



Inheritance Rights of *Nasabiyyah* Children Born Out of Wedlock According to Islamic Family Law

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Abstract

The inheritance rights of nasabiyyah children outside of marriage, religion, or the state will not get inheritance because the status of the child follows his mother, not his father. The serious problem is how to maintain the rights that should be obtained by children born out of wedlock, and whether the development of science and technology is ignored, even though in the rules of a change in a law is dependent on the time, place, and context of the problem. This study uses a comprehensive juridical law method that is comparatively analyzed to present data and facts from the perspective of positive law and Islamic law as well as the role of technology and science. The data is sourced from articles, books, legal rules, and other juridical sources. This study concludes that in positive law, especially civil law of inheritance, the status of the child's inheritance rights outside of marriage can be recognized as long as the biological father recognizes the child's destiny as his destiny. As for Islamic civil law, there is no legal leniency for children outside of marriage, if the child is born without a clear status from both parents, then the child follows his mother and not his father. Islam has flexible laws that can adapt to the existing context. From the point of view of Islamic law, there are several ways to determine nasab, one of which is the qiyafah technique. The technique can be qiyas-kan with the reading of the nasab through a DNA test because it has almost the same legal 'illat. With the advancement of technology and the development of science, the method of determining the nasab can also be developed.

Keywords: Nasab, inheritance, qiyafah techniques, Islamic family law

Abstrak

Hak waris anak nasabiyyah di luar pernikahan agama ataupun negara tidak akan mendapatkan harta waris di karenakan status anak tersebut nasabnya mengikuti ibunya bukan ayahnya. Dalam kewarisan hukum perdata status hak waris anak di luar pernikahan bisa dapat diakui asalkan sang ayah kandungnya mengakui nasab anak tersebut sebagai nasabnya. Adapun dalam hukum perdata Islam tidak ada keringanan hukum bagi anak di luar pernikahan, jika anak tersebut lahir tanpa status jelas dari kedua orang tuanya, maka anak tersebut nasabnya mengikuti ibunya bukan ayahnya. Permasalahan yang serius adalah bagaimana mempertahankan hak yang harusnya didapat oleh anak yang lahir di luar pernikahan, dan apakah dengan adanya perkembangan ilmu pengetahuan dan teknologi diabaikan, padahal dalam kaidah berubahnya suatu hukum tergantung pada masa, tempat, dan konteks permasalahan. Penelitian ini menggunakan metode studi kepustakaan secara komprehensif dan komparatif menyajikan data dan fakta dari sudut pandang hukum positif dan hukum Islam serta peranan teknologi dan ilmu pengetahuan. Islam memiliki hukum yang fleksibel yang dapat menyesuaikan konteks yang ada. Dari sudut hukum Islam terdapat beberapa cara dalam penentuan nasab, salah satunya adalah teknik qiyafah. Teknik dapat di-qiyas-kan dengan pembacaan nasab melalui tes DNA karena memiliki 'illat hukum yang hampir sama. Dengan kemajuan teknologi dan perkembangan ilmu pengetahuan ini metode penetapan nasab juga dapat dikembangkan.

Kata Kunci: *Nasab, kewarisan, teknik qiyafah, hukum keluarga Islam*

Introduction

Islamic law emphasizes the importance of nasab, so it is ordered to marry between a man and a woman who then give birth to a legally valid child. Nasab etymologically means "al-qurabah" which means near. While secara terminology means "al-qurabah bayna syakhsain" which means a relationship between two people. In this case, Ibn Manzur in the book "*lisan al-'arabiy*" said that nasab is a kinship relationship that specifically depends on the father. Although the majority of scholars think that nasab is a form of kinship in blood relations.¹

The paradigm that has formed among Indonesian society generally states that; children born from adultery relationships do not have a nasab relationship with their adulterous father, and only have a nasab to their biological mother.² This causes the child to lose some of the rights that should have been obtained. Like;

¹ Ali Abubakar, et.al., "The Right of a Child Outside the Legal Marriage of a Biological Father: The Analysis of Hifz Al-Nafs as Law 'Illat," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 1 (2021). Akhmad Jalaluddin, "Nasab: Antara Hubungan Darah Dan Hukum Serta Implikasinya Terhadap Kewarisan," *Jurnal Ishraqi* 10, no. 1 (2012), p. 65–82. Imam Allamah Manzur, *Lisan Al-Arabiy* (Kairo: Dar al-Hadits, 2006).

² M Jamil, "Nasab Dalam Perspektif Tafsir Ahkam," *AHKAM: Jurnal Ilmu Syariah* 16, no. 1 (2016), p.123–130.

maintenance, guardianship, hadhanah, and inheritance. Another consequence that arises is regarding *muharramat al-nikah* (the prohibition of marrying through the nasab path).³

Human beings were created by God through several stages. Biologically, humans who are born into the world are the result of an egg fertilized by sperm, then a zygote, then an embryo, and finally a fetus until it is born. However, there are some cases that are under Allah's control, such as the case of the prophet Adam, Siti Eve, and the prophet Isa (in the Qur'an; al-Nisa' 4:1, Ali Imran 3:59). So in general, it can be concluded that in addition to these cases, humans will be born carrying genetic information from their mothers and fathers.

