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The Right of a Child Outside the Legal Marriage of a Biological Father: The Analysis of *Hifz Al-Nafs* as *Law `Illat*

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Abstract: This article aims to analyze the protection of life (*hifz al-nafs*) as the law reason (*`illat*) of the rights of children outside of legal marriage (ALPS) of biological fathers. *Hifz al-nafs* is assumed to be *`illat* emerging from many neglected ALPS phenomena and resulting in negative stigma and discrimination. This research is a study of Islamic law using the theory of *`illat* in analyzing the problem of children's rights outside of legal marriage. The research concludes that the presence of the 2010 Constitutional Court decision regarding the civil rights of ALPS with biological fathers reveals new spaces in seeing the nature of ALPS rights. This is different from the fatwa of the Indonesian Ulema Council and classical fiqh (Islamic jurisprudence) arguments, which tend to only link the child to the mother. Based on the Constitutional Court decision, the essence of ALPS rights from biological fathers is limited to civil rights. The responsibility of the biological father to ALPS is in the form of physical and mental support, while denying other rights such as guardianship of marriage; ALPS rights today have been largely abandoned. Thus, the protection/care is necessary. *`Illat* (the reason of law) in *hifz al-nafs* (protection of the life) is real and can be juxtaposed with *`illat hifz al-nasl* (protection of heredity). *Hifz al-nasl* does not completely fulfill the real requirements of an *`illat* which can abolish the abandonment of ALPS.

Keywords: Children's rights, a child outside a legal marriage, biological father, *hifz al-nafs*, *`illat*.

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Abstrak: Artikel ini bertujuan menganalisis perlindungan terhadap jiwa (*hifz al-nafs*) sebagai *ratio legis* (*`illat*) hukum hak anak di luar perkawinan yang sah (ALPS) dari ayah biologis. *Hifz al-nafs* diasumsikan sebagai *`illat* berangkat dari banyak fenomena ALPS terlantar dan berakibat pada perlakuan stigma negatif dan diskriminasi. Penelitian merupakan studi hukum Islam dengan menggunakan teori *`illat* dalam menganalisis masalah hak anak di luar perkawinan yang sah. Penelitian menyimpulkan bahwa hadirnya putusan Mahkamah Konstitusi tahun 2010 terkait hak perdata ALPS dengan ayah biologis membuka ruang baru dalam melihat hakikat hak ALPS. Ini berbeda dengan fatwa Majelis Ulama Indonesia dan fikih klasik yang cenderung hanya menghubungkan anak tersebut dengan ibunya. Berdasarkan putusan MK, hakikat hak ALPS dari ayah biologis hanya sebatas hak perdata. Tanggung jawab ayah biologis kepada ALPS berupa nafkah lahir dan batin, sementara menafikan hak lain seperti perwalian wali nikah; hak ALPS zaman sekarang banyak terlantar. Karena itu yang dibutuhkan adalah perlindungan/pemeliharaan. *`Illat* (*rasio legi*) dalam *hifz al-nafs* (perlindungan jiwa) nyata; dapat disandingkan dengan *`illat hifz al-nasl* (perlindungan keturunan). *Hifz al-nasl* sudah tidak seutuhnya memenuhi syarat nyata suatu *`illat* yang dapat menghapuskan penelantaran ALPS.

Kata Kunci: Hak anak, anak luar perkawinan yang sah, ayah biologis, *hifz al-nafs*, *`illat*.

Introduction

In 2010, the Constitutional Court (MK) through Decision Number 46 / PUU-VIII / 2010 made progressive steps by stating that children born outside of marriage can have civil relations with men as their father and their father's family. As long as it is proven based on science and technology and/or other evidence according to the law that the two of them are related by blood, including a civil relationship with their father's family¹.

The Constitutional Court decision gives rights to children born outside of legal marriages (hereinafter written as ALPS)² from their biological father.

¹ The Command of Constitutional Court Decision Number 46/PUU- VIII/2010.

² The Constitutional Court uses the term Children Out of Marriage, MUI uses Children from Adultery, and the Aceh MPU uses Children Born Out of Marriage (Children of Adultery). As for the nomenclature of Civil Law in Indonesia, Children Outside of Marriage is used. While in this study, the nomenclature and phrases are in accordance with the written systematics of the official regulations and laws in Indonesia, namely Children Outside a Legitimate Marriage (ALPS). The phrase "adulterous child" which is automatically included in the object of this study is the word used in opinion writing and popular writings introduced <http://jurnal.arraniry.ac.id/index.php/samarah>

If the biological father is unwilling to give up his rights, then the child can sue him. The Constitutional Court is based on the considerations of the benefit, the fulfilment of rights and law protection for the children³. It can be said that the Constitutional Court Decision is a modification of the law based on the motive of *hifz al-nafs* (protection of the life) as a new solution for the protection of ALPS rights that are urgently needed in order to attain their rights.

Responding to the Constitutional Court Decision Number 46/PUU-VIII/2010, the Indonesian Ulema Council (hereinafter written as MUI) issued religious advice interpreting the position of the ALPS. In the General Provisions point (4), it is stated that; "The mandatory will⁴ is the policy of the *uli al-'amr* (ruler) which requires the man who causes the birth of an adulterous child to make a will to give property to the child resulting from adultery after his death."⁵

MUI emphasized that in order to protect ALPS rights; there is no need to provide civil relations to his biological father. Protection from biological fathers can be accomplished by fulfilling the needs of ALPS and the obligation to provide assets through a compulsory will after the father dies. In 2015, the Aceh Ulama Consultative Assembly (hereinafter referred to Aceh MPU) also responded to the problem of ALPS rights. In the Aceh MPU *fatwa* (decree) in the section of *tausiah* (speech) point c, it is stated that the government is obliged to educate and protect adulterous children and prevent them from abandonment.⁶

by individual authors in their writings without following the official nomenclature based on regulative texts in Indonesia.

³Muhammad Arifin, Kedudukan Anak Luar Kawin: Analisis Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010 tentang Uji Materi terhadap Pasal 43 ayat 1 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, *Jurnal Ahkam* 5, no. 1, Juli 2017, p. 120-121. Nasaiy Aziz dan Muksal Mina, Nasab Anak yang Lahir di Luar Nikah: Analisis Fatwa MPU Aceh Nomor 18 Tahun 2015 dan Keputusan MK Nomor 46/PUU-VIII/2010, *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, Volume 1, Issue 1, January-June 2017, p. 72. Tb. Ahmad Marachul Bachrain, Analisis Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010 Tentang Anak Di Luar Nikah, *Bil Dalil: Jurnal Hukum Keluarga Islam* 1, no. 1 (2016), p. 121.

