

Muhammad Abu Zahrah's Istinbat Method on the Law of Isbat Nasab Son of Zina Based on the Ilḥaq Method

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Abstract

Islamic law still gives a portion of reason to man, therefore man still has to establish laws based on the Qur'an and Hadith on problems that do not exist Nas and the law clearly. It is these interpretations that are the root of dissent among scholars. One of the important themes in the study of Islamic family law is the adultery of children. The scholars agree that the adulterous child's nasab is cut off from the man and is only connected to the mother's path, but so the scholars are sincere in the matter of determining the adulterous child's nasab by the biological father through the ilḥaq (confession of the child). According to Abu Zahrah, adulterous children do not have a sexual relationship with a man as a biological father. But an adulterous child can be recognized as a biological father through the ilḥāq method, provided that the biological father does not explicitly suggest that the child he recognizes is the result of adultery. The consequence is a relationship of mutual support, inheritance relations, guardian relationships and other laws.

Keywords: *Confession of Nasab, Son of Adultery, Ilḥaq*

Introduction

In Islam, one form of legal protection for children is to keep the child's fate clear. Nasab is something abstract that occurs very important in the dimension of Islamic family law. Nasab became a strong binder of sibling and familial ties, determining the attachment

between a person and another person between children and fathers, brothers, uncles, nephews, grandchildren, and other relatives. Although lineage is abstract and vague, the existence of lineage is important to determine kinship. The study of nasab in jurisprudence is placed on an equal footing with other material



areas of sharia law. This is considering that the purpose of recognition of lineage in Islam is to safeguard the rights of children's education, child care, livelihood, laws on property, wills and so on.¹

The importance of the position of nasab in Islam leads to the prohibition for a person to deny his own child. ²To deny a legitimate child is to deny the nasab, and this denial is contrary to the teachings of Islam. It's just that the condition is different when the child is born from an illegitimate relationship or adultery. The child of adultery as a result of an illegitimate relationship by a *jumhur ulama* considers having no attachment to the biological father. This is because nasab can only be established through legal marriage (*nikāḥ ṣāḥih* or *firāsh*), broken marriage or *fasid* (*nikāḥ faṣid*), and *Shubhat* relationship (*waṭi' syubḥat*). These three methods became the scales of nasab in Islam. ³The common and commonly used legal proposition in this context refers to the hadith narrated by al-Bukhārī which is about children for the owner of the case (due to legal marriage) and adulterers punished by stoning.

The establishment of nasab in Islam has various forms. Legal perspectives (Islamic jurisprudence) on the forms, methods and methods of determining lineage are very diverse. Scholars study this issue in great detail. Considering that the issue of nasab is an important issue as the foundation of a family, the attachment of civil rights, mahram, and even the study of nasab will be inseparable from other legal relationships. In general, scholars have agreed on three forms of nasab determination, namely through legal marriage (wedding *shāḥih*), broken or *fasid* marriage (wedding *fasid*), and *syubhat* relationship (*wathi' syubhat*). In addition to the agreed method, there are also other forms of methods that were not agreed upon by the scholars. The method of determining nasab in question is recognition (*il ḥaq* or *iqṛar al-nasb*), and resemblance or similarity (*al-qāfah* or *qiyāfah*).⁴

Through legal marriage, that lineage can be determined for the father and mother to the child when both have entered into a legal marriage. ⁵The *il ḥaq* method is a method of recognizing children or also called *iqṛar bi al-nasb*. The method of determining the lineage

¹ Amir Syarifuddin, *Islamic Marriage Law in Indonesia*, First Edition, Cet. 5, (Jakarta: Kencana Prenada Media Group, 2014), hlm. 165-166.

² Yusuf al-Qaradawi, *Completely Understanding Halal Haram*, (Translation: M. Tatam Wijaya), (Jakarta: Qalam, 2017), hlm. 336.

³ Imanuddin, "At a Glance on the Determination of Lineages in Jurisprudence: A Study of Legal Standards Through the Qur'an, al-Sunnah, wa

Ijtihad". *Manhaj al-'Ilm Waqfa*. Vol. 1, No.1 November 2018. hlm. 3.

⁴ Imanuddin, "At a Glance on the Determination of Lineages in Jurisprudence: A Study of Legal Standards Through the Qur'an, al-Sunnah, wa Ijtihad". *Manhaj al-'Ilm Waqfa*. Vol 1, No. 1. November 2018. hlm. 3-6.

⁵ Wahbah al-Zuhaili, *Fiqh Islam wa Adabiatul* (Jakarta: Gema Insani, 2011), hlm. 32-37.

of the child through *il ḥ aq* is that a man admits voluntarily that the child born to his wife is his child. In similar cases, a man who has committed adultery with a woman can recognize his biological child as legitimate, but he is advised not to openly recognize the child as the result of his adultery.

