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## Illegitimate Child Inheritance: An Analysis from Syariah Perspective

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### ABSTRACT

*An illegitimate child is born outside of legal marriage by both parents, as a result of adultery. The implication is that their rights in the Islamic law are hindered, such as inheritance from their biological father. However, is it the child's right to be categorically denied from receiving his biological father's estate? What is the alternative in syarak, in caring for their welfare? This study will analyze the ruling of illegitimate child inheritance from a syariah perspective, and thus propose some solutions to the problem. This study applied a qualitative approach using the library research method. The findings were obtained from articles, cases from the Syariah Court, acts, enactments, and analysis of fatwas in Malaysia. To achieve this objective, interviews were also conducted with a takaful consultant and an executive from the Amanah Raya Berhad (ARB). This study found that the instruments of hibah takaful, will, trust or testamentary trust can be implemented in Islamic estate planning to safeguard the welfare of an illegitimate child.*

**Keywords:** Hibah takaful, Illegitimate child, Islamic estate planning, Trust, Will.

The discussion of an illegitimate child in Malaysia has become a constant and frequently debated polemic. Their presence in the world is not like the birth of other children who have preserved their descent and their privileges. They are like normal children, but from a syariah perspective, they are prevented from inheriting the inheritance left by their biological father. The burden of this offence had to be borne by them because of the adultery committed by their parents. Initially, they were referred to as "sons of adultery", coinciding with the use of the term, adultery, as mentioned in the Quran:

الرَّائِيَةُ وَالرَّائِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ

"The woman and the man guilty of adultery or fornication,- flog each of them with a hundred stripes" (Al-Quran, al-Nur 24: 2)

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Then, the term was slightly softened to, "extramarital child". Until now the term has been referred to as, "illegitimate child ". However, all these terms refer to the same individual who is a child born without a legal bond between a boy and a girl (Paizah Hj Ismail, 2013).

Every year, the statistics revealed by the National Registration Department (JPN) are worrying in referring to the cases of the birth of illegitimate children. Based on the statistics in 2019, a total of 25,567 illegitimate children were registered with the JPN. In fact, the statistics released by the Ministry of Health Malaysia show that a total of 3694 unmarried girls under 18 years old were pregnant and gave birth to illegitimate children in 2017. On average, 300 cases are recorded per month and this is equivalent to 10 cases per day (Sinar Harian 2019). According to the records released by the Department of Social Welfare, the states that recorded the highest ratio of births of illegitimate children in Malaysia were Selangor, Pahang, Johor, Sabah and Sarawak (Muhammad et. al 2021).

Many factors contribute to the occurrence of this issue of the illegitimate child. Siong & Tharshini (2020) have suggested that the main factors causing such problems are due to poor family relationships, the development of information technology, peer influence, socioeconomic status and low levels of education. Ab Razak & Hamjah (2017) have added that other factors include the influence of mass media, desire to try new things, problems of romance and self-willingness, victims of rape, exposure to pornographic videos and movies, ignorance and neglect of religious practices, abuse of imaginary pills and involvement in illegal racing. Most of the perpetrators involved are teenagers because at this age, they are still looking for identity and need affection (Siong & Tharshini 2020).

All factors mentioned until the birth of an illegitimate child are contrary to culture, law and religion. In fact, among the main effects that befall them is that they are prevented from inheriting the biological father's estate, even though the birth of an illegitimate child can be registered in the JPN, based on Section 7 of the Registration of Births and Deaths Act 1957 (Act 299), Section 9 Birth And Death Ordinance 1951 (Sabah Cap123), and Section 10 Birth and Death Ordinance 1951 (Sarawak Cap 10). This study will analyze the ruling of the inheritance of an illegitimate child from a syariah perspective, thus proposing the best solutions available for estate inheritance.

### Concept of an Illegitimate Child

Referring to the definition presented by the 57<sup>th</sup> Muzakarah Fatwa Committee of the National Council for Islamic Religious Affairs Malaysia (Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia -MKI), which convened on 10<sup>th</sup> June 2003:

1. An illegitimate child is a child born out of wedlock either as a result of adultery or rape, and he is not from *syubhah* intercourse or not from a child of slavery.
2. An illegitimate child born less than 6 months 2 *lahzah* (seconds) according to *the Qamariah calendar* from the date of *tamkin* (sex).

