

The Protection of Law toward Illegitimate Children

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Abstract: *This study discussed about the protection of law toward illegitimate children. The Constitutional Court No. 46/PUU-VIII/2010 has changed the statement on Article 43 Paragraph (1) into the statement that stated illegitimate children have civil relationship with both their mother and the family and father and the family. This changing caused a problem because it is not in accordance with the Islamic norms which stated that illegitimate children cannot be related to their biological father. The methodology used in this study was qualitative descriptive based on library research. The result showed that illegitimate children had right to get the provision right, the guardianship right, and the inheritance right as their protection of law that ruled in the Constitutional Court No. 46/PUU-VIII/2010.*

Keywords: illegitimate children, civil relationship, protection of law

1. Introduction

The Constitutional Court has received the petition for judicial review of the provisions of Law Article 43 Paragraph (1) No. 1/1974 regarding on marriage [1]. The decision of the Constitutional Court No. 46/PUU-VIII/2010 change the content of the Article 43 Paragraph (1) from 'Illegitimate children only have civil relationship with their mother and the family of their mother' to 'Illegitimate children have civil relationship with their mother and the family of their mother and with the man as their father that can be proved based on science and technology and/ or other evidence according to the law for the blood relations, including civil relationship with the family of their father.' However, the decision of the Constitutional Court regarding on the recognition of illegitimate children has caused a new problem [2]. The Constitutional Court No. 46/PUU-VIII/2010 was in contrast to the Islamic religious norm that emphasized children who were born through adultery cannot be related to their biological father [3].

Before the existence of this decision, the status of illegitimate children were only civil relationship with their mother and the family of their mother. It could be seen through the birth certificate which only mentioning the name of the mother without the name of the father. The law consequence of the absence of blood relationship between the father and the children was resulting in the lack of inheritance rights and lack of the right to become the guardian of marriage. However, the Court's decision recognized illegitimate children as valid children who have relationship with their biological father as long as it can be proved scientifically and technologically and/or with other evidence.

The status of illegitimate children was meant as children of adultery. In Islam, unrecognized children or *li'an* (the accusation of husband towards his wife for adultery) could not be line to their biological father. Article 100 of Presidential Instruction No. 1/1991 about the dissemination of the compilation of Islamic law (hereinafter called KHI) also asserted that illegitimate children only had lineage with their mother and the family of their mother. Related to this thing, illegitimate children only had right to receive their lineage rights through their mother. After the issuance of the

Decision of the Constitutional Court No. 46/PUU-VIII/2010, the interpretation of the new law on civil law relationship between children and their biological father was open, with the stipulation of Article 43 Paragraph (1) of Act on Marriage, Article 100 and Article 186 KHI. This brought a consequence that law was giving an opportunity for illegitimate children or parties who represent them to apply for or claim against their biological father in court if it proven, based on science and technology and/or the other evidence according to the law, had blood relationship with their biological father [4].

The words "blood relation" in the formulation of the Article changes in the decision of the Constitutional Court No. 46/PUU-VIII/2010 was very sensitive, since the blood relationship in Islamic law was identic with the conception of *nasab* (the descendant from father's side) which constitute as one of the *al-kulliyahal-khams*, *al-dharuriyyat al-khams* (the soul of *shari'a* or Islamic law). Responding to the emergence of a statement about the position of the children of adultery, related to the lineage relationship, heirs and guardian of marriage according to the Islamic law, especially after the decision of the Constitutional Court No. 46/PUU-VIII/2010, Indonesia's Council of Ulama (*Majelis Ulama Indonesia*) issued *fatwa* (ruling point of Islamic law given by a recognized authority) No. 11/2012 about the position of the children of adultery and the treatment toward them, specified the terms of the law as follows:

- 1) The children of adultery does not have lineage relationship with, guardian of marriage, heirs, and rights of living from the men that caused their birth.
- 2) The children of adultery only have lineage relationship, heirs and rights of living with their mother and the family of their mother.
- 3) The children of adultery does not bear the sins of the adultery done by their parents.
- 4) The adulterer is convicted *hadd* punishment by the authority parties to keep the valid heredity (*hifzh al-nasl*).
- 5) The government has authority to do the *ta'zir* punishment for the male adulterer who caused the born of the child, with the obligation to:
 - a) Sufficient the needs of the living child.
 - b) Give his property after he died through the *wajibah* testament [5].

