



## The Concept of Islamic Education for Nonmarital Children: A Comparative Analysis of the Thoughts of Muhammad Syahrur and Abdullah Nasih Ulwan

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### Abstract

**Keywords:**

Parenting; Islamic Education; Non Marital Children; Muhammad Syahrur; Abdullah Nasih Ulwan.

This article examines the comparative analysis of Abdullah Nasih Ulwan's thoughts with Muhammad Syahrur regarding the parenting of non-marital children. Departing from the current social phenomenon of society which indicates the number of children born from non-marital relations, where as individuals who are born naturally, children ideally have the right to be able to live properly like other children resulting from marital relations in giving their obligations and right to children as natural and holy individuals in the Islamic view as in hadith narrated by the Prophet. This paper uses a descriptive qualitative approach with a type of literature review. Analyzing Abdullah Nasih Ulwan's thought about the role of parents in giving obligations and rights to non-marital children, as well as how Muhammad Syahrur's thoughts with his theory of milk al-yamin views the obligations and rights of parents toward children as parents' obligations to children through the marital route, as explained by Ulwan about parenting. This was because Syahrur aligned milk al-yamin with marriages of the types mut'ah, misyar, and etc.

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### Abstrak:

**Kata Kunci:**

Parenting; Pendidikan Islam; Anak Non Marital; Muhammad Syahrur; Abdullah Nasih Ulwan.

Tulisan mengupas tentang analisis komparatif pemikiran Abdullah Nasih Ulwan dengan Muhammad Syahrur terkait parenting terhadap anak non marital. Berangkat dari fenomena sosial masyarakat saat ini yang terindikasi banyaknya lahir anak dari hubungan non marital, dimana sebagai individu yang terlahir secara fitrah, anak idelanya memiliki hak untuk dapat hidup layak sebagaimana anak lainnya hasil hubungan marital. Demikian juga secara biologi bagaimana orangtua yang menghasilkan anak ketika terlibat dalam hubungan non marital

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dalam memberikan kewajibannya dan haknya kepada anak sebagai individu yang fitrah dan suci dalam pandangan Islam sebagaimana hadits yang telah diriwayatkan Rasulullah. Tulisan ini menggunakan pendekatan kualitatif deskriptif dengan jenis kajian pustaka. Menganalisis pemikiran Muhammad Syahrur dan Abdullah Nasih Ulwan tentang peran orangtua dalam memberikan kewajiban dan hak terhadap anak non marital, juga bagaimana pemikiran Muhammad syahrur dengan teori *milk al-yaminnya* berpandangan terhadap kewajiban dan hak orangtua terhadap anak sebagaimana kewajiban orangtua terhadap anak melalui jalur marital, sebagaimana yang dijelaskan oleh Ulwan tentang parenting. Hal tersebut karena Syahrur mensejajarkan *milk al-yamin* dengan pernikahan jenis *mut'ah*, *misyar* dan sebagainya.

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## 1. Introduction

Muhammad Syahrur, whose full name is Muhammad Ibnu Da'ib Syahrur, was born on March 11, 1938. Syahrur is a civil engineering professional who received his primary and secondary education in Damascus. After finishing his secondary education at around 19 years old, he went to Moscow to further his engineering studies. While in Moscow, he deepened his understanding of Marxist teachings, which later influenced his Islamic studies. In 1964, Syahrur pursued his Master's and Doctoral studies in soil mechanics and foundation engineering at University College Dublin, Ireland. He completed his Master's and Doctoral degrees within four years and then joined the University of Damascus, also partnering with a civil engineering company. In 1972, he returned to Syria, joined the University of Damascus, and became a partner in a civil engineering company.<sup>1</sup>

Besides being an expert in engineering, Muhammad Syahrur is a contemporary Islamic expert from Syria, renowned for his "theory of limits," which has sparked controversy in the realm of Islamic thought in general. In addition to his theory of limits, he also wrote about the theory of "*milk al-yamin*," which drew controversy due to the perception that it legalized relationships between men and women without marriage. Contrary to the initial understanding of the *milk al-yamin* theory, Muhammad Syahrur, who will henceforth be referred to as Syahrur in this article, actually endeavored to contextualize fiqh (Islamic jurisprudence) for his time, specifically concerning relationships between men and women without marriage, in a world where slavery has been abolished both legally and globally. In light of the phenomena around him, he attempted to reconstruct the concept by seeking a middle ground between relationships without status and slavery. In fact, the practice of *milk al-yamin* proposed by Syahrur has terms and conditions similar to those of marriage, but without a guardian and some other conventional marriage requirements. However, this article does not focus on what *milk al-yamin* is, its practice, laws, or relevance. Instead, it will discuss the implications of *milk al-yamin* when it results in children or offspring. It will explore the rights and responsibilities of parents towards children born from such relationships, where the children are considered non-marital offspring.

