

EXTRAMARITAL DAUGHTER'S ABUSE TO BIOLOGICAL FATHER DURING IJAB-QABUL IN ORDER TO COVER UP FAMILY DISGRACE

Cut Hudzaifah Najwa Azalea Dzahin, Muhammad Yogi Galih Permana
STDI Imam Syafii Jember, Indonesia
Email: najwaadzahin@gmail.com, muhammad_yogi@outlook.com

ABSTRACT

This study examines the problem of sexually abstaining girls born out of wedlock to their biological fathers in the ijab-qabul contract in order to protect family disgrace. Clerics agree that a daughter born out of wedlock, then she is given to her mother, not her father biologically. However, what about in the pronunciation of ijab-qabul? Do girls still have to be given to their mothers? Then, if that happens wouldn't it be a container for dismantling family disgrace? So, this journal was written to find a definitive answer to the unrest experienced by children who were "victims" of their parents' dark past. This research is a library research study with a quantitative method approach. From the aforesaid description it can be concluded that the daughter is not to her biological mother has a very large mashlahah here. The syar'i proposition that forbids to speak to other than his father is a general prohibition under absolute conditions

KEYWORDS Marriage; Nasab; Adultery; Islamic family.



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INTRODUCTION

Thank God, all praise be to Allah. I testify that no *god* has the right to be worshipped properly other than Allah who created the heavens and the earth and handed down the Quran to His servant as a guide and guide for life (Rupita, 2021). Shalawat and greetings to the Prophet Muhammad صلى الله عليه وسلم, the Messenger of Allah who brought the people out of the darkness to the light of faith (Muhammadun, 2017). He was the Messenger of Allah صلى الله عليه وسلم who guided his ummah towards the straight path.

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Nasab is an important issue and is highly regarded by Islam. This is evidenced by the nash postulate and the inclusion of this problem in *adh-dharuriyyat al-khams*: 5 main things that must be taken care of (Septuri, 2018).

Nasab is a favor from Allah, as He جل جلاله said:

(وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِنْ أَزْوَاجِكُمْ بَنِينَ وَحَفَدَةً وَرَزَقَكُمْ مِنَ الطَّيِّبَاتِ)

It means: "God made for you wives of your own kind and made for you of your wives, children and grandchildren, and gave you sustenance from the good. So why do they have faith in the good and deny God's favor?"

Nasab is a *tsabit* thing, that is, it is established with certainty. Nasab is not inherited nor traded. Nasab cannot be inherited from any direction except by legal marriage. The Messenger of Allah صلى الله عليه وسلم said:

الْوَلَاءُ لِحَمَّةٍ كَأَحْمَةِ النَّسَبِ، لَا يُبَاعُ وَلَا يُوهَبُ.

It means: "Al-Wala (the relationship between the master who liberated the slave and his slave) was equated with the nasab relationship, not traded and not given away." (HR. Ibn Hibban)

Imam Al-Dahlawi said, "Know that nasab is one of the things that man builds to be preserved, then you will not see a person in any of the areas unless he likes to be attributed to his father and grandfather, and he hates being demeaned by his nasab, except because of an accident of a lowly hereditary or the purpose of rejecting *mudharat* or bringing benefits, and so on (Azzam et al., 2015). Attention to the issue of nasab has a great impact on many issues of jurisprudence, including: the problem of inheritance, marriage guardians, guardians to bathe the corpse, guardians, livelihoods, wills, and *mahramat* (Arikunto & Praktek, 2001).

There is no doubt that the mixing of nasabs is one of the issues of concern to jurists. So it should be the Muslims in general and the claimants of knowledge that will be asked by the public about the laws of jurisprudence specifically to pay attention to and concern for this nasab problem (Manan & SH, 2017).

People now live in an age where people no longer care about their religion—except for a few people whom God has mercy. They do not know God's law and the limits of sharia. Among the many ungodliness that occur, the problem of extramarital sex/adultery is a problem that needs further study. Because the consequences of the act do not end with the end of the act of adultery itself (Dewi, 2020).