Actually, the problem of lineage was already complex since the emergence of Article 42 of Act on Marriage which then asserted back on the Article 99 letter (a) KHI that defined valid children and children who were born **in an** or as a **result of** marriage. There is no additional explanation about the legality of this children (about the conception of **in** and **the result**) either in the Act of Marriage itself or the Government Regulation No. 9/1975, as well as in the Regulation of the Minister of Religious Affairs No.3/1975. The statement of the article bring out two substantiation of interpretation; (1) valid children are children who were born in a valid marriage and (2) valid children are children who were born as a result of valid marriage. The main problem of the first interpretation generalized the definition of valid children as children who born in valid marriage, including children who born because of the intercourse before the marriage and born after the marriage. For each born child or child who kept in a marriage was considered as the valid children and had lineage relation with the man whose status was the husband of the mother who gave birth. But the consequence appeared when the born child is a girl and wanted to married, then the guardian of bride should be her biological father.

This was not in line with the Islamic law that asserted, a child will have a lineage relation with her father if she was born from the result of the valid marriage based on *shari'a*. A child who was born from the result of marriage which not based on *shari'a*, either before or after the bond of marriage, then the child will only had lineage relation with her mother, and if the child was a girl then automatically had status of *'adamwalinasab* and person who will become her guardian of marriage is not her biological father but the trustee of judge.

The decision of the Constitutional Court in the perspective of *Maqashid al-shari'ah*

The purpose of shortening Islamic law included two points of view that do not escape each other, namely *qasdsy-Shari'* (the purpose of God as Creator of the *shari'a*) and *qasd al-mukallaf* (the purpose of man as the subject of the law). Each point of view, philosophically, dug from the understanding of Al-Quran and al-hadith. Each of the rule of law in Islam had functions that realize the purpose for explicitly or implicitly to the benefit and prevent harm to mankind, *syar'i* was created by Allah SWT to bring the common good for His servants in the world and the hereafter. Al-Syatibi uses the term of *al-maqshid al-shari'ahfil al-shari'ah* and *maqashid min syari' al-hukm* in defining *maqashid al-shari'ah* which means the law prescribed for the common good for human in the world and the hereafter. The definition given by al-Syatibi was departed from the view that all obligations and prohibitions established by God in order to realize the common good man. None of the God's law did not have a purpose. He said the law that did not have the same purpose with *taklif ma la yutaq* (burdening something that can be done) and this could not have occurred on the laws of God [6]. Muhammad Abu Zahrah strengthen this view by saying that the real purpose of Islamic law is the common good man and none of the law prescribed both in Al-Quran and hadiths, except for something good [7]. Islamic law jointed and based on the wisdom and the common good. Every issue that lead to the

mayhem, turn aside from the common good toward bad, turn aside from the compassion, aside from wisdom toward vain, all of that is not the law of Islam. Islamic law is just and put justice in the midst of the man. Thus the law of Islam built on the joints that aimed to establish a real justice for all of mankind (*tahqiq al-'adalah*), keep and realize the common good of all mankind (*ri'ayatmashalih al-ummah*), reduce the burden, prevent trouble and eliminate difficulties (*qillat al-taklifwanahyu al-harajwaraf'u al-masyaqqah*), revamping gradually (*tadrij fi al-tasyri'*) and each man will only bear his own sin without burdened by any other sin.

One of the important concepts and fundamental of *maqashid al-shari'ah* was a concept which asserted that Islamic law was prescribe to make and keep the goodness of mankind. This concept has been recognized and incited in famous rules: "Where no goodness, there against the law of God." [8]. Theory of *maqasid al-shari'a* asserted that Islamic law was prescribe to provide protection of human rights. The details of the protection was essentially divided into five (*al-kulliyatalh-khams*), those were; protection against religion (*hifzhad-din*), protection against the soul (*hifzh an-nafs*), protection against mind (*hifzh al-aql*), protection against honor (*hifzh al-ardh*) and the protection of wealth (*hifzh al-mal*) [8].

The fact of the lineage relationship in the perspective of *Fuqahaa*

The concept of lineage in Islamic Law

Lineage or blood relation is one of the basic and firm foundation in building a family, which is binding between personal. In order to keep the blood relation, it is prescribed to getting married in a legal way to maintain and keep the purity of blood relation. Adultery cannot be made for the existence of the lineage relationship between the father and his child. A child who was born from the womb of a mother has right to get a clear acknowledgmentofthelineageor bloodrelation. A child must owned the right to be specified in the lineage arrangement, both with his father and mother. As well as the right of the child is also the right of Allah the GreatandWise [9]. A father has the right to his child because he is seen as the figure who is able to give security protection and feed to his child before the child grow as an adult. On this basis, a father has the right to be fulfilled by his child when he is old and need something, while the child has been able to earn on his own. In addition, a father is also have the right to receive the inheritance if his child diedfirst [9].

