

The lineage of children out of wedlock according to Islamic law

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ABSTRAK

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This article discusses the nasab status of children out of wedlock according to Islamic law. The subject of the article discusses the nasab status of children out of wedlock in Islam. Furthermore, the article that the author adopted aims to find out how the lineage of a child is the result of adultery, by referring to the four schools of thought and the compilation of Islamic law. The data collection technique that the author uses is using library research techniques sourced from books or journal websites. Sources of data in this study are primary and secondary data.

So that in this article concludes that the status of a child out of wedlock in Islamic law is that the child's lineage is cut off from his father, a child out of wedlock follows his mother's lineage and his mother's family only. The father of the child has no obligation to provide a living even though he is biologically his son.

There are four schools that are the author's reference, namely the Imam Shafi'i school, the Abu Hanifah, the Imam Malik and the Ahmad bin Hambal.

1. Introduction

Allah swt. Creating humans in pairs with the aim that humans feel peaceful and comfortable then to get offspring for their survival. Marriage is a bond between a man and a woman to build a harmonious household based on Islamic law. Marriage in addition to obtaining a calm in living life, fulfilling human instincts, fortifying morality, marriage is also an act or human effort in protecting his lineage.

Looking at today's world, the development of the world is increasingly rapid and it is undeniable that there are many social interactions that often override religious and legal norms. This is a negative impact from the influx of western cultural influences that have affected the human side of life from a lifestyle and way of getting along/association that tends to be free. The impact of a promiscuity that does not pay attention to these religious values will be very easy to fall into unwanted things. We can see that it is very concerning to see how rampant free sex is which is considered normal and is considered a natural thing.

The rise of cases of free sex is one of the causes of the birth of what is called a child out of wedlock. This happens a lot to minors, according to Maria Ernawati's explanation through the Head of Public Relations and Public Relations, Bramanda Noya, in Palu said that "the rise of child marriage is still happening in Indonesia, especially in villages. Nationally, the fertility

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rate for the young age group ASFR (Age Specific Fertility Rate) aged 15-19 years who have given birth is 36 per 1,000 women”.

Many of these cases of free sex resulted in pregnancies outside of wedlock, and the path they took if a woman was already pregnant without a husband, the action they took was usually an abortion. However, there are also some women who are pregnant out of wedlock and leave the womb and ask the man to be responsible for marrying him, so that a marriage occurs after pregnancy.

This will greatly affect the child's future on the position and status of the child both in religion and the state. Because in the social context or in the community, the existence of children outside of marriage is seen as discriminatory and is usually described to the child as an illegitimate child and the like. Even though every child really wants and has the right to have a decent life, and love both physical and spiritual that is obtained from both parents.

Therefore, a child born from the adultery of both parents, the child does not get the rights as the rights obtained like a legitimate child. Especially in terms of kinship, guardian, marriage and inheritance relationships. Biologically, the child out of wedlock is related by blood to his parents. However, the question is whether the child has a legal relationship with his parents or not, and what is the view of Islamic law regarding the status of the child out of wedlock.

Based on the preliminary description above, the author is very interested in discussing the lineage of children outside marriage according to Islamic law.

2. Literature Review

Lineage in the big Indonesian dictionary is descendant (especially from the father's side). While the etymological understanding of nasab comes from Arabic, namely nasaban and is a deviation from the word yansibu-nasaban which means relatives, descendants or determining descendants. Ibn Cashier defines nasab as a hereditary relationship that forms a family through a relationship that comes from a marriage. The explanation of the understanding of nasab can be understood that nasab means blood relations between one person and another, both someone who is far or near. But in Islamic legal literature, the word nasab will refer to a very close family relationship, namely the relationship in question is the relationship with parents, especially male parents.

