

ABSTRACT

M. Khalilurrahman.2013. *The Constitutional Court Ruling Republic of Indonesia Number: 46 PUU-VIII / 2010 And a Fatwa was Majelis Ulama Indonesia Number: MUNASVIII MUI / 11 / / 03 / 2012 About a Child out of Wedlock (Comparative Analysis)*. Thesis. Al-Ahwal Al-Syakhshiyyah Department, Syariah Faculty, the State Islamic University Maulana Malik Ibrahim of Malang. Supervisor: H. Moh. Toriquddin, Lc., M.HI.

Keywords: The Constitutional Court Ruling, Fatwa was Majelis Ulama Indonesia, Child out of Wedlock

One of the authority given to the Constitutional Court is conducting a judicial review (material testing) Act against the Constitution of the Republic of Indonesia in 1945. All decisions made by the Constitutional Court are final, binding and not have a remedy for the review. On February 17, 2012, the Constitutional Court issued a ruling number: 46/PUU-VIII/2010 about the position of children outside the marriage. This ruling invites controversy among the community. On the one hand the verdict was a relief, but on the other hands, the effects of this verdict raise new problems troubling the people. A certain which is become concern to the public is the contents of the Constitutional Court verdict that declared section 43 subsection (1) of ACT No. 1 of 1974 about marriage that reads born outside marriage has civil relations with her mother and her mother's family. The sound of this section was modified with the addition of the sentence with a man as his father, who can be proven based on Science and technology and/or other proof according to law had blood relations, including relations with his father's family in civil. And a very interesting of this ruling is the reaction of the Indonesia Ulema Council issued a fatwa number: 11/CONGRESS VIII/MUI/3/2012 about the position of children of adultery and the treatment of him. This Fatwa is a reaction to the rejection of The Ulama Indonesia against the verdict of the Constitutional Court in reviewing appropriate Islamic jurisprudence.

The discussion aim of this research is to find out; similarities, differences and basic law used by the Constitutional Court and Majelis Ulama Indonesia in any take a legal decision in this respect with a child out of wedlock.

Viewed from its kind, this research including research normative position or juridical law normative by using two approaches is concep approach (approach conceptual) and approach comparison (comparative approach). By the way of assessing law as data sources. The verdict which is used by the writer in this research is the constitutional court ruling number: 46 PUU-VIII / 2010 and a fatwa was Majelis Ulama Indonesia number: MUNASVIII MUI / 11 / / 03 / 2012 about a child out of wedlock and materials laws pertaining to discussion over.

From the research obtained a conclusion that equation between the award the constitutional court number: / 46 PUU-VIII / 2010 and MUI FATWA number: / 11 / MUNASVIII MUI 3 / / 2012 is judicial consideration issued the ruling namely children born out of wedlock to be covered as form of protection of human rights while the difference between two is concerning basic law used thus producing legal products different besides the difference also lies in focus consideration. The award the constitutional court was child outer marriage pertaining to absence of marriage registration and dispute marriage, it is different thing with fatwa number: / 11 MUNAS VII / MUI 3 / / 2012 focus consideration of its being discussed in the contents of the fatwa talked about child out of wedlock or child results fornication.