The Status of Outside Marriage Children (The Study of Constitutional Court Regulation No. 46/PUU-VIII/2010 on February 27th, 2012 Based on the Fuqaha' Perspective)

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Abstract.

Fornication is a kind of jarimah (felony) resulting in confusion of the biological father. However, nowadays, there is clarity on the status of the children out of marriage. The Constitutional Court issued a decision of regulation No. 46/PUU-VIII/2010 on February 27th, 2012 about the out wedlock children who have a civil relationship and the blood rapport with their biological father as long as it can be proven biologically. This regulation drives some criticisms from various parties; the pro-side of the Court Regulation will claim it in the term of the doer of the adultery, while the contra-side of the Court Regulation will review it in the term of legalized the adultery. Furthermore, the aims of this study are: First, to know the opinion of jurists' law (fuqaha") about the status of the out of wedlock children; Second, to find the legal implications of the out of wedlock children after the application of the Constitutional Court regulation No. 46/PUU-VIII/2010 on February 27th, 2012 based on the Fuqaha' perspective?. Moreover, this study uses the library research. The data are collected through the documentary of the primary and secondary data sources. The collected data are, then, analyzed qualitatively by using the content analysis. The results of this study are: Firstly, This according by the Shafi'i jurists' of four and the ad-Dzahiri the out of wedlock children (bastard) are not related to their biological father, but they are related to their biological mother and her family. Secondly, This according by some groups of Hanafi and Shaykh of Islam Ibn Taymiyah corroborated by ibn Qayyim al-Jauziyyah the wedlock children (bastard) are related to the men as their biological father and their father's family. Thirdly, the Constitutional Court (MK) regulations do not have any legal implications associated on the civil relationships of the out wedlock children (natural children) with their biological father. Moreover, the attitude of the biological father is classified as a jarimah (felony), and it is entitled to a penalty of the ta'zir; it is an obligation to provide the children, which the amount is considered to the fit and proper in accordance income of his; while the other civil rights includes the right of lineage, inheritance, and the rights of guardians. The ta'zir punishments in the provision of livelihood can be executed after the filing of a lawsuit and obtain an order from the Religion Court. The provision of the living is solely to satisfy the justice and legal protection for the interests of children's rights.

Keywords: *Constitutional Court Regulation, Jurists' Law*

1. INTRODUCTION

The existence of children in the family is something that is very meaningful. The child has a different meaning for every person. Some people assume that the child is a

connector descent, as a future investment, the child is the hope to be backrest at a time when the elderly. There are also who regard the child as a capital to improve the ranking of life so that it can control the social status of the parents. The child is the holder of the privilege of the parents. The time parents are still alive, the child as a sedative and as a parent has died, the child is the epitome of the successor and the emblem of eternity. The child inherits the signs in common with the parents, including the distinctive traits, both good and bad, high and low. Children are the parts of the soul and the pieces of meat to his parents.

Marriage is a bond that is legitimate to build a new home and a family, where the husband and wife carry out the mandate and responsibility. Pensyari'atan marriage has the purpose, among others, to have offspring that are legitimate in the society, nourishes the child, justifies the relationship of gender to acquire the demands of the intent of the nature of humanity, nurturing yourself someone that don't fall into the valley of adultery and create a sakinah family. Islamic law gives severe sanctions against adultery, because adultery can lead to lack of clarity in the offspring, so that when the child is born as a result of adultery, then there will be no doubt about who his father is. With its marriage of any child born out of bed the wife, the absolute becomes the child of the husband of it, without the need for recognition from him.

It seems that this time of the institution of marriage itself is not something sacred. Indonesia as a developing country so it absorbs a wide range of elements both in the field of technology and budayadari other countries. The absorption of these elements can not be filtered again and finally bring a positive and negative impact for youth in Indonesia. One example of the positive impact of the influx of foreign culture is the increasing public awareness of the science and the law. While one of the negative impact of the inclusion of elements of foreign culture is the rise of sexual intercourse committed by a spouse that has no ties of marriage (free sex). Promiscuity was not only performed by the adult children, even in the absence of sexual relations before marriage are increasingly mushrooming in society.

Social change and change in the law is a phenomenon of mutual influence one another. Changes to the law in a country can affect social change in the community. Similarly, on the contrary, social change in the community can bring to change the law in a country. Social change in a society can affect change in terms of other life. Changes to the law, seems to be able to affect change in terms of the other life.3 Similarly, on the contrary, changes in society can affect the change in the law. Although the possibility was not only caused by the influence of social change, but how far can survive from the flow of such changes. One of the effects of social change it is the decline in the moral community, the widespread promiscuity, which resulted in the number of children born “out of Wedlock”.