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<sup>1</sup> Mukhammad Nur Hadi, "Muhammad Syahrur Dan Konsep Milkul Yamin: Kritik Penafsiran Perspektif Ushul Fiqh," *Yudisia : Jurnal Pemikiran Hukum Dan Hukum Islam* 10, no. 1 (2019): 25–51.

A classical Islamic education figure, Abdullah Nasih Ulwan, hereinafter referred to as Ulwan, was born in 1347 H/1928 AD in the Qadhi' Askar area of the city of Aleppo, Syria, and passed away on Saturday, 5 Muharram 1408 H, in a hospital in Jeddah. One of Ulwan's renowned works is the book on Islamic education from early childhood to adolescence titled "Tarbiyatul Aulad Fil Islam." In this book, he details the rights and duties of parents towards their children to ensure that the children grow up as pious and God-fearing individuals. Although the book does not explicitly address the status of children born outside of conventional marriage, it implicitly assumes that the rights and duties of parents towards children arise within the context of formal, conventional marriages.

This article will briefly discuss this issue, specifically regarding parenting responsibilities towards children born outside of official or non-marital relationships. The analysis is based on the theory of *milk al-yamin* by Syahrur. However, before delving into the discussion, the author reviewed related articles with similar themes. Among many, two articles were selected for their content relevance. The first article, written by Muhammad Joni and titled "Perkawinan yang Tidak Dicatatkan: Dampaknya Bagi Anak" (Unregistered Marriage: Its Impact on Children), explains that unregistered marriages do not align with children's rights because such marriages intersect with the need for child protection, both in family law and in fulfilling their individual rights. The legal consequences of unregistered marriages are unjust for children. Therefore, the risks and consequences of such marriages pose barriers to children's rights. The legal obstacles that arise must be addressed, and children born from unregistered marriages should still have a legal relationship with both parents—a relationship that legally cannot be disregarded. Even when born from an unregistered marriage, non-marital children should still have a civil relationship with their biological mother and her family, as well as their biological father and his family.<sup>2</sup>

Agus, in his article in the journal of Tarbiyah Islamiyah titled "Konsep Pendidikan Islam terhadap Pendidikan Anak Usia Dini (PAUD)" (The Concept of Islamic Education for Early Childhood Education), explains that in the context of Islamic education, an educator has the responsibility to foster the development of students by striving to develop their potential comprehensively, including affective (feelings), cognitive (thoughts), and psychomotor (motor skills) aspects. Early Childhood Education (PAUD) from an Islamic perspective encompasses three main aspects: nurturing, habituation, and the introduction of learning. Nurturing aims to protect children from the negative impacts of behavior, such as harmful actions or abuse, whether physical, verbal, or psychological. Habituation, which serves as a means of adapting children to their social environment, involves broader life experiences. Meanwhile, Early Childhood Education (PAUD) methods in the Islamic perspective include various approaches, such as the method of role modeling, training and experience, the use of games, songs, and stories, as well as approaches through praise, commendation, and the inculcation of good habits. Early Childhood Education (PAUD) from an Islamic perspective also emphasizes principles such as instilling aqidah (faith) as a priority for guidance and the demand for the actualization of worship, the cultivation of noble character, training for independence, and the principle of balance between worldly life and the hereafter, as well as the balance between knowledge and action.<sup>3</sup>

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<sup>2</sup> Muhammad Joni, "Perkawinan Yang Tidak Dicatatkan: Dampaknya Bagi Anak," *Musāwa Jurnal Studi Gender Dan Islam* 12, no. 2 (2013): 237, <https://doi.org/10.14421/musawa.2013.122.237-259>.

<sup>3</sup> Zulkifli Agus, "Konsep Pendidikan Islam Terhadap Pendidikan Anak Usia Dini (Paud)," *Raudhah Proud To Be Professionals : Jurnal Tarbiyah Islamiyah* 3, no. 1 (2018): 39–56,

