



THE MAQASHID SYARI'AH PERSPECTIVE ON THE SUBSISTENCE OBLIGATIONS BY "FATHERS" AGAINST CHILDREN DUE TO ADULTERY (An Analysis of MUI Fatwa Number 11 of 2012 About the Situation of and How to Treat a Child Born Out of Adultery)

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Abstract: The accommodation of the clause "civil relations" by the Constitutional Court Number 46/PUU-VIII/2010 became a polemic because it showed a relationship between "fathers" and their biological children and indirectly "legalizes" the relationship both with no marriage process. Seeing the MUI as one of Indonesia's Islamic institutions provided a firm interpretation with interpretation that it still negated the lineage relationship between the "fathers" and their biological children, and the fall of rights and obligations is due to the punishment of "fathers," not the "fathers" and children ties. as stated in the MUI fatwa No. 11 of 2012, but a question arises as to whether the fatwa is in accordance with the provisions of the Shari'a. Therefore, later in this article, we would analyze descriptively and analytically the linkages of the MUI fatwa mentioned above with the construction of shari'ah provisions through the maqashid shari'ah aspect. The results of this study can be concluded that the MUI fatwa Number 11 of 2012 has fulfilled the maqashid syari'ah aspect as the construction of kulliyatul al khams asy syatibi, with the dharuriyat level category in the context of hifz nafs and *hifz nasl* as a form of protection and prevention of neglect, especially by giving ta'zir punishment to men who cause birth to

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meet their needs and as a form of *syadz al-dzari'ah* adultery in the context of not linking the lineage of "fathers" to their biological children as protection against honor and descendants for a person as a human being who is glorious.

Keywords: Subsistence Obligations, Biological fathers, Children Due to Adultery, Maqashid Syari'ah.

Abstrak: Pengakomodasian klausul "hubungan perdata" oleh Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 menjadi polemik karena menunjukkan adanya hubungan antara "ayah" dengan anak kandungnya dan secara tidak langsung "melegalkan" hubungan keduanya tanpa proses perkawinan. Melihat MUI sebagai salah satu lembaga Islam di Indonesia memberikan penafsiran yang tegas dengan penafsiran bahwa MUI masih meniadakan hubungan nasab antara "ayah" dengan anak kandungnya, dan jatuhnya hak dan kewajiban karena adanya hukuman terhadap "ayah", bukan ikatan "ayah" dan anak-anak. sebagaimana tertuang dalam fatwa MUI Nomor 11 Tahun 2012, namun timbul pertanyaan apakah fatwa tersebut sesuai dengan ketentuan syariat. Oleh karena itu, pada artikel ini nanti akan dianalisis secara deskriptif dan analitis keterkaitan fatwa MUI tersebut di atas dengan konstruksi ketentuan syariat melalui aspek maqashid syari'ah. Hasil penelitian ini dapat disimpulkan bahwa Fatwa MUI Nomor 11 Tahun 2012 telah memenuhi aspek maqashid syari'ah sebagai konstruksi kulliyatul al khams asy syatibi, dengan kategori tingkat dharuriyat dalam konteks *hifz nafs* dan *hifz nasl* sebagai bentuk perlindungan dan pencegahan penelantaran, khususnya dengan memberikan hukuman ta'zir kepada laki-laki yang menyebabkan kelahiran untuk memenuhi kebutuhannya dan sebagai bentuk zina *syadz al-dzari'ah* dalam rangka tidak mengaitkan nasab "ayah" dengan anaknya. anak kandung sebagai pelindung kehormatan dan keturunan bagi seseorang sebagai manusia yang mulia.

Kata Kunci: Kewajiban Nafkah, Ayah Biologis, Anak Zina, Maqashid Syari'ah.

