

# DNA AS THE DETERMINATION OF DESCENDANT OF CHILDREN OUTSIDE OF MARRIAGE UNDER THE PERSPECTIVE OF IBN TAIMIYYAH

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**Abstract:** *The focus of this study was ibn Taimiyyah's ijtiḥad on the status of children outside marriage and its correlation with the determination of DNA as normative evidence of child status. The purpose of the research was to find out the results of Ibn Taimiyyah's ijtiḥad related to the position of children outside marriage and its correlation to the determination of DNA as a valid child status. This type of research is in the form of a literature study ijtiḥad Ibn Taimiyyah in Majmu' Fatawa's book using descriptive deductive analysis. The determination of child' in Islamic perspective has significant meaning, with resolution can be known relationship between child and father. His Father's decision is the first right of a child when it is born into the world that must be fulfilled. According to Ibn Taimiyyah, adulterous children can still be recognized by unfaithful men and have mahram relationships with both parents. Adulterous children have mahram relationships with the man, provided that the man realizes the adulterous child as his son. Then according to Ibn Taimiyyah's view, civil relations, both inheritance, living, and guardianship of unfaithful children with adulterous men who admit the child is severed due to adultery, Ibn Taymiyyah's opinion has a solid correlation with the verdict of Mk No. 46/PUU-VIII/2010, namely the affirmation of his father of an unmarried child having a blood relationship and civil relations with his biological father and father's family as evidenced by DNA tests. The legal relationship of an out-of-wedlock child with his biological father gives rise to the right and obligation in return.*

**Keywords:** *DNA, determination of descendant of children outside of marriage, Ibn Taimiyyah.*

## AL-HUKAMA

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**Abstrak:** Fokus penelitian ini adalah ijtihad Ibnu Taimiyyah tentang status anak di luar perkawinan dan korelasinya dengan penetapan DNA sebagai bukti normatif status anak. Tujuan penelitian ini untuk mengetahui hasil ijtihad Ibnu Taimiyyah terkait posisi anak di luar perkawinan dan korelasinya dengan penetapan DNA sebagai status anak yang sah. Penelitian ini berupa studi literatur ijtihad Ibnu Taimiyyah dalam buku *Majmu' Fatāwā* dengan menggunakan analisis deduktif deskriptif. Penentuan anak dalam perspektif Islam memiliki arti yang signifikan, dengan tekad dapat diketahui hubungan antara anak dan ayah. Selain itu, keputusan Ayahnya adalah hak pertama seorang anak ketika lahir ke dunia yang harus dipenuhi. Menurut Ibnu Taimiyyah, anak-anak hasil perbuatan zina masih bisa dikenali dan memiliki hubungan mahram dengan kedua orang tuanya. Anak-anak hasil zina memiliki hubungan mahram dengan ayahnya, asalkan ayahnya menyadari anak tersebut sebagai anaknya. Selanjutnya pandangan Ibnu Taimiyyah, terkait hubungan sipil, baik warisan, hidup, maupun perwalian anak-anak hasil zina seorang lelaki yang mengakui anaknya terputus akibat perzinahan. Pendapat Ibnu Taimiyyah ini memiliki korelasi yang kuat dengan putusan MK Nomor 46/PUU-VIII/2010, yaitu penegasan nasab anak di luar nikah memiliki hubungan darah dan hubungan keperdataan dengan ayah biologis dan keluarga ayahnya. Hubungan hukum anak di luar nikah dengan ayah biologisnya itu memunculkan hak dan kewajiban secara timbal balik.

**Kata Kunci:** *DNA, penetapan nasab anak luar nikah, Ibnu Taimiyyah*

## Introduction

The child is the holder of parental privileges; when the parent is alive, the child is a tranquilizer. When the parent has died, the child is the symbol of the successor and symbol of immortality. The child inherits signs of similarity with his

parents, including characteristics, good and bad, high, and low. The child is the soul mate and the butcher of his parents.<sup>1</sup>

So important is the existence of children in human life, then God Almighty prescribes marriage. Marriage equality has the purpose of having good children to maintain descent, avoid disease, and create a low-income family.<sup>2</sup> Allah has claimed the child's descent very well through the bonds of marriage, as contained in Article 99 paragraph (1) Compilation of Islamic Law (KHI), which is a child born in a valid marriage bond, who has a father and mother so that the child can be passed on to his father.

In the perspective of Islamic Law, descent children against men who impregnate the woman can happen arena three things, namely through legal marriage, a *fāsīd* wedding, and intercourse because of the existence of *shubhat al-nikāḥ* (*marriage shubhat*).<sup>3</sup>

An out-of-wedlock child is a child born due to a biological relationship with no ties, guardian of marriage, heritage, and living with the man that resulted in his birth. The child only has a relationship descent, heritage, and living with the woman who gave birth to the child and her family. But after the decision of MK. No. 46/PUU- VIII/2010 a biological father can be charged with the obligation to fulfill the right to spend the child born out of wedlock with a record of blood relations between the child and his biological father can be proven by the science that develops now such as DNA testing.<sup>4</sup>

In Islamic law, the descent can occur from one of three causes, namely:

1. By *way of firāsh*, birth due to the existence of a valid marriage;
2. By *way of iqrār*, which is a confession made by a father who admits that the child is his son;

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<sup>1</sup> Yusuf al-Qardawi, *Halal and Haram dalam Islam* (Surabaya: Pt Bina Ilmu), 158.

<sup>2</sup> Wahbah al-Zuhaili, *Al-Fiqh al-Islāmī wa Adillatuh* (Beirut: Dār al-Fikr, 1997), 114.

