method was chosen in order to explore in depth the views, experiences, and practices occurring in the field, particularly in Pangururan Village, Sumbul Subdistrict. Through this approach, the researcher seeks to understand the meanings underlying community practices of granting a *marga* to illegitimate children, as well as how such practices interact with the norms of Islamic law and local culture.

Data collection techniques included in-depth interviews, direct observation, and document analysis (Arrasyid et al., 2024). In-depth interviews were conducted with various informants closely related to the issue, such as religious leaders, customary leaders, village officials, and families with direct experience regarding the attribution of a *marga* to children born out of wedlock. These interviews aimed to elicit their understanding of the legal foundations, social considerations, and implications of such practices.

In addition, observation was carried out to examine the social and cultural interactions of the Pangururan community in their daily lives, thereby providing the researcher with a concrete picture of how the practice of *marga* attribution takes place. This observation is essential to complement the interview data, as discrepancies often arise between what informants express and what actually occurs in practice.

Document analysis was also employed to examine relevant sources, such as village administrative records, family data, as well as Islamic legal and Batak customary literature

related to the conferral of a marga (Hadaiyatullah et al., 2024). By integrating these three techniques, this study seeks to produce a comprehensive and in-depth analysis of the Islamic legal perspective on granting a marga to children born out of wedlock, while also uncovering the socio-cultural dynamics underlying the practice.

## **RESULTS AND DISCUSSION**

### **General Findings The Meaning of Children in Society**

A child is regarded as a blessing long awaited by every family as the result of a sacred marriage. The presence of a child holds immense value for every individual who has entered into marriage and established a family. Within the Pangururan village community, children are highly expected and deeply cherished. The principle of lineage in the customary system is patrilineal, meaning that the ethnic line of descent is traced through male offspring. Sons hold a crucial role in the continuity of generations (Yanggo, H. Khuzaimah T & Anshory, AZ, H.A. Hafiz, 1996). This implies that if a family does not have a male child, the condition may be regarded as Nupunu, signifying that the paternal lineage cannot be continued, and the father's name will neither be remembered nor acknowledged within the genealogy. Nupunu therefore denotes the extinction of one's generation, indicating that the family line is no longer sustained within the customary genealogical system, particularly among the Batak people. A symbolic marker of this principle of Batak lineage is the marga (clan name).

A marga refers to a group of people who share common descent from a forefather, with the line of ancestry reckoned through the father, thus making it patrilineal. All members of a particular marga carry the same clan name as part of their personal identity, which is affixed after their given name. In Batak customary society, which is patrilineal in nature, both male and female siblings born of the same father are considered part of the paternal kin group. For children, the father's brothers are regarded not only as uncles but also as fathers, reflecting the collective familial ties within the paternal line.

Within this customary framework, the continuation of the marga in Batak genealogy is strictly dependent on male offspring, while daughters are not considered in the customary genealogical record. Consequently, if a Batak family has no sons, the lineage of that marga within the family will be lost and forgotten in the customary records. The male line therefore holds a central role in the Batak socio-cultural system. Sons are viewed as indispensable figures, regarded symbolically as kings or commanders within the family group, unparalleled in status and importance. For this reason, a family without male offspring is often considered to live in emptiness, as their lineage will eventually vanish from the Batak genealogical structure and their name will no longer be remembered or spoken of (Setiawati et al., 2023).

### **The Bestowal of Clan Name upon Children in the Batak Customary System**

Children, particularly sons, hold an absolute significance within the Batak customary system, as male offspring are regarded as the successors of the paternal lineage and clan name. Hence, if a family has no male children, such a family is considered extinct. In principle, the rightful heirs are the sons, and if the deceased has no male offspring, the inheritance will be transferred to the deceased's brothers or father. Meanwhile, the wife and daughters are excluded from inheritance rights (Silaen, 2021). Within Batak custom, the position of sons is considered superior to that of daughters. Thus, a family without male children is deemed incomplete and imperfect (Syarifuddin, 2002).