The method of *il ḥ aq* or confession of the child of adultery by the biological father, is still found in the opinion of scholars. Jumhur ulama stated that adulterous children cannot be recognized by anyone, including the biological father. For adultery cannot make is confession.⁶ Sulhani Hermawan stated that most scholars from the schools of jurisprudence (*Ḥ anafiyah*, *Mālikiyah*, *Syāfi ' iyah* and *Ḥ anabilah*) have agreed that it is not possible to *isbat nasab* children born outside the minimum threshold of pregnancy, including adulterous children. This means that the child has no sexual relationship with the biological father, even though the father admits it.⁷

One of the scholars studied in this study was Mu ḥ ammad Abū Zahrah, in which he chose the opinion that it is permissible for a biological father to recognize his biological

child as his legitimate child. Mu ḥ ammad Abu Zahrah was a scholar. According to him, the term of adulterous children does not exist, or adulterous children are not assigned to men.⁸

However, biological fathers can recognize biological children as a result of adultery with their partners. Mu ḥ ammad Abū Zahrah added that a man commits adultery with a woman and becomes pregnant, so the man may marry her, and the child is prescribed on condition that there must be recognition or *il ḥ āq* of the child.⁹

Ibn Qayyim al-Jauziyyah argues that an adulterous child still has a mahram relationship with an adulterous man, if the man recognizes the adulterous child as his son. As for Ibn Qayyim's legal *istinbath* method in determining the status of adulterous children, namely interpreting hadith related to disputes over claims of recognition of children. Ibn Qayyim states the decree of the Messenger that prescribes the child to the owner of the bed, whether the child is fertilized from the proceeds of adultery or from the result of a legal marital relationship. Ibn Qayyim also argues that the word "bed" in the hadith as a postulate of proving *nasab* in terms of

⁶ Wahbah al-Zu ḥaili, *Fiqh Islam wa Adillatub*, (Jakarta: Gema Insani, 2011), hlm. 27.

⁷ Ministry of Religion, *Problems of Contemporary Islamic Inheritance Law in Indonesia*, (Jakarta: Research and Development and Training Agency of the Ministry of Religion of the Republic of Indonesia, 2012), hlm. 291.

⁸ Mu ḥ ammad Abu Zahrah, *al Ah wal al-Shakh siyyah*, (Beirut: Dar al-Fikr al-Arabi, 1950), hlm. 388-389.

⁹ Mu ḥ ammad Abu Zahrah, *Fatwa*, (Taḥ qiq: Mu ḥ ammad Usman Shabir), (Damascus: Dar al-Qalam, 1980), hlm. 588.

attachment of civil rights, while "similarity" as a postulate of mahram relationship. For this reason, the claimed child has a sexual relationship in terms of fame, but not in terms of inheritance, bread, and guardianship.¹⁰

The concept of *ilhaq* used by Wahbah Zuhaili is generally in accordance with the concept of Islamic law. However, regarding the recognition of a child born outside the minimum age of marriage, Wahbah Zuhaili argues that the man in question has no chance of sabbating himself with the child, because it has been proven that the child resulted from adultery by being born below the child. minimum prescribed limit. In the view of Islamic law which refers to the opinion of the majority of jurisprudence scholars, a child born outside the minimum age of marriage can be recognized by his father with the fulfillment of specified conditions. In addition, it is possible that the child was born as a result of a fake marriage relationship, or from a *shaubhat* relationship. Therefore, the author suggests that a child born less than six months of marriage can still be recognized by his father who has fulfilled the specified conditions first, with the aim of safeguarding the benefits of the child from vanity.¹¹

¹⁰ Almukhrijal, "*Ibnu Qayyim's Views on the Status of Children of Adultery (Study of Determining Mahram Relations and Civil Rights of Children of Adultery)*", Student of the Family Law Study Program, Faculty of Sharia and Law, Uin Ar-raniry Banda Aceh in 2017.

¹¹ Muhammad Rizal, "*Istilbaq of Children Born Less Than Six Months of Marriage (Study of Wahbah Zuhaili's Thoughts)*", Student of the Family Law Study Program,

Method

Method means a certain way, while research is a scientific activity related to analysis, carried out methodologically, systematically and consistently.¹² So the research method is a way that is done for analysis using research methods. This research uses normative research methods, namely research that emphasizes conceptual legal studies.

1. Research Approaches

Approach is a way to approach research. In this study, the research approach used was qualitative. According to Cresweell, as quoted by Rukajat, that qualitative approach is an approach used to build knowledge statements based on constructive perspectives. In qualitative research, knowledge is built through interpretation of multi-diverse perspectives.¹³ In this study, the approach used is the study of the opinions of figures, in this case Muhammad Abu Zahrah. The study of character opinions here aims to inventory and study broadly and deeply the thoughts of figures so that they can then be explained as clearly as possible.

Faculty of Sharia and Law, Uin Ar-raniry Banda Aceh in 2016.

¹² Beni Ahmad Saebani, *Legal Research Methods*, (Bandung: Pustaka Setia, 2009), hlm. 13.

¹³ Ajat Rukajat, *Qualitative Research Approach*, (Yogyakarta: Deepublish CV Budi Utama, 2018), hlm. 5.

¹⁴So the research approach in this study is a study aimed at analyzing the thoughts of M. Abū Zahrah in isbat nasab son adultery by biological father through il ḥ aq method.

2. Types of Research

This research was conducted with the type of library (library research), where the overall research data was obtained from literature data, especially data related to the thoughts of Muhammad Abu Zahrah about the recognition of adulterous children through the ilhaq method. Meanwhile, literature data is also needed to explore the opinions of scholars about data extracted from fiqh literature.