First, there is the possibility of spreading infectious diseases such as HIV and Aids. Second, it is a great disgrace that must be borne for life, especially if people who have committed adultery, especially women, want to marry and prospective partners demand a wife with a virgin state (Abror & MH, 2016). Third, a bigger problem will arise if from the act a child is born, because a child born from an extramarital relationship must not be given to his biological father and is not entitled to inheritance or a living (Az-Zuhaili, 2011). A much bigger problem will be present at a time when girls born from extramarital relationships will enter into marriage. First, his biological father must not be his guardian married, then he must be married by the guardian of the judge. Secondly, he should not be confined to his biological father (Al-Barry, 1997).

Then how will the mention of his name be pronounced? If he were to be given to his mother, wouldn't this be tantamount to dismantling the disgrace that should be covered tightly? In this case, is it okay for a daughter born of an adulterous relationship to be given to her biological father in order to cover up the disgrace her parents once committed? (Saputra, 2019)

Therefore, this matter is considered so important to discuss. In an effort to convey knowledge that can be the basis for charity and reassurance for the shock and sadness of the hearts of girls born out of wedlock. Because of course they never want to be labelled as "illegitimate children" and have to bear so many consequences for their parents' mistakes in the past (Asman, 2020).

RESEARCH METHOD

This research is a type of library research carried out by examining various sources of literature or reading materials such as books, books, journals, theses, theses, magazines, and various other sources relevant to the discussion of research. The approach used is a quantitative approach by focusing on causation and the solution of the problems that occur.

RESULT AND DISCUSSION

1. Definition of Zina

Zina according to fiqh is copulation between a man and a woman in the absence of a valid marital bond, that is, by inserting the male sex into the female genitalia, at least to the limit of hasyafah (chief testicles) (Samsidar et al., 2019).

Definition of adultery from the 4 of Mazhab

a. Zina According to Al-Hanafiyah

قَضَاءُ الْمُكَافِّ شَهْوَتَهُ فِي قُبُلِ الْمُكَافِّ امْرَأَةً خَالِيَةً عَنِ الْمَلَائِكِينَ وَشَبَهَتْهُمَا لَا شُبُهَةَ الْأَشْبَاهِ وَتَمَكِينِ الْمَرْأَةِ مِنْ ذَلِكَ .

It means: "The commissioner fulfills his desire for a woman who is free of the two angels, and she resembles them, not the suspicion of similarities, and empowers the woman to do so."

b. Zina According to Al-Malikiyyah

كُلُّ وَطْءٍ وَقَعَ عَلَى غَيْرِ نِكَاحٍ صَحِيحٍ، وَلَا شُبُهَةَ نِكَاحٍ، وَلَا مِلْكَ يَمِينٍ.

It means: "Every intercourse that took place was not a valid marriage, there was no suspicion of marriage, and there was no possession of an oath."

c. Zina According to Asy-Shafi'iyyah

هُوَ عِبَارَةٌ عَنِ وَطْءِ رَجُلٍ مِنْ أَهْلِ دَارِ الْإِسْلَامِ امْرَأَةً مُحَرَّمَةً عُحْرَمَةً عَلَيْهِ مِنْ غَيْرِ عَقْدٍ، وَلَا شُبُهَةَ عَقْدٍ، وَغَيْرِ مِلْكَ، وَلَا شُبُهَةَ مِلْكَ.

It means: "It is about the intercourse of a man from the House of Islam with a woman forbidden to him without a contract, without a contract, without possession, and without a suspicion of possession."

d. Zina According to Al-Hanabilah

هُوَ فِعْلُ الْفَاحِشَةِ فِي قُبُلٍ أَوْ دُبُرٍ.

It means: "It is an act of obscenity, before or after."

From the definition given by Fuqoha and 4 Muslim imams, it can be understood that adultery can be briefly defined as sexual intercourse performed in the absence of a marital relationship or a cause that justifies the relationship, such as slave ownership.

Unfortunately, the definition of adultery recognized in Indonesia is contained in article 248 of the Criminal Code, that a man or woman can be charged with the sanction of adultery if he meets three conditions, namely: 1) having intercourse with a woman or man instead of her husband or wife; 2) for himself applies art. 27 BW; 3) he is in marriage (Tahir & Handayani, 2018).

From these conditions, it can be understood that adultery according to Indonesian law is if the copulation relationship is carried out by a married man or woman and a man or woman who does it with someone else's husband/wife.

Thus, Muslims should return this problem to Islamic law, which has made it clear that adultery is any form of sexual intercourse that is not based on legal marriage. It doesn't matter whether it is married or not. Also, it doesn't matter whether it is done with the married or not (Ariswoyo & Nasution, 2005).