The inheritance rights of a *nasabiyyah* child who is outside of religious or state marriage is a debate about the status of his right to receive inheritance from the parents. Over time with the existence of technology and science that continues to develop, the determination of nasab through *the qiyafah* technique (identification by looking at physical or psychological characteristics), and today it has developed into a DNA test whose results can be accounted for. The opportunity of science and technology should be the point where the breakup of the nasab due to a relationship outside of marriage can be clarified with several considerations of *ijtihadiah law*.⁴

This study uses a comprehensive juridical law method that is comparatively analyzed to present data and facts from the perspective of positive law and Islamic law as well as the role of technology and science.⁵ The data is sourced from articles, books, legal rules and other juridical sources. As a source of law, namely positive law and Islamic law, both are used as analytical tools to discuss the inheritance of children outside of marriage.

The Validity of Nasab in Islamic Law

Nasab is an important issue in Islam. Al-Qur'an mentions 3 verses regarding nasab, namely Surah al-Mu'minun verse 101, Surah al-Furqan verse 54, and Surah al-Shaffat verse 158.⁶ This indicates that Islam is concerned with determining the nasab of a child who is born, whether it is from a valid or illegitimate marriage.

There are several ways of determining nasab in Islam. *First*; The determination of the nasab of a valid marriage, which is indeed in accordance with the purpose of marriage, is to multiply legitimate offspring in accordance with Islamic law. This is based on a hadith narrated by Aisyah RA and a hadith narrated

³ Moh. Dliya'ul Chaq, "Nasab Anak Dalam Hukum Islam; Membaca Peluang Sains Dan Teknologi Dalam Penetapan Nasab," *Tafāqquh: Jurnal Penelitian Dan Kajian Keislaman* 6, no. 1 (2018), p. 60–75.

⁴ Aslati, et. al., "Utilizing Science and Maqāṣid Al-Sharī'ah in Resolving Contemporary Issues of Islamic Family Law," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (2024), p. 17–36.

⁵ Faisar Ananda Arfa and Watni Marpaung, *Metodologi Penelitian Hukum Islam*, Jakarta: Kencana, 2016.

⁶ Jamil, "Nasab Dalam Perspektif Tafsir Ahkam"; Jamil Ddamulira Mujuzi, "The Conundrum of Intestate Succession for Muslims in Uganda: Qadhis Court, Women's Rights, and Islamic Inheritance Law Issues," *Al-Ahwal* 16, no. 1 (2023), p. 43–68.

by Abu Hurairah regarding the determination of the child's destiny is based on the owner of the mattress,⁷ which means a man who has a wife or a female slave who has been associated.

There are three conditions in which the determination of nasab cannot be relied on by the father even in a valid marriage. That is; The child born is not denied by his father, this denial can be done by li'an to the wife so that the child born does not have a nasab to the man who takes care of his mother, or it can also be seen from the gestation period which is not less than 6 months (180 days) or more than 360 days after the breakup of the marriage in KHI articles 100-102.⁸ The man who becomes his father is classified as a person who is able to conceive, this can be seen from the function of the male reproductive organs, and if it does not function, the nasab can be canceled. Next is the possibility of a meeting between husband and wife, if there is no possibility of *dukhul* then the determination of the nasab for the child can be canceled.⁹

Second, the determination of nasab from fasid marriage (invalid). The determination in such a marriage is the same as the determination of the nasab in a valid marriage. This is because often a fasid marriage is only known after the existence of the contract even after the occurrence of *jimak* (*dukhul*).¹⁰

Third, the determination of the nasab of *wati' syubhat*, which is meant by an unclear relationship (not a category of valid marriage, fasid, or adultery). In this case, it is a relationship that is carried out with a woman who sleeps on her bed who is thought to be her wife due to dark conditions or others, or with a wife who has been rejected three times and is in the iddah period. If such a situation occurs, the determination of the child's nasab will fall on the man who associates him with the birth record of not less than six months or the man recognizes the nasab of the child who was born.¹¹

Fourth, the determination of the nasab of adulterous children. Basically, the prohibition of adultery in Islam has been explained in qath'i. This act of adultery also has consequences for children who can only be given to their mothers, as is the case in the case of Li'an.¹² In determining the nasab of an adulterous child, there are three

⁷ Wahbah Al-Zuhaily, *Fiqh Al-Islam Wa Adillatuhu Jilid 9* (Jakarta: Gema Insani, 2010), p. 141.

⁸ Wahbah Al-Zuhaily, *Fiqh Al-Islam wa Adillatuhu*, p. 481; Dirjen Bimas Islam, *Compilation of Islamic Law in Indonesia* (Jakarta: Ministry of Religious Affairs of the Republic of Indonesia, 2018), p. 54.

