

Reconstructing the Law of *Nasab* for Children Born with a Gestation Period of Less Than Six Months through a Critical Analysis of the Perlis State Fatwa Based on *Maqāṣid Al-Syarī'ah*

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Abstract: *The phenomenon of children being born with a gestational period of less than six months after the marriage contract (premarital conception) has created a crisis of legal dualism in Malaysia. The majority of Malaysian states, following the National Fatwa, reject the attribution of lineage (nasab) of such children to their mother's husband and mandate the use of "bin Abdullah," which generates social stigma and long-term psychological consequences. In contrast, the Fatwa Committee of the State of Perlis issued a reformist opinion that allows the attribution of lineage to the mother's husband if certain conditions are met. This study aims to critically analyze the methodological construction of the Perlis Fatwa in comparison with the National Fatwa, as well as to evaluate the relevance of both fatwas from the perspective of Maqāṣid al-Sharī'ah (the objectives of Islamic law) and the protection of children's rights in the modern context. The research employs a juridical-normative method using a statute approach. Primary data sources include the texts of the National Fatwa and the Perlis State Fatwa, along with official explanatory documents from the Mufti of Perlis. The data are analyzed using content analysis techniques and uṣūlī comparison to examine the evidences and methods of legal reasoning (istinbāt al-ḥukm). The study finds that the Perlis Fatwa does not intend to legalize fornication (zinā), but rather applies the principles of Sitr (concealing faults), Hifz al-Nafs, and Hifz al-'Ird, which are considered more dominant than the formalistic textual approach of Hifz al-Nasl upheld by the National Fatwa. The Perlis Fatwa is strongly grounded in the opinions of minority classical scholars and is highly relevant to the principle of justice for innocent children. This research offers a new synthesis between classical Islamic law and modern sociological realities, recommending legal harmonization that prioritizes the welfare of children without compromising the principles of sharī'ah, while also filling the gap in the literature regarding the maqāṣid-based justification of the Perlis Fatwa.*

Keywords: *Maqāṣid al-Syarī'ah, Illegitimate Children, Fatwa.*

Abstrak: *Fenomena kelahiran anak dengan masa kandungan kurang dari enam bulan pasca akad nikah (premarital conception) telah menciptakan krisis dualisme hukum di Malaysia. Mayoritas negara bagian di Malaysia, mengikuti Fatwa Kebangsaan, menolak nasab anak tersebut kepada suami ibunya dan mewajibkan penggunaan "bin Abdullah", yang memicu stigma sosial dan dampak psikologis jangka panjang. Sebaliknya, Jawatankuasa Fatwa Negeri Perlis mengeluarkan pandangan reformis yang membolehkan penisbatan nasab kepada suami ibu jika memenuhi syarat tertentu. Penelitian ini bertujuan untuk menganalisis secara kritis konstruksi metodologis Fatwa Perlis dibandingkan dengan Fatwa Kebangsaan, serta mengevaluasi relevansi kedua fatwa tersebut ditinjau dari perspektif Maqāṣid al-Syarī'ah (tujuan hukum Islam) dan perlindungan hak anak dalam konteks modern. Penelitian ini menggunakan metode*

yuridis-normatif dengan pendekatan statute approach. Sumber data primer meliputi teks Fatwa Kebangsaan dan Fatwa Negeri Perlis, serta dokumen penjelasan resmi dari Mufti Perlis. Data dianalisis menggunakan teknik analisis konten (content analysis) dan komparasi uşūlī untuk membedah dalil dan metode istinbat hukum. Studi ini menemukan bahwa Fatwa Perlis tidak bermaksud melegalkan zina, melainkan menerapkan prinsip Sitr (menutup aib) dan Hifz al-Nafs (menjaga jiwa/kesejahteraan anak) serta Hifz al-Ird (menjaga kehormatan) yang lebih dominan daripada pendekatan tekstualis formalistik Hifz al-Nasl (kemurnian nasab) yang dianut Fatwa Kebangsaan. Fatwa Perlis memiliki landasan kuat pada pendapat minoritas ulama klasik dan sangat relevan dengan prinsip keadilan bagi anak yang tidak berdosa. Penelitian ini menawarkan sintesis baru antara hukum Islam klasik dan realitas sosiologis modern, merekomendasikan harmonisasi hukum yang memprioritaskan kesejahteraan anak tanpa mengorbankan prinsip syariah, serta mengisi kekosongan literatur terkait justifikasi Maqāṣid dalam Fatwa Perlis.

Kata Kunci: *Maqasid al-Syariah, Anak Tak Sah Saraf, Fatwa.*

Introduction

In principle, *nasab* (lineage) arises as a consequence of legal causality. This causality is rooted in the understanding that a valid marriage is the requisite cause for legitimate offspring within the framework of matrimonial law. Within marriage, the most fundamental legal act and logical consequence is the establishment of a lineage bond between father and child. Conversely, if a child is conceived through an extramarital relationship, the lineage connecting the child to the biological father is severed, although the connection to the mother remains intact.¹

In the State of Perlis, Malaysia, the legal authority empowered to issue religious edicts is the Perlis State Sharia Committee (*Jawatankuasa Syariah Negeri Perlis*), led by Mufti Dr. Mohd Asri Bin Zainul Abidin. On September 4, 2008, this body ruled that a child born less than six months after the parents' marriage may be attributed (*nasab*) to the mother's husband, provided the husband does not deny paternity. This fatwa contradicts the national consensus in Malaysia, which states that a child born less than "six months and two moments" (*lahzah*) from the date of *tamkin* (consummation) cannot be attributed to the man who caused the birth. Such a child is deemed illegitimate (*anak tak sah taraf*) and is consequently barred from inheriting, serving as a *mahram*, or acting as a legal guardian (*wali*).