A. Introduction

The philosophical meaning of Mitsaqan Ghalizan in a marriage has to do with the rights and obligations of a husband, wife, or children who in a bond have their respective rights and obligations according to their position, namely the husband who is also domiciled as fathers must provide for his wife and children. On the other hand wife and children must serve and respect their husband or fathers as a form of their obligation.¹

Discussion of the issue of living, in this case the husband who is also domiciled as the fathers have the obligation to provide for his children and wife with minimal aspects that must be met, namely the basic needs of the wife and children, this provision has been expressly regulated in the provisions of Law No. 1 of 1974 concerning Marriage or in Presidential Instruction Number 1 of 1991 concerning the implementation of the Compilation of Islamic Law², similarly, in the provisions of Islamic Law as said by Allah Swt Almighty in Q.S Al-Baqarah verse 233 which essentially states that parents have an obligation to provide for their children in the event that the children are the result of a marriage in accordance with the provisions of Islamic law (Fiqh Munakahat) if the children are born in the process outside of marriage then the burden of the children's livelihood is imposed on the mother which it rests on the position of the lineage which in the children results outside the marriage is not passed on to their fathers but only to the mother or the mother's family.

In its development, specifically in Indonesia, the provision of children's livelihood outside of marriage can be born on their biological "fathers" where in the Constitutional Court Decision Number 46/PUU-VIII/2010 accommodates the burden of children's

¹ See Regulated in The Provisions of Law no. 1 of 1974 Concerning Marriage

² See Presidential Instruction Number 1 of 1991 concerning the implementation of the Compilation of Islamic Law

livelihood outside of marriage to their biological "fathers" by withdrawing a position not as a lineage relationship but as a civil relationship so that there is the biological "fathers" obligation to provide for his biological "children".³ In addition to the Constitutional Court, the Indonesian Ulema Council also issued a fatwa emphasizing the obligation of livelihood by biological "fathers" to their biological "children", which is stated in MUI Fatwa Number 11 of 2012 concerning the position of children resulting from adultery and the treatment of them, one of the points of which is punishing in the form of ta'zir by the government to biological "fathers" to provide for their biological "children" as a form of punishment for adultery committed by their fathers.⁴

The MUI fatwa as stated above is a breakthrough in Islamic Law, where in Islamic Law itself we know that the charge is given in the context of looking at the relationship of lineage not in the context of condemnation to someone who has committed adultery.

Therefore, this research will later explain the legal construction of MUI Fatwa Number 11 of 2012 in charging biological "fathers" to their biological "children" with the perspective of Maqashid Syar'iah by looking at aspects of the Maqashid Syar'iah category and its points against the imposition of a living on biological "fathers" on their biological "children".

In this study, researchers drew on a number of theoretical investigations. The first is the theory of causation, in which the researcher considers the position of the children as a result of adultery committed against their biological "Fathers" in this case. Second, children protection theory is viewed in terms of matters related to children protection efforts as a form of purpose for the rights of the adulterous children and thirdly the maqashid shari'ah theory. Which will later be used as a measuring point in the context of the application of shari'a specifically to this research case Furthermore, the three theories according to the researcher are

³ See Constitutional Court Number 46/PUU-VIII/2010

⁴ See MUI fatwa No. 11 of 2012

considered relevant to this research topic as an analysis knife, so as to help researchers to analyze legal problems in this study.

This study is descriptive qualitative, which means it examined how well children were protected by the law. In this instance, it entailed in-depth examination of MUI Fatwa Number 11 of 2012. The study then employed 2 (two) techniques. specifically, the case approach and the conceptual approach. both a conceptual approach and a case approach. The conceptual approach was to look at how the concepts in Islamic law related to the status of a children resulting from adultery to their biological "fathers" and the case approach how to relevantly protect the adulterous children Furthermore, this study will clarify ideas by providing an understanding of the law, legal concepts, and legal principles relevant to the problem.

B. Results and Discussion

1. The Status of Adultery Children under Islamic Law

Issues related to the status and position of adulterous children always cause problems in society, in Islam children born in marriage as stipulated in Shari'a are something that greatly affects the position of children as a result of marriage. The relationship is directly attributed to both parents, namely the father and the mother, with the consequence of the rights and obligations between the two, the children are obliged to respect and obey both parents as long as it is not in the realm of things that violate the provisions of sharia, on the contrary is obliged to educate, and provide for him as well as the needs of the children.⁵

From the explanation above, it can be seen that the rights and obligations of children are only obtained on the basis of the lineage relationship between the two, and the linkage of the lineage will not occur if the provisions of sharia marriage are not implemented due

⁵ Yuni Harlina, Status Nasab Anak Dari Berbagai Latar Belakang Kelahiran (Ditinjau Menurut Hukum Islam), Jurnal, Universitas Islam Negeri Sultan Syarif Kasim, Riau, Vol. XIV No. 1 Juni, 2014, p. 68

to the halal and haram aspects in the lineage linking procession.⁶ Allah Almighty said in surah al-Ahzab/33:5,

أَدْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَاِخْوَانُكُمْ فِي الدِّينِ
وَمَوْلَاكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ
غَفُورًا رَحِيمًا ۝

Meaning : *"Proclaim their real parentage. That will be more equitable in the sight of Allah. And if ye know not their fathers, then (they are) your brethren in the faith, and your clients. And there is no sin for you in the mistakes that ye make unintentionally, but what your hearts purpose (that will be a sin for you). Allah is ever Forgiving, Merciful."*⁷

In the case of children born outside of marriage or children of adultery, the laws of religion and the state specify that the children do not have a lineage to their fathers but only to his mother and his mother's family, eliminating the responsibility of their "fathers," and that the mother and her family are solely responsible for the children as a single parent.⁸

There are various viewpoints regarding the lineage of fiqh experts, including the following explanation;

a. Hanafi school of thought

In the opinion of hanafi school of thought, the position of the adulterated children can only be given to their "fathers" if the children are born within 6 (six) months after the legal marriage between the father and mother, without seeing any indication of copulation between the two on the grounds that by understanding the pronunciation of "marriage" is essentially "copulation" so that the consequences as long as there is marriage and copulation after marriage then with a vulnerable time of 6

⁶ Agus Salim, "Menikahi Wanita Hamil Karena Zina Ditinjau Dari Hukum Islam, Jurnal Ushuluddin", Vol. XVII No. 2 Juli 2011, p. 139.

⁷ Kementrian Agama RI, Al-Hamid Mushaf Dan Terjemah, p. 418

⁸ Asyari Abdul Ghofar, *Pandangan Islam Tentang Zina Dan Pernikahan Sesudah Hamil*, (Jakarta: PT. Raja Grasindo Persada, 1996), p. 81.

(six) months after marriage it is born then the children can be passed on to their fathers regardless of who reaped the children's seeds.⁹ Based on surah al-Ahqaf 46:15

... وَحَمْلُهُ وَفِصْلُهُ ثَلَاثُونَ شَهْرًا ...

Meaning : *Their 'period of' bearing and weaning is thirty months.*¹⁰

And in surah al-Luqman 31:14;

وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ حَمَلَتْهُ أُمُّهُ وَهَنَا عَلَى وَهْنٍ وَفِصْلُهُ فِي عَامَيْنِ أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ
إِلَيَّ الْمَصِيرُ ١٤

Meaning : *And We have commanded people to 'honour' their parents. Their mothers bore them through hardship upon hardship, and their weaning takes two years. So be grateful to Me and your parents. To Me is the final return.*¹¹

Surah al-Ahqaf verse 15 explains cumulatively that the amount of conceiving and weaning is 30 months, while in surah al-Luqman verse 14 weaning has a limit of 2 years, so that it can be concluded that the period of pregnancy is at least 30 months minus 24 months i.e. 6 months after the occurrence of the marriage agreement, not calculated from the pre-marital intercession which in this case can still be attributed to his father. However, if the children in their birth do not meet the above conditions the relationship with their biological "fathers" is not absolutely broken where the biological "fathers" cannot marry

⁹ Samsidar, "Analisis Perbandingan Antara Perspektif Imam Mazhab Dan Hukum Positif Tentang Status Anak Diluar Nikah" dalam Jurnal IAIN Bone, 14 No. 2 Oktober 2019, p. 88.

¹⁰ Departemen Agama RI, *Al-Qur'an Terjemahan*, (Bandung: CV Darus Sunnah, 2015), 382.

¹¹ Departemen Agama RI, *Al-Qur'an Terjemahan*, (Bandung: CV Darus Sunnah, 2015), 246.

