

Fiqh al-Hadith Review on Children's Status as a Result of Premarital Intercourse

Muhammad Miftah Alkausar¹, Ananda Prayogi²

¹Hasyim Asy'ari, Jombang University, Indonesia

²Ma'had Aly Hasyim Asy'ari Boarding School Tebuireng, Jombang, Indonesia

ABSTRACT

Article:

Accepted: April 22, 2023

Revised: March 11, 2023

Issued: June 30, 2023

© 2022 The Author(s)



This is an open access article under the [CC BY-SA](https://creativecommons.org/licenses/by-sa/4.0/) license

Doi: [10.15408/quhas.v12i1.32465](https://doi.org/10.15408/quhas.v12i1.32465)

Correspondence Address:

miftahalkausar07@gmail.com

Premarital intercourse is not only an issue in society but also a serious discussion in religion. The outcome is the birth of a child whose lineage becomes a questionable. This article aims to answer this issue from the perspective of Islamic law with the Fiqh al-Hadis approach. The method used in this article is a library research method with an approach of Fiqh al-Hadith to analyze narrations and significance of the hadith by collecting all the related history, examining the validity and quality of the hadith and explaining how mazhab scholars argue about the meaning and purpose of discussed hadith text. The result is that there are agreements and differences in understanding the text and substantive of the 'lil firasy' hadith among mazhab scholars. From the various results of reasoning, mazhab scholars can provide clear stipulations in determining lineage status and can also be a way out for the community in this case.

Keyword: children's lineage, premarital intercourse, *fiqh al-hadis*

Introduction

Marriage is a path that must be taken to justify the relationship between the two parties who have a contract (*al-aqd*) with the rules set by religion. (Abu Zahra, 1957: 180). Marriage is a bond that links a man with a woman accompanied by an agreement between both parties to live together as husband and wife according to religious rules. Even though religion has properly regulated how humans can fulfill biological desires lawfully, human deviations often occur, such as having sex outside of marriage. This distortion often brings unwanted adverse effects, one of which is the occurrence of pregnancies caused by premarital intercourse. The impact of this is the presence of children with unclear legal status and position in illegitimate births or termed illegitimate children. This is something that is forbidden both in terms of religious norms and norms in general. In the United States, which is often considered a liberal in this case, even this behavior is considered not to follow the norm. (Smith and Hindus, 1975: 548)

Furthermore, Sayyid Sabiq (1983) in *fiqh sunnah* provides several reasons why premarital intercourse is considered a crime, as follows: 1) Premarital intercourse can eliminate lineage and automatically waste inheritance when her parents die; 2) Premarital intercourse can cause a dangerous disease for people who commit it and the children born due to that way; 3) Premarital intercourse can destroy the integrity of the household, and so on. (Sabiq, 1983: 341) Accordingly, premarital intercourse is something that cannot be justified as a norm and is even considered a crime because of the various negative impacts it has, both health, legal and social.

The Law of the Republic of Indonesia concerning Marriage Number 1 of 1974, Article 43 Paragraph (1) explains that a child born outside of marriage only has a civil relationship with his mother and her family. (Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan., 1974) Thus, according to this law, children resulting from sex outside of marriage only have a legal relationship with the mother and her family without requiring recognition, as stated in article 280 of the Civil Code (KUH Perdata). The acknowledgment referred to the article is to create a legal relationship between a child born outside of marriage and his father. This is one of the things that distinguishes the legal position between children caused by premarital intercourse and legal children.

In contrast to customary law, a child resulting from sex outside of marriage will be considered a lawful child if born in a legitimate marriage regardless of the time gap between the child being born and a legal marriage, then the child is able to be assigned to his mother's

husband in a legal marriage when the child is born. Accordingly, Nani Soewondo states that children born in marriage are considered legitimate children, regardless of how long a marriage has been running when the child is born. If a wife gives birth to a child, her husband becomes the father of the child who was born earlier, unless if the husband – based on reasons acceptable to the tradition of the community, refuses to do so. (Soeawando, 1984: 133)

While in Islamic law, most scholars agree that children from premarital intercourse will not gain inheritance rights from their fathers or vice versa. Accordingly, Wahbah Zuhaili (2015) quotes Imam Syafi'i's opinion that the status of children resulting in premarital intercourse is equated with a *mula'annah* child with the stipulation that the child is disconnected from the relationship with his or her father and his family due to no legal lineage status between them. (Zuhaili, 2012) Likewise, in Compilation of Islamic Law (KHI), article 186, it is stated that children born out of premarital intercourse only have an inherited relationship with their mother and her family. (Kompilasi Hukum Islam, "Hukum Kewarisan, Besarnya Bahagian," Bab III, Pub. L. No. 186 (n.d.).

Amir Nuruddin and Azhari Akmal discuss a lot about adultery children in their study. They explain that in accordance with Islamic law, a child born outside of a legal marriage, he or she is adulterous and only has a lineage relationship with his mother, while according to the Law of the Republic of Indonesia (UU) Number 1 of 1974 concerning marriage, a legitimate child is a child born in a valid marriage and has a lineage relationship with his or her father. (Akmal, 2004) However, their study did not mention much about the legal status and position in Islamic law specifically.