The intent of the Perlis fatwa is that a woman who marries and gives birth, even if the duration of the marriage is less than six months, may still attribute the child to her husband on the condition that he does not contest it. This stance stands in opposition to the National Fatwa of Malaysia. The 57th Dialogue of the National Fatwa Committee for

¹ Muhamamd Daud Ali, *Hukum Islam: Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*, (Jakarta: Raja Grafindo Persada, 2011), p. 61.

Islamic Religious Affairs Malaysia ("National Fatwa Dialogue"), which convened on June 10, 2003, discussed the issue of illegitimate children.

The Committee decided as follows:

1. An illegitimate child is defined as: A child born out of wedlock, whether due to adultery (*zina*) or rape, and not through erroneous intercourse (*shubhah*) or slavery.
2. A child born less than 6 months and 2 moments (*lahzah*) according to the Lunar Calendar (*Qamariah*) from the date of consummation.²

Such a child cannot be attributed to the man responsible for the birth or to anyone claiming paternity. Consequently, they cannot inherit, serve as *mahram*, or act as a *wali*.

Nasab holds profound significance in Islamic law. Jurists (*fuqaha*) have extensively discussed its complexities and solutions, often without providing a singular, rigid definition. Imam Raghīb al-Asfahani defines *nasab* as a partnership with one of the parents, encompassing both the vertical relationship (father and child) and the horizontal relationship (siblings and uncles). According to Prof. Dr. Wahbah al-Zuhaili, *nasab* is the primary pillar upon which the family rests, binding family units through blood ties.

In Islamic law, a child born less than six months after marriage is generally considered to have no legitimate lineage to the husband, unless the husband explicitly acknowledges the child as his own flesh and blood. This view is supported by the majority of scholars, including the Shafi'i and Hanafi schools, though differences exist in the details of application. Furthermore, medical perspectives on gestational age also play a crucial role in determining the validity of a child's lineage.

The Hanafi school, however, asserts the validity of attributing a child born of adultery to the biological father if the two adulterers marry before the child is born. In *Al-Mughni*, Ibnu Qudamah cites Abu Hanifah's view that if a man commits adultery with a woman and she becomes pregnant, he is permitted to marry her while she is pregnant, and the child's status is that of his legitimate offspring.³ Conversely, the Hanbali and Maliki schools deem it haram to marry a woman pregnant from adultery until she has given birth. Consequently, if a marriage occurs with a woman pregnant via adultery, the marriage is void, and the child remains illegitimate, attributed solely to the mother.⁴

² Jakim, *Kompilasi Pandangan Hukum Muzakarah Jawatan Kuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia*, (Putrajaya: Jabatan Kemajuan Islam Malaysia), p. 206-207.

³ Ibnu Qudamah, *Tahqiq: Muhammad Syariffudin Khathab, Al-Mughni*, Jilid. 9, (Jakarta: Pustaka Azzam), p. 122.

⁴ Ibnu Abdil Bar, *At-Tamhid Syarh Muwatho Imam Malik*, Jilid. 15, (Beirut: Dar Ibn Hazm, 2024), p. 47.

In the discourse of Islamic Family Law (*Ahwal Syakhshiyyah*) in Southeast Asia, particularly Malaysia, the establishment of *nasab* for children born less than six months after marriage (*aqallu muddatil hamli*) is one of the most crucial and sensitive debates. *Nasab* is not merely a biological identity but the foundation for civil and Sharia rights, including guardianship (*wilayah*), maintenance (*nafaqah*), and inheritance (*mirath*). The severance of the lineage bond between a child and their biological father carries devastating legal consequences, altering the child's status to "illegitimate," often administratively labeled with "bin/binti Abdullah."

Traditionally, the majority of scholars in Malaysia, adhering to the Shafi'i school, establish that the minimum gestation period for valid lineage attribution is six lunar months. A child born short of this period, even within a valid marriage, is considered conceived prior to the contract (a result of *zina*), and thus lineage is severed from the mother's husband. This view is strictly adopted by the National Fatwa Council of Malaysia.

However, social reality demonstrates a significant increase in births out of wedlock or legally "premature" births according to Sharia standards. Statistics from the National Registration Department (JPN) show hundreds of thousands of children registered without a father's name or with "bin Abdullah," creating a social class vulnerable to stigmatization and psychological distress. Responding to this reality, the Perlis State Fatwa Committee took a divergent step of *ijtihad*, ruling that a child born less than six months after marriage may be attributed to the mother's husband, provided he does not deny it (*nafy*).

This divergence in fatwas is not merely a difference in *fiqh*, but represents a clash of paradigms between a textual-formalistic approach emphasizing "purification of lineage" (*hifz al-nasl*) and a contextual-maqasidi approach emphasizing the "welfare of the child." This tension is exacerbated by inconsistent application in judicial and administrative institutions, where Civil Courts and Sharia Courts often hold differing views regarding jurisdiction and the definition of "legitimacy."