⁹ Wahbah Al-Zuhaily, *Fiqh Al-Islam wa Adillatuhu*, p. 482.

¹⁰ Chaq, "Nasab Anak Dalam Hukum Islam; Membaca Peluang Sains Dan Teknologi Dalam Penetapan Nasab."

¹¹ Dirjen Bimas Islam, *Kompilasi Hukum Islam Di Indonesia*; M. Anwar Nawawi et al., "Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (2022), p. 117–33.

¹² Abu Muhammad Ali Bin Ahmad Bin Sa'id Bin Hazm Andalusian Qurtubi, *Al-Muhalla in Sharh al-Mujalla bi al-Hujaj wa al-Athar* (Beirut: Al-Afkar Ad-Dauliyyah, 2003), p. 1856.

opinions expressed by Imam Abu Hanifah,¹³ namely: first, if the child is born without a marriage bond. In this case, the fate is only based on his mother and cannot be relied on his adulterous father. Second, if the child is born in a marriage bond but the pregnancy occurs before the marriage. In this case, the fate can be connected to the man who marries the woman. Third, if the child is born in a marriage bond but the child produced is from adultery with another man. In this case, the nasab is based on the man in the marriage bond, unless there is a denial from him (as in the case of li'an), so that the child only has the nasab against his mother.

Fifth, the determination of the nasab by the way of *Qiyafah*. This *qiyafah* technique is a person's ability to identify physical similarities.¹⁴ In the time of the Prophet PBUH, there was a *qiyafah* expert, namely Saraqah bin Malik bin Ja'sham who was from the Banu Madlaj¹⁵ who said that Usamah bin Zaid and Zaid bin Haritsah had identical foot shapes. This is narrated in the hadith of Imam Bukhari; "From 'Aisha she said: "Indeed, the Messenger of Allah (PBUH) met me in a state of joy as if her face were shining and said: Didn't you see Mujazziz Al Mudallij (the identifier) seeing Zaid bin Haritsah and Usamah bin Zaid, and he said: Indeed, the owners of these feet are similar to each other." In other words, the Prophet did not reject the words of the *qiyafah* experts, then the fiqh scholars argued that this *qiyafah* technique can be used to determine the nasab with criteria; men, independent, fair, and their skills have been tested. Ibn al-Qayyum al-Jauziyyah opined; "Indeed, *qiyafah* experts are like experts in certain fields, appraisers, dividers, and the like from people who are guided by matters that are visible and visible to them. In this case they have signs that they are specifically known for, namely similarity, difference, estimation, and size. What is deeper than that is that the people who gather to see the hilal, when one or two of them see it, it is decided with the information of one or two people, without any information from others."¹⁶

The Child of Adultery in Inheritance: Between Fiqh and KHI

Children resulting from adultery are the result of relationships that are not based on sharia or state law. The result is a relationship between a man and a woman who are not tied to the legal marital status, either in religion or the state. Children born as a result of adultery are often at the center of legal disputes regarding their inheritance rights. In this case, it is necessary to explore the legal framework that

¹³ Abdullah Bin Ahmad Bin Qudamah, "*Sharah Al-Kabir Ibn Qudamah*" (Maktabah al-Syamilah, 2020).

¹⁴ Agustin Hanapi, et.al., "The Position of the Al-Qāfah Method in Determining Children's Nasab According to the Perspective of Maqashid Al-Sharia Scholars," *De Jure: Journal of Law and Sharia* 14, no. 1 (2022), p. 21–37.

¹⁵ Abdullah bin Qadamah Muhammad Al-Maqdisi, *Al-Kafifi Fiqh Ibn Hanbal* (Maktabah al-Siyamilah, 2020).

¹⁶ Ibnu Qayyim Al-Jauziyah, *Al-Turuq Al-Hukmîyah Fi Al-Siyasah Al-Shari'ah* (Kairo: Dar al-Hadits, 2000). Maizuddin Maizuddin et al., "The Typology of Hadith as the Bayan of the Qur'an and Its Implications for the Reform of Islamic Inheritance Law," *Samarah* 7, no. 2 (2023), p. 760–780.

governs the inheritance for children from the proceeds of adultery, compare different jurisdictional approaches and evaluate ethical considerations based on Fiqh and the Compilation of Islamic Law.