The two articles with similar themes to this article take different positions. The first article broadly emphasizes the rights of children from legal marriages, highlighting that these children are legally and biologically attached to their mother. In contrast, the second article focuses on the concept of Islamic education for children, emphasizing that it should encompass three aspects: nurturing, habituation, and the introduction of learning. This article positions itself between the two, exploring how children from non-marital relationships can obtain their civil rights and receive religious education as individuals who are born inherently free. It seeks to address both the civil status and the educational needs of these children, ensuring they are afforded the same opportunities and protections as those from conventional marriages. In relation to the phenomenon of ongoing social transformation in global society, as briefly referenced by Syahrur in his effort to respond to surrounding phenomena through *ijtihad*, the situation of relationships between adult men and women who tend to engage in intimate relations without formal and conventional marriage bonds, not leading to adultery, prostitution, or cohabitation ("kumpul kebo" or "samen leven"), is difficult to avoid. While such relationships could be legally recognized in pre-Islamic times when involving slaves, the modern context presents new challenges. It should be reiterated that this article does not delve into the details of non-marital relationships between men and women but rather focuses on the rights and responsibilities of parents when such relationships result in children. The parental rights and duties encapsulated in parenting activities for children born from non-marital relationships will be analyzed through the lens of Syahrur's *milk al-yamin* theory and Ulwan's *tarbiyatul aulad* principles. Therefore, the aim of this article is to analyze Muhammad Syahrur's perspective on the rights of children resulting from *milk al-yamin* and to compare it with the parenting approach and parental obligations towards children as proposed by Muhammad Nasih Ulwan. By juxtaposing Syahrur's thoughts on *milk al-yamin* with Ulwan's concepts of child upbringing, this article seeks to provide a nuanced understanding of how parents in non-marital relationships can fulfill their obligations and ensure the rights of their children. This analysis aims to offer insights into how modern interpretations of Islamic teachings can address the complexities of parenting in contemporary contexts.

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<https://doi.org/10.48094/raudhah.v3i1.24>.

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## 2. Methods

This research uses a qualitative descriptive analysis approach with the type of library research. In this type of research, the data used as the main source are library materials related to the subject matter, to obtain theories or concepts as an analysis of the problems discussed. As well as to examine relevant previous research in order to add to the literature in this research and put this research in a position and find novelty in discussing the problem. This research takes secondary data through scientific writing in journals or other research results found randomly related to the theme of discussion. The data obtained is then analyzed and compared to obtain data synthesis to emerge new threads in the academic realm.

## 3. Results and Discussion

### 3.1 General Overview of Islamic Education for Nonmarital Children

Before discussing about Islamic education or known as Islamic parenting for non-marital children in the views of Syahrur and Ulwan, it is essential to provide a brief overview of general parenting principles, the rights and responsibilities according to Indonesian positive law as a benchmark for legality in Indonesia, and the implications of conventional legal marriages and *milk al-yamin*. These elements will be used to analyze the issues in this article, where Ulwan's ideas as an Islamic education figure and Syahrur's thoughts as a contemporary Islamic thinker will be examined to understand the rights and responsibilities of parents through parenting activities for non-marital children. The novelty of this article lies in the obligations of parents who engage in the practice of *milk al-yamin* and produce offspring, as well as the rights of children resulting from *milk al-yamin*.

*Milk al-yamin* refers to a relationship framework discussed by Syahrur, which historically relates to the status of slaves and their masters. In Syahrur's modern interpretation, it addresses non-marital relationships between men and women. While Syahrur's theory of *milk al-yamin* does not intend for such relationships to produce offspring, it raises questions about the rights and responsibilities of parents and children if they do.

Syahrur's theory emphasizes the legal and social acknowledgment of non-marital relationships without producing offspring. If children are born, their rights and the parents' responsibilities must be addressed, challenging conventional legal and social norms. On the other hand, Ulwan's work focuses on comprehensive Islamic education and parenting, detailing the rights and responsibilities of parents towards their children to ensure their growth as pious and righteous individuals. His principles can be applied to all children, regardless of their parents' marital status.

Although Muhammad Syahrur explained that the practice of *milk al-yamin* is ideally not meant to produce offspring because it primarily addresses the status of relationships between men and women, this article will explore these potential implications. Meanwhile, Muhammad Nasih Ulwan's perspectives are chosen because he is a prominent Muslim figure who has intensively discussed the rights and responsibilities of parents towards their children. This article attempts to juxtapose these two viewpoints to find common ground, despite the different

conceptual frameworks regarding the parental relationship status that results in offspring.

The parenting encompasses the practices and approaches used by parents to raise their children, focusing on nurturing, guiding, and supporting their development in various aspects, including emotional, cognitive, and physical growth. Effective parenting aims to provide a stable, loving environment that fosters a child's overall well-being and helps them develop into well-rounded individuals.

In Indonesia, the rights and responsibilities of parents and children are comprehensively regulated by a series of laws aimed at ensuring the well-being and protection of the family unit. The Marriage Law (Law No. 1 of 1974) is fundamental in defining the legality of marriage, stipulating the conditions required for a valid marriage, and detailing the mutual rights and duties of spouses. This law ensures that both parents are responsible for the upbringing of their children, emphasizing the importance of providing a stable and supportive family environment.

Complementing the Marriage Law is the Child Protection Law (Law No. 23 of 2002), which specifically focuses on safeguarding children's rights. This law underscores the need to protect children from neglect, abuse, and exploitation. It mandates that children must be provided with adequate care, education, and protection, highlighting the role of parents and guardians in fostering a safe and nurturing environment. Additionally, the law outlines the responsibilities of government agencies in implementing policies that support child welfare and protection.