Research on *nasab* and fatwas regarding children born less than six months after marriage has been prolific in the last five years. Some studies focus on the legal and social aspects of *nasab*, while others examine interpretive differences between various schools of thought and fatwa authorities. One relevant study is a thesis by Fadhli Warman titled "*Status Anak Hasil Zina (Studi Komparatif Antara Fatwa Majelis Ulama Indonesia, Dār Al-Ifiā' Mesir, Dan Jabatan Mufti Negeri Perlis)*." This research aims to identify the

methods used in each fatwa and the similarities and differences between them regarding the legal status of children born of adultery.⁵

Fundamentally, *nasab* is the cornerstone of Islamic family law, determining inheritance, guardianship, and maintenance. Yuni Harlina explains that from an Islamic legal perspective, a child born of adultery or out of wedlock only has a lineage relationship with the mother and her family. She asserts that Islam forbids attributing a child to a biological father absent a valid marriage contract, referencing the Prophet's Hadith: "The child belongs to the owner of the bed (the husband in a valid marriage), and for the adulterer is the stone (deprivation)".⁶

Determining the gestational limit is crucial in establishing this status. Fatimah Yusro Hashim, et al., highlight the principle of the majority (*jumhur*) of scholars that the minimum duration of pregnancy is six lunar months. Children born less than six months after the marriage contract are considered illegitimate. However, Hashim critiques weaknesses in Malaysian judicial practice (specifically Section 110 of the Islamic Family Law Act of the Federal Territories), where children born after six months of marriage are automatically attributed to the husband, even if medical evidence (a full-term or perfectly mature baby) indicates conception occurred before marriage. This is seen as frequently obscuring the true status of *nasab* according to Sharia principles.⁷

There is tension between traditional Islamic law and modern Human Rights perspectives regarding child protection. Ayu Indriani Amalia Martoredjo discusses the ruling of the Constitutional Court (MK) of Indonesia No. 46/PUU-VIII/2010, which introduced a new paradigm. The Court ruled that children born out of wedlock have a civil relationship with their biological father as long as it can be proven by science (such as DNA).⁸

Beyond the legal aspect, the social impact of naming conventions is also highlighted. In Malaysia, the national fatwa requires illegitimate children to be named "bin/binti Abdullah." Muhammad Mustaqim bin Roslan examines the negative impact of this policy. Although the intention is to cover the shame of adultery (*maslahat*), in reality, the use of "bin Abdullah" becomes a social label that triggers stigmatization.⁹

⁵ Fadhli Warman, *Status Anak Hasil Zina (Studi Komparatif Antara Fatwa Majelis Ulama Indonesia, Dār Al-Iftā' Mesir, dan Jabatan Mufti Negeri Perlis)*, (Jakarta: Universitas Islam Negeri Syarif Hidayatullah, 2022).

⁶ Yuni Harlina, "Status Nasab Anak Dari Berbagai Latar Belakang Kelahiran (Ditinjau Menurut Hukum Islam)," *Hukum Islam* 14, no. 1 (2014): 64-65.

⁷ Fatimah Yusro Hashim et al., "Penentuan Nasab melalui Prinsip Undang-undang Keterangan Islam," *Jurnal Undang-undang dan Masyarakat*, Vol. 28, (2021): 58-60.

⁸ Ayu Indriani Amalia Martoredjo, "Status Nasab Anak Lahir Di Luar Perkawinan Perspektif Hukum Islam Dan Hak Asasi Manusia," *Al-Mujtahid: Journal of Islamic Family Law* 1, no. 1 (2021): 8-9.

⁹ Muhammad Mustaqim bin Roslan, "Impak Penasaban Kepada Abdullah Terhadap Masalah Sosial Anak Tak Sah Taraf," *International Journal of Al-Quran and Knowledge* 4, no. 1 (2024).

Literature discussing the law of *nasab* for children born under six months is still dominated by classical normative approaches. The main critique of these studies is the lack of synthesis between traditional theological arguments and modern scientific reality, particularly DNA evidence, as well as the dimension of children's rights. Many studies conclude merely that there is a difference of opinion among jurists, without venturing to assess which fatwa is stronger (*rajih*) and more relevant in the modern context. Consequently, the discourse on *nasab* law often remains trapped in old dichotomies without providing comprehensive solutions for the protection of children and families.

This article offers novelty by utilizing a specific *maqāṣid* analysis. It does not merely refer to "maslahah" in general but adopts Jasser Auda's Systems Approach. This approach juxtaposes three main *maqāṣid*: *Hifz al-Nasl* (preservation of progeny in the sense of biological purity), *Hifz al-'Ird* (preservation of honor), and *Hifz al-Nafs* (preservation of the self, including the child's mental health). On the other hand, it offers a methodological clarification of the Perlis Fatwa. Many misunderstand the fatwa as a form of "legalizing adultery." This article asserts that the Perlis Fatwa is, in fact, a form of *Sadd al-Dhari'ah* (blocking the means to harm) against the psychological and social impacts suffered by the child. By allowing the attribution of the child to the mother's husband, the fatwa seeks to prevent mental damage, social stigma, and discrimination against the child. This perspective is rarely raised in previous literature, yet it is key to understanding the *maqāṣid* rationale behind the fatwa.

