

## Implementation of Marriage of an Unmarried Girl By Her Biological Father According to Imam Syafi'i (Case Study in Bukit Sofa Village, Subdistrict Siantar Sitalasari Simalungun Regency)

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**Abstract:** The current phenomenon is that there are many cases where biological fathers marry off extra-marital daughters, one of the factors being that the girl's parents did not inform her that the child was the result of extra-marital affairs (adultery). The madzab imams (Hanafi, Maliki, Hanbali, Shafi'i) differ in their opinions about the law of marrying off a girl by her biological father. The research objective to be achieved in this journal is how the law of marrying off a girl out of wedlock by her biological father according to Imam Shafi'i. Imam Shafi'i argues that the law of marriage of a girl by her biological father is invalid. If a woman and a man marry and a child is born alive and in perfect form before six months, as well as if the child is born after more than six months of marriage but the woman knows that the child existed before the marriage took place, then the child cannot be attributed nasab on behalf of his biological father. The focus of this study is on how Imam Syafi'i's opinion on the law of marrying a girl out of wedlock by her biological father.

**Abstrak:** Fenomena saat ini, banyak terjadi pelaksanaan menikahkan anak perempuan luar nikah oleh ayah biologisnya yang salah satu faktornya dikarenakan, orang tua anak perempuan tidak memberitahu bahwa anak tersebut hasil dari luar nikah (zina). Para imam madzab (Hanafi, Maliki, Hanbali, Syafi'i) berbeda pendapat tentang hukum menikahkan anak perempuan oleh ayah biologisnya. Tujuan penelitian yang ingin dicapai dalam jurnal ini adalah bagaimana hukum menikahkan anak perempuan di luar nikah oleh ayah biologisnya menurut Imam Syafi'i. Imam Syafi'i berpendapat bahwa hukum perkawinan anak perempuan oleh ayah biologisnya adalah tidak sah. Apabila, seorang wanita dan laki-laki kawin lalu lahir seorang anak dalam keadaan hidup dan sempurna bentuknya sebelum enam bulan, sekaligus jika melahirkan anak setelah usia pernikahan lebih dari enam bulan akan tetapi wanita tersebut mengetahui bahwa anak tersebut ada sebelum pelaksanaan pernikahan berlangsung, maka anak tersebut tidak bisa dikaitkan nasab atas nama ayah biologisnya. Fokus kajian ini adalah tentang bagaimana pendapat Imam Syafi'i tentang hukum menikahkan anak perempuan luar nikah oleh ayah biologisnya.



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### INTRODUCTION

Marriage is a social and cultural institution that has strong values and norms in society. However, in various contexts, marriage also sets the stage for various debates, especially when it involves sensitive and complex issues. (Rahmawati &

Luqman, 2022) One issue that has long been a topic of discussion is the marriage of a girl outside of a legal marriage, which is then performed by her biological father. This phenomenon is at the center of attention because it involves aspects of law, ethics,

culture, and the protection of children's rights.(Khoiruddin, 2020)

The implementation of the marriage of a girl outside the legal marriage bond, which is carried out by her biological father, with reference to the perspective of Imam Syafi'i. Imam Syafi'i is one of the major figures in the Islamic law school who has a special view of marriage, which includes ethical norms and Islamic law that become a reference in the practice of marriage. (Wulandari, 2018)

The case taken in this research occurred in Bukit Sofa Village, Siantar Sitalasari Sub-District, Simalungun District. This village was chosen as a case study because this is where the practice of marrying a girl outside of a legal marriage, by her biological father, occurs. By focusing on a specific location and subject, this research is expected to provide a clearer picture of this practice in a real social and cultural context.

By understanding more about the practice of marrying girls outside of legal marriage, it is hoped that we can consider the legal, ethical and social implications involved. In addition, this research can also serve as a basis for formulating better recommendations and solutions in dealing with this complex issue, while respecting religious values, cultural norms and children's human rights.(Masfufah, 2023)

In an increasingly connected and diverse global context, the issue of girls' marriage outside legal marriage has become more complex. Globalization brings new views and universal norms on human rights, including child protection rights. Therefore, it is important to analyze this practice not only from a local religious and cultural perspective, but also within the framework of international norms governing children's rights.(AYU, 2021)

Marriage of girls outside the bonds of legal marriage according to Imam Syafi'i's view, but also encourages a broader and more inclusive dialogue about this practice.