In Islam, a child's status can be determined through several methods. First, through legal marriage or *fasid* marriage between both parents. Second, through *syubhah* intercourse. The third is a father's acknowledgement that the child is his biological child. Fourth, evidence by two fair male witnesses. The fifth, *qiyafah*, is the recognition by experts who specialize in determining descent based on physical characteristics and likeness (al-Zuhaili 2012). The sixth is through *deoxyribonucleic acid* or DNA tests on samples such as blood, hair, bone and saliva. The final method is through laboratory testing which has 99.99% accuracy in the determination of descent and can also be used to identify hereditary genealogy for inheritance (Azziz et. al 2020). All the methods mentioned above are based on the hadith of the Prophet:

الْوَالِدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ

(Descent) The child belongs to the span (legal marriage). While there is no right for adulterers." (al-Bukhari, 2000. Hadith No. 2092).

The reason for the *wurud* of this hadith is that Sa'ad Bin Abi Waqas had complained to the Prophet PBUH that a child was his nephew during the time of ignorance. His brother, 'Utbah bin Abi Waqas, had ordered him to take care of his child, because the birth of the child was due to his intercourse with his servant Zam'ah. However, this statement was refuted by 'Abd Bin Zam'ah by saying that the child was his brother and the son of his father's wife who was born after marriage. Therefore, the Prophet PBUH acknowledged the statement by 'Abd Bin Zam'ah and also advised Sudah Binti Zam'ah to cover the private parts (*hijab*) because she is similar to 'Utbah bin Abi Waqas (al-'Asqalani 2001).

In addition, the jurist also stipulates that the equality of a child should also be seen during his birth period which is not less than six months *qamariah* from the date of the valid marriage, *aqad*. If a child is born less than that period, then the birth of the child is considered invalid (Ibn Rusd, 2004). This can be referred to in the case of Raisha binti Annuar Case No: 05100-006-0447-2009. An application was made in court to bring an illegitimate child to Annuar Hj Zakaria after the Port Dickson Religious Office doubted the marriage formed between him and Zaharah Yunus. The birth certificate of the illegitimate child was found to be less than 6 months. The couple were married on 5<sup>th</sup> April 1985 while the date of birth was on 1 October 1985. Thus, the court has decided that the status of the application for the illegitimate child cannot be attributed to the biological father. Similar cases which involved the birth of an illegitimate child of less than 6 months can be referred to in the Titik Subiyanti, Case No. 05100-006-0213-2008 and the case of Mohd Hairiy bin Hamdan v. Rabiah Binti Ishak.

However, there are also court cases that allow an illegitimate child to be assigned to his biological father for legal or administrative reasons. For example, the case of Faizal bin Rabion v Nurul Fazila bt Nawawi [2014] 1 SHLR 137. In this case, the plaintiff and the defendant have entered into a marriage and have a child who was born 5 months 9 days after the date of the marriage certificate. Therefore, the plaintiff requested that the child be assigned to him to obtain a birth certificate. In fact, the plaintiff also requested the JPN to issue an identity card to the illegitimate child and assigned it to him. This application was made based on his justification for his child's legal and administrative affairs such as schooling and medical matters. Thus, the court has allowed the application to be for that purpose only. As for matters involving the Islamic law such as guardianship and inheritance of estate, it is not allowed. The same situation can also be referred to in the case of Zafrin Zulhilmi bin Pauzi v Noor Aini bt Nasron [2013] 2 SHLR 39, who gave birth to an extramarital child 4 months 24 days from the date of the marriage certificate.

Looking at the differences in judgment, the method of setting the period of the content of the illegitimate child can be referred to in the statement of Allah:

وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا

The carrying of the (child) to his weaning is (a period of) thirty months (al-Quran, al-Ahqaf 46: 15).

وَفِصَالُهُ فِي عَامَيْنِ

"and his weaning is in two years" (al-Quran, Luqman 31:14)

Based on the above two verses of the Quran, Allah mentioned two different circumstances. In the first sentence, the period of joint pregnancy and breastfeeding is a dive of 30 months and in the second sentence the period of breastfeeding is for 24 months. Al-Sarkhasi (1993) has argued that when the first period pushes the second period, then the minimum remaining balance to conceive is six months. This means that a child born more than 6 months is a legal child under Islamic law. While the birth period of less than 6 months is considered as an illegitimate child.

This interpretation is also reinforced by the narration of a woman who gave birth to a child within six months, during the era of the caliphate Uthman ra. Ibn Abbas ra. brought the woman to the caliphate because there was a suspicion of the birth. Then, the woman was almost stoned on suspicion of adultery. At that time, Ibn Abbas ra interpreted the verse based on the two actual meanings of the above verse which suggested that the minimum duration of content is 6 months. Thus, the woman escaped punishment (Al-Kasani 1986).

