



The Law on Marrying Off Children Out of Wedlock by Their Biological Father According to Imam Syafi'i

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Abstract

In recent times, there have been many cases of biological fathers marrying off their daughters outside of marriage, one of the factors being that the girl's parents did not disclose that she was born out of wedlock (adultery). The objective of this study is to examine the ruling on a biological father marrying off his daughter outside of marriage according to Imam Syafi'i. Imam Syafi'i opines that the marriage of a daughter by her biological father is invalid. This research employs a qualitative method with a library research (literature review) approach. Data were collected through the analysis of primary and secondary sources related to Islamic jurisprudence, particularly the views of Imam Syafi'i. The study aims to understand the legal and theological reasoning behind Imam Syafi'i's opinion, by critically examining classical and contemporary scholarly works.

INTRODUCTION

Marriage law is one of the laws established by Allah for the benefit of all mankind, to channel human nature and produce legitimate offspring in accordance with Islamic law (Khamidiyah & Hertina, 2020; Maimun, 2022; Musyafah, 2020). In addition to creating a harmonious, loving, and compassionate family environment, marriage, according to Islamic jurisprudence, refers to a contract (agreement) that permits sexual relations through the use of the marriage vows. Furthermore, according to the compilation of Islamic law, marriage is a strong contract or promise (*mistaqon gholidzon*) to obey Allah's commands, and fulfilling it is an act of worship.

According to Shafi'i scholars, marriage is a contractual agreement that includes the element of permitting sexual intercourse using the phrase *ankabtuka* or *tazanwajtu*, or commonly referred to as *ijab qabul* (Azis & Qayyum, 2022; Habiburrahman & Sa'adah, 2025; Sugitanata, 2022). From the above definition, it can be understood that marriage is the union of a woman and a man in a lawful bond, meaning it is permissible for them to live together and establish a household (Lisnawati & Imran, 2023; Malisi, 2022; Wardana, 2024).

When discussing marriage, it is impossible to ignore the status of children born from a lawful marriage or an unlawful marriage. However, in this case, we are not discussing the status of children born from a lawful marriage, but rather the status of children born from an unlawful marriage. Although the rules governing legitimate

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marriages under Islamic law are clear and must be followed, many people violate them solely to satisfy their sexual desires, resulting in acts that are not permitted by Islamic law, from which a child (fetus) is conceived. Thus, after birth, the child is considered an illegitimate child. Based on this issue, this article examines the legal ruling on marrying an illegitimate daughter by her biological father according to Imam Syafi'i. This case is commonly encountered in various segments of society, both in urban and rural areas.

METHODS

The method used in this study is library research, which involves studying and searching through various sources (literature), because the data sources to be explored are focused on literature studies (Engkizar et al., 2021). This method allows researchers to collect relevant theories, concepts, and previous findings as a basis for analyzing research problems. Through this approach, researchers can gain a comprehensive understanding of the topic by synthesizing information from credible academic sources. In addition, library research helps in identifying gaps in previous studies, which can serve as a foundation for developing new insights or perspectives.

RESULT AND DISCUSSION

Definition of Guardian

The word guardian comes from Arabic, namely *Al-Wali* with the plural form *Auliyyaa*, which means lover, brother, or helper. According to the term, the word wali refers to a person who, according to religious and customary law, is entrusted with the responsibility of managing the affairs of an orphaned child until the child reaches adulthood, as well as the party who represents the bride during marriage and who makes the marriage vows with the groom (Diyansyah et al., 2022; Khoiruddin, 2020; Rinwanto & Arianto, 2020).

A guardian generally refers to a person who, by virtue of their position, has the authority to act on behalf of another person. In the context of marriage, a guardian is someone who acts on behalf of the bride in a marriage contract (Aditya & Fathullah, 2023; Jamri, 2021; Nasution & Wijaya, 2020). The legal basis for guardianship is mentioned in several hadiths, including the saying of the Prophet Muhammad, which means: "Any woman who marries without the permission of her guardian, her marriage is invalid, her marriage is invalid, her marriage is invalid".

Imam Syafi'i's View on the Case of Marrying a Child Outside of Marriage by Her Biological Father

Imam Syafi'i argues that the marriage of a girl by her biological father is invalid. If a woman and a man marry, and a child is born alive and fully formed before six months, or if the child is born after the marriage has lasted more than six months, but the woman knew that the child existed before the marriage took place, then the child cannot be attributed to the biological father (Kaputra et al., 2021). In such a case, the guardian of the child will be the sultan or the judicial guardian. As-Syaikh Ibn 'Usaimin, may Allah have mercy on him, stated in *As-Syarhul Mufti* that the term "sultan" refers to the Imam (Amir) or his representative. In Indonesia, they are the officials (penghulu) of the Religious Affairs Office. Based on the above explanation, it is clear that Imam Shafi'i stated that the child resulting from adultery is not attributed to the father but only to the mother (Kadafi & Shuhufi, 2024; Maulana, 2020). It is permissible for him to marry the child from his adultery, but it is forbidden for him to marry her off.

An illegitimate child is a child born as a result of adultery committed by a man and a woman without a valid marriage bond according to Islamic law (Asman, 2020; Susanto et al., 2021). In Islamic law, the marital relationship between a man and a woman without a valid marriage bond is called “zina” so if the relationship results in a fetus, then after birth, the child is considered an illegitimate child (Musyafah, 2020).