Furthermore, this research will delve deeper into the practical impact of the fatwa's application within the context of family law in Malaysia, focusing on broader social and legal implications. Thus, this study is expected to fill the existing literary gap and provide a new perspective in understanding legal policies related to *nasab* in Malaysia.

This research asserts its novelty by focusing on the reconstruction of the concept of *nasab* within the context of local and national fatwas, as well as their implications for law and society. This study fills the gap in the literature by critiquing existing views and offering a new perspective on *nasab* in Islamic law and medicine. This research aims to analyze and compare fatwas regarding the lineage of children born less than six months after marriage in the State of Perlis with the National Fatwa of Malaysia. Additionally, it aims to explore the legal and social implications of lineage denial and enrich the literature on *nasab* in Islamic law and medicine.

Method

This study utilizes normative juridical research with a statute approach to examine the issues raised. This approach was chosen for its relevance in analyzing primary legal

materials such as theories, concepts, legal principles, and legislation related to the object of research.¹⁰ The applied research method is library research, where the author collects secondary data from various sources such as books, theses, articles, and legislation relevant to the topic.¹¹

The data sources consist of primary legal materials, namely books and collections of fatwas from the Mufti of Perlis, Malaysia, who holds authoritative power in the legal context studied. Secondary legal materials include works by experts such as Prof. Dr. H. Boedi Abdullah, Wahbah al-Zuhaili, and other *fiqh* literature, as well as tertiary legal materials such as dictionaries, magazines, journals, articles, and relevant internet sources.

Data collection techniques involve gathering information from the Fatwas of the Perlis Mufti (Dr. Mohd Asri Zainul Abidin) and members of the Fatwa Committee published in official media or academic proceedings, as well as documentation methods to obtain authentic data. The data in this study is analyzed using two main approaches. First, a comparative analysis is conducted by comparing the method of legal deduction (*istinbat*) used by the Shafi'i School of thought, which forms the basis of the National Fatwa, with the views of Ibn Taimiyah and some Hanafi scholars, which serve as references for the Perlis Fatwa. This comparison aims to reveal methodological differences in determining the lineage of children born under six months, while simultaneously assessing the consistency of each school's argumentation in the context of contemporary Islamic law.

Second, this research employs a *maqāṣidī* analysis by evaluating the legal impact of both fatwas based on the five basic principles of *Maqāṣid al-Syarī'ah*. The primary focus is directed at three aspects of protection: *hifz al-nasl* (preservation of progeny), *hifz al-nafs* (protection of the soul/self, including the child's mental health), and *hifz al-'ird* (preservation of honor). With this approach, the analysis assesses not only legal validity from a normative perspective but also considers the social, psychological, and moral implications arising from the fatwa's application, thereby producing a more comprehensive picture of the relevance and strength of each view in the modern context. Data validity is maintained by ensuring consistency among information obtained from these sources. Data analysis is conducted qualitatively with a descriptive approach, assisting in outlining the analyzed legal concepts and explaining the implications of the research findings.

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum*, Cet. 13, (Jakarta: Kencana Prenada Media Group, 2017), p. 36.

¹¹ Muhaimin, *Metode Penelitian Hukum*, (Mataram: Mataram University Press, 2020), 45.

Discussion

A. The Definition of *Nasab*

Problems of lineage (*nasab*) in society often involve complex cases, such as women pregnant out of wedlock who subsequently marry the man involved or a non-adulterer, as well as cases of pregnancy arising from interfaith marriages. *Nasab* in this context holds significant weight in Islamic law, relating to issues such as guardianship, maintenance, inheritance, and marriage eligibility.

The establishment of *nasab* is vital as it determines the familial relationship between a child and their father, which serves as the basis for regulating rights and obligations within the family and in inheritance matters. In Islam, the determination of *nasab* plays a primary role in ensuring just legal protection for every individual.¹²

Linguistically, *nasab* is derived from the word "nisbah," referring to the determination of a person's familial relationship with their father. This term encompasses upward blood relations (father, grandfather, grandmother), downward relations (children, grandchildren), and lateral relations (siblings, uncles). In the Qur'an, *nasab* is mentioned several times to emphasize the importance of family ties as part of God's plan in creating humanity.¹³

Terminologically, *nasab* is lineage or family ties as a blood relationship, whether ascending, descending, or collateral. For example, paternal *nasab* refers to family ties on the father's side; maternal *nasab* to the mother's side. Lineage attribution relates to guardianship, inheritance, and social interaction within the family.¹⁴ In the Al-Qur'an, the word *nasab* is mentioned in three places, one of which is in Al-Furqan: 54:

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

Meaning: "And it is He who has created from water a human being and made him (a relative by) lineage and marriage. And ever is your Lord competent (concerning all things)." (QS. Al-Furqan [25]: 54).

Understanding *nasab* also influences social and legal aspects, such as the validity of marriage and the determination of a person's legal status. In the context of Islamic law, erroneous determination of *nasab* can have serious impacts, including the prohibition

¹² Moh. Dliya'ul Chaq, *Nasab Anak Dalam Hukum Islam; Membaca Peluang Sains dan Teknologi Dalam Penetapan Nasab*, *Tafaqquh: Jurnal Penelitian Dan Kajian Keislaman*, vol. 6, no. 1, (2018), pp. 60-75, doi:10.52431/tafaqquh.v6i1.130.