Legal status can be interpreted as the state or position of a person in a regulation made by the government or custom that applies to everyone in a society or certainties determined by Allah Swt. (Departemen Pendidikan Dan Kebudayaan RI, Kamus Besar Bahasa Indonesia (Jakarta: Balai Pustaka, 1990), 78) While in Islam, the set of arguments used to determine the legal status of a case must be based on *Mashadir al-Ahkam al-Syar'iyah* (sources of determination of Islamic law). Manna' al-Qathan (*Takhri' Tasri*, 73) states that scholars agree that *mashadir al-Ahkam al-Syar'iyah* there are 4 (four) sources, namely *al-Qur'an al-Karim*, *al-Sunnah al-Nabawiyah*, *Ijma'* (a consensus of scholars), and *Qiyas*. The *Sunnah* occupies the second important position in establishing law after *Qur'an* and the existence of the *Sunnah* is a revelation like *Qur'an*. (Al-Qathan, n.d.: 73) Therefore, the position of the *sunnah* is very influential in determining the law of a case.

Subsequently, from the description above, the author is interested in examining the lineage status of children resulting from sex outside of marriage in a specific Islamic legal perspective through a hadith approach accompanied by the reasoning of Islamic jurisprudence scholars on the theme of hadith related to the problem of children status resulted from premarital intercourse.

One of hadiths that is closely related to the issues raised in this study is the hadith about *li al-firasy*, which has the meaning of owning a bed. This hadith needs to be explained in detail in order to obtain a correct understanding, which in Islamic studies is termed *sharh al-hadith* or *fiqh al-hadith*. (Anshori, (2019: 169) Although there are several definitive differences in meaning according to some hadith experts, al-Jawwabi chooses to equate both of them, namely *fahm al-Hadis wa istikhrāj ma'nāhu*, which means an attempt to understand hadith and bring out its meaning. (Al-Jawwābī, n.d.: 128-129) From here, this study takes one of these terms, namely *fiqh al-hadith* as an approach to interpreting hadith correctly.

Method

The study employs a library research method, namely by collecting data from numerous references that have direct or indirect links. Of the various research methods in hadith studies including thematic hadith studies (*maudu'i*), tahlili hadith studies (Amrulloh, 2022: 203) and living hadith, the author chooses thematic hadith method, which is to conduct a discussion of hadiths with certain themes issued from hadith books. (Khon, 2014: 141).

Based on this method, the author performs *takhrij*, namely extracting hadiths from the source books (*al-Mashadir al-Ashliyyah*) to make it easier to test the validity and quality of hadiths, both from the path of transmission and from the text of the hadith related to the theme being studied, namely the lineage status of the child resulted from premarital intercourse. The coverage of *takhrij* in this study is sourced from primary hadith books, namely *al-Kutub al-Sittah* (*Sahih Bukhari*, *Sahih Muslim*, *Sunan Abi Daud*, *Sunan al-Tirmidhi*, *Sunan al-Nasai*, and *Sunan Ibn Majah*). Then proceed with the process of analyzing the reasoning of Islamic law scholars on the hadith so that it becomes a conclusion.

In addition, in order to understand hadith not only limited to understanding the text, it is crucial to employ a *Fiqh al-Hadis* approach in this hadith research. Considering that approaches which are limited to certain texts often lead to conflicts, (Kholishuddin, 2020: 76) with this approach, the understanding gained can later be broader and more acceptable to academics to broaden its meaning and the wider community.

Result and Discussion

In the study of hadith, the validity and quality of 'lil *firas*' hadith are considered authentic and can be used as evidence or legal stipulations. While the results of the textual and substantive reasoning of hadith carried out by *mazhab* scholars there are agreements and differences. From various results of reasoning, *mazhab* scholars can provide clear stipulations in determining lineage status and can also be a way out for the community in the problem of determining the lineage status of children resulting from premarital intercourse.

1. Understanding Children Caused by the Premarital Intercourse

Children caused by premarital intercourse is a term for children born as a result of sex outside of marriage. The meaning outside of marriage is the relationship of a man with a woman who then gives birth to offspring, and while they do not have a relationship which is a legal marriage bond according to positive law and the religion they adhere to. (Witanto, 2012: 71) In other words, a relationship that is not valid both religiously and stately.

In a nutshell, according to Hassanain, the term child born caused by premarital intercourse is a child born to his mother from an illegitimate relationship. The meaning of an illegitimate relationship here is the absence of a legally and religiously valid marriage.

2. The Text and Quality of the Hadith about the Lineage Status of Children Caused by the Premarital Intercourse

Hadith Text

In the process of *takhrij* or verification of the hadith from the primary hadith books (*mashadir al-ashliyyah*), the author finds a hadith that talks about the problem of children born outside of legal wedding. Accordingly, 'Aisyah narrated the hadith related to the topic and then quoted in Sunan Abi Daud, the Book of Talak, Hadith Index 1935, which is the object of this research. The text is as follows:

حَدَّثَنَا سَعِيدُ بْنُ مَنْصُورٍ وَمُسَدَّدٌ قَالَا حَدَّثَنَا سُفْيَانُ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ اِخْتَصَمَ سَعْدُ بْنُ أَبِي وَقَّاصٍ وَعَبْدُ بْنُ زَمْعَةَ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي ابْنِ أُمِّةٍ زَمْعَةَ فَقَالَ سَعْدُ أَوْصَانِي أَخِي عُنْبَةَ إِذَا قَدِمْتُ مَكَّةَ أَنْ أَنْظُرَ إِلَى ابْنِ أُمِّةٍ زَمْعَةَ فَأَقْبِضْهُ فَإِنَّهُ ابْنُهُ وَقَالَ عَبْدُ بْنُ زَمْعَةَ أَخِي ابْنُ أُمِّةٍ أَبِي وَوُلِدَ عَلِيٌّ فِرَاشِ أَبِي فَرَأَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ شَبَهَا بَيْنًا بَعْتَبَةَ فَقَالَ "الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ وَاحْتَجِجِي عَنْهُ يَا سَوْدَةَ" زَادَ مُسَدَّدٌ فِي حَدِيثِهِ وَقَالَ هُوَ أَحْوَكُ يَا عَبْدُ. (Al-Thayalisi, 1999: 59).