The Civil Code of Indonesia further reinforces the legal framework governing family relationships. It provides detailed regulations on the civil rights and obligations of parents and children, ensuring that children's interests are prioritized in all decisions affecting them. The Civil Code grants parents the authority to make essential decisions regarding their children's upbringing and welfare, while also stipulating that parents must provide for their children's financial support, education, and moral guidance.

Together, these laws create a robust legal structure that ensures children born within a legal marriage in Indonesia have clear rights to care, education, and protection. Parents are legally obligated to fulfill these rights by providing for their children's basic needs, ensuring they receive a proper education, and protecting them from any form of harm. This legal framework not only protects children's rights but also emphasizes the importance of parental responsibility in nurturing and supporting the next generation.

In summary, the combination of the Marriage Law, the Child Protection Law, and the Civil Code in Indonesia establishes a comprehensive approach to family and child welfare. These laws collectively ensure that children are cared for, educated, and protected, while clearly defining the corresponding duties of parents. By enforcing these legal provisions, Indonesia aims to create a society where the rights of children are upheld, and parents are empowered to provide a safe and supportive environment for their growth and development.

The unique contribution of this article is to explore the parental obligations and children's rights in the context of *milk al-yamin* and to analyze how Ulwan's educational principles can be applied to non-marital children. By comparing and contrasting Syahrur's and Ulwan's views, the article seeks to provide a balanced understanding of how to address the complexities of parenting non-marital

children in contemporary society, ensuring their rights and well-being are upheld. This comprehensive approach aims to bridge the gap between traditional Islamic teachings and modern social realities, offering practical insights for parents, educators, and policymakers in handling the rights and responsibilities of non-marital children.

Several secondary literary sources, including academic journal articles and other scholarly works (theses, dissertations) on Islamic education, have not provided specific strategies, models, or methods by Syahrur. His work primarily focuses on the conceptual thinking of Islam in constructing laws that he aims to contextualize. Regarding the theme of this article, the rights of non-marital children are not clearly addressed in Syahrur's work. He elaborates in detail on the concept of *milk al-yamin*, which, when related to Ulwan's concepts, pertains to pre-conception education and the selection of good parents. Syahrur emphasizes that the practice of *milk al-yamin* should ideally not result in offspring, which may explain why he does not discuss the rights of non-marital children resulting from *milk al-yamin*.

### 3.2 Comparative Analysis of the Syahrur and Ulwan's Perspective on Islamic Education for Non-Marital Children

Ulwan, in his concept of Islamic education for children, does not explicitly differentiate between marital and non-marital children regarding their right to receive Islamic education. He outlines an ideal theory according to Islamic law, which the author assumes operates within the context of legal relationships. However, the presence or birth of a child is a logical consequence of a relationship between two individuals, regardless of their status. Nasih Ulwan states that the primary responsibility emphasized in Islam is the educator's duty to children, who deserve guidance, instruction, and education from them<sup>4</sup>. The educators referred to are parents and teachers in formal schools, including those involved in early childhood education. A child, as an individual and social being, has the right to receive education that meets their needs and abilities. Education is provided with the hope that the child can grow and develop intelligently according to their potential, ultimately becoming a quality member of society. During early childhood, a child's development reaches its maximum, comprising 80% of the total brain development of an adult. In Ulwan's view, parenting focuses on several aspects of education: intellectual education, psychological education, moral education, faith education, physical education, social education, and sexual education. To implement this educational concept, Ulwan employs several educational methods: first, Education through role modelling (*al-tarbiyah bil qudwah*). This method emphasizes the importance of parents and educators' values by observing and imitating adults. In an Islamic context, this means demonstrating qualities such as honesty, compassion, and devotion to religious practices. Second, education through advice (*al-tarbiyah bil mau'zahah*). Giving advice and counsel is a key educational method. This involves providing guidance, reminders, and moral instruction to children. It includes teaching them right from wrong, explaining the reasons behind Islamic teachings, and encouraging them to follow the right path through gentle persuasion. Third,

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<sup>4</sup> Ahmad Atabik and Ahmad Burhanuddin, "Konsep Nasih Ulwan Tentang Pendidikan Anak," *Elementary* vol 3, no. 2 (2015): hlm 275-276, <http://journal.stainkudus.ac.id/index.php/elementary/article/download/1454/1330>.

education through habitual practices (al-Tarbiyah bil `Adah). Forming good habits is crucial in a child's development. This method focuses on instilling positive habits and routines from an early age, such as regular prayer, cleanliness, and discipline. Repeated actions become ingrained in the child's behavior, making them a natural part of their lifestyle. Fourth, close attention and supervision ensure that children are following the teachings and practices they have learned. This method includes monitoring their actions, providing corrective feedback, and ensuring they are adhering to Islamic principles. It also involves creating a supportive environment where children feel safe to express their thoughts and seek help. Five, educational through punishment and reward (al-tarbiyah bil `uqubah wal thawab). This method uses a system of rewards and punishments to reinforce good behavior and discourage negative actions. Rewards can be praises, privileges, or tangible items, while punishments should be fair and constructive, aimed at helping the child understand and correct their mistake. This method teaches children accountability and the consequences of their actions within an Islamic framework.<sup>5</sup>