their biological "children" because traditionally they are their own children and are still born of their own flesh and blood.¹²

b. Maliki school of thought

In the opinion of maliki school of thought that the children of adultery cannot be given to their biological "fathers" and only to their mother and their mother's family even in the opinion of maliki school of thought does not use the term vulnerable or the condition that marrying is a man who impregnates as the opinion of school of hanafi and shafi'i. This has the legal consequence that the children are not the mahram of their biological "fathers" and the children are lawful to marry their biological "fathers" because they have no relationship with their biological "fathers".¹³

c. Syafi'i school of thought

According to the Syafi'i school of thinking, adultery or adultery children who do not meet the requirements are born within six months of marriage and must be married to a guy who impregnated his mother. In order to completely cut off the status of children who do not match these conditions. This is in line with the belief of the Hanafi school of thought, but the Shafi'i school of thought adds that the requirement for marriage is for a man to conceive her as a measure of caution by looking at the seeds of the forerunner of the children.¹⁴

d. Hambali school of thought

The hambali school of thought holds the same view as other schools of thought regarding the lineage of adulterated children, namely that there is no lineage connection between biological "fathers" and their biological children; however, in the case of

¹² See Amir Nuruddin and Azhari Akmal Tarigan, *Hukum Perdata Islam di Indonesia Studi Kritis Perkembangan Hukum Islam Dari Fikih, UU No. 1 Tahun 1974 Sampai KHI*, p. 280

¹³ See Ardhy Rahmad Saputra, *Studi Komparatif Empat Madhhab Terhadap Putusan MK No 46/PUU-VII/2010 Tentang Anak Luar Kawin*, Skripsi, (Surabaya: UIN Sunan Ampel, 2019), p. 29

¹⁴ See Riri Wulandari, *Status Nasab Anak di Luar Nikah Perspektif Mazhab Syafi'i dan Implikasinya Terhadap Hak-Hak Anak*, p. 69

complete disconnection of lineage, the hambali school agrees with the hanafi school of thought, specifically that the hambali school forbids them and their fathers from getting married and marrying those who become their ma'am. Even seeing and lustfully touching their adulteress is not permitted. They don't, however, pass down from one another's genes.¹⁵

From some of the opinions of the above schools of thought, it can be seen that in Islamic law the rights and obligations arise between parents and children due to their family relationship, where adulteress children can only be recognized as legitimate children with the condition that the children must be born within 6 months after the marriage, even if in In the case of an absolute separation of the lineage, there are different opinions, but in terms of relationship, the scholars of the madhhab agree that adulteress children who do not meet the requirements as described above cannot be linked by lineage to their biological "fathers", so that the rights and obligations between parents and children are not borne by the "fathers". the biology of the adulteress.

If we compare it to the positive law provisions in Indonesia, Law No. 1 of 1974, Articles 42 to 44, which define the following:

- a) A legal child is a child born in or as a result of a legal marriage.
- b) Children born outside of marriage only have a civil relationship with the mother and their family members.
- c) If the husband can prove that the wife committed adultery and the child is the result of adultery, then the husband can deny the validity of the child born by the wife.
- d) The court decides whether the child is valid at the request of the person concerned.¹⁶

Article 55 Law no. 55 regarding the validation of the origin of the child. Number 1 of 1974 confirms:

¹⁵ Ardhy Rahmad Saputra, *Studi Komparatif Empat Madhhab Terhadap Putusan MK No 46/PUU-VII/2010 Tentang Anak Luar Kawin,...* p.41-42.

¹⁶ See Regulated in The Provisions of Law No. 1 of 1974 concerning Marriage chapter 42-44

- a) The birth of a child can only be proved by the original birth certificate issued by an authorized official.
- b) If a birth certificate cannot be issued, the court may determine the child's blood after examining the evidence that meets the requirements.
- c) According to the provisions of this court, the birth registry office within the jurisdiction of the court issues birth certificates to the child concerned.¹⁷

The provisions of the articles as mentioned above, there are several things that are regulated. First, the legal children are the children born through a legal marriage. There are at least two possible forms of legal children born from a valid marriage and children born from the result of a valid marriage. Second, the antonym of legitimate children is an out-of-wedlock children who only have a civil relationship with their mothers. Third, the husband has the right to deny or deny the validity of the children. Fourth, the creation of a children's birth certificate can be done with a birth certificate.¹⁸

In addition to the provisions of Law No. 1 of 1974, the Compilation of Islamic Law also makes a definitive provision regarding the problem. Where in Article 99 of the Compilation of Islamic Law states that legal children are the children born from a valid marriage. As a result the legal spouse is fertilized outside the womb and conceived by the wife. While in Article 100, children born out of wedlock are only related to the mother and the mother's family.¹⁹

Based on the foregoing discussion, it can be concluded that the legal children are the children born in or as a result of a legal

¹⁷ See Regulated in The Provisions of Law No. 1 of 1974 concerning Marriage chapter 55

¹⁸ Amiur Nurudin and Azhari Akmal Tarigan. *Hukum Perdata Islam Di Indonesia: Studi Kritis Perkembangan Hukum Islam Dari Fiqih, UU No 1 Tahun 1974, Sampai KHI.* (Jakarta: Kencana, 2004), p. 281-282.