Discussion

Understanding Nasab

Nasab is a legal relationship between a person and a child born from his wife's woman in a legal marriage, from a slave he has associated with, or from a woman whom he associates with because of wrongdoing (subhat). ¹⁵Nasab can also be interpreted as a blood relationship that binds a person to his parents, offspring or siblings.¹⁶

In another sense, nasab is a bond between two people or several people related by blood, more broadly will relate family ties, for example blood relations (nasab) between children and fathers, fathers with grandfathers, grandfathers with grandchildren, and so on. Nasab can be narrowly defined as offspring or children, and more broadly kinship or kinship caused by blood relations, whether the blood relationship results from a legal marriage, face or damage, or a Shubhat relationship.¹⁷

So the author can conclude that nasab is a legal relationship between a person and another person, giving rise to family status and relationships such as grandfathers, fathers, children, grandchildren, brothers, uncles, nephews, and so on, where the family relationship results either from a valid marriage (fulfilling and getting along with marriage), a facid marriage (a broken marriage), or a sub-hat or wrong relationship (sexual relationship due to not knowing that the person being associated with his wife is legitimate).

¹⁴ Syahrin Harahap, *Methodology of Character Study and Biography Writing*, Cet. 2, (Jakarta: Kencana Prenada Media Group, 2014), hlm. 34.

¹⁵ Ahmad Rafiq, *Islamic Civil Law in Indonesia*, Revised Edition, (Jakarta: Rajawali Pers, 2015), hlm. 177.

¹⁶ Abdul Manan, *Islamic Law Reform in Indonesia*, First Edition, (Jakarta: Kencana Prenada Media Group, 2017), hlm. 257.

¹⁷ Imanuddin, "At a Glance on the Determination of Lineages in Jurisprudence: A Study of Legal Standards Through the Qur'an, al -Sunnah, wa Ijtihad". *Journal: Minhaj Ilm Waqfa*, Vol. 1, No. 1, November 2018.

Legal Basis of Nasab

Nasab is one of the important elements in Islamic studies. Nasab is placed parallel to other important themes such as livelihood, guardianship and other themes. Islam forbids adultery because it wants to preserve the fate of a child. Therefore, Islam is very concerned about the success of nasab.¹⁸

The importance of the discussion of nasab in Islam is recognized in several foundations of Islamic law, both the Qur'an and in the hadith of the Prophet Muhammad (peace be upon him). Among the Qur'anic postulates that are commonly used to emphasize the importance of nasab is referring to QS. Al-Ahzab verses 4-5:

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِنْ قَلْبَيْنِ فِي جَوْفِهِ وَمَا جَعَلَ
أَزْوَاجَكُمْ اللَّائِي تَظَاهَرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ وَمَا جَعَلَ
أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَلِكَ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ
يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ ادْعُوهُمْ لِأَبَائِهِمْ هُوَ
أَفْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَإِخْوَانُكُمْ
فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا
أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ
غَفُورًا رَحِيمًا

It means: "God did not make for a man two hearts in their sockets; and He did not make your wives whom you adulterated as your mothers, and He did not make your adopted children your natural (own) children. Those are just words in your mouth. God

¹⁸ Ali Abubakar and Zulkarnain Lubis, *Aceh Jinayat Law: An Introduction*, (Jakarta: Kencana Prenada Media Group, 2019), hlm. 75.

tells the truth and He shows you the way (the right). Call them (the adopted sons) by (wearing) their father's name; that is just with Allah, and if you do not know their father, then (call them as) your co-religionists and your brothers. And there is no sin against you if you are ignorant of it, but what your heart willful. God is merciful, merciful." (QS. Al-Ahzab: 4-5).

In addition to the above verse, it is also found in QS. Al-Furqan verse 54 as follows:

وَهُوَ الَّذِي خَلَقَ مِنَ الْمَاءِ بَشَرًا فَجَعَلَهُ نَسَبًا وَصِهْرًا ۗ وَكَانَ
رُبُّكَ قَدِيرًا

It means: "And He created man out of water, and He made man (had) offspring and musaharah and your God was Almighty. (QS. Al-Furqan: 54).

The above verse expressly mentions the existence of nasab through the way of marriage contract through the legal channel of mushaharah. This verse according to Manan comments on Allah Almighty binding the relationship between parents and their children and vice versa.¹⁹ Mardi Candra also mentioned the verse above giving information about nasab as a gift from Allah Almighty so that it must be maintained in a good way. Allah (swt) created offspring. The term mushaharah in the verse above means family relationships

¹⁹ Amran Suadi and Mardi Candra, *Legal Politics from Islamic Civil and Criminal Law Perspectives and Sharia Economics*, (Jakarta: Kencana Prenada Media Group, 2016), hlm. 56.

derived from marriage relationships, such as sons-in-law, brothers-in-law and in-laws.²⁰So, Allah (swt) stated unequivocally about the importance of nasab in Islam. The mention of the term nasab in the above verse is certainly an indication that Allah Almighty wants to give a decree regarding the existence of nasab in Islam.