In general, the right of the child in the bloodline relation could be proved by the existence of the birth certificate. The birth certificate is an evidence of the legality of a child in a family with multiple identities that owned, namely full name, the place and time of birth and the identity of the parents. Therefore, the birth certificate which is owned by children will strengthen their position in the family with full rights and tracing one line clearly. As the child has specified in blood relation with his mother, the mother has the right to receive the inheritance when her child is died first. In addition when the mother is old and weak, she also has the right to get sustenance guarantee from her child [9]. Provisioning blood relation is also the right of Allah SWT.

Blood relation is an important thing to be glorified. The benefits of the announcement of blood relation will return to children. Therefore, Allah SWT commanded to all mankind to maintain and protect the rights of the children [10]. The recognition of children in a valid lineage showed that children get protection through the fortress of the social. Children who live inside the legal family will get a secure and peaceful life [11]. Therefore, Islam makes marriage into a strong and honorable agreement [12].

The Lineage of Illegitimate Children

In Islamic law, scholars agreed that the lineage of a child to his mother is happen naturally and automatically. It is happen because of the insemination and childbirth. Whereas the lineage between the child and his father could be formed in three ways; the first is through a valid marriage, the second is through *fasid* or *con found* marriage (including the unregistered marriage) and the third is through *syubhat* intercourse (intercourse before marriage). Fiqh scholars agreed that the child who was born from a valid marriage will have lineage to his father.

The second way of the emergence of the lineage between a child and his father is through *fasid* marriage. *Fasid* marriage is a marriage held in a state of lack of conditions such as it is done without the presence of marriage guardian. According to Hanafi sect, the presence of marriage guardian is not a required requirement for valid marriage. It is similar to the opinion of Imam Malik in one of the history of his disciples, Syahnun Al-Maliki, who allowed marriage without the presence of marriage guardian with a condition must be held *walimahal-ursy* (marriage party). Even though the *fasid* marriage is clearly not similar to the marriage that is conducted in a legal way, but in the case of lineage fiqh scholars agreed that the lineage announcement of children who were born in *fasid* marriage is same with the lineage announcement of children who were born through valid marriage.

The third way of tracing child's lineage to his biological father is through *syubhat* intercourse (*wath'isyubhat*), it is an intercourse between a man and a woman outside of marriage but cannot be called as adultery, such as the intercourse during the triple divorce *iddah* period (a period after the husband asking for divorce) it is surely halal, the intercourse with woman who is believed to be his wife, and also some scholars allowed the intercourse in *mut'ah* marriage. These *syubhat* intercourses have possibility for the existence of pregnancy and childbirth. In this case the scholars from various sects agree that children who were born from *syubhat* intercourse could have lineage with the man who did the intercourse, if the children born after six or more months after the intercourse [13]. According to the concept of Islamic law, adultery is the relationship between men and women outside of marriage. With adultery, as it also can be happened on the valid marriage, is possible for pregnancy and childbirth. The scholars agreed that adultery is not the cause of the appearance of the lineage between the child and his father. Thus, child of adultery cannot have lineage relation with his father, even though it is biologically proven that he is born from the seed of the man who did the intercourse with his mother. The background and the reason that the lineage relation is a grace and favor, while adultery

is *jarimah* (crimes) which is not deserve to get any blessings, but the punishment. The implication of the lack of the lineage relation between children of adultery with their biological father could affected on several juridical aspects, those are the lack of rights provision, inheritance rights and the right of marriage guardian.

The Fact of the Penal Relations in the Perspective of the Court

The position of the children outside of marriage

The decision of the Constitutional Court resulting in the renovation of the family law in Indonesia significantly. The positive places the legal status of illegitimate children different with the legal children. The recognition of illegitimate children have a penal relationship with their mother and the family of their father and of course will result in the right of a child to get the rights of lineage relation, rights to provision, rights upon the heir guardianship rights, and other alimentation rights. The position of the illegitimate children become equal with legal children. The decision of court regarding on the status of the rights of illegitimate children made the illegitimate children has the law position against their biological father with conditionable to prove the existence of blood relationship based on science and technology and/or other evidence according to the law. The relationship and the position of illegitimate children is awaited of the clarity of their status, since everyone needs legal status in their life [14]. The Act on Marriage does not provide understanding about what is meant by illegitimate children. Depending on the formulation of Article 42 of Act on Marriage about understanding the legal children, based on the interpretation of *a contrario*, can be explained that the illegitimate children are not belong to the three categories of legal children:

- a) The children are born from valid marriage.
- b) The children are seeding before the marriage and born in valid marriage.
- c) The children are seeding in valid marriage and born after divorce.