The inheritance of an adulterous child is absolutely determined if it cannot obtain inheritance rights, this is based on the status of the child can be recognized when going through a valid marriage process both in terms of religious law and state law.¹⁷ The following is the legal framework and approach regarding inheritance to adulterous children: *First*, Based on Islamic jurisprudence, children born from adultery may face limitations in inheritance rights compared to children born in legal marriages. The division of inheritance and its legal status can vary based on interpretations among Islamic legal figures (madzhab). *Second*, the Civil Law System: Civil law jurisdictions vary greatly in their treatment of children born from adultery. Some jurisdictions may grant inheritance rights without discrimination based on the circumstances of birth, with an emphasis on protecting the child's rights to parental behavior. *Third*, the Common Law System: Common law principles often prioritize the welfare of children and can provide inheritance rights regardless of the marital status of the parents or the circumstances of their birth. The focus is on fair treatment and the best interests of the child.¹⁸

This legal framework and approach is an illustration that can be found regarding the existence of inheritance law for adulterous children. Next, we will provide a study, how the Compilation of Islamic Law and Fiqh in reviewing the inheritance law for adulterous children. Islamic jurisprudence regulates the legal status and inheritance rights of children born as a result of adultery are regulated in detail within the framework of the Compilation of Islamic Law. This study seeks to examine the interpretation of the law, its application in different contexts, and its ethical implications for family relations and social cohesion.¹⁹

Article 168 of the Compilation of Islamic Law clearly states that adulterous children do not get an inheritance share from any man,²⁰ as reads article 168 of the KHI: "*Children born out of wedlock only have a mutual inheritance relationship with their mother and their mother's family.*" From this article, an analysis can be drawn as follows: *First*, Legal Foundation: Islamic Compilation Law in Indonesia

¹⁷ Elfia, et al., "Patterns for Settlement of Puhah Inheritance Disputes In the Community of Nagari Salareh Aia from the Perspective of Islamic Law," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 2 (2022), p. 480–505.

¹⁸ Muhammad Hajir Susanto, et.al., "Kedudukan Hak Keperdataan Anak Luar Kawin Perspektif Hukum Islam," *Justisi* 7, no. 2 (2021), p. 105–117.

¹⁹ Yusna Zaidah, et.al., "Unveiling The Role of Local Cultural Consideration In Judicial Discretion: An Analysis Of Inheritance Decisions In The Religious Courts Of South Kalimantan," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (2023), p. 47–58

²⁰ Ruslan Abdul Gani, "Status Anak Luar Nikah Dalam Hukum Waris (Studi Komperatif Antara Kitab Undang-Undang Hukum Perdata Dengan Kompilasi Hukum Islam)," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 11, no. 01 (2018), p. 84–109. Mursyid Djawas et al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law," *Juris: Jurnal Ilmiah Syariah* 21, no. 2 (2022), p. 207–219.

provides guidelines regarding inheritance rights, influenced by Islamic principles sourced from the Qur'an, Hadith, and scientific interpretation (fiqh). Special provisions regulate the distribution of inheritance and eligibility criteria for heirs, including children born from adultery. *Second*, Interpretive Flexibility: Scholars and jurists interpret the principles of inheritance in a variety of ways, applying flexibility in cases involving children born as a result of adultery to uphold justice and protect the rights of children while still taking into account the circumstances of their birth.²¹ *Third*, Application in Practice: The practical application of this law involves court decisions based on specific individual cases, taking into account factors such as parental recognition, community welfare, and the best interests of the child.²²

The analysis of Islamic jurisprudence is certainly considered inadequate if social ethical considerations regarding the inheritance law for adulterous children have not been added. In order to broaden their views in an effort to take care of the welfare of adulterous children, who are basically victims in terms of illicit relationships.

Talking about ethical considerations and social implications regarding the inheritance rights of adulterous children raises the following ethical considerations: *First*, regarding the welfare of children, namely ensuring fair treatment and protecting children's rights regardless of their birth conditions.²³ *Second*, regarding parental responsibility, by emphasizing the responsibility of parents towards their children and the consequences of their actions based on Islamic ethics. *Third*, regarding community cohesion, namely overcoming societal attitudes and stigmas towards children born from adultery, encouraging inclusivity and support.²⁴

A legal, ethical and social consideration should provide a discourse in responding to the dilemma of inheritance law against adulterous children. If a child is born without sin, then it is necessary to ease the social burden that must be borne in the future.

Challenges in implementing inheritance law for children resulting from adultery include: Legal Interpretation: Clarifying and harmonizing the interpretation of Islamic inheritance law in diverse cultural and legal contexts. Social Dynamics: Addressing public perceptions and ensuring legal frameworks reflect evolving social

²¹ Shinta Ayu Purnamawati et al., "Child-Friendly Justice and Children's Rights from Criminal Cases; Islamic Law Notes," *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (2024), p. 141–154.

²² Achmad Arnold and Mulyono Jamal, "Hak-Hak Keperdataan Anak Hasil Zina Dan Anak Luar Nikah Perspektif Hukum Positif Dan Hukum Islam," *Journal of Indonesian Comparative of Law* 2, no. 1 (2019).

²³ Syaikhu et al., "The Maqashid Sharia Construction on Inheritance in Dayak Ngaju Customs Within the Tumbang Anoi Agreement," *El-Mashlahah* 13, no. 2 (2023), p. 181–202.

