

The Birth of Illegitimate Children According to Islamic Law and Legislation in Brunei Darussalam

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Abstract

A child born out of wedlock, commonly referred to as an illegitimate child or a child of Zina, is the result of unlawful sexual intercourse before the establishment of a marital relationship. This issue is increasingly prevalent worldwide, affecting people of all religions and ethnicities. The country of Brunei Darussalam is also not immune to facing cases of syariah crimes, such as premarital pregnancies, which lead to the birth of illegitimate children. Islamic jurists (*fuqaha*) have different views on the duration of a woman's pregnancy in determining whether a child can be recognized as legitimate or not. The objectives of this study include understanding the concept of illegitimate children according to Islamic law and the Islamic Family Law (Chapter 217) in Brunei Darussalam, as well as exploring the current situation regarding illegitimate children in the country. Furthermore, this paper will discuss the rights of illegitimate children in terms of nasab (lineage) and inheritance. The methodology used in this study is qualitative, involving the collection of research data from books, journals, articles, and other sources relevant to the topic. Statistical data on the birth of illegitimate children were obtained from the Department of Immigration and National Registration of Brunei. The findings of this study indicate that according to Brunei's Islamic Family Law, the duration of pregnancy, based on the opinions of jurists other than those of the Maliki school, is 180 days. Statistics on the birth of illegitimate children in Brunei show a significant number of such births. The rights of illegitimate children differ from those of legitimate children, particularly concerning nasab, inheritance, and other related aspects.

Keywords: Illegitimate child; Sharia; Islamic law; Brunei Darussalam

Introduction

The issue of illegitimate births, or children born outside of marriage, has garnered more and more attention in Muslim countries across the globe including in Brunei Darussalam. The legal marriage between a mother and father is the only source of a child's ancestry (*nasab*) under Islamic law.

A child is deemed illegitimate if they are born outside of a lawful marriage or during a time frame that is insufficient to prove legitimacy after a wedding. This has significant social and legal implications, as illegitimate children may not be entitled to rights such as inheritance and lineage, which are generally enjoyed by legitimate children (Hashim et al., 2021; Musa, 2023).

The rules of Brunei concerning the status of illegitimate offspring are based on Sharia, meaning that these children cannot be linked to their biological fathers. Instead, they are only linked to the mother. This means that they are also not entitled to inherit from their fathers, except through valid wills or gifts (*hibah*) (Musa, 2023) (Ab Rahman & Mohamad Noh, 2023).

This study aims to investigate the concept of illegitimate children according to Sharia and Islamic law in Brunei Darussalam and to explore their rights concerning lineage and inheritance. It will also examine the current challenges faced by these children, considering the social and legal hurdles they encounter. The findings are expected to provide deeper insights into the Sharia approach to the rights of illegitimate children and how these are applied within the modern context of Brunei society.

Research Methods

This study uses a qualitative approach, where data are collected through a literature review involving books, journals, articles, and legal documents related to illegitimate children in Brunei. This approach allows for a deeper evaluation of the Sharia and legal issues concerning lineage, inheritance, and guardianship of illegitimate children. The study also includes an analysis of fatwas issued by the Majlis Ugama Islam Brunei (MUIB) and provisions within the Islamic Family Law (Chapter 217), which form the basis for the implementation of laws related to illegitimate children (Hashim et al., 2021)

In addition to the literature review, the study also considers statistical data on the birth of illegitimate children obtained from the Department of Immigration and National Registration of Brunei. These statistics are used to understand the rate of illegitimate births in the country and the current trends related to this phenomenon. Furthermore, the study examines the opinions of classical and contemporary Islamic jurists (*fuqaha*) on the definition and implications of lineage and inheritance for illegitimate children. This data is analyzed to evaluate how the concept of *maqasid al-shariah*, particularly the principles of justice and protection of children's rights, can be applied to improve the legal and social situation of illegitimate children in Brunei (Bin Roslan, 2023).