This interpretation can also be seen in the court case of *Wan Khairi Wan Azmi v Farah Nurliliana Jauhari* [2011] 1 CLJ (Sya) 344. The appellant, Wan Khairi Wan Azmi, has filed an application in court for a child born on 7 December 2010 at Hospital Raja Perempuan Zainab II, Kota Bharu to be assigned to the applicant. After the court had examined the facts of the applicant's case and considered the doubts that exist, the child has been attributed to the applicant. This is because the child was born within six months and four days from the date of the marriage certificate.

In the case of *Wan Azmi v Nik Salwani*, (1991) 9 JH (2) 192, the plaintiff was married on 29 June 1987 and divorced on 21 February 1988. This was due to the doubts which arised on the part of the husband. After all, his wife gave birth in March 1998. The plaintiff has applied from the court to deny that the child was attached to him. However, it is based on the consideration of the Grand Kadi Court that the child is considered legitimate under *syarak* as the birth took place more than six months. In addition, the court also used the concept of *firash* for the case of *Salim* (1976) 2 JH 296 and *Wan Azmi* (1991) 9 JH (2) 192 in revoking the application of the plaintiff who claimed his wife was pregnant first before the marriage certificate was executed. All decisions of this court were in accordance with the Islamic Family Law (Federal Territories) Act 1984, Section 110, on the conviction of a child to his biological father:

Where a child is born to a woman who is married to a man **more than six qamariah months** from the date of the marriage or **within four qamariah years** after dissolution of the marriage either by the death of the man or by divorce, the woman not having remarried, **the nasab or paternity of the child is established in the man . . .**

While for the maximum period of the birth of the child, the jurists differ. The Hanafi school views the maximum period as two years. While on the side of Syafie and Hambali schools, the maximum period is four years. Next, for the Maliki school, the period is five years. The Daud az-Zahiri school believes that it is only nine months (al-Syarbini 1994; Ibn Rushd 2004). All such views have their justifications and *istidlal*. According to Abu Zahrah, the ijthad of the jurists is based on the authority of knowledge. However, based on the facts, births usually occur within nine months (Abu Zahrah 1957).

However, there are also court cases involving a birth period of more than four years such as the case of *Ismail bin Ishak v. Kalam binti Mamat* (1995) 10 JH 41. The plaintiff has made an application in court that the child born to his ex-wife was not his child. The plaintiff was divorced on 28.9.1985, while the child was born on 23.9.1989, which is more than four years later. The defendant, his wife, has claimed there was *a snub* between them. However, the claim cannot be proved and the court has relied on Mazhab Syafie and Hambali that the child cannot be assigned to the plaintiff upon the birth of a child more than 4 years *qamariah* after the marriage is dissolved. In fact, by referring to the Islamic Family Law (Federal Territories) Act 1984, Section 111: For birth of more than four years after the dissolution of marriage:

Where the child is born more than four qamariah years after the dissolution of the marriage either by the death of the man or by divorce, **the paternity of the child shall not be established in the man . . .**

Looking at some of the judgment cases decided by the court regarding the status of the illegitimate child mentioned, there are some differences in results, especially the birth status of an illegitimate child born less than 6 months. Thus, the status of the illegitimate child should be viewed more closely through fatwas issued in Malaysia.

### **Fatwas of the Illegitimate Child**

To date, most of the states in Malaysia have issued their fatwas on illegitimate child. The Federal Territory of Kuala Lumpur, Selangor, Melaka, Negeri Sembilan, and Terengganu are the states that have gazetted the fatwa. Referring to the text of the fatwa in each state, the content is generally

almost the same, except that the text or use of the term is slightly different (Paizah 2013; Abd. Azid et. al 2019). The texts of the fatwa can be formulated into the following three main points:

1. Period: (a). An illegitimate child is born **less** than 6 months 2 *lahzah qamariah* from the time of "*Imkan al-Dukhul*", and (b). An illegitimate child is born **more** than 6 months 2 *qamariah lahzah* in terms of the time of "*Imkan ad Dukhul*" after a valid *`aqad*, and there is evidence in terms of syarak that the child is an unmarried child through their *iqrar* (confession) (the husband and wife or one of them), or 4 witnesses who meet the requirements according to Islamic law.
2. Ways of marriage: The birth of the child is due to illegal marriage including rape, adultery or scientific methods, and not from *syubhah* marriage.
3. Implications of Islamic law: An illegitimate child shall not be assigned to the man who caused his birth or to anyone who claims to be the father of the child. They cannot be inheritances, do not become mahram and cannot be guardians.