As long as the children require one of the requirements above, then the children can obtain the legal children position. Article 99 KH defines the legal children as the children who were born in or as a result of valid marriage and the result of insemination outside the womb between husband and wife. In the position as the legal children, of course they have a juridical consequence. The juridical result of legal children is if they have a civil relationship with their father and mother and the family of t father and mother. According to Islamic law, a child that can be connected with his parents' lineage relation must meet the three aspects in cumulative, those are; children were born in the bonds of valid marriage and not from the result of adulterous relationship, both husband and wife are having real intercourse, and the last the womb has at least 6 months of age.

The statement of law of lineage relation is reflected in the articles in the Act on Marriage along with the regulations. It arises because the regulations were considered to be opposed with the basic constitutional norms in Indonesian

(NRI Constitution 1945). The legal norms which contained in the constitution are:

Article 28 B:

- (1) Everyone has the right to have and continue the family lineage through valid or legal marriage.
- (2) Everyone has the right to survive, grow and develop, and deserves a protection from violence and discrimination.

Article 28 D:

- (1) Everyone has the right of recognition, warranty and legal certainty in a fair and equal treatment of law.

The terms of the norms that became the key word is "through valid marriage" as written on the Article 28B Paragraph (1) of NRI constitution 1945. A valid marriage is must be read based on the provisions of Article 2 paragraph (1) of Act on Marriage, "marriage is valid when it is done according to each religion and beliefs". This basic norm gives everyone the right to get the justified descendant, which is obtained from valid marriage according to the law of his religion and not legalize the right to get the descendant of invalid marriage.

In this case, Islamic law already defines some of the terms and the fundamentals that must be met. Thus, the marriage that has been done could be valid. The positive law in Indonesia have also been regulating the marriage etiquette, namely the Act on Marriage Article 2 paragraph (1), which stating that "marriage is legal when it is done according to the law of each religion and beliefs", then Article 2 paragraph (2) stated that "every marriage were listed according to theregulation."

Maybe these two verses are not problematic because these set up two different things. First about the validity of marriage and two about the record of marriage. But then the provisions on the recording of marriage appeared, that stated must perform the recording of marriage in the presence of and under the supervision of the servants of a Marriage Staff. If people are breaking the terms of the applicable terms, then they can be sued and their marriage is not recorded. In this case the Constitutional Court appears to be more inclined to the opinion that states that the recording of marriage is not to be the elements of the legality of the marriage. The Constitutional Court only recognizes the legality of a marriage if it is met the terms of the law that has been determined by religion is destined for although not done before timekeeping officials deed authorities and not numbered according to the applicable terms. Different with the Decision of the Cassation No. 1948/K/PID/1991 who proposed that valid marriage is marriage as regulated in Act No. 1/1974 and the Government Regulation No. 9/1975, conducted according to the terms of the religion and beliefs, and were recorded according to the applicable terms. A valid marriage is the marriage that has met the provisions of Article 2 paragraph (1) and paragraph (2) of Act No. 1 of 1974 overall [15].

The Consequences of invalid marriage is the loss of all blood relations and penal relationship that should be happen between the child and his father. The positive law does not

differentiate between the children of adultery or not recorded marriage. In KHI Article 100 mentioned that illegitimate children has only the lineage relationship their mother and the family of their mother. The next consequence is the father and his biological child does not have the duty and responsibility of any laws. The duty and responsibility of the law in the form of the existence of the obligation provision, *hadhanah*, the birth right and all things related to penal issues that should happen between a father and his child.

From the explanation above it can be drawn an understanding that according to the positive Indonesian law, illegitimate children have two definitions; *First*, children who were born without any marriage or children of adultery. *Second*, children who were born from a legal marriage by religion but not recorded. The problem appears when the definition of illegitimate children entered to the field of valid marriage based on religion, but not recorded. It is not possible to state that unrecorded marriage is not valid, whereas the marriage meets the conditions and the pillars that have been specified by religion. In this context there are two things that are actually be distinguished, between the law of the recording of the marriage itself, and whether the recording became pillars of marriage that affect the validation of the marriage or not.