“Sa'id bin Mansur and Musaddad have told us, they said: “Sufyan from Al-Zuhri from 'Urwah from Aisyah has told us: “Sa'd bin Abu Waqqash and 'Abdu bin Zam'ah were fighting for something. Afterwards, they complained to the Rasulullah SAW about the child of Zam'ah's slave girl. Sa'ad said: “My brother, 'Utbah, gave me a will when I came to Makkah to look at the child of Zam'ah's slave girl, then he took the child because she was his.” Meanwhile, Abdu bin Zam'ah who had a different opinion said: “He is my brother, the son of my father's slave, and the child was born in my father's bed.” Then the Rasulullah SAW saw the child similar to 'Utbah. Subsequently, he said: “The lineage of the child is to follow the owner of the bed, and while the person who commits adultery does not get anything (cannot admit the child). Oh Sauda, be careful from that way. Musaddad added in his hadith and he said: “He is your brother, Oh 'Abdu”.

Based on the text of the hadith above, it can be seen that the origin (*al-Masadir al-Ashliyah*) of this hadith is Sunan Abi Daud narrated by Aisyah ra. Meanwhile, to assess the quality and determine the intent of the hadith, the author needs to describe the biographies of the narrators and present some meaningful hadiths. As for the scope of the search for meaningful hadith, the researcher only limits it to 9 (nine) books of *mu'tabar* hadith to facilitate research. The verification process (*takhrij*) uses *takhrij bil lafdzi* (search for hadiths with specific keywords) method supported by the *Maktabah Syamilah* application media and uses a sample sentence:

الولد للفراش وللعاهر الحجر

Translation: “Children are the property of the owner of the bed, and the person who commits adultery is stoned (*al-rajm*).”

Based on the editorial of the text, it was found in several books of *mu'tabar* hadith, as follows:

Sunan Al-Nasa'i, no. 3428

Hadith no. 3428 narrated by Aisyah ra., from Urwah, from Ibn Shihab.

أَخْبَرَنَا قُتَيْبَةُ، قَالَ: حَدَّثَنَا اللَّيْثُ، عَنْ ابْنِ شِهَابٍ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ، قَالَتْ: اخْتَصَمَ سَعْدُ بْنُ أَبِي وَقَّاصٍ وَعَبْدُ بْنُ زَمْعَةَ فِي غُلَامٍ، فَقَالَ سَعْدٌ: هَذَا يَا رَسُولَ اللَّهِ ابْنُ أَخِي عُنْبَةَ بْنِ أَبِي وَقَّاصٍ عَهْدَ إِلَيَّ أَنَّهُ ابْنُهُ انظُرْ إِلَى شَبَّهِهِ، وَقَالَ عَبْدُ بْنُ زَمْعَةَ: أَخِي وَوُلِدَ عَلَيَّ فِرَاشِ أَبِي مِنْ وِلْدَتِهِ، فَانظُرْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَى شَبَّهِهِ فَرَأَى شَبَّهًا بَيْنًا بَعْتَبَةَ، فَقَالَ: «هُوَ لَكَ يَا عَبْدُ، الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ، وَاحْتَجِي مِنْهُ يَا سَوْدَةَ بِنْتُ زَمْعَةَ» فَلَمْ يَرَ سَوْدَةَ قَطُّ. (Al-Nasa'i, 1987: 160)

Sunan Ibnu Majah no. 2004

Hadith no. 2004 narrated by Aisyah ra., from Urwah

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ قَالَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ، قَالَتْ: إِنَّ عَبْدَ بْنَ زَمْعَةَ، وَسَعْدًا احْتَصَمَا إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي ابْنِ أُمِّةِ زَمْعَةَ، فَقَالَ سَعْدٌ: يَا رَسُولَ اللَّهِ، أَوْصَانِي أَخِي إِذَا قَدِمْتُ مَكَّةَ أَنْ أَنْظُرَ إِلَى ابْنِ أُمِّةِ زَمْعَةَ فَأَقْفِضَهُ، وَقَالَ عَبْدُ بْنُ زَمْعَةَ: أَخِي وَإِنَّ أُمَّةَ أَبِي، وُلِدَ عَلَيَّ فِرَاشِ أَبِي، فَرَأَى النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ شَبَهَهُ بِعُتْبَةَ، فَقَالَ: «هُوَ لَكَ يَا عَبْدُ بْنُ زَمْعَةَ، الْوَلَدُ لِلْفِرَاشِ، وَاحْتَجِجِي عَنْهُ يَا سَوْدَةَ». (Ibn Majah, n.d.: 646)