However, the Perlis State Fatwa is found to be different from the majority of fatwa institutions in Malaysia. The Perlis State Fatwa allows an illegitimate child to be assigned to his biological father through a fatwa gazetted in 2013 as follows:

A child born less than 6 months after the mother's marriage can be given to the mother's husband, unless the husband refuses.

According to Mohd Asri (2019), this fatwa has its *maslahah* based on the opinion of Ibn Sirin, Ishaq Ibn Rahawiyah, Abu Hassan al-Basri, Ibn Taymiyyah and Ibn Qayyim. This fatwa believes that an illegitimate child whose birth period is less than 6 months may be attributed to the father, provided that it is not denied by the father. The main *maslahah* of this retaliation is to cover up the disgrace, protect the dignity of an illegitimate child and family institutions, to protect emotions and psychology. An illegitimate child assigned to "abdullah" is not a solution and will remove the child's respect for the father, especially if the illegitimate child has another sibling. In fact, the parents have also repented and are ready to keep the child's best interest through a legal marriage. The Perlis State Fatwa is also seen as different from the 1<sup>st</sup> Muzakarah of the National Fatwa Committee for Islamic Religious Affairs which convened on 28-29 January 1981:

Muzakarah has decided that an illegitimate child, whether followed by the second marriage of their parents or not, should be assigned to Abdullah.

On the other hand, Zulkifli al-Bakri (2017) saw that the prohibition of the cultivation of illegitimate child is to maintain the general *maslahah* which is *hifz an-nasab*. According to him, the negative impact on the illegitimate child is greater, becomes a virus in society, and damages family institutions. Thus, the view that allows the birth of illegitimate child to maintain a specific *maslahah* i.e., dignity and disgrace of illegitimate child should be refined. In fact, the majority of fatwa institutions in Malaysia is also based on the story of the Prophet PBUH with the past Sa'ad bin Abi Waqas, "*Nasab is the son of a legal marriage. Whereas adulterers are shame.*" (al-Bukhari, 2000, Hadith No: 2092).

This difference in fatwa is seen as having implications for the descent of illegitimate child and other matters related to Islamic law. For example, the Muzakarah of the 44th MKI fatwa authority on 25 June 1998 clearly states that:

An illegitimate child cannot be assigned to the man who caused the birth or anyone who claims to be the child's father. Therefore, they cannot inherit, cannot become a mahram and cannot become a guardian (*wali*).

Looking at the differences, this study found that the majority of fatwas that prohibit the cultivation of illegitimate child to biological fathers and inheritance are more accurate today. This is because the statistics of reported cases of adultery are so alarming. If an illegitimate child can

be easily assigned to his father, this will cause the community to be unconcerned about the issue of adultery. In fact, the prohibition of this descent is *a sadd al-zarai'* to other heavier issues (Abd. Azid et. al 2019). Although an illegitimate child is not eligible to inherit his father's estate, the study looks at the need for other alternatives to allow an illegitimate child to inherit his father's property. This indirectly proves that Islamic law is fair and does not punish as it safeguards the general *maslahah*.

### **Illegitimate Child Inheritance**

The rulings of inheritance or *al-mirath* are built on a solid basis through the statement of Allah in Surah an-Nisa, verses 11, 12, and 176. This is further complemented through the explanation of the Prophet PBUH and *ijmak* among the companions. The laws of this inheritance cover the characteristics as follows (Awang 2008; Md Said et. al 2021):

1. *Al-Wasatiyyah*: the middle between the capitalist and communist systems.
2. *Al-Tawazun*: the consideration for testament with a rate of 1/3 of the property to non-heirs and the remaining 2/3 is divided by faraid.
3. *Al-Adalah*: a fair division according to human nature.
4. *Al-Ijbar*: the legal heirs receive their share according to the *al-mirath* law without being able to take away the rights of others.
5. *Al-Thabat*: the ruling of its implementation is fixed and relevant since the time of the Prophet until now.
6. *Al-Syumul*: the inheritance of the estate involves all the next of kin to the deceased, relatives, *dhawil al-arham*. Whether the division is by *fardhu* (1/2, 1/3, 2/3, 1/4, 1/6, 1/8) or *asabah* (*asabah bi an-nafsih*, *asabah bi al-ghairi*, *asabah ma al-ghair*). Inheritance also does not count age, and poor or rich.

