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Illegitimate Child in Malaysia

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ABSTRACT

Until now little is known about the exact number of illegitimate child in Malaysia. Following the growing number of illegitimate child in Malaysia in recent years, research on illegitimate child has become the focus of extensive concern, and the discussion of illegitimate child has been considered necessary. Illegitimate child is related to problems such as inheritance, guardianship in marriage, the question of incest, and many others related to Islamic family law. The National Fatwa Council holds the opinion that only a child born after six months from the date of marriage can be considered legitimate. This paper discusses the main categories of illegitimate child according to Islamic law. Two informants related to lineage law in Malaysia have been interviewed. Data for this study are gathered through unstructured interviews. Results show that there are three categories of illegitimate child according to the Islamic law in Malaysia, namely a child born as a result of rape, a child born from pregnancy did not reach 6 months, as well as a child born from a pregnancy before marriage.

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INTRODUCTION

Until now little is known about the exact number of illegitimate child in Malaysia. Perhaps this is because illegitimate child is not viewed as an acceptable birth according to cultural norms and Islamic law. Besides the usual problems of inheritance, guardianship in marriage, the question of incest, and many other things related to Islamic family law, the pregnant women may experience several additional problems resulting from the disapproval of community members for such pregnancy. The pregnancy before marriage is disapproval in Islam, and Muslim community does not accept of premarital sex. Following the growing number of illegitimate child in Malaysia in recent years, research on illegitimate child has become the focus of extensive concern, and the discussion of illegitimate child has been considered necessary in Malaysia. Illegitimate child refers to a child born before or outside legal marriage. The phenomenon has now become a common one and thus can be regarded as a social problem to the Muslim community in Malaysia. The increase in births outside of marriage in society can lead to many negative implications for women in particular, as well as for the family, community, or the country in general. Thus, the birth of an illegitimate child needs to be addressed, especially as it related directly to the Islamic law of inheritance, guardianship in marriage, the question of incest, and many other things related to Islamic family law.

According to data released by the National Registry Department, from 2000 to July 2009, there were a total of 257 thousand babies born without a legitimate father in Malaysia. The number if calculated in terms of frequency, an average of about 2500 cases out of illegitimate children recorded each month, or 83 cases per day, and one illegitimate child for every 17 minutes. There are also some claims that the birth of illegitimate children in this country is actually much more than those registered in by the National Registry Department. Those who claimed such phenomenon give the ratio of birth of illegitimate children in Malaysia as one registered and three others were not. Failure to register these babies is due to the effort of the family to cover the shame of the illegitimate child. As the birth of the illegitimate child will be raised many interconnected questions of lineage laws, the statistics under the sharia crime below illustrate how these issues should be given special attention.

Mohd Azis Ngah in his report published in *Berita Harian* (March 22, 2010), stated that a total of 17, 303 Malay illegitimate children registered across the country throughout 2009. This increasing in numbers of the

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phenomenon are officially confirmed when the Director-General of the National Registry Department, said that there were 762 cases over the previous year. In 2008 a total of 16, 541 illegitimate children were registered, while a total of 16,100 illegitimate children in 2007. He added in the last five years, the department recorded a total of 74, 723 of Malay/Muslim illegitimate children were registered. This does not include cases of abandoned babies reported to the Social welfare Department. During this period, 214, 033 babies of various ethnics registered with the status of illegitimate children, including cases of children without father 104, 834 and 109, 199 child in accordance with Section 13 of the Births and Deaths Registration Act 1957 (Act 299).

There are cases where women are pregnant before they get married, and these women are forced to marry after that. Is the child born is legitimate according to Islamic law? Or marriage after pregnancy can solve the problem of lineage in Islam? Can an infant born as a result of this marriage be line aged to the mother's husband? Many questions regarding this issue remain unanswered. To fill the gap, this paper therefore aims to analyze the questions of illegitimate child in Malaysia. Therefore this paper is aim to discuss the incident of illegitimate child in Malaysia and analyze the main categories of illegitimate child according to Islamic law. To analyze this issue, the paper is organized into four sections. The first section will be an introduction to the topic of discussion. The second section presents a brief discussion on materials and method employed in this study, while the third section provides results and discussion.