(Bowontari, 2019) Such a dialogue should involve various stakeholders, including religious communities, community leaders, legal practitioners, and organizations and institutions concerned with children's rights.(Botu et al., 2023)

By understanding the root causes and implications of such marriage practices, it is hoped that society can find solutions that are in line with the times and human values. It can also be an opportunity to raise awareness about the importance of education, child protection and women's empowerment in society. Thus, this research is expected to make a meaningful contribution in addressing this complex issue and safeguarding the well-being of girls and their future in a changing context.

## **METHODS**

This research uses an empirical sociological approach. An empirical approach is an approach used when there is a difference between the positive law written and the law that lives in society, this is a social fact. The empirical approach is carried out in the field, using field research methods and techniques such as visits to the community and communicating with community members. this type of research is a combination of decision research (Library Research) and field research (Field Research). Decision research is carried out by reviewing various literature, while field research is carried out by visiting the object to be studied to obtain valid data.(Jonaedi Efendi, 2018)

This research is descriptive, and the data collected are in the form of words and pictures. Data sources include primary data obtained directly from community sources in Kerisik Village through interviews, observation, and other tools. Secondary data comes from library materials related to the views of Islamic law regarding the marriage of girls out of wedlock. The author uses data collection tools such as observations that are carried out deliberately and systematically, as well as interviews to obtain information directly from informants. The data analysis technique used is descriptive qualitative.

This is a study that describes events based on facts obtained in the field. This method focuses more on the quality of the object of research, especially the perpetrators of marrying off girls out of wedlock in Kerisik Village. (Muhaimin, 2015)

## **RESULTS AND DISCUSSION**

### **1. Pelaksanaan pernikahan Anak Perempuan Luar Nikah Oleh Ayah Biologis Di Desa Bukit Sofa.**

In one of the areas in Bukit Sofa Village, the author has observed a case where there was a couple who initially had a normal dating relationship, then the relationship developed into an engagement, or in other words, they had been proposed to. After being proposed to, perhaps both sides of the family considered the couple's relationship legitimate. So, when the husband-to-be visited the wife-to-be's house, the woman's parents did not see a problem if the husband-to-be stayed together in the woman's house, even in the same room.

This phenomenon then contributes to pregnancy outside of marriage by the wife-to-be. Five months later, the child from this relationship is born. When the child grows up and eventually gets married, the man who is considered the child's father becomes the marriage guardian. However, if we look at the case above, the child was actually born as a result of a relationship outside of marriage, or in other words, it can be called a child of adultery.

The author also conducted an interview with Mr. Budi. In this case, if the bride-to-be is the first child, it is necessary to ask about the girl's date of birth in the context of the marriage contract performed by her marriage guardian or biological father. If there is a suspicious discrepancy between the date of birth of the bride-to-be and the date of the parents' marriage contract, a discussion will be held between the KUA and the bride-to-be. If necessary, the matter will be discussed separately between the guardian or parent and the prospective bride.

If it is proven that the bride-to-be is the result of a relationship outside of a legal marriage, then before determining the

marriage guardian, the head of the KUA will explain about the differences in the status of legitimate and illegitimate children in the context of marriage guardians. The explanation will include the view in terms of fiqh (Islamic law) and also the view of the applicable law and KHI (Civil Code). Based on this explanation, the head of the KUA will offer an option to all parties involved to choose to determine the marriage guardian based on the applicable law, namely using a wali naş ab (lineal guardian) or following fiqh principles by using a wali hakim. This choice will be adjusted to the beliefs and awareness of each party involved.

In the context of determining the marriage guardian for a girl born out of an extra-marital relationship, these steps will be taken to find a solution that is in accordance with religious norms and applicable laws.

In one case that the author has encountered, there was a pair of individuals who started a relationship as lovers. Unfortunately, the parents of the woman showed disapproval of the relationship, forcing their daughter to end the relationship with the man. However, the situation became complex when it was discovered that the woman was five months pregnant. After ascertaining the truth of the information, the woman's parents then questioned the identity of the father of the unborn child. The woman revealed that the individual who impregnated her was the same man who had been opposed by her family. Eventually, the man proposed and married the woman. Five months after the wedding, they were blessed with a child. When the child reached adulthood and decided to get married, the man who was considered to be her father acted as her guardian in her marriage.

According to the opinion of Imam Shafi'i, Imam Malik, and a number of other scholars, if a man marries a woman - whether he has never been intimate with her or vice versa - and she gives birth to a child less than six months after they got together, then the child cannot be linked to the man who caused the pregnancy. Imam Hanafah is of the view that the six months is taken from the moment of the marriage contract. Consequently, if a child is born less than six

months after the marriage contract, the child's lineage cannot be linked to the biological father.