In addition, in the rulings of inheritance, the three groups agreed by jurists that are not entitled to inherit the inheritance are murderers, different religions, and slavery (al-Zuhaili 2012). However, the method of illegitimate child inheritance is not discussed in detail in the classical book by jurists (Abdullah et. al 2021). This is because, the jurist says that those who inherit the inheritance are due to their family descent, marriage line, slavery and Baitul Mal (Ibn Rushd 2004; al-Syarbini 1994). Hence, there is no need for a detailed discussion on the status of the inheritance of an illegitimate child. This is due to an understanding of the issue that is easily facilitated, which asserts that the illegitimate child and his biological father does not inherit each other. However, this is completely different from her mother's inheritance due to the existence of a valid descent relationship (Paizah 2013).

### **Literature Analysis**

The issues surrounding the illegitimate child are so significant to debate to find out the solution. Because of this, there are many studies done from time to time, whether it involves individuals, scholars, government and private departments. If the issue of an illegitimate child is not treated and prevented, then the implications of this matter will intensify. These include issues in terms of maintenance, guardianship, emotions, future, nomination, society and education (Siong & Tharshini 2020). However, the discussion on the obstruction of the illegitimate child, especially in the inheritance of the estate is still less debated.

This study looked at the need for some suggestions for illegitimate child inheritance. This is because not all parents who commit mistakes during their life would ignore the child who has been born out of it. Some expressed regrets and got married according to the Islamic law, with the unborn child still in the womb during the marriage. In fact, the illegitimate child is still given custody, maintenance and love as usual. Thus, this study will focus on three main instruments, namely the hibah takaful, will, and trust, as recommended solutions to estate inheritance of an illegitimate child.

The solution to the inheritance of this unnerved child's estate is worth talking about. This is because the prohibition of Islamic law on the inheritance of an illegitimate child from his biological father can be misinterpreted as tyranny. What if the illegitimate child is an orphan, underage and comes from a poor family? Does not the barrier of inheriting the estate of the deceased open up *mafsadah* and greater harm to the welfare of this child?

For example, in the case of Mohd Hanif bin Farikullah v Bushra Chaudri [2001] 5 MLJ 533. The applicant has appealed in the High Court of Malaya Kuala Lumpur for the monthly payment of RM1,050 by the Kuala Lumpur Magistrates Court to his illegitimate son, Muhammad Osman bin Mohd Hanif, to be reduced to RM200. In addition, a monthly maintenance payment order was also issued from the Federal Territory Syariah Subordinate Court of RM50. Imagine if the father dies and the illegitimate child has no dependency and financial resources to inherit. Is this denial not contrary to *maqasid hifz nafs* and *hifz mal*?

There is no denying that the reason for the inheritance is due to the family descent, the marriage bond of the slave and Baitul Mal. Thus, the nerveless child is not eligible to inherit the inheritance of the biological father who was left behind. This is as referred to in the 44<sup>th</sup> National Fatwa Committee which convened on 25<sup>th</sup> June 1998:

1. An illegitimate child does not break the hereditary genealogy with his/her mother. Therefore, both can inherit each other's inheritance. If the mother dies, he/she has the right to inherit her mother's inheritance with other heirs. Likewise, if the illegitimate child dies first, the mother is entitled to inherit the estate.
2. An illegitimate child is not eligible to inherit the inheritance of the biological father, and he/she does not become a legal heir and vice versa.

Looking at the above fatwa, it is clear that the illegitimate child does not inherit from his biological father's side unless the inheritance only occurs through his mother's side. For example if "A" passed away and the next of kin left behind is a wife and an illegitimate daughter aged 10. The deceased also left behind a mother and two brothers. Faraid calculation is as per Table 2 below:

Beneficiary	Distribution Rule(s)	Shares
Wife	1/8	6/24
Mother	1/6	4/24
Brother	<i>`Asabah bi nafsih</i>	7/24
Brother		7/24

Table 2: Faraid Calculation

Based on Table 2 above, the beneficiaries who are eligible for the estate of the deceased "A" are the wife (1/8), mother (1/6), and two brothers by *`asabah bi nafsih*. If the estate left behind is RM100,000 cash. Thus, the wife will get her share of RM25,000, the mother's share of RM16,666, and each brother will get RM29,167. In this situation, the illegitimate child status does not inherit the estate of the deceased "A". The welfare of his illegitimate child is seen as increasingly difficult if the wife does not have a fixed income and does not receive other financial assistance. However, the welfare of his illegitimate child is still guaranteed if the deceased "A" has the opportunity to plan the property owned during his life such as preparing a Hibah Takaful, will, trust or testamentary trust.