Ulema Opinion on the Legality of Isbat Nasab Children of Zina through the Il h aq Method

In the case of an unknown child, for example in the case of an adulterous child, scholars still differ on whether the child can be recognized by the man who caused the birth or not. According to some scholars, such as Ilhaq bin Rahawayh quoted by Hamid Sarong, it is permissible for an adulterer to be recognized by an adulterer as his father, but on condition that the man does not explicitly declare the child he recognizes as adulterous. The justification for admitting adulterous children according to Ishaq bin Rahawayh is to protect the interests of children not to have no lust.²¹

²⁰ Mardi Candra, *Aspects of Indonesian Child Protection: Analysis of Child Marriage*, (Jakarta: Kencana Prenada Media Group, 2018), hlm. 20.

²¹ Hamid Sarong, *Islamic Marriage Law in Indonesia*, cet. 3, (Banda Aceh: Pena, 2010), hlm. 174.

²² Ibn Qayyim al-Jauziyyah, *I'lam al-Muwaq'i'in: A Guide to Islamic Law*, (Translated: Asep Saifullah FM and Kamaluddin Sa' diyatulharamain), (Jakarta: Pustaka Azzam, 2000), hlm. 856.

²³ Abdul Fattah Mahmud Idris, et al, *Qa d aya Fiqhiyyah Mu'ashirah: Fiqh al-Bunuk allIslamiyyah:*

Ibn al-Qayyim al-Jauziyyah mentions:²²

"Adulterous children can still be recognized by adulterers and have a mahram relationship with both parents, so that the parents get the elements of mahram. This mahram relationship cannot be denied any barrier to a man who has been known to be his father, even adultery."²³

Specifically this opinion of Ibn al-Qayyim, adulterous children can be recognized by adulterous men, but such recognition only affects the maintenance of the mahram relationship between the child and his father (meaning they cannot marry), but in matters of inheritance, bread, and marital guardianship remains absent.²⁴This means that a man who causes a child to be born can recognize him as his child as long as the conditions are properly met.

However, according to the jumhur ulama, the adulterous child cannot be recognized and the adulterer cannot determine the name of the child he produces. Because, adultery cannot be used as a cause of confession.²⁵On this issue, scholars still differ on the argument of recognition as a method

Contemporary Islamic Knowledge, (Translation: Addyis Aldizar), Volume 1, (Jakarta: Pustaka Dinamika, 2014), hlm. 141

²⁴ Ibn Qayyim al-Jauziyyah, *I'lam al-Muwaq'i'in: Guide to Islamic Law*, (Translation: Asep Saifullah FM and Kamaluddin Sa' diyatulharamain), (Jakarta: Pustaka Azzam, 2000), hlm. 497-502.

²⁵ Wahbah al-Zuhaili, *al-Fiqh al-Syafi'i al-Muyassa*, Cet. 2, (Jakarta: Almahira, 2012), hlm. 40.

of determining lineage. For this reason, in some fiqh literature found, the confession or *ilhaq iqrar al-nasb* is included in the method of determining nasab that is disputed by scholars.

Muhammad Abu Zahrah's Views on the Law of Confession of the Child of Zina by the Biological Father Through the Il ḥ aq Method

The issue of the law of *isbat* (establishment and ratification) of the adulterous child by the biological father through confession (*il ḥ aq*) is one of the legal issues that is still being debated. Some scholars allow it and some forbid it altogether. This condition is further strengthened by the absence of definite evidence regarding the permissibility and prohibition of recognizing adulterous children by biological fathers. Muhammad Abu Zahrah was one of the scholars who represented the group that allowed the determination or recognition of the adulterous child by the biological father through the way of confession of the child (*ilhaq*).

Muhammad Abu Zahrah mentioned that keeping nasab is one of the five needs of *dharuriyyah*, in addition to caring for religion, soul, reason, and property. Keeping lineage is one of the important elements in the study of Islamic law, and scholars have agreed on it.

²⁶In fact, these five criteria are included in the *haqiqiyyah mashlahah*. Therefore lineage must be guarded against adultery.

In the case of children born of adultery, Muhammad Abu Zahrah was not much different in principle from his predecessors. That is, Abu Zahrah's opinion on the adulterous son is generally the same as that of other scholars. Muhammad Abu Zahrah actually agreed in principle with the classical scholarship, in which the lust of an adulterous child is severed with any man, including the biological father of the child. That is, whoever causes the child to be born then legally he has no attachment to it.

Abu Zahrah instead said that biological fathers can recognize adulterous children born to adulterous couples (mother of children). Abu Zahrah cites a commentary in the opinion of the Hanafi school, which in fact is affiliated with his school, that nasab can be established through recognition (*iqrar* or *il ḥ āq*). ²⁷For Abu Zahrah, the biological father can recognize the biological child of adultery with his partner. A man commits adultery with a woman and becomes pregnant, so the man may marry her, and the child is prescribed on condition that there must be recognition or *il ḥ ā q* of the child.²⁸

²⁶ Muhammad Abu Zahrah, *Tanzīm al-Uṣrah wa Tanzīm al-Nasl*, (Cairo: Dar al-Fikr al-Arabi, 1976), hlm. 107

²⁷ Muhammad Abu Zahrah, *Tanzīm al-Islam lil Mujtama'*, (Cairo: Dar al-Fikr al-Arabi, 1965), hlm. 128.