The adoption of a child in Batak society is referred to as Mangain. This practice is underpinned by a philosophical expression: Tampulak sibaganding di dolok ni pangiringan, Horas na ro dohot na didapot masipairing-iringan, which means that the adoption of a child is expected to bring goodness, harmony, and peace, both to the adoptive parents and the adopted child. Mangain signifies the elevation of one's position, dignity, and status transforming someone who initially held no rights into a person vested with full rights. The adopted child is then called Naniain. Batak customary society adheres to a patrilineal kinship system, in which lineage is traced through the male line (the father). Sons are therefore regarded as the bearers of descent who carry the responsibility and obligation to continue their father's clan name. From a social perspective, the Batak people recognize marga (clan), which functions as a vital marker of identity and as a central element of kinship relations. When a clan name is bestowed by adoptive parents upon an adopted son, it determines the position and responsibilities of that child within Batak kinship relations. Furthermore, it influences his honor, social interactions, and social status, while also entrusting him with the duty of preserving and transmitting Batak cultural values.

### **The Status of Children Born Out of Wedlock in Batak Customary Law**

In relation to customary law, the status of children born out of wedlock can be examined through three kinship systems. First, in patrilineal societies, the status of such children is limited to kinship relations with their mother alone, and they are considered heirs only within their mother's lineage. Consequently, children born out of wedlock are not regarded as heirs of their (biological) father. Second, in matrilineal societies, the kinship relationship between the biological father and the child born out of wedlock, as well as with the father's extended family, is acknowledged only if the father marries the child's mother. This is because such societies do not regard the act of bearing children out of wedlock as merely an attempt to avoid misfortune, but rather as a reproachable act. Third, in parental or bilateral societies, such as in Java, a child born out of wedlock is referred to as anak kowar, whose inheritance rights are limited to the mother or the mother's family. However, within parental or bilateral societies, it is common for the biological father to also provide inheritance to the child born out of wedlock. As a result, the inheritance rights of an anak kowar are often not distinguished from those of legitimate children, or at the very least, they are still granted a share of the inheritance. Furthermore, such children may freely associate with their biological father's family, and in some cases, their kinship ties may even become closer (Sianturi, 2017).

In patrilineal societies, particularly within the Batak community, the presence of a child born out of wedlock is considered a serious social problem, especially for the woman who gives birth. The existence of such a child often leads to conflicts within the family, kinship networks, and the wider customary community. Specifically, in Batak customary law, the status of a child born out of wedlock, even if male, does not grant him the position of heir or successor to his father's marga (clan lineage). Since such a child is born outside a lawful marriage, he is not recognized as a legitimate descendant of the father's lineage. Accordingly, his kinship ties are acknowledged solely through his mother and her relatives.

In relation to the status of children born out of wedlock, these are defined as children born to a woman who does not have a husband, or children whose biological father and mother are not bound by a legally recognized marriage. Concerning such children, there are two

categories: First, children born to a father and mother between whom there exists no legal impediment to marriage. Second, children born to a father and mother who are prohibited from marrying due to reasons stipulated by law, or in cases where either the father or mother is already bound in marriage to another person. From the perspective of customary law characterized by a matrilineal kinship system, when an unmarried woman gives birth to a child (out-of-wedlock child), the legal relationship of such a child exists only with the mother and not with the father. Such circumstances, within matrilineal customary societies, are regarded as disgraceful and reprehensible acts (Reswandi et al., 2025).

### **Social and Cultural Factors Influencing the Granting of Clan Names (Marga) to Children Born Out of Wedlock**

According to Pasaribu and Hutauruk (2009: 8), the granting of a marga (clan name) is merely a customary symbol (acknowledgment), wherein the party conferring the name formally declares their willingness to serve as a guardian or as a representative of the family of the person being granted the marga in fulfilling Batak customary obligations. Another purpose of this practice, known as mangain, is to ensure the continuity of interactions within the *dalihaan na tolu* social system so that communal bonds are not severed. It should be noted that the granting of a marga is only appropriate for women who are not of Batak origin, in accordance with the patrilineal principle of lineage. In general, the granting of a marga is not only carried out within the context of marriage but may also serve broader family or even political purposes (Makinuddin, 2007).