MATERIALS AND METHOD

The purpose of this paper is to analyze the incidence of illegitimate child in Malaysia. The data reported in this paper is part of a larger qualitative study conducted to explore the application of lineage law in Malaysia in the late 2010 and early 2011 (Wan Ab Rahman Khudzri Wan Abdullah Md Zawawi Abu Bakar dan Wan Ibrahim Wan Ahmad, 2011). This study took place in the northern parts of Malaysia, in the states of Kedah and Perlis. The states were chosen as study areas since the number of birth outside marriage in these two states is quite significant. This application of lineage law in Malaysia can be seen in the registration of birth conducted by National Registration Department.

This present paper is a result of a qualitative study. Major data for the study are derived from unstructered interviews with two key informants, the practitioners who are directly involved in the issues. The two main informants have been the Perlis State Director of the National Registry Department , and the Deputy *Mufti* for the State of Kedah. Information regarding the lineage law was also obtained from the secondary analysis conducted on the official *fatwa* (religious decree) made by the country's *fatwa* authority, as well as including all related legal documents. The interview, containing both closed-ended and open-ended questions, made available a wide range of data that have been collected. Relevant to this paper is variable related to the illegitimate child in Malaysia.

RESULTS AND DISCUSSION

Mohammed Rafiq Abdul Rahman (Dewan Masyarakat; June, 2011) who reported from the Johor State Fatwa Committee Meeting held on March 26 2004, classified the illegitimate child into three types. First, a child born as a result of the raped women, secondly, children born within less than six months *Qamariah* and two *lahzah* from the time of the marriage; and thirdly, children born within more than six months *Qamariah* and two *lahzah* from the date of marriage, and there is a clear evidence that the child is illegitimate. Any child born inside a marriage, or the period of pregnancy of any woman should be at least six months before she gives birth. From the Islamic law point of view, illegitimate child has to be treated differently from any legitimate child, especially in terms of school registration, trust, estate, or the registration of children.

In terms of trusteeship, if the infant is a girl and later on if she is to be married, her farther is not allowed to be her *wali* (guardian for women seeking marriage). Her *wali* then will be *wali raja* or Registrar of Marriage , and she cannot inherit the paternal property. In relation to the lineage, a child born as a result of rape, and a child born as a result of pregnancy before marriage cannot be lineaged, while a child born as a result of pregnancy did not reach 6 months is allowed to be lineaged.

In this study, the issue was brought forward for the informants' point of view. According to the informants, there were some other views on the matter, among them are: (1) any children born less than six months, and if there is a pledge that they (father and mother) have had sexual intercourse before their marriage, the illegitimate child can be lineaged. (2) Sheikh Abdul Majid, a former Syeikhul Islam, hold an opinion that, although there is a declaration that sexual intercourse happened before their marriage, the illegitimate child can be lineaged for the goodness of the society. (3) There are other scholars who did not agree on this matter, because when there is a pledge of the couple involved, these scholars hold the opinion that this illegitimate child cannot be lineaged, (4) Perlis holds a fatwa that even though the pregnancy is less than 6 months a child can be lineaged. Such a fatwa from Perlis was rejected in Kedah because Kedah, likes other states in Malaysia, is using the existing *nas* related to the period of pregnancy that is the pregnancy should be more than 6 months. Imam Malik holds the opinion

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and said only a pregnancy of more than 6 months can be lineaged. In this regard, the National Fatwa has been using this *nas*.

Information obtained from informants is that there were three main categories of illegitimate child, namely (1) children born result of rapes; (2) children born in legal marriage, but the pregnancy did not reach 6 months, and (3) children born in legal marriage but was affirmed by the couple that they have had sexual intercourse before marriage, and was pregnant before their marriage.

Children Born Results of Rape:

Rape is a type of sexual intercourse, which is initiated by one or more persons by forcing another person to have sexual intercourse without that person's will (Hornby, 2000). A child born as a result of rape is considered as illegitimate child according to Islamic law, thus the child should not be treated as the same with a child born in a normal family especially whilst dealing with wealth distribution amongst the family and other family relationship matters. In the first place, any woman who is raped is not guilty of any sin, for the situation is beyond her control. In regards to a child born results of the rape, the baby considered a Muslim child and must be protected as the Prophet (peace and blessings be upon him) said: 'every child is born with a true faith (i.e., to worship none but Allah alone).' (Reported by al-Bukhari) It has been stated in the books *Fiqh* (Islamic Jurisprudence) that if the child born without legitimate fathers, he or she considered a Muslim child, with no doubt, and the Muslim society is obliged to take care of his upbringing, to spend on him and to bring him up well. They should not leave the burden to his poor, suffering mother.