²⁸ Muhammad Abu Zahrah, *al-Fatāwa*, (Tahqiq: Muhammad Usman Syabir), (Damascus: Dar al-Qalam, 1980), hlm. 588.

From Abu Zahra's view, it can be seen that the adulterous child has no sexual relationship with a man (biological father). However, the adulterer can connect with the man only when he is recognized (il ḥ āq). Therefore, as long as the father does not recognize him as a child through the path of il ḥ āq, then as long as the child has no sexual relationship with the man. otherwise, if the child is recognized by his biological father, then his fate is connected, provided that the man (biological father) does not explicitly state that the child he recognizes is the result of his adultery with the woman who is the child's mother.

The consequence of the adulterous child's connection with the biological father after the confession requires the father to provide for his child. Because the child's income is due to the kinship relationship between the child and the father. Muhammad Abu Zahrah mentioned at least three types of causes of income obligations, namely because of marriage, because of ownership, and because of kinship.²⁹ An adulterous child who has been recognized by his biological father results in kinship, so legally the biological father is obliged to provide property to the child who has confessed his adultery (il ḥ ā q).

²⁹ Muhammad Abu Zahrah, *Mubadharat fi Aqd al-Zawaj wa Atsaruh*, (Beirut: Dar alFikr al-Arabi, 1971), hlm. 295.

Muhammad Abu Zahrah's Istinbat Propositions and Methods on the Law of Confession of the Child of Zina Through the Il ḥ āq Method

Discussing the legal opinions of scholars cannot be separated from the search for arguments and also the method of extracting laws used in producing laws. Before further examining the methods and methods of extracting the law (istinbath al-ahkam) of Abu Zahrah, it is important to first mention the concept of the method of istinbath law (istinbath al-ahkam) in Islam.

The method of extracting law or often called istinbath al-ahkam is a method or way of scholars in analyzing legal problems in the postulates of the Qur'an and hadith and finally concluding the problem in certain legal products, such as permissible, haram, makruh and others accompanied by legal arguments. The term istinbath is interpreted as an attempt to remove ma'ani (law) from the texts of the Qur'an and hadith by using and using the efforts of reason and the power of intelligence.³⁰

The term istinbath originally meant nabathal bi'ra (digging a well and removing water). As for the free meaning is to examine the meaning that is hidden in it by way of

³⁰ Faisar Ananda Arfa and Watni Marpaung, *Islamic Law Research Methodology*, Revised Edition, Cet. 2, (Jakarta: Kencana Prenada Media Group, 2018), hlm. 59.

ijtihad, and the same meaning as the word istikhraj (drawing conclusions by analogy).

³¹Thus, the laws explored by scholars through the Qur'an and hadith have their own mechanisms and procedures called the legal istinbath method.

In the study of Ushul Fiqh, there are known to be three forms of istinbath method, namely the bayani, ta'lili, and istinbā ṭ istislahi method.

- a. The bayani method is a method of reasoning and legal discovery, namely by relying on the rules of discussion. The bayani method is often referred to as the lughawiyah method.³²
- b. The ta'lili method is a method of reasoning and legal discovery by relying on the search for illat (cause or ratio legis) on a legal issue.³³
- c. The istislahi method is a method of legal reasoning with an effort to see whether there is a side of benefit in a case or in other words that the istislahi method is a method of legal reasoning by looking for nash provisions based on the benefits achieved.³⁴ According to Mufid, the istislahi method is a method of legal istinbat that depends on general postulates on a case, because there is no specific proposition while still based on benefits that are in accordance with

the objectives of sharia (maqashid shari'ah), which includes three categories of needs, namely primary needs (daruriyyat) or basic needs, secondary needs (hajiyyat) namely supporting needs, and tertiary needs (tahsiniyyat) or complementary needs.³⁵

Based on the three istinbath methods above, it can be seen that scholars in establishing a law are inseparable from one of these methods, or in certain circumstances, scholars establish laws using more than one istinbath method. Therefore, if we look at the opinions of scholars, it will appear that one of the three methods was used in an attempt to explore the laws contained in the Qur'an and hadith. Similarly, the postulates and methods of istinbath of the scholars in establishing the law of Confession of the child of adultery by the biological father through ilhaq means.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ أَخْبَرَنَا مَالِكٌ عَنْ
ابْنِ شِهَابٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ رَضِيَ اللَّهُ
عَنْهَا قَالَتْ كَانَ عْتَبَةُ عَمِدٌ إِلَى أَخِيهِ سَعْدٍ أَنَّ
ابْنَ وَليدَةَ زَمَعَةَ مِئِّي فَأَقْبَضَهُ إِلَيْكَ فَلَمَّا كَانَ
عَامَ الْفَتْحِ أَخَذَهُ سَعْدٌ فَقَالَ ابْنُ أَخِي عَمِدٌ إِلَيَّ
فِيهِ فَقَامَ عَبْدُ بْنُ زَمَعَةَ فَقَالَ أَخِي وَابْنُ وَليدَةَ

³¹ Maulana Muhammad Ali, *Islamology: A Complete Guide to Understanding the Sources of Islamic Teachings, Pillars of Faith, Islamic Law and Shari'*, (Translation: R. Kaelan and M. Bachrun), Cet. 8, (Jakarta: Darul Kutubil Islamiyyah, 2016), hlm. 96.