Children outside of marriage in Indonesia is regulated in Law No. 1 year 1974 article 43 paragraph(1) and (2)states: (1) a Child born outside of marriage has only a civil relationships with his mother and his mother's family. (2) the Position of the child

referred to in paragraph (1) above will be further diaturdalam Government Regulation. Law N0 1 Tahun1974 about marriage already in force in the period +39-year-old, but the legality of the law a child out of wedlock in the status quo, especially regarding the legal protection of the fundamental rights they are very weak. Rights-the right to obtain parental care, maintenance, education and the cost of livelihood and the other with his biological father and his father's family and the environment.The Indonesian Child Protection commission (KPAI) revealed nearly 50 million Indonesian children do not have birth certificates, this is due to among others the marriage is not valid or is not recorded in the Office of Religious Affairs (KUA) or mating sirri, this figure is almost half of the total number of children below 5 years in Indonesia.4 According to data from the head of the Civil registry Office in Jakarta, annually +1000 children out of wedlock requested his birth certificate. The Constitutional court (MK) as state institutions in the state system of Indonesia is the holder of the power of justice together with the Supreme Court. Article 24 paragraph 2 of the Constitution of the republic of Indonesian Year 1945 states, judicial power is exercised by a Supreme Court and judicial bodies that are below it in the general courts, religious courts, military courts, environmental, administrative courts, and by a Constitutional Court (MK).

The Constitutional court (MK) has received the petition filing Yudicial Review22 asked by Hj. Aisha Mokhtar and his son named Muhammad Iqbal bin Moediono to the provisions of article 2 paragraph (2) and article 43 paragraph (1) of Law Number 1 Year 1974 on marriage. Moerdiono as a husband has been married married again to his second wife named Hj. Aisha Mokhtar in shari"at Islam with not recorded in the Office of Religious Affairs (KUA), so he did not have a Book of Quotes Marriage Certificate. From such a marriage was born a son named Muhammad Iqbal Ramadhan bin Moerdiono. With the entry into force of Article 2, paragraph (2) and article 43 paragraph (1) of Law Number 1 Year 1974 on marriage, then Hj. Aisjah Mukhtar and Mohammad Iqbal Ramadhan rights of the constitution as a citizen of Indonesia that is guaranteed by the article 28 paragraph (1) of the 1945 have been harmed, because of the status of marriage and the child that is born to be not legally valid. Upon such request, the Constitutional Court gave the decision to grant in part the petition of the applicant by issuing the constitutional Court Decision No. 46/PUU-VIII/2010, Dated February 27, 2012 by changing the sound of article 43 paragraph (1) N0 1 Year 1974 on Marriage. The discharge of the constitutional court decision No. 46/PUU-VIII/2010, Dated February 27, 2012 about a child out of wedlock can be nasabkan to mr biological reap a lot of criticism. The attitude of the pros and cons of several NGOS, Religious Organizations and the MUI. Party against the decision of the constitutional court, among others, the Chairman of the Majlis Ulama Indonesia (MUI) KH. Maruf Amin said that the decision of the court already an overdose and contrary to shari'at Islam. Therefore, likening the result of a marriage with the child of adultery. Further, he asserts, the court has to feel like a God other than Allah, make the decision

you want. On another occasion he said: granting the same status in children born from the relationship of adultery, is considered against the law of the shari'ah, then as muslims don't need to comply with that decision because it violates the article 29 of the 1945 Constitution. He said the decision of the court should be immediately disallowed for messing up the order of the law of the shari'ah of Islam that clearly set the issue of the child in marriage.In the interpretation of Islamic law very clearly distinguished the status of a child born in a legal marriage with the child of the relationship is not legitimate, that is adultery. Islam give equal rights in a child who was born in a legal marriage with children born through the marriage sirri. However the decision of the court that made the status of the child from the relationship of adultery to be the same with a child from a legal marriage. The child of adultery, do not have the relationship of a child, the guardian of marriage, inheritance and living with the man who caused her birth, but has a relationship of inheritance, lineage and living with his mother and his mother's family. Nevertheless, MUI support the efforts of the legal protection of the child that is born. MUI asked the government to impose a penalty ta'zir to the male adulterer to meet the needs of the child's life as well as give the treasure after a man died through probate wajibat. In the era of reform now, the government has taken positive steps to change the law through the structure and legislation, the substance of the instrument legal guarantee and provide opportunities as well as issue a policy of political law. One of these policies is the establishment of the Constitutional Court (MK). On February 27, 2012 the supreme Court Konstistui RI issued a decision No. 46/PUU-VIII/2010 with the revamp (review) in article 43 paragraph 1 of the Act N0 1 of 1974 about marriage. The verdict has been given the legality of the law of blood relationship between the child with his biological father who was originally just a reality of becoming the legal relationship, that have the effect of law.

