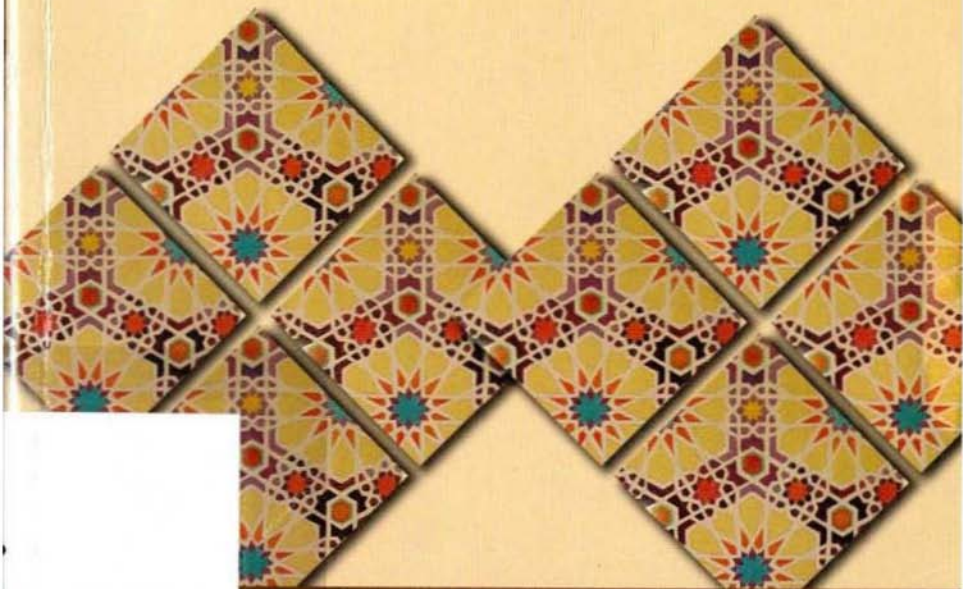


THE PROBLEMS OF
THE ILLEGITIMATE CHILD
(*WALAD AL-ZINĀ*) FOUNDLING (*LAQĪT*)
IN THE SUNNI SCHOOLS OF LAW

MOHAMAD SUJIMON



IIUM Press



LIBRARY
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

**THE PROBLEMS OF THE
ILLEGITIMATE CHILD (*WALAD
ZINĀ*) AND FOUNDLING (*LAQĪT*)
IN THE SUNNĪ SCHOOLS OF LAW**

Mohamad Sujimon



IIUM Press



Published by:
IIUM Press
International Islamic University Malaysia

Copy no:	1119597D	First Edition, 2010
Initial: AAR		©IIUM Press, IIUM
Date:	9/11/16	
Location: MAIN /PJ /ISTAC /NILAI /K/ K2		

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without any prior written permission of the publisher.

Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

Mohamad Sujimon

The problems of the illegitimate child (*walad zinā*) and foundling (*laqīṭ*) in the sunnī schools of Law : highlights from Malaysia and Brunei Darussalam / Mohamad Sujimon

Bibliography p. 185

ISBN 978-967-5272-50-9

1. Illegitimate children--Legal status, laws, etc--Malaysia. 2. Illegitimate Children--Legal status, laws, etc.--Brunei. 3. Illegitimacy (Islamic Law)--Malaysia. 4. Illegitimacy (Islamic law)--Brunei. I. Title.

306.87409595

ISBN: 978-967-5272-50-9

Member of Majlis Penerbitan Ilmiah Malaysia – MAPIM
(Malaysian Scholarly Publishing Council)