<sup>3</sup> Ibid.

<sup>4</sup> Soedharyo Soiman, *Hukum Orang dan Keluarga Perspektif Hukum Perdata Barat/BW, Hukum Islam dan Hukum Adat* (Jakarta: Sinar Grafika, 2010), 39.

3. By *way of bayyinah*, using proof is based on valid evidence that a particular child is the child of a person (his father);

Following the above fiqh theory, the provisions of Article 43 paragraph (1) of Law No. 1 of 1974 and Article 100 of the Compilation of Islamic Law, which states that children born outside marriage have only civil relations and relationships with their mother and mother's family, has been in line with the universal fiqh theory.<sup>5</sup>

Valid children in Law No. 23 of 2002 have been revised into Law No. 35 of 2014, namely children born in legal marital ties and children born outside marriage recognized by their parents. As it is contained in Articles 38A and 39 concerning the recognition of children. A recognized child can be made by a man or woman who gave birth to him with intention, legal relationship.

The legalized child is an extramarital child between a woman and a man who recognizes the child born before marriage as their lawful child. The confession states by noting it in the marriage certificate. The child born in a valid marriage bond has a status as a biological child, where civil rights are attached to him and have the right to use his father's name behind his name to indicate his descendants or origins.

According to civil law, a child born outside of marriage is a child born after a certain period since the wedding was severed, considered an illegitimate child. In the practice of civil law, children outside of marriage have two kinds: first, if the parents of one or both are still tied to another wedding, then they have sexual relations with another woman or man that results in pregnancy and childbirth, then the child is called an adulterous child. In comparison, the so-called extramarital child is born of a biological relationship between a man and a single woman.<sup>6</sup>

The determination of child descent from an Islamic perspective has essential meaning because the decision can be known the relationship between the child and his father's

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<sup>5</sup> Compilation of Islamic Law, 2007: 34.

<sup>6</sup> Soiman, *Hukum Orang dan Keluarga*, 39.

descent. Besides, the determination of descent is the first right of a child when it is born into the world that must be fulfilled.

### The General Basis of Ibn Taimiyyah's Fatwa

The general basis is the general principles underlying Ibn Taimiyyah's fatwa in Islamic law and family law.<sup>7</sup> There are three general rules of Ibn Taimiyyah in issued *fatwa's*:

*First Rule:*

الشريعة قائمة على ما يحقق العبودية لله

*The Sharia is based on what brings slavery to God "The existence of Shari'ah is to realize 'ubūdiyyah to Allah."*

First, a Muslim must accept that *Shāri'* (Allah) ordains the shari'a of Islam. He is guided to it far from his passions, meaning that *Shāri'* has the intention of shari'ah that brings out *mukallaf* from the invitation of his desires so that he becomes a servant to his Lord (Allah), this is a signal that man of any creature he does not escape from the nature of *'ubūdiyyah*, become a servant to Allah or a servant other than Allah. Moreover if people are in the heavens and the earth, or one of people is on a day where people will not be able to do so, then indeed Allah is All-Merciful. Everyone who boasts of worship to God must worship him other than Allah.<sup>8</sup>

Ibn Taimiyyah underlies this understanding based on verses of the Qur'an such as the word of God:

وما خلقت الجن والانس الا ليعبدون

*And I only created jinn and man to worship "I did not make the jinn and humankind except to worship Me (QS. al-Dhariyāt: 56).*

To come to the understanding that religion all fall into the category of worship, 108 then the act of horn of a Muslim must be done in terms of prayer and to create and realize the *'ubūdiyyah* to Allah, then worship, obedience, and *istiqāmah*, and follow a straight path and other names whose purpose is one,

<sup>7</sup> Alaidin Husein Rahal, *Ma'ālim wa Dawābiṭ al-Ijtihād 'ind Sheikh al-Islām Ibn Taymīyah* (Jordan: Dār al-Nafai's, 2002), 303.

<sup>8</sup> Ibn Taymīyah, *Al-'Ubūdiyyah* (Tp.: Dār al-fikr, t.t.), 111.

and it is not realized except by the following two rules: *first* method: do not worship other than just to Allah ; *Second* method: Allah is not worshipped except as He has commanded and prescribed.<sup>9</sup>

Lusts, connections, and heresies do not worship Allah, so it is obligatory to worship Allah in the way He has prescribed for His servants. *'Ubūdiyyah* is what raises the rank of a Muslim if this is clear then the perfection of human beings in realizing *'ubūdiyyah* to Allah, and every time the efforts of His servants in learning *'ubūdiyyah* then every time it increases the value of perfection and height of his degree. Whoever suspects that if a creature comes out of *'ubudiyah* for a reason or comes out of *ubudiyah* will make it more perfect, then that person is the dumbest and even the most misguided creature.<sup>10</sup>

On this basis, every action intended for purposes other than Allah means that the act is not designed to Allah. Every effort that is not in accordance and sync with the shari'a of God means that the show is not intended to Allah, even it is said that the practice/deeds allocated to Allah SWT is only that has a combination of two traits:*First*, the practice should be intended or devoted to Allah SWT, and secondly, it should be following the pleasure of Allah and His Messenger, which must be done in doing deeds.<sup>11</sup>

Ibn Taimiyyah also relates the understanding of this *shamanic* worship with the importance of following the Messenger of Allah, in this case, Sheikh al-Islam said:

*"We are ordered not to be afraid other than Allah, for resignation except only to Allah, to love except only to Allah, ask for help only to Allah, our worship is only for Allah." we are ordered to follow the messenger and obey him. The halal is what he and the haram for which he is forbidding, and religion is what he prays for.*<sup>12</sup>

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<sup>9</sup> Ibid., 80.