Adulterers are grouped into 2 groups: 1) *Zina muhsan*, is adultery committed by a man or woman who has been and is still in marital status. 2) *Zina ghairu muhsan*, is adultery committed by an unmarried man or woman.

2. Definition of Children Outside Marriage According to Indonesian Civil Law

There are several types of children known, including: biological children, adopted children, stepchildren, breastfeeding, children, and children out of wedlock or what is known as adulterous children. An out-of-wedlock child is a child born to a woman while the woman is not in legal marital status.

Law No.1 of 1974 regulates the position of a child in chapter IX articles 42-44, which reads:

Article 42 "A legitimate child is a child born in or as a result of a valid marriage".

Article 43 "(1) A child born out of wedlock has only a civil relationship with his mother and his mother's family. (2) The position of the child in subsection (1) above shall henceforth be regulated in a government regulation."

Article 44 "(1) A husband may deny the validity of a child born to his wife if he can prove that his wife has committed adultery and that the child is the result of the adultery. (2) The court renders a decision on whether or not the child is valid at the request of the interested party."

3. Nasab's Position of Children Out of Wedlock

a. Perspectives of the Compilation of Islamic Law

According to the compilation of Islamic law, a child born through an extramarital relationship has no law and attachment to his father, nor his father's family. There was no nasab bond between the two of them.

Looking at article 43 of Law No. 1 of 1974 and article 100 of the KHI, both of them state that extramarital children only have a civil relationship

with their mother's family. However, there is an exception set out in article 53 of the Compilation of Islamic Law, namely that in point (1) a woman pregnant out of wedlock, can be mated with a man who impregnates her. (2) The marriage with a pregnant woman referred to in subsection (1) may take place without first waiting for the birth of her child. So it can be understood, that a child who is fertilized out of wedlock is then born into a valid marriage i.e. the mother and the man who impregnated him to marry, hence the status becomes a legal child because he was born in a legal marriage, thus having a nasab relationship with the man who married his mother. If the woman has married a man who impregnated her before her child was born, then under article 99 of the Compilation of Islamic Law, the child is a legitimate child. This is because a legitimate child is:

- a) Children born in or as a result of a legal marriage
- b) The result of the legal fertilization of the husband and wife outside the womb and born by the wife.

Based on article 99 paragraph (a) of this, it is clear that the child of adultery or the out-of-wedlock child after his mother has married the impregnator as stipulated in article 53 paragraph 1 of the KHI is a legal child. The reason is that the child was born in a legal marriage. This child is not a child born outside of marriage.

b. Perspectives of 4 Madzhab

Regarding the position of the out-of-wedlock child, the madzhab scholars dissented as follows:

- a) Madzhab Shafi'i

Madzhab Shafi'i argues that an extramarital child is a child born less than six months after the existence of a legal conjugal relationship. Followers of the Shafi'i madzhab argue that the nasab of a child born out of wedlock is cut off from his father. In this case the father is considered ajnabi (non mahram foreigner) which is allowed to be married. Thus, all rights that a child can get from his parents are also cut off, including inheritance rights, living rights, and guardianship rights.

This opinion is derived from an understanding of the hadith of the Prophet صلى الله عليه وسلم as follows:

الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ.

It means: "The child born is the right of the owner of the firasy, and for the adulterer is a stumbling block (gets nothing). (HR. Muslim).

- b) Madzhab Hanafi

In contrast to the opinion in the Shafi'i madzhab, the Hanafi madzhab assumes that the nasab of an extramarital child remains continuous to his biological father. A person is called a child because he is born from his father's semen, therefore the Hanafi madzhab argues that nasab is not decided by marital status, but rather by a clear blood relationship, in the presence of copulation. Thus, a daughter is a mahram for her biological father and illegitimate to marry.

Imam Abu Hanifah reasoned by understanding the meaning of the pronunciation of "marriage" according to the essence of being a marriage. Every child born will be linked to the male who has the seedling (seminal). This provision

is seen by his attitude of interpreting marriage with a marriage. 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.

c) Madzhab Maliki

According to Maliki's madzhab that the son of adultery is not given to his father, but is given to his mother. In this case, Maliki's madzhab also allows a man to marry his daughter, his sister and nieces and nephews from adultery, because the women have no shari'a relationship with him.

d) Madzhab Imam Ahmad ibn Hanbal

Madzhab Hambali is no different from other madhabs which say that extramarital children only have nasab to a mother who gave birth to him and do not have a nasab to the father who impregnated his mother. But just like the Hanafi madzhab, the Hambali madzhab also forbade him and his father to marry and marry the people who became their mahram. It is not even justified for them to see and touch their adulterous child with lust. But at the same time they do not inherit each other.