⁴A mandatory will is a will that is intended for an heir or a relative who does not receive a share of the inheritance of the person who died because of an obstruction of Islamic regulation. Abdul Aziz Dahlan, *Ensiklopedi Hukum Islam*, Jakarta: PT Ikhtiar Baru Van Hoeve, 2000, p. 30.

⁵ Previously in point number (3), it was stated that "*ta'zir is a type of punishment for a criminal act whose form and extent are left to uli al 'amr (the party with the authority to determine the punishment).*" Fatwa of the Indonesian Ulema Council Number 11 of 2012 concerning the Position of Children from Adultery and Their Treatment.

⁶ Fatwa of the Aceh Ulema Consultative Assembly Number 18 of 2015 concerning the <http://jurnal.arraniry.ac.id/index.php/samarah>

From that speech, it seems that the Aceh MPU wants the government to pay attention to ALPS rights with all its instruments, including through the judiciary. According to the author, what the Aceh MPU wants has been striving for by the Government since 2012 through the Constitutional Court Decision Number 46/PUU-VIII/2010. Obviously, the efforts to take law conclusions by the Constitutional Court and MUI/MPU are conducted with different considerations and methods.

Long before these legal conclusions emerged, the Government of the Republic of Indonesia had implemented a form of "life protection" for children by issuing Law No. 4/1979 on Child Welfare and Law No. 23/2002 on Child Protection.⁷ From several existing laws, the Constitutional Court Decision, MUI decree, and Aceh MPU decree (*fatwa*), it can be assumed that all these government instruments are considered as *hifz al-nafs* (life protection) of children.

According to the author, the word "protection" as a conventional term known in the systematics of Indonesian legislation⁸ is one of the spirits of the Constitutional Court Decision recognizing the status of ALPS on civil relationship with their biological father. In *ushul fiqh* literature (jurisprudence in Islam that studies detailed principles, theories and sources in order to produce Islamic law taken from those sources), this word is synonymous with *hifz* (care or protection).

Therefore, this article seeks to analyze *hifz al-nafs* (protection of the life) with the aim of providing a basis for the theory of Islamic law contained in the Constitutional Court provision. As the object of this study, there are several elements of ALPS that are not categorized as ALPS variables because there are many elements behind the emergence of ALPS, such as criminal, non-criminal, political, and prostitution. Of those four elements, only the elements of "non-criminal" and "criminal" are used as references because minimal political and prostitution elements occur, and the possibility of certain irrelevant facts can be equated with the variables of this study. So, apart from non-criminal and criminal elements, it is not juxtaposed with the *'illat* variable (*ratio legis*)⁹*hifz al-nafs*. The aims and objectives to be

Lineage of Children Born Outside of Marriage (Adulterous Children).

⁷ Law Number 23 of 2002 concerning Child Protection. This law has been amended again into Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

⁸ See the law mentioned in the previous footnote.

⁹ In simple terms, *'illat* is a positive, measurable, and rational character which is a sign of the law. Fazlur Rahman called it *ratio legis*. He said, "Every statement that is legal in the Quran is always accompanied by a *ratio legis* which explains why a law was declared. Fazlur Rahman, *Tema-tema Pokok Al-Qur'an*, terj. Anas Mahyudin, Bandung: Pustaka, 1983, p. 70. <http://jurnal.arraniry.ac.id/index.php/samarah>

expressed are motives or *'illat* whose significance can be measured (clear and concrete) as a basic assumption which is worthy to be analysed. Furthermore, its objective is to explain the construction of the current understanding on the protection of children's lives.

During this time, ALPS rights have been neglected, even by the biological mothers themselves. Many ALPS are abandoned and their daily needs are not fulfilled well. *Fiqh* (Islamic jurisprudence), used by the community as a guide, states that the child only has a lineage relationship with the mother and the mother's family. The origin law of ALPS rights comes only from the mother's side.¹⁰ *'Illat* from this original law is *hifz al-nasl* (the protection of descent). At the time of the Prophet Peace Be Upon Him (PBUH), ALPS was conquered¹¹ so that *hifz al-nasl* became the most appropriate and relevant *'illat*. Meanwhile, now, ALPS tend not to get their rights properly because they are only under the responsibility of the mother. Children's rights obtained from the mother's side are insufficient and completely limited to fulfil their care. If *'illat hifz al-nasl* continues to be used as a standard measure in determining ALPS rights today, it can be imagined how the ALPS rights will be neglected and there is no solution that can embrace their destitute condition.

Consequently, *hifz al-nafs* becomes the "new motive" considered in this study in order to understand the basic theoretical which is as modest as the benefit that Allah as *al-Shari'* wants. The benefit is related to protecting interests and fulfilling human needs.¹² In this article, *hifz al-nafs* is assumed to be *'illat* which is the legal motive for the ALPS rights of the biological father. Meanwhile, the original law of *'illat* (ALPS rights only from the mother's side) in the form of *hifz al-nasl* cannot be juxtaposed with a position in the new law (ALPS rights from biological fathers).¹³ It is because *'illat hifz al-nasl* is unable to stand alone to support the paradigm of a sharia reason that becomes a logical view of the legal status of ALPS rights from biological fathers. Changes in the *'illat* of the law occur due to different situations, conditions, times, and motives. In these law cases, the appropriate application of the theory of *'illat* in this study is *'illat tasyri'i*, which is *'illat* to find out

¹⁰ Zakyah, Nasab Anak Luar Kawin menurut *Hifz al-Nafs*: Kajian Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010, *Jurnal Yudisial* 9, no. 2, (2016), p. 196.

¹¹ Tengku Fatimah Muliana Tengku Muda Siti, Khatijah Ismail, dkk, Penggunaan DNA bagi Penentuan Nasab *al-Walad li al-Firāsy* dalam Peruntukan Undang-undang Keluarga Islam di Malaysia, *Jurnal Islam dan Masyarakat Kontemporari Keluaran Khas*, (2011), p. 19.

¹² Al Yasa' Abubakar, *Metode Istishlahiah: Pemanfaatan Ilmu Pengetahuan dalam Ushul Fiqh*, Banda Aceh: Pascasarjana UIN Ar-Raniry dan Bandar Publishing, 2012, p. 81.