³² Al Yasa ' Abubakar, *Istislahi Method: Utilization of Science in Ushul Fiqh*, (Jakarta: Kencana Prenada Media Group, 2016), hlm. 19.

³³ Muhammad Syukri Albani Nasution and Rahmat Hidayat Nasution, *Philosophy of Islamic Law and*

Maqashid al-Syari'ah, (Jakarta: Kencana Prenada Media Group, 2020), hlm. 63.

³⁴ Amran Suadi et al, *Abdul Manan Legal Scientist & Practitioner, Memories of a Struggle*, (Jakarta: Kencana Prenada Media Group, 2016), hlm. 206.

³⁵ Moh. Mufid, *Ushul Fiqh Contemporary Economics and Finance from Theory to Applicatio*, Second Edition, Cet. 2, (Jakarta: Kencana Prenada Media Group, 2018), hlm. 209.

أَبِي وُلِدَ عَلَى فِرَاشِهِ فَتَسَاوَقَا إِلَى النَّبِيِّ صَلَّى
 اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ سَعْدُ يَا رَسُولَ اللَّهِ ابْنُ
 أُخِي قَدْ كَانَ عَمِدَ إِلَيَّ فِيهِ فَقَالَ عَبْدُ بْنُ زَمْعَةَ
 أُخِي وَابْنُ وَلِيدَةَ أَبِي وُلِدَ عَلَى فِرَاشِهِ فَقَالَ
 النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ هُوَ لَكَ يَا عَبْدُ بْنُ
 زَمْعَةَ الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ ثُمَّ قَالَ
 لِسُودَةَ بِنْتِ زَمْعَةَ احْتَجِي مِنْهُ لِمَا رَأَى مِنْ
 شَبَهِهِ بَعْتَبَةَ فَمَا رَأَاهَا حَتَّى لَقِيَ اللَّهَ

"Has told us [Abdullah bin Yusuf] Has preached to us [Malik] from [Ibn Shihab] from [Urwah] from [Aisha] radiallahu 'anha said; 'Utbah told his brother Sa'd, that 'the son of the servant of Sahaya Zam'ah is from me, so take him.' On the day of the conquest of Makkah, Sa'd took it by saying: 'This is my brother's son, he told me about it.' So Abd ibn Zam'ah stood up, saying; '(He) my brother, and the son of my father's servant Sahaya, was born in his bed.' So the Prophet (peace and blessings of Allaah be upon him) said: "He is for you, O Abd bin Zam'ah, the son for the owner of the bed and for the adulterer is stone (stoning)." Then the Prophet said to Saudah bint Zam'ah: "Thou shalt wear a veil from her," he saw her resemblance to 'Utbah, so that the boy never saw Sauda again until he died". (HR. Al-Bukhari)³⁶

Children for bed owners (firas) as intended by the hadith above by Abu Zahrah

are interpreted as firasy shahih, namely firasy or bed because there is a marriage relationship. In the case of an adulterous child, the biological father can recognize the adulterous child as part of his offspring by ilhaq. The consideration of the permissibility of the biological father to confess the adulterous child is for the benefit of the child.³⁷

In addition to the above postulates, Abu Zahrah also used the postulate regarding the minimum limit of pregnancy, which is 6 (six), as taken from the combination of two Qur'anic verses, between QS. Al-Ahqaf [46] verse 15 and QS. Luqman [31] verse 14 (as quoted in the previous chapter). Both verses, according to Ibn 'Abbas as quoted by Ahmad Rafiq that the first verse indicates the grace period for receiving and also weaning is 30 (thirty) months. While the second verse explains the period of weaning the baby after the baby is breastfed perfectly with a gain of 2 (two) years or 24 (twenty-four) months. Then the limit of conceiving and weaning is reduced by the time limit of weaning, so that the acquisition of that time is for 6 (six) months.³⁸

According to Abu Zahrah, if the recognized child is born not less than 6 (six) months, then the child directly becomes the

³⁶ Imam al-Bukhari, *Sabih al-Bukhari*, (Riyadh: Bait al-Afkar al-Dauliyyah li al-Nasyr, 1998), hlm. 889.

³⁷ Muhammad Abu Zahrah, *Mubadharat fi Aqd al-Zawaj wa Atsaruh*, (Beirut: Dar alFikr al-Arabi, 1971), hlm. 588.

³⁸ Ahmad Rofiq, *Islamic Law in Indonesia*, Cet. 2, (Jakarta: PT Raja Grafindo Persada, 1997), hlm. 224

child and nasab of the man who becomes the mother's husband, even though he is not recognized in the form of ilhaq. However, if the child is born less than the minimum pregnancy limit of 6 (six), then the biological father can recognize the adulterous child provided that he does not explain the child's status as an adulterous child.³⁹

Analysis

The determination of the origin of the child in the perspective of Islamic law has a very important meaning, because with that determination can be known the relationship of mahram (nasab) between the child and his father. Although in fact every child born comes from the sperm of a man and must actually become a father, Islamic law provides other provisions. A child is said to have a legal relationship with his father if born of a legal marriage. On the other hand, a child born outside of legal wedlock (ie adulterous child), cannot be called a legitimate child, and he only has a sexual relationship with his mother.⁴⁰

The concept of determining nasab through the ilhaq / iqrar nasab method can be carried out by someone to another person who wants to relate to family civil relations. However, keep in mind that in the process of implementing the method, scholars have formulated several conditions that must and

must be punished to be followed. However, it is realized that in setting these provisions and conditions there is also the sincerity of scholars considering that there are different ways of thinking and are also influenced by the scientific capacity that exists in each of them.