<sup>10</sup> Ibid., 74.

<sup>11</sup> Ibid., 136.

<sup>12</sup> Ibid., 171.

Ibn Taimiyyah said, quoting QS. Al-Tawbah verse 59, then the fact of shari'a is *ittibā'* (following) the Messenger of Allah and entering into his obedience. According to this principle, *ijtihad* must follow the "principle of '*ubūdiyyah* to Allah", and "the rule of '*ubūdiyyah*" should be the trigger to interact with all new things. The meaning of '*ubūdiyyah* is limited to the *shar'ī* side. Such as prayer, hajj, *dhikr*, fasting, but on the other hand, ignore aspects of *mu'amalat*, *marriage*, and *jināyat*. A mujtahid must pay close attention to the principle of '*ubūdiyyah* against all his opinions, not much based on the results of legal debate. A mujtahid must always uphold the principle of '*ubūdiyyah* to God with confidence. Ibn Taimiyyah addressed this meaning clearly when talking about the importance of law and jurisdiction.

*Second Rule:*

تسليم المجتهد بأن الجمعية للشرع لا غير

*The hard-working recognition that the muja'i is for the sharia "Mujtahid's confession that marji'iyah (source of law) only exists in syara' (religion) is not other than religion."*

Although this rule is universal from birth, everyone accepts the importance of shari'a as a source and evidence of "*marji'*" because the Islamic faith follows the principle of "Obey Allah, the Apostle, and His Book.

There is no reason to abandon this principle as a blessing from the sharia bearers. The companions know that the most excellent favor they receive from Sharia (Allah) is the firmness of the Book and al-Sunnah, as a source of Islamic law resulting from the agreement of the companions and *Tabi'in*.<sup>13</sup> The obligatory prophets are al-Kitab, al-Sunnah and *Ijma'*. The three sources are permissions that do not have their Damaged, must be followed and cannot leave it in any situation, and cannot go something indicated by the three sources, as cannot get out of something suggested by the third source.<sup>14</sup>

<sup>13</sup> Ibn Taymīyah, *Majmū' al- Fatāwā* (Tp.: Dār al-Fikr, t.t.), 164.

<sup>14</sup> Ibid.

In this case, Ibn Taimiyyah has composed a treatise article named him, "article: the explanation of the Messenger of Allah about religion, *uṣūl*- *uṣūl* religion, *furū'*-*furū'* inner, and outer, knowledge, and practice." This *ushul* is the source of all *uṣūl* in knowledge and faith, and whoever has the most significant determination to hold on to this *uṣūl*, then is the most entitled to the truth of wisdom and faith.<sup>15</sup>

*Third Rule:*

صريح المنقول لا يعارض صريح المعقول

*Express movable not expressly opposed reasonable "A firm naṣ (ṣaḥīḥ) is not contrary to reason (ratio) firm (ṣarīḥ)."*

Ibn Taimiyyah discussed this rule in detail and extensively. His discussion of this departs from the perception that the reason ratio is a condition in knowing the various knowledge, perfection, and validity of deeds, which expertise and charity will perfect. Still, the reason is not alone in doing the task if the mind alone will not see weak things.

So the Messengers came with a concept in which the mind could not detect the idea, so the messenger informed about *muhārat al-'Uqūl* instead of *Muhāwalāt al-'Uqūl*.<sup>16</sup>

If this is acceptable, then surely a man needs to *shara'* (religion) to know the benefits of danger. If it were not for al-*Risālah*, the mind would not be guided. To the details of the services and harms in this world and the hereafter.<sup>17</sup>

While the reason is not alone in knowing good and evil, then who says that reason can be contrary to *naql* means he does not understand the boundaries of logic and field of cause and does not know what is brought by *naql*. Precisely such a view is wrong, because it is impossible what is accepted by reason expressly and contrary to what is obtained by the *manqūl* (revelation) that is firm (ṣaḥīḥ).<sup>18</sup>

This does not mean that reason, according to Ibn Taimiyyah, is sidelined or neglected, but the reason is not the

<sup>15</sup> Ibid., 19, 5.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid., 28.

<sup>18</sup> Ibid., 19, 100.



first and last arbiter or determinant. That is the way of Allah, and he is the All-knowing, the All-knowing. Thus it is clear that Ibn Taimiyyah did not see reason alone would readily know the nature of religion, precisely he (reason) does not escape the need to *naql*, The (*naql*) does not ignore reason. Still, the reason is demanded and sought but his role as *tābi'* and not *matbū'*, so it is punished that the Quran and the face of reason should fit in the realm of *istidlāl*.<sup>122</sup> This rule is a rule that Ibn Taimiyyah's grip in the science of religion, interpretation, jurisprudence, *uṣūl*, and is a rule for all the sciences of *shar'i*, this is because what is known by reason is not a point agreed by all reason (reason), because something is known or unknown by reason, is not a common trait for something. Still, it is a matter of blasphemy that is stated, so it is said, for example, Zaid with his mind may be aware of something unknown to command with his mind, and it may be that man knows things with his mind but something he no longer knows at other times.<sup>19</sup>

### Special Foundation of Fatwa Ibn Taimiyyah<sup>20</sup>

The exceptional basis means the specific principles underlying Ibn Taimiyyah's fatwas in Islamic law in general and including family law. Seven special rules are the basis of Ibn Taimiyyah's fatwa, and there are at least five rules that have different specifications than the scholar's *uṣūlīyīn* and *fuqahā'* in general.

