

**THE FILIATIONS OF ILLEGITIMATE CHILDREN TO BIOLOGICAL  
FATHER : (COMPARATIVE STUDY BETWEEN PERLIS FATWA AND  
INDONESIA CONSTITUTIONAL COURT DECISION NUMBER  
46/PUU\_VIII/2010)**

**THESIS**

By :

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**DEPARTMENT OF ISLAMIC FAMILY LAW**

**SYARIA' FACULTY**

**STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM**

**MALANG**

**2023**

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## STATEMENT OF THE AUTENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled :

**THE FILIATIONS OF ILLEGITIMATE CHILDREN TO BIOLOGICAL FATHER : (COMPARATIVE STUDY BETWEEN PERLIS FATWA AND INDONESIA CONSTITUTIONAL COURT DECISION NUMBER 46/PUU-VIII/2010)**

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Malang, 9<sup>th</sup> June 2023

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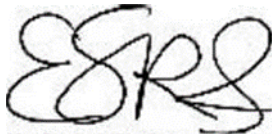
## APPROVAL SHEET

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the supervisor stated that this thesis has met the scientific requirements to be proposed and to be examined on the Assembly Board of Examiners.

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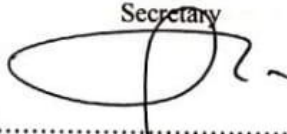
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Peace be Upon into The Rasulullah Prophet Muhammad SAW who has taught us guidance (uswatun hasanah) to do activity correctly in our life. By following Him, may we belong to those who believe and get their intercession on the last day of the end. Amin.

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14. Last but not least, The Bruh Crew for the strength and love for me to finish this thesis.

With the completion of this thesis report, the hope that knowledge which we have gained during our studies can provide the benefits of life in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for the forgiveness, criticism and suggestions from all parties for future improvement efforts.

Malang, 9<sup>th</sup> June 2023

Writer,



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## MOTTO

وَأَسْتَعِينُوا بِالصَّبْرِ وَالصَّلَاةِ إِنَّهَا لَكَبِيرَةٌ إِلَّا عَلَى الْخَاشِعِينَ

“ And seek help through patience and prayer, and indeed, it is difficult except for the humbly submissive [to Allah]”.

( 2 : 45 )

## TRANSLITERATION GUIDENCE<sup>1</sup>

The Latin Arabic Transliteration Guidelines which are the result of a joint decision (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia .Number :158 of 1987 and Number: 0543b/U/1987.

### A.Consonan

A list of Arabic letters and their transliteration into Latin letters can be seen on the following:

| Arab | Latin          | Arab | Latin |
|------|----------------|------|-------|
| أ    | Not Symbolized | ط    | T     |
| ب    | b              | ظ    | Z     |
| ت    | T              | ع    | ‘     |
| ث    | th             | غ    | Gh    |
| ج    | J              | ف    | f     |
| ح    | H              | ق    | q     |
| خ    | Kh             | ك    | K     |
| د    | D              | ل    | L     |
| ذ    | Dh             | م    | M     |
| ر    | R              | ن    | N     |
| ز    | Z              | و    | W     |
| س    | S              | ه    | H     |

<sup>1</sup> Tim Penyusun,Pedoman Penulisan Karya Ilmiah,(Fakultas Syariah:UIN Maulana Malik Ibrahim Malang,2022),43-50.

|   |    |   |   |
|---|----|---|---|
| ش | Sh | ء | ' |
| ص | S  | ي | Y |
| ض | d  |   |   |

Hamzah (ء) which is located at the beginning of the word follows the vowel without any marking. If it is in the middle or at the end, it is written with a sign (').

## B.VOCAL

Arabic vowels, like Indonesian vowels, consist of single vowels or monophthongs and double vowels or diphthongs.

Single Arabic vowels whose symbols are signs or harakat, transliteration as follows:

| Arab Letters | Name   | Latin Letters | Name |
|--------------|--------|---------------|------|
| اَ           | Fathah | A             | A    |
| اِ           | Kasrah | I             | I    |
| اُ           | Dammah | U             | U    |

Arabic double vowels whose symbols are a combination of harakat and letters, its transliteration is a combination of letters, namely:

| Arabic Letters | Name           | Latin Letters | Name    |
|----------------|----------------|---------------|---------|
| اِي            | Fathah and Ya  | Ai            | A and I |
| اُو            | Fathah and Wau | Au            | A and U |

Example :

كيف = kaifa

هول = Haula

### C.Maddah

Maddah or long vowels whose symbols are harkat and letters, transliteration in the form of letters and signs, namely:

| Harakat and Letters | Name                     | Lettersd and Sign | Name                 |
|---------------------|--------------------------|-------------------|----------------------|
| آي                  | Fathah and Alif<br>or ya | ā                 | a and the line above |
| ي                   | Kasrah and Ya            | ī                 | i and the line above |
| و                   | Dammah and wau           | ū                 | u and the line above |

Example:

مَات = māta

رَمَى = ramā

قِيل = qīla

يَمُوتُ = yamūtu

#### **D.Ta'Marbutah**

There are two transliterations for ta marbūṭah, namely: ta marbūṭah which is alive or received fathah, kasrah, and ḍammah, is transliterated as [t]. Whereas the ta marbūṭah which is dead or has the letter sukun, is transliterated as [h].

If the word ending in ta marbūṭah is followed by a word that uses the article al- and the two words are read separately, then ta marbūṭah is transliterated with ha (h). Example:

المَدِينَةُ = al-madinah

#### **E.Syaddah (Tasydid)**

Syaddah or tasydīd which in the Arabic writing system is symbolized by a tasydīd sign ( ̣ ), in this transliteration is symbolized by a repetition of letters (double consonants) given a syaddah sign.

syaddah sign. Example:

الْحَجُّ = al-hajj

الْحَقُّ = al-haqq

رَبِّ = rabbi

If the letter ى is tasydīd at the end of a word and is preceded by a letter with the letter kasrah ( ِ ), then it becomes tasydīd, then it is transliterated like a maddah letter (ī). Example:

عَلِيٌّ = 'Alī (not 'Aliyy or 'Aly)

عَرَبِيٌّ = 'Arabī (not 'Arabiyy or 'Araby)

## F.Sandang Words

The article of faith in the Arabic writing system is symbolized by the letter (لا) alif lam ma'arifah. In this transliteration guideline, the article is transliterated as usual, al-, both when it is followed by a shamsiah letter and a qamariah letter.

by a Shamsiah letter or a Qamariah letter. The article does not follow the sound of the letter directly that follows it. The article is written separately from the word that follows it and is connected with a horizontal line (-). with a horizontal line (-). For example:

الشَّمْسُ = al-syamsu (not asy-syamsu)

الزَّلْزَلَةُ = al-zalزالah (not az-zalزالah)

الْفَلْسَفَةُ = al-falsafah

الْبِلَادُ = al-bilādu

## G.HAMZAH

The rule of transliterating hamzah letters into apostrophes (') only applies to hamzahs located in the middle and end of words. However, if the hamzah is located at the beginning of the word, it is not symbolized, because in Arabic writing it is an alif. in Arabic writing it is an alif. For example:

تَأْمُرُونَ = ta'murūna

النَّوْءُ = al-nau'

سَيِّئٌ = syai'un

أُمِرْتُ = umirtu

## H. Writing Arabic Words Commonly Used In Indonesian

Arabic words, terms or sentences that are transliterated are words, terms or sentences that have not been standardized in Indonesian. Words, terms or sentences that are already common and part of the Indonesian language treasury, or are often written in Indonesian writing, are no longer written according to the above transliteration method. For example, the words Quran (from al-Qur'ān), sunnah, hadith, khusus and umum. However, when these words are part of a series of Arabic texts, they must be transliterated in full. Arabic text, then they should be transliterated entirely. Example:

Fī zilāl al-Qur'ān

Al-Sunnah qabl al-tadwīn

Al-'Ibārāt Fī 'Umūm al-Lafz lā bi khuṣūṣ al-sabab

### 1. LAFZ AL-JALĀLAH (الله)

The word "Allah" which is preceded by particles such as jarr and other letters or acts as a muḍāf ilaih (nominal phrase), is transliterated without the hamzah. Example:

دينُ الله = dinullah

As for the ta marbūṭah at the end of a word that is based on lafz al-jalālah, it is transliterated with the letter [t]. Example:

هُم فِي رَحْمَةِ اللهِ = hum fī raḥmatillāh

### 2. Capital

Although the Arabic writing system does not recognize capital letters (All Caps), in transliteration the letters are subject to the provisions on the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the initial letter of proper names (person, place, month) and the first letter at the beginning of a sentence. and the first letter at the beginning of a sentence. When a proper name is preceded by an (al-), then the initial letter of the proper name is written with a capital letter, not the initial letter of the article. If it is located at the beginning of a sentence, then the letter A of the article is capitalized (Al-). The same rule applies to the initial letter of the title of the reference preceded by the article al-, both when it is written in the text and in the reference notes (CK, CK, CK). or in the reference notes (CK, DP, CDK, and DR). Example:

Wa mā Muḥammadun illā rasūl

Inna awwala baitin wuḍi‘a linnāsi lallaẓī bi Bakkata mubārakan

Syahru Ramaḍān al-laẓī unzila fih al-Qur’ān

Naṣīr al-Dīn al-Ṭūs Abū Naṣr al-Farābī

Al-Gazālī

Al-Munqiz min al-Ḍalāl



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## ABSTRAK

Basri, Harisa Sheila Binti,16210193, 2023. **Nasab Anak Tak Sah Taraf Kepada Bapa Biologi : (Komparatif Studi Antara Fatwa Perlis Dan Putusan Mahkamah Konstitusi No.46/PUU-VIII/2010).**Skripsi.Hukum Keluarga Islam. Fakultas Syariah.Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing Erik Sabti Rahmawati,MA.,M.Ag.

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**Kata Kunci : Nasab Anak Tak Sah Taraf,Fatwa Perlis,Putusan Mahkamah Konstitusi**

Permasalahan nasab anak luar kawin kepada ayah biologisnya telah menjadi topik diskusi dan kontroversi di banyak negara terutama di Malaysia dan Indonesia, fatwa yang dikeluarkan oleh Departmen Mufti Negeri Perlis yang membolehkan anak luar kawin dinasabkan kepada ayah biologisnya, sedangkan di Indonesia Putusan Mahkamah Konstitusi yang mengakui status anak luar kawin menimbulkan kehebohan, sehingga tesis ini bertujuan untuk membandingkan dan menganalisis Fatwa Perlis dan Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010 tentang status anak luar kawin kepada ayah biologisnya.

Jenis penelitian yang digunakan adalah penelitian kepustakaan (library research) dengan pendekatan kualitatif dan pendekatan komparatif. Penelitian ini membandingkan fatwa Jabatan Mufti Perlis dan putusan Mahkamah Konstitusi Indonesia mengenai status anak luar kawin terhadap ayah biologisnya.

Hasil penelitian ini menyimpulkan bahwa Fatwa Perlis membolehkan nasab anak luar kawin kepada ayah biologisnya apabila tidak diingkari oleh ayahnya, sedangkan setelah adanya putusan MK No.46/PUU-VIII/2010, anak yang dilahirkan di luar perkawinan tidak hanya memiliki hubungan perdata dengan ibu dan keluarganya, tetapi juga memiliki hubungan keperdataan dengan ayah biologisnya apabila diakui olehnya atau dapat dibuktikan melalui ilmu pengetahuan dan teknologi.

## ABSTRACT

Basri, Harisa Sheila Binti,16210193, 2023. **The Filiation of Illegitimate Child To Biological Father:(Comparative Study Between Perlis Fatwa And Constitutional Court Decision No.46/PUU-VIII/2010).**Thesis.Islamic Family Law Department.Faculty of Shari'a.State Islamic University of Maulana Malik Ibrahim Malang.Supervisor Erik Sabti Rahmawati,MA.,M.Ag.

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**Keywords : Filiation of Illegitimate Children,Perlis Fatwa,Constitutional Court Decision**

The issue of filiation of illegitimate children to their biological father has been a topic of discussion and controversy in many countries especially in Malaysia and Indonesia.The fatwa issued by Perlis State Mufti Department which allow the illegitimate children to be attributed to their biological father.While in Indonesia,the Constitutional Court Decision recognizing the status of children born out of wedlock has caused sensation.This thesis aims to compare and analysed the Perlis fatwa and Indonesia Constitutional Court Decision No.46/PUU-VIII/2010 regarding the status of illegitimate children to their biological father.

The type of research used is library research with a qualitative approach and a comparative approach. This research compares the fatwa of Jabatan Mufti Perlis and the Indonesian Constitutional Court's decision regarding the status of illegitimate children versus biological fathers.

The results of this study conclude that the Perlis Fatwa allows the nasab of illegitimate children to their biological father if not denied by the father.After the decision of Constitutional Court No.46/PUU-VIII/2010,children born out of wedlock not only have a civil relationship with the mother and family,but also have civil relationship with their biological father if they recognized by him or can be proven through science and technology.

## مخلص البحث

البصري، حريصة شيلا بنتي، 16210193، 2023. بنوة الطفل غير الشرعي إلى الأب البيولوجي: (دراسة مقارنة بين فتوى برليس وقرار المحكمة الدستورية رقم PUU-/46 (VIII/2010). أطروحة. قسم قانون الأسرة الإسلامي. كلية الشريعة. الجامعة الإسلامية الحكومية لمولانا مالك إبراهيم مالانج. المشرف إريك سبتي رحمواتي ، MA.,M.Ag

### الكلمات المفتاحية : بنوة الأطفال غير الشرعيين، فتوى برليس، قرار المحكمة الدستورية

كانت قضية بنوة الأطفال غير الشرعيين لوالدهم البيولوجي موضوعا للنقاش والجدل في العديد من البلدان وخاصة في ماليزيا واندونيسيا ، الفتوى الصادرة عن إدارة مفتي ولاية بيرليس والتي تسمح بنسب الأطفال غير الشرعيين إلى والدهم البيولوجي. بينما في إندونيسيا ، أثار قرار المحكمة الدستورية الذي يعترف بوضع الأطفال المولودين خارج إطار الزواج ضجة كبيرة. تهدف هذه الأطروحة إلى مقارنة وتحليل فتوى بيرليس وقرار المحكمة الدستورية الإندونيسية رقم PUU-VIII / 2010 / 46 بشأن وضع الأطفال غير الشرعيين لوالدهم البيولوجي.

نوع البحث المستخدم هو البحث المكتبي مع نهج نوعي ونهج مقارن. يقارن هذا البحث فتوى مفتي جابتان بيرليس وقرار المحكمة الدستورية الإندونيسية بشأن وضع الأطفال غير الشرعيين مقابل الآباء البيولوجيين.

خلصت نتائج هذه الدراسة إلى أن فتوى برليس تسمح لنصاب الأطفال غير الشرعيين لأبيهم البيولوجي إذا لم ينكرهما الاتحاد. بعد قرار المحكمة الدستورية رقم PUU-VIII / 2010 / 46 ، لا يكون للأطفال المولودين خارج إطار الزواج علاقة مدنية مع الأم والأسرة فحسب ، بل لديهم أيضا علاقة مدنية مع والدهم البيولوجي إذا اعترفوا به أو يمكن إثباته من خلال العلم والتكنولوجيا.