Islamic law in the big Indonesian dictionary is the rules and regulations that are related to life based on the Qur'an and hadith. TM Hasbi Ashshidqi as quoted by Ahmad Rofiq. Defining Islamic law is a collection of legal experts' efforts to apply sharia to the needs of the community in the treasures of Islamic law in Indonesia, the term Islamic law is understood as a combination of two words, namely law and Islam. Law is a rule that is recognized by a country or society and must be obeyed. Furthermore, the word law is based on the word Islam. So it can be concluded that Islamic law is a regulation formulated based on the revelation of Allah and the Sunnah of the Prophet regarding the provisions of the mukallaf (people who have been charged with an obligation) which have been recognized and apply to all adherents of the Islamic religion.

Islamic law is also a shari'a which means rules made by Allah for His people, both laws related to aqidah/belief, as well as laws related to amliyah/deeds carried out by all Muslims. Islamic law which is the source of Islam itself, Islamic law is the rules or norms that regulate human behavior in a social life.

3. Methodology

The type of research that the author uses in this article is library research. In this study, the author collects data on literature related to the theme raised by the author, such as books, articles, views of schools and others that support the theme that the author adopts. The approach used in this study is a linguistic approach. The linguistic approach is a linguistic approach in explaining the meaning of the verses contained in the Qur'an.

4. Results and Discussions

Marriage is an important thing for humans because by getting married someone will get a balance of life both socially, biologically, and psychologically. A person who gets married indirectly will automatically fulfill all his biological needs. Both mentally and spiritually those who are married are more able to control their emotions and control their sexual desires.

According to the language, marriage means a union. Marriage is also defined as a contract or intercourse. Rasulullah saw explained, that in reality marriage is not just a contract, but also more than that, after the implementation of the contract the bride must feel the pleasure of the contract. A marriage serves to regulate the relationship between a man and a woman based on the principle of mutual assistance in the area of affection and love and respect.

In Islam, marriage is an act of worship in which a Muslim woman has completed half her religion and will meet Allah in a pure and clean state. Marriage is also a strong and solid holy covenant to live together in happiness, security and peace. Marriage itself is a human nature that must occur in a life as a means to bestow a sense of love and affection that has been given by God Almighty to His servants.

In this day and age, a marriage occurs not on the basis of perfecting worship or so on but because of promiscuity which causes a woman to become pregnant out of wedlock. The impact of the influence of western cultures and the lack of faith as well as religious understanding that causes this to happen is pregnancy out of wedlock. If this happens, it will be confused and embarrassed, not only the two couples but their parents and families will feel the same and even more embarrassed. And then, of course, the way to be taken is to marry off the two couples to eliminate and resolve the problem.

Adultery is a very bad act. Allah SWT. has reminded his servants to avoid adultery because adultery is a major sin and Allah swt. said in the Qur'an surah al-Isra verse 32:

وَلَا تَقْرَبُوا الزَّوْجَىٰ ۖ إِنَّهُ كَانَٰ حِشْمًا وَسَاءَ سَبِيلًا

It means :

And do not approach adultery, verily, adultery is an abominable act and a bad way.

Then there are several schools of thought regarding a marriage caused by pregnancy out of wedlock, namely:

- a. The Hanbali school of thought holds that it is not legal to marry a woman who is pregnant either because she is pregnant by her husband or is pregnant out of wedlock. Because the woman must undergo the iddah period (the waiting period to be able to remarry, namely when the woman has given birth to her child).
- b. The Maliki school is of the opinion that, they do not like men marrying women who are known for their badness, but the Maliki scholars also do not forbid or allow the marriage of pregnant women whether whoever marries them as long as they wait for the 'iddah period of the woman.
- c. The Hanafi school is of the opinion that it is legal to marry a pregnant woman if the one who marries her is a man who impregnates her and if the one who marries the woman is not the man who impregnates her, there is still a lot of debate among these schools, Abu Hanifah and Muhammad are of the opinion that it is legal if it is not a man. the man who impregnates the woman who marries her, but the man who marries her is not allowed to have intercourse with her until the child she is carrying is born.
- d. The Shafi'i school of thought, argues that the marriage is valid. Marriage can take place even if the woman is pregnant. Either the marriage is carried out with the man who impregnated her or not the man who impregnated her.

