



The Civil Rights of Children Born as a Result of Zina: An Islamic Law Perspective

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ABSTRACT:

The research aims to determine the status of the civil right of children involved in adultery from an Islamic legal perspective and how they are implemented in society. Every child has civil rights related to both parents, and these rights are the responsibility of both parents in a legally married relationship. The increase in cases of extramarital relationships resulting in children of adultery, along with a great deal of public misunderstanding regarding these cases, is a problem that needs to be re-examined. This type of research is library research, using normative juridical methods. This type of research is a study conducted in a library space, either in the form of books such as periodicals, such as books, journals, scientific articles published periodically, documents, and other library materials that can be used as reference sources for compiling scientific reports. The object of this research is the civil rights of children of adultery from the perspective of Islamic law. From the research and discussion, it can be concluded that: Under Islamic law, children resulting from adultery are only related by blood to their mother and do not have inheritance rights or guardianship from their biological father.

Keywords: Civil Rights, Children of Adultery, Islamic Law

ABSTRAK:

Penelitian ini bertujuan untuk mengetahui status hak keperdataan anak hasil zina dalam perspektif hukum Islam serta implementasinya dalam masyarakat. Setiap anak memiliki hak keperdataan yang berkaitan dengan kedua orang tuanya, dan pemenuhan hak-hak tersebut merupakan tanggung jawab kedua orang tua dalam hubungan pernikahan yang sah. Meningkatnya kasus hubungan di luar pernikahan yang mengakibatkan lahirnya anak hasil zina, disertai dengan masih banyaknya kesalahpahaman masyarakat mengenai persoalan tersebut, menjadi permasalahan yang perlu dikaji kembali. Jenis penelitian ini adalah penelitian kepustakaan (library research) dengan menggunakan metode yuridis normatif. Penelitian kepustakaan merupakan penelitian yang dilakukan dengan memanfaatkan berbagai sumber pustaka, seperti buku, jurnal ilmiah, artikel ilmiah yang diterbitkan secara berkala, dokumen, serta berbagai bahan pustaka lainnya yang dapat digunakan sebagai sumber referensi dalam penyusunan karya ilmiah. Objek penelitian ini adalah hak keperdataan anak hasil zina dalam perspektif hukum Islam. Berdasarkan hasil penelitian dan pembahasan, dapat disimpulkan bahwa dalam hukum Islam, anak hasil zina hanya memiliki hubungan nasab dengan ibunya dan tidak memiliki hak waris maupun hak perwalian dari ayah biologisnya.

Kata Kunci: Hak Keperdataan, Anak Hasil Zina, Hukum Islam

INTRODUCTION

Marriage, from a legal perspective, is a lawful union between a man and a woman governed by legal norms and statutory provisions. It is regarded as a sacred institution that regulates family life and establishes the legal foundation for domestic relations. In Islamic law, marriage is considered an act of worship (*ibadah*) and serves as the primary institution for establishing a harmonious, peaceful, and prosperous family. Accordingly, every family aspires to achieve these objectives, which represent the fundamental purposes of marriage. However, rapid social change and modernization have contributed to the increasing prevalence of premarital sexual relationships, particularly among adolescents. Juvenile delinquency and unrestricted social interactions have exposed many young people to risky behaviors without adequate awareness of their legal, social, and moral consequences.

Promiscuity and extramarital sexual intercourse constitute forms of zina in Islamic law. Zina refers to sexual intercourse between a man and a woman who are not legally married to one another, regardless of whether one or both parties are already married (*muhshan*) or unmarried (*ghair muhshan*). Within Islamic jurisprudence, zina is regarded as a grave offense because it undermines the preservation of lineage (*nasab*), violates moral and religious principles, and threatens the integrity of family institutions. It is explicitly prohibited under Islamic law and is considered a reprehensible act that may lead to various criminal and social consequences, including sexual misconduct. The prohibition of zina is clearly stated in the Qur'an, Surah Al-Isra (17:32):

"And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way." (Qur'an 17:32) This verse not only prohibits the commission of zina itself but also forbids actions that may lead to it. Islamic scholars interpret this prohibition as encompassing all conduct that facilitates illicit sexual relations, such as intimate physical contact and other acts that may encourage immoral behavior. Consequently, zina often becomes the primary cause of pregnancies occurring outside lawful marriage, giving rise to legal, social, and psychological problems for the individuals involved as well as their families. Such circumstances are frequently regarded as a source of social stigma and may jeopardize the preservation of legitimate lineage.