With two fundamental reasons, actually the recording of marriage is not only in the context of the obligation of statehood as citizens who must be subject to the applicable legislation, but at the same time a religious obligation as part of the compliance of Muslims to obey the commands of Allah and His Messenger. However, the reported marriage in the Office of Religious Affairs (KUA) becomes a problem, whether the recording is a valid conditions or not. Some Indonesian practitioner's law have different opinion in this problem. Masrum M Noor asserts that the mandatory recording of marriage in Indonesia is not only have become the state policy, but has also been agreed by Indonesian scholars. Indonesia also requires the existence of the marriage recording in early independence, as Act No. 22/1946. The Indonesian scholars earlier have also agreed on this matter as contained in the KHI, until the obligation of the recording of empowered with Act No. 23/2006 about citizenship administration, even technically is also regulated in legislation which have been specified by the Minister of religion contained in the Regulation of the Minister of Religious Affairs the Number 11/2007 [16]. Therefore, there is no more powerful *syar'ī* reason to reject the obligations of the recording of the marriage. Thus there is no longer false dichotomy between valid according to religion or valid according to the state. There is no longer the term "the marriage is legal but does not have the force of law." [17]

2. Result and Discussion

a) Provision Right

Based on the Decision of the Constitutional Court No. 46/PUU-VIII/2010, illegitimate children have lineage relationship with their mother and the family of their mother and with their father and the family of their father. On the basis of the verdict, then the father and family are obliged to provide the living cost against the children. Father here is a

man who had valid marriage with the children's mother. The obligation is a legal obligation to provide provision to children. Thus, a father is obligated to fulfill provision and livelihood such as living cost, health, education and so on based on his ability. It is in accordance with the statement of Article 80 Paragraph (4) KHI, in the case of the father and mother are still bound cords of marriage, when the father and mother of the child has to divorce the father still has to feed his child, according to his ability, as mentioned in Article 105 letter c and Article 156 letter dKHI.

The subject of mind that underlie the Decision of the Constitutional Court that break the terms of Article 43 (1) Law Number 1/1974 is basically the unfairness of law, if the law liberate the man who did the sexual intercourse and made the woman had child which became his responsibilities as a father and along with that law eliminates the rights of child against his father". This seems to be a fundamental reason that a man hold on the statement of Article 43 Paragraph (1). Therefore, after the statement in the article revised, the biological father is forced by law to responsible for what he did.

b) Guardianship Right

In Islamic law, marriage is a marriage which justifies the association between a man and a woman because the bonds of husband and wife, and limit the rights and obligations between a man and a woman who is not men unlawful [18]. The understanding of marriage in the Act on Marriage and in Islamic law is not so much different from the understanding to customary law. Marriage is not only a legal relationship between the husband and wife but also the emergence of legal relations between the relatives of the family tree of the other relatives [19]. The meaning and the purpose of marriage cause besides involving relatives that one with the other is also more means to continue the descendants of because the seed is very important from the purpose of the will carry out the marriage.

To realize the purpose of the marriage, the scholars consider carefully guardianship institutions, because according to them the existence of the mayor in deed is very important, especially for women and children to keep the common good and maintain their rights. In addition, because the mayor based on his experiences viewed can choose the candidate is most appropriate and best for them [20]. The existence of the mayor for women basically it is intended to provide the common good and the protection of their rights.

Terminologically, guardianship is derived from the *region* which among other means friendship, help, strength and power, so that the governor himself contains the meaning of those who help, supporters, protector or people who have the power by the terminology the term parents are those who have the power to performance to flaw without depending on the permissions of other people. Thus the guardian is someone who is able to do the works of the law as well for himself or for another man. The ability to receive the rights and obligations of (*ahliyyah al-wujub*) is a fit and proper receptacle a person to be given the rights and given the obligation. Man as the subject of the law when connected with the ability to receive (*ahliyyah al-wujub*), there are two kinds of the man who has the ability to receive less perfect

(*ahliyyah al-wujub s- naqishah*) and human beings who have the ability to receive by perfection and works (*ahliyyah al-wujub al-kamilah*). Meanwhile, ability act (*ahliyyah al-ada'*) is a fit and proper receptacle for someone considered valid all the words and deeds. When he made a covenant or marriage, then the action is legal and can lead to legal consequences and when he did a criminal act and he can be punished [21].