Pregnancy did not Reach 6 Months:

If a man and a woman committed a sexual intercourse before they get marriage, and resulted to pregnancy and giving birth a child, then the child is also can be considered as illegitimate child unless the man and woman decided to get married according to Islamic law prior to the pregnancy reaches four months *Qamariah* (moon phase calendar). No one knows about the sexual intercourse that results in the pregnancy. In another instance, although children may be born in legal marriage, but the pregnancy did not reach 6 months, the children should also be considered as illegitimate child.

It can be meant although a child born in a legal marriage, but if at the end the couple decided to get marriage before the pregnancy reaches four months *Qamariah*, a child born in this situation can be considered as a legitimate child according to Islamic law. Meaning that for the child is to be considered legitimate; the period of any pregnancy of a woman should reach 6 months out of nine months before she gives birth. In other words, if in a case of a sexual intercourse before married and the couple wants their child to be considered legitimate, they have to; (1) get married before the pregnancy reach four months, and (2) they should not disclose that the pregnancy happened before married. It should remain personal secret.

Pregnancy before Marriage:

Pregnancy before marriage is widely viewed as an acceptable behavior in advanced countries. In those countries couples engage in cohabitation for sexual accessibility. Moreover, cohabitation is becoming an increasingly popular lifestyle in advanced countries such as United States, Canada, Australia, and elsewhere (Cavanaugh, Blanchard-Fields, 2006). In United States, for example, cohabitation has increased 10-fold over the past three decades, from 523 000 in 1970 to 5 500 000 in 2000 (U.S Census Bureau, 2001, in Cavanaugh, Blanchard-Fields, 2006). In most European countries cohabitation is a common alternative to marriage, and this lifestyle is part of the culture. Cohabitation is extremely common in the Netherlands, Norway, and Sweden. Ninety-nine percent of married couples in Sweden cohabit before they married, and nearly one in four couples are not legally married (Cavanaugh, Blanchard-Fields, 2006). Decisions to marry in these countries are typically made to legalize the relationship after children are born. Thus, what we can conclude is that pregnancy out of marriage is an acceptable behavior in advanced countries. In contrast, cohabitation, and thus, pregnancy before marriage is not an acceptable behavior in Muslim countries. Not only that. If a child born in a legal marriage but it was affirmed by the couple that they have had sexual intercourse before marriage, and was pregnant before getting married, a child is also considered as an illegitimate. The point here is that if the couple was having sexual intercourse out of marriage, and they decided to get married after knowing the woman has pregnant, it should be remained secret. Having sexual intercourse out of marriage is forbidden in Islam. A child which is born through this conduct will not be recognized as a legitimate child; unless the couple decided to be married before the pregnancy reach four months and before no one else knows about the forbidden pregnancy. In other words, the forbidden pregnancy should remain secret. The reason behind this is that the woman will normally give birth after six months of the marriage and considered normal amongst scholars in this field.

Conclusion:

A child born outside of marriage has been considered as illegitimate according to Islamic law, and thus

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is not viewed as an acceptable birth according in Malaysia. Illegitimate means that the child has not been accepted as a child of the man responsible for the pregnancy of the mother. In the birth certificate, the father of this child has been considered as anonymous. Although the number of illegitimate child in Malaysia in recent years is growing, little is known about the exact number of the illegitimate child. Thus, it is felt that research on illegitimate child need to become the focus of extensive concern. Illegitimate child is related to problems such as inheritance, guardianship in marriage, the question of incest, and many others related to Islamic family law. There have been many births that have been considered as illegitimate. The National Fatwa Council holds the opinion that only a child born after six months from the date of marriage can be considered as legitimate. This paper discusses three main categories of illegitimate child according to Islamic law in Malaysia. As the paper have discussed, there are three categories of illegitimate child according to Islamic law in Malaysia, namely a child born as a result of rape, a child born from pregnancy did not reach 6 months, as well as a child born from a pregnancy before marriage.

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