

**BLOOD MARRIAGE AND CHILD STATUS IN INHERITANCE
PERSPECTIVE OF IMAM NAWAWI**

Submitted : March 2022	Revised : June 2022	Published : July 2022
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Abstract: Islam is a religion that upholds the rights and obligations of all human beings and cares for all the aspects needed in life. Some of the most important aspects of life that must be fulfilled are the distribution of libido properly and in accordance with the provisions of applicable norms. This is where Islam enacts and strictly regulates the concept of marriage. As for the ins and outs of marriage, especially regarding the boundaries of blood marriage or close relatives, the researcher specializes in the conception of Imam Nawawi's perspective as the main reference for research, especially in the context of the consequences of the marriage law and what is the status of the inheritance rights of the children resulting from the marriage. Some general findings regarding this research, the majority of the Ashabul Mazdhab found that as long as there was no intentional element, the marriage was classified as *wath' syubhat* and the child resulting from the marriage was a *tabi' child*, namely obtaining full inheritance rights from both parents. Based on Imam Nawawi's perspective, the consequences of inbreeding marriage are grouped into several points: if there is an intentional marriage the two are *fasid* and both are punished with death and their property is confiscated as is the law of the origin of adultery against a *mahrom*, if it is based on mutual ignorance both of them are punished with *wath' syubhat*, but if one of them Among them there are those who hide the truth, so for them they are killed and their property is confiscated, while the status of children's inheritance rights follows the marital status of their parents.

Keywords: Blood Marriage, Child Status, Imam Nawawi Perspective

Abstrak: Islam adalah agama yang menjunjung tinggi hak dan kewajiban seluruh umat manusia serta memperhatikan segala aspek yang dibutuhkan dalam kehidupan. Beberapa aspek kehidupan terpenting yang harus dipenuhi adalah penyaluran libido dengan baik dan sesuai dengan ketentuan norma yang berlaku. Disinilah Islam enaknya dan mengatur secara tegas konsep pernikahan. Adapun seluk beluk perkawinan khususnya mengenai batas-batas perkawinan sedarah atau kerabat dekat maka peneliti mengkhususkan pada konsepsi perspektif Imam Nawawi sebagai acuan utama penelitian khususnya dalam konteks akibat hukum perkawinan dan apa adalah status hak waris anak-anak hasil perkawinan. Beberapa

temuan umum mengenai penelitian ini, mayoritas Ashabul Mazdhab menemukan bahwa selama tidak ada unsur kesengajaan, maka perkawinan tersebut tergolong wath' syubhat dan anak hasil perkawinan tersebut adalah anak tabi' yaitu memperoleh hak waris secara penuh. dari kedua orang tua. Berdasarkan pandangan Imam Nawawi, akibat perkawinan sedarah dikelompokkan menjadi beberapa poin: jika terjadi perkawinan yang disengaja keduanya fasid dan keduanya dihukum mati dan hartanya disita sebagaimana hukum asal zina terhadap mahrom , jika atas dasar saling jahil keduanya dihukum dengan wath' syubhat, namun jika salah satunya diantara mereka ada yang menyembunyikan kebenaran, maka bagi mereka dibunuh dan hartanya disita, sedangkan status anak-anak hak waris mengikuti status perkawinan orang tuanya.

Kata Kunci: Perkawinan Sedarah, Status Anak, Perspektif Imam Nawawi

A. Introduction

Marriage is something sacred and glorified in religion, both Islam and other religions. Therefore, not everyone can do it alone, but someone else must marry and be a witness to the marriage. More than that, in marriage there is also an agreement and agreement or commitment to carry out the obligations and responsibilities of each (husband and wife). The stability of household life is the basic capital for efforts to foster a happy and prosperous family.¹

The immortality of the human population will be achieved by gathering or joining men and women which is then called marriage. That method is determined according to human nature and is the only means to prosper the world, to decorate it and to see its beauty and fruit. This provision is set by Allah SWT for humans to encourage the meeting of the two types of humans (male and female), which will lead to calm, compassion and peace.² As for some humans, they abandoned their character or instincts and returned to their former habits, which are like animal life, which resulted in great damage, which brought disaster to humanity as a whole, as is happening to some of humanity today.