¹³ This new law is at the same level as the branch law in the qiyas method. However, this study will only focus on its *masālik al-illah*.

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whether a law provision can be continued or should be changed because the underlying 'illat changes.¹⁴

Many Islamic Jurisprudence provisions are subject to changes and developments based on the 'illat *tasyri'i*'s principles.¹⁵ The author sees that the Verdict of the Court that inaugurated the ALPS rights of biological fathers is a representation of the concept of this 'illat. Through the understanding of 'illat, this study set out to analyze that *hifz al-nafs* is a manifestation of the concept of 'illat which is done by paradigm modification of *hifz al-nasl* with *hifz al-nafs*. With such modifications, the position of 'illat *hifz al-nasl* is not automatically eliminated, but rather confirms its existence. It is because when the motive of *hifz al-nafs* is juxtaposed with the motive of *hifz al-nasl*, then this becomes a modified form of mode leading ALPS to the purpose of *hifz al-nasl* itself.

As explained above, this study is a study of Islamic law using the theory of 'illat as an analytical tool in discussing ALPS. The data sources come from the Constitutional Court decisions, statutory regulations, *fatwa* (decree) of religious institutions and *fiqh* books related to the issues being studied.

The Concept of *Hifz al-Nafs* and 'Illat

Hifz al-nafs is derived from Arabic words for حَفِظَ and النَّفْسُ. *Hifz* (حَفِظَ) means to guard and *al-nafs* (النَّفْسُ) means soul or spirit¹⁶ Literally, *hifz al-nafs* means guarding the life, while in terminology, it is to prevent doing bad things to the soul and ensuring it remains alive.¹⁷ The equivalent term is "protection of the life". *Hifz al-nafs* is closely related to *maslahat* (benefit). Al-Syātībī explained that *maslahat* is something that returns to the establishment of human life, perfect life, achieve what is desired by the nature of desire (lust) and sense in absolute terms.¹⁸ *Maslahat* is something that brings benefits and avoids harm. In other words, it preserves the five main points of *syarak* (Islamic law), namely protecting religion, life, mind, descent and property.¹⁹ The existence

¹⁴Romli, 'Illat dan Pengembangan Hukum Islam, *Jurnal Intizar* 20, no. 2, (2014), p. 227.

¹⁵Al Yasa' Abubakar, Teori 'illat dan Penalaran *Ta'lili*, dalam Tjun Surjaman (Edit.), *Hukum Islam di Indonesia: Pemikiran dan Praktek*, Bandung: Remaja Rosda Karya, 1991, p. 181. Romli, 'Illat dan Pengembangan..., p. 228

¹⁶Ahmad Warson Munawwir, *Bahasa Arab-Indonesia*, Yogyakarta: Pustaka Progresif, 1996, p. 297 and 1446.

¹⁷ Nūr al-Dīn al-Mukhtār al-Khādimī, *Al-Munāsabah al-Syar'iyah wa Taṭiqhā al-Mu'āṣirah*, Beirut: Dār Ibn Ḥazm, 2006, p. 77.

¹⁸Abū Ishāq al-Syātībī, *al-Muwāfaqāt*, jilid 2, Khubar: Dār Ibn 'Affān, 1997, pp. 16-17.

¹⁹ Al-Gazzālī, *Al-Mustaṣfā min 'Ilm al-Uṣūl*, jld. I, Beirut: Mu'assasah al-Risālah, t.t., pp. 416-417.

of *ḥifẓ al-nafs* in the level of primary needs in the study of *maqāṣid al-syarī'ah*²⁰ becomes the focal point of the relevant indication of it as the law of 'illat.

Literally, *al-'illat* (العلّة) means disease.²¹ It is called disease because it can change the condition of something from its original state. For example, from a strong state to a weak state. In terms of *ushul fiqh*, the word 'illat means a definite, fixed nature and obtains information from the evidence as a connection to the law. 'Illat is also sometimes referred to as the meaning of the law.²² Fazlur Rahman called it *ratio legis*.²³ There are several agreements that ulema of *ushul* agree about 'illat's terms and conditions, namely that it must be a real (positive), binding, rational, and not only for the problem of origin.²⁴

For the third condition (rational), the ulema of *ushul* divide it into four parts, namely *al-munāsib al-mu'ātsir*, *al-munāsib al-mulā'im*, *al-munāsib al-mursal* and *al-munāsib al-mulghah*.²⁵ First, *al-munāsib al-mu'ātsir* means an influential (effective) rational, i.e. a rational nature that Allah SWT allegedly used to make laws. Second, *al-munāsib al-mulā'im* means a rational nature that is commensurate, i.e. the rational nature that sharia uses as the basis for producing a law that corresponds to that trait.

Third, *al-munāsib al-mursal* means an infinite rational nature, which is a trait that is not used by al-Syāri' (Allah SWT as a lawmaker) to produce laws that are in accordance with that nature; nor is there any evidence to point to it as a futile nature. That trait is rational because it can prove good; but it is just

²⁰ Etymologically, *maqāṣid* means intention or purpose. *Maqāṣid* also means things that are desired and intended. Meanwhile, sharia means a number of *amaliah* (deed) laws brought by Islam, both related to the conception of the creed and legal legislation. The combination of these two words becomes *maqāṣid al-syarī'ah*, broadly speaking has the meaning as the objectives of Islamic law. *Maqāṣid al-syarī'ah* is a new trend in the study of the Islamic Jurisprudence which has developed in the contemporary era. The pioneer of *maqāṣid al-syarī'ah*'s thought appear implicitly in some classical literature such as in the book *al-Mustaṣfā* by Al-Gazzālī and *Qawā'id al-Ahkām* by al-'Izz ibn' Abd al-Salām. After those period of time, the study of *maqāṣid al-Syarī'ah* received great attention from the Andalusian ulema al-Syatibi with his book *al-Muwāfaqāt*. see Muchamad Coirun Nizar, *Literatur Kajian Maqasid al-Syar'iyah*, *Jurnal Ulul Albab*, No. 35. 2016, p. 54.

²¹ Al-Fayruzabadī, *al-Qamūs al-Muhīt*, jld. 3, Beirut: Dār al-Kutub al-'Ilmiyyah, 1995, p. 578.