¹³ <https://kbbi.web.id/nasab> diakses pada 20 Agustus 2022.

¹⁴ Abi Qasim Husain bin Muhammad al-Ma'ruf al-Ashfahani, *Al-Mufradat fi Gharib al-Quran*, (Kairo: Al-Maktabah At-Taufikiyah, 2003), p. 80-130.

against claiming lineage from someone with whom there is no actual blood relation, as emphasized in the teachings of the Prophet SAW.

In many reproductive systems of God's creation, the process almost always begins with the meeting of two elements: the seed of the male and the seed of the female. In human reproduction, according to Divine rule, this begins with the marriage contract. This contract contains elements (*rukun*) that must be fulfilled: a prospective bride, a prospective groom, a guardian (*wali*), two witnesses, and the offer and acceptance (*ijab kabul*). Within each element, there are conditions; for instance, the prospective spouses must not be related within prohibited degrees. It is in this context that a person's *nasab* must be determined.

Without knowing a person's *nasab*, they will face difficulties in marrying. Similarly, it affects other interests, such as determining the rights and obligations of an adult toward a child, or conversely, the rights of an adult regarding a child in matters of inheritance. Without established lineage, it is difficult to determine who is obligated to provide maintenance and life necessities. Likewise, without known *nasab*, it is difficult to determine who is most entitled to inherit from a deceased child who leaves behind wealth, or whether a person may marry that child.

Here lies the urgency of determining a child's origin. Islam pays close attention to this issue of lineage. One is forbidden to claim someone as kin who is not, just as one is forbidden to deny someone who is kin.¹⁵

B. Legal Basis of *Nasab*

Islam places immense emphasis on the importance of blood ties. In numerous verses and hadiths, there are commands to maintain *silaturahmi* (kinship ties) and severe warnings against severing them. More importantly, blood ties with biological parents are highly respected in Islam. The Qur'an clearly forbids severing a person's lineage from their biological father. Therefore, Islam prohibits adoption that results in the severance of a child's lineage from their biological parents and their attribution to adoptive parents.

Essentially, *nasab* is a blood relationship. The legality of a person's lineage to their mother is automatic based on birth (*wiladah*). However, regarding lineage to the father even though it is fundamentally a blood relationship jurists stipulate that the relationship resulting in the birth must not be forbidden (i.e., *zina*). Because *nasab* is fundamentally a blood tie, a person has lineage to both father and mother. The lineage connection to the

¹⁵ Yuni Harlina, Status Nasab Anak Dari Berbagai Latar Belakang Kelahiran (Ditinjau Menurut Hukum Islam), *Jurnal Hukum Islam*, Vol. Xiv No. 1, (Juni 2014), p 67.

mother is stronger than that to the father, which is often based more on assumption, claim, and testimony.¹⁶

Etymologically, *nasab* means *alqarabah* (kinship). According to al-Lubliyy, the term is well-understood: if you mention someone, you say "So-and-so son of So-and-so," or attribute them to a tribe, country, or occupation. Terminologically, scholars have not formulated a specific definition, sufficing with the general meaning used etymologically, which is *alqarabah bayna syakhsain* (kinship between two people).¹⁷

Nevertheless, linguists and exegetes provide explanations. Ibn Manzhar and al-Zubaydiy state that *nasab* is kinship, or specifically paternal kinship. When interpreting the word *nasab* in Al-Furqan: 54, al-Qanujii states that *nasab* refers to those who are not lawful to marry. Al-Wahidiy also notes that exegetes agree *nasab* refers to the seven types of relatives mentioned in Allah's decree in An-Nisa: 23:

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُم مِّنَ الرَّضَاعَةِ وَأُمَّهُتِ نِسَائِكُمْ وَرَبَائِكُمُ اللَّاتِي فِي حُجُورِكُمْ مِّنْ نِّسَائِكُمُ اللَّاتِي دَخَلْتُمْ بِهِنَّ فَإِنْ لَّمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُورًا رَّحِيمًا

Meaning: "Prohibited to you (for marriage) are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your (milk) mothers who nursed you, your sisters through nursing, your wives' mothers, and your step-daughters under your guardianship (born) of your wives unto whom you have gone in. But if you have not gone in unto them, there is no sin upon you. And (also prohibited are) the wives of your sons who are from your (own) loins, and that you take (in marriage) two sisters simultaneously, except for what has already occurred. Indeed, Allah is ever Forgiving and Merciful." (QS. Al-Nisa [5]: 23).

Jurists state that a person's lineage to their father is established through valid marriage. They agree that a child born within a valid marriage is attributed to the mother's husband. This is based on the hadith stating that the child belongs to the husband who married the mother, while the child of adultery may be subject to stoning.

Syekh Ali Jum'ah, a former Grand Mufti of Al-Azhar Egypt, responded in his *Fatawa Asriyah* that the lineage between a child and mother is established biologically

¹⁶ Fitri Febrianti, Analisis Hak Mewaris Anak Luar Kawin Menurut Kompilasi Hukum Islam Setelah Putusan Mahkamah Konstitusi NO 46/PUU-VIII/2010, *Journal Fatwa Law*, Vol. 14, No. 2, (2021).