If we picture a group of men competing to prey on women, it will look like what is happening now, namely the appearance of mutual envy, hatred, lust,

¹ J.Satrio. Hukum Keluarga tentang Kedudukan Anak dalam Undang-Undang. Bandung: PT Citra Aditya Bakti, 2005

² Sayyid Sabiq. Fiqhus Sunnah. Kairo: Darul Fath lil l'lam al Araby. 2001

injustice, mixing of offspring, damage to human morality, or the spread of diseases that cannot be avoided by anyone. . Allah said in Surah Al-Israa verse 32:

وَلَا تَقْرَبُوا الزَّوْجَ إِذَا كَانَ فُحْشَةً وَسَاءَ سَبِيلًا

“And do not approach adultery, verily adultery is an abomination and a bad way.”³

Adultery in Islamic law is considered an immoral act and is regarded as a finger. This opinion is agreed upon by the scholars except for differences in punishment. According to some scholars, regardless of the perpetrators, whether it is done by unmarried people or married people. As long as the intercourse is carried out outside the framework of marriage, this is called adultery and is considered an unlawful act. Nor does it reduce the sense of criminal value even though it was done voluntarily or consensual. Even though no one feels aggrieved, adultery is seen by Islam as a violation of sexuality which is very reprehensible without knowing priority, adultery is forbidden in all respects.⁴

Unlike the case with the view of positive law originating in Western law. In positive law, adultery is not considered a violation and certainly not punished as long as no one feels aggrieved. Because relying on an act as a crime is only due to losses. In the Criminal Code, the act of adultery that allows for punishment is the act of adultery committed by married men and women while married adultery is not included in the prohibition.⁵

Crime in Islamic criminal law, is defined as a legal prohibition given by Allah, whose violation carries a punishment determined by Him. Thus a crime is an act that is only prohibited by the Shari'a.⁶ Islam is one whose legal basis comes from the Al-Qur'an and Hadith, so that in the execution of punishments Islam highly upholds the values of justice, Islamic law in principle refers to the provisions contained in the Qur'an and Hadith, and reason is used as a tool in solving the law.⁷

³ Departemen Agama R.I, Al-Quran dan Terjemahannya, Semarang: PT. Karya Toha Putra Semarang, 2002.

⁴ Departemen Agama RI. Kompilasi Hukum Islam. Jakarta, 2000.

⁵ Abdul Aziz Dahlan (ed.) et. Al. Ensiklopedi Hukum Islam, Vol. 4.

⁶ Departemen Agama RI. Kompilasi Hukum Islam. Jakarta, 2000.

⁷ Sayuti Thalib. Hukum Keluarga Indonesia, Cet. 3. Jakarta: UI-Press, 1998.

Allah swt wants marriage to return humanity to goodness and serenity. Among the wisdom in the law of marriage is contained in it regarding boundaries, laws and maintenance of the rights and obligations of each married couple. It is also explained to them how and the legitimate legal relationship between them, as well as the straight path that must be taken if they really want happiness and peace in their relationship, and to get a lot of goodness in this world and the hereafter.⁸

The purpose of marriage according to Islam, among others, is for the sake of preserving offspring. Marriage can encourage people to have children and try to have offspring so that they become assets and strengths for Muslims. The second is to follow the sunnah of the Prophet Muhammad SAW well. Marriage is the sunnah of the prophet and the large number of people makes the Prophet happy and happy. because he is proud in front of other people on the Day of Judgment. The third is to give birth to a child with the aim of getting a reward from Allah. The fourth is maintaining self-purity and worshiping Allah. Marriage can maintain itself and avoid unlawful and dirty acts. Fifth is to produce tough Muslim cadres. When a Muslim marries, the aim is that Allah gives gifts in the form of pious children so that they become defenders of religion and uphold Islam according to their capacities and roles in society. The sixth is to produce jihad cadres in the way of Allah. Seventh is to seek a sufficient life, because through marriage the adequacy of life can be fulfilled.⁹

The purpose of the marriage is also explained in the Qur'an Surah Ar Rum verse 21.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً ۗ إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

“And among the signs of His power is that He has created for you wives of your own kind, so that you are inclined to and feel at ease with him, and He made them between you with love and affection. Indeed, in that there are signs for people who think.”¹⁰

⁸ Mahmud, Akilah. Keluarga Sakinah. Makassar: Alauddin University Press, 2012

⁹ Kanang, Abdul Rahman, Perlindungan Hukum dan Pemenuhan Hak-hak Konstitusional Anak. Makassar: Alauddin University Press, 2011.

¹⁰ Departemen Agama R.I, Al-Quran dan Terjemahannya, Semarang: PT. Karya Toha Putra Semarang, 2002.

In Islam, various matters related to marriage have been regulated in detail regarding who, with whom, how the marriage process is carried out, as well as the conditions and pillars that must be met so that a marriage procession can be declared valid. If in the future problems arise related to the various matters above, then a marriage contract can be canceled or determined according to the applicable legal regulations.