FP
BP
158-5
J455
M697P
2010

CONTENTS

Acknowledgements	xi
Preface	xiii
Preamble	
The Importance of Genealogical Relationship (<i>Nasab</i>) in the Sunnī Schools of Law	xvii
CHAPTER ONE	
Child's Legitimacy: <i>Al-Walad li al-firāsh</i>	1
I. Evidence (<i>al-Bayyinah</i>)	5
II. Doubtful Intercourse (<i>Waṭ' shubhah</i>)	10
CHAPTER TWO	
Illegitimacy (<i>Nasab Ghayr Shar'ī</i>)	19
I. The First Category – <i>Zinā</i>	19
II. The Second Category – The Offspring Arising within a Legitimate Union:	19
(1) Imprecation (<i>Li'ān</i>)	20
(2) The Period of Gestation	24
(3) Inability to Beget	25
III. The Third Category – Deliberate Unlawful Marriage	26
The Rights of the Illegitimate Child	26
I. Legal Status of the Illegitimate Child (<i>Walad zinā</i>)	26
(1) Genealogical Relationship (<i>Nasab</i>) of the Illegitimate Child (<i>Walad zinā</i>)	26
(2) Maintenance and Care of the Illegitimate Child (<i>Walad Zinā</i>)	27
(3) Blood-wit for the Illegitimate Child (<i>Walad zinā</i>)	33
(4) Inheritance of the Illegitimate Child (<i>Walad zinā</i>)	34
(5) Marriage of the Illegitimate Child (<i>Walad zinā</i>)	34

II.	Moral Status of the Illegitimate Child (<i>Walad Zinā</i>)	35
	(1) The Ability of the Illegitimate Child to Lead the Prayers (<i>Imāmat al-Ṣalāh</i>)	36
	(2) The Ability of the Illegitimate Child to Give Testimony (<i>Shahādah</i>)	39
	(3) Funeral Prayers (<i>Ṣalāt al-Janāzah</i>) of the Illegitimate Child (<i>Walad zinā</i>)	39

CHAPTER THREE

	Treatment of Foundlings (<i>Laqīṭ</i>)	47
I.	<i>Laqīṭ</i> Defined	47
II.	The Legal Assumption of the Freedom of the Foundling (<i>Laqīṭ</i>)	48
III.	Reasons for Abandoning Foundlings (<i>Laqīṭ</i>)	48
IV.	The Rules (<i>Hukm</i>) Governing the Finding of Foundling (<i>Laqīṭ</i>)	49
V.	The Religious Status of the Foundling (<i>Laqīṭ</i>)	52
VI.	Problem about the Legitimacy of the Foundling (<i>Laqīṭ</i>)	53
VII.	Maintenance and Upbringing of the Foundling (<i>Laqīṭ</i>)	53
	(1) Maintenance of the Foundling with Property or Money	54
	(2) Maintenance of the Foundling without Property or Money	57
VIII.	The Application of the Institution of the <i>Walā' al-Mu'ākhāh</i> or <i>Walā' al-Muwālāh</i> to the Foundling (<i>Laqīṭ</i>)	59

CHAPTER FOUR

I.	Prohibition of Pre-Islamic Adoption	77
II.	How Adoption Took Place in Pre-Islamic Times	83
III.	The Genealogical Relationship (<i>Nasab</i>) of the Foundling (<i>Laqīṭ</i>)	85
IV.	<i>Istilhāq</i> or <i>Iqrār bi al-nasab</i> as an Islamic Alternative	89
V.	The Role of Acknowledgement of Paternity (<i>Istilhāq</i>) in Dealing with the Illegitimate Child (<i>Walad zinā</i>) and Foundling (<i>Laqīṭ</i>)	116
	(1) The Acknowledgement of Paternity (<i>Istilhāq</i>) Made by One Claimant	117

(2) The Acknowledgement of Paternity (<i>Istilhāq</i>) Made by a Woman	120
(3) The Acknowledgement of Paternity (<i>Istilhāq</i>) Made by Two Claimants	123
VI. Physiognomy (<i>al-Qiyāfah</i>) as a Means of Determining Disputes over Paternity	131
VII. Drawing Lots (<i>al-Qur'ah</i>)	136
 CHAPTER FIVE	
• Brief Background on Family Law in Malaysia	147
• Provisions for the Illegitimate Child (<i>Walad zinā</i>) and Foundling (<i>Laqīṭ</i>) in Brunei Darussalam	170
• Conclusions	176
 Bibliography	 185
 Index	 199