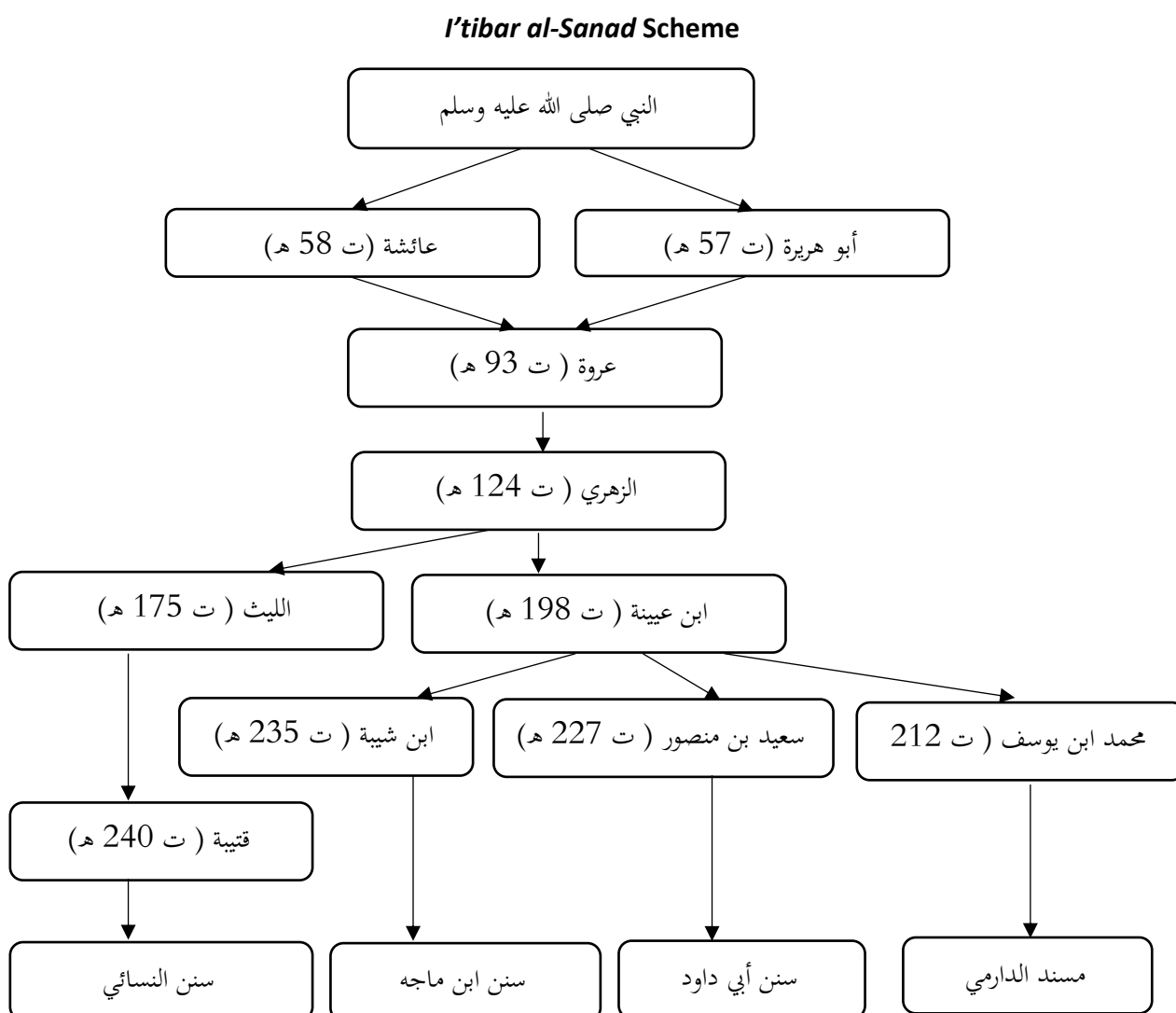
Sunan Al-Darimi no. 2281

Hadith no. 2281 narrated by Abu Hurairah, Abdurrahman ibn Shakhr

أَخْبَرَنَا مُحَمَّدُ بْنُ يُوسُفَ، حَدَّثَنَا ابْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنِ ابْنِ الْمُسَيَّبِ، عَنِ أَبِي هُرَيْرَةَ، يَرْفَعُهُ قَالَ: «الْوَلَدُ لِلْفِرَاشِ، وَلِلْعَاهِرِ الْحَجَرُ». (Ad-Darimi, 2000: 1436) [تعليق المحقق] إسناده صحيح

I'tibar al-Sanad

Searching and collecting hadith from source books, the researchers found several paths contained in the *Kutub al-Tis'ah*. Then the next step is to do *i'tibar al-sanad*. According to Ibn al-Salah, *i'tibar* means to include other sanads for a particular hadith, in which the hadith only appears to have one narrator and by including the other sanads so it can be identified whether there are other narrators or not for the sanad part of the hadith. (Ismail, 1994: 51) The results of this *i'tibar sanad* process will clearly show how the entire hadith related to the lineage of children from premarital intercourse. So this *i'tibar al-sanad* is to find out the entire chain of the hadith and it can be seen whether the hadith has supporting or meaningful hadith (*syahid* hadith or *tabi'* hadith). As a description, *Syahid* is a narrator who has the status of a supporter at the level of a friend. *Mutabi'*, also known as *tabi'* with plural *tawabi'*, is a narrator who has the status of supporting a narrator who is not a friend of the Prophet. (Darwis, 2011: 80) To see in detail the single scheme of all the hadiths related to the studied hadith can be seen in the appendix.



In this scheme, it shows that all the chains of hadith are connected (*ittisal*) to Rasulullah SAW. In consequence in terms of the hadith narration, it can be judged *marfu'*. Afterwards, it is seen in the scheme that the hadith narrated by Abu Daud is *syahid* – a hadith in which its *riwayah* are allied with other *riwayah*, both in terms of pronunciation and meaning or just in terms of meaning, and the chain of *sanad* varies according to the path of the companions (Al-Tahhan, 2004: 107) – and *tabi'* – narrators who are allied in their narration with other narrators, both in terms of pronunciation and meaning or just in meaning, and the chain of *sanad* are united in the path of the companions. (Al-Tahhan, 2004: 108) The role of *syahid* and *tabi'* is to see the supporters and reinforcements of the hadith. Thus, the path of Sunan al-Darimi narrated by Abu Hurairah (57 H) becomes *syahid* for the narration of Sunan Abi Daud. Meanwhile, the paths of Sunan Ibn Majah and Sunan al-Nasa'i which were both narrated by Aisyah (58 H) become *tabi'*.