¹⁷ Murtada al-Zubaydiy, *Taj al-'Arus min Jawahir al-Qamus*, Jilid 2. (Beirut: Dar al-Fikr, 1994), p. 428.

something now provable via DNA testing. However, the lineage of a child to a father is established through religious means, not merely biological proof. This means a child resulting from adultery does not follow the lineage of the male adulterer because the relationship occurred without a valid marriage contract, even if the man is the biological father.

If it is proven that a valid marriage did not occur, or the contract lacked perfect pillars and conditions, a judge must rule that the child's *nasab* is not connected to the father, even if DNA tests prove otherwise, as paternal lineage is a religious construct, not solely a biological one.¹⁸

C. Children Born Under Six Months

There are five traditional methods for establishing lineage in Islam: *Al-Firasy* (valid bed/marriage), *Al-Bayyinah* (evidence), *Al-Syahadah* (testimony), *Al-Iqrar* (acknowledgment), and *Al-Qur'ah* (drawing lots). However, scholars differ on the conditions and legal strength of each.

In Islam, a child is attributed to the man who impregnates the mother within a legitimate framework, not merely to the mother. While maternity is certain by the act of birth, paternity is not always visibly evident. To clarify paternity, Islam mandates that the child's name includes the father's name. A child conceived out of wedlock but born within a valid marriage faces specific scrutiny.¹⁹

According to Imam al-Shafi'i, if a child is born more than six months after the marriage contract of the parents, the child is legally attributed to the husband of the mother. However, if the child is born less than six months after the marriage contract, the child is attributed solely to the mother. Imam al-Shafi'i's reasoning regarding the minimum period of pregnancy six months is based on the Qur'anic verses in Surah al-Ahqaf and Surah Luqman. In Surah al-Ahqaf (46: verse 15), it is stated cumulatively that the period of pregnancy and nursing amounts to thirty months. Meanwhile, Surah Luqman (31: verse 14) specifies that the maximum duration of nursing is two years (twenty-four months). By deducting the nursing period (24 months) from the combined total (30 months), the minimum possible duration of pregnancy is established as six months. Therefore, for a child to be recognized as the legitimate offspring of the mother's husband, the child must be born at least six months after the marriage contract.

¹⁸ Ashriyah Dr. Ali Jum'ah, Mufti Al-Azhar, *Baiti Jannati: Jawaban Menuju Rumah Tangga Sakinah*, Terj: Kitab Fatawa, September 2016, p. 104-105.

¹⁹ Samsidar, Hukum & Pengajarannya Analisis Perbandingan Antara Perspektif Imam Mashab Dan Hukum Positif Tentang Status Anak Diluar Nikah, *Jurnal: Pemikiran dan Penelitian Ilmu-ilmu Sosial*, Volume 14, Nomor 2, (Oktober 2019), p. 85-95.

According to Imam Abu Hanifah, the lineage of a child is essentially determined by the one who “sows the seed.” Thus, if a child is born to a mother who has married the man responsible for her pregnancy, the child is considered legitimate and is attributed to that man as the father. However, if the mother does not marry the man who impregnated her, the child’s lineage is traced solely to the mother. Imam Abu Hanifah bases this view on his interpretation of the term *nikah*, which in its literal sense refers to sexual intercourse. Consequently, every child is attributed to the man who provided the seed. This principle reflects his understanding of *nikah* as an act of physical union rather than merely a contractual bond.

The implication of this position is that whenever sexual relations result in conception, the child is regarded as the offspring of the man who caused the pregnancy. Therefore, a child born to a pregnant woman who later marries another man is not automatically attributed to the husband, but rather to the biological father the one who “sowed the seed.” By contrast, Imam Malik and Imam Ahmad ibn Hanbal (Hanbali) hold a different view. Since they do not permit marriage to a pregnant woman outside of wedlock, they maintain that a child conceived out of wedlock is attributed only to the mother and her family.²⁰

A minority of scholars, such as Muhammad bin Sirin and Ibn Taimiyah (reinforced by Ibn Qayyim), allow attributing a child of adultery to the father. However, Hassan al-Basri and Ibrahim an-Nakhai’iy argued that one should connect the child of adultery to the adulterous father only after the *hudud* punishment is applied.²¹

The third ruling of the scholars, as recorded in *al-Tamhid*, affirms a consensus based on the hadith of the Prophet. In this hadith, the Messenger of Allah declared that every child born upon the marital bed (*firash*) of a man’s wife is attributed to her husband, regardless of circumstances or the likelihood of pregnancy except in cases where the lawful husband denies the child through the procedure of *li’an*, in accordance with the rules of *li’an*. The scholars also agree that a free woman becomes a lawful wife through a valid marriage contract, which allows for the possibility of intimacy and pregnancy. If intimacy and conception are possible within the framework of marriage, then the child born is attributed to the husband and cannot be denied under any circumstances, even if another man claims paternity. The only exception is through *li’an*.²²

²⁰ Amir Nuruddin dan Azhari Akmal Tarigan, *Hukum Perdata Islam di Islam di Indonesia Studi Kritis Perkembangan Hukum Islam dari Fikih, UU No. 1 Tahun 1974 sampai KHI*, (Jakarta: Grindo, 2008), p. 280.