In the data analysis process, a comparative approach is also used, comparing Brunei's laws and practices with those of other Muslim-majority countries that have implemented reforms regarding the rights of illegitimate children. This comparison is essential in assessing how Brunei can learn from other nations that have adopted more inclusive laws to deal with the problem of unmarried children. This study will concentrate on how more moderate legal reforms that adhere to Islamic values can be built upon the precepts of *maqasid al-shariah*.

Through this method, the study aims to provide relevant and practical recommendations for improving the laws concerning the rights of illegitimate children in Brunei Darussalam, while also reducing the negative social impact experienced by these children.

Result and Discussion

The Various Definitions of Illegitimate Child

An illegitimate child, or *walad al-zina* in Arabic, is used to describe an unmarried child. A child born from an unlawful relationship prior to a lawful marriage is considered an illegitimate child under Sharia law. Wahbah Al-Zuhaily defines an illegitimate child as one born to a mother unlawfully or as the result of adultery (*zina*) (Wahbah Zuhaily, 1985). This view is supported by 'Ali Bin Hussin al-Sughdi, who states that a child born to an unmarried woman is considered illegitimate (Al-Sughdi, 1984). This definition reinforces the concept that an illegitimate child can only be attributed to the mother, while the biological father has no rights to claim the child's lineage (Qal'aji, M. R, 2000).

The Shafi'i school of thought, which holds that a child born less than six months after a valid marriage is deemed illegitimate, concurs with this viewpoint. (Sandimula, 2019). According to the study's findings, illegitimate children are typically defined by jurists as those born into relationships other than a valid marriage. In this context, a legitimate marriage according to Sharia is crucial in determining whether a child is considered legitimate or illegitimate (Bin Roslan, 2023)(Hj Ismail, 2017). This discussion further strengthens the conclusion that the minimum pregnancy period, as agreed upon by jurists, is six months or 180 days, as referenced in the Quran in Surah Al-Ahqaf (46:15) and Surah Luqman (31:14) (Al-Khatib, Y. A., 1999).

In Brunei Darussalam, the minimum pregnancy period that can establish a child's lineage to the mother's husband is six months and two *lahzah* (moments) after legitimate marital relations. The infant is deemed illegitimate if the pregnancy lasts less than six months and two *lahzah* and cannot be linked to the mother's husband. In this context, an illegitimate child cannot be attributed to a man who does not have a legitimate marital relationship with the child's mother, even if that man later marries the mother (Jabatan Mufti Kerajaan, N, n.d.).

According to the Islamic Family Law (Chapter 217), Part VIII on the legitimacy of children, Section 113 provides that if a married woman gives birth to a child more than six months after the marriage date, the child can be attributed to her husband and considered legitimate. However, if the child is born less than this period, the child is considered illegitimate, and the husband can deny the child's lineage through the *li'an* procedure in the Sharia court (Islamic Family Law Chapter 217, 2012).

The Implications for Illegitimate Children

Lineage (nasab) is a critical issue for illegitimate children. Islamic scholars agree that a child born out of adultery cannot be attributed to the man who committed adultery with the mother. The child can only be attributed to the mother (Nor Izzati Binti Mahd Nor, 2021). This strict stance on attribution contrasts with the patronymic principle, where a child is given the father's surname, which can cause social problems and psychological effects on the child (Bin Roslan, 2023). Scholars suggest that it is preferable to give the child names such as Abdullah or names derived from Asma al-Husna (Muzakarah Jawatankuasa Fatwa, 1998).

According to Islamic law, a child's validity is determined by their bloodline or nasab. Legal marriage establishes a kid's ancestry, according to the hadith "al-walad lil firash" (the child is traced to the owner of the bed). As a result, illegitimate children are often perceived as having fewer rights, especially when it comes to inheritance and acknowledgment by family (Armin et al., 2023). This notion is based on conventional interpretations of Islamic law that, in general, deny illegitimate children the same rights as biological children (Rahbari, 2022).