3. Narrator's Biography

The author presents this biography to see whether there is a connection between the narrators (*ittisal sanad*). Here, the author also inserts the assessment of the critic of the narrators in assessing their quality in narrating the hadith.

a. Abu Daud

Abu Daud's full name is Sulaiman ibn al Asy'aš ibn Syadad ibn 'Amru ibn 'Amir. Abu Bakr al-Khaṭi argues; Ibn 'Amru ibn Imran al-Imam, Shaykh al-Sunnah, Muqaddimu al-Huffa, Abu Dāud al-Azdi as-Sajistaniy, an expert on hadith from the city of Basra. He was born in 202 H in the State of Sijistan. Abu 'Ubaid al-Ajurī thinks that Imam Abu Daud died in the city of Basrah on Friday the 16th of Shawwal 275 Hijri, at the age of 73 years. (Al-Mizzi, 1980: 355) According to Ibn Hajar in the assessment of *jarh wa ta'dil* against him is *Tsiqah, Hafiz, and Mushanif al-Sunan*. (Al-Asqalany, 1986: 250)

b. Said ibn Mansur

Said ibn Mansur's full name is Said Ibn Mansur Ibn Syubah. He belongs to the old *tabi'ul atba'* circle. His chewing name is Abu 'Uthman. He lived in the land of Marur Rawz, and passed away in 227 H. Among his teachers were Hamid ibn Ziyad, Abi Qudmah al-Hāris, Ibn 'Ubaed, Dāud ibn Abdurrahman, Abi Shihāb, 'Abdurrahman ibn Nafi' and Sufyan ibn Uyainah. Furthermore, the some students who took the hadith from him are Muslims and Abu Daud. The opinion of scholars is that Abu Hatim said he was *Tsiqah min al-mutqininin* and Ibn Hajar thought he was *Hafiz*. (Al-Asqalany, n.d.: 89)

c. Sufyan ibn Uyainah

Sufyan ibn Uyainah has a full name Sufyan ibn 'Uyainah ibn Imran Maimun, and he belongs to the *tabi'ut tabi'in* circle. He was born in 107 H and died in 198 H. His teachers were Sufyan ibn 'Uyainah ibn Abi 'Imrān Maimūn, namely 'Abdul Malik ibn 'Umr, Muhammad ibn Muslim al-Zuhri and so on. Meanwhile, those who had taken hadith from him are Ibn Harij, Shu'bah, Abu Ishaq, Said ibn Mansur and so on. (Al-Mizzi, 1980: 188) The scholars' assessment of him: According to Ibn Hajar he was *Tsiqah, Hafiz, Faqih, And Imam*. (Al-Asqalany, n.d.: 245)

d. Muhammad ibn Muslim al-Zuhri

Muhammad ibn Muslim al-Zuhri has the full name Muhammad ibn Muslim ibn 'Ubaidillah ibn 'Abdullah ibn Shihab. He belonged to the *tabi'ut tabi'in* from the middle class, he lived his life in the city of Medina and died in 124 H. His teachers were Abdullah ibn

Umar ibn Khotib, 'Abdullah ibn Ja'far, Rabi'ah ibn Ubaed, Misri ibn Mukhromah, Abdurrahman ibn Azhar, 'Abdullah ibn Umar ibn Rabi'ah, Sahl ibn Sa'id, Anas, Jabar, Abi Thofal, Syaid ibn Yazid, Ahmad, Muhammad ibn Robi'ah, Sa'labah ibn Abi Malik ibn Abi Umamah, ibn Sahl, ib Hunaepi, Qubishoh ibn uwaeb. While those who had taken hadiths from him were 'Atho ibn Abi Rabāh, Abu Zubair, Umar 'Abdullah ibn Umar ibn Dinar, Soleh ibn Hussein, Sufyah ibn Uyainah and so on. (Al-Mizzi, 1980: 419) The opinion of the scholars, according to Ibn Hajr, he was *Faqih, Hafiz, And Mutqin*. (Al-Asqalany, 1986: 506)

e. Urwah ibn al-Zubair

Urwah ibn al-Zubair's full name is Urwah ibn al-Zubair ibn al-'Awawam ibn Khuwailid ibn Asad al-Quraish. He belonged to the middle-class *tabi'in*, he lived in Medina during his life and died in 93 H. Some of his teachers were 'Abdullah, Umm Asma bint Abi Bakr, Aisyah bint Abi Bakr, Ali ibn Abi Talib and Sa'id ibn Jiyad ibn Umar ibn Nofal. While some people who had taken hadiths from him were 'Abdullah, Hisham, Muhammad, Yahya, Ibn Umar ibn 'Abdullah ibn Urwah and Muhammad ibn Muslim al-Zuhri. (Al-Asqalany, n.d.: 80) The opinion of the scholars is, according to Ibn Hajr, he was *Tsiqah and Faqih*. (Al-Asqalany, n.d.: 389)

f. Aisyah bint Abi Bakr

Aisyah's full name is Aisyah bint Abi Bakr al-Siddiq. She is one of the wives of the Prophet. She lived in the city of Medina during her life and she died in 58 H. Her teachers were the Prophet Muhammad SAW, Ali, Umar, al-Miqdad and so on. While those who had heard the hadiths from her are 'Atho ibn Abi Robah and Urwah ibn az-Zubair. (Al-Mizzi, 1980: 227)

Narrator List

The list of biographies of the narrators above is based on the books of *Tahdzib al-Kamal fi Asmai al-Rijal* by al-Mizzi, *Tahdzib al-Tahdzib*, and *Taqrib al-Tahdzib* by Ibn Hajr al-Asqalany. To make it easier to see the names of narrators, birth, death, *jarh wa ta'dil* (assessment of hadith scholars), a table was made, as follows:

No.	Narrator's Name	Birth	Death	<i>Tabaqah/Level</i>	Assessment of Hadith Scholars
1.	Aisyah	-	58 H	<i>Sahabah</i>	' <i>Adil</i>
2.	Urwah ibn al-Zubair	-	93 H	Middle of <i>tabi'in</i>	<i>Tsiqah, Faqih</i>
3.	Muhammad ibn Muslim	-	124 H	<i>Tabi' tabi'in</i>	<i>Faqih, Hafiz, Mutqin</i>
4.	Sufyan ibn Uyainah	107 H	198 H	<i>Tabi' tabi'in</i>	<i>Tsiqah, Hafiz, Imam</i>

5.	Sa'id ibn Manshur	-	227 H	<i>Tabi' atba' tabi'in</i>	<i>Hafiz</i>
6.	Abu Daud	202 H	275 H	<i>Mukharrij</i>	<i>Tsiqah, Mushanif Sunan</i>

4. *Sabab al-Wurud of the Hadith*

There is a narration from Aisyah that she related the dispute between Sa'ad ibn Abi Waqhash and 'Abd ibn Zam'ah over fighting over a child. Sa'ad complained to the Rasulullah SAW: "Oh Rasulullah saw. the child is the son of my brother, Utbah ibn Abi Waqhas, he told me that the child is his son, look at the resemblance." Then 'Abd ibn Zam'ah responded to Sa'ad's words and said: "The child is my brother, Oh Rasulullah, that the child has been born on my father's bed, then the child is his son." Then Rasulullah saw the child's resemblance and it turned out that the child's face was similar to 'Utbah, brother of Sa'ad ibn Abi Waqhas. Afterwards, Rasulullah SAW said: "The child is yours, oh 'Abd ibn Zam'ah and the child belongs to the lawful husband of his mother. As for men (who commit adultery) then they get the *al-rajm* punishment (throwing stones)." (Ad-Damsyiqi, 1991: 72)

5. *Meaning and Reasoning of Fiqh al-Hadis in 'al-Walad lil Firasy' Hadith*

Understanding the hadith using the *fiqh al-hadis* approach means understanding it as a whole with the aim so that the hadith of the prophet can be understood correctly and so that people avoid mistakes in understanding it and applying it in everyday life. Mukhtar, 2018: 112) Before going further into understanding, it is important to know about the basic definition first. According to etymology, the meaning of 'al-firāsy' in the hadith can be interpreted as a bed. Abdul Majid in the word 'al-firasi' gives meaning to a legal marriage which is interpreted as terminology. Meaningful in understanding, Saleh Faujan in his book, *al-mulakhash al-fiqh*, the word 'al-firasy' can be interpreted as the bed of a legal marriage. (Ibnu Katsir, 2013: 954) According to Imam Nawawi in Sahih Muslim, it is said that when a woman marries a man or a slave woman becomes a man's partner, then she becomes al-firāsy for the man. Furthermore, this man is called 'the owner of the 'firāsy' as long as the woman becomes the male al-firāsy then every child born to the woman is his child.

So with the results of this understanding, it means that a child born from a woman's relationship with a 'firāsy owner' is a legitimate child. On the other hand, if there is a relationship with someone other than the 'firāsy owner', then the child is not legitimate. This means that a legitimate child can be lineaged to his father and also has rights for him like inheritance, but an adulterous child is not lineaged to him other than his mother. (Al-Nawawi,

1981: 442) The majority of scholars and also followed by *mazhab* scholars widely agree this opinion.

However, on the other hand, there are differences in the opinion of Imam Shafi'i and also Imam Malik in determining the word '*lil firasy*' of wife and slave. The wife can be said to be the husband's '*firasy*' after contract and *wata*'. As for what is the basis for '*firasy*' with provisions in terms of time (at least six months of pregnancy) and maybe in terms of 'place' (domicile of husband and wife after the contract) – For example, after carrying out the contract, the husband lives in the west direction, while the wife lives in the east direction. When the wife gives birth to a child after 6 months or more, the child cannot be connected to the husband, because *wata*' is not possible. (Al-Nawawi, 1981: 443) Meanwhile, slaves can be said to be '*lil firasy*' from their masters when the *wata*' is recognized by their parents. So, if the slave gives birth to a child while the master does not admit to interfering with it, then the child born cannot be linked by his lineage with his master. (Al-Mubarak , n.d.: 41)

From the description of the opinions of Syafi'i and Malik, it can be further clarified that if the child is born less than 6 months pregnant, then the lineage of the child cannot be linked to the husband. Meanwhile, when the child is born from a period of at least 6 months of pregnancy and above, then the child can be linked by lineage to the husband. However, if later the husband turns out to be denying the child, then this problem can be solved by way of *li'an*. (Al-Mubarak, 326)

As for Imam Shafi'i and Imam Malik, the age of the womb is 6 months, because it is based on the *nash* of Q.S al-Ahqaf (46): verse 15.

وَحَمْلُهُ وَفِصْلُهُ ثَلَاثُونَ شَهْرًا

Translation: "*Conceiving him until weaning him is thirty months.*"

The verse states that the period of pregnancy until weaning is 30 months. While there is another verse in al-Baqarah verse 233.

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ

Translation: "*Mothers should breastfeed their children for two whole years*".

Whereas in this verse it is stated that the period of breastfeeding is 2 (two) full years or the equivalent of 24 months. If in the previous paragraph, it is stated that the period of pregnancy and lactation is 30 months, then the gestation period is 6 (six) months at least. These two verses are the guidelines for Imam Shafi'i and Imam Malik in determining six months as the minimum pregnancy.