²² St. Halimang, Pendekatan 'Illat Hukum dalam Penalaran Fikih, *Jurnal Al-'Adl* 7, no. 1, (2014), p. 89.

²³ Fazlur Rahman, *Tema-Tema Pokok Al-Qur'an*, ... p. 70.

²⁴ 'Abd al-Wahhab Khallaf, *Ilmu Usul Fikih*, terj. Faiz el Muttaqin, Jakarta: Pustaka Amani, 2003, p. 87-90.

²⁵ 'Abd al-Wahhab Khallaf, *Ilmu Usul Fikih*..., p. 90-91.
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that it is infinite. Fourth, *al-munāsib al-mulghah* means a free/odd rational nature explaining that in the determination of the law on that nature, it manifests benefit.²⁶

The ulema divided *'illat* into three categories, namely *'illat qiyāsī*, *'illat istiḥṣānī*, and *'illat tasyrī'ī*. *'Illat qiyāsī* applies the law provisions of a problem explained by the *nas* (Islamic authoritative quotation from the Quran and Hadith) on other issues that are not explained by the *nas* evidence because there is a similarity of *'illat* between the two.²⁷ Second, *'illat istiḥṣānī*, according to the term is the switch of the thought of a *mujtahid* (Moslem experts in Islamic law who give an independent interpretation from the Quran and Hadith) from the demands of the real *kias* to the ambiguous *kias* or from the common law to the exception. It is because there is a mistake of thought that then wins the changes.²⁸ Third, *'illat tasyrī'ī* i.e. *'illat* used to identify if a provision of the law can be applied continuously or should be changed because the underlying *'illat* has changed.²⁹

The ulama stated that *'illat* can be understood through *nas*, *ijmak*, and *al-sabr wa al-taqṣīm*. They asserted that the way of understanding it is through the *masālik al-'illat* (method of finding *'illah*). *'Illat* as a law is clearly stated in the legal text (*nas*) or an explicit rational reason (*al-'illat al-manṣūṣah*). There is also *'illat* which is not clearly stated in the legal text, but there are signs indicating that there is a rational reason for it.³⁰ The determination of *'illat* goes through the observational step (scrutinise) of the *'illat* of the law contained in the *nas*. Then, it is derived to a significant context in responding to the existence of these legal reasons and applying them in empirical cases. If *'illat* is unknown, then *tawaqquf* (non-attitude) is performed. Two important points in this method are, firstly, that it should not go beyond what has been prescribed by law or by certain causes. Secondly, basically, the *syarak* cannot be exceeded in its scope of meaning until the purpose of *al-Shari'* (Allah) regarding that problem is understandable.³¹

In relation to the discovery of *'illat* through *ijmak* (consensus), Al-Syalabi states that ulema's consent should not be violated by the consideration that *ijmak* is real and obtained through a valid way of law whose benefit has

²⁶ 'Abd al-Wahhab Khallaf, *Ilmu Usul Fikih ...*, p. 96.

²⁷ Romli, *'Illat dan Pengembangan...*, p. 222

²⁸ 'Abd al-Wahhab Khallaf, *Ilmu Usul...*, p. 104.

²⁹ Al Yasa' Abubakar, *Teori 'illat...*, p. 181. Romli, *'Illat dan Pengembangan...*, pp. 228-229.

³⁰ Muchlis Bahar, *Metode Penemuan Alasan Rasional dalam Hukum Islam (Masalik Al-'Illat)*, *Jurnal Fitrah 1*, no.1, (2015), p. 178.

³¹ The search for *'illat* is one of the steps in the *istislahiyyah* method of reasoning, namely the sixth step. Al Yasa' Abubakar, *Metode Istislahiah...*, p. 70.
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not changed throughout the ages.³² Abdul Wahhab Khallaf stated that if the *mujtahids* at a certain period agreed on the 'illat of a trait for sharia law, then that trait becomes 'illat like a "small attribute" becomes 'illat guardianship of the property of a child.³³

Al-sabr wa al-taqsim literally means "election" and "investigation". *Al-sabr* means to try and *al-taqsim* means to limit some traits that deserve to be used as 'illat in the law of origin. Then, it matches those attributes with 'illat which is assumed to be said that 'illat has certain qualities.³⁴ *Al-sabr wa al-taqsim* is to collect (record) attributes that may become the law of 'illat.³⁵ Then, it sets aside some of them because there are indications that what is set aside is not possible to become 'illat. In simple terms, it can be said that *al-sabr wa al-taqsim* is classification and verification. As an example is the classification and verification of 'illat *haram* in wine: intoxicating, the origin of the grape juice, the flow, or the dirty elements (*khabīs*).

Hifz al-Nafs as The Law of 'Illat

In this section, this study will identify *hifz al-nafs* as the law of 'illat. The identification is conducted using *masalik al-'illat* through the theory of "nas" which is detected as the most appropriate means and in accordance with the object of this issue. *Hifz al-nafs*, which is assumed to be the law of 'illat with its consideration of social facts and its central class position in the perspective of sharia turns out to have the character of *al-munāsib al-mulā'im* in the specification of the division of 'illat. As previously explained, *al-munāsib al-mulā'im* is a compatible rational nature. That is to say, *hifz al-nafs* here has a rational relationship between the resulting law and *nas*, although the *nas* does not specify the nature of *hifz al-nafs*. In other words, according to the *nas*, it is considered as an 'illat because its character is coherent with the assumption of the *nas*.

When this study assumes that *hifz al-nafs* is the law of 'illat, then it can be understood that 'illat in the way of *nas* and consensus will no longer be done because these methods are automatically eliminated. It is also because the focus of this study is to analyze and introduce *hifz al-nafs* as the law of

³²Muṣṭafī al-Syalabī, *Ta'īl al-Aḥkām*, Beirut: Dār al-Nahḍah al-'Arabiyyah, 1981, p. 327.

³³'Abd al-Wahhab Khallaf, *Ilmu Usul Fikih...*, p. 99.

³⁴'Abd al-Wahhab Khallaf, *Ilmu Usul Fikih...*, p. 100.

³⁵Abad Badruzaman, *Dari 'Illah ke Maqasid: Formula Dinamisasi Hukum Islam di Era Kekinian Melalui Pengembangan Konsep Maqasid, Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 14, No.1, 2014, p. 68. See 'Abd al-Wahhab Khallaf, *Ilm Usul al-Fiqh*, Cairo: Maktabah al-Da'wah al-Islamiyyah, 1968. Muhammad al-Khudari Bik, *Usul al-Fiqh*, Beirut: Dar al-Fikr, 1988.