Regarding the implementation of the confession of the adulterous child by the biological father through the ilhaq path, it can be seen that Muhammad Abu Zahrah placed emphasis on the implementation of the law for the person who made the confession. Where, the man in question has no chance of establishing lineage in the child he is fertilizing through any means, either by determination through the method of premonition, let alone by legal marriage.

Basically, the law looks at the external side only, and also sets its provisions based on data or a person's confession. Likewise, a conceived fetus is recognized as a child either before or after its birth, and is legally recognized if it meets its conditions justified. Among the forms of confession of the child is to recite it orally, or to establish it through the court, or in the case of adulterous children, then the man marrying the child's mother is part of the intention of confessing the child himself.

³⁹ Muhammad Abu Zahrah, *Mubadharat fi Aqd al-Zawaj wa Atsaruh*, (Beirut: Dar alFikr al-Arabi, 1971), hlm. 588.

⁴⁰ Amiur Nuruddin dan Azhari Akmal Taringan, *Islamic Civil Law in Indonesia; Critical Study of the*

Development of Islamic Law from Jurisprudence, Law No. 1/1974 to KHI, cet. 2, (Jakarta: Kencana, 2004), hlm. 276.

However, even if it is recognized as a child before or after its birth, and it is also legally recognized if it fulfills its conditions, the child is still in God's sight an illegitimate child. Even with his confession, the person concerned had committed multiple sins, one time for adultery and another time for confession which of course had legal implications for the child and other than the child. For example, by being recognized as a child, the person concerned is entitled to inheritance, has become a mahram of biological children.

It is understood that, in Islam there is a classification of laws. The scholars divided it into two parts, namely the vertical (legal relationship between man and God, called *hablum minallah*) and horizontal (legal relationship between humans and men or called *hablum minanas*). Given the legal problems of adulterous children as mentioned earlier, the implementation and settlement of the law cannot be separated from the legal relationship between humans. In the case of confession of a child of adultery, the biological father has the opportunity to admit it, only to do so by not openly declaring the child to be the result of adultery.

Conclusion

Based on the above discussion, it can be concluded that according to Muhammad Abu

Zahrah, adulterous children do not have a sexual relationship with men as biological fathers. But the adulterous child can be connected to the biological father only when he has been recognized by *il ḥ ā q*. As long as the biological father does not recognize him as his son through the path of *il ḥ ā q*, then as long as the child has no sexual relationship with the man. On the other hand, if the child is recognized by the biological father, then the fate is connected, provided that the man (biological father) does not explicitly state that the child he recognizes is the result of adultery.

The consequences of the adulterous child's connection to the biological father after the confession involve a relationship of mutual support, inheritance relationship, guardian relationship, and other legal penalties. The legal basis used by Muhammad Abu Zahrah in establishing *isbat nasab* son adultery by the biological father through the *il ḥ ā q* method is referring to QS. Al-Ahqaf [46] verse 15 and QS. Luqman [31] verse 14. Both verses were used by Abu Zahrah in setting the minimum birth limit for adulterous children of less than 6 (six) months. Children born less than 6 (six) months old can be recognized by their biological father through the *il ḥ ā q* path.

Another legal basis refers to the narration of the hadith of al-Bukhari, which states that children for bed owners (premonition) and adulterers are punishable

by stoning. Through this hadith, Abu Zahrah revealed that an adulterous child can be recognized by his biological parents as long as it is not stated frankly that the child he recognizes is the result of adultery.