Imam Hanafi and Imam Hambali stated that girls resulting from adultery are illegitimately married as are legal daughters. For the daughter is her own flesh and blood. In terms of language and traditions of the people or "*urf*" he is his own child. Not being recognized as a *syar'i* in terms of inheritance law, does not mean that he is not his biological son in essence, but what is meant is to deny the consequences of his *syar'i* only, for example the law of inheritance and giving a living. They suggested that adultery could cause *mushahah*, so that the man was illegitimate to marry the daughter and mother of the woman he had adulterated. Meanwhile, the woman herself was also married by the father and son of the man who killed her. Imam Hanafi These two madhabs do not distinguish between the occurrence of adultery before and after marriage. If a man commits adultery with his in-laws, or a child commits adultery with his father's wife (his stepmother) then his wife becomes illegitimate to her husband forever.

4. Nasab Children Out of Wedlock During Ijab-Qabul

1. The Obligation to Cover Disgrace in Islam

Islam teaches its people to always cover up the disgrace of themselves and others. as this is clearly stated in the hadith of the Prophet صلى الله عليه وسلم narrated by Ibn Umar radhiyallahu *anhuma*, Messenger of Allah صلى الله عليه وسلم said:

يَا أَيُّهَا النَّاسُ قَدْ أَنْ لَكُمْ أَنْ تَنْتَهُوا عَنْ حُدُودِ اللَّهِ مَنْ أَصَابَ مِنْ هَذِهِ الْقَادُورَاتِ شَيْئًا فَلْيَسْتَتِرْ بِسِتْرِ اللَّهِ فَإِنَّهُ مَنْ يُبْدِي لَنَا صَفْحَتَهُ نُقِمَ عَلَيْهِ كِتَابَ اللَّهِ.

It means: "O people, I have reminded you to be careful of the limits of God. Whoever falls into a bad deed, should he cover himself with the curtain of God. For whoever tells us his deeds will surely establish the statute of the law of God upon them." (HR. Ath-Thahawi)

Similarly, in the editorial of the following hadith, the Messenger of Allah صلى الله عليه وسلم said:

كُلُّ أُمَّتِي مُعَافَى إِلَّا الْمُجَاهِرِينَ ، وَإِنَّ مِنَ الْمَجَانَةِ أَنْ يَعْمَلَ الرَّجُلُ بِاللَّيْلِ عَمَلًا ، ثُمَّ يُصْبِحُ وَقَدْ سَتَرَهُ اللَّهُ ، فَيَقُولُ يَا فَلَانُ عَمِلْتُ الْبَارِحَةَ كَذَا وَكَذَا ، وَقَدْ بَاتَ يَسْتُرُهُ رَبُّهُ وَيُصْبِحُ يَكْتَشِفُ سِتْرَ اللَّهِ عَنْهُ

It means: "Every one of my people is forgiven except one who is blatant in his misgivings. That is, a person who has sinned at night and then in the morning he says that he has committed this and that sin even though God has covered his sin. In the evening, God has covered his disgrace, but in the morning he opens himself the disgrace that God has covered." (HR. Bukhari, no. 6069 and Muslim, no. 2990).

Both editors of the hadith prove that Islam pays great attention in the obligation to cover up disgrace. Anything that God has covered, must not be easily opened by others. All sins and misdeeds committed, should be sealed off and do not let anyone know about it.

On the issue of adultery, scholars argue that both women and men who have committed adultery are prohibited from exposing the bad disgrace of the past, including to the future husband. It is not permissible for a woman to explain that she is not in a virgin state. Whereas in this case, knowing it is considered an important matter. However, the obligation to cover up the disgrace of the past is more important.

What else if it is exposed without any *udzur* and great importance? So it can be concluded that the law is illegitimate and will have sinful consequences if it is still done. This is God's concern for His people. It is also a form of affection and mercy from God. Because with the exposure of disgrace and ugliness, it will have an impact on the many opportunities for sin that may occur, including: blasphemy, hunting, enmity, and breaking the ropes of friendship.

