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# MAKING THE CHILD RIGHT FOR OUT-MARRIAGE CHILDREN IN ISLAMIC FAMILY LAW OF INDONESIA

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## INTRODUCTION

This paper, principally, will expose and examine one unpopular, single, and contested opinion of Islamic Classical Legal Scholar that obliges responsibility; legal, social or economic, to the biological father of out-marriage children. Traditional 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 where mother is often undertaking alone all the risks to raise the child. 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 problem of the neglected, not-married mother for the purpose of producing the law reform. The framework that builds the research is the need for the reformation 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 positivistic 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 felt 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 targetting 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-

maintenance. But, this paper finds a more radical and innovative opinion, and -the most surprisingly in the light of the rigidity of traditional Islamic law- this comes from one Islamic legal expert of classic era, namely Ibn Taymiyyah. He argues that biological father of out-marriage child, not only should share with the women whom he shares the sexual act but, moreover, the court should confiscate his properties once it is proven he has biological connection with the child, without waiting till the court process finish.

#### 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 thoroughly 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 Family Law will get enough basis and reasons. The fatwa (legal opinion) by the council of Indonesian Islamic legal scholars (MUI) is not binding for, in the system of Islamic law, this body only function as legal guidance.

The man of biological father should be punished to share financing his illegitimate child and its enactment is now an urgent, especially within the current provocative campaign on the elimination of sexual crime.

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