#### Hibah Takaful

Hibah Takaful is a gift based on love from a giver to a voluntary recipient, without expecting retribution (Mohamed Said & Wan Ayub 2021). Basically, the term, Hibah Takaful consists of two different instruments, namely hibah and takaful. Hibah Takaful is now widely used in takaful companies whether in the form of life takaful, education, accident, disaster, critical illness, permanent disability and many others (Bank Negara Malaysia 2010). The implementation of the

Hibah Takaful is in line with *maqasid hifz al-mal*, built based on *al-ta'awwun* concept and welfare. The encouragement to help is also explained by the Prophet:

مَنْ نَفَسَ عَنْ مُؤْمِنٍ كَرْبَةً مِنْ كَرْبِ الدُّنْيَا، نَفَسَ اللَّهُ عَنْهُ كَرْبَةً مِنْ كَرْبِ يَوْمِ الْقِيَامَةِ، وَمَنْ يَسِّرْ عَلَى مَعْسِرٍ،  
يَسِّرْ اللَّهُ عَلَيْهِ فِي الدُّنْيَا وَالْآخِرَةِ

Whoever gives help to a Muslim who is experiencing something from the hardships of the world, Allah SWT will relieve the hardships that suffocate him and the hardships of the Resurrection. And whoever helps to facilitate the hardships of one's life and hardships in this world, Allah SWT will ease the hardships of this world and in the Hereafter. (Muslim, 2000. Hadith No. 7028)

According to the above hadith, Islam encourages everyone to help each other in distress. The participant's contribution money will be kept in two different funds. The first is the *Tabarru' Fund*, where participants contribute to a special fund to help other takaful participants in the event of a disaster. The second is the Savings Fund, where participants will receive back the contributions made upon the maturity of the takaful certificate and the investment made (Mohd Noor & Zakaria 2010). The Hibah Takaful plan offered is dependent on the needs of the takaful participants. The higher the monthly contribution, the higher the benefits rendered, either to the beneficiaries or the takaful participants themselves. Referring to the Resolution of the Shariah Supervisory Council of Bank Negara Malaysia at the 34<sup>th</sup> meeting dated 21<sup>st</sup> April 2003, it was summarized that (Bank Negara Malaysia 2010):

1. The benefits of takaful can be given to anyone and their use is free as long as it complies with Islamic law.
2. A Hibah Takaful is a conditional gift and does not exchange its status to a will.
3. The takaful benefit will be passed on to the beneficiary upon the death of the takaful participant. However, if the takaful policy matures and the takaful participant is still alive, the benefit will be handed over to him based on the implementation of the *Hibah Ruqba*.
4. The Hibah Takaful can be revoked by the takaful participant during life as there is still no *qabad* on the beneficiary's side. Beneficiary who has died before can be changed to other nominees.

Thus, the Hibah Takaful is believed to benefit the beneficiaries, especially in the inheritance of the estate. This is because the benefits of the Hibah Takaful can be given to anyone including an illegitimate child without any limit. Among the main advantages and benefits of having a Hibah Takaful are the replacement of income, debt settlement, absolute recipients and ease of inheritance, and the purpose of education, treatment and maintenance of children.

In the context of illegitimate child inheritance, there is a significant difference between regular savings and the Hibah Takaful contribution. For example, Table 3 below describes Takaful Ikhlas plans at the minimum rates (Ahmad Mustapha 2022):

Regular saving		Hibah Takaful	
Participant "AA"		Participant "BB"	
30 years old			
Monthly saving	RM50	Monthly contributions	RM50
Saving period (20 years)	RM12,000	The amount of protection: death of sickness or misfortune, disability and critical illness, <i>badal haji</i> .	RM200,000
Total saving	RM12,000	Total compensation	RM200,000

Based on Table 3 above, it is clear that the difference between regular saving and Hibah Takaful within 20 years. The "AA" participant only left the saving worth RM12,000. However, the risk is that the saving will be inherited by the other heirs based on *faraid* law. Meanwhile, the "BB"



participant will leave behind a higher compensation worth RM200,000. More importantly, the benefit of the Hibah Takaful is absolute to the illegitimate child only without the need to be inherited based on *faraid* law, and without going through a lengthy process of estate administration. This undoubtedly provides a lifeline and a guarantee of the survival of the illegitimate child.