#### **1. Family**

Every Batak Toba community member possesses a marga or family name. A marga or family name constitutes a component of identity that signifies the family lineage from which an individual originates. This name or marga is inherited through the paternal line and is passed down continuously to subsequent generations. In the process of conferring a marga upon a woman who does not belong to the Batak Toba community but marries a man of Batak Toba descent who possesses a marga, the woman must first be granted a marga so that she is formally affiliated with a recognized lineage. The rationale for granting a marga to a non-Batak woman arises primarily from marriage (Rohman et al., 2021). Through this process, such women become members of the Batak Toba customary community and are integrated into the chosen kinship association, with full knowledge of the rights and obligations therein. Within the family context, the granting of a marga functions as a symbolic marker of kinship bonds among members.

#### **2. Politics**

The conferment of a clan name (marga) may also be carried out for political purposes. Such a clan name is obtained through the Batak customary traditions that have been previously established. The attribution of a marga in the context of politics serves as a means of consolidating power in order to attain a particular position. From this, it can be inferred that identity is utilized as an instrument of authority to secure status within society. The political use of marga is intended to foster kinship and strong social bonds, which subsequently become valuable capital for social interaction and for serving broader communal interests, particularly in leadership roles over regions in which clan identities are prevalent. For instance, in the province of North Sumatra widely recognized as a region dominated by populations with

established clan lineages the attribution of marga is often inseparable from political strategies (Qadri, 1973).

### **The Concept of Lineage (Nasab) in Islam**

In the literature of Islamic jurisprudence (fiqh), the concept of children or descendants is referred to by the term nasab. The term nasab is defined as the bond of kinship within a family. Amir Syarifuddin interprets nasab as a legally recognized kinship relationship. Among all aspects of law, marriage law and inheritance law are the most determinative and reflective of the family system prevailing in society. The structure of family relations is fundamentally rooted in the system of descent (Az-Zuhaili, n.d.). From an anthropological perspective, several types of descent systems can be identified, namely:

- a. Bilateral/Parental System, which recognizes kinship relations through both male and female lines.
- b. Patrilineal System, which acknowledges family relations only through the male line. Consequently, every member of society counts all the paternal relatives within the limits of kinship ties.
- c. Matrilineal System, which considers family relations exclusively through the female line.
- d. Bilineal or Double-Unilateral System, which recognizes kinship relations through the male line for certain rights and obligations, and likewise through the female line for others (Hazairin, 1982).

A person's lineage (nasab) to their mother is established through pregnancy resulting from sexual intercourse with a man, whether such intercourse takes place within a valid marriage contract or outside of it. Meanwhile, the determination of a child's lineage to the father may occur through a valid marriage, an invalid (fāsid) marriage, or intercourse under mistaken assumption (wāṭi' syubhat) (Melbourini, 2018). Amir Syarifuddin states: "If lineage to the mother is natural in character, then the child's lineage to the father is a legal relationship; that is, it requires the occurrence of a prior legal event, namely marriage" (Syarifuddin, 2002).

### **Causes of the Determination of Lineage Through a Valid Marriage**

The fuqahā' unanimously agree that a child born to a woman through a valid marriage contract is affiliated (nasab) to her husband (the child's father). For this determination, several conditions must be fulfilled. First, the husband must have reached biological maturity (bāligh). Second, the fetus must be at least six months old from the time of the marriage contract. This opinion is upheld by the Ḥanafī school, while other scholars maintain that the minimum period of six months is to be calculated from the actual occurrence of sexual intercourse between husband and wife. If the child is born in less than six months, then the child cannot be affiliated with the husband. Third, there must be the possibility of a meeting between the spouses after the marriage contract. The Ḥanafī school considers a mere possibility of meeting, based on rational presumption and imagination, as sufficient. They argue that when it is rationally conceivable for the spouses to have met, then a child born at least six months after the contract is to be affiliated with the husband, even if no direct physical encounter actually occurred (Melbourini, 2018).