In situations where the child's lineage cannot be linked to the father, the guardian of the child is the sulthan or wali hakim. Shaykh Ibn 'Usaimin (may Allah have mercy on him) in his work "As-Sharhul Mufti" explains that what is meant by sulthan here is the imam (amir) or officer (penghulu) of the Office of Religious Affairs (KUA). This opinion corroborates the statement that the guardian for the child of adultery is the sulthan, as explained in the Prophet's hadith.

عن نعا نشة قال : قال رسول الله صلي  
وسلم : ايما اراة نكحت بغير اذن وليها  
فانكاحها باطل فان دخل بها فلها المهر  
بما استحل من فرجها فان اشتجر و افا  
لسلطا ولي من لا ولي من لا ربعة الا  
النساي وصحه ابو عوانة وابن حبان  
والحاكم

Meaning: "If a woman marries without the permission of her guardian, her marriage is null and void, and if the man has intercourse with her, she is entitled to a dowry in lieu of what he has done with her, and if the guardians disagree about her marriage, then the Sultan is the guardian of a woman who has no guardian." (Reported by Abu Dawud, At-Tarmizi and Ibn Majah and authenticated by Abu "Awanah, Ibn Hibban and al-Hakim).

Case analysis, A child out of wedlock is a child born as a result of extramarital sex. In Islamic law the child can be considered a child out of wedlock are:

- a. Adultery, is a child born as a result of sex without marriage, because of the actions taken by the person who caused the birth of the child.
- b. Mula'anah child, is a child born to a wife whose existence is denied by the husband as his child and accuses his wife of committing adultery with another man by taking an oath of li'an against his wife.
- c. A shubhat child is a child born to a woman who has had sexual intercourse in a shubhat manner, what is meant by shubhat in this case, according to Jawad

Mughaniyah, is a man having sexual intercourse with a woman who is forbidden to him because he does not know about the prohibition.

A child out of wedlock means that the pregnancy that occurs in the woman is not through a legal marriage, which only causes an obstacle to the division of inheritance according to faraid law. If the adulterer marries after the pregnancy, his wife gives birth to a child less than a period of six months according to the school of Imam Shafi'i the child cannot be bin kan to the father involved instead bin kan with the mother. Likewise, if, beyond six months his wife gave birth to the child then the child still cannot be bin kan to his father. This is because the mother knew the child in the womb before the marriage.

In terms of the nasab of children out of wedlock, scholars differ in their opinion on the ruling. Some scholars state that the child is attributed to both of them while some state that the child is attributed to the mother only. And also in terms of marrying a child out of wedlock to a man who adulterated his mother, some say it is permissible and some say it is not permissible.

Determination of the origin of children in the perspective of Islamic law has a very important meaning, because with this determination, the nasab relationship between the child and his father can be known. Although in essence every child born comes from the sperm of a man and must truly be his father, Islamic law provides other provisions.

It seems that Islamic jurisprudence adheres to a fairly firm understanding regarding legitimate children. Although there is no clear and unequivocal definition of a legitimate child, but departing from the definition of the verses of the Qur'an and hadith, a limitation can be given, a legitimate child is a child born by reason of and in a legal marriage. In addition, it is called an adulterous child who only has a nasab relationship with his mother.

The origin of the child is the basis for showing the existence of a relationship of kemahraman (nasab) with his father. This is what is believed in Sunni fiqh. Because the

scholars agree that adulterous children do not have a nasab relationship with their adulterous mother or father, therefore adulterous children cannot inherit from them.

## **2. Imam Syafi'i's View of the Marriage of an Extra-Marital Daughter by her Biological Father in Bukit Sofa Village, Siantar Sitalarasi District, Simalungun Regency.**

A child out of wedlock is a child born as a result of extra-marital sex. What is discussed here is children outside of marriage who are said to be adulterous children. (Nurwandri & Syam, 2021)

In Islamic law, the relationship between a man and a woman who are not bound by marriage is called "zina", so that if the result of the relationship results in a fetus, then after being born the child is an extramarital child or what is better known in society as "adultery child".

The most correct view of the Shafi'i definition of marriage is that the word denotatively means contract, while connotatively it means intimate relationship, as mentioned in the Quran and Sunnah. The contract by which sexual intercourse between a man and a woman becomes lawful.