2. Reviewing Maslahah's Perspective

Let's review in terms of the mashlahah and mafsadah that may be caused. Maslahah is a concept that is used as the main consideration in solving Islamic legal problems because the principle contained in maslahah is the maintenance of the objective purpose of law (maqasid al-shari'ah) namely the maintenance of religion, soul, reason, offspring, and property. So all that guarantees the five principles (ushul) is a maslahah and any omission in the maintenance of these five things is mafsadat. According to al-Ghazali, maslahah should be based on nash syara' and not on reason alone, al-Ghazali stated maslahah is acceptable if it has three qualities namely daruriyyah, qathiyyah and kulliyah. Al-Ghazali rejects maslahah in relation to the benefit of humanity, research and study of maslahah should be focused on existing nash-nash.

If an extramarital daughter is married and at the time the ijab-qabul is given to her mother's name, then this will create so much mafsadah and mischief. The disgrace that has been tightly closed will be open in front of many people, not only families, but even invited guests who in fact foreigners will know about it. Of course this is a condition that no one really expects. Marriage should be a bliss, a day in which people rejoice. However, the atmosphere changed because of the daughter's blasphemy to her mother which proved that she was a child born out of wedlock. In terms of mashlahah, there is no good thing to do by pinning the mother's nasab

behind the name of the daughter who is about to marry, except for sticking to the sharia of God.

3. Reviewing Indonesian Civil Law Perspectives

Regarding the status of your child born outside of marriage, in the opinion of the Head of KUA Pademangan District, North Jakarta Abdul Syakur, the ijab process in the marriage will be directly carried out by the guardian of the judge, namely the head of the local KUA sub-district. Meanwhile, his own biological father cannot be a guardian of nasab, even if he is related by blood. Later, the name of the head of the local sub-district kua will be recorded in the guardian column on the marriage certificate citation. So it can be concluded, an out-of-wedlock daughter can still carry out marriage. The name of the husband who is not the biological father of the child does not need to be listed, either on the birth certificate or on the quotation of the marriage certificate.

As for the mention of nasab when ijab-qabul refers to what is stated in the Family Card, because that is the data that is considered valid. If the mother has remarried while still pregnant, then the child is allowed to use the last name of the stepfather's name. As for if the mother does not remarry, then the child's nasab is leaned on to the mother or other alternatives are carried out by the KUA as follows:

1. Keep mentioning the name of his biological father.
2. Not naming the biological father and not giving anyone a name.
3. Replacing nasab with the mention of "binti Adam / binti Abdullah"

CONCLUSION

From the aforesaid description it can be concluded that the daughter is not to her biological mother has a very large mashlahah here. The syar'i proposition that forbids to speak to other than his father is a general prohibition under absolute conditions. The Messenger of Allah صلى الله عليه وسلم said:

مَنْ ادَّعَى إِلَى غَيْرِ أَبِيهِ أَوْ انْتَمَى إِلَى غَيْرِ مَوْلِيهِ فَعَلَيْهِ لَعْنَةُ اللَّهِ
وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ لَا يَقْبَلُ اللَّهُ مِنْهُ يَوْمَ الْقِيَامَةِ صَرْفًا وَلَا عَدْلًا

It means: "Whoever confesses father to other than his father or relies on the one who is not his guardian, then the anathema of Allah, also the Angels and all men fall upon them, and on the day of judgment, Allah will not receive from them, neither the fardhu nor the sunnah." (HR. Bukhari)

As for this issue, the purpose is not to lean on nasab nor to claim to be part of the descendants. The mention of the biological father's name behind an extramarital daughter who is about to get married aims to cover up disgrace and avoid the dignity of the family. Then this problem can be regarded as a special problem that has different laws and general problems.

The mention of nasab is not an obligation in the marriage contract and does not fall under the legal terms of ijab-qabul. The name of the bride-to-be's father may not be mentioned if the bride-to-be is clear, in harmony between the intention of the one who pronounces the ijab and the one that pronounces qabul. The rules of jurisprudence reveal:

العِبْرَةُ فِي الْعُقُودِ بِالْمَقَاصِدِ وَالْمَعَانِي لَا لِلْأَلْفَاظِ وَالْمَبَانِي

It means: "What is considered important in the contract is the intent and meaning not the pronunciation and form of the word."

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