### Will

According to Section 2, the Muslim Will (State of Selangor) Enactment 1999, a will is an *iqrar* or planning that a person made at the time of the testator's life on his property, or a benefit to complete something for virtue, or any purpose permitted according to Islamic law after the death of a testator. A will is one of the instruments of inheritance in Islam and its sanctioning has been clearly stated in the al-Quran and al-Hadith:

مَنْ بَعَدَ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ

The distribution in all cases ('s) after the payment of legacies and debts (al-Quran, al-Nisa' 4: 11

The planning of the will is done during the life of the testator, while the execution is after the death of the testator. The beneficiary of the will is the same as the *hibah* and can be given to an illegitimate child. However, the grant to the non-heirs is conditional with not more than 1/3 of the deceased's property, which is calculated after deducting the cost of funeral arrangements, the deceased's debt, the execution of the will, and the property if any. While the remaining 2/3 will be inherited by the legal heirs according to the *faraid* law. This is in accordance with a hadith from Saad bin Abi Waqqas ra when the Prophet visited him who was sick:

يا رَسُولَ اللَّهِ، أُوصِي بِمَا لِي كُلِّهِ؟ قَالَ: لَا، قُلْتُ: فَالْشَّطْرُ، قَالَ: لَا، قُلْتُ: التُّلُثُ، قَالَ: فَالتُّلُثُ، وَالتُّلُثُ كَثِيرٌ،  
إِنَّكَ أَنْ تَدَعَ وَرَثَتَكَ أَعْيَاءَ خَيْرٌ مِنْ أَنْ تَدَعَهُمْ عَالَةً يَتَكَفَّمُونَ النَّاسَ فِي أَيْدِيهِمْ

O Messenger of Allah, may I wish to testament all my possessions? He said: "no", I said: "half?" He said: "no", I said again: "One-third" He replied: "One-third and a third is a lot", "surely you leave the heirs rich better than he asks of the people with their hands. (al-Bukhari, 2000. Hadith No. 2780).

According to the hadith above, the Prophet gave guidance to Saad bin Abi Waqqas ra in the inheritance of property. Although he owns a lot of wealth, the limit for making a will to non-heirs is only 1/3. This is to ensure that the rights of the heirs are protected and not left in poverty (An-Nawawi 1971). This hadith encourages property owners to make a will during life to non-heirs. For example, if a biological father bequeaths 1/3 of his savings of RM300,000 to his illegitimate child. Thus, the Islamic law has guaranteed the rights of the illegitimate child, who is eligible to acquire the amount of RM100,000. The bequeathed property will be inherited by the illegitimate child after the death of the testator without following the *faraid* law.

### Trust

The implementation of trust refers to contract and commercial law based on Civil Law especially involving the principle of equity. Its definition can be seen in one interpretation of the case of Parmeshiri Devi & Anor v Pure Life Society (1971) MLJ 42 as follows (Awang et. al 2022):

An equity obligation binds a person that is called a "trustee" to manage a property under his control is called trust property, for the benefit of a person or some people referred to as the "beneficiary" of which he or she may be one of them and any person which can enforce the obligation.

Based on the definition, there are 5 main components in the trust which are donor, beneficiary, executor, trustee, and trust deed. Among the features of the trust implementation is its establishment based on diverse objectives through a trust deed and have a maturity date. The donor can give the trust property to any beneficiary including an illegitimate child. Such trust property can consist either in cash or property. It is required to transfer the property to the executor during life to be administered as per the terms and conditions stipulated in the trust deed (Abdullah et. al 2020; Awang et. al 2022).

Referring to the issue of an illegitimate child's inheritance, the donor can allocate a sum of cash to the trust account. The donor can detail the objectives of his establishment in the trust deed on how the trust should be administered. For example, monthly maintenance, education, celebration, medical, investment and others. This administered trust property is not subject to the ruling of *faraid* and not required to obtain a Letter of Administration (Abdullah et. al 2020; Awang et. al 2022).