'*illat*. The collection and investigation that are assumed to be '*illat* will also not be conducted in this study. This study only actualizes the assumption of '*illat hifz al-nafs* in the form of identifying to what extent it can be effective as the law '*illat* of the ALPS rights of biological fathers. It is expected that it may become a closer interpretation to the will of Allah.

Hifz al-nafs as the law of '*illat* can be identified through the excavation of *nas* related to the ALPS rights contained in the Qur'an and Hadith. '*Illat* of ALPS rights which is not mentioned in the *nas*, either explicitly or implicitly, is pursued using the method of discovery of '*illat* through the excavation of related *nas*. *Hifz al-nafs* is assumed to be '*illat* because it sees the abundance of state law literature that strongly requires the existence of "protection of a child's life" in general. It is also until the care of the ALPS life that the peak of its renewal law was carried out by the Constitutional Court in 2010. This is in contrast to *fiqh* which is recognized as an interpretation of the Qur'an and Hadith. ALPS care is not so highlighted because of the motivation when the presence of the *nas* is different. *Nas* related to the care of ALPS that appears only around the issue of determining its lineage only. At that time, the determination of lineage was more necessary because of the efforts to remove *Jahiliyyah* (ignorance) law that is not relevant to Islamic teachings. In a hadith narrated by Abu Daud, it is mentioned that a man stood up and said, "O Messenger! Really, this *Fulan* is my son. I had committed adultery with his mother in the days of *Jahiliyyah*." The Prophet replied:

لَا دَعْوَةَ فِي الْإِسْلَامِ ذَهَبَ أَمْرُ الْجَاهِلِيَّةِ الْوَالِدُ لِلْفَرَّاشِ وَاللِّعَاطِرُ الْحَجَرُ³⁶

Meaning: "There is no confession of a child in Islam. The time of Ignorance is gone. The child belongs to the husband of the woman (*al-firāsy*) and the adulterer is harmed (stone)." (HR. Abī Dāwud).

Al-Malik and al-Nawawi agree that the meaning of *al-walad li al-firāsy* means a man who has a wife or female slave whom he has sexual intercourse with and then the wife or slave gives birth to a child. The child becomes the man's son because it is his right.³⁷ The rights of the ALPS in the description

³⁶ Abī Dāwud, *Sunan Abī Dāwud*, Jilid 6, Beirut: Dār al-Kitāb al-'Ilmiyyah, 1996, p. 195.

³⁷This opinion also shows that *ummu al-walad* (a slave girl who gave birth to her master's child) had an independent status. This is different from Ibn Ḥajar al-'Asqalanī who questioned the status of *ummu al-walad* whether he was sentenced to independence or not. Al-Asqalanī, *Fath al-Bārī bi Syarḥ Ṣaḥīḥ al-Bukhārī*, juz V, t.tp: Dār al-Ṭayyibah, t.t., p. 164. According to Ibn al-Manayyar, this hadith is a sign of the independence of *ummu al-walad*, because the Prophet PBUH has made it as a bed which consequently equals her with the lawful wife. Mahdalena Nasrun, Telaah Hadis tentang Nasab Anak Luar Nikah, *Ulumuna: Jurnal Studi Keislaman* 18, No. 2, (2014), p. 482.

<http://jurnal.arraniry.ac.id/index.php/samarah>

of the above hadith are understood differently among the ulema, especially about their lineage status. Hence, it is unquestionable that until now the hadith of *al-walad li al-firāsy* is still relevant in the interpretation because its redaction gives many signs, implied messages and deep meanings when it is understood in today's context. From this narrative, it can be seen that the recognition of a lineage became so important at that time and they fought over the status of the APLS as their right. So that the main law that is raised is the clarity of the child's lineage, while the care of his life is not so prominent.

Nowadays, it is different. APLS's biological father does not want to acknowledge his own flesh and blood with various factors that affect him, such as shame, self-disgrace, irresponsibility, and selfish with his own dignity, property, and family. Thus, the condition of APLS today is in contrast to the condition of the APLS at the time of The Prophet PBUH and Shahabah era which can be seen that the care of APLS is so important and crucial to be taken care of. Especially, if the APLS is a woman, the lineage is extremely important when she will get married. *Hifz al-nafs* for APLS is urgently required, as *hifz al-nasl* was needed during the early period of Islam. Many APLS are born in conditions that are far from the "condition" of *hifz al-nafs*. The concept of *'Illat hifz al-nasl* needs to be reapplied nowadays as its function used today is only as a guarantee law for the protection of the life of APLS which is through the fulfilment of the rights of the mother alone.

Currently, parents have neglected APLS. This condition is different from the APLS at the time of the Prophet PBUH whose care status was conquered. In a hadith narrated by Ibn Mājah, it is stated that Sa'ad ibn Abi Waqqas and 'Abd ibn Zam'ah fought over an APLS. Both came to the Prophet SAW disputed over the status of the child of the Zam'ah's slave female. Sa'ad said, "O Messenger of Allah, my brother gave me a will: when I arrived in Mecca, I was ordered to see the child of the Zam'ah's slave girl. Thus, I picked him up. 'Abd ibn Zam'ah said, "He is my brother and the son of my father's slave-girl; born in my father's bed! The Prophet saw that he was similar to 'Utbah (Sa'ad's brother). Then the Prophet PBUH said:

هُوَ لَكَ يَا عَبْدَ بَنِ زَمْعَةَ الْوَلَدُ الْفِرَاشِ وَاحْتَجِي عَنْهُ يَا سَوْدَةَ

Meaning: "He is yours, O 'Abd ibn Zam'ah. The child belongs to the owner of the bed. Wear hijab from him, O Sawdah." (H.R. Ibn Majah).

With regard to the above narration, it can be understood that *asbāb al-wurūd hadith al-walad li al-firāsy*³⁸ is due to a struggle for children between

³⁸ Details can be found at Ibn Hamzah al-Ḥusaynī al-Ḥānafi Al-Damsyiqī, *Asbāb al-Wurūd*, terj. Suwarta Wijaya, Zafrullah Salim, Volume. 3, Published. IX, Jakarta: Kalam Mulia, 2006, p. 392

the *firāsy* owner ('Abd ibn Zam'ah as a stepbrother with APLS) and the biological father (Sa' d ibn Abi Waqqas as 'Utbah's brother who was the biological father). Outwardly, the context of this hadith concludes that APLS is the right of the *firāsy* owner (husband or slave owner), not the right of the biological father.