There are many opinions of scholars about whether it is permissible to marry a woman who is pregnant out of wedlock. The scholars make ikhtilaf regarding the marriage of women who commit adultery. Jumhur allowed it, while a group of scholars forbade it. In the word of Allah swt. said in Surah An-Nur verse 3 which means:

'...and the woman who commits adultery does not marry her but the man who commits adultery or the man who is idolatrous, and that is forbidden to the believers'.

Many scholars are of the opinion that this verse contains criticism and is not a prohibition based on the hadith: a man said to the Messenger of Allah. about his wife who never refuses anyone's hand for 3 to Islamic law touches it. The Prophet also said

to the man, 'when he was'. The man replied 'but I love him'. Rasulullah saw. said, 'don't divorce her'. A group of scholars also say that zina actually annuls marriage, based on this original law.

Then from a marriage that is carried out because of pregnancy out of wedlock, of course, it will give birth to a child, the child who is said to be an illegitimate child is also commonly called an adulterous child. An illegitimate child is a child born to a woman but not in a legal marriage. Legitimate means that it is recognized by state law. In Islam, the term child fornication means a child born out of a legal marriage or in a legal marriage but whose father denies it through Li'an (children out of wedlock).

In the compilation of Islamic law it is explained about legitimate children and illegitimate children, legitimate children are children who will automatically have a nasab relationship with their father and father's family, and children born in a legal marriage bond. Meanwhile, the adulterous child is a child born to a mother born outside of marriage, who does not follow the syara' rules or the result of a forbidden relationship. In the provisions of Article 43 paragraph (1) of Law No. 1 of 1974 concerning marriage, it is stated that: 'Children born out of wedlock only have a civil relationship with their mother and their mother's family'. This was then followed by the provisions in the formulation of Article 100 of the Compilation of Islamic Law, which became the main reference in the judicial process in all Indonesian religious courts.

In Islamic law, it is stated that children can get their rights if several factors have been fulfilled which cause parents to fulfill their obligations. These influencing factors are status or lineage, the right of children to inherit, livelihood and guardianship.

4.1 Mazhab Syafi'i

The Shafi'i school is of the opinion that a biological father cannot marry off his daughter out of wedlock. Because the lineage of the daughter is with her mother and her mother's family while the father has no rights over his daughter. Children who are born out of wedlock are cut off from all rights related to their lineage, such as inheritance, maintenance, and guardianship. According to the Shafi'i school of thought, that a child out of wedlock is cut off from his father's lineage, the child's status is a foreigner (ajnabiyah), therefore, according to the Shafi'i school of thought that the child may be married by his biological father because the child is considered a foreigner, and is not a mahram (if she is a woman) for her biological father. In the mashab, Imam Shafi'i added that a child out of wedlock can get or receive property from his biological father on the condition that the child can inherit property or be recognized by all heirs.

4.2 Mazhab Abu Hanafih

In the school of Abu Hanafih said that children out of wedlock are children born less than six months. The difference is that the Shafi'i school requires an indication of intercourse between husband and wife and then gives birth to a child for less than six months, while the Hanafi school is satisfied with a marriage contract. Imam Abu Hanifah reasoned by understanding the meaning of the pronunciation of "marriage" according to the essence of having intercourse. Every child born will be linked by lineage to the man who impregnated the woman. This provision is seen by his attitude interpreting marriage with intercourse. So the consequence is that as long as there is sexual intercourse that results in the birth of a baby, then the baby is the child of a man who results in pregnancy. Thus, babies born from marriages of pregnant women are not directly assigned to those who reap the seeds.

Because this is the real cause of intercourse between husband and wife. In essence, the law on the stipulation of nasab is due to intercourse with a legal husband, but the obvious reason is because of this (marriage contract). Therefore, even though there has been a marriage between a man and a woman and then they are separated between the areas in the East and West and give birth to a child, the child's lineage remains with the man, although the essence is not found, namely the existence of intercourse, but the reason has been seen. that is the marriage.