## CHAPTER 1

### INTRODUCTION

#### A. Research Background

A child is an individual who is a result of a man and a woman's relationship. In general, children have a relationship with their parents. Children are both a blessing and a great responsibility from Allah to parents.<sup>2</sup> Therefore parents are accountable for mentoring or educating their children in accordance with the guideline set in Al-Quran and As-Sunnah.

But there are children born out of wedlock or without a legal bond. These children are known as illegitimate children. These illegitimate children usually the result of adultery. Committing adultery is prohibited in Islam, and the prohibition of approaching adultery is stated in the Quran Surah Al-Isra verse 32:

وَلَا تَقْرَبُوا الزَّوْجَىٰٓ إِنَّهُ كَانَ فُجُورًا وَسَاءَ سَبِيلًا ۝ ٣٢

“And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way”. (Al-Isra’:32)

Malaysia Mufti Department was brought into question about the meaning of verse 32 Surah Al-Israa “and do not approach near to adultery”, and whether adultery refers only to the act of adultery. The Mufti Department clarified that all ways that lead to adultery, such as eye contact, touching, and isolation are haram and should be avoided, even if they are considered minor sins. According to the Mufti Department, Ibnu Kathir said in his Tafsir that Allah forbids His servant from committing adultery, as well as the things that lead to adultery.<sup>3</sup>

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<sup>2</sup> Y.B S.S Dato’ Hj Mohd Murtadza bin Hj Ahmad, Pendidikan Anak Dengan Solat, Mufti Kerajaan Negeri, Negeri Sembilan Darul Khusus, accessed on March 2, 2023, <https://muftins.gov.my/tareqat-tasauwuf/Pendidikan-anak-dengan-solat>

<sup>3</sup> Umar Mukhtar Mohd Noor, Apakah Maksud Ayat “Jangan Dekati Zina”?, Artikel, Al Kafli li al-Fatawi, accessed on January 29, 2021, <https://muftiwp.gov.my/artikel/al-kafli-li-al-fatawi/166-apakah-maksud-ayat-jangan-dekati-zina>

The increase in adultery has led to an increase in the number of illegitimate children. Illegitimate children caused controversy in the community, especially in Malaysia and Indonesia. One of the focuses of debate is the nasab of illegitimate children to their biological father. The suggestion to establish illegitimate child to their father however has been disputed by several parties, including the Fatwa Committee, Malaysian Sharie Lawyers Association, and experts.

In the context of children born out of wedlock, the child lineage is only to the mother. This is a society's question on why the woman should bear responsibility for an out-of-wedlock child's lineage rather than the father. Meanwhile, the father must be held accountable for everything that has been done to cause the birth of a child out of wedlock. Islam takes a child's position very seriously, whether they born legally or illegally, which has major implications for Islamic law.

In Malaysia, an illegitimate child is referred to by various names and terms. However, the phrase "illegitimate child," as employed by several official authorities in Malaysia, has sparked a polemic and never-ending stream of debate among members of the community. The debate is mainly concerned with the real definition of the word "illegitimate kid" in Malaysia, whether it refers to a child born of adultery or otherwise.<sup>4</sup>

The legal status of children born outside of marriage is still a bone of contention among mujtahids. The unclear status of children born out of wedlock can have a lot of implications, including guardianship, inheritance, association, aurah, and others. In Islamic countries, the filiation of children born outside of marriage is often codified in the form of a fatwa. The word fatwa itself is used to describe something that answers, explains, or describes the law.<sup>5</sup> In practical terms,

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<sup>4</sup> Wan Abdul Fatah Wan Ismail, Ahmad Syukran Baharuddin, Lukman Bin Abdul Mutalib, Zulfiqar Mamat, *A Comparative Study of The Illegitimate Child Term From Shariah And Malaysia Legal Prespective*, Humanities and Social Sciences 8, (2020), 106. <https://doi.org/10.18510/hssr.2020.8412>

<sup>5</sup> Muhammad Fahmi Rusli, Bayyan Linnas Siri Ke-151: Tajdid Dalam Fatwa: Antara Teori Dan Praktikal, Pejabat Mufti Wilayah Persekutuan, accessed on 31 March 2023

fatwa is directed as a form of explanation of problems that arise among Muslims and demand answers and solutions in a problem.<sup>6</sup>

Malaysia and Indonesia are Islamic-majority countries with institutions specifically responsible for determining and issuing fatwas for the benefit of their people. In Malaysia, the institution responsible for issuing fatwas is The Nasional Council for Islamic Religious. This institution acts as an institution that has the authority to issue fatwas at the Nasional level to harmonize and uniformize every fatwa in every state in Malaysia.<sup>7</sup> In Indonesia, the institution that issues fatwas is the Indonesian Ulama Council. This institution is a forum for deliberation of scholars, muftis and scholars who have the competence to provide solutions to every problem that exists in Indonesian society.<sup>8</sup> The legal provisions for each state in Malaysia are different. Therefore, the fatwa provisions for each state are also not the same. The result of the 57th Muzakarah Fatwa Committee of the Nasional Council for Islamic Religious Affair Malaysia which convened on 10 June 2003 have decided that the non-legitimate child cannot be lineage to the man who cause his birth or whom he claimed to be the father of the child.<sup>9</sup>

The fatwa on adulterous children in Indonesia stated in the Ulama Indonesia Council's Fatwa No.11/2012 on The Position of Children Resulting from Adultery and the treatment of them. This fatwa explicitly states that the child of adultery does not have a relation of nasab, inheritance and nafaqah with the man who caused his

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<https://muftiwp.gov.my/artikel/bayan-linnas/2709-bayan-linnas-siri-ke-151-tajdid-dalam-fatwa-antara-teori-dan-praktikal>

<sup>6</sup> Badri Khaeruman, *Hukum Islam dan Perubahan Sosial* (Bandung : Pustaka Setia, 2010), 108.

<sup>7</sup> Muhammad Ikhlas Rosele, "Muzakarah of The Fatwa Committee of The Nasional Council in Malaysia: Its Establishment Role And Relevancy", *Journal of Fatwa Management and Research*, Volume 10 Number 1 (2017), 91

<sup>8</sup> Peraturan Organisasi Majelis Ulama Indonesia Tahun 2015 Tentang Pedoman Penetapan Fatwa Majelis Ulama Indonesia

<sup>9</sup> *Kompilasi Pandangan Hukum Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia* (Selangor: Creative Empire, 2015) cet ke 5, 206-207.



birth.<sup>10</sup> There are several fatwas that state the legalisation of illegitimate children is not justified in Islam and does not change the status of the child. This means that children born out of wedlock do not have a nasab relation to their biological father.

Nevertheless, The Perlis Mufti Department has issued a fatwa that states that adulterated children can be related to their biological father. This is contrary to national fatwas and fatwas from other states in Malaysia. In a similar case, the Indonesian Constitutional Court has issued a decision No.46/PUU\_VII/2010 that adulterated children have a civil right or inheritance right from their biological father. This decision has canceled the previous decision which stated that children born out of wedlock only have a civil relationship to their mother.<sup>11</sup>

From this background, there has been a bit of controversy over the nasab of illegitimate children to biological fathers in society, especially in Malaysia and Indonesia. This interests the author to make research related to **The Filiation of Illegitimate Children To Biological Father : (Comparative Study Between Perlis Fatwa And Indonesia Constitutional Court Decision Number 46/PUU-VIII/2010).**

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<sup>10</sup>Ketentuan Hukum Angka 1 Fatwa MUI Nomor 11 Tahun 2012 tentang Kedudukan Anak Hasil Zina dan Pelakuan Terhadapnya.