The purpose of an overhaul (review) article 43 paragraph (1) of the look very closely related to the hifz al-nasl, which is one of the principal objectives of the legal institution of marriage in Islam. Therefore, to achieve the goals that can be achieved properly and certainly, not with the remodel of article 43 paragraph (1)UUP such, but rather to change the Marriage Act overall this felt barren and not firm and does not provide any sanctions against those who break it.Among the Experts of Islamic Law (fuqaha), the Scholars of the Hanafis, Hanbalis and the opinion of the well-known class of Malikiyyah argue that the relationship of the body without the bonds of marriage are legitimate. Partner with the agency relationship with the bond of marriage which is valid the result of a relationship mushaharah, not a relationship inheritance rights because the right of inheritance was obtained through the relationship of one legitimate. Therefore, if a person had intercourse with a female, then it is forbidden for him to marry his mother, grandmother, daughter and son of his daughter.

According To Lili M. Rasjidi and Arief Sidharta, that human life is in fact a concrete controlled by the variety of the rule of law in the side by the rules of the social other.7 therefore, the norms of the law has been progressing and blend in with the

overall values and traditions prevailing in the society. As with any other law,40 the norms of the law on the status of children outside of marriage based on the constitutional Court decision No. 46/PUU-VIII/2010, dated February 27, 2012 can be accepted and applied as the provisions that are binding.

II. METHODS

This research is library research (library research), by using written materials in the form of a book, the book and the written sources relevant to the discussion. The nature of this research is descriptive analysis, the research aims to obtain a picture as a whole and clear about the position of a child out of wedlock after the Constitutional Court decision No. 46/PUU-VIII/2010, dated February 27, 2012 some of the books which have been published, and then provide an analysis based on the data collected.

Data collection was done through the study of documentation of source data. The Data collected were then analyzed qualitatively using content analysis (content analysis) is a scientific analysis of the position of a child out of wedlock after the decision of the Court. Number 46/PUU-VIII/2010 as well as the implications of the ruling on the perspective of the fuqaha". Analysis of these data using the approach in a systematic and objective about the legal status of children outside of marriage after the constitutional Court decision no. 46/PUU-VIII/2010 as well as the implications of the ruling on the perspective of the fuqaha, with how to collect, evaluate and mensintesikan evidence to obtain a conclusion. The techniques used in the analysis of the data can be selected one can be combined several techniques, namely: descriptive Method is used to give an idea is fundamentally about the position of a child out of wedlock after the decision of the Court: No. 46/PUU-VIII/2010, dated February 27, 2012 the perspective of the fuqaha". While the method of content analysis is used to determine keduduka child out of wedlock after the decision of the Court: No. 46/PUU-VIII/2010, dated February 27, 2012 in general, will then be analyzed in an inductive, i.e. with the method of making general conclusions resulting from the special facts.

III. RESULT AND DISCUSSION

The Position Of A Child Out Of Wedlock Perspective Fuqaha

Child out of wedlock in the terminology of fiqh scholars called the son of zina that children born as a result of the relationship of a male and a female that is not valid. The relationship between a male and a female is not valid as intended is intercourse (intercourse or wathi) between two people that are not tied to rope a wedding that meet the elements of harmony and the terms of the marriage that has been determined. The relationship of husband and wife that are not valid such can occur on the basis of consensual or because compulsion for example rape, committed by a person who has been married or not married. One child outside of marriage there are two opinions among the jurists that: First, the Fuqaha View of the four and Madhahib al-Dahiri agreed that one child out of wedlock can only dinasabkan to his mother. The legal

status of children outside of marriage in ilhaqkan or by analogy to the child mula'anah (children, which was denied by his own father). Hadith riwayatAmr bin Shu'aib shows that the Prophet peace be upon HIM deny to menasabkan child out of wedlock (son of zina) to mr biological. Action menasabkan child outside of marriage to his father, including the behavior of jahiliyyah. The prophet did not give the explanation of the circumstances of the child whether the child is a legitimate child or children out of wedlock. One is the favor of God, deliciously it is only used to be obedient and dutiful to Him not to disobey Him. Deliciously it is not obtained from adultery. Assign one child due to adultery partner with quick and easy issue of adultery and publish adultery as indecency among the believers. Imam as-Sarakhsi say: disconnect one according to the law, one should essentially be the same to prevent and prohibit adultery, if the sperm of someone wasted with adultery, then he keep his pride to do adultery.