References

- Abu Zarah, Muhammad. *Mubadharat fi Aqd al-Zawaj wa Atsarub*. Beirut: Dar alFikr al-Arabi, 1971.
- Abubakar, Al Yasa. *Istislahiah Method: Utilization of Science in Usul Fiqh*. Jakarta: Kencana Prenada Media Group, 2016.
- al-Bukhari, Imam. *Sahih al-Bukhari*. Riyadh: Bait al-Afkar al-Dauliyyah li al-Nasyr, 1998.
- Ali, Maulana Muhammad. *Islamology: A Complete Guide to Understanding the Sources of Islamic Teachings, Pillars of Faith, Law and Islamic Shari'a*. Translated: R. Kaelan and M. Bachrun. Cet. 8. Jakarta: Darul Kutubil Islamiyyah, 2016.
- al-Jauziyyah, Ibn Qayyim. *Ilam al-Munwaqi'in: A Guide to Islamic Law*. Translation: Asep Saifullah FM and Kamaluddin Sa 'diyatulharamain. Jakarta: Azzam Library, 2000.
- Almukhrijal, " *Ibnu Qayyim's Views on the Status of Children of Adultery (Study of Determining Mahram Relations and Civil Rights of Children of Adultery)*", Student of the Family Law Study Program, Faculty of Sharia and Law, Uin Ar-raniry Banda Aceh in 2017.
- Al-Qaradawi, Yusuf. *Complete Understanding of Halal and Haram*. Translated: M. Tatam Wijaya. Jakarta: Qalam, 2017.
- Al-Zuhaili, Wahbah. *al-Fiqh al-Shafi'i al-Muyassar*. Translation: Muhammad Afifi & Abdul Aziz. Cet. 2, Volume 2. Jakarta: Almahira, 2012.
- Azhari Akmal Taringan, Amiur Nuruddin. *Islamic Civil Law in Indonesia; Critical Study of the Development of Islamic Law from Fiqh, Law No. 1/1974 to KHI*, cet. 2. Jakarta: Kencana, 2004.
- Chandra, Mardi. *Aspects of Indonesian Child Protection: Analysis of Underage Marriage*. Jakarta: Kencana Prenada Media Group, 2018.
- Hidayah, Ahdiyatul, and Ahmad Bunyan Wahib. "Defending Women's Legal Rights through Organizations in Turkey." *An-Nisa': Journal of Gender Studies* 15.2 (2022): 185-200.
- Hidayah, Ahdiyatul. "Pembagian Harta Waris Menurut Adat Masyarakat Banjar Kalimantan Selatan." *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan* 16.6 (2022): 2106-2130.
- Please, Syahrin. *Character Study Methodology and Biographical Writing*, Cet. 2. Jakarta: Kencana Prenada Media Group, 2014.
- Hidayah, Ahdiyatul; Fahmi, Muhammad. Kriteria Saksi Yang Adil dalam Pernikahan Menurut Kantor Urusan Agama Kecamatan Amuntai Utara Kabupaten Hulu Sungai Utara. *Jurnal Indonesia Sosial Teknologi*, 2022, 3.04: 511-520.
- Imanuddin, "A Glimpse into the Problem of Determining Nasab in Fiqh: Study of Legal Norms Through the Qur'an, al-Sunnah, wa Ijtihad". *Journal: Manhaj al-'Ilm Waqfaa*. Volume I. Number 1. November 2018.
- Ministry of Religion, *Problems of Contemporary Islamic Inheritance Law in Indonesia*.

- Jakarta: Research and Development and Training Agency of the Ministry of Religion of the Republic of Indonesia, 2012.
- Yogyakarta: Deepublish CV Budi Utama, 2018.
- Saebani, Beni Ahmad. *Legal Research Methods*. Bandung: Faithful Library, 2009.
- Mahmud Idris, Abdul Fattah. et al, *Qa d' aya Fiqhiyyah Mu'ashirah: Fiqh al-Bunuk al-Islamiyyah: Contemporary Islamic Knowledge*. Translation: Addyis Aldizar. Volume 1. Jakarta: Dynamics Library, 2014.
- Sarong, Hamid. *Islamic Marriage Law in Indonesia*, cet. 3. Banda Aceh: Pena, 2010.
- Manan, Abdul. *Islamic Law Reform in Indonesia*. First Edition. Jakarta: Kencana Prenada Media Group, 2017.
- Suadi, Amran et al, *Abdul Manan Scientist & Law Practitioner Memories of a Struggle*. Jakarta: Kencana Prenada Media Group, 2016.
- Mardi Candra, Amran Suadi. *Legal Politics Perspectives on Islamic Civil and Criminal Law and Sharia Economics*. Jakarta: Kencana Prenada Media Group, 2016.
- Syarifuddin, Amir. *Islamic Marriage Law in Indonesia*, First Edition, Cet. 5. Jakarta: Kencana Prenada Media Group, 2014.
- Mufid, Moh. *Ushul Fiqh Contemporary Economics and Finance from Theory to Application*, Second Edition, Cet. 2. Jakarta: Kencana Prenada Media Group, 2018.
- Watni Marpaung, Faisar Ananda Arfa. *Islamic Law Research Methodology* Revised Edition, Cet. 2. Jakarta: Kencana Prenada Media Group, 2018.
- Muhammad Rizal, " *Istilbaq of Children Born Less Than Six Months of Marriage (Study of Wabbah Zubaili's Thoughts)*", Student of the Family Law Study Program, Faculty of Sharia and Law, Uin Ar-raniry Banda Aceh in 2016.
- Zulkarnain Lubis, Ali Abubakar. *Aceh's Jinayat Law: An Introduction*. Jakarta: Kencana Prenada Media Group, 2019.
- Rafiq, Ahmad. *Islamic Civil Law in Indonesia*, Revised Edition. Jakarta: Rajawali Press, 2015.
- Rahmat Hidayat Nasution, Muhammad Syukri Albani Nasution. *Philosophy of Islamic Law and Maqashid al-Syari'ah*. Jakarta: Kencana Prenada Media Group, 2020.
- Rofik, Ahmad. *Islamic Law in Indonesia*, Cet. 2. Jakarta: PT Raja Grafindo Persada, 1997.
- Rukajat, Ajat. *Qualitative Approach Research. Qualitative Research Approach*.