From the aspect of hadith science, the pronunciation of *al-firāsy* in the hadith is a *gharib* pronunciation. *Al-walad li al-firāsy* means the son of the owner of the *firāsy*, namely the husband or *mawlā*. Another opinion asserts that the meaning of *al-firāsy* denotes wife.³⁹ Meanwhile, the letter *lam* means "for" or "for him" which means "ownership". This means that a child born from the wife belongs to and is even given to the husband as the owner of the *firāsy* (the wife belongs to the husband).

It can be said that those who understand the pronunciation *firāsy* with the meaning of "wife" see the meaning of the word *al-firāsy* itself. While those who interpret it as "husband", understanding it from the pronunciation of *al-walad li al-firāsy* as a whole.⁴⁰ If it is understood textually, the hadith *al-walad li al-firāsy* needs further explanation as to why Sawdah had to veil herself from the child outside the legal marriage (APLS), even though it was said to be his brother. The words "*huwa laka*" of the Prophet PBUH should be suspected to giving the lineage but not to his father. It can be understood that the Prophet PBUH acknowledged the APLS relationship with his biological father, but did not provide a lineage connection. The indication shows that it is possible if this *nas* actually requires a civil relationship (not a lineage) between APLS and the biological father.

Regarding the impact of the diversity of a meaningful narration, the ulema have concluded a variety of conclusions about the meaning of the law from the word *al-walad li al-firāsy*. It should be assumed that there is a new "indication and will" from this hadith. From this difference in understanding the hadith of *al-walad li al-firāsy*, a study that can provide the development of the assumption of *'illat* in the hadith is needed. Historically, the hadith of *al-walad li al-firāsy* describes the struggle for the right to look after (take care of) a child outside the legal marriage of a slave who is owned and has the status of *ummu al-walad*. The dialectical conclusion that can be understood from the hadith of *al-walad li al-firāsy* with the current context is that *ḥifẓ al-nafs* APLS in the era of *Jahiliyyah* occurred "voluntarily" and even it is conquered. So that *ḥifẓ al-nafs* was very well preserved as what has been implemented by Western society (non-Muslims) nowadays when viewed

³⁹Asriaty, Hadis *al-Walad li al-Firāsy* sebagai Penetapan Nasab Anak, *Jurnal Hukum Diktum* 8, no. 2, (2010), p. 133.

⁴⁰ Asriaty, Hadis *al-Walad li al-Firāsy*....., p. 138.
<http://jurnal.arraniry.ac.id/index.php/samarah>

literally. Meanwhile, *hifz al-nafs* APLS, especially in Indonesia (Muslims), is now carried out in a "forcible manner" through the official law system. It will also happen if the child or mother demands their child's rights to the court. If that does not occur, it is hoped that both the biological father and father's family can imitate the good side of the *Jahiliyyah* community who openly accepted their APLS.

Nowadays, what is the barrier to suing that the biological father should be responsible for APLS? APLS should be protected by a biological father if no one else can guarantee his care. At least this is a moral punishment for biological fathers. Thus, in the future, such immorality can be suppressed because of the law consequences that must be accounted for from the act of adultery. If this problem is being ignored, it will certainly cause a greater harm for the children such as the fear of they will be acted on promiscuity, immorality, abortion will continue to increase, child abandonment and infanticide, children trafficking, exploitation, and inbreeding.

This is in accordance with the rule of الضَّرَرُ يُزَالُ شَرْعًا (the danger according to the *syarak* must be eliminated), which is the *usuliyyah* rule of *syarak* law to reject the occurrence of danger.⁴¹ Islam is very concerned about the benefit of every child born. The recognition of the right of the biological father does not mean that adultery will be legalised (as some people think), but rather to harmonize the "two damages" that have already existed and spreaded around the community, namely adultery and neglected APLS. These two defects are closely related because they have a causal relationship. Among the causes of adultery is sinfulness, which has become a new tendency due to the influence of foreign culture affecting on the birth of APLS. When adultery is already being a "culture", APLS will automatically increase and as a consequent, they will be neglected. The abandonment of APLS is a new problem and requires a great solution that must sacrifice certain "status quo" provisions and other "conveniences" law. For example, the emergence of the notion that APLS rights from biological fathers seem to have allowed adultery because it tends to provide exclusive solution space to APLS which in fact their status is a disgrace and a stigma. These legal considerations are in harmony with the *usūliyyah* rules:

إِذَا تَعَارَضَتْ مَفْسَدَتَانِ أَوْ ضَرَرَانِ رُوِيَ أَعْظَمُهُمَا ضَرَرًا بِإِزْتِكَابِ أَحَدِهِمَا

⁴¹ 'Abd al-Wahhab Khallaf, *Ilmu Usul Fikih...*, p. 305.

Meaning: "If there are two damages or dangers that conflict each other, then the greater damage or harm is avoided by committing an act which carries less risk."⁴²

The recognition of biological fathers of their children's rights is to provide clarity on the status of a child's existence as what had been done by people in the period of *Jahiliyyah* who wanted to admit their children without a clear rule of law. This seems so different today as the confession of the children is in the condition of "compulsion". In other words, there must be a judge's decision on this issue. Another difference is that the status of the relationship between the child and the biological father is limited to the civil relationship between individuals only and does not extend to the recognition of the lineage relationship as in the era of *Jahiliyyah*. This conclusion of law aims to actualize every human being born has rights to live. For instance, the right to respect, ownership rights, and the right to fulfil the rights of biological parents like other children.

It should be noted that the Constitutional Court decision legalizing the existence of a civil status between ALPS and biological father is a form of the authorities' efforts to maintain ALPS rights as practised by the Prophet PBUH when a woman confesses to adultery. The Prophet PBUH did not immediately stone her but waited until the child was born and weaned. In the hadith narrated by al-Nasā'ī, it is stated: "Imran ibn Husayn stated that a woman from Juhainah came to see the Prophet PBUH and said; "I have indeed committed adultery!". While she was pregnant, then the Prophet PBUH gave the woman to her guardian and said, "Be kind to her, after she has given birth to her baby, you come to me with her." After she has given birth, her guardian came with her, and the Messenger of Allah ordered (to stone her) and performed prayer to her. Then 'Umar asked the Prophet PBUH; "Did you pray for her when she had committed adultery?" Rasulullah replied; "Indeed she has repented. If her repentance was distributed to seventy residents of Medina, it would be sufficient for them. Did you find a greater repentance from her who had convicted herself to Allah 'Azza wa Jalla?" (H.R. Al-Nasā'ī).