### **Lineage Established Through Fāsid Marriage**

A fāsid marriage refers to a marital union conducted in a manner that does not fulfill, or is defective in, its legal validity requirements. For example, marrying a woman who is still



within her period of ‘iddah. The jurists (fuqahā’) unanimously agree that the determination of lineage (nasab) for a child born from a fāsīd marriage is the same as that in a valid marriage, provided the following conditions are met: First, the husband must be capable of impregnating his wife, meaning he has reached the age of puberty (bāligh) and does not suffer from any illness that would prevent conception. Second, marital intercourse must have occurred. Third, the child must be born at least six months after the consummation of the marriage (Laia, 2023).

### **Lineage Resulting from Wāṭi’ Syubhat**

Wāṭi’ syubhat refers to sexual intercourse that occurs as a result of error or mistake. For instance, in the darkness of the night, a man may engage in intercourse with a woman in his room, believing her to be his lawful wife. Jawād al-Mughniyah describes it as a man having sexual relations with a woman who is in fact unlawful (ḥarām) for him, due to his ignorance of the prohibition. In such a case, if the woman becomes pregnant and gives birth at least six months after the intercourse and before the maximum permissible duration of pregnancy, the child’s lineage is attributed to the man who engaged in intercourse with her. However, if the child is born after the maximum pregnancy period, then the child cannot be ascribed to that man (Liputan6.com, 2022).

### **The Attribution of the Father’s Lineage (Clan Name) to a Child Born Out of Wedlock in Islam**

Islam strictly prohibits the act of fornication (zinā), and even approaching it is explicitly forbidden by Islamic law. To reinforce this prohibition, Islamic law stipulates severe punishments for those who commit such acts. If the perpetrator of zinā is unmarried (whether male or female), the prescribed punishment is one hundred lashes to be carried out publicly before many witnesses, followed by banishment. However, if the perpetrator is married, the punishment is stoning to death (rajm). In Islamic law, a child born out of wedlock is defined as one born outside of a legitimate marriage. Such a child is considered illegitimate (anak luar kawin/anak tidak sah) and, as a consequence, cannot be affiliated through lineage (nasab) to the biological father, but only to the mother. Nevertheless, according to the Civil Code (KUHP), there is a provision that such a child may be regarded as a legitimate child if formally acknowledged by the father. In this framework, although the status of the child remains as one born out of wedlock, once acknowledged and legalized by the biological father, the child is entitled to inheritance rights. This stance was further reinforced following the Constitutional Court’s ruling on the legal status of children, which stipulates that a child born out of wedlock may be recognized as a legitimate child under civil law, provided such affiliation can be proven through modern technological means (e.g., DNA testing). Consequently, the child may establish an inheritance relationship with the biological father. This recognition gives rise to reciprocal rights and obligations between the father and the child. By contrast, in Islamic law, the consequences for a child born out of wedlock are distinct: the child cannot be affiliated through lineage to the father, but only to the mother; there are no mutual inheritance rights between the child and the father; and the father cannot serve as the legal guardian (walī) in matters such as marriage for the child.

In Islam, a newborn child is regarded as pure, sinless, and still in a state of fitrah (innate purity). Likewise, a child born out of wedlock is also innocent of the sins committed by the

individuals responsible for his or her existence in this world. This is in accordance with the word of Allah in Surah An-Najm verse 38:

أَلَّا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ

Meaning: (In those scriptures it is decreed) that no bearer of burdens shall bear the burden of another.

Therefore, a child born out of wedlock must be treated humanely. Such a child possesses the same inherent rights as any other human being, requiring proper education, instruction, and skills to serve as provisions for future life within society (Al-Mughniyah, 1964). In Islamic law concerning lineage (nasab) between a child and the father, certain conditions must be fulfilled. Among them: the child must be born after a minimum of six months from the time of the marriage contract (according to the Hanafis), or six months from the time of marital intercourse (according to the majority of jurists from other schools of thought). If a child is born less than six months from the date of the marriage contract or the first marital intercourse, the child cannot be affiliated through lineage to the husband of the woman who gave birth. This is because scholars unanimously agree that the minimum gestational period capable of resulting in childbirth is six months (William A. Haviland, 1985). If a child is born earlier than six months (through a normal birth), it is an indication that conception occurred before the marriage, even if the husband acknowledges the child as his and admits to having impregnated the woman prior to marriage.