<sup>11</sup> Anwar Hafidzi, Nadiyah, Rina Septiani, The Biological Father Have Civil Rights With Evidence And Conviction of Their Children, Jurnal Ilmiah Al-Syir'ah Vol 18, No 2, (2020), 127-129, accessed on 1 April 2023, [http://journal.iain\\_manado.ac.id/index.php/JIS](http://journal.iain_manado.ac.id/index.php/JIS)

## **B. Statement Problems**

1. How is Perlis State Fatwa towards the filiation of illegitimate children?
2. What is the decision of The Constitutional Court on the status of illegitimate children?
3. What are the similarities and differences in the status of illegitimate children according to the Perlis Fatwa and Indonesia Constitutional Court Decision?

## **C.Objectives of Research**

Based on the statement of problems, this study will attempt to answer the following:

1. To identify the fatwa of Perlis State towards the filiation of illegitimate children.
2. To identify the Indonesia Constitutional Court Decision towards the status of illegitimate children.
3. To identify the similarities and differences between Perlis Fatwa and Indonesia Constitutional Court Decision in established the status of illegitimate children.

## **D.Significance of the Study**

One of the objectives of this research is based on the problems above, it is hoped that this research has benefits both theoretically and practically to expand the knowledge of education in the community. The expected benefits of this study are as follows:

### **1.Theoretically.**

- a) To increase knowledge in the field of Islamic Family Law on the lineage of an illegitimate child to a biological father.
- b) Making scientific contributions to the Islamic Family law departmentat Maulana Malik Ibrahim State University.

## 2. Practically

- a) To be used as one of the references in further similar research.
- b) Can be used as a consideration as the consideration of practitioners in the law concerning the lineage, in particular the lineage of an illegitimate child to biological father.

## E. Operational Definition

In order to facilitate the understanding of readers, it is necessary to explain in advance some of the terms operationally as follows :

### 1. Perlis State Mufti Department

Perlis State Mufti Department is an institution that plays an important role in the development of Islam. It is located on Perlis State, the northwest coast of Peninsular Malaysia. In Malaysia, the Mufti Department is placed under the authority of the Assembly Administration or the State Religious Officer. The department is headed by a mufti who is the highest official in the field of religion and Islamic law and is responsible for issuing fatwas or decisions on Islam and is responsible for issuing fatwas or judgements on matters relating to Islamic law.

### 2. Indonesia Constitutional Court

The Constitutional Court is one of the state institutions that exercise independent judicial powers to harmonize the rule of law. The main function and role of the Constitutional Court is to defend the Constitution to uphold the principles of legal constitutionality. The Constitutional Court's primary purpose is to safeguard the constitution and maintain the principle of legal constitutionality, which is a fundamental aspect of countries that have established the court within their constitutional system.<sup>12</sup>

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<sup>12</sup> Mahkamah Konstitusi Republik Indonesia, Peran Dan Fungsi Mahkamah Konstitusi, accessed on 30 April 2023, <https://www.mkri.id/index.php?page=web.Berita&id=10958>

### 3.Filiation

The word Filiation or Nasab is derived from the Arabic word An-nasab, which means descendant or relative. Marriage creates legal family relationships based on blood ties, which are referred to as descent. Descent is the affinity induced by a blood link<sup>13</sup>, which is what marriage creates.

### 3.Illegitimate Children

An illegitimate child is a child born outside of a legal marriage. The status of illegitimate children varies by country and legal system.<sup>14</sup>

## **F. Research Method**

Research is a set of knowledge about steps systematically and logically on searching data about specific problems and then processed, analyzed and concluded to be one troubleshooting an issue. That is a comprehensive strategy to find or obtain data required for the review of a topic in research and get an answer to the problem. The research methods can be said to solve the problem. It is also a way of collecting research data in comparison to predefined standards<sup>15</sup>.

The technique and methods used are:

#### 1. Type of Research

Type of research method used by author is library research, which is a study of the Perlis Fatwa's and decision by Indonesia Constitutional Court on the nasab of children born out of wedlock which has been issued by Perlis Mufti Department and Indonesia Council Court. This thesis used a qualitative approach by examining

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<sup>13</sup> B. Setiawan, *Ensiklopedi Indonesia Jilid 4*, (Jakarta: Ichtiar Baru Van Hoeve, 1994), 237

<sup>14</sup> Ahmad Rizza Habibi, *The Dynamics of Illegitimate Child Status in Sharia and National Law of Indonesia : Is There A Harmonization?*, *Al-Manhaj: Journal of Indonesian Islamic family Law*, 3(1), 70-80, <https://doi.org/10.19105/al-manhaj.V3i1.4787>

<sup>15</sup> Suharsimi Arikunto, *Prosedur Pendekatan Praktek*, (Jakarta : Rineka Cipta, 2002), 126-127.

an object with the researcher as the key instrument. Data is acquired using a combination of techniques and then analyzed qualitatively<sup>16</sup>.

## 2. Research Approach.

The approach that researchers used is a comparative approach. The researcher compares a fatwa established by Mufti of Perlis and a Indonesia Constitutional Court Decision towards the status of illegitimate child.

## 3. Law Material

### a. Primary Law material

Primary law material is the first obtained source from which to generate data<sup>17</sup>. In this research, the primary law material used are the Perlis fatwa and Indonesia Constitutional Court Decision No.46/PUU\_VII/2010

### b. Secondary Law Material

In this study, the researchers used books and previous research related to the Fatwa Nasab of children born out of wedlock in Malaysia and Indonesia, as well as the analysis of the Indonesia Constitutional Court's decision on the status of children born out of wedlock.

### c. Tertiary data

Tertiary legal materials are legal materials that provide guidance and explanations on the two previous sources of law, consisting of journals, encyclopedias, dictionaries, magazines and materials from the Internet, with the aim of understanding the results of this research.

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<sup>16</sup> Burhan Bungin, *Metode Penelitian Kualitatif*, (Jakarta: PT Grafindo Persada, 2006), 124

<sup>17</sup> Burhan Bungin, *Metode Penelitian Sosial, Format-Format Kuantitatif dan Kualitatif* (Surabaya: Airlangga University Press, 2001) 129.

#### 4. Law Material Collection

The data collection technique used in this research is the documentation technique. Studying documentation is a way of getting an overview from the subject's point of view, using a written medium and other documents written or created directly by the subject concerned.<sup>18</sup> This technique is performed through the study of books and academic papers that are relevant with the research topic. These include fatwas and Islamic family law in Malaysia, as well as decisions by the Indonesian Constitutional Court and fatwas by the Indonesian Ulama Council.

#### 5. Analysis of Law

Based on the nature of the research, the data analysis in this study uses research with a comparative approach, namely comparing fatwas in Malaysia and Indonesia. In this study, the researchers compared the Perlis Fatwa established by Perlis Mufti Department, Malaysia with the Indonesian Constitutional Court's Decision No. 46/PUU\_VII/2010 on the status of children born out of wedlock.

#### G. Previous Research

This chapter will describe some studies that have relevance to this study. Studies of previous research are important. The previous research was intended to make some differences and look for differences between the study to be conducted by the same theme study. This previous is also to confirm which this study is new and has never been researched before. Besides, this previous research also useful as a comparison in the same study. The previous research will be described below :

1. *Pertimbangan Hakim Dalam Penetapan Nasab Anak Zina (Studi Terhadap Putusan Mahkamah Rayuan Putrajaya Kasus No. W-01- ( A ) – 365 – 09 / 2016*

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<sup>18</sup> Haris Herdiansyah, *Metodologi Penelitian Kualitatif Untuk Ilmu-Ilmu Sosial* (Jakarta: Salemba Humanika, 2009) 143.