An illegitimate child is a child born from a relationship between a man and a woman without a valid marriage (Attas, 2024; Sugiarto et al., 2023; Muna & Aisyi, 2024). The most authentic opinion of Imam Syafi'i regarding the definition of marriage is that the word, from a denotative perspective, means a contract, while from a connotative perspective, it means a human relationship as mentioned in the Quran and Sunnah, or commonly referred to as the valid performance of a contract to engage in marital relations between a man and a woman due to a bond established in accordance with Islamic law.

The marriage contract has several pillars that are integral to its substance. The marriage contract also has several conditions, which are divided into conditions of validity, conditions of legality, conditions of fulfillment, and mandatory conditions. Among the essential elements of the marriage contract are the offer and acceptance, meaning the interdependence of one with the other (Koswara et al., 2020; Muhammad Fahrol & Mhd Haikal, 2025; sallom, 2023). Both signify the mutual consent of the parties involved and indicate the attainment of divine approval. The default ruling on marriage is permissibility. Marriage is recommended for those who need it. The purpose of marriage in Islam goes beyond the fulfillment of biological desires, involving social, psychological, and religious aspects (Hariati & Salat, 2023). Marriage can preserve religious norms, customs, reproductive functions, and future regeneration, as well as uphold humanity and prevent religious violations.

The purpose of marriage in Islam reflects the human condition in accordance with the nature of life and social norms. A child born out of wedlock is a child born without a valid marital bond, leading to issues regarding the distribution of inheritance. According to Imam Syafi'i, if a person commits adultery and then marries after becoming pregnant, a child born before six months of marriage is not recognized as the biological father's child but is recognized as the mother's child (Botu et al., 2023). If born after six months of marriage, the child is still not recognized as the father's child because the mother knew about the pregnancy before the marriage contract. The argument used is that the daughter born out of adultery is not her daughter according to Sharia law, therefore the two do not inherit from each other, are not obligated to provide financial support, and cannot be guardians in the marriage of the daughter, and there is no blood relationship between the two. Therefore, if the daughter is not her daughter according to Sharia law, she is not included in the generality of Allah's command. The evidence states that the daughter may not marry the man with whom her mother committed adultery, according to Imam Shafi'i, as mentioned in Surah An-Nisa' verse 23:

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ

Meaning: “It is forbidden for you to marry your mothers, your daughters, and your sisters”

Syafi'i Fiqh states that it is permissible to marry the child of adultery, as stated in the book *Al-Um*, which means: “As for adultery, there is no ruling on the person who commits adultery, whether it is haram or halal. If a man commits adultery with a woman, it is not haram to marry her child, nor is it haram for the father.” From the above statement, it is clear that according to Shafi'i Fiqh, it is permissible for the father who committed adultery to marry the daughter born from adultery, and similarly, it is not haram for a man from the father's lineage or another man to marry

the daughter born from adultery. Therefore, it is not haram to marry the child of adultery (Hamdani et al., 2022; Jinawar Al-Yamani, 2025).

According to Imam Syafi'i, the biological father marrying the daughter resulting from adultery is valid, there is no *fasakh* for him, but the ruling is *makruh* (it is permissible to do it, but leaving it is rewarded). If a man marries a woman (his adulterous partner) and they are of the same religion, then they divorce, it is haram to marry her child if the child was born more than six months into the marriage. In that case, the child can be attributed to the man (Engkizar et al., 2025). However, if the child is born less than six months into their marriage, the child cannot be attributed to the father but only to the mother. But if he divorces the mother before converting to the same religion during the marriage, it is permissible for the man to marry his daughter.

If a man commits adultery with a woman, and after six months the woman gives birth to a child who may be the result of that adultery, then there is no difference of opinion among scholars that there is no blood relationship between the child and the man, and neither of them can inherit from the other (Engkizar et al., 2025). Regarding the marriage of the man to the woman, Imam Syafi'i states, "I disapprove of him marrying her, but if he does marry her, the marriage is not invalidated." In the book *Al-Majmu'*, Imam Shafi'i states that if a man commits adultery with a woman and she gives birth to a daughter, it is disliked for him to marry her (it is permissible to do so, but refraining from it is more virtuous).

Syafi'i fiqh states that a man may marry his daughter, granddaughter, sister, and niece who are the result of adultery (Bahri, 2024; Khalidi, 2022). This is because these women do not have a legal blood relationship with him. Adultery does not render marriage (*mushabarah*) haram, so it is permissible for someone who commits adultery to marry the mother and child of the woman with whom he committed adultery. From the above statement, it is clear that the child resulting from adultery is forbidden for the mother to marry off because she is the one who gave birth to the child and is the mother's heir. Therefore, the guardian for the child's marriage is the judge, and it is permissible for the biological father to marry the daughter resulting from adultery because she is not his mahram (Engkizar et al., 2022).

CONCLUSION

In this discussion, after we have explained the contents, the next step as a conclusion to this discussion is that we will conclude that the case we have presented above concerns the marriage guardian of a child born out of wedlock, namely the father becoming the marriage guardian of his child, even though the child is not the product of a valid marriage. The marriage took place five months before the child was born. When the child is born and grows up, and then marries, the man who is considered the father becomes the guardian. According to Imam Syafi'i, Imam Malik, and their colleagues: If a man marries a woman whom he has not yet consummated the marriage with or has already consummated, then if the time is less than six months from the marriage contract, and the woman gives birth, the lineage cannot be attributed to the man who caused the woman to become pregnant. The six-month period is calculated from the time of consummation. However, Imam Hanafi bases the six-month period on the marriage contract, so the child cannot be attributed to the father.

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