Second, say a child out of wedlock (son of zina) can dinasabkan to mr biological if he ask a child born to be recognized as his son even though the woman who gave birth to not admit it and the child is not the child who is born it is not a child's doubtful. This opinion was stated by Shaykh of Islam Ibn Taimiyyah266, corroborated by Ibn al-Qayyim10 and one narration from Abi Hanifa as described by Ibn Qudaamah said in al-Mughni11. He argues: it can not be said a sin, if a man with a woman intercourse outside of marriage, then the woman pregnant with the man he married to cover the disgrace of the woman, then the child is born it dinasab to a man biologically. The opinion is in line with the opinion of Ishaq Ibn Ruhawaih, Urwah bin Zubair, Sulaiman bin Yasar, Muhammad bin Sirin and'Ata'.The jurists divide the guardianship into two, namely guardianship over personal self-esteem (al-a region of ala al-Nafs) and the guardianship of wealth (al-a region of ala al-Maal). Guardianship over personal self that is of power to perform the contract (marriage) without dependence on other people. While the guardianship of wealth (al-a region of ala al-Maal) is the power or authority to take care of the contract relating to the property owned by the below perwaliantanpa dependence to others.The fuqaha different opinion about who is entitled to be the guardian of marriage for the child outside of marriage. The first opinion says; a man as the biological father and the brother of the biological father of the child outside of marriage (son of zina) is not entitled to be the guardian of marriage. The second opinion said; all the people who get the inheritance rights with got the part for sure (dzawi al-Furudh) or to get a part ashabah (dzawi al-ashabah) because there is a relationship relatives (dzawi al-arham) can become the guardian of marriage. This opinion was expressed by the Hanafites.

The Jurists agreed that the relationship kemahraman it occurs due to the presence of a child, a wet (rada), the wedding (mushaharah). In contrast, there was a debate in the issue of adultery, whether adultery can lead to the presence of the mahram relationship between the biological father with daughter relationship outside of marriage. Group Hanafi opinion; a child out of wedlock (son of zina) dinasabkan to be his biological father so that between the biological father with girls and boys have a

mahram relationship. Group Malikiyyah, Shafiiyyah and Hanbalis argue that child out of wedlock (son of zina) is not dinasabkan to her biological father, so the child outside of marriage (children of fornication) does not have a mahram relationship with his biological father. On the other Jurists are agreed that the child out of wedlock (son of zina) has a mahram relationship with his mother and all my sisters and a mahram of his mother.

The majority of the Fuqaha say; there is no relationship ties between the child adultery with her biological father. The two parties won't be able to inherit because of the absence of relationship one. A child of adultery can't be the heirs of the father and family of the biological father as grandfather, grandmother, uncle and others. This opinion was expressed by the Hanafiyyah, Malikiyyah, shaafa'is, Hanbalis. On the contrary most of the Hanafis argues, the son of zina is still entitled to get the inheritance of his parents. It is also stated by al-Hasan and Ibn Sirin, Ibrahim al-nakha'i and the fuqaha' of the other. On the relationship of inheritance with his mother, the Fuqaha agreed the child of adultery can be the heir of his mother, and vice versa mother of the child can become the heir of his son. It is because of the lack of agreement of the fuqaha about his child to his mother, where the issue of inheritance is highly related to the lineage. Imam shafi'i says that when a child zina died, then his mom get a part in the inheritance of his son, so also with the brother of seibu of the children of fornication is. Maintenance obligation was given the name of a father to his son. As long as a person can be said to be the father of a legitimate than a child, then he is obliged to support his son. When that recognition is not there, then the father is not mandatory to provide these. Similarly with a living child out of wedlock (son of zina). The opinion of the majority which deny the lineage of a child with his biological father, then the father is not obliged to give a living to children outside the bridal chamber. Because in the eyes of the law between them there is no any relationship.