In Ulwan's concept of parenting, faith education involves teaching and internalizing fundamental values of faith, the pillars of Islam, and the basics of Shariah. The content of faith education includes the declaration of faith (Kalimat Tauhid), obedience to Allah, knowledge of halal (permissible) and haram (forbidden), the commandments of worship, emulating the Prophet, love for the Qur'an, and devotion in worship. Moral education, from Ulwan's perspective, instills lessons on the attitudes and character traits that a child should embody. Physical education focuses on imparting knowledge about maintaining a healthy physique and well-being. Intellectual education aims to cultivate a child's intellectual abilities to be of high quality and excellence. Psychological education aims to equip children with the skills to manage their mental and emotional well-being, fostering a healthy personality adorned with virtuous behavior.<sup>6</sup>

In Ulwan's view, children are considered a precious and invaluable gift granted to parents by Allah. Not every parent is entrusted with the responsibility to raise children; they cannot be requested nor refused. When Allah wills the birth of a child, their arrival on earth cannot be prevented by anyone. Conversely, if Allah decrees a child's birth, no one can prohibit it. Children are entrusted to parents as a trust (amanah) to be nurtured, raised, and developed into quality individuals—righteous sons and daughters. In Ulwan's perspective, righteous children are those who grow up obediently following Allah's commandments and avoiding His prohibitions, embracing Islam as their religion, with the Qur'an and Hadith as their guidance, and Prophet Muhammad (PBUH) as their role model.<sup>7</sup>

According to Ulwan, the way to raise righteous children is by providing education based on Islamic values. In Ulwan's view, righteous children are those who: believe and fear Allah and the Last Day, love and emulate the Prophet Muhammad (PBUH), his family, and his companions; are obedient and dutiful to their parents; enjoin good and forbid evil; fulfill the pillars of Islam and believe in

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<sup>5</sup> A. N Ulwan, *Tarbiyatul Aulad, Diterjemahkan Oleh Emiel Ahmad Dengan Judul Tarbiyatul Aulad: Pendidikan Anak Dalam Islam* (Jakarta: Khatulistiwa Press, 2015).

<sup>6</sup> Abdullah Nasih Ulwan, *Pendidikan Anak....*, Ibid.

<sup>7</sup> M. Khairil Musthafa, "Konsepsi Pendidikan Islam Menurut Dr. Abdullah Nasih Ulwan," *Jurnal Study Islam Panca Wahana* 12, no. 1 (2014): 84–94.



the pillars of faith; show patience in facing trials; and have noble character.<sup>8</sup> The relationship between a man and a woman, whether through legal marriage or not, greatly impacts the birth of a new generation or child. Naturally and inherently, every child born, regardless of their parents' circumstances, is born in a state of purity or fitrah, as stated by the Prophet Muhammad (PBUH). The Prophet (PBUH) said, "Every child is born in a state of fitrah. Then his parents make him a Jew, Christian, or Zoroastrian, just as an animal gives birth to a perfect offspring. Do you see any defect in it?" This hadith underscores that children are born pure and predisposed to goodness, and their upbringing and environment influence their beliefs and practices as they grow.<sup>9</sup> Next, quoting a hadith narrated by Imam Muslim that "there are two matters in a person that can lead to disbelief: slandering lineage and mourning excessively over the deceased."<sup>10</sup>

Referring to the two hadiths related to the duties and responsibilities of parents towards their children, it is important to understand that every action taken by humans in this world will be asked the responsibilities by Allah SWT at hereafter. As the Prophet Muhammad SAW said, every person is a leader responsible for themselves, and every leader will be asked the responsibilities for their leadership. According to the Republic of Indonesia Law number 35 of 2014, Article 26 Paragraph 1 states that parents are obligated and responsible for their children in terms of: First, nurturing, caring for, educating, and protecting them; it means that parents have the primary responsibility to nurture and care for their children, ensuring their well-being and safety. This includes providing for their basic needs, offering emotional support, and creating a secure environment. Education, both formal and informal, is also crucial, guiding children towards knowledge and understanding. Protection involves safeguarding children from harm and guiding them to make safe choices. Second, fostering their growth according to their abilities, talents, and interests; Recognizing that each child is unique, parents should foster their growth by acknowledging and nurturing their individual abilities, talents, and interests. This means providing opportunities for children to explore their passions and develop their skills, whether in academics, arts, sports, or other areas. Tailoring support to each child's strengths helps them to achieve their full potential and develop self-confidence. Third, preventing child marriage; preventing child marriage is crucial to ensure that children have the opportunity to grow and develop without the pressures and responsibilities of adult life too soon. This involves educating children about their rights and the importance of completing their education and developing fully before considering marriage. Parents play a key role in setting expectations and supporting their children to avoid early marriage. Fourth, instilling character education and moral values in them. Ulwan explains that parents' duties include: instilling strong character and moral values in children is fundamental to their development. This includes teaching them honesty, respect, responsibility, compassion, and other virtues. Character education helps children understand the difference between right and wrong, fostering ethical behavior and a sense of justice. Parents should lead by example and provide consistent guidance to reinforce these values. As Ulwan's detailed parental duties: providing and instilling religious education,