Based on the above explanation, it is clear that in Islamic law, a child born out of wedlock does not have a legal paternal lineage; his or her lineage is only traced through the mother. Only a child born within a lawful marriage (according to Islamic law) can have paternal lineage and thereby inheritance rights. The four major schools of Islamic jurisprudence (Hanafi, Maliki, Shafi'i, and Hanbali) unanimously agree that a child born out of wedlock has no lineage to the biological father. In other words, the child cannot be affiliated to the man who committed fornication, even if he acknowledges the child as his own. Such acknowledgment is not legally recognized because the child resulted from an unlawful relationship. This applies regardless of whether the woman involved was unmarried or already married. Consequently, the child is considered as having "no father." This is based on the saying of the Prophet Muhammad (peace be upon him): "The child belongs to the [owner of] the bed, and for the fornicator there is only stone (loss and regret)." (Narrated by Bukhari and Muslim).

### Specific Findings

#### Islamic Legal Review on the Attribution of Clan Name to Children Born Out of Wedlock (Case Study in Pangururan Village, Sumbul District)

Based on the findings of the research conducted in Pangururan Village, Sumbul District, Dairi Regency, it can be presented that the community's perception regarding the attribution of clan names to children born out of wedlock reflects the central role of customary law. The attribution of a clan name in customary marriages is regarded as essential and obligatory, as it has become a deeply entrenched tradition.

The existence of clan names serves as a principal element in the social structure of the community and plays a crucial role in maintaining identity and kinship relations. A clan name is not merely a marker of ancestry and lineage, but it also regulates prevailing social norms,

such as the prohibition of marriage between individuals belonging to the same clan, a regulation that continues to be strictly observed by the indigenous community. Such customary rules emphasize the importance of safeguarding the honor and purity of lineage while simultaneously strengthening the sense of solidarity and social responsibility among members of the same clan.

The research findings indicate that the attribution of a clan name to children born within the community continues to be practiced, whereby the child is given the clan name of his or her parents in accordance with ancestral lineage. In this regard, the people of Pangururan Village do not differentiate based on the child's birth status. This is consistent with the statements obtained during interviews with customary leaders and religious figures in the village.

### **Interviews with community figures**

Interviews with community figures "In Batak custom, marga is not merely a family name. It is an identity, a marker of lineage, and it determines one's position within the social structure. Without a marga, a person is considered 'incomplete,' as they have no place within the *dalihan na tolu* system."

He further emphasized that children without a marga often face significant social obstacles, especially in customary activities and marriage processes.

"If a child does not have a marga, they cannot participate in *martupol* (the traditional engagement ceremony) according to custom, nor can they be positioned as either the giver or the receiver of *ulos* during traditional festivities. This situation may cause the child and their family to feel alienated."

This perspective illustrates how deeply embedded the marga system is in the Batak cultural framework, shaping not only personal identity but also one's social legitimacy and acceptance in the community.

"We understand that, according to religion, there is a prohibition against attributing a child born out of wedlock to their biological father. However, in customary practice, if the child is not given a marga at all, they will suffer social consequences. Therefore, we usually assign a marga from a certain side either from the mother's family or from a family willing to 'accommodate' the child."

He recounted several cases that had occurred in the community.

"There was once a girl born out of wedlock. Her mother came from the *Simanjuntak* marga. When the child was about to enter junior high school, the school administration asked for her marga. If she did not have one, it was feared that later on she would face difficulties with administrative and customary matters. Eventually, the family agreed to assign her the marga from the mother's side, not from the biological father. In this way, the child retained a customary identity without contravening religious rules on lineage."

Mr. G. S. acknowledged that differing perspectives between customary leaders and religious scholars often lead to lengthy debates.

"The *ulama* here are firm in their stance; they say lineage (*nasab*) must only follow the mother. However, in customary practice, if a child is said to follow the mother, they must still be given the appropriate marga. The problem is that if the marga is taken from the mother, some people consider it essentially the same as attributing the child to the father. This is where the dilemma arises."

At the conclusion of the interview, he expressed hope for a reconciliation between custom and religious law.