Table 4 below describes an example of the implementation of trust (Muhammad Nidzamuddin 2020):

Donor	"AB"														
Beneficiary	Illegitimate child (12 years old)														
Trust property	RM100,000														
Date of trust deed seal	1.1.2022														
Trust deed maturity date	Until an illegitimate child is 18 years old OR 1.1.2028 (6 years period)														
Instructions in trust deed	<ul style="list-style-type: none"> <li>• The guardian appointed is illegitimate child mother.</li> <li>• Payment of trust through guardian starting when the illegitimate child is 13 years old as follows:                             <table style="margin-left: 40px; border: none;"> <tr> <td style="padding-left: 20px;">i. Monthly living</td> <td>RM300 x 6 years</td> <td style="text-align: right;">RM21,600</td> </tr> <tr> <td>ii. Schooling</td> <td>RM200 x 6 years</td> <td style="text-align: right;">RM14,400</td> </tr> <tr> <td>iii. Celebration</td> <td>RM500 x 6 years</td> <td style="text-align: right;">RM3,000</td> </tr> <tr> <td></td> <td style="text-align: right;">Sum</td> <td style="text-align: right;">RM39,000</td> </tr> </table> </li> <li>• Estimated final payment of trust account to the beneficiary at age of 18 = RM61,000</li> </ul>			i. Monthly living	RM300 x 6 years	RM21,600	ii. Schooling	RM200 x 6 years	RM14,400	iii. Celebration	RM500 x 6 years	RM3,000		Sum	RM39,000
i. Monthly living	RM300 x 6 years	RM21,600													
ii. Schooling	RM200 x 6 years	RM14,400													
iii. Celebration	RM500 x 6 years	RM3,000													
	Sum	RM39,000													

Referring to Table 4 above, the donor "AB" can create a trust account for his illegitimate child who is then 12 years old. A trusted guardian can be appointed to manage the illegitimate child benefits. After the trust deed is signed, the donor will need to deposit RM100,000 and the trust account will be administered by the appointed executor in accordance with the terms and conditions as agreed in the trust deed. The payment of trust money will only begin when the illegitimate child is 13 years old and continues until the age of 18 for 6 years. The scheduled payment of trust money covers monthly living, schooling and celebrations. Out of the RM100,000 capital, RM39,000 will be used for the benefit of the illegitimate child. The net balance to be handed over to the illegitimate child, which is RM61,000, will be handed over when he is 18 years old.

#### Testamentary Trust

Testamentary Trust is part of the will but uses the concept of the trust instrument. It is created by the testator through instructions written by a will in life. Its implementation will take effect after the death of the testator and the instructions contained therein are more detailed than the usual will. For Muslims, the grant to non-beneficiary through the Testamentary Trust is still subject to 1/3 part. While the gift to the beneficiary must obtain the consent of the other heirs (Muhammad Nidzamuddin 2020).

For example, the "DD" donor bequeathed his Amanah Saham Nasional Berhad (ASNB) savings of RM300,000 to his heirs. While 1/3 of the ASB is to an illegitimate child. In his will, he ordered a trust account to be opened and the RM100,000 amount to be contributed to the takaful until the illegitimate child reached 18 years old. The balance of the contribution is payable to the beneficiary. Upon death, his estate will be administered, and a trust account will be created as directed by the donor. Among the main benefits of the implementation of this trust instrument is that the trust will be fully administered for the benefit of the illegitimate child. This implementation is seen as significant, especially if the illegitimate child is still underage.

In conclusion, an illegitimate child is not eligible to inherit his biological father's estate. This is as stated by the jurists and in accordance with the majority of fatwas issued in Malaysia. However, the illegitimate child also has rights in life and welfare. Their rights need to be taken care of as they will go through a difficult phase of life if the society views them as children of adulterers, whereas the offence is on the part of their parents. Unfortunately, it is them who have to endure all the shame and blame. This reality seems unfair to them and that is not the true meaning of Islamic law.

Thus, this study found that the instruments of Hibah Takaful, will, trust or testamentary trust can be implemented in the Islamic estate planning to safeguard the welfare of the illegitimate child. Although they are not eligible to inherit their biological father's estate in absolute terms, the three proposed instruments are in line with the *maqasid syariah*. The father needs to plan the inheritance for the benefit of his son from the beginning. When he knows that the illegitimate child cannot be attached to him, then it is necessary to realize that the implications of inheritance will be more difficult. This study suggests that the State Islamic Religious Council (MAIN), government agencies and non-governmental organizations (NGOs) should expand awareness campaigns, especially through social media, so that information on Islamic estate planning to the illegitimate child is taken more seriously. In addition, the details of the fatwas also need to be refined to address the custody of the illegitimate child's inheritance from the Syariah perspective.

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