See the opinion of the majority who denies the existence of obligations of the living to the children of adultery from his biological father, There are differences in opinion regarding who is obliged to give a living child out of wedlock (son of zina) that is not known to be his biological father, namely: the first Opinion says; the obligation of living becomes the responsibility of her mother, grandfather and grandmother of the mother, children, grandchildren and so on. This opinion was expressed by the Fuqaha Malikiyyah and shaafa'is. The second opinion said; obligations of the living to be the responsibility of all persons who are bound relationship relatives and kemahraman. When the two parties is all there, then the precedence is the heir. And at the time when all the heirs exist, then they are obliged to provide a living in accordance with the levels of the parts of the inheritance received. This opinion was expressed Class Hanafiyyah. They are influenced by the arguments as follows

:وَالَّذِينَ آمَنُواْ مِن بَعْدُ وَهَاجَرُواْ وَجَاهَدُواْ مَعَكُمْ فَأُوْلَـئِكَ مِنكُمْ وَأُوْلُواْ الأَرْحَامِ بَعْضُهُمْ أَوْلَى بِبَعْضٍ فِي كِتَابِ اللهِ إِنَّ اللهَ بِكُلِّ شَيْءٍ عَلِيمٌ -٧٥-

“And those who believed afterwards emigrated and strove with you then the people that belong to you (also). The people of [blood] relationship are more entitled [to each other (rather than a non-relative) in the book of God.Indeed, Allah is Knowing of all things” (Q.S. Al-Anfal: 75).

The implications of the law a child out of wedlock after the decision of the COURT: no. 46/PUU-VIII/2010, date February 27, 2012 the perspective of the Fuqaha

See the debate among Jurists about the status of civil child of adultery, then in fact there is a difference of opinion among the jurists on this issue. There are two poles of the different thinking between the majority of the Fuqaha is represented by the View of Imam Malik, Imam Shafi'i, Hanbali and View of the Ad-Dzahiri. On the other hand the minority opinion of the scholars represented by the Hanafi Madhhab.

The opinion of the majority fuaqaha" (a child out of wedlock) child adultery has no relationship ties with mr biological. As a consequence of this opinion, then between the children and the father of biological't there a civil relationship. Child of zina is not entitled to earn their living, there is no relationship heirs, even he shall be married to mr biological.

While the consequences of the opinion of Imam Abu Hanifa and the fuqaha" like-minded establish the existence of the relationship s between the children of fornication and the father of biological. Thus, the decision of the Court brought the legal implications of them;

1. Change the relationship of the blood of a child with his biological father who was originally to be a natural sheer, to be the legal relationship without memersoalkan marriage of his parents in accordance with the reality.

2. The recognition by law, that children born outside marriage have a civil relationships with his biological father and his father's family as civil relationships of the child with his mother and his mother's family. Recognition of this law, was not there before.

3. Its responsibility according to the law of the father to the child that was born due to his actions, even though the child was born outside marriage. Then the men no longer carelessly course intercourse with perempuankarena he should also bear the consequences thereof, including the birth of the child. Previously, the biological father can not be responsible for the child's biology.

4. Determination of the birth certificate based on determination of the Court Religion is conducted in accordance with the Law Number 23 of Population Administration and other Regulations on civil registration.

Therefore, associated with the polemics of the constitutional Decision no. 46 / PUU-VIII/2010 dated 17 February 2012, then in fact the decision could not be said to have been out of the teachings of Islam. The decision only not in accordance with the opinion of the majority of Fuqaha. More precisely, that what is produced by the constitutional court is to follow the opinion of a minority of scholars from among the Hanafiyyah.

In the context of freedom of bermadzhab decision of the constitutional court is still in the corridor bermadzhab in accordance with the guidelines of the Ahl as-sunnah which bermadzhab follow one of the schools of thought four. As for the noise law that occurs after the issuance of such a decision, no more than just the shock of the moment because during this time, muslims in Indonesia more presented the opinion of the majority of fuqaha that have been legalized in the law of marriage and the compilation of Islamic law. People who are already familiar with the difference of opinion among the Fuqaha" responded to the decision of the court with reasonable and not excessive. There are even a positive appreciation with the decision. Ma'had Aly Qism Fiqh wa Ushulih one of the institutions-based high schools that are under the auspices of Pondok Pesantren Salafiyyah shaafa'is Situbondomemberikan full support to the decision of the court below everything into a logical consequence of the decision.