The marriage contract has several pillars that stand and are integrated with its substance. The marriage contract also has several conditions, which are divided into several conditions, namely the conditions of being, the conditions of saah, the conditions of being carried out and the mandatory conditions. Among the pillars of the marriage contract is *ijab* and *qabul*, which means that they are related to one another. Both have the meaning of helping the intentions of both and indicating the achievement and approval of the marriage contract. (Asman, 2020)

The original ruling on marriage is permissible. Marriage, however, is *sunnah* for those who need it. The purpose of marriage in Islam is not only at the limit of fulfilling biological lust or sexual release, but has important goals related to social, psychological, and religious. Among them

can maintain human genes as a means of maintaining the continuity of human genes, reproductive organs and regeneration of the future and marriage can protect humanity and keep away from violations that are forbidden in religion and marriage channels human lust to be maintained. So it is clear that the purpose of marriage in Islam is very high, namely as an indication of the height of the human degree in accordance with the character of nature and in line with natural social life to achieve a *semperna* degree. Children out of wedlock means that the pregnancy that occurs in the woman is not through a legal marriage, which only causes obstruction to the division of inheritance according to *faraid* law. If the adulterer marries after the pregnancy, his wife gives birth to a child less than a period of six months according to the school of Imam Shafi'i, the child cannot be *bin kan* to the father involved instead *bin kan* with the mother. Likewise, if, beyond six months his wife gave birth to his child then the child still can not be *bin kan* to his father. This is because the mother knew the child in the womb existed before the marriage. (Wulandari, 2018)

In terms of the nasab of children out of wedlock, scholars differ in their opinion on the ruling. Some scholars state that the child is attributed to both of them while some state that the child is attributed to the mother only. And also in terms of marrying a child out of wedlock with a man who adulterated his mother, some say it is permissible and some say it is not permissible. (Riyo, 2021) And according to the Shafi'i madhhab is

"A creature or human being that is the product of adultery. It is lawful for him and unlawful for a woman to have a child born of adultery."

From the above statement, it can be understood that the child born as a result of adultery is attributed to the mother only. So it is forbidden for the father (the man who committed adultery with the mother) and the man from the descendants of the father who committed adultery with the mother to marry the daughter of adultery for that reason, because she is not a child to him, does not inherit (heirs) and is not other than the rulings of nasab. It is also *haraam* for the

mother of the adulterer to marry the son of the adulterer, because the mother is the one who gave birth to the child and is his heir. So it is forbidden for a woman to marry the son of adultery. And the statement of fiqh shafi'i in the book Al-Muqhnī(Khoiruddin, 2020)

يجوز لك كله : (على الرجل نكاح بنته  
من الزنى وبنت ابنه وبنت أخيه و اخته  
من الزنى) لا نها اجنبية ولا تنتسب اليه  
شرعا ولا يجري التوارث بينهما ولا  
تعنق عليه اذا ملكها ولا تلزمه نفقتها  
فلمتحرم عليه كسائر الاجانب

Meaning: *It is permissible for a man to marry the daughter of an adulterer, his brother, the daughter of his son, the daughter of his daughter, and the daughter of his brother, and the sister of an adulterer, because they are ajanabi and not his descendants in arara', and there is no inheritance between them, and they are not obliged to spend on each other, so it is not haraam for them to marry.*

The above statement means that it is permissible for a man to marry the daughter of adultery because she is ajanabi and not related to him by shar'i law, and they do not inherit from each other, and they are not obliged to spend on her.(Syafii & Ihwan, 2021)

The evidence used is that the daughter of adultery is not his daughter according to shar'i law, therefore they do not inherit from each other, are not obliged to provide maintenance and cannot be guardians in the marriage of the girl and do not apply all nasab relationships between the two, so if indeed the girl is not his daughter according to shar'i law, it does not fall within the generality of the words of Allah SWT. and the evidence that states that the daughter cannot marry the man who adulterated her mother according to Imam Shafi'i is in Surah An-nisa" verse 23.

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ

Meaning: *"It is forbidden for you to marry your mothers, your daughters"* (An-nisa: 23).

In understanding the above verse that the phrase banatukum in verse 23 of Surah An-Nisa "which is intended for children born in a legal marriage and inherit each other. So it is clear to us about the daughter who is forbidden to marry, while

the daughter of adultery is halal to marry and the child is not the child of the man who impregnated the mother. Because the child is a descendant of his mother and becomes an heir to his mother only.

Fiqh Shafi'i states that it is permissible to marry the child of adultery, with a statement in the book Al-Um "As for adultery, then there is no law for the one who commits adultery whether it is forbidden or lawful, if a man commits adultery with a woman, it is not forbidden to marry her daughter and not on her father."