²¹ Basri bin Ibrahim Al Hasani Al Azhari, Mashitoh binti Mohamad Hashim, *Anak Zina, Menurut Hukum Syarak & Undang-Undang Sivil*, (Terengganu: Telaga Biru, 2011), p. 207.

²² Ibnu Abdil Bar, *At-Tamhid Syarh Muwatho Imam Malik*, Jilid. 15, (Beirut: Dar Ibn Hazm, 2024), p. 183.

In addition, there exists a method known as *qiyafah*. *Qiyafah* is a technique in Islamic tradition used to determine lineage. It is a specialized skill by which an expert assesses similarities between individuals based on physical and psychological traits.²³ Within the Shafi'i school of thought, *qiyafah* is regarded as a knowledge and ability granted by Allah to discern lineage in cases of uncertainty. One of the renowned experts in *qiyafah* was Saraqah ibn Malik ibn Ja'sham of the Bani Madlaj tribe.

D. The Relationship Between Child *Nasab* and Civil Registration in Malaysia

The phenomenon of children born less than six months after marriage in Malaysia has become a widespread social issue, frequently discussed across various platforms, including social media, print, and electronic media. Cases of infant abandonment often capture public attention, while the number of unmarried pregnant women receiving care in rehabilitation centers continues to rise.

According to official reports from the National Registration Department (Jabatan Pendaftaran Negara, JPN), between 2013 and 2017 more than 167,073 babies were born without a legally registered father in Malaysia. The department, which operates under the Ministry of Home Affairs, is responsible for issuing birth certificates. In the context of Islamic law, children born without a father or within six months of marriage are registered with one of the *Asmaul Husna* (the Beautiful Names of Allah) rather than their biological father's name, thereby socially categorizing them as children born out of wedlock.

The growing number of illegitimate children has become a matter of serious concern, as it raises issues of guardianship and inheritance rights under Islamic law. These matters are regulated by Islamic family legislation in various jurisdictions, including Selangor and the Federal Territories. The term *anak tidak sah taraf* (illegitimate child) refers to children who lack a legally recognized paternal relationship, whether due to being born outside of marriage or within a marriage of less than six months.

Kelantan's State Mufti, Sahibus Samahah Datuk Mohamad Shukri Mohamad, has emphasized that the illegitimacy of such children can lead to significant practical complications, particularly in matters of marriage and inheritance. Every birth, including that of illegitimate children, must be registered with the National Registration Department in accordance with the Births and Deaths Registration Act 1957, ensuring equal rights for all children to be officially recorded regardless of their status.

The registration of illegitimate children is governed by Sections 13 and 13(A) of Act 299, which stipulate provisions regarding family names and related rights. While JPN carries out the registration process, the determination of a child's legitimacy falls under

²³ Muh Tamimi, Tes DNA dalam Menetapkan Hubungan Nasab, *Jurnal Istimbath*, Vol. 13, No. 1, (Juni 2014): p. 92-93.

the jurisdiction of the Syariah Court. If no paternal information is available at the time of registration, the child is recorded under the appropriate legal category. Such registration is provisional and may be revised once the Syariah Court issues a ruling on the child's legitimacy.

The authority of JPN is limited to registering births, whereas the determination of legitimacy lies exclusively with the Syariah Court. In cases where JPN cannot record a father's name whether under Section 13 registration or registration without paternal information Muslim children are assigned *bin* or *binti* followed by one of the *Asmaul Husna*. Non-Muslim children, however, are permitted greater flexibility, with any chosen name allowed to be recorded as the father's name.

In practice, Muslim children registered under Section 13 remain without paternal information until the required documentation is provided. Those registered under this provision include children born of adultery, rape victims, and children of marriages with incomplete documentation, among others. Furthermore, the term *anak tidak sah taraf* is not officially recognized within JPN; instead, such children are categorized as either "Section 13 registrations" or "registrations without paternal information." Ultimately, registrations under Section 13 or without paternal information are temporary in nature and remain subject to amendment once the Syariah Court has issued a definitive ruling affirming the child's legitimacy.

E. *Maqāṣid al-Syarī'ah* Analysis of *Nasab*

Traditionally, *Hifz al-Nasl* (protection of progeny) is understood as protecting legitimate reproduction. Thus, a child of adultery is seen as a "defective product" to be separated from the legitimate line. This view is rooted in classical interpretations prioritizing biological purity. However, Jasser Auda and contemporary scholars offer a systems theory approach, where *maqāṣid* are dynamic and interconnected. Here, protection of lineage is not just biological but linked to honor, the soul, and welfare. This broader interpretation emphasizes the importance of social and ethical dimensions in lineage, allowing for a more inclusive understanding of familial relationships. By recognizing the interconnectedness of various *maqāṣid*, contemporary thought encourages a more holistic view of progeny that values the well-being of all individuals, regardless of their origins.

In the context of the Perlis State Fatwa, *hifz al-nasl* is interpreted not merely as biological purification but as the preservation of the family unit. By recognizing the lineage of a child who biologically belongs to the husband whether through DNA testing or acknowledgment (*istilhaq*) the fatwa ensures that the child has a complete family structure. Severing lineage is instead seen as a form of *tadzyi' al-nasl* (neglect of

progeny), as it deprives the child of a father figure, financial support, and social protection. Thus, the Perlis Fatwa places family preservation at the core of *hifz al-nasl*.