¹⁹ Amiur Nurudin and Azhari Akmal Tarigan. *Hukum Perdata Islam Di Indonesia: Studi Kritis,...* p.283

marriage. An extramarital children are the children born in a marital relationship, but not in a legal marriage.

2. MUI Fatwa Legal Construction No. 11 of 2012, which provides that adultery-related penalty for children will take the shape of a living responsibility

The Constitutional Court's judgment Number 46/PUU-VIII/2010, which accepted that there is a biological tie such that the adulterous children and the "fathers" are entitled to civil rights, served as the impetus for the release of the MUI fatwa Number 11 of 2012. The term "civil" has become a problem in society since it can be taken in a "wild" fashion, even though the Constitutional Court only stated it generally in its ruling. There are many who comprehend that the term "civil" pertains to all aspects of inheritance, including those relating to lineage, the duty of the "fathers" to support their family, and financial obligation. Therefore, MUI as the highest part that is asked as the mascot of Islamic figures in Indonesia takes part in solving this matter in the midst of society through fatwa Number 11 of 2012 by interpreting the phrase "civility" which is still commonly interpreted with substantive meanings so that Muslims in Indonesia continue to follow existing religious values, For more details, the researcher explained these meanings as follows:²⁰

- a) Clarifying the context of the relationship between the biological "father" and the adulterous child is that there is no lineage relationship between the two and the adulterous child only affects the mother.
- b) Clarifying the things that are *ubudiyah*, namely related to the violation of sins committed by the "parents" are not passed on to the child resulting from adultery.
- c) Strengthening the context of condemnation of adulterers as a form of *hifz al-nasl*.
- d) Clarifying the position of the government's authority as *ulul amri* to impose *ta'zir* punishment for the "father" resulting in the birth

²⁰ See MUI fatwa No. 11 of 2012

of the child by punishing the obligation to provide and giving a mandatory will in the case of inheritance as a form of protection.

From some of the things above, it can be seen that the MUI as an Islamic institution still upholds the form of amar ma'ruf nahi munkar which in the fatwa can still be seen Islamic values in the form of ubudiyah, although in the current context things that previously could not be resolved due to the absence of modern technological times like now, but that does not mean that sharia that has been enacted was later abandoned. Because in sharia what is seen is not only the aspect of knowledge but morality as a form of implementation of "man is the noblest being" because knowledge is not a whole part of glory, but only part of the phrase glory itself.²¹

In addition to supporting Islamic values, MUI fatwas can also be established as a form of protection for children born from adultery. In this case the government should protect children from adultery by preventing neglect, especially by punishing men who give birth to their needs. Then the adulterer is subjected to the punishment of had imposed by the ruler to protect the legitimate descendants (hifiz al-nasl). And the government has the power to impose ta'zir punishment on the adulterer which leads to the birth of children, forcing him to take care of the needs of the children and give them property after his death. The purpose of the protection set out by the MUI in the fatwa is to protect the rights of the children so that they get what they should receive. Although these children may not be married or have any relationship on the grounds of birth.²²

3. Analysis of MUI Fatwa No. 11 of 2012 from Maqashid Syari'ah's point of view

The Taklif al-Syari is ta'abud in the Shari'ah, which forbids the option of legalizing adultery, and the *maqashid sharia* construction that links the lineage of an adulteress children to its biological "fathers" is called a *maqashid al-khalaq*. Despite the fact that one of the