It can be seen that the verdict of the Prophet PBUH in this hadith is a desirable deed for ALPS to have his life preserved. Her mother who had repented was not stoned immediately. It is because of the consideration of the fetus in her womb should not be killed (stoning) due to her mother's bad deed. The woman followed the order of the Prophet PBUH to breastfeed the baby until weaning him so that the care of the child in terms of nutritional needs and health is fulfilled. Besides, when interpreting the decision of the Prophet

⁴² Fatwa of the Indonesian Ulema Council Number 11 of 2012 concerning the Position of Children from Adultery and Their Treatment; the Remembering section.
<http://jurnal.arraniry.ac.id/index.php/samarah>

PBUH ordering the female guardian to be kind to her until the child was born indicates that *hifz al-nafs* towards ALPS actually applies since the child is in the womb. Actually, the Prophet PBUH asking her guardian to do good to the woman aims to protect and help the woman during pregnancy until giving birth. In the hope that her child was born safe and no bad things or harm occurred to the child. The guardian is also responsible for the woman in order to follow the instructions of the Prophet PBUH.

The Commands of the Qur'an

The above hadith is an affirmation of the messages of Allah in the Qur'an in *Surah al-Baqarah* verse 233:

“And the mothers (married or divorced) should suckle their (born) children for two whole years, (that is) for those who desire to complete the term of suckling, and their nutrition and clothing must be upon the father according to custom and usage (on a reasonable basis, *bi'l ma'rûf*). No soul shall have a burden laid on him greater than he can bear. A mother should not be made to suffer harm because of her child, nor should the one for him the child was borne (the father) because of his child. And a similar devolves on the heir. But if both desire weaning by mutual consent and counsel, there is no sin on them, and if you wish to engage a wet-nurse for your children, there is no sin on you so long as you pay what you promised for according to custom and usage (on a reasonable basis). And have piety (*takwâ*) towards Allah and know that Allah is All-Seeing of what you do.”

This verse describes breastfeeding and the obligation of the ex-husband to support the life of the child who bears his name and the obligation of the former spouse to have deliberations regarding their children. This verse provides a way to find other women (wet-nurse) to breastfeed.⁴³ This verse begins with the sentence *وَالْوَالِدَاتُ يُرْضِعْنَ*. According to *balaghah* science (one of the branches of Arabic knowledge), the composition of this word is in the form of news, but means command; serves to emphasize so that it could be practiced. That is, "they should suckle".⁴⁴ In addition, in this verse, there is also the word *لَا تُضَاوِرْنَ* which means that the mother should not be burdened because of her child. The parents should help each other and have good intentions based on their affection for the child. They do not sacrifice their interests for the child due to the jealousy or revenge. Thus, from infancy, the

⁴³M. Quraish Shihab, *Al-Lubab: Makna, Tujuan, dan Pelajaran dari Surah-Surah Alquran*, Jld. I, Tangerang: Lentera Hati, 2012, p. 77.

⁴⁴ Wahbah al-Zuhaili, *Tafsir al-Munir: Aqidah, Syariah, dan Manhaj*, Terj. Abdul Hayyie al Kattani, dkk, Jld. I, Jakarta: Gema Insani, 2013, p. 565.

<http://jurnal.arraniry.ac.id/index.php/samarah>

life of the child is taken care of and nurtured through the duties of both the father and mother.⁴⁵

Furthermore, Allah SWT set a firm limit for the implementation of the law above. It should be implemented on the basis of piety to Allah. If the rights of women and children are fulfilled and both parents do not suffer each other, their children will surely become good role models and a cause of rewards for parents. Conversely, if they follow their desire, it will lead to an evil act that brings calamity to become the cause of punishment for the parents in the hereafter.⁴⁶

This verse is a series of discussions about family. Using news editors, this verse contains a strong command for mothers to breastfeed their children. Breastmilk is the best food for babies up to two years of age. By breastfeeding the biological mother, the child will feel more at ease. According to research by scientists, babies hear the sound of their mother's heartbeat that they have known since in the stomach.⁴⁷

In addition, breastfeeding mother need the fund in order to maintain good health so that she can provide milk for her children. The author sees that the costs of breastfeeding for ALPS are the father's responsibility. The father should not decrease the practical rights for the mother such as in providing a living and clothing; particularly not only relying on the mother's love for her child. With the guidance of this verse, children who are born are guaranteed to have good physical growth and mental development. Even this guarantee must be obtained even though his father died.⁴⁸

The above verse clearly shows that the commandment of *hifz al-nafs* of a child has existed even before the birth of the child. If we see the context of the law content in the hadith of the mother of ALPS above, it is obvious that the law cannot be actualized in the similar implementation nowadays. It is because the consideration of state law has not yet discussed the punishment of stoning or *hudud*. While in the level of awareness of the faith, the morality of society now is different when compared to the woman in the hadith. What has to be done is to take the lesson on what the Prophet PBUH strongly advise us about the practice of *hifz al-nafs* on ALPS. The biological father should imitate the female guardian's deed mentioned in the above hadith like being sympathetic to the mother of the child from pregnancy to delivery of the child

⁴⁵ Ibn al-Katsir, *Terjemah Singkat Tafsir Ibnu Katsir*, Terj. Salim Bahreisy, Said Bahreisy, Jld. I, Surabaya: Bina Ilmu, 2004, pp. 461-462.

⁴⁶ Wahbah az-Zuhaili, *Tafsir al-Munir...*, p. 570.

⁴⁷ M. Quraish Shihab, *Tafsir Al-Misbah: Pesan, Kesan dan Keserasian Alquran*, Jld. I, Jakarta: Lentera Hati, 2007, pp. 503-504.