From the perspective of *Hifz al-Nafs* (protection of life), the psychological dimension reveals that children labeled as “illegitimate” often suffer severe trauma. The administrative imposition of the label “*Bin Abdullah*” has become a source of stigma and bullying in schools. The Perlis Fatwa eliminates this source of trauma by allowing children to use their biological father’s name. This measure constitutes a form of safeguarding the child’s life and mental health, which Islam regards as a fundamental obligation.²⁴

The protection of honor in Islam strongly upholds the principle of *sitr* (concealing faults). The National Fatwa, by mandating the use of “*Bin Abdullah*”, indirectly announces to the public that the child was born of illicit relations. This contradicts the Islamic spirit of concealing past transgressions. In contrast, the Perlis Fatwa, by permitting “*Bin [Father’s Name]*,” effectively conceals family shame, provides space for parental repentance, and enables both child and family to begin anew without social stigma.²⁵

A crucial note in this discourse is the need for synthesis with modern realities. The rejection of lineage in the National Fatwa is based on the classical assumption that the semen of a fornicator holds no value. Yet modern science, through DNA testing, can establish paternity with up to 99.9% accuracy. The Perlis Fatwa implicitly aligns more closely with this scientific truth. If DNA proves that the child biologically belongs to the husband, and the husband acknowledges it, then denying lineage merely because the child was born “a few days short of six months” constitutes legal formalism that disregards material truth. This creates injustice, as a biological child is denied rights solely due to calendar calculations, despite undeniable blood relations.²⁶

The most tangible impact of these divergent fatwas is administrative confusion within the National Registration Department (JPN). As a federal institution, JPN adheres to the National Fatwa, which often results in the rejection of applications by couples in Perlis seeking to register children born within six months under the father’s name. The “*Bin Abdullah*” legal case (2017–2020) in the Federal Court affirmed that state (*Syariah*)

²⁴ Muhammad Mustaqim bin Roslan, “Impak Penasaban Kepada Abdullah Terhadap Masalah Sosial Anak Tak Sah Taraf,” *International Journal of Al-Quran and Knowledge* 4, no. 1 (2024).

²⁵ Nugroho, Irzak & Safiudin, Achmad, Nasab Anak di Luar Perkawinan Perspektif Hukum Progresif dan Maqāṣid Shari’ah, *AL-HUKAMA’*, Vol. 11, No. 2, (2021): 1-28. 10.15642/alhukama.2021.11.2.1-28.

²⁶ <https://www.pta-pekanbaru.go.id/55438/dilema-hukum-nasab-anak-zina-dalam-pernikahan-yang-sah.html>

law holds sovereignty in determining legitimacy for Muslims. This ruling strengthened the position of the Perlis Fatwa within its jurisdiction but left unresolved bureaucratic challenges for Perlis residents dealing with federal institutions.²⁷

Another serious implication lies in the economic dimension. According to the National Fatwa, which is based on the Shafi'i school of thought, a biological father is not obligated to provide financial support for an illegitimate child, leaving the burden entirely on the mother.²⁸ This situation creates gender injustice and neglects the child's economic rights. The Perlis Fatwa, by affirming lineage, automatically obligates the father to provide financial support. This policy offers a concrete solution to poverty among single mothers and abandoned children. With paternal responsibility enforced, children are more likely to receive proper education and healthcare, in line with the objectives of *shariah* to uphold social justice.

Conclusion

This study concludes that there exists a significant legal divergence between the Perlis State Fatwa and the National Fatwa of Malaysia regarding the determination of lineage (*nasab*) for children born less than six months after marriage. The Perlis State Fatwa provides flexibility by allowing such children to be attributed (*dibinkan*) to the mother's husband, provided that the husband does not object primarily to safeguard family honor and social reputation. In contrast, the National Fatwa of Malaysia, adhering to the consensus (*jumhur*) of scholars and the Shafi'i school of thought, stipulates that the minimum period of a valid pregnancy is six months. Consequently, children born before this threshold are deemed illegitimate (*anak tak sah taraf*), their lineage severed from the biological father, and they are denied inheritance and guardianship rights from him.

Furthermore, the article emphasizes that although the reasoning behind the Perlis Fatwa is grounded in considerations of public welfare (*maslahah*), particularly in concealing shame, such justification cannot be used to obscure the true principles of lineage law. From the perspective of *Maqasid al-Shariah*, the preservation of purity and legitimacy of lineage (*hifz al-nasl*) remains a paramount priority that must not be compromised. Accordingly, the findings of this study support the position that children born less than six months after marriage should not be attributed to their biological fathers

²⁷ <https://www.loc.gov/item/global-legal-monitor/2023-02-07/malaysia-federal-court-holds-that-illegitimate-child-can-inherit-from-father-who-died-intestate/>

²⁸ Nur Zakirah Asmawi, et al, "Establishing the Obligation of Financial Support by a Biological Father Towards an Illegitimate Child: A Fatwa-Based Analysis within the Framework of Maqasid al-Shariah", *International Journal of Research and Innovation in Social Science (IJRISS)*, vol. 9, no. 07, (2025): 25-36, <https://doi.org/https://dx.doi.org/10.47772/IJRISS.2025.907000003>.

but only to their mothers, in order to ensure the certainty of Islamic law and the orderly administration of civil registration in accordance with the *shariah*.

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