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<sup>8</sup> M. Khairil Musthafa, *Konsepsi Pendidikan Islam Menurut*, p.77

<sup>9</sup> Hadith narrated by Bukhary number 1296

<sup>10</sup> Hadith narrated by Muslim number 165

imparting moral education, providing physical education, providing intellectual responsibility, providing psychological education, providing social education, and providing appropriate sex education.

Normatively, various rights of children have been regulated in the Republic of Indonesia Law number 23 of 2002 concerning Child Protection, originating from legal or formal marriages. Article 4 states that "every child has the right to live, grow, develop, and participate in a manner consistent with human dignity and worth, and to be protected from violence and discrimination." Article 5 states that "every child has the right to a name as an identity and citizenship status." And Article 6 states that "every child has the right to worship according to their religion, think, and express themselves according to their intelligence and age, under parental guidance."<sup>11</sup>

The Constitutional Court Decision Number 46/PUU-VII/2010 has altered the legal treatment of children born out of wedlock. Regarding this Constitutional Court decision, Article 43 paragraph (1) of the Marriage Law states: "Children born out of wedlock have civil relations with their mother and her family, as well as with the man proven to be their father based on scientific knowledge and technology and/or other legal evidence, including blood relations with the father's family." Article 99 of the Compilation of Islamic Law (KHI), hereinafter referred to as KHI, provides criteria for legitimate children are children born within or as a result of a valid marriage, and conception by a lawful husband and wife outside the womb, with the child born by the wife.

Of interest is Article 99 paragraph (2) KHI, which concerns conception outside the womb. For conception outside the womb to establish legitimacy, two conditions must be met: first, the conception must originate from the sperm and ovum of a lawful husband and wife, and second, the child must be born from the womb of the wife. This is understandable as morality is a concern in Islamic law.

Indonesian Marriage Law does not regulate in detail about conception outside the womb as does KHI. According to Budhayati (2012) in the journal article "Refleksi Hukum," the principles as stipulated in Article 99 paragraph (2) KHI can be applied to those not subject to KHI if issues arise regarding the status of children born from conception outside the womb. In their status as legitimate children, there are juridical consequences. The juridical consequences of legitimate children include having civil relations with both parents and the families of both parents. As a result of these relations, there arises the obligation of *alimentatie* (*alimentatieplicht*) on both parents, which is the obligation to support each other.

According to Article 45 of the Indonesian Marriage Law, parents are burdened with the obligation to support and educate their children until they marry or become independent, even if their marriage is dissolved. "Support" means that parents have the duty to provide adequate clothing, food, and shelter according to their ability. "Educate" means that parents have the duty to provide both formal and informal education to their children.

The analysis of KHI, when linked to Muhammad Syahrur's concept of *milk al-yamin*, shows a common thread, especially in the status of children's existence, which also correlates with the views of Muhammad Nasih Ulwan regarding parenting and children's education.

Parenting activities primarily involve the responsibilities of parents in nurturing and caring for their children. A child has the right to guidance, security,

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<sup>11</sup> <https://peraturan.bpk.go.id/Details/44473/uu-no-23-tahun-2002> diakses tanggal 11 Januari 2024 jam 14:44 WIB

protection, education, and direction from their parents on how to shape and model their behavior. Jerome Kagam, a developmental psychologist in 1997, defined parenting as a series of decisions about socializing children, including what parents should do to be responsible and contribute as members of society. Hetherington and Whiting in 1999 described parenting as the total interaction process between parents and children, such as caregiving, feeding, cleaning, protecting, and socializing within the environment. Meanwhile, Gunarsa in 2022 explained parenting as the interaction pattern between children and parents in fulfilling physical and psychological needs. From these three perspectives, the common thread is that parenting is primarily about the obligations of parents to their children, which aligns with Ulwan's views in his book "Tarbiyatul Aulad fil Islam." Ulwan's opinion on parenting towards children entails activities that occur within families formed conventionally or legally according to positive law in Indonesia and fiqh law in certain schools of thought, particularly the Shafi'i madhhab. However, what about children born out of non-marital relationships or those not legally recognized under Indonesian positive law and generally accepted madhhabs dominant among Muslims? As parents, are their obligations towards such children the same or different from those explained above? Nevertheless, before delving into parenting obligations towards non-marital children, I will first briefly discuss and outline the theory of *milk al-yamin* so that readers can understand it holistically.