²⁴ Rahmat Vijay Bengal et al., "Tinjauan Yuridis Kompilasi Hukum Islam Tentang Hak Warisan Anak Hasil Hubungan Di Luar Nikah Antara Tenaga Kerja Wanita Dengan Majikannya," *Bhirawa Law Journal* 2, no. 1 (2021), p. 28–32.

norms and ethical considerations. Humanitarian Care: Balancing legal principles with human values to protect vulnerable individuals and advance justice.²⁵

A child resulting from adultery cannot be compared to his father's nasab, this has been stated in article 100 of the Compilation of Islamic Law, that "*a child born out of wedlock only has a nasab relationship with his mother and his mother's family.*" However, it should not be ruled out that children resulting from adultery can still be pursued for their welfare and justice.

The inheritance of adultery children in the view of fiqh is discussed based on the interpretation of the main Islamic texts such as the Quran and Hadith, as well as the opinions of scholars in various sects.²⁶ The following is an overview of the fiqh's view on this issue: *First*, Rejection of Inheritance from Biological Fathers: The majority of scholars agree that a child born of adultery has no right to inherit from his biological father who is involved in the adulterous relationship. This is based on the principle that adultery is contrary to the conditions of marriage in Islam, and the child is not considered a legitimate child from the point of view of the Shari'ah. *Second*, Inheritance Acceptance Through His Mother: An adulterous child has the right to receive inheritance through his mother, as long as his mother is a shari'a legal woman (valid in a valid marriage).²⁷ In this case, the child is considered part of his mother's family and has the right to inheritance from his mother's family.²⁸

The principles of fiqh in this case are to ensure justice in the distribution of inheritance, maintain the integrity of the family, and overcome the consequences of adultery by maintaining appropriate rights for the children. The fiqh view of the law of inheritance of an adulterous child affirms that the child does not inherit his biological father who is involved in adultery, but still has the right to receive the inheritance through his legitimate mother according to sharia. This view reflects the principles of justice and order in Islam, which recognizes and protects individual rights even in the context of social injustice.²⁹

Islamic fiqh provides detailed guidelines on inheritance, reflecting principles derived from the Qur'an, Hadith, and scientific interpretation. The inheritance rights of children born from adultery present complex legal and ethical challenges, requiring an understanding of the principles of fiqh and their application in diverse cultural and legal contexts.

²⁵ Imam Supriyadi, "Komparasi Anak Zina Dan Anak Angkat Menurut BW Dan Hukum Islam," *The Indonesian Journal of Islamic Law and Civil Law* 1, no. 1 (2021), p. 18–36

²⁶ Moh. Ali Ghafir, "Anak Zina Dalam Pandangan Islam," *Syaikhuna: Jurnal Pendidikan Dan Pranata Islam* 9, no. 1 (2018), p. 133–146.

²⁷ Bukhari Ali, et.al., "Status of Children Born Out of Wedlock: A Study of Constitutional Court Decision and Its Relevance to the View of Ibnu Taimiyah," *El-USrah: Jurnal Hukum Keluarga* 7, no. 1 (2024), p. 406–426.

²⁸ Sari Pusvita, "Keperdataan Anak Diluar Nikah Dalam Putusan Mahkamah Konstitusi Dan Implikasinya Terhadap Harta Warisan," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 1, no. 2 (2018), p. 31.

²⁹ Bernadeta Resti Nurhayat, "Status Anak Luar Kawin Dalam Hukum Adat Indonesia," *Jurnal Komunikasi Hukum* 3, no. 2 (2017), p. 1–9.

A summary of fiqh perspectives on inheritance rights is as follows; *First*, regarding the legal status, different fiqh madhhab may have different interpretations regarding the inheritance rights of children born from adultery. Although there is a consensus on the basic principles, differences in their application arise from the interpretation of the Hadith and analogical reasoning (qiyas). *Second*, regarding the inheritance part, according to the principles of fiqh, children born from adultery may have the right to inheritance, even under certain conditions and within specified parameters. The determination of the distribution of inheritance considers factors such as parental recognition, community welfare, and the best interests of the child. *Third*, regarding ethical considerations, the discussion of fiqh emphasizes the ethical responsibility of parents, public perceptions, and the importance of justice in determining inheritance rights. The main goal is to uphold children's rights while maintaining family harmony and community cohesion.³⁰

There are similarities in attitudes that arise both in the view of the Compilation of Islamic Law and Fiqh towards the inheritance law of adulterous children. Children resulting from adultery are indeed according to Islamic law and state law only follow the bloodline of their mother and mother's family. Indicates that the civil rights of children resulting from adultery have limitations.

The next discussion is about the challenge of applying fiqh principles to inheritance rights for children born from adultery. The application and challenges faced include: 1) Differences in interpretation: variations in interpretation and fiqh methodologies between different madzhab. 2) Legal implementation: ensuring consistency and fairness in implementing fiqh decisions within the framework of contemporary law. 3) Ethical balance: addressing public perceptions and encouraging inclusive legal solutions that protect children's rights and uphold ethical standards.³¹

The fiqh perspective on inheritance rights for children resulting from adultery reflects Islamic principles, namely justice, equality, and compassion. Although its interpretation may vary among schools of fiqh, its main goal remains to uphold children's rights and improve family and community harmony in accordance with Islamic teachings. Thus, fiqh's view of the law of inheritance of adultery children reflects a commitment to the principles of justice, maintenance of family order, and respect for Islamic sharia values in a context involving social wrongdoing.