⁴⁸ M. Quraish Shihab, *Tafsir Al-Misbah...*, p. 505.

in order to reduce the burden on the mother of the child in raising the baby. The moral message of the woman guardian's actions for the biological father is to do good to the mother and the prospective child. If the father is unable to be responsible physically and mentally (marrying her), then at least he is responsible materially. For example, after knowing that the woman is pregnant, he is willing to be responsible for the cost of childbirth, will help her difficulties, and prohibit her from having an abortion. This is important to be considered because crimes such as abortion and disposing of babies, as widely witnessed in the news, television, mass media and social media, can be avoided. Unfortunately, *the ḥifẓ al-nafs* of a prospective child, i.e. ALPS who is still a fetus has not yet become a legal indicator highlighted in the Constitutional Court decision.

For that considerations, from several texts of the Quran, the hadith and the two *uṣūliyyah* rules above, it can be logically described that *'illat ḥifẓ al-nafs* has the character of *al-munāsib al-mulā'im*. It is a characteristic that is in synchronization with the passage showing that there is an ALPS right from the biological father, although the passage does not explicitly specify the nature of the *ḥifẓ al-nafs*. The alignment of the nature of the law that is owned by *ḥifẓ al-nafs* has been able to function as *'illat*. Moreover, it has been described logically through the explanation of *nash* (proposition) to other *nash* which have the flexibility to cover the meaning of the law reasons for the status of civil relationship between ALPS and the biological father.

The position of *ḥifẓ al-nafs as 'illat* in this study is categorized as *'illat tasyrīṭ*, which is an *'illat* seeing that the provisions of old *'illat* are not completely relevant in providing the solutions for the law. It is because in certain conditions and factors the underlying benefit requires enrichment of old *'illat* with the construction of new *'illat* which is more relevant and conducive.

The Validation of *Ḥifẓ al-Nafs* as *'Illat*

The position of *ḥifẓ al-nafs as 'illat* can be proven by measuring the four conditions of *'illat* made by the *ushul* ulema.

- 1) *Ḥifẓ al-nafs* is real. It appears as the fact that today's ALPS rights are neglected. Abandoned children are part of the problems of a nation so that they have the right to obtain services from the state in the form of education, health, and law protection. The issue of abandoned children was raised due to the fact that there are still children who should be learning at school in their golden age but they are living on the streets looking for food, such as busking, begging, and even pickpocketing which then become their daily

activities.⁴⁹ With such conditions, the *hifz al-nafs* for ALPS has disappeared. Therefore, it is necessary to raise it again by making it as a new *'illat*.

- 2) *Hifz al-nafs* is binding which means that it is real: have provisions, and have limitations on the existing law provisions that not obstruct the “status quo” of the old *'illat*. In other words, *hifz al-nasl* is still protected by its position as the basis for the appearance of *'illat hifz al-nafs* and makes it as *'illat* for the relevant laws functioned as *'illat*. Therefore, every law that is created from *'illat hifz al-nafs* must be bound by the considerations of *hifz al-nasl*.
- 3) *Hifz al-nafs* is rational. In the discussion of *masālik al-'illat*, it includes *munāsib al-mulā'im*, which is an equivalent rational nature. It means that there is an accordance between the nature of *hifz al-nafs* and *nas* (through the rules of *ushul fiqh*). The conformity with *nas* makes *hifz al-nafs* apply the wisdom of the law. With the existence of *hifz al-nafs* as *'illat* and at the same time being added to a position with the aim of the concept of *maqāsid al-syar'iyah*, automatically its selection as *'illat* is to attract benefit and reject harm.
- 4) *'Illat* must be a trait not only for the original problem. For this fourth condition, there are ulema who do not require it. However, while looking at the benefits of *'illat hifz al-nafs* condition, the author will describe how the position of the attribute of *'illat hifz al-nafs* can be applied to the original law as well as this condition. First, the law of origin is identical to the *qiyas* method or in this study some call it as *'illat qiyāsī* reasoning. Because *hifz al-nafs* has the position of *'illat tasyrī'ī* as explained earlier, it will be aligned with the understanding of the original goal. Thus, when *hifz al-nafs* is assumed to be *'illat*, then immediately it can be used for the original law because the context is to actualise the child protection. However, this may be done with certain terms and conditions. For example, there must be a motive for the functionality to be actualized.

With a glimpse of the evidence above, *hifz al-nafs* has met the criteria to be called as *'illat*. Therefore, this study assumes that the emergence of the change in the conclusion of the law on ALPS rights through the Constitutional Court Decision, the MUI *fatwa*, and the Aceh MPU are new law provisions whose *'illat* should be *hifz al-nafs*.

⁴⁹ Gatot Gunarso, Wiwik Afifah, Konsep Layanan Pendidikan Anak Telantar Sebagai Hak Konstitusional Warga Negara, *Jurnal Ilmu Hukum* 12, no. 23 (2016), p. 18. <http://jurnal.arraniry.ac.id/index.php/samarah>

Conclusion

Maintaining the rights of ALPS is the same as carrying out the main objective of Islamic law, namely *ḥifẓ al-naḥs*. The existing hadiths show that the Prophet PBUH acknowledged the ALPS relationship with his biological father, but did not provide a lineage connection. This means that Islam actually calls for a civil relationship (not a mere lineage) between the ALPS and the biological father as decided by the Indonesian Constitutional Court. Therefore, the biological father is considered to have his position to protect the life of the child outside of legal marriage (APLS). To abolish the abandonment of APLS, it is necessary to protect the child's life (*ḥifẓ al-naḥs*). *Ḥifẓ al-naḥs* qualifies as 'illat (ratio legis). 'Illat *ḥifẓ al-naḥs* does not completely fulfil the requirements of being "real" which can eliminate the abandonment of ALPS, so it does not fulfil the requirements of 'illat and weakens its integrity as "independent 'illat". 'Illat *ḥifẓ al-naḥs* can relatively be juxtaposed with 'illat *ḥifẓ al-naḥs* because *ḥifẓ al-naḥs* means the protection itself. So, its character is manifested as 'illat because its meaning is to maintain/protect which can automatically deprive the abandonment. Regarding the reason for choosing *ḥifẓ al-naḥs* as the assumed term of 'illat is due to the consideration of the inherent nature of physical and mental protection to it. The purpose of the appointment of term *ḥifẓ al-naḥs* according to the logic of this study is that *ḥifẓ al-naḥs* made into 'illat due to its "purpose as 'illat" not as "wisdom". *Ḥifẓ al-naḥs* is assumed to be Law 'illat which is pure as a stand-alone 'illah and does not intend to occupy as *ḥifẓ al-naḥs* in the context of the study of *maqāṣid al-syarī'ah*.

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