“We hope that customary leaders and ulama can sit together to find a middle ground. The child should not become a victim of discrimination, but at the same time, religious rules must not be violated. Perhaps a special marga designation could be created for such children, one that is recognized in customary terms yet does not contravene the sharī‘ah.”

### **Interview with a Traditional Leader**

The results of the interview with Mr. Adi Basri Solih, a traditional leader, concerning the theme “An Islamic Legal Review of Granting Clan Names to Children Born Out of Wedlock (A Case Study in Pangururan Village, Sumbul District)” are as follows:

In Batak Toba custom, the clan name (marga) is of great importance because it constitutes one’s identity. Without a clan name, a person cannot be positioned within the kinship system of Dalihan Na Tolu. A child born out of wedlock is usually considered not to have an official relationship with the paternal lineage. Therefore, in customary practice, such a child is often given the mother’s clan name or, in some cases, adopted by close relatives from the mother’s side or by a family willing to bestow a clan name. However, the granting of a clan name often becomes a matter of debate, since a clan name is not merely about nomenclature, but also encompasses inheritance, rights, and social status.

In addition, members of the community who are regarded as customary leaders provided the following explanation:

We usually hold a family deliberation. If a child is born, the mother’s family will reach a consensus to assign the clan name from the maternal line. If there is an uncle or close relative who is willing to adopt the child, then the clan name may be taken from the adoptive party. The purpose is to ensure that the child attains a clear position within customary society. Thus, even though born out of wedlock, the child should not be left alienated or unacknowledged.

### **Interview with a Religious Leader**

The results of the interview with Mr. M. Soleh Siregar, as a religious figure, concerning the theme “Islamic Legal Review on the Conferral of Clan Names (Marga) upon Children Born Out of Wedlock (A Case Study in Pangururan Village, Sumbul Subdistrict)” are as follows:

In the Pangururan community, there are two prevailing attitudes. First, some firmly adhere to the customary principle that children born out of wedlock should not be given the father’s clan name, since they were born outside a legitimate marriage. Second, there are those who are more flexible, maintaining that a child should still be given a clan name so as not to lose their identity within the community. However, the common practice is to assign the clan name from the mother’s side rather than the father’s. This approach is intended to preserve family honor and to avoid potential conflict.

Furthermore, another perspective provided by religious leaders in the community is as follows:

“Yes, of course. Since the majority of the people here are Muslims, religious views exert a strong influence. In Islamic law, a child born out of wedlock has a legal lineage (nasab) only through the mother, not the biological father. Therefore, many religious leaders in our village reject the assignment of the father’s clan name to such children. They argue that it is more

appropriate for the child to carry the mother's clan name. In this way, the practice does not contradict Islamic law, even though certain customary adjustments are made."

## CONCLUSION

Based on interviews with traditional leaders in Pangururan Village, it can be concluded that the granting of a surname to an illegitimate child is a complex issue, as it involves two aspects: the Batak Toba customary system and Islamic law.

1. In Batak Toba tradition, a surname (*marga*) is a core identity marker that determines a person's position within the *Dalihan Na Tolu* kinship system. An illegitimate child without a surname is considered to have no clear status in society. Therefore, the community tends to grant a surname either from the mother's side or through adoption by close relatives, so that the child still possesses a customary identity.
2. In Islamic law, the lineage (*nasab*) of an illegitimate child is traced only through the mother, not the biological father. This aligns with customary practices in Pangururan Village, where surnames are typically given from the mother's side, not the father's. Therefore, assigning a father's surname is considered inconsistent with Islamic principles of lineage.
3. Community attitudes are divided: some strongly uphold traditional customs and reject the use of the father's surname, while others are more flexible, allowing the use of the mother's surname or that of the family who adopts the child.
4. The solution often involves family deliberation to ensure the child does not lose their social identity, while also ensuring that the decision does not contradict Islamic teachings.

Thus, it can be understood that the granting of a surname to an illegitimate child in Pangururan Village is carried out through a compromise between customary law and religion, with the main principle being that the child should not be made a victim of their parents' actions and must still be given a respected position in society.

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