#### *First Rule:*

عدم الخروج عن خط السلف الصالح في فهم الأصول – القرآن والسنة ومعاني  
الالفاظ الشرعية

*"Not to deviate from the line of righteous advances in understanding the originals - The Qur'an, sunnah, and the meaning of the Islamic words. "It is not out of the line of Salaf al-Shālih in understanding ushul (Qur'an and al-Sunnah) including in understanding the meanings of Pronunciation shar'i."*

<sup>19</sup> Ibn Taymīyah, *Dar' Ta'āruḍ al-'aql wa al-Naql* (Tp.: Dār al-Fikr, t.t.), 144.

<sup>20</sup> Rahal, *Ma'ālim wa Ḍawābiṭ*, 311.

Ibn Taimiyyah asserts in his book "*Majmū' al-Fatāwā*" that *al-mujtahid* in his view of the Quran and al-Sunnah as the source of *shari'ah* should refer to the Salaf scholars and their methods of understanding the Quran and the Sunnah. They have witnessed the revelations of the Qur'an and witnessed what Allah has told them in the Qur'an and understood what it means, whether it is intended *khāṣ* or *'ām*, therefore whoever interprets the Qur'an according to his birth without *dilālah* from Rasulullah or his companions, then this is the interpretation of the *bid'ah* experts.<sup>21</sup>

It should be known that the Qur'an and al-Hadith, if the interpretation is known from the Prophet himself, then there is no need to *istidlāl* to the linguist or others. This is better than knowing the *aqwāl* of the *salaf* in their religion and practices. Following *salaf*, scholars are better than following the scholars after their era. Knowing *ijma'* *salaf* scholars and their disputes in science and religion is better than knowing the so-called *ijma'* other than *salaf*.<sup>22</sup>

According to Ibn Taimiyyah, the following *salaf* means following the *Salaf* method in terms of thinking, behavior, and faith and not being bound by the solutions presented by the *salaf* in their problems but following their *approach* in understanding Islam.

Among the examples *iqtidā'* (following) *salaf method*, according to Shaykh al-Islām that they do not accept against the verses of the Qur'an with proof of the degree under the Qur'an. Still, they allow against verses of the Quran with other poems that serve to interpret it or tedious or oppose the poetry of the Quran with *sunnah* (hadith) that helps to explain and explain it because they *salaf* scholars agreed that the Quran is not opposed except with the Quran, not by *ra'y* or *ma'qūl* (ratio) or *qiyās* or feelings or ward or inspiration and *mukāsyafah*.<sup>23</sup>

Here, Ibn Taimiyyah suggests that language is not the end goal but as an intermediary to understand *aqwāl shāri'*, if so. The

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<sup>21</sup> Ibn Taimiyyah, *Majmū' al-Fatāwā*, 7, 390-391.

<sup>22</sup> Ibid., 13, 23-25..

<sup>23</sup> Ibid., 13, 29-30.

source (*marji'*) to understand *aqwāl aqwāl shāri'* is *aqwāl Rasulūllah*, and *aqwāl Salaf* scholars, Ibn Taimiyyah's concern in this matter is because of the many disputes in interpreting *nūṣūṣ shāri'*, and the argument of the *mutaakhkhirīn* scholars about the meanings of Pronunciation *shāri'*. Ibn Taimiyyah worried that *Pronunciation-Pronunciation shār'i* liquid in the *takwil-takwil* according to desire and motifs and interpreted outside of the importance it contains.

Ibn Taimiyyah explained that "*naṣ al-shāri* (Allah)" will only be understood when trying to express the meaning from within, rather than making "*naṣ al-shāri*" as the source of meaning, otherwise it can cause "*lafadh al-shāri*" (Allah)" not to be understood as the meaning He wants. Suppose he knows the language used by *mutakallim*. In that case, *lafadh* will (indicate) the purpose of something, this is a common thing that is often used in His *khithāb*, and the meaning of *dilālah lafadh* is the intention and desire of *dilālah*, *ikhtiāriyyah* (not obligatory) of *mutakallim*. *Mutakallim* wants to learn the importance of *lafadh*, so if he is used to expressing meaning through *lafadh*, then that is the language. Therefore, everyone who cares about the purpose of *lafadh* will surely know the habits of the Prophet in *khiṭāb*, and understand the meaning, most likely still unclear to others.<sup>24</sup>

On this basis, if the Prophet mentions *lafadh* Quran and Hadis, then he intends to say the comparison of *lafadh* so that he can know the Qur'an. In this language, God communicates with His servants. This is a habit known by Kalam of Allah. If there is a comparison language in kalam another, then it can be seen that "There" and that language is *Mushtarak* and a common language. So not only for the Prophet but also for the language of his people. Therefore, it is not permissible to interpret the kalam of Allah explains in *nūṣūṣ* language that displayed in His kalam (Allah and his messenger) and the words of the companions of the Prophet who lived at the time the Qur'an was revealed.

*Second Rule:*

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<sup>24</sup> Ibid., 7, 115.

