ICoCSPA 2019
5th International Conference on Contemporary Social and Political Affairs 2019

“Transformation of Nation State and Global Society on Gender Equality and Social Inclusion”

Surabaya, July 17, 2019
63. VIOLENCE AGAINST WOMEN AND GIRLS IN HARARE, ZIMBABWE
   Maybe Zengenene, Emy Susanti
   175

64. VALIDATION OF THE WORK ABILITY - PERSONAL RADAR (WA-PR): A PRELIMINARY EVIDENCE AMONG FIRE FIGHTERS IN MALAYSIA
   Anisah Abas Hamidon, Aliza Abu Hamid, Fadillah Putri
   177

65. SEEING THE UNSEEN IN 'GENDER PERSPECTIVE': THROUGH THE APPLICATION OF R2P IN HUMAN TRAFFICKING ISSUES
   Retno Puasita Ningtyas, Firsty Chintya Laksami Perbawani
   181

66. IRONY OF FINLAND: GENDER PAY GAP ISSUES IN GENDER EQUALITY PIONEER COUNTRY
   Firsty Chintya Laksami Perbawani, Retno Puasita Ningtyas
   183

67. SEXUAL VIOLENCE IN INDONESIA (RICH REGULATION - POOR PROTECTION)
   Nursiati binti Muhammad Arin, Mohd. Dar
   183

68. MAKING THE CHILD RIGHT FOR OUT-MARRIAGE CHILDREN IN ISLAMIC FAMILY LAW OF INDONESIA
   Nurhasanah, Tjek Tanto
   185

69. DOMINATION AND RE-VICTIMIZE CASE STUDY ON VICTIMS OF VIOLENCE IN DATING RELATION IN SURABAYA CITY
   Emna Afia Nidaa
   187

70. MODEL OF ELIMINATION OF COMMUNITY-BASED HOUSEHOLD VIOLENCE
   Tri Winarni Soenarto Putri
   191

71. THE INVESTMENT OF ANTI-VIOLENCE IN CHILDREN EDUCATION THROUGH LOCAL CULTURE
   Julify Rattu, Maya Wacouw, Goidea Tuhung
   193

72. STARTING WITH PREJUDICE: TAKING TIME, STEPPING ON THE WANDING PATH OF SEEKING JUSTICE (CASE STUDY OF PROVIDING EQUAL EMPLOYMENT JOB OPPORTUNITIES FOR TRANSGENDERS)
   Wury Ayu Ambarwati, Trias Setiawan
   197

73. INTENTION OF HEALTH CARE PROVIDER: SCREENING DOMESTIC VIOLENCE PATIENTS
   N. K Endiah Triwijati, Handi Muagiri Koenomeljakar, Vesti Probowati, Widodo J. Pucitisahardjo
   201

74. HUMAN RIGHTS EDUCATION THROUGH CHILDREN FABLE: CONTENT ANALYSIS OF HUMAN RIGHTS VALUES
   Ingty Chistianti, Atoyalisa Vira Harawati
   203

75. WOMEN’S ATTITUDE TOWARDS JUSTIFICATION OF WIFE BEATING
   Muhammad Saud, Asia Asliq
   205

76. ASEAN COMMITMENT TO PROTECT HUMAN RIGHTS AND GENDER EQUALITY BY SETTING ACWC (ASEAN COMMISSION ON PROMOTION OF WOMEN AND CHILDREN’S RIGHTS )
   Henri Susarti, Suyatmadi, Dini Dewi Herasani
   207

77. CRIMINAL SUBCULTURE OF STREET TEENAGERS
   Ratna Alvira Prasetyo, Nur Syamsiyah, Udji Asyiah
   209

Cluster 6. EDUCATION AND LOCAL INITIATIVES

78. WOMEN’S ROLE ON FAMILY WELFARE EDUCATION PROGRAM TO MANIFEST SURAKARTA AS CHILD FRIENDLY CITY
   Sityy Indria Lestyyasari
   221

79. WOMEN’S EFFORT TO IMPROVE THEIR ECONOMY THROUGH READING ACCESS
   Tri Soesianti
   223

80. GENDER DIFFERENCES IN THE USE OF LANGUAGE LEARNING STRATEGIES FOR GLOBAL SOCIETY
   Golda Juliet Tuhung, Maya Pinkihan Wacouw, Julify Anek Rattu