Extramarital sexual relations represent the fulfillment of sexual desire outside the institution of marriage. Such conduct may result in serious consequences, including the loss of personal and family honor, social stigma affecting the child born from the relationship, and disruption of the integrity of family lineage.

Every child possesses civil rights arising from the legal relationship with his or her parents, and these rights are generally accompanied by corresponding parental obligations established through a lawful marriage. Children born as a result of zina or other sexual relationships outside a legally recognized marriage, however, occupy a unique legal position. Under Article 42 of Law Number 1 of 1974 on Marriage, a legitimate child is defined as a child born within or as a consequence of a lawful marriage. Similarly, Article 250 of the Indonesian Civil Code (*Burgerlijk Wetboek*) provides that a legitimate child is one conceived and born during the existence of a lawful marriage and is legally presumed to be the child of the husband.

In Islamic law, the distinction between an illegitimate child and a child born outside marriage is generally not recognized. Instead, both categories are classified as children born as a result of zina. Consequently, such children do not possess a legal lineage (*nasab*) with their biological father and are therefore excluded from paternal inheritance rights under classical Islamic jurisprudence. Nevertheless, many contemporary Islamic scholars maintain that the biological father remains morally responsible for providing financial support until the child reaches adulthood. This obligation is viewed not as a consequence of lineage but as a form of *ta'zir* (discretionary sanction) imposed upon the father for engaging in unlawful sexual conduct.

The legal status of children born outside lawful marriage remains one of the most sensitive issues in both Islamic and Indonesian legal discourse. Questions concerning lineage,

parental responsibility, inheritance, guardianship, and other civil rights continue to generate legal uncertainty and social controversy. Although such children are entitled to legal protection and fundamental civil rights, they frequently experience discrimination and social stigma because of the circumstances surrounding their birth.

Given the increasing number of pregnancies resulting from unlawful sexual relationships, particularly among young people, it is essential for the law to respond by providing legal certainty while ensuring the protection of children's rights. Furthermore, a clearer understanding is required regarding the similarities and differences between the legal status of children born as a result of zina and children born outside marriage under both Islamic law and Indonesian positive law. Such clarification is expected to reduce public misunderstanding and contribute to a more comprehensive legal framework for the protection of children's civil rights. Accordingly, this study examines the civil rights of children born as a result of zina from the perspective of Islamic law.

RESEARCH METHOD

This study employs a normative juridical research method, which examines legal issues through the analysis of statutory regulations, legal principles, doctrines, and relevant legal theories. The research adopts a doctrinal legal approach by reviewing primary and secondary legal materials concerning the legal status of children born outside lawful marriage, with particular emphasis on the civil rights of children born as a result of *zina* under Islamic law.

The analysis focuses on Islamic legal principles governing lineage (*nasab*), inheritance, guardianship, and maintenance, while also considering relevant Indonesian legislation, judicial decisions, and legal doctrines. Accordingly, this research seeks to examine the legal position of the civil rights of children born as a result of *zina* and their implementation within the Indonesian legal system and society.

RESULT AND DISCUSSION

1. The Legal Status of the Civil Rights of Children Born as a Result of Zina under Islamic Law

Pregnancy is fundamentally regarded as a blessing that married couples eagerly anticipate, as children are considered one of God's greatest gifts and should be nurtured and protected with care. Ordinarily, the birth of a child results from the lawful union of a man and a woman within a valid marriage. Nevertheless, childbirth may also occur outside a legally recognized marriage through acts of zina (unlawful sexual intercourse).