Juridical Implications of the Breakup of Nasab

The breakup of the nasab causes several juridical implications. In Islam, nasab is very closely related to guardianship, maintenance, ḥadanah, inheritance,

³⁰ Aden Rosadi and Siti Ropiah, "Reconstruction of Different Religion Inheritance Through Wajibah Testament," *Jurnal Ilmiah Peuradeun* 8, no. 2 (2020), p. 327–350.

³¹ Margareta Sevilla et al., "Kedudukan Anak Luar Kawin Dalam Hukum Waris," *Jurnal Hukum Magnum Opus* 4, no. 2 (2021), p. 159–169.

muḥarramat al-nikâh, and so on.³² As a result, if a child is separated from his father, the *thabi'i* (biological) father of the child born does not have any responsibility. This makes there is ambiguity in this issue.

Al-Qurthubi explains in the tafsir of al-Qurthubi that the term nasab is used for the term meeting of ovum and sperm based on *the procedure of sharia'*. Then the majority of jurists state that between children who are born there is no relationship between their biological fathers and their biological fathers. This invites the argument that the consequence is the loss of biological father's responsibility for the child. Hanafiyyah scholars disagree by stating that children born still have a relationship of destiny with their biological father. In the opinion of hanafiyyah, this has the consequence that there must be a relationship regarding the complex relationship regarding the obligations and responsibilities of the biological father to the child.³³

Nasab is not only a civil relationship between the biological father and his child, it also concerns the survival of the child who is born. In the science of ushul fiqh, nasab is a benchmark in the law of *wad'i* (cause and effect) on the issue of the obligation to provide, educate, the rights of *ulu al-qurba* (kinship relations), guardianship, inheritance, and also the *law of mani'* (obstruction) on the issue of marriage.³⁴ The consequences caused by the breakup of this nasab, such as; the absence of a prohibition on marriage between the biological father and the child resulting from the relationship outside the marriage, this makes the incest relationship (blood relationship) which results in offspring who can experience several health problems both physically and mentally.

The positive legal view in Indonesia regarding this problem is also quite complicated. If viewed from the perspective of the punishment obtained by the perpetrator of adultery (male) can be subject to the crime of sexual violence, this can also be carried out if the woman's family demands justice. If they are not required to account for this, the perpetrator (male) does not need to be burdened and responsible for the problem.³⁵

The Indonesian Ulema Council (MUI) takes part in the problem of children born out of wedlock. MUI issued fatwa no. 10 of 2012 to respond to changes in law (46/PUU-VIII/2010) in paragraph (1); "A child born out of wedlock has a civil relationship with his mother and his mother's family as well as with a man as his father which can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with his father's family". There are several points that have been determined, namely; *First*, the child born does not have a relationship with the man, who is the cause of

³² Sakirman, "Telaah Hukum Islam Indonesia Terhadap Nasab Anak," *Hunaf: Jurnal Studia Islamika* 12, no. No. 2 (2015), p. 357–375.

³³ Jamil, "Nasab Dalam Perspektif Tafsir Ahkam."

³⁴ Jalaluddin, "Nasab: Antara Hubungan Darah dan Hukum Serta Implikasinya Terhadap Kewarisan."

³⁵ Jamil, "Nasab dalam Perspektif Tafsir Ahkam."

his birth. *Second*, the child born only has a relationship of nasab, inheritance, and maintenance with his mother and his mother's family. *Third*, the child who is born does not bear the sin of adultery from the person who caused him to be born. *Fourth*, adulterers are subject to *the punishment of hadd* for the benefit of the child who is born. *Fifth*, it requires the man who caused his birth to fulfill the child's maintenance and set aside part of his property through a mandatory will after he dies. *Sixth*, the punishment in the fifth point aims to protect the rights of children, and not as a ratification of their destiny.³⁶ Although this is seen as a middle way for the problem of adulterous children, it still does not rule out the possibility of incest marriage. In fact, in the fiqh rules "*dar'u al-mafasid muqaddam 'ala jalbi al-masalih*³⁷" which means preventing damage takes precedence over attracting benefits. Damage due to the termination of nasab opens up a greater possibility of mafsadah which results in physiological or psychological abnormalities in the child who is born.

Nasabiyyah Inheritance to Adulterous Children

Another impact caused by adultery is that it results in unclear offspring. So that children when they are born will have doubts about who their father is. The child who is born will be the result of the deeds that he does not do, he will be the impact of the actions of his parents. Legally, the child has no legal consequences from the actions of his parents. This is because Islam does not recognize inherited sin. When a person commits a sin or mistake, he will bear his own sin, the sin and mistake cannot be passed on or inherited to others even to his own children.³⁸ This is stated in the Qur'an surah Al-Isra' (17:15), which is "... A sinner will not bear the sins of others. We will not torture (someone) until We send an apostle."