Therefore, it is different from the Imam Shafi'i school, the Abu Hanifah school forbids his biological father from marrying a child out of wedlock. Madzhab Abu Hanifah also said that if a pregnant child outside of wedlock is born, more than six months from the marriage contract of the mother and father, the child is assigned to the man who marries his mother. But if

the child is born less than six months after the marriage contract between the parents, then the child is assigned only to the mother. The basis used by Abu Hanifah who is pleased with the minimum limit of pregnancy for six months is basically the word of Allah swt. QS Al-Ahqaf verse 46:15

وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا

It means :

'contained and weaned it for thirty months.'

And in QS. Luqman verse 14:

وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ حَمَلَتْهُ أُمُّهُ وَهْنًا عَلَىٰ وَهْنٍ وَفِصَالَهُ فِي غَامٍ أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ إِلَيَّ الْمَصِيرُ

Meaning:

'And We command humans to (do good) to their parents. His mother had conceived him in a state of increasing weakness, and weaned him at the age of two. Be grateful to Me and to your parents. Only to me will you return'

In surah al-ahqaf verse 15 it is explained that the number of pregnant and weaning is 30 months. In Surah Luqman it is explained that the maximum weaning limit is two years (24 months). So it can be concluded that the minimum period of pregnancy is 30 minus 24 months which is equal to 6 months after the marriage contract. So with this statement Imam Abu Hanifah calculated the number of 180 days from the marriage, not from the start of sexual relations between his biological parents. So it can be seen if the child out of wedlock is born less than six months old, if the child born is a girl, then if the child is an adult and wants to get married, the guardian will not be her mother's husband but the guardian of the judge.

4.3 Mazhab Imam Malik

According to the Maliki school of thought, the child of adultery is not attributed to his father, but to his mother. Between the schools of Imam Malik and Imam Shafi'i are the same. In this case, the Maliki school also allows a man to marry his daughter, sister and niece resulting from adultery, because these women do not have a shar'i lineage relationship with him.

4.4 Mazhab Imam Ahmad bin Hambal

Imam Ahmad bin Hambal's school of thought is no different from other schools which say that a child out of wedlock only has a lineage to his mother and his mother's family and does not have a lineage to the father who impregnated his mother.

This school of Ahmad bin Hanbal is also the same as the Hanafi school, which forbids children out of wedlock and their fathers to marry and marry those who become their mahram. It is not even permissible for them to look and touch their adulterous children with lust. But at the same time they do not inherit each other. The daughter of adultery is forbidden to be married as it is forbidden for a legitimate daughter. Because the daughter out of wedlock is his own flesh and blood.

Then in Article 99 of the compilation of Islamic law states that a child out of wedlock if the woman is married to a man who has impregnated her before her child is born then the child is a legitimate child. A legitimate child because he was born in or as a result of a legal marriage and the result of a legal husband and wife's fertilization outside the womb and born by that wife.

5. Conclusion

Marriage is an important thing for humans because by getting married someone will get a balance of life both socially, biologically, and psychologically. In Islam, marriage is an act of worship in which a Muslim woman has completed half her religion and will meet Allah in a state of purity and cleanliness. In this day and age, a marriage occurs not on the basis of perfecting worship or so on but because of promiscuity which causes a woman to become pregnant out of wedlock. The impact of the influence of western cultures and the lack of faith as well as religious understanding that causes this to happen is pregnancy out of wedlock.

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There are also 4 schools of thought regarding pregnancy out of wedlock, namely in the schools of Imam Malik, Imam Syafi'i and Imam Ahmad bin Hambal asserting that a child out of wedlock has no kinship relationship with his father who had impregnated his mother. The child only has kinship with his mother and his mother's family. Meanwhile, according to the Imam Abu Hanifah school of thought, a child out of wedlock is legal if the father and mother are legally and Islamically married, and the child is born in the marriage bond of his parents

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