ان تكون المصلحة متوافقة مع شرع الله المنزل

*That the interest is compatible with God's law of the house,  
The benefit shall be in sync with the law of Allah which has  
been sent down."*

Ibn Taimiyyah uses *al-maṣlaḥah* in its *shāmil* meaning, namely the benefits and benefits of this world and the hereafter, not only benefit in the importance of *al-maṣlaḥah al-mursalah*, so when mentioned the word, *al-Maṣlaḥah* is not intended *al-maṣlaḥah* as one of the pieces of evidence *shara'*. Therefore Ibn Taimiyyah does not compare the *al-maṣlaḥah* with other pieces of evidence, such as the Quran, al-Sunnah, *Ijmā'*, and *Qiyās* in terms of the order. He explained that *shari'ah* was not sent down except to make His servants benefit in the affairs of this world and the hereafter, and Allah sent messengers to satisfy and complete it, stop corruption, and minimize it. The Prophet invites people with the highest target in terms of ability and leads each individual to goodness according to his ability.<sup>25</sup>

This is an affirmation from Sheikh al-Islām Ibn Taimiyyah about the importance of *shara'* (religion) for servants in their world life, with this meaning, it should believe that *shari'ah* does not neglect the benefit at all, but God has perfected the religion for his people and perfected his favor, but what is believed by reason (ratio) even though *shara'* has not offended him, then that must be interpreted one of two things, that is, maybe religion shows the belief of reason from the ignorance of the person who sees it, or perhaps the thought of reasoning is not good.<sup>26</sup>

So *shari'ah* came to realize the benefit of the servant, and to mujtahid is expected to find the *services*, so that *tasyri'* can be a source (*marji'*) for the service, straighten things that are new from the benefit, reject the danger's and receive the benefits, and not the *shari'ah* to set unique gifts. So the command and prohibition, even if it means gaining advantage and rejecting the

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<sup>25</sup> Ibid., 13, 96-97.

<sup>26</sup> Ibid.

*mafsadah* (corruption), must be seen in his opponent if it is removed *maṣlaḥah* or obtained more *mafsadah* (corruption) means that it is not commanded to be forbidden. Still, the assumption of the assessment of *al-maṣlaḥah* and *mafsadah* is by *mīzān* (scales) *shari'ah*.<sup>27</sup>

Therefore, mujtahid must see that this benefits more (from his *mafsadah*), and in religion, no one denies it. Concerning this meaning,<sup>28</sup> Ibn Taimiyyah has mentioned a rule that is so precise in terms of importance and steady in terms of content.

### **Constitutional Court Ruling on Extra Marriage**

Since the enactment of Law No. 1 of 1974 on marriage (in the future referred to as the Marriage Law), which Government Regulation then follows up No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 on marriage (in the future referred to as PP No. 9 of 1975) has changed the paradigm of Indonesian society on biological relationships between a woman and a man where the natural connection is mandatory to be ratified in a valid marriage bond as stipulated in Article 1 of the Marriage Law which specifies that: Marriage is an inner birth bond between a man and a woman as a husband and wife to form a happy and eternal family (household) based on the One True God.

Every child has dignity and dignity that should be respected, and every child born must have his rights without the child asking. This right is a fundamental right that is inherently attached to the human being, is universal and lasting. Therefore, it must be protected, respected, defended and should not be ignored, diminished, or deprived by anyone. In the 1945 Constitution-NRI in Chapter X on Human Rights, this can be seen in the provisions of Article 28 A determined: "Everyone has the right to live and maintain his life and life."<sup>29</sup>

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<sup>27</sup> Ibn Taimiyyah, *Majmu' al Fatâwâ*, 28, 29.

<sup>28</sup> Ibid., 5, 26.

<sup>29</sup> I. Nyoman Sujana, *Kedudukan Hukum Anak Luar Kawin dalam Perspektif Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/tahun 2010* (Yogyakarta: Aswaja Pressindo, 2015), 2.

Like the grace of God Almighty, human rights are usually formulated as an inherent natural right owned by man as a gift given by God to human beings in sustaining and maintaining life and livelihood on the earth. DF. Scheltens, as quoted by Nurul Qamar in his book, suggests that Human Rights are a right obtained by every human being as a consequence of being born human.<sup>30</sup>

Article 1 point 1 of the Law of the Republic of Indonesia No. 39 Year 1999 on Human Rights in the future referred to as human rights law provides a formulation of human rights as a set of rights attached to the nature and existence of man as a creature of God and is His grace that must be respected, upheld and protected by the state, law, government, and everyone for the honor and protection of human dignity and dignity.

If human rights are the right that every human being obtains, he is destined to be born as a human being, then all his rights attached to him must be respected. Regarding the rights of this child, following the provisions of the Convention on the Rights of The Child ratified by the United Nations General Assembly on November 20, 1989, and enacted as international law on September 2, 1990, and approved by the Government of Indonesia by Presidential Decree No. 36 of 1990 on August 25, 1990; it is stated that in this Convention has given birth to the principles / general principles of child protection, namely (1) active protection (active protection), (2) nondiscrimination, (3) something that is best for the child (the best interest of the child), (4) the right to life, survival, and development and (5) respect for the views of the child). These principles are also contained in Law No. 23 of 2002 as amended by Law No. 35 of 2014 on Child Protection (in the future referred to as the Child Protection Law) established by the government so that children's rights can be implemented in Indonesia. In terms of life child, the state is the future of the ideals of the government. Every child is entitled to survival, growth, and development,

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<sup>30</sup> Df. Scheltens in Nurul Qamar, *Hak Asasi Manusia dalam Negara Hukum Demokrasi*, (Jakarta: Sinar Grafika, 2013), 16.

participate is entitled to protection from violence and discrimination as well as civil rights and freedoms. The Indonesian government's concern for the dignity and dignity of children has been seen since 1979 in Law No. 4 of 1979 on Child Welfare (in the future referred to as the Child Welfare Law). However, until the release of the Child Protection Law until now, child welfare and the fulfillment of children's rights are far from expected, especially for children born outside of a valid marriage or often referred to as "out-of-wedlock children."<sup>31</sup>

Prosecuting, Stating:

1. Grant the applicants' application for a portion;
2. Article 43 paragraph (1) of Law No. 1 of 1974 on Marriage (Statute Book of 1974 No. 1, Supplement to the State Gazette of the Republic of Indonesia Number: 3019) which states, "Children born out of wedlock only have civil relations with their mother and mother's family," contrary to the Constitution of the Republic of Indonesia year 1945 as long as it is interpreted to eliminate civil relations with men that can be proven based on science and technology and other evidence according to the law turns out to have a blood loss as his father;
3. Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage (Statute Book of 1974 No. 1, Supplement to Statute Book No. 3019) which states, "A child born out of wedlock has only a civil relationship with his mother and his mother's family," has no binding legal force as long as it is interpreted to eliminate civil relations with men that can be proven based on science and technology and other evidence according to the law turns out to have a blood relationship as his father, so the verse must be read, "The child born outside of marriage has a civil relationship with his mother and his mother's family and with the man as his father that can be proven based on science and technology and other evidence according to the law has a blood relationship, including civil relations with his father's family,"
4. Reject the applicants' application for other than and the rest;

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<sup>31</sup> Sujana, *Legal Position*, 4.

5. Order to contain this award in the State Gazette of the Republic of Indonesia as appropriate. This ruling further creates the pros and cons of various parties, both from academics, legal practitioners, and the wider community. The decision of the Constitutional Court No. 46/PUU-VIII/2010 dated February 17, 2012, concerning the recognition of children outside marriage is shocking and not excessive if this ruling can be said to be something that galvanizes the legal world in Indonesia. By the Editor ikhlas Amal, Information Media of the Ministry of Religious Affairs called the term a very Revolutionary verdict.<sup>32</sup>

### **Ibn Taimiyyah's View of Extramarital Children**

فتوى شيخ الاسلام ابن تيمية:

المقصود هنا الكلام في "نكاح الزانية" وفيه مسألتان، إحداهما في استبرائها وهو عدتها، وقد تقدم قول من قال: لا حرمة لماء الزاني. يقال له: الاستبراء لم يكن لحرمة ماء الاول، بل لحرمة ماء الثاني. فإن الانسان ليس له ان يستلحق ولدا ليس له. وكذلك إذا لم يسترئها وكانت قد علققت من الزاني. وأيضا ففي استلحاق الزاني ولده إذا لم تكن المرأة فراشا، قولان لأهل العلم، والنبي صلى الله عليه وسلم قال: "الولد للفراش" وللعاهر الحجر" فجعل الولد للفراش دون العاهر. فإذا لم تكن المرأة فراشا لم يتناوله الحديث، وعمر ألحق أولادا ولدا في الجاهلية لأبائهم<sup>33</sup>

ولد الزنا يثبت نسبه من أمه بيقين لأن صلته بها حقيقة مادية لا شك فيها. أما نسبه من الزاني فإن ادعى شخص بنوئه ولم يصرح بأنه من الزاني وتوافرت شروط النسب ثبت نسبه منه. أما إذا قال إنه انثى من الزاني، فلا يثبت نسبه عند جمهور الفقهاء لأن النسب نعمة فلا يترتب الجريمة وانما يترتب عليها العقوبة والنعمة. وذهب

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<sup>32</sup> Putusan Mahkamah Konstitusi Tentang Status Anak Hasil Nikah Siri Bisa Mengancam Eksistensi Lembaga Perkawinan, "Ikhlas Beramal", Media Informasi Kementerian Agama, Edisi 73 Februari 2012, 22-25.

<sup>33</sup> Ibn Taymīyah, *Majmu' al-Fatāwā*, 112-113.



إسحاق بن راهوية وابن تيمية وابن قيم الى ثبوت نسبه من بناء على الحقيقة المادية بزناه بإمه, كما ثبت نسبه من الام بزناها, يثبت نسبه من الزاني وذلك حفظا للولد من وحتى لا يصيبه الضرر والعار سبب جريمة لم يقتربها, "ولا تزر وازرة وزر أخرى" 34

This is a dispute between the two opinions, if the mother of the child -during her pregnancy - is not a wife for the man who impregnated her, nor is the woman in 'iddah.

If the mother of the child is a wife or a woman in 'iddah, then the mother is considered "*firāsh*," and every child born in the ratio of his descent to "*firāsh* " and her mother's husband as "*ṣāhib al-firāsh*." So on this basis, it is not acceptable to claim or acknowledge descent that comes not from *ṣāhib al-firāsh* according to *ijmā'* the *fuqahā* 35

The evidence of majority based on hadith: المولود للفراش means that the child is married to "*al-firāsh*" which is his mother and father, although "not *al-firāsh* "can not even give him a child.

As for the opinion of Ibn Taimiyyah, Ibn Qayyim and Ishaq ibn Rahawiyah interpret the context of the hadith as if there is an *al-firāsh* (husband) who demands it his son, but if there is no *al-firāsh* (husband) who demands, then the child is connected that's descent to the man who claims it. Alternatively, when the husband of the mother of the child disputes, then the husband is the one who wins, and the child is made to him. However, if no pharaoh claims that the *adulteress* is not a wife, not an 'iddah woman, then the child is then made to a man who commits adultery with his mother.

From the above explanation of Syekh al Islam, it can be concluded as follows:

1. First must be seated the understanding of adulterous children is:

المولود من غير نكاح شرعى أو ثمرة العلاقة الائمة بين الرجل والمرأة.

34 Panitia Kuliiah Syariah, *Ahkām Mawāriṭh fī al-fiqh al-Islāmī* (al-Azhar Kairo: Maktab al-Risālah al-Dawliyah li al-Thibah, 2000-2001), 324-325.