Based on this, children born out of wedlock only have a civil relationship with their mother and her mother's family. This provision also applies to children born from unregistered marriages. An unrecorded marriage can be interpreted as the marriage event never existed so that children born out of wedlock according to the law are categorized as children out of wedlock.³⁹ The legal status of an illegitimate child will only have a civil relationship from his mother and his mother's family, while with his biological father and his family, an illegitimate child will not have a civil relationship at all. Similarly, in the case of making the identity of the child in

³⁶ A. Mukti Arto, "Hukuman Ta'zir Mewajibkan Ayah Biologis Memberi Bagian Dari Harta Waris Untuk Anak Luar Nikah Dan Penyelesaiannya Di Pengadilan Agama," *Mahkamah Agung*, 2013. Abdullah Jarir, Ratno Lukito, and Moch. Nur Ichwan, "Legal Reasoning on Paternity: Discursive Debate on Children Out of Wedlock in Indonesia," *Ahkam: Jurnal Ilmu Syariah* 23, no. 2 (2023), p. 449–472.

³⁷ Imam Jalaludin Abdurrahman Al-Suyuti, *Al Asybah Wa An Nadhair Fi Qawa'id Wa Furu' Fiqh Al-Syafi'iyyah* (Beirut: Al-Thaba'at al-Aula, 1983).

³⁸ Muhammad Ihwan, "Hak-Hak Anak Zina Perspektif Fiqh Empat Madzhab," *Istidlal: Jurnal Ekonomi Dan Hukum Islam* 1, no. April (2017), p. 73–85.

³⁹ Fitriyadi et al., "Redefining Legal Frameworks: Progressive Methods in Ascertaining Children's Lineage From Fasid Marriages in Religious Court," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024), p. 148–171.

the form of a birth certificate, the birth certificate of the illegitimate child will be recorded that the child is an illegitimate child by only including the name of the mother, while the name of the father is not listed.⁴⁰

The purification of the position of children outside of marriage is seen from the theory of the first movement departing from the texts in the perspective of normative texts, the political configuration that arises and *the social setting* that surrounds the time of the normative texts. The text, among others, is related to the concept of nasab, and the concept of the child itself. After finding a real picture of the portrait of the concept *of nasab* and the position of the child at the birth of the text and *social setting*, then *the double movement* theory tries to apply these situations and conditions in the second motion theory which analyzes the contextual meaning of the above terms according to the current situation and conditions.⁴¹

Inheritance refers to the potential distribution, reduction, and misallocation of family company assets during the distribution of wealth between generations.⁴²The impact of inheritance law in a society that continues to grow. Ralph C. Brashier's emphasis quoted by Sandra Kopels in his article says that on the current probate law (the law relating to wills and inheritances) and the differential effect of this law on various family compositions. According to Brashier, inheritance is an inclusive family that he considers family, dividing them into traditional and nontraditional families, using existing state probate laws as a yardstick. Brashier defined the traditional nuclear family as consisting of a husband and wife whose children are their combined biological descendants and are not conceived through the use of any reproductive technology. Brashier considers all other families non-traditional because they are new or not considered by inheritance law and may not receive the same treatment from the legislature and courts as traditional families do. Some of the families he considers nontraditional are husbands and wives who adopt children (because adoptive families are new to wills), mixed families, heterosexual couples who are not married, gay and lesbian families, and parents who use artificial reproduction to create children, even children outside of marriage.⁴³

The most striking and significant difference between the Sunni and Shi'a legal systems as a whole lies in their respective inheritance laws. From a comparative point of view, a prominent characteristic of Shi'a inheritance law is its refusal to confer any special place or privileged position on relatives. A somewhat graphic fundamental difference is expressed in Imām's alleged dictum, Ja'far al-Sadiq: "As

⁴⁰ Hijawati Hijawati and Rizayusmanda Rizayusmanda, "Hak dan Kedudukan Anak Luar Nikah Yang Diakui Terhadap Warisan Tanah Ditinjau Dari Hukum Perdata," *Solusi* 19, no. 1 (2021), p. 126–137.

⁴¹ Ahmad Fageh, "Analisa Hak Waris Anak Luar Kawin Pendekatan Hak Asasi Manusia," *Akademika* 11, no. 2 (2017), p. 166–181.

⁴² Michael Carney, Eric Gedajlovic, and Strike Vanessa M., "Dead Money: Inheritance Law and the Longevity of Family Firms," *Entrepreneurship Theory and Practice* 36, no. 6 (2014), p. 1261–83.