This principle has far-reaching repercussions. The exclusion of illegitimate children from inheritance in Islamic law continues to generate social inequality. Illegitimate children, for instance, are not entitled to inheritance from their biological fathers in certain Islamic jurisdictions, such as Brunei (Septiana et al., 2023) (Wan Ismail et al., 2020). As a result, they may find themselves without resources or financial support. The rationale behind this exclusion is the belief that legal marriage is the only way to establish ancestry, which strengthens the idea of the conventional family.

Inheritance is another significant issue discussed in this study. Scholars agree that an illegitimate child can only inherit from the mother and the mother's family. The inheritance relationship with the biological father is severed due to the lack of a legitimate lineage between the child and the father (Zulkifli Mohamad al-Bakri, 2011). Although an illegitimate child can inherit from the mother, they are not entitled to claim any inheritance from the biological father or his family (Ba'qili, M. M, 2010). This is based on the consensus of Islamic scholars, who hold that lineage is a primary condition for inheritance rights.

In many nations with a majority of Muslims, including Brunei, there is a strong social shame attached to illegitimate children. The psychological health and social integration of unwed mothers and their offspring can be seriously impacted by discrimination and exclusion ("Analyzing 'Child Born Out Of Wedlock' ('Illegitimate Child') In The Law On Marriage And Family," 2023) (Hamzani, 2016). Unwed mothers frequently hide their pregnancies and the existence of their children out of fear of social rejection, which exacerbates their situation (Novenanty, 2017). Illegitimate offspring are perceived as a cause of shame due to societal views that emphasize the value of marriage and family, which aggravate this stigma (Disemadi, 2019). This cultural

perception plays a significant role in the legal marginalization of these children, further distancing them from the rights that children born within legal marriages enjoy.

The Brunei Islamic Family Law Regarding Illegitimate Children

In Brunei Islamic Family Law Chapter 217, Part VIII on the Legitimacy of Children, section 113 covers the person considered as the father. 113. If a woman who is married to a man becomes pregnant more than six lunar months after the marriage date or within four lunar years following the marriage's dissolution, whether due to the man's death or divorce, and the woman does not remarry, then the man is considered the father of the child. But the man can use *li'an* to reject the child's rightful ownership in front of the judge. This provision covers two scenarios: first, if a woman gives birth to a child more than six lunar months after her marriage to her husband, the child can be attributed to that husband, and the child is considered legitimate. Second, if the woman gives birth to a child within four years after divorcing her husband and has not remarried, the child can be attributed to her former husband, and the child is considered legitimate. However, if the former husband wishes to deny that the child is his, he may do so through *li'an* in the Sharia Court.

Meanwhile, section 114 covers births occurring more than four years after the dissolution of a marriage. 114. A man cannot be regarded as the father of a kid born more than four lunar years after the marriage was dissolved, whether as a result of his death or divorce, unless he or one of his heirs explicitly states that the child is theirs. This provision explains that if a woman gives birth to a child more than four years after divorcing her husband, whether due to the man's death or divorce during his lifetime, the child cannot be attributed to her former

115. Regarding Syubhah Intercourse

If after a man and a woman have had *syubhah* sexual relations and the lady becomes pregnant between six and four lunar months after the sexual relations, then the man shall be considered the father of the child.

Case Example of Illegitimate Child Status Confirmation Application in the Sharia Court Case Facts

This appeal notice was filed on November 10, 2010, through Form MS 30 of the 2005 Syariah Courts Civil Procedure Order by a married couple. The couple was married on March 28, 2010. The first appellant, the wife, gave birth to a child on September 20, 2010. According to the calculations of the Syariah Lower Court Judge (Trial Judge), the period between the marriage date and the birth date of the child was only 176 days. The Trial Judge made the following decision after reviewing and weighing the applications of both appellants: According to the appeal petition of appellants 1 and 2, they filed an appeal notice through form MS30 on November 10, 2010, to the Syariah Court stating that they disagreed with the decision made on

November 8, 2010. On May 19, 2011, they filed the appeal petition along with the grounds for appeal.