)<sup>19</sup>. This study states that an extramarital child in Malaysia is indebted to Abdullah and this decision is based on a fatwa by the National Fatwa Council of Malaysia stating that the nasab of an adulterous child should not be attributed to his biological father. However, Malaysia's Court of Appeal has allowed the child to assign blame to the birth father to raise the question of whether the judges are using adultery as a basis in determining the child's fine in the court. The results of this study revealed that there is a difference between the determination of the nasab by the Syariah court and the civil court. The decision of fiqh but the basis used by the civil courts is different as the decision used by the National Registration Authority is civil law. This study also explains the weaknesses in the legal system in Malaysia, which has resulted in Muslim issues being heard in the civil courts, while the Syariah court has more powers to hear the case.

*2. Status Nasab Anak Di Luar Nikah Perspektif Mazhab Hanafi dan Mazhab Syafi'i Dan Implikasinya Terhadap Hak-Hak Anak*<sup>20</sup>. This study was conducted to determine the status of illegitimate children according to the Hanafi School and the Shafii School and the impact on their rights when a child was born less than six months after the contract and the child's status is the same as the of a child born in a lawful marriage, because the Hanafi school essentially considers the existence of nasab, then the true nasab to the biological father is a sabbit the child It was unlawful to marry her biological father. According to the Shafii School, an illegitimate child is a child born less than six months after having sexual intercourse with a legal husband. The status of the born child does not relate to its biological father, but only to the mother and only to the mother's family. Also, an illegitimate child does not acquire the right to care for his biological father, and his biological father does not have the right to be the guardian of the marriage, but can only be cared for by the judge's guardian. Contrary to inheritance, according to the Hanafi

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<sup>19</sup> Muhammad Luqman Hakim Bin Yahya, *Pertimbangan Hakim Dalam Penetapan Nasab Anak Zina (Studi terhadap Putusan Mahkamah Rayuan Putrajaya Kasus No W-01 (A) – 365-09/2016*, Skripsi (Aceh, Faculty of Syariah and Law, UIN Ar-Raniry Darussalam-Banda Aceh, 2019).

<sup>20</sup> Riri Wulandari *Status Nasab Anak Di Luar Nikah Perspektif Mazhab Hanafi Dan Mazhab Syafi'i Dan Implikasinya Terhadap Hak-Hak Anak*, Skripsi, (Lampung: Fakultas Syaria, UIN Raden Intan, 2018)

school, illegitimate children do not inherit from the biological father but from the mother and the mother's family, while according to the Shafii school, there is an exception that illegitimate children can receive the inheritance provided the illegitimate child is recognized by all heirs of the biological father.

3. *Penetapan Nasab Anak Zina Menurut Hukum di Malaysia (Studi Kasus Terhadap Putusan Mahkamah Rayuan Sivil No W-01 (A) - 365-09 / 2016)*.<sup>21</sup> This study discusses the naming of a child under Order 17 of 2003, Islamic Family Law (Johor State) Order 2003, which allows a child to be given to his father at least six months after the date of his parents' marriage. However, contrary to the findings of the Civil Court of Appeals No. W-01 (A) -365-09/2016, the surname /bin/binti indicates the existence of a relationship between the son and his biological father. The results found that the Civil Court of Appeal's naming of an adulterous child's nasab resulted from Section 13A of the Registration of Births and Deaths Act 1957 (BDRA Act). The decision of the Civil Court of Appeals No. W-01(A)-365-09/2016 determining the nasab in adultery conflicts with the perspective of Malaysian family law and Mazhab Syafi'i.

4. *Penasaban Anak Tak Sah Taraf Menurut Perspektif Maqasid Syariah*.<sup>22</sup> This study discusses the relationship of Maqasid Shariah in the cultivation of illegitimate children within the scope of "hifz nafs". The findings found that it is not permissible to send an illegitimate child to his biological father in order to preserve the purity of the offspring. And the cultivation of illegitimate children will open up more mafsadah spaces to certain parties.

5. *Pandangan Jabatan Mufti Negeri Perlis Tentang Nasab Anak Luar Nikah (Menurut Perspektif Maqashid Syariah)*.<sup>23</sup> The determination of the child's lineage is based on the concept of al-firasy or marriage on condition that the pregnancy is

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<sup>21</sup> Nurulazlina binti Mohd Norazman, *Penetapan Nasab Anak Zina Menurut Hukum di Malaysia (Studi Kasus Terhadap Putusan Mahkamah Rayuan Sivil No W-01 (A) -365 -09/2016*, Skripsi, (Medan;Universitas Islam Negeri Sumatera Utara,2019.

<sup>22</sup> Masturah Binti Kasa@Muhyiddin, *Penasaban Anak Tak Sah Taraf Menurut Perspektif Maqasid Syariah*, Skripsi, Universiti Sultan Zainal Abidin, 2019.

<sup>23</sup> Meor Muaz Bin Meor Nadzri, *Pandangan Jabatan Mufti Negeri Perlis Tentang Nasab Anak Luar Nikah (Menurut Perspektif Maqashid Syariah)*, Skripsi, Universitas Islam Negeri Ar-Raniry, Aceh ,2022.



more than six months from the date of dukhul. However, the office of the Mufti of Perlis State differed on this matter, namely by only stating the condition of al-firasy, without specifying a gestational age of six months for the purpose of sabitling nasab. This description focuses on the concept of determining the fate of extramarital children fatwas of the Perlis State Mufti Department according to the perspective of Maqashid Sharia. The results of the study found that there is a problem of khilaf among the fuqaha, the Perlis State Mufti Department states that not declaring extramarital children to biological fathers can indirectly oppress the lives of children.

*6. Status Anak Hasil Zina (Studi Komparatif Antara Fatwa Majelis Ulama Indonesia, Dar Al-Ifta dan Jabatan Mufti Negeri Perlis).*<sup>24</sup> This thesis is normative legal research with a comparative approach. The results of the study found that the method used to determine fatwas in the MUI, Dar Al-Ifta and the Perlis State Mufti Department was the agreed source of law. The difference between the three fatwas lies in the background of why they were issued.

*7. Analisis Hukum Islam Terhadap Status Anak Luar Kawin Berdasarkan Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*<sup>25</sup>. This research uses library research method. The author's main focus is the Constitutional Court Decision Number 46/PUU-VIII/2010 from the perspective of Islamic law regarding the legal basis and rights obtained by extramarital children. The results of the analysis conducted found that extramarital children have civil relations with their mothers and fathers. Whereas in Islamic law extramarital children have a different relationship. This Constitutional Court ruling does not contradict Islamic law that links an extramarital child only to his mother, because the right granted by the Constitutional Court to a child born without the marriage bond of his parents, not related to nasab.

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<sup>24</sup>Fadhli Warman, *Status Anak Zina (Studi Komparatif Antara Fatwa Majelis Ulama Indonesia, Dar Al-Ifta Mesir dan Jabatan Mufti Negeri Perlis)*, Tesis, Universitas Islam Negeri Syarif Hidayatullah, Jakarta, 2022.

<sup>25</sup> Wahyu Andini, *Analisis Hukum Islam Terhadap Status Anak Luar Kawin Berdasarkan Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*, Skripsi (Ponorogo, Fakultas Syariah, Institut Agama Islam Negeri, Ponorogo, 2021).

8. *Studi Komparatif Pendapat Empat Madhhab Terhadap Putusan MK No46/PUU-VIII/2010 Tentang Anak Luar Kawin*<sup>26</sup>. This thesis discusses the views of scholars of four schools of thought on the Constitutional Court Decision No. 46 / PUU-VIII / 2010 concerning Extramarital Children. The results of the study can be concluded that children born out of wedlock have a civil relationship with their mother and her mother's family and a man as her father which can be proven based on knowledge and technology and / or have other evidence according to law to have blood relations, including civil relations with his father's family. There are several conclusions according to the Imams of four schools of thought, including according to Imam Hanafi and Imam Shafii that children born less than 6 months after marriage should not be given to their birth mother's husband while Imam Maliki and Imam Hambali Do not allow marriage to women who become illegitimate before childbirth. If one concludes that the decision of the Constitutional Court is not his responsibility, but that it is the biological father's responsibility to ensure a biological consanguinity and to have it confirmed on the basis of the legal process, then he is also for the illegitimate child responsibly act as his father through legal mechanisms using evidence based on science and technology.