In addition to the non-fulfillment of the legal requirements for marriage, blood relations are also a reason for the cancellation of a marriage bond. The problem that then arises is what if the marriage has been annulled, the fasakh law is caused because the two husband and wife are known to have blood relations while the couple already has children, such as the case that occurred in Kalimantan in the 1970s and also a true story that was once filmed on television which was broadcast on a private TV station in Indonesia in 2003,¹¹ where children born from these marriages experience mental disorders and physical disabilities. Does the child have the right to be assigned to both parents who have been fasakh, one of the parents, or does he have no inheritance rights at all? so that in inheritance he also does not have any rights. This is a separate problem related to the next child's life, both for himself and for other family members. Clarity on this issue must exist, so that the possibility of various conflicts that will arise can be eliminated.

B. Research Methods

The research method that the author uses in this research is a qualitative method with data collection techniques through literacy. The data obtained were processed in an analytical descriptive manner and presented in a narrative form. Descriptive research is a type of research that describes or describes a situation, case studies, problem concept analysis, feed back trial error, as clearly as possible without any treatment of the object being examined.¹²

C. Results And Discussion

1. Analysis of the Law of Blood Marriage According to Imam Nawawi.

¹¹ Abdul Aziz Dahlan (ed.) et. Al. Ensiklopedi Hukum Islam, Vol. 4.

¹² Kountur. Tehnik Penelitian Partisipatif . Jakarta: Pedoman Ilmu Jaya. 2009

Marriage (incest) is actually not a new phenomenon among the people. Incest is usually categorized by society as a taboo immoral act. He doesn't appear on the surface because it will always be considered a disgrace to the family if this is revealed and of course this is closely related to the culture and beliefs of people in every era. Children in inbreeding marriages are children born from a marriage in which there is a family affinity between them both to women who have blood relations in the upward line, women who have blood relations in a straight line down. Children born from inbreeding marriages have a very heavy psychological burden, because society's view of children from inbreeding marriages will burden the psychology of the child.¹³ Society usually imposes sanctions haphazardly regardless of who is actually at fault and who is innocent. That is actually what happens in society, namely spontaneous law.¹⁴ According to Islamic law, for the sake of law, in order to regulate and maintain blood relations (nasab), offspring or children are broadly divided into two categories¹⁵:

- a. Syar'i children are children who have a family relationship (legally) with their male parents.
- b. Tabi'i children are children who do not have a family relationship with their male parent.

From Abdullah bin Abbas, he said: had said Rasulullah Shallallaahu 'alaihi wasallam,

من وقع على ذات محرم فاقتلوه

*“Anyone who has intercourse with his mahram should kill him.”*¹⁶

It was reported to Al-Hajjaj that a man raped his own sister. So, he Shallallaahu 'alaihi wasallam also said,

¹³ Kanang, Abdul Rahman, *Perlindungan Hukum dan Pemenuhan Hak-hak Konstitusional Anak*. Makassar: Alauddin University Press, 2011.

¹⁴ Sadarjoen, Sawitri Supardi. *Bunga Rampai Kasus Psikoseksual*. Bandung: 2000

¹⁵ Al-Jaziri, Al-Fiqhu 'Ala Madzahibul Arba'ah. Beirut: Darul Fikri, juz IV, 1982

¹⁶ Imam Muslim, Shahih Muslim. Riyadh, Darussalam, 1998.

احبسوه وسلوا من هاهنا من أصحاب رسول الله - صلى الله عليه وسلم - فسألوا عبد الله بن مطرف فقال: سمعت رسول الله - صلى الله عليه وسلم - يقول: من تخطى حرم المؤمنين فخطوا وسطه بالسيف

“Hold him and ask your companions of the Messenger of Allah about this matter! Then, they asked Abdullah bin Mutharrif, then he said: I once heard the Prophet sallallaahu 'alaihi wasallam saying, "Whoever steps over the honor of the believers, then step over the middle (of his body) with a sword".¹⁷

Then in another hadith:

عن يزيد بن البراء، عن أبيه، قال: لقيت عمي ومعه راية، فقلت له: أين تريد؟ قال: «بعثني رسول الله صلى الله عليه وسلم إلى رجل نكح امرأة أبيه، فأمرني أن أضرب عنقه، وأخذ ماله

"From Al Barra', he said, "I once met my uncle who was with a group of war troops, then I said to him, where are you going?' My uncle replied, the Messenger of Allah had sent me to meet a man who had married his father's wife, and he ordered me to cut off his head (kill him) and seize his property.¹⁸ Whoever commits adultery with his mahram, the hadd punishment for him is to be killed, whether he is married or unmarried. If he marries her, then he is killed and his property is taken.¹⁹

Iman Nawawi Rahimahullah argues on these three Hadiths,

وفيه دليل على القتل بالتوسيط. وهذا دليل مستقيل في المسألة، وهو أنّ من لا يباح (١) وطؤه بحال فحدُّ وطئه القتل. دليله: من وقع على أمه وابنته. وكذلك يقال في وطء ذوات المحارم ووطء من لا يباح له وطؤه بحال، فكان (٢) حدّه القتل، كاللوطي