Ulwan's opinion on parenting towards children entails activities that occur within families formed conventionally or legally according to positive law in Indonesia and fiqh law in certain schools of thought, particularly the Shafi'i madhhab. However, what about children born out of non-marital relationships or those not legally recognized under Indonesian positive law and generally accepted madhhabs dominant among Muslims? As parents, are their obligations towards such children the same or different from those explained above? Nevertheless, before delving into parenting obligations towards non-marital children, I will first briefly discuss and outline the theory of *milk al-yamin* so that readers can understand it holistically. The term "milk al-yamīn" by Syahrur is not interpreted as slavery in contemporary times, but is understood as a noble covenant ('aqdun ihsān), namely a mutual agreement to protect oneself and commit to engaging in sexual relations exclusively with one's partner.<sup>12</sup> It seems there might be some confusion or overlapping points in your query. Let me clarify the concept of "milk al-yamīn" as interpreted by Syahrur and how it relates to non-marital sexual relationships:

Syahrur interprets "milk al-yamīn" not as slavery but as a noble covenant ('aqdun ihsān), which involves a mutual agreement to engage in sexual relations exclusively with a partner outside of conventional marriage. He sets forth several conditions for this arrangement: There must be a contract ('aqd), It should not involve a mahram (close relative), It excludes homosexual and lesbian relationships, It should not be done publicly, It should not involve another man's wife, It should not involve multiple men simultaneously. According to Abdul Azis, who discusses Syahrur's concept, "milk al-yamīn" validates non-marital sexual relationships similarly to marital relations. This interpretation allows for various possibilities: A man can engage in non-marital sexual relations with one woman. A man can engage in polygamous non-marital sexual relations with multiple women. A woman without a partner can engage in non-marital sexual relations

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<sup>12</sup> Abdul Mustaqim, "Memahami Konsep Milk Al-Yamin Ala Syahrur Dan Beberapa Kelemahannya," *Https://Islami.Co./*, 2019, <https://islami.co/memahami-konsep-milk-al-yamin-ala-syahrur-dan-beberapa-kelemahannya/>.

with one man. A woman without a partner cannot engage in polyandrous non-marital sexual relations with multiple men. A husband can engage in non-marital sexual relations with one woman. A husband can engage in polygamous non-marital sexual relations with multiple women. A wife cannot engage in non-marital sexual relations with another man. These points outline Syahrur's perspective on "milk al-yamin" and its implications for non-marital sexual relationships as discussed by Abdul Aziz.<sup>13</sup>

Based on the above explanation, the extent of validity of non-marital sexual relationships in Syahrur's concept of *milk al-yamin* includes nine forms: temporary marriage (nikah mut'ah), fixed-term marriage (nikah al-muhall), customary marriage (nikah 'urfi), traveler's marriage (nikah misyar), friendship marriage (nikah friend), gift marriage (nikah hibah), living together (al-musakanah), and acts of kindness (akad ihsan).

The expert from Amr Adhep, Sheikh Khaled, and Syahrur, quoted by Abdul Aziz in the appendix of his dissertation as the theoretical basis for the position of *milk al-yamin*, which Syahrur aligns with conventional legal marriage. When referring to various sources that define milk-al-yamin from traditional to modern times, aside from Syahrur, most tend to converge on the following definition: Amr asked if Syahrur could explain the fatwa and his interpretation of the verse "ma malakat aimanukum," which refers to *milk al-yamin*. Syahrur explained that there are two cases of sexual relationships permitted by Sharia. The first case is az-zawaj (marriage), and the second is *milk al-yamin*, which is not marriage. In both cases, sexual relations are considered halal. Marriage is defined as a relationship between a man and a woman for living together, forming a family, uniting permanently, having children, and descendants from the woman he marries as his wife. As for *milk al-yamin*, it does not contain conditions as previously explained. Syahrur further provided an analogy, stating that religion allows for four wives and a number of *milk al-yamin* without limit. The Quran does not describe *milk al-yamin* as slavery, but rather emphasizes freeing slaves. However, social history considers *milk al-yamin* as slavery. In the book of Allah, *milk al-yamin* is mentioned and explained repeatedly, up to 13 times. Further explained that Mut'ah marriage is a case of *milk al-yamin*, and misyar marriage is also considered *milk al-yamin*. All such cases are classified as *milk al-yamin* because the human mind tends to be clever and seeks to address issues that cannot be reached or resolved by scholars. The human mind tends to create misyar marriages, friendship marriages, and indeed, there are various forms that will continue to be created in the future. In another excerpt, Sheikh Khaled asked about the scenario of pregnancy, to which Syahrur responded that according to what is agreed upon, such as in misyar marriages in Saudi Arabia.<sup>14</sup>