²¹ See MUI fatwa No. 11 of 2012

²² See MUI fatwa No. 11 of 2012

difficulties in demonstrating adultery due to the technological limits of the Tasyr period is thought to be one of the grounds for its prohibition. In fact, if we pay great attention, al-goal Syar's is to create a legal relationship (*firasy*) that serves as the foundation for lineage. If adultery is forbidden because it causes ambiguous heredity. So the logic can be reversed, if unclear origins can be avoided, adultery becomes permissible. Such logic cannot be justified because it will lead to the repeal of the law prohibiting adultery and marriage. From the perspective of Maqāsid theory, linking the lineage of an adulteress children with their mothers is a refinement of the *al-ḍarūriyyah* marriage law. In that case *al-qawā'id al-maqāṣidiyyah* said, "Any improvement that weakens its origin is null and void". The descendants of the adulteress children from their biological "fathers" cannot be justified because it undermines their origins, namely the law on the prohibition of adultery. Even though linking the lineage of adulteress children with their mother is an addition (*al-mukammil*) to *al-ḍarūriyyah* in marriage law. In this case *al-qawā'id al-maqāṣidiyyah*, who said, "Anything that weakens its origin is perfect is null and void." Therefore, the descendants of the adulterer's children to the adulterer's fathers must be annulled because it is proven to weaken the descendants, ie. H. proved to be a weakening of adultery law. The understanding that the children of adultery is brought to his mother is *al-mafhūm al-mukhalfah*.²³

Regarding the Ta'zir punishment of the biological "fathers" of the children for adultery, when it is associated with the *kulliyatul al khams asy syatib* decision, it refers to the Dharuriyat, Hajjiyat, and Tahsiniyat levels which are mentioned in the Dharuriyat level category namely *hifz nafs* and *hifz nafs* in the context of *hifz nafs* and *hifz nasl* as a form of protection and prevention of neglect, especially by imposing ta'zir punishment on men who force them to give birth, to meet their needs (covering living expenses, education, health,

²³ Jabbar, *Validitas Maqasid al-Khalq (Kajian Terhadap Pemikiran al-Ghazali, alSyatibi, dan Ibn 'Asur)*, (Banda Aceh: Dissertation from Post Graduated Program UIN Ar-Raniry, 2013), p. 398.

maintenance, etc.) until the children are adult and independent. Basically no human being is born into this world with sin and biologically no children are born without parents, in this case fathers and Syadz al-dzari'ah as a form of adultery to protect honor and descendants. someone like a noble person.²⁴

Therefore, in this case the fatwa of the Maqasid Syari'ah MUI scholar No. 11/2012 is very much in accordance with the objectives of sharia. For basically māqāṣid al-Syari'ah in the application of lineage of illegitimate children, namely the enforcement of lineage based on legal marriage combining punishment (ta'zir) with biological "fathers" to prevent adultery from providing for children and in relation to inheritance providing a binding will as a form of protection against him.

C. Conclusion

In the context of applying the lineage of an adulteress children by imposing a lineage based on the shari'ah of marriage, the MUI Fatwa No. 11 of 2012's *Maqasid al-Syari'ah* provisions are suitable. Because there was no valid marriage, the genealogy that originated with the adulterer's son had information that was improper. When an adopted children had previously been given the name of his adoptive fathers and Sharia marriage was a means of family preservation that altered how children were raised (taban) during the Jahiliyah era, Syari changed things and mandated that the children be adopted and given the name of their biological fathers.

From the perspective of Maqāṣid theory, linking the lineage of an unfaithful children with their mother is a complement to the shari'ah (almukammil). In this case *al-qawā'id al-maqāṣidiyyah* which states "Every perfecter that undermines its origin is null and void." So the lineage of an adulteress children to biological "fathers" must be canceled because it undermines the origin, namely undermines

²⁴ See Taufiqurrahman Syahuri, *Tafsir Konstitusi Berbagai Aspek Hukum*, Jakarta: Prenada 2013, p.198

the law of the prohibition of adultery. Then regarding the ta'zir punishment for biological "fathers" of children resulting from adultery when it is associated with the provisions of *kulliyatul al khams asy syatibi*, it is associated with the *dharuriyat*, *hajjiyat*, and *tahsiniyat* levels included in the *dharuriyat* level category in the context of *hifz nafs* and *hifz nasl* where in the context of *hifz nafs* and *hifz nasl* as a form of protection and prevention of neglect, especially by imposing ta'zir punishment on men who give birth to earn a living (providing living expenses, education, health care, etc.) until the children are old enough and independent. basically no human being is born into this world with sin and biologically no children are born without parents, in this case fathers, as well as a form of *syadz al-dzari'ah* adultery as a form of protection for honor and descendants for someone as a noble human being.

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