35 Ibn Qudāmah, *al-Mughnī*, (Riyāḍ: Dār 'a'lām al-Kutub, t.t.), 129-130.

## 2. The Prophet said:

الولد للفراش وللعاهر الحجر.<sup>36</sup>

*The boy's to bed, and the pointy.*<sup>37</sup>

Ibn Taimiyyah responded to this hadith that the Prophet made descent the child to *firāsh* (husband), not to *Âhir* (adulterous man). If the woman is not a *pharaoh*, then she is not covered by the hadith. At the same time, 'Umar ibn Khattab' is narrated to have attributed the descent of children born in the time of ignorance to men who claimed them in Umar, especially when there was no *firāsh* (husband) who opposed and admitted his ownership of the child.

3. The second part of the hadith الحجر وللعاهر means that the child's descent is hindered to "the man who commits adultery with his mother, therefore it is not related to him the child of cheating, whether the adulteress is *firāsh* (his status as a wife or in *'iddah*) or not *firāsh* (not a wife and not in *'iddah*). Ibn Taimiyyah argues that the preventing of the child's descent to adulterous men, if the adulterous woman is *firāsh*, that is, she is her status as a wife or woman in *'iddah*. However, if the woman who is adulterous is not *firāsh*, meaning not a wife, not in *'iddah*, then there is no obstacle to even the child's descent to the man who commits adultery.
4. Ibn Taimiyyah's fatwa concerning the death of an adulterous child with a man who commits adultery with his mother will be stronger if scientifically proven positive relationship through DNA testing. He obtained inheritance, living, and mahram from the man. This right can be established, first because he does not bear the faults of his parents, and it is not appropriate –according to justice–he must accept the risk of his parents' mistakes, says God:

ولا تزر وازرة وزر اخرى

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<sup>36</sup> Abi Abdillah Muhammad bin Ismail bin Mughirah bin Bardizbah al-Bukhari, *Ṣaḥīḥ al-Bukhārī*, No. 2053, Jilid 3. Kairo: Dar al-Hadith, 2004. Abul Husain Muslim bin al-Hajjaj al-Qusyairi al-Naisaburi, *Ṣaḥīḥ Muslim*, No. 1457, Juz I, Bairūt: Dār al-Kutub al-ʿIlmiyah, t.t..

<sup>37</sup> Ibid.

*And not to visit and button another button "Others do not bear one's fault" (QS. Fathir, verse 18)*

Second, the provision of such rights for adulterous children is because adultery committed by parents is an incident that can be addressed in *emergency* conditions (unusual), or called by the term because it can not be managed or spoken of as an everyday occurrence called: روف عادية because under normal conditions, from a valid marriage gives rise to the rights and obligations of the wedding, such as *thubut* descent, mutual inheritance, living, *haḍānah*, guardianship. And *maḥram*. As for unusual conditions, such as adultery, those rights and obligations have not been established automatically but can be described *tafṣīl*. The decree of the right of the adulteress in this matter is to avoid it from neglect and from the harm that will be borne in life due to the actions of his parents. So the main principle of this fatwa is to provide help and attention, and protection for the child, and not for his biological father. The inheritance and the inheritance are the benefits of the child from his father, including mahram. However, the question of guardianship does not have to be from his father. His mother's father or uncle takes precedence unless there is nothing else, then his father as a last resort.

5. If the child's adultery is related to his mother, and this fatwa majority *fuqahā*, why can not the same be related to his father also (if it is proven that his father)?. whereas the *fatwa* of the blasphemy of descent to his mother emerged from an extramarital relationship (not legally valid *syar'i*). Where is the justice of *Shari'ah*?. Maybe *fuqaha* reasoned the man could have been. Claiming his relationship with the child, called; اثبات الدعوى والاقرار والبينة While her mother cannot do the same, she cannot deny it because of concrete evidence with her pregnancy. But what if the confession is accompanied by *bayyinah*, known as اثبات الدعوى والاقرار والبينة ?

Ibn Taimiyyah, in the author's assessment, pointed in this direction. If the claim of descent by his father was proven further by conducting a DNA test that will confirm the

positive relationship of the blood. Fuqaha fatwas about extramarital child descent appear when there is no development of science as it is now, then is such a fatwa still maintained? or should it be changed with a fatwa that is fairer and more *al-maṣlaḥah*, especially for the benefit of children outside marriage, to be given protection and protection of their rights?. in this matter, the *fatwa's*<sup>38</sup> of Ibn Taimiyyah, Ibn Rahāwiyah, and Ibn Qayyim al-Jauziyah has opened up opportunities for this noble purpose.

6. There is a worry, if descent can be *related* to men who adulterate their mothers, it will harm the general rules in society during this time. He said all men could have claimed it was his son, or the man's concern would be the guardian of the child's marriage, he claimed. According to the author, this is nothing to worry about because what can be associated with the child is not just any man, but only a man who proved his father. This falls into the category; indicted with pledges and evidence". Of course, DNA testing is undeniably scientific evidence. As for the concern that the father will be the guardian of the child's marriage because it is not familiar in the view of the community, it is also unnecessary because the guardian of marriage can take precedence from another path, perhaps his uncle or his mother's father or grandfather from his mother's line.
7. Suppose the father and mother agree to marry in a shari'ah after repentance and *istibrā'*. In that case, that means both move from unusual relationship conditions to normal relationship conditions marriage under normal conditions. There is nothing in question from the rights and obligations of each party.<sup>39</sup>

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<sup>38</sup> Decision of the Constitutional Court "MK" No. 46/PUU-VIII/2010 dated February 17 2012 decided that Article 43 paragraph (1) of Law No. 1 of 1974 on Marriage (Marriage Law) is contrary to the 1945 Constitution.