Islam strictly prohibits the commission of zina and even forbids any conduct that may lead to it. This prohibition is explicitly stated in the Qur'an:

"And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way." (Qur'an 17:32) This verse extends beyond prohibiting the act of zina itself by also forbidding behaviors that may facilitate it, including intimate physical contact such as embracing, kissing, or other actions capable of leading to unlawful sexual relations. Consequently, zina frequently becomes the underlying cause of pregnancies occurring outside lawful marriage, creating legal, social, and psychological challenges for both the individuals concerned and their families. Such circumstances are often regarded as a source of social stigma because they affect the preservation of legitimate lineage (*nasab*).

From the perspective of Islamic law, however, a child born as a result of zina bears no personal sin. Every child is born in a state of purity (*fitrah*), and therefore cannot be held morally or legally responsible for the unlawful conduct committed by his or her parents. The social and legal consequences associated with the child's status arise solely from the parents' unlawful actions rather than from any wrongdoing on the part of the child.

A. Lineage (*Nasab*) of Children Born as a Result of *Zina*

A child born as a result of *zina* is a child conceived through an unlawful sexual relationship rather than through a legally valid marriage. According to Sa'ad, *zina* refers to sexual intercourse occurring outside a lawful marriage or a marriage affected by *shubhat* (legal ambiguity). For example, if a married couple later discovers that they are related through fosterage (*rada'ah*), their marital relationship is categorized as one involving *shubhat* rather than *zina*, because the legal defect arises from an unintentional impediment rather than deliberate unlawful conduct.

Children born as a result of *zina* occupy a distinctive legal position under Islamic law, particularly with respect to lineage (*nasab*), inheritance, guardianship, and maintenance. Among these issues, lineage constitutes the fundamental legal basis from which other civil rights are derived. The determination of a child's lineage directly affects entitlement to inheritance, legal guardianship, and other familial rights and obligations.

For this reason, Islamic law places considerable importance on preserving lineage. The Prophet Muhammad (peace be upon him) prohibited individuals from falsely attributing themselves to someone other than their lawful biological father, stating:

"Whoever knowingly claims lineage to someone other than his (lawful) father will be forbidden Paradise."

This Prophetic tradition underscores the significance of preserving legitimate lineage within Islamic jurisprudence.

Accordingly, a child born within a lawful marriage is recognized as a legitimate child possessing full legal rights arising from that marital relationship. Conversely, a child born outside a lawful marriage does not acquire legal lineage with the biological father under classical Islamic jurisprudence. Instead, the child is legally affiliated only with the mother and the mother's family.

This principle is also reflected in Indonesian positive law. Article 43 of Law Number 1 of 1974 on Marriage provides that:

"A child born outside marriage shall have a civil legal relationship only with his or her mother and the mother's family."

This provision establishes that the legal rights and obligations relating to a child born outside marriage primarily rest with the mother, while the biological father does not automatically acquire legal rights or obligations toward the child solely on the basis of biological paternity.

B. Custody and Maintenance of Children Born as a Result of *Zina*

Under Islamic law, the mother bears primary responsibility for the care, upbringing, and breastfeeding of a child born as a result of *zina*. Because the child's legal lineage with the biological father is not recognized, the right and responsibility to raise the child belong to the mother and her maternal relatives.

According to Ahmad, classical Islamic jurists did not specifically discuss the custody of children born as a result of *zina* as an independent legal issue. Consequently, the applicable legal principles are generally derived from broader doctrines governing child custody (*hadhanah*). Based on these principles, custody remains with the mother and her family, whereas the biological father does not possess custodial rights because no legal lineage exists between them.

The same principle applies to maintenance (*nafaqah*). Under classical Islamic jurisprudence, financial support for a child born as a result of *zina* is primarily the

responsibility of the mother and her family, since the child is legally affiliated with them. The biological father is generally not under a legal obligation to provide maintenance because the legal relationship of *nasab* between father and child is absent.

Nevertheless, Islamic legal doctrine also recognizes the state's responsibility to safeguard the welfare of vulnerable children. Where neither the mother nor her family is capable of providing adequate financial support, responsibility for the child's maintenance may be assumed by the state through the *Bayt al-Mal* (public treasury), thereby ensuring that the child's fundamental needs and welfare are protected in accordance with the principles of justice and social responsibility in Islamic law.