Based on the discussion of various theories and explanations above, the author attempts to analyze the perspectives of Ulwan on parenting, which emphasizes that parents from conventional and legal marriages have the obligation to parent their children or descendants as previously explained. On the other hand, Syahrur's opinion regarding his theory of *milk al-yamin* broadly states that non-marital relationships in the form of *milk al-yamin* are halal, permissible, and legal, similar to temporary marriages (mut'ah) and others mentioned earlier. However, in Syahrur's explanation during an interview with a netizen, as quoted by Abdul Aziz in the appendix of his dissertation, *milk al-yamin* purely regulates

<sup>13</sup> Abdul Aziz, "Konsep Milk Al-Yamin Muhammad Syahrur Sebagai Keabsahan Hubungan Seksual Non Marital". Disertasi. (Universitas Islam Negeri Sunan Kalijaga, 2019), <https://digilib.uin-suka.ac.id/id/eprint/42440/>.

<sup>14</sup> *ibid*, hal 367-373

the legality of relationships between men and women not bound by conventional marital ties, and does not necessarily lead to offspring or the birth of children from such relationships.

Nevertheless, from a rational legal and causal perspective, it is sometimes possible that a long-term relationship between a man and a woman may not result in pregnancy and the birth of offspring (children), although this is not absolute. Returning to the formulated problem related to parenting children, it can ultimately be concluded that children or descendants resulting from *milk al-yamin* relationships are still considered legally legitimate children and not illegitimate children. This is because *milk al-yamin* holds a legal status equivalent to conventional marriages. Therefore, men and women who engage in *milk al-yamin* relationships and produce offspring have the same responsibilities as parents who have offspring from conventional marriages. Based on the discussion above, the obligation of parents towards their children through parenting can be carried out as taught by Ulwan, so that offspring or children can grow and develop according to their nature. Even though the origin or lineage of the child may not be as ideal as through conventional legal marriage, instinctively and naturally, the process of giving birth to children and descendants remains a responsibility of parents to provide rights to them until they become mature and independent. Because in terms of blood and lineage, the relationship between parents and children is clear and proven, even if it is through non-marital means. In this context, non-marital relationships are not in the form of adultery, prostitution, commercial sex work, or any other unregulated activities. Instead, non-marital relationships here refer to the concept of *milk al-yamin* according to Syahrur, which also has its conditions and regulations. In his *ijtihad* (jurisprudential interpretation), Syahrur aligns the legality of marital and non-marital relationships.

The primary task that parents must fulfill is to provide basic religious education to their children, which is done by instilling beliefs in their minds. When a child is born, the first step is to introduce the statement of faith, *Laa ilaaha illallah* (There is no god but Allah). This sacred statement should be introduced to the child from the beginning of their life or birth, so that it leaves an imprint in their mind and lights up their heart. Referring to the concept of Islamic education for children according to Ulwan and the definition of non-marital relationships by Syahrur, the author concludes that a child conceived biologically and causally is legitimate and inherits the lineage of their father. Both parents have the obligation to provide the rights of the child and fulfill their responsibilities as parents. They must provide adequate clothing, food, and shelter, ensure the safety and security of body and soul, provide suitable education, and educate them in religious teachings through example, good habits, advice, attention, praise, and discipline.

#### 4. Conclusion

The conclusion drawn from the data analysis is that parents who have children through conventional legal marital relationships have a duty to provide parenting to their children or descendants, as explained by Ulwan regarding the rights and responsibilities of parents. However, children born through non-marital pathways like *milk al-yamin*, as per Syahrur's perspective, still require parents to fulfill their parenting duties. Syahrur's concept of *milk al-yamin* aligns with temporary marriages such as *mut'ah*, *misyar*, and others that meet specified conditions. Parenting in this context views the process of educating children as starting from choosing a life partner.

In raising children, it is imperative for parents to have a strong foundation of education and knowledge, both in general and religious aspects. For Muslim families, instilling the basics of religion from a young age is crucial to providing

children with guidance and a strong defense against engaging in forbidden behaviors. Strategies for shaping Islamic character include: (1) instilling religious values from an early age, (2) fostering a collaborative family environment, (3) implementing boundaries and rules in technology use, (4) involving children in problem-solving, and (5) cultivating character according to their developmental stage. The educational process can utilize various methods as conveyed by the Prophet and explained by Nasih Ulwan. Therefore, parents' duty through parenting serves as a way to regulate the upbringing of children in their growth process, aligned with Islamic teachings based on the Quran and the Sunnah of the Prophet Muhammad. This includes responsibilities in nurturing, providing a foundation of faith, offering educational guidance, and ensuring physical and psychological protection so that children can grow and develop according to their inherent nature and disposition.

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