Based on the terms of the above can be understood that the right to be parents is the father who have lineage relationship with his daughter, namely children born in or as a result of the marriage is valid according to Article 42 of Acton Marriage, or in other words she was born of a woman who pregnant a man in the bonds of marriage is invalid. The terms of this article gave birth to the rule of law that the existence of the relationship of the law (blood relation between a child with both parents and caused the right mayor against his father is due to the bonds of marriage is valid and the child was born in the bonds of his marriage. Thus the birth of the child than those specified in the rule does not have the blood relation with his father, and result in the law of the Father in such a condition is not eligible to become the mayor of marriage in the marriage of her daughter and her guardianship rights were on the mayor of judges

Related to the legal basis of the guardianship is that the renewal of the law that was done by the Court is a legal breakthrough. The principles of scholarly developments in technology is evidence that the discovery of the law (*istinbat al-ahkam*) which is done by the Court is law transformation and spirit of the law excavation base substantive justice and truth (legal recognition by *de facto*) above the procedural truth (legal recognition by *de jure*). Therefore the Decision of the Constitutional Court about the rights of the child in custody especially parents in marriage, becomes the target of the Decision of the Constitutional Court. Because the stem from the existence of the right of guardianship is caused by the existence of blood relation. Whether or not there is blood relation cause legal whether or not right. Through the decision, the Constitutional Court also to legitimacy and reach over the rights of the child outside of marriage to obtain rights in custody.

c) Inheritance Right

Etymologically, the word *war is* (inheritance) is derived from the words *waratsa- yaritsu-waratsatan* which means the transmission of wealth a person to someone after death. The word *waratsa* means replacing the position, giving or granting and receiving the inheritance. While *al-mirats* according to the term is the transmission of the rights of ownership of the people who died to the heir who still alive [22]. The law of inheritance according to the scholars is the rules governing on the transfer of the wealth of a man who died to other people. Supported by Pitlo's opinion the law of inheritance is a series of provisions related to the death of a person that has the result in the field of materialism, and set as the result of transferring the wealth of a heritage who died, either in the family or relationship with the thirdparty." [23].

Based on the position of the law of illegitimate children,

Act on Marriage and KHI have similarities in the position and the rights of the illegitimate children. Construction spending juridical position of the rights law of the child outside of marriage in the means of inheritance before the emergence of the Decision of the Constitutional Court No. 46/PUU-VIII/2010 has been able to accommodate the law of inheritance that has been regulated in the Act on Marriage and basically regulations. The application of the law of inheritance before the Decision of the Constitutional Court has put the position of the illegitimate children only have the rights of inheritance to their mother and the family of their mother. The Court stated that Article 43 Paragraph (1) of Act on Marriage which stated, "Illegitimate children only have civil relationship with their mother and the family of the mother", does not have a binding legal powers that the verse should be read, "Illegitimate children have civil relationship with their mother and the family of their mother and with a man as their father that can be proved scientifically and technologically and/or the other evidence according to the law, including civil relationship with the family of their father."

The Decision of the Constitutional Court raises the consequences of the existence of the lineage relationship of illegitimate children with their biological father; the rights and obligations between the illegitimate children and their biological father, both in the form of provision, heirs and etc. This of course occurs when the DNA test already done, which stated that the illegitimate children have blood relationship with their biological father [24]. According to Islamic law (*Islamic jurisprudence*) children can be connected with parents' lineage relation in three cumulative aspects; the child was born in the bonds of marriage as valid, not from the agency relations outside the bonds of marriage (adultery), the husband and wife has to do a real sexual intercourse and the child is in the womb of his mother for at least 6 months.

3. Conclusion

In conclusion, the illegitimate children had their protection of law in three form; those are the provision right, the guardianship right, and the inheritance right. The provision right was obtained from the biological father of the illegitimate children. The father should be responsible for the cost of living, health, education, and others based on his financial ability. While, the guardianship right was focused on the future marriage of the illegitimate children, especially if the children are girl. The biological father cannot be the marriage guardian if the children are the result from adultery or invalid marriage that not based on Islamic Law. However, the children still got the marriage guardian from the man who Muslim, mature, and adult. The last was the inheritance right. In the field of law, the illegitimate children got the inheritance right from their biological father as long as it can be proved by the DNA test or other scientific test. While in Islamic Law, the illegitimate children only got the inheritance right from their mother, not their father.

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