“In this hadith there is evidence for the punishment of killing by cutting off the middle part (of the body). This is separate from the problem. In fact, anyone who has intercourse with someone who is not permitted to do so by law, the punishment for him is to be killed. The argument is the same as someone who has intercourse with his own mother or daughter, that is what is said in matters of having intercourse with a mahram (including in false marriages that are realized by one or both of them) and having intercourse with someone who is not permissible. This was done to him according to the original law, so the punishment for the culprit is to be killed like a homosexual offender).²⁰

¹⁷ Ibid

¹⁸ Muhammad bin Ismail Al-Bukhari, Shahih Al-Bukhari. t.t: Dar Tauq Al-najah, 1422 H.

¹⁹ Syeikh Abdurahman Al-Juzairi, Fikih Empat Madzhab, Cet. 1. Surabaya

²⁰ Al-Minhaj Syarh Shahih Muslim, karya Imam An-Nawawi terbitan Dar Ihyaut Turots, cetakan ketiga.

Based on the Syarah contained in the quote from al Imam Nawawi's fatwa, it was explained that the law of inbreeding marriage is fasid and invalid. And the association (jima') in it for both of them is subject to the law of adultery against the mahram, namely being killed and having their property confiscated. As well as children born from fasid marriages are categorized as adulterous children whose lineage is cut off from their biological father.²¹

Except for marriages between mahrams which are based on mutual ignorance of the status of each of the two, they are punished by wath subhah. And the lineage status of children who are born is related to their biological father. But if one of the two hides the identity of his partner, and knows and consciously knows that the marriage they are carrying out is incest, then the death penalty will be imposed on him and his property will be confiscated. As well as stating that the child born from the marriage is still assigned to both parents because he was born from a valid marriage even though it is fasid (wath subhah), and the child has every right attached to a legitimate child in the eyes of the law.²²

1. Analysis of the Inheritance Status of Children from Blood Marriage According to Imam Nawawi

Imam Nawawi's perspective relates to the syarah matan of the previous quote in the current point regarding the status of inheritance rights for children resulting from incestuous marriages namely; for incestuous marriages because both are intentional, or based on the cunning of one of the bride and groom, then the marriage is fasid, and the child born from the marriage is categorized as an adulteress child whose lineage is cut off from his biological father, and does not inherit from his father.²³ Whereas the lineage status of a child born in an incestuous marriage is based on pure ignorance and coincidence of both, the child born from the marriage is inherited by his biological father, and inherits the assets of both biological parents.²⁴

Referring to Indonesian law, it can be concluded that "the rights of children, especially in obtaining inheritance rights from their biological parents, are

²¹ Majmu' Syarh Al-Muhadzdzab, karya An-Nawawi terbitan Daru Fikr.

²² Idris Dja'far. Kompilasi Hukum Kewarisan Islam. Jakarta: Pustaka Jaya, 1999

²³ Abdul Aziz Dahlan (ed.) et. Al. Ensiklopedi Hukum Islam, Vol. 4.

²⁴ Ali, Zainuddin. Pelaksanaan Hukum Waris di Indonesia. Jakarta: Sinar Grafika, 2008.

determined absolutely in their existence (presentation of their parts). refers to the law book of the Civil Code (BW).²⁵ While the perspective of the KHI book is mentioned, Children of inbreeding here are different because it is carried out by someone who has blood relations, for example between a father and his own biological child. If from this act a child is born, then there will be a problem regarding the rights and position of the child. If the child is not seen as the child of his biological father, then he has no mutual relationship with that man, and is referred to as a *tabi'i* child who does not have a family relationship with his father.

D. Conclusion

If there is an intention, the law of inbreeding marriage is *fasid* and invalid and the association in it is imposed on both of them by the law of adultery against a mahram, namely being killed and having their property confiscated. Marriages between mahrams based on mutual ignorance of each other's status are considered *wath subhah* for them. If in an incestuous marriage one of the two hides the identity of his partner, and knows and consciously knows that the marriage they are carrying out is a blood marriage, then for him (the one who hides it) the death penalty is imposed and his property is confiscated. The status of the inheritance rights of children resulting from incestuous marriages are; In points A and C: children born from *fasid* marriages are categorized as adultery children whose lineage is cut off from their biological father, and does not inherit from their father. For point B: lineage status of children who are born to their biological father, and inherit the assets of both biological parents.

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²⁵ Kanang, Abdul Rahman, *Perlindungan Hukum dan Pemenuhan Hak-hak Konstitusional Anak*. Makassar: Alauddin University Press, 2011.

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