2. Implementation of the Civil Rights of Children Born as a Result of Zina in Society

The implementation of the civil rights of children born as a result of zina concerns the legal protection and fulfillment of their fundamental rights despite their birth outside a legally recognized marriage. Under Indonesian positive law, such children maintain a civil legal relationship with their mother and the mother's family. Furthermore, following developments in Indonesian jurisprudence, they may also claim certain civil rights against their biological father, including the right to maintenance, affection, and inheritance, provided that biological paternity can be established through lawful evidence.

Civil rights refer to rights associated with an individual's legal identity and civil status, including the right to a name, legal identity, nationality, family status, and other rights necessary for one's legal existence and participation in society. These rights are fundamental because they determine an individual's legal recognition and access to essential public services, including education, healthcare, civil registration, and legal protection. In the context of children, civil rights encompass both family-related rights and broader civil entitlements guaranteed by law.

In Indonesia,

Fatwa of the Indonesian Council of Ulama (Majelis Ulama Indonesia/MUI) No. 11 of 2012 serves as an important religious guideline concerning the legal status of children born as a result of zina. The fatwa provides guidance for Muslim communities while also offering valuable considerations for lawmakers and government institutions in formulating policies concerning the protection of such children's rights. It emphasizes that parents or guardians responsible for unlawful sexual relations cannot deprive children born as a result of zina of their fundamental civil rights. Consequently, these children must not be subjected to moral condemnation or social discrimination but should instead be treated fairly, humanely, and in accordance with the principles of justice.

The MUI Fatwa further affirms that a child born as a result of zina does not possess a legal relationship of lineage (*nasab*), marriage guardianship (*wali nikah*), inheritance (*warith*), or maintenance (*nafaqah*) with the man responsible for the child's conception. Instead, these legal relationships exist only between the child, the mother, and the maternal family. Accordingly, the fatwa does not recognize the establishment of lineage, guardianship, inheritance rights, or maintenance obligations through biological paternity alone, thereby differing from the legal interpretation reflected in the Constitutional Court Decision No. 46/PUU-VIII/2010.

Nevertheless, Islamic law also upholds the principle that every child possesses equal dignity before God, the law, and society. Although a child born outside marriage does not acquire legal lineage with the biological father, this does not absolve the biological father of all moral and humanitarian responsibilities. The MUI Fatwa expressly states that while such a child is not entitled to inherit from the biological father under Islamic inheritance law, the father remains responsible for ensuring the child's welfare. This responsibility may be fulfilled through a mandatory bequest (*wasiat wajibah*), requiring the biological father to

allocate a portion of his estate to the child upon his death.

Similarly, maintenance (*nafaqah*) should be understood as financial support necessary to meet the child's essential living needs, including food, clothing, shelter, education, and other necessities according to the financial capacity of the person responsible. Although Islamic law does not establish a legal relationship of lineage or marriage guardianship between the child and the biological father, humanitarian considerations require that the child's welfare remain protected.

In formulating its legal opinion regarding the status and treatment of children born as a result of *zina*, the Indonesian Council of Ulama based its Fatwa No. 11 of 2012 on several principal considerations:

1. Every child is born in a state of purity (*fitrah*) and does not bear responsibility for the sins committed by his or her parents, including conception through *zina*.
2. In practice, many children born as a result of *zina* experience neglect because the biological father refuses to assume responsibility for their basic needs. They are also frequently stigmatized as "illegitimate children" and subjected to discrimination, particularly because their birth certificates generally identify only their mother.
3. The Constitutional Court, through Decision No. 46/PUU-VIII/2010, sought to strengthen child protection by recognizing that children born outside marriage possess civil legal relationships not only with their mother and the mother's family but also with their biological father, provided that biological paternity can be established through scientific evidence or other legally admissible proof.
4. The Constitutional Court's decision subsequently generated legal debate regarding the status of children born as a result of *zina*, particularly concerning issues of lineage (*nasab*), inheritance, maintenance (*nafaqah*), and marriage guardianship (*wali nikah*) under Islamic law.
5. Accordingly, the MUI considered it necessary to issue Fatwa No. 11 of 2012 to provide authoritative religious guidance concerning the legal status and treatment of children born as a result of *zina*.