So from the above statement, it is clear that according to Shafi'i fiqh, it is permissible for an adulterous father to marry the daughter of adultery, so it is not forbidden for a man from his father's descendants or any other man to marry his daughter from adultery. Because the adulterous father is allowed to marry. So it is not haraam to marry the daughter of adultery.(Syafii & Ihwan, 2021)

If a man marries the mother of an adulterer and he is of the same religion as his wife, then they divorce, then it is haraam to marry his child if the child is born more than six months into the marriage. Then the child can be related to the man. But if the child was born less than six months into their marriage, then the child cannot be related to the father, only to the mother. But if he divorces the mother before the marriage is consummated, then it is permissible for the man to marry the child.(Syafii & Ihwan, 2021)

If a man commits adultery with a woman, then after six months the woman brings forth a child who may be the result of the adultery, there is no difference of opinion among the scholars that the child is not related to the man and that they do not inherit from each other. As for the man's marriage to the woman, Imam Shafi'i said: "I discourage him from marrying the woman, but if he marries her anyway, then I do not consider their marriage invalid.(Pongoliu, 2013)

In Al-Majmu, Imam Shafi'i states that if a man commits adultery with a woman and gets a daughter, it is makrooh to marry her. "It is makrooh for a man to marry her, and if he marries her son, it is not permissible"

Fiqh Shafi'i says that it is permissible for a man to marry his daughter, granddaughter, sister, and niece as a result of adultery. And adultery does not establish the prohibition of *mushahah* (marriage relations) so it is permissible for a man who commits adultery to marry the mother and daughter of the woman who committed adultery. (Rahmawati & Luqman, 2022)

From the above statement that the child of adultery is forbidden for his mother to marry because he is the one who gave birth and as an heir to his mother and *halal* daughter of adultery *halal* marriage with his father. (Rahmawati & Luqman, 2022)

Children born as a result of adultery are called adulterous children or bastard children. An illegitimate child is a child born to an unmarried woman who is illegitimate according to the law. However, according to Islam, the child is sacred. Therefore, the child of adultery must also be treated humanely, given education, teaching and skills that are useful for his future life. (Adam et al., 2022)

The responsibility for all the needs of the child, both material and spiritual, is the mother who gave birth to him and his mother's family. Because, adulterous children have *nasab* with their mothers only. This is also the case with inheritance.

So *Syafi'i* fiqh states that adultery is forbidden and a big sin and for the perpetrators of adultery must be punished based on the words of Allah SWT. in Surah An-nisa "verse 16

وَالَّذِينَ يَأْتِيْنَهَا مِنْكُمْ فَأَذُوهُمَا فَإِنْ تَابَا وَأَصْلَحَا فَأَعْرِضُوا عَنْهُمَا إِنَّ اللَّهَ كَانَ تَوَّابًا رَّحِيمًا

Meaning: "And as for two men who commit an evil deed among you, punish them both; but if they repent and reform themselves, then leave them alone." (An-nisa":16)

According to *Shafi'i* fiqh, the punishment for a widow who commits adultery is one hundred strokes and stoning, and for a *bikar* or girl it is one hundred strokes and exile for a year. And here also the consequences of adultery are many among them are eliminating offspring, and adultery is only a temporary relationship, and also arises the consequences for the child born as a result of adultery, namely that the child has no *nasab* relationship and does not inherit with the man who interfered with his mother

but only inherits with his mother. And the man who adulterated his mother cannot be the guardian of the girl either. And the child will develop a feeling of mental weakness or disability and the child may also lack affection from his parents.

So here the author has analyzed the view of *fiqh Syafi'i*, which previously the author has put forward a temporary hypothesis, that the author tends to *fiqh Syafi'i* by ruling that it is permissible to marry a girl out of wedlock. With that the daughter may marry because the daughter according to the author the child is biologically the son of the man who committed adultery with his mother but by *shara'a* law the child is not his child, because the child is not born of a legal marriage and does not inherit with the man who committed adultery with his mother only inherits with his mother with this the author gives the opinion that it is permissible to marry a daughter out of wedlock.

## CONCLUSION

The case that the author has described above concerns the guardian of the marriage of a child out of wedlock, namely that the father is the guardian of the marriage to his child while the child is not a child of a legal marriage relationship. The marriage was five months later the child was born. Then when the child is born and grows up and then gets married, the man who is considered his father becomes his guardian.

According to Imam *Shafi'i*, Imam *Malik* and others; if a man marries a woman with whom he has never been intimate or has been, then if less than six months from the marriage contract the woman gives birth it cannot be linked to the man who caused the woman to conceive. This six-month period is counted from the time of conception. Meanwhile, Imam *Hanafah* chose the marriage contract as the basis for calculating the six months where the consequence is that when the child is born less than six months from the marriage contract, the child cannot be related to his father.

Based on the above description, it is clear that Imam *Syafi'i* said that the child of adultery is not related to his father but he is

related to his mother only. It is halal for him to marry the child of adultery.

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