Follow the opinion of some Groups Hanafiyyah, then all the legal consequences that arise due to the court Decision no. 46 /PUU-VIII 2010 February 27, 2012 can be justified and enforced in civil law in Indonesia. The relationship of a child, a mahram, right living, and mutual inherited among the children of fornication and his biological father which is part of the existence of a civil relationship is something definitely happens and it can be legalized. In the view of Abu Haneefah marriage without a wali is not provided with the terms sekufu. In the concept of the Hanafiyyah, that every person who is entitled to manage his own property then he can marry her himself. In a wedding, who will undergo is the women themselves that he is entitled to govern themselves. However it is recommended to a woman, to submit the issue of his marriage to the guardian.Fifteen The base that allow marriage without a guardian according to Abu Hanifa's al-Quran and Sunnah. Dalil al-Quran are as follows:

وَالَّذِينَ يُتَوَفَّوْنَ مِنكُمْ وَيَذَرُونَ أَزْوَاجاً وَصِيَّةً لِّأَزْوَاجِهِم مَّتَاعاً إِلَى الْحَوْلِ غَيْرَ إِخْرَاجٍ فَإِنْ خَرَجْنَ فَلاَ جُنَاحَ عَلَيْكُمْ فِي مَا فَعَلْنَ فِيَ أَنفُسِهِنَّ مِن مَّعْرُوفٍ وَاللّهُ عَزِيزٌ حَكِيمٌ -٢٤٠-

“And people who are taken in death among you and leave wives, be it Said to his wife-his wife, (namely) are living up to a year old and not told to move on (from the house). But if they move (yourself), Then there is no sin for you (guardian or heir of the deceased) let them do good to themselves. and Allah is Mighty, Wise” (Q.S. Al-Baqarah: 240).

Thus it can be concluded that according to the view of Abu Haneefah, guardian in marriage is not a condition of the validity of a marriage means that even without the presence of the guardian a woman can marry her. Thus in the case of a child born due to an extramarital affair then it is not a big problem for whom the guardians illegitimate because in the view of Abu Haneefah a woman can marry himself. For a child of adultery does not need a guardian because he can marry her himself. This means that when the verdict of the COURT to give space to the biological father of the child of adultery to marry flesh and blood, not a problem according to scholars Hanafiyyah.

IV. CONCLUSION

Child out of wedlock in the terminology of fiqh scholars called the son of zina that children born as a result of the relationship of a male and a female that is not valid. One child outside of marriage there are two opinions among the jurists, namely: 1) the Fuqaha View of the four and Madhahib al-Dahiri agreed that one child out of wedlock can only dinasabkan to his mother. 2) say a child out of wedlock (son of zina) can dinasabkan to mr biological if he ask a child born to be recognized as his son even though the woman who gave birth to not admit it and the child is not the child who is born it is not a child's doubtful. The majority of the Fuqaha say; there is no relationship ties between the child adultery with her biological father. The two parties won't be able to inherit because of the absence of relationship one.

Decision of the Constitutional Court (MK) has no legal implications between children outside of marriage (children adultery) with his biological father. The deeds of his biological father is jarimah (felony), deserve the punishment ta"zir in the form of an obligation to give a living and giving most of the treasures, the amount of which consider of income to be his biological father. The granting of a living and most of the treasures, can be implemented after the filing of the lawsuit and get a determination from the court Religion. The granting of living are solely and exclusively to satisfy the sense of justice and the protection of the law for the benefit of the rights of the child.

V. ACKNOWLEDGMENTS

This study provides a contribution for the development of thinking, regarding the legal status of children outside of marriage with the Court decision No. 46/PUU-VIII/2010 dated 27 February 2012 and its implications for the development of Islamic law in contemporary.

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[13] Zakiyuiddin Syaban, *al-Ahkam as-Syariyyah li Ahwal as-Shahshiyyah*, Kairo :Dar al-nahdhah al-Arabiyyah, 1969, 214.

[14] Ibn Nuim. *al-Bahru al-Roiiq syarh kanzu ad-Daqaiq* (Beirut: Dar al-Ma'rifah, t.th) Juz III, 133. Al-Kasani, *Bada'iu al-Shanaa'iu fi Tartib,* Juz II, 250.

[15] Ibn Nujaim, Zainuddin Ibn Nujaim Al Hanafi, *Al Bahr Al Raiq,* Beirut: Dar Al Ma"rifah, tt, juz 3 pp. 117