<sup>39</sup> Fatwa Sheikh bin Bâz in child nasab problem outside Marriage:  
"If both have repented, then there is no harm in the man marrying her after giving birth to her child, and the child born is even given to her mother. But if they have not repented, then he cannot marry her.

8. In addressing the descent of children out of wedlock, Ibn Taimiyyah did not ignore the hadith *naṣ* above, "*al-walad li al-firāsh*." The problem is in interpreting the hadith associated with the benefits that want to be given, especially legal protection for children outside of the marriage of the innocent. Therefore, QS. Fāṭir verse 18: "One's fault is not borne by others" reflects the *al-maṣlaḥah*. Or in other words, in terms of blasphemy, the hierarchy of laws, the principles of shari'ah and *dilālah*, then this verse (Fāṭir 18) defeats the validity of hadith: *al-walad li al-firāsh wa li al-'āhir al-hijr*. This is also evidence that Ibn Taimiyyah, despite his high commitment to *nuṣūṣ*, but sometimes prefers the people in *ijtihād* and *fatwā* by arguing to a higher degree and level *naṣ*, namely *naṣ* al-Quran.

## Conclusion

The determination of the child' in Islamic perspective has a significant meaning, because with the finding that can be known the relationship between the child and his father. Besides, his father's decision is the first right of a child when it is born into the world that must be fulfilled. According to Ibn Taimiyyah, adulterous children can still be recognized by unfaithful men and have mahram relationships with both parents. Adulterous children have mahram relationships with the man, provided that the man realizes the adulterous child as his son. Then according to Ibn Taimiyyah's view, civil relations, both inheritance, living, and guardianship of unfaithful children with adulterous men who admit the child is severed due to

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This fatwa is deliberately shown as a comparison only with the fatwa of Sheikh al-Islam Ibn Taimiyyah, quoted from an article about the *naṣab* of adulterous children, by Sheikh 'Adnan al-Duqailân, 22nd edition, Riyadh, 1425 H. Fatwa Sheikh bin Baz is judged in accordance with *nuṣūṣ* when he states mandatory repentance for both women and men adulterers, the second makes repentance as a condition of their marriage, and the three marriages can be carried out if the woman has given birth to her child (*istibra'*), but his fatwa that even the child to his mother alone, this still smells classic. This is what the author thinks should be reviewed by linking it to other related *nuṣūṣ*, including *qarinah* and *bayyinah*, in order to provide legal protection to innocent extramarital children.

adultery, Ibn Taimiyyah's opinion has a solid correlation with the verdict of MK No. 46/PUU-VIII/2010, namely the affirmation of his father of an unmarried child having a blood relationship and civil relations with his biological father and father's family as evidenced by DNA tests. The legal relationship of an out-of-wedlock child with his biological father gives rise to the right and obligation in return.

### **Bibliography**

- Bukhari (al), Abi Abdillah Muhammad bin Ismail bin Mughirah bin Bardizbah. *Ṣaḥīḥ al-Bukhārī*, Jilid 3. Kairo: Dar al-Hadith, 2004.
- Nurul Qamar. *Hak Asasi Manusia dalam Negara Hukum Demokrasi*. Jakarta: Sinar Grafika, 2013.
- Husein Rahal, Alaidin. *Ma'ālim wa Ḍawābiṭ al-Ijtihād 'inda Sheikh al-Islām Ibn Taimiyyah*. 1st cet. Jordan: Dar al Nafai's, 2002.
- Ibn Taimiyyah. *Majmū' al-Fatāwā*. Beirut: Dār al-fikr :t.t.
- . *Rasāil al-Fatāwā*. Beirut: Dār al-fikr:t.t.
- . *al-'Ubūdiyyah*. Beirut; Give al-fikr:t.t.
- . *Dār' Ta'āruḍ al 'aql wa al Naql*. Beirut: But al-fikr:t.t.
- Ibnu Qudamah,. *al-Mughnī*. Riyadh: Dār 'Ālam al-Kutub, t.t.
- Naisaburi (al), Abul Husain Muslim bin al-Hajjaj al-Qusyairi, *Ṣaḥīḥ Muslim*, Juz I, Bairūt: Dār al-Kutub al-'Ilmiyah, t.t..
- Panitia Kuliah Syariah. *Aḥkām Mawāriṭh fī al fiqh al-Islāmī*, al-Azhar Kairo: Maktab al-Risālah al-Dawliyah li al-Thiba"ah, 2000-2001.
- Putusan Mahkamah Konstitusi Tentang Status Anak Hasil Nikah Siri Bisa Mengancam Eksistensi Lembaga Perkawinan, "Ikhlās Beramal", Media Informasi Kementerian Agama, Edisi 73 Februari 2012
- Qardawi (al), Jusuf. *Halal and Haram dalam Islam*. Surabaya: PT. Bina Ilmu, t.t.
- Siregar, Abdul Hakim. "Qiyafah dalam Fiqh Islam; Penetapan Nasab Melalui Penelitian Genetika", ". Medan: Universitas Islam Sumatera Utara, VolumeVol.. IV, No. 2, Desember 2015.

- Soiman, Soedharyo. *Law of Persons and Families Perspective of Western Civil Law/BW, Islamic Law and Customary Law*. Jakarta: Sinar Grafika, 2010.
- Sujana, I. Nyoman. *Kedudukan Hukum Anak Luar Kawin dalam Perspektif Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/tahun 2010*. Yogyakarta: Aswaja Pressindo, 2015.
- Zuhaili (al), Wahbah. *Al-Fiqh al-Islāmī wa Adillatuhu*. Beirut: Dār al-Fikr. 1997.