According to the opinion of Imam Shafi'i and Imam Malik, according to Hanabilah, if a slave is pregnant and gives birth to a child and his master admits to having interfered with him, then the child can be linked by his lineage with his master. If the slave becomes pregnant again and gives birth to a second child, the child could not be related to the master, unless it was acknowledged that he interfered. (Al-Mubarak, n.d.: 343) It seems that Hanabilah's opinion is also *thubut firasy* to slaves with the occurrence of *wata'*.

In contrast, Hanafiyyah said that *thubut firasy* to the wife is only fulfilled by the existence of a contract, even though it is known that there is no *wata'* at all. Because Hanafiyyah thinks this is corroborated by another narration referred to in *al-ghayts* which states that *thubut firasy* in the lineage of children can be carried out if there is a contract, even though it is known that intercourse did not occur, for example, between husband and wife far apart and a husband cannot reach his wife in time when pregnancy is possible. The reason is that married couples can divorce for six months after the marriage contract. If the wife is pregnant and gives birth to a child in less than six months, the child can be lineage linked to the husband, as long as the child is not rejected by the husband, but if the child is rejected, it must be the *li'an* method. (Al-Zarqani, n.d.: 24) The *thubut firasy* in slaves is if the slave becomes pregnant and gives birth to a child while the master admits that he interfered with it. The reason is if *firasy* can be determined by *wata'* only, it means the slave also becomes a *firasy* with a contract of ownership, just as the wife becomes *firasy* when the contract and *wata'* occur. (Al-Zarqani, n.d.)

6. Actualization of '*al-Walad lil Firasy*' Hadith

In the current era, Muslims face many challenges, one of which is promiscuity. The result is that a child is born whose lineage status is not clear. This problem needs to be solved. The hadith regarding *al-Walad lil Firasy* can be drawn as proof by hadith and fiqh scholars to resolve husband-wife cases (where the wife gives birth to a child and the child is recognized by another man). Not only that, but it can also be used to resolve cases of pregnant women (read: unmarried women) who are married to the man who impregnated her or another man.

Reasoning Syafi'i and Malik set a minimum birth limit of 6 (six) months after the occurrence of contract and *wata'*. Through this reasoning, it is easy to determine whether the child can be lineaged to his mother's current husband or only lineaged to his mother, by looking at the moment of birth of the child with the distance between legal marriages and the occurrence of *wata'*. However, sometimes through reasoning, it is not suitable in Indonesian

society. Because, if it cannot be proven that the birth of the child is within the established limits, then the impact will be negative on the child and the household relationship.

Thus, Hanifiyyah's reasoning can be one solution to the problem if the child is born after the contract, then the lineage to the husband who shares the same bed with her in a legal marriage can link the child. However, if it turns out that the husband refuses the lineage of the child, then it can be taken with *li'an*. Abu Hanifah's reasoning can be considered as one way out of the problem, so in a case like this if the child is born after the contract, then the child can be legally engaged to the husband.

In essence, the hadith of *al-Walad lil Firasy* can be determined as a way out of the lineage problem of children born from premarital intercourse. The lineage of the child can be lineage to her husband. If another man comes to acknowledge the child, then his confession cannot be justified because it is for the sake of maintaining the benefit of the household, and children, and also maintaining the dignity of women. Because if the man's confession of a child born to a married woman is considered true, then this automatically accuses the woman of adultery. If the lineage of a child can be linked to a husband who is at the same level as a valid marriage, it will be legally bound by mutual inheritance, provision of maintenance, guardianship, and the prohibition of marriage between them.

Therefore, with the stipulation of *al-walad li al-firasy wa li al 'ahir al-hajar*, the child born from the wife's womb is attributed to her husband, if there is another man who acknowledges the child, then his confession is not considered for the benefit of the household, the benefit of children, and maintaining the dignity of women. Because of the recognition of another man against a child born from the womb of a woman who already has a husband, he automatically accuses the woman of adultery with him. When the lineage of children is connected to the husband, then both of them are legally bound by mutual inheritance, provision of maintenance, guardianship, and the prohibition of marriage between them.

Conclusion

The validity and quality of the hadith about *al-walad li al-firasy wa li al-ahir al-hajar* are considered authentic. Because it can be proven authentic through the study of *takhrij* and *i'tibar*. Therefore, this hadith can be accepted and used as evidence in determining the legal status of children born as a result of premarital intercourse.

While the results of the reasoning of *mazhab* scholars, according to Imam Syafi'i and Imam Malik in determining the lineage of a child is that he was born less than 6 (six) months

of gestation and is also accompanied by the husband's acknowledgment. If the husband refuses the child, then it can be taken by way of *li'an*. Meanwhile, according to Hanafiyyah, the determination of the child can be done only through a contract, there is no need to look at the time of birth of the child. The reason could be that the couple divorced less than six months after their marriage.

From the various thoughts of *mazhab* scholars above, it can be a way out of the problem of the child's lineage status. This clearly shows that Islam is very concerned about the benefit of children born from the wife's womb whose husband denies their existence. Because, that every human being born in this world is a creation of God who has the basic right to live, to be respected, to have, and to get the same respect as other human beings.