Court's Review & Opinion

Referring to the Syariah Lower Court trial notes from MS 16-17 in the appeal bundle of appellants 1 & 3, the Trial Judge heard the testimonies and confessions of both appellants on November 3, 2010. Among the testimonies and confessions given by the two appellants before the Trial Judge were:

1. The marriage date of both appellants was March 28, 2010.
 2. The child's birth date was September 20, 2010, at 12:50 PM.
 3. According to the Trial Judge's calculation, the period between the marriage date of appellant 1 & appellant 2 and the child's birth date was 176 days.
 4. Appellant 1 gave birth to the kid naturally, but due to a cardiac condition, the baby had to be delivered early, given medicine, and spent two days in a scuba.
 5. The actual due date was October 11, 2010.
 6. The child had to be delivered early, or else it would suffocate in the womb.
 7. The hospital verified appellant 1's pregnancy in late January 2010.
 8. At the time of marriage, appellant 1 was two months pregnant.
 9. Appellant 2 admitted that appellant 1 was two months pregnant at the time of marriage.
 10. Both appellants admitted to having intercourse before marriage.
 11. Appellant 1 also admitted that she was two months pregnant before marriage.
 12. Appellant 2 admitted to having premarital intercourse and not working in Brunei.
- Decision After reviewing and considering the appeal grounds of both appellants and the Trial Judge's decision:
13. The appeal was dismissed, and the Syariah Lower Court's decision was upheld.
 14. The child was attributed to the mother/bin Abdullah/Asmaul Husna. The judgment and order took effect on September 15, 2011. (Syariah, 2011) From this case example, it can be concluded that the implementation of the application for confirmation of illegitimate child status in the Brunei Sharia Court follows the opinion of the majority of Islamic scholars (jumhur ulama), which states that the child must be born no less than 180 days from the marriage date according to Brunei Islamic Family Law Chapter 217, Part VIII on the Legitimacy of Children, section 113 on the person considered as the father.

Statistics of Illegitimate Births Registered with the Immigration and National Registration Department in 2020-2021

Year	Birth Less than 180 Days from the Date of Marriage
2020	195
2021	169
2022	183

Table 1: Statistics of Illegitimate Births in Brunei

According to statistics obtained from the Brunei Immigration and National Registration Department, the number of illegitimate births less than 180 days from the marriage date in 2020 was 195 births. In 2021, the number slightly decreased to 169 births, but in 2022, the number of illegitimate births in Brunei Darussalam rose again to 183 births. From these statistics, it can be concluded that there is a significant number of illegitimate births in Brunei Darussalam.

Conclusion

The findings of this study suggest that the concept of an illegitimate child under Sharia and Islamic law in Brunei Darussalam encompasses various interpretations. Nevertheless, Islamic scholars concur that an illegitimate child is one born from unlawful relations before marriage. The minimum accepted pregnancy period is six months, or 180 days, and according to Bruneian law, any child born within a shorter timeframe is considered illegitimate. Such a child does not possess a recognized lineage with the biological father and can only be attributed to the mother.

Regarding inheritance, an illegitimate child is only entitled to inherit from the mother, while no inheritance rights from the biological father's estate are acknowledged under Sharia. Statistics on illegitimate births in Brunei show a marked increase, emphasizing the need for urgent attention to this matter. It is essential for both legal frameworks and societal attitudes to seek more equitable and balanced approaches that respect Sharia principles while safeguarding the welfare of these children (Bin Roslan, 2023). While the study confirms adherence to traditional Islamic values, it also emphasizes the necessity for legal reforms aimed at providing greater protection for illegitimate children, especially concerning inheritance and social welfare. The findings highlight the importance of harmonizing Islamic legal principles with the evolving social landscape in Brunei Darussalam.

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