The previous research is presented in the table as follows:

**Table 1**

**Previous Research**

| No | Name/ university/Year/Tittle  | Equation  | Difference   |
|----|---|---|--|
| 1. | Muhammad Luqman Hakim Bin Yahya / Universitas Islam Negeri Ar-Raniry Darussalam-Banda Aceh / <i>Penetapan Hakim Dalam Penetapan Nasab Anak Zina (Studi terhadap Putusan Mahkamah Rayuan</i> | The equation between this thesis and the research is the issue of the nasab of adulterous children. | This thesis focuses on the consideration of the judge's decision on the nasab of adulterated children. |

<sup>26</sup> Ardhy Rahmad Saputra, *Studi Komparatif Pendapat Empat Madhhab Terhadap Putusan MK No46/PUU-VIII/2010 Tentang Anak Luar Kawin, Skripsi, (Surabaya, Fakultas Syariah dan Hukum, Universitas Islam Negeri Sunan Ampel, Surabaya, 2019).*

|    |   |   |   |
|----|---|---|---|
|    | <i>Putrajaya Kasus No W-01 (A) – 365-09/2016 (2019)</i>   |   |   |
| 2. | Riri Wulandari / Universitas Islam Negeri Raden Intan Lampung / Skripsi / <i>Status Nasab Anak Di Luar Nikah Perspektif Mazhab Hanafi Da Mazhab Syafi'i Dan Implikasinya Terhadap Hak-Hak Anak (2018)</i>                                 | This thesis and the research conducted have similarities in discussing the nasab of adulterated children.                                 | This thesis focuses on the position of extramarital children from the perspective of Mazhab Hanafi & Syafi'I and the implications for children's rights.                                |
| 3. | Nurulazlina binti Mohd Norazman /Universitas Islam Negeri Sumatera Utara Medan / Skripsi / <i>Penetapan Nasab Anak Zina Menurut Hukum di Malaysia (Studi Kasus Terhadap Putusan Mahkamah rayuan Sivil No W-01 (A) -365-09/2016 (2019)</i> | This thesis has the same objective as the author's research, which is to determine the nasab of adulterated children.                     | This thesis is more focused on the Determination of Nasab of Adulterated Children According to Law in Malaysia (Case Study of the Court of Appeal Decision No W-01 (A) - 365-09 / 2016, |
| 4. | Masturah Bt Kasa@Muhyiddi / Universiti Sultan Zainal Abidin / Skripsi / 2019 / <i>Penasaban Anak Tak Sah Taraf Menurut Perspektif Maqasid Syariah (2019)</i>  | This thesis has the same objective as the author's research, which is to determine the nasab of illegitimate children                     | This thesis focuses on the relationship between maqasid sharia in the naming of illegitimate children within the scope of hifz nasab.   |
| 5. | Meor Muaz Bin Meor Nadzri / Universitas Islam Negeri Ar-Raniry,Aceh / Skripsi / 2022 / <i>Pandangan Jabatan Mufti Negeri Perlis Tentang Nasab Anak Luar</i>   | This thesis discussed the author's research into the view of Perlis Mufti Department's in determining the law of out of Wedlock Children. | The thesis more focus on Perspective of Maqashid Syariah in determaining the lineage of out of wedlock Child.   |

|    |  |   |   |
|----|--|---|---|
|    | <i>Nikah (Menurut Perspektif Maqashid Syariah (2022)</i>   |   |   |
| 6. | Fadhli Warman / Universitas Islam Negeri Syarif Hidayatullah, Jakarta / Tesis / Status Anak Zina (Studi Komparatif antara fatwa Majelis Ulama Indonesia, Dar Al-Ifta Mesir dan Jabatan Mufti Negeri Perlis) (2022) | This thesis has the same research with the author that discussed the similarities and the differences between status of children born out of wedlock.                       | The thesis focus on determine the similarities and differences between legal status of children born out of wedlock based on the fatwa of the MUI, Dar al-Ifta and Perlis Mufti Department. |
| 7. | Wahyu Andini / Institut Agama Islam Negeri Ponorogo / Skripsi / Analisis Hukum Islam Terhadap Status Anak Luar Kawin Berdasarkan Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. (2021)                        | This thesis has similarities with the theme studied by the author who discussed the Constitutional Court Decision Number 46 / PUU-VIII / 2010.                              | This thesis focuses more on the analysis of Islamic law on the status of extramarital children based on Constitutional Court Decision Number 46/PUU-VIII/2010.                              |
| 8. | Ardhy Rahmad Saputra / Universitas Islam Negeri Sunan Ampel, Surabaya / Skripsi / Studi Komparatif Pendapat Empat Madhhab Terhadap Putusan MK No46/PUU-VIII/2010 Tentang Anak Luar Kawin (2019)                    | This thesis has similarities with the theme studied by the author who discussed the Constitutional Court Decision Number 46 / PUU-VIII / 2010 About out of wedlock children | This thesis condemns the views of imams of four schools of thought related to the Constitutional Court Decision   |

Although it has the same theme about illegitimate child nasab, the research conducted by the author this time focuses on the comparison of child nasab according to Fatwa Perlis, Malaysia and Constitutional Court Decision No.46 /

PUU-VIII / 2010. Perlis's fatwa allowed the invalidity of children to be assigned to their biological fathers. This fatwa contradicts the fatwas issued in Malaysia. The difference between Perlis' fatwa and the Constitutional Court's ruling in determining a child's fate is DNA test. Perlis's fatwa stipulates the invalidity of a child by the confession of a man who is a husband to his mother and if denied, the child should not be confided to the man. On the other hand, through the Constitutional Court Decision, extramarital children can be proven based on science and technology and / or other evidence according to law to have blood relations as their father.

## **H. Structure of Discussion**

The writer has divided the discussion and topics into four chapters to make this research report more systematic and structured.

**Chapter I** is an Introduction that includes background of research, a statement of a problem, the objective of research, significance of research, operational definition, the research method and the structure of the discussion. The writer discussed The Filiation of Illegitimate Child To Biological Father (Comparative Study Between Perlis Fatwa and Indonesia Constitutional Court Decision No.46/PUU\_VII/2010).

**Chapter II**, The status of illegitimate children according to the Perlis fatwa and the decision of the Constitutional Court. In this chapter, the author describes the profile of Jabatan Mufti Perlis and the Constitutional Court and what is the rationale in their consideration of the law of establishing the nasab of children in their control region and the nasab of illegitimate children according to the Perlis fatwa and the status of illegitimate children according to the decision of the Indonesian Constitutional Court.

**Chapter III** Comparison of The Perlis Fatwa and the Constitutional Court Decision. In this chapter, the author emphasizes the differences and similarities between the fatwa and this decision in establishing the status of illegitimate child,

as well as the impact after the fatwa and this decision were issued in Malaysia and Indonesia.

**Chapter IV**, the final chapter acts as the chapter's conclusion, summarizing the previous chapter's observations. Furthermore, ideas that are required for improvement in order to achieve excellence for future knowledge enhancement.

**CHAPTER II**  
**THE STATUS OF ILLEGITIMATE CHILDREN ACCORDING TO**  
**PERLIS FATWA AND THE INDONESIA CONSTITUTIONAL COURT**  
**DECISION**

**A. FATWA OF PERLIS**

**1. Profile of the Perlis State Mufti Department**

The Mufti Department is an institution that plays an important role in the development of Islam. In Malaysia, the Mufti Department is placed under the authority of the Assembly Administration or the State Religious Officer. The department is headed by a mufti who is the highest official in the field of religion and Islamic law and is responsible for issuing fatwas or decisions on Islam and is responsible for issuing fatwas or judgements on matters relating to Islamic law.