References

- Ad-Damsyiqi, I. H. A.-H. A.-H. (1991). *Asbabul Wurud: Latar Belakang Historis Timbulnya Hadits-Hadits Rasul* (Z. S. Wijaya, H.M.S. (ed.)). Kalam Mulia.
- Ad-Darimi. (2000). *Sunan Ad-Darimi, Third Cover*. Dār al-Mughni.
- Akmal, A. N. D. A. (2004). *Hukum Perdata Islam Indonesia (Studi Kritis Perkembangan Hukum Islam dari Fiqih Undang-undang No. 1 Tahun 1974)* (1st ed.). Kencana.
- Al-Asqalany, I. H. (n.d.-a). *Tahdzib al-Tahdzib, Fourth Cover*. al-Ma'arif al-Nidzomiyyah.
- Al-Asqalany, I. H. (n.d.-b). *Tahdzib al-Tahdzib, Seventh Cover*. al-Ma'arif al-Nidzomiyyah.
- Al-Asqalany, I. H. (1986a). *Taqrib al-Kamal*. Dar al-Rasyid.
- Al-Asqalany, I. H. (1986b). *Taqrib al-Tahdzib*. Dar al-Rasyid.
- Al-Jawwābī, M. Ṭāhir. (n.d.). *Juhūd al-Muḥaddithīn fī Naqd al-Matn al-Ḥadīth al-Nabawī al-Sharīf*. Nasyr wa Tauzī' Muassasāt 'Abdul Karīm Ibn 'Abdullāh.
- Al-Mizzi, Y. bin A. (1980a). *Tahdzib al-Kamal fī Asma' ar-Rijal, Eleventh Cover*. Muassasah ar-Risalah.

Al-Mizzi, Y. bin A. (1980b). *Tahdīb al-Kamal fī Asmā al-Rijal, Thirty Sixth Cover*. Muassasah ar-Risalah.

Al-Mizzi, Y. bin A. (1980c). *Tahdīb al-Kamal fī Asmā al-Rijal, Twenty Sixth Cover*. Muassasah ar-Risalah.

Al-Mubarak, M. al-D. (n.d.-a). *Nihayah fī Gharib Al-Hadis Wa Al-Aṣar, First Cover*. Dar al-Fikr.

Al-Mubarak, M. al-D. (n.d.-b). *Nihayah fī Gharib al-Hadis wa al-Aṣar, Third Cover*. Dar al-Fikr.

Al-Nasa'i. (1987). *Sunan Al-Nasa'i, Sixth Cover*. Maktabah al-Mausuah al-Islamy.

Al-Nawawi. (1981). *Al-Minhaj Syarh Shahih Muslim, Tenth Cover*. Dar Ihya al-Turats.

Al-Qathan, M. ibn K. (n.d.). *Takhri' al-Tasyri' al-Islamy*. Maknah al-Ma'arif.

Al-Tahhan, M. (2004). *Taisir Mustalah al-Hadis* (10th ed.). Riyad: Maktabah al-Ma'arif.

Al-Thayalisi, A. D. (1999). *Sunan Abi Daud, Talak Stage, No. Hadith Index 1935, Third Cover*. Darul Hijrah.

Al-Zarqani, M. ibn 'Abd al-B. (n.d.). *Syarah al-Zarqani 'Ala Muwatta al-Imam Malik*. Dar al-Kutub al-Alalmiyyah.

Amrulloh, A. (2022). Metode Studi Hadis Tahliili dan Implementasinya. *Nabawi: Journal of Hadith Studies*, 2(2), 201–235. <https://doi.org/10.55987/njhs.v2i2.49>

- Anshori, M. (2019). Ilmu Sharḥ al-Ḥadīth: Istilah dan Konsep. *Quhas: Journal of Qur'ān and Hadīth Studies*, 8(2), 166–186.
- D.Y. Witanto. (2012). *Hukum Keluarga Hak Dan Kedudukan Anak Luar Kawin*. Prestasi Pustakarya.
- Darwis, B. (2011). *Hadis Tentang Takdir Dalam Teologi As'ariyah* (1st ed.). Alauddin Press.
- Hindus, D. S. S. and M. S. (1975). Premarital Pregnancy in America 1640-1971: An Overview and Interpretation". *The Journal of Interdisciplinary History*, 5(4), 547–570.
- Undang-undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan., Pub. L. No. 1 (1947).
- Hukum Kewarisan, Besarnya Bahagian, Pub. L. No. 186.
- Ismail, M. S. (1994). *Pengantar Ilmu Hadits* (2nd ed.). Angkasa.
- Katsir, I. (2013). *Fikih Hadis Bukhari Muslim* (U. Mujtahid (ed.)). Ummul Qura.
- Kholishuddin. (2020). Penggunaan Pendekatan Maqasid Syariah Sebagai Instrumen Kontekstualisasi Makna Hadis. *Nabawi: Journal of Hadith Studies*, 1(1).
- Khon, A. M. (2014). *Takhrij & Metode Memahami Hadis*. Amzah.
- Majah, I. (n.d.). *Sunan Ibn Majah, First Cover*. Dar Ihya al-Kutub al-Islamy.

- Mukhtar, M. (2018). Syarh Al-Hadis Dan Fiqh Al-Hadis (Upaya Memahami Dan Mengamalkan Hadis Nabi). *Ash-Shahabah: Jurnal Pendidikan Dan Studi Islam*, 4(2).
- RI, D. P. D. K. (1990). *Kamus Besar Bahasa Indoensia*. Balai Pustaka.
- Sabiq, S. (1983). *Fiqh al-Sunnah* (4th ed.). Dar al-Fikr.
- Soeawando, N. (1984). *Kedudukan Wanita Dalam Hukum Dan Masyarakat* (4th ed.). Ghalia Indonesia.
- Zahra, M. A. (1957). *Al-Ahwalu al-Syakhsiyyah*. Dar al-Fikr.
- Zuhaili, W. (2012). *Fiqh Imam Syafi'i, Mengupas Masalah Fiqhiyah Berdasarkan al-Qur'an Dan Hadits* (Muhammad Afifi Dan Abdul Hafiz (ed.); 2nd ed.). al-Mahira.