"Transformation of Nation State and Global Society on Gender Equality and Social Inclusion,"
Surakarta, July
MAKING THE CHILD RIGHT FOR OUT-MARRIAGE CHILDREN IN ISLAMIC FAMILY LAW OF INDONESIA

Nurasiah, 

Islamic National University of North Sumatera, Indonesia  
nurasiah@unsu.ac.id

Tjek Tanti

Islamic National University of North Sumatera  
tjektanti@gmail.com

INTRODUCTION

This paper will expose and examine; one unpopular, single, and contested opinion of Islamic Classical Legal Scholar that oblige responsibility; legal, social or economic, to the biological father of out-marriage children. Islamic Family Law has been very clear and centuries conducted to not recognizing any relation, hence, any consequences of this relation between biological father and his out-marriage child. To this fact, this paper will contribute fundamentally that it will foster ideas to promote the rights of out-marriage children. In doing this, the concept of gender equality will be posed to see the situation rights of out-marriage children. The method of the paper will be qualitative and using interpretative analysis. The main finding is that this neglected and abandoned opinion from classical era manifest more the contemporary child-right idea, as such, should be enacted in Indonesian Islamic Family Law.

RESEARCH METHOD

The questions to be answered in this paper are about the exact rulings of conventional Islamic Family Law on the maintenance of out-marriage children. Also, about the actual alternatively relevant opinion which get unnoticed throughout the era. Finally, how gender perspective can help to analyze the problems of the neglected, out-married mother for the purpose of producing the law reform. The framework that builds the research is the need for the reformulation of the law on child right by applying gender analysis approach. Clearly, this study will be a library study and should analyze the problem with a qualitative method.

RESULT AND DISCUSSIONS

Islamic law has totally cut off whatever association between biological father and his illegitimate child, hence any possibility to claim rights one to each other. To the extreme edge, one school even says that a man is allowed to marry his illegitimate daughter. Trapped into the positivist paradigm, it illustrates how the concept of ‘Family Tie’ of illegitimate child in Islamic law is really rigid. The whole discussions by classic Islamic legal scholars on out-marriage children can be concluded as follows: first, the child has no had father-lineage and is only identified as the child of mother; second, the child, the fact of being un-bondage, has not had any right for maintenance, inheritance, and guardianship from his biological father; third, administratively, in the condition of the fail of mother and her relative to custody, the obligation goes to the government. However, one will soon understand that all these rules find their rational basis because Islamic Law condemn the man of illegitimate father to death that he is not subjected to claim anything from.

Now, this traditional classic Islamic Family Law of out-marriage child should be adopted in Indonesia wherein the law-system is not fully equipped to implement it. For example, the man of illegitimate father is not indicted to a death sentence and still to other penalty. They even can just go and free. Meanwhile, the child still have to accept all the original consequence rulings. What happen then, we witness many children suffered and being neglected while their biological father fell free from responsibility since the law rejects any claim to him by his out-marriage child. With this fact, it is a need to creatively reformulate Islamic law of maintenance of out-marriage child according to Indonesian context and to grasp the substantial message of Islam on the issue by using child-right perspective and victim recovery paradigm instead of just rigorously targeting the convicted.

One revolutionary opinion has been passed some years ago by Indonesian Islamic Legal Scholar Council (MUI) in the form of Fatwa no 11/2012, which allows women to sue illegitimate father to share the payment of child-
CONCLUSION

Traditional Islamic family ruling on the family tie (nasab) of out-marriage child is not fully compatible with the context and the moral change of Indonesian Muslim community. Its thorough application will do harm and injustice to child-right and mother.

In Islamic law, the design to reform the law will get strong basis when it is referred to and is backed up by the opinion of classical legal expert. This means that the reform of child-right ruling in Indonesian Islamic Law will get enough basis and reasons. The fatwa (legal opinion) by the council of Indonesian Islamic legal scholars (MIU) is not binding for, in the system of Islamic law, this body only function as legal guidance.

The role of biological father should be punished to share financing his illegitimate child and its enactment is not urgent, even not within the current provocative campaign on the elimination of sexual crime.

REFERENCES