From the perspective of Islamic law, children born as a result of *zina* cannot be burdened with responsibility for the unlawful acts committed by their parents. The legal and moral consequences of *zina* are borne exclusively by the parents who committed the prohibited act. Nevertheless, although such children do not possess legal lineage with their biological father, Islamic principles of justice and child welfare require that the father remain morally accountable for supporting the child's well-being.

The Constitutional Court Decision No. 46/PUU-VIII/2010 marked a significant development in Indonesian family law by expanding legal protection for children born outside marriage. The Court recognized that such children may establish a civil legal relationship with their biological father if biological paternity can be proven through scientific methods, including DNA testing, or other legally admissible evidence. As a consequence, responsibilities that were previously imposed solely upon the mother may also be borne by the biological father. This legal development strengthens the child's entitlement to maintenance, inheritance, and other civil rights derived from the proven biological relationship.

Furthermore, children born outside marriage may seek legal remedies before the courts if the biological father refuses to fulfill these civil obligations. As noted by Ahmad Baihaki, following Constitutional Court Decision No. 46/PUU-VIII/2010, children born outside marriage are entitled to receive care, education, maintenance, and other necessary financial support from both parents responsible for their birth. Where either parent fails to discharge these legal obligations, the child, either personally or through a legal

representative, may initiate legal proceedings to enforce those rights before the competent court.

CONCLUSION

Based on the findings and discussion, it can be concluded that, under Islamic law, a child born as a result of *zina* possesses a legal lineage (*nasab*) only with the mother and the maternal family. Consequently, the child does not acquire inheritance rights or marriage guardianship (*wali nikah*) through the biological father. Nevertheless, Islamic law emphasizes that such a child bears no responsibility for the unlawful acts committed by his or her parents and is therefore entitled to protection, dignity, and equal treatment as a human being.

The implementation of the civil rights of children born as a result of *zina* within the Indonesian legal system encompasses several important aspects. First, following the Constitutional Court Decision No. 46/PUU-VIII/2010, a child born outside a lawful marriage may establish a civil legal relationship with the biological father, provided that biological paternity is proven through scientific methods, such as DNA testing, or other legally admissible evidence. This decision represents a significant development in strengthening the legal protection afforded to children born outside marriage.

Second, with respect to maintenance and inheritance, children born outside marriage are entitled to claim financial support necessary for their upbringing, education, healthcare, and other essential needs. Although Islamic inheritance law does not recognize inheritance rights through the paternal lineage, Islamic jurisprudence provides an alternative mechanism through the doctrine of mandatory bequest (*wasiat wajibah*) to ensure the child's welfare. Under the Indonesian Civil Code, a child who has been lawfully acknowledged may also acquire inheritance rights from the biological father in accordance with the applicable statutory provisions.

Third, regarding civil registration, a child born as a result of *zina* is legally affiliated with the mother and the maternal family. Consequently, the biological father's name may only be included on the child's birth certificate where legal recognition has been established through a court determination supported by sufficient legal evidence.

Finally, in relation to marriage guardianship, a biological father does not possess the legal authority to act as the *wali nikah* of a daughter born as a result of *zina*. Under Islamic law, the authority to solemnize such a marriage rests with the judge-appointed guardian (*wali hakim*), reflecting the absence of a legally recognized paternal lineage.

Overall, this study demonstrates that while classical Islamic law and Indonesian positive law adopt different approaches to the legal status of children born as a result of *zina*, both legal systems increasingly emphasize the protection of the child's fundamental rights and best interests. Therefore, legal protection should focus not only on establishing legal certainty but also on ensuring justice, non-discrimination, and the fulfillment of children's civil rights in accordance with the principles of human dignity and child welfare.

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