⁴³ Sandra Kopels, "Book Review: Inheritance Law and the Evolving Family," *Affilia* 20, no. 2 (2005), p. 255–257.

for *the aşaba*, the dust in their teeth." The Shia's basic approach to the issue of inheritance has two main effects. First, all blood relatives are embraced by a single and comprehensive system of priority, and there is no major division, as is the case in Sunnah law because of the criteria of agnostic relationships, between the inner family and the outer family. Second, female and non-agnostic relatives stand on the same footing as male relatives in the succession scheme, in the sense that they exclude relatives who occupy an inferior position in the order of priority. The exception of other relatives is not, as in the Sunni system, the special prerogative of male relatives. Much of the complexity of Sunnah law stems from the superior status it confers on male relatives as legitimate heirs.⁴⁴

Technology and science that are currently developing should be considered for nasab meetings that are claimed to have been severed due to relationships outside of legal marriage. The *qiyafah* technique that can now be qiyased by DNA tests can be a connection of the disconnected nasab. It is undeniable in science, DNA is genetic information that humans have carried since birth, whether the birth is desired or not, in a legal marriage bond or not. In addition, the results of DNA tests can be scientifically accounted for. So it is impossible to unilaterally terminate the nasab without involving the man who caused the birth.⁴⁵

The Qur'an in Surah al-Qalam (68:10-13) alludes to this problem of nasab. Some narrations say that the one mentioned is al-Walid bin Mughirah, in the verse it says "zaniim" in the tafsir of Qurthubi,⁴⁶ the tafsir of At-Thabari,⁴⁷ and Lisan al-Arabiy⁴⁸ is "*da'i li al-nasab*" (confessing the nasab to someone other than his biological father). From this event, it can be concluded that the identical nasab is genetic data passed down by biological parents.

The *qiyafah* technique, which is now developed and can be qiyas-turned into a DNA test, is an offer to update Islamic law and laws in determining nasab.⁴⁹ This is because humans who are born without a relationship with their biological father are a denial of reason and science. In Surah Al-Ahzab (33:5) there is a command to call a child by his father's name.

⁴⁴ N. J. Coulson, "Inheritance in Shi'ī Law," in *Succession in the Muslim Family*, ed. N J Coulson (Cambridge: Cambridge University Press, 1971), p. 108–34. Fathonah K. Daud, "Dinamika Hukum Keluarga Islam Dan Isu Gender Di Iran: Antara Pemikiran Elit Sekuler Dan Ulama Islam," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 4, no. 2 (2021), p. 153–165.

⁴⁵ Chaq, "Nasab Anak Dalam Hukum Islam; Membaca Peluang Sains Dan Teknologi Dalam Penetapan Nasab"; Zainal Azwar et al., "Child Filiation and Its Implications on Maintenance and Inheritance Rights: A Comparative Study of Regulations and Judicial Practices in Indonesia, Malaysia, and Turkey," *Journal of Islamic Law* 5, no. 1 (2024), p. 62–85.

⁴⁶ Abu Abdillah Muhammad bin Ahmad bin Abu Bakar al-Anshari Al-Qurthubi, *Tafsir Al Qurthubi Jilid 19* (Jakarta: Pustaka Azzam, 2020).

⁴⁷ Imam Abu Ja'far Muhammad bin Jarir Ath-Thabari, *Tafsir At-Thabari Jami' Al Bayan Fi Ta'wil Al Qur'an Terjemah Bahasa Indonesia Jilid 25* (Jakarta: Pustaka Azzam, 2022).

⁴⁸ Manzur, *Lisan Al-Arabiy*.

⁴⁹ Ali, Wulandari, and Erianti, "Status of Children Born Out of Wedlock: A Study of Constitutional Court Decision and Its Relevance to the View of Ibnu Taimiyah."

With the clarity of this nasab, the child who is born gets implications in the relationship with his father and his father's family. In the law *of wad'i*, children can get full rights over themselves, namely in maintenance, guardianship, and so on. As well as *the law of semen'* regarding the prohibition of marriage from the path of its nasab.⁵⁰ Although in essence the act of adultery is prohibited, it does not cause a domino effect on the line of descent.

Conclusion

Islamic law places great emphasis on the importance of lineage, so it is ordered to carry out marriages between men and women who then give birth to legally valid children. Lineage is genetic information carried from their parents. This study concludes that in positive law, especially civil inheritance law, the inheritance rights of children outside of marriage can be recognized as long as the biological father recognizes the child's lineage as his lineage. As for Islamic civil law, there is no legal relief for children outside of marriage. If the child is born without a clear status from both parents, then the child's lineage follows the mother, not the father. Islam has flexible laws that can adapt to the existing context. From the perspective of Islamic law, there are several ways to determine nasab, one of which is the *qiyafah* technique. The technique can be *qiyas* by reading the lineage through DNA testing because it has almost the same legal *illat*. With advances in technology and developments in science, methods for determining ancestry can also be developed.

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⁵⁰ Chaq, "Nasab Anak Dalam Hukum Islam; Membaca Peluang Sains Dan Teknologi Dalam Penetapan Nasab."

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