His Royal Highness of Perlis is the leader of the Islamic faith in Perlis and is responsible for the course and growth of Islam in the state. His Majesty the King of Perlis manages religious organisations such as the State Mufti Department of Perlis and the Department of Religion and Customs of Malay Perlis.

Perlis State Mufti Department is one of government institution that is specifically tasked with researching and providing Fatwa opinions to the state government, the Islamic Religious Council, and Customs of Malay Perlis for any inquiry requiring a Fatwa, as well as providing opinions and advisory services to the public in all Sharia Law-related matters<sup>27</sup>.

Initially, Perlis State Mufti Department was one of the fatwa departments of Jabatan Islam Negeri Perlis (JAIP). However, in 1996, Jabatan Perkhidmatan Awam (JPA) published a directive demanding that the fatwa divisions of Malaysia's

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<sup>27</sup> <https://muftiperlis.gov.my/index.php/profil-jabatan/sejarah> accessed on January 28,2023

Ministry of Islamic Affairs be split. Jabatan Mufti Negara Perlis was then established, with Mufti Sahibus Samahah as the department's head.

The vision of Jabatan Mufti Negeri Perlis is to be an Organization of Excellence in the Enforcement of Islamic Sharia in Society and the State. While the mission of Jabatan Mufti to provide excellent service in the management of fatwas and Sharia legal views, management of Shari'i astronomical affairs and information sources, and management of Jabatan Perlis Mufti's affairs, to maintain Shari'ah authority and further live the teachings of Islam based on a true understanding of the Qur'an and As-Sunnah in all aspects of life to achieve Allah's pleasure.

State of Perlis has a slightly different system or policy for amending fatwas than other Malaysian states. In Perlis, the Sharia Committee must follow the Qur'an and Sunnah of the Prophet s.a.w. rather than a specific Mazhab. Legal judgements must be influenced by a majority vote. Fatwas must be referred to His Majesty the King of Perlis for his decision via Jabatan Fatwa<sup>28</sup>.

## **2. Departmental Authority of Perlis Mufti**

Perlis State Mufti Department is separated into numerous divisions to better management and generate more efficient work, including a fatwa section, falak section, library section, and isnad and da'wah section.

The Fatwa Section of Perlis State Mufti Department oversees presenting fatwas or sharia law views on religious topics and current issues to the people of Perlis. The Fatwa Section is also in responsibility of doing research and issuing fatwas. Individuals engaged in the establishment of fatwas in Negeri Perlis are:

1. Prof Madya Dr. Mohd Asri Bin Zainul Abidin (Mufti Negeri Perlis)
2. Dr. Mohd Radzi Bin Haji Othman

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<sup>28</sup> <https://muftiperlis.gov.my/index.php/profil-jabatan/sejarah> accessed on January 28,2023.

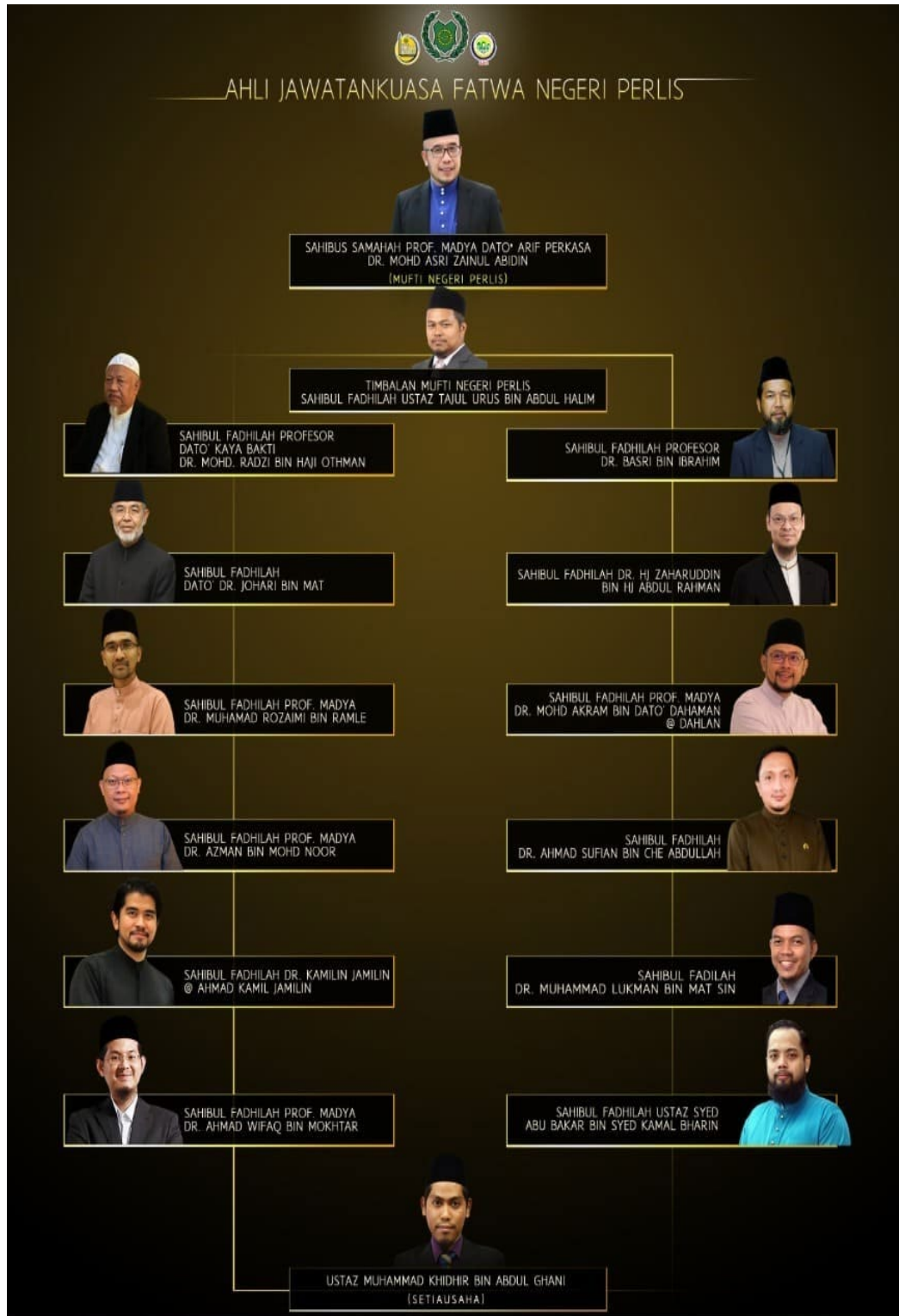


3. Ustaz Ahmad Bin Jusoh
4. Dato Dr. Johari Bin Mat
5. Dr. Muhamad Rozaimi Bin Ramle
6. Dr. Azman Bin Mohd Noor
7. Dr. Kamilin Jamilin
8. Dr. Wifaq Bin Mokhtar
9. Dr. Basri Bin Ibrahim
10. Dr. Haji Zaharuddin Bin Haji Abdul Rahman
11. Dr. Mohd Akram Bin Dato Dahaman
12. Dr. Ahmad Sufian Bin Che Abdullah
13. Ustaz Syed Abu Bakar bin Syed Kamal Bharin
14. Ustaz Khidir Bin Abdul Ghani<sup>29</sup>

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<sup>29</sup> <https://muftiperlis.gov.my/index.php/bahagian-fatwa/jawatankuasa-fatwa-negeri-perlis> accessed on January 29, 2023.

## Member Of Departmental Authority of Perlis Mufti<sup>30</sup>



<sup>30</sup> Jabatan Mufti Negeri Perlis, <https://muftiperlis.gov.my/index.php/bahagian-fatwa/jawatankuasa-fatwa-negeri-perlis> accessed on January 29, 2023.

### 3. Perlis Fatwa Towards Status of Illegitimate Children

Fatwa that established in Malaysia state that an illegitimate child or child born out of wedlock will be granted to Abdullah<sup>31</sup> or another name of Allah and start with Abdul<sup>32</sup>. When a child attributed to Abdullah, the child despised by the community and various forms of discrimination ensue against him and his family, especially when the child begins formal education.

Perlis Mufti Department believes that it is not easy for a man to take responsibility for his adulterous children and mother. However if the man knows that after marriage, the child will attribute to Abdullah, it is likely that the man will reconsider taking responsibility for what he did. In the end, the mother and child become victims and the responsibility for educate, rise, care, etc., is only placed to on the mother alone. In addition, Perlis Mufti Department states that by registering a child with Abdullah indirectly tells people during his lifetime that my wife and I committed adultery.

Finally, in 2013 Perlis Mufti Department under the provisions of subsection 48(6) of the Islamic Family Law Enactment 2006, the Islamic Religious and Malay Customs Councils of Perlis, after asserted by the ruler and informing the State Government, thus causing the following fatwa to be published :

*“Child born less than 6 months after his mother is married, can be lineage to her spouse unless denied by the husband”*.<sup>33</sup>

This fatwa requires that the father to be proclaimed should marry the pregnant mother and the father does not deny that it is his son. This means that this

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<sup>31</sup> Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia (MKI), Kali Pertama, accessed on Oct 30, 2019, <http://www.e-fatwa.gov.my/fatwa-kebangsaan/penamaan-anak-tak-sah-teraf-anak-luar-nikah>

<sup>32</sup> JAKIM, Garis Panduan Anak Tak Sah Taraf, Penamaan, Pergaulan dan Haknya, 9

<sup>33</sup> Bayan Linnas Siri Ke-106 : Isu Penamaan “Bin/Binti Abdullah” Kepada Anak Tak Sah Taraf Oleh Mahkamah Rayuan, Pejabat Mufti Wilayah Persekutuan, accessed on Oct 30, 2019, <https://muftiwp.gov.my/en/artikel/bayan-linnas/736-bayan-linnas-siri-ke-106-isu-penamaan-bin-binti-abdullah-kepada-anak-tidak-sah-teraf-oleh-mahkamah-rayuan>

fatwa does not cover all adulterous children born whose mothers do not have husbands. Also, if the father denies then the son cannot be proclaimed to him.

In the issue of adulterous children, there are things that are ijmak (agreed by the mujtahids without exception) and there are those who are khilaf that the mujtahids have different opinions. The thing that becomes ijmak is that if a woman gives birth to a child after six months of marriage, then the child should be transferred to the husband. If anyone tries to claim that it is the result of his own adultery with the mother, the claim is simply not accepted. This is unless the husband denies it is his son. So at that time the process *of li'an* or *mula'annah* is anathema to obey yourself if lying should be done. After that, the child is not transferred to the husband.

According to the Perlis Fatwa's, the phenomenon of attributing a child to Abdullah may oppress the life of innocent child. It also seems to give no opportunity to adulterer to cover the sin that has been committed even though he has repented. The community will feel that adultery is a common phenomenon because there are people around them have adultery marks on their name. The phenomenon of the child's attributed to Abdullah also has an indirect effect on the child's positive development<sup>34</sup>.

The difference of Fatwa issued by Perlis Mufti Department with Muzakarah Fatwa Committee of The Nasional Council is The Fatwa Committee of The Nasional Council required six month two lahzah and al-firasy as the purpose of establishing nasab to children while Perlis Mufti Department only required al-firasy as a requirement of establishing nasab to children.<sup>35</sup>

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<sup>34</sup> Masalah Nasab Anak Kurang Daripada Enam Bulan Perkahwinan, Jabatan Mufti Perlis, accessed on Oct 30, 2020, <https://mufti.perlis.gov.my/index.php/minda-mufti/150-masalah-nasab-anak-kurang-daripada-enam-bulan-perkahwinan>

<sup>35</sup> Meor Muaz Bin Meor Nadzri, Pandangan Jabatan Mufti Negeri Perlis Tentang Nasab Anak Luar Nikah (Menurut Perspektif Maqashid Syariah), 45

#### 4. The Position of Fatwa in Malaysia

There are two institutions that administer fatwas in Malaysia, namely the National Council Fatwa Committee (JFMK) at the National level and the State Fatwa Committee (JFN) at the State level<sup>36</sup>. The National Council Fatwa Committee for Malaysian Islamic Religious Affairs was established in early 1970 as provided for in Article 11 of the National Council Rules for Malaysian Islamic Religious Affairs (MKI). This committee is the body that issues fatwas at the National level on any matter referred to to by the Council of Kings. While the MKI chaired by Prime Minister is a coordinating body at the Federal level established by the Council of Kings in March 1968. However, this committee only acts as a coordinator for fatwas that touch the public interest.

JFN was also established according to the deeds or enactments of Islamic administration for each state. This committee decides on the fatwa that applies to all Muslims in the country. However, only fatwas proclaimed by the State Legislative Council (DUN) apply and are binding on Muslims in the country.

Malaysia is a federal state based on Islam, but still offers opportunities for the safe and peaceful practice of other religions in all parts of the states. Yang di Pertuan Agong as head of the religion of Islam in the territories of Kuala Lumpur, Labuan and Putrajaya Federated States; To this end, Parliament is legally permitted to make provisions to regulate the affairs of the Islamic religion and is a council that advises the Yang di Pertuan Agong regarding the religion of Islam. Meanwhile, the constitutions of the states of Malacca, Penang, Sabah and Sarawak will make provisions to negotiate the Yang di Pertuan Agong leading the religion of Islam in those states<sup>37</sup>.

Fatwa administration is enforced in the states through a state law called the Islamic Religious Administration Law. By enacting the provisions of this law, the

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<sup>36</sup> Arif Fahmi Md Yusof, Izawati Wook, *Fatwa: Kedudukannya Di Mahkamah Sivil*, Almanhal, 2.

<sup>37</sup> Isa Ansori, *Kedudukan Fatwa di Beberapa Negara Muslim (Malaysia, Brunei Darussalam dan Mesir)*, Analisis: Jurnal Studi Keislaman, Vol 17, No 1 (2017), 137-166, <https://doi.org/10.24042/ajsk.v17i1.1790>

state kingdom established the department of mufti. This department was created separately from State Islamic Council, but the Mufti was directly responsible for assisting and advising the DYMM (Duli Yang Maha Mulia) Sultan or Yang di-Pertuan Agong in relation to all Sharia law, and the Mufti also became the main ruler after DYMM Sultan or Yang di-Pertuan Agong.<sup>38</sup>

After the Sultan, the Mufti is the most important authority in religious affairs for any state when it comes to religious affairs. However, the Mufti must not interfere in the application of Sharia law before the Sharia court. The Sharia court is a separate body in the administration of the independent judiciary. Before the changes in state law were made, the mufti was the chairman of the Court of Appeals Committee of most states.<sup>39</sup>

In general, the Mufti in Malaysia has the following duties<sup>40</sup>:

- a) Advisor on Islamic affairs to the State Government;
- b) Members of the State Islamic Council;
- c) Chairman of the State Fatwa/Sharia Power Committee (Chairman of the Committee);
- d) Member of the National Fatwa Committee (Member of the National Fatwa Committee);
- e) Chairman of the Committee for the Election of Mosque/Surau Imams;
- f) Resolve or answer problems related to Islam;
- g) Checking the text of the Friday sermon/holiday;
- h) Ratifying Islamic Taqwim at the state level;

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<sup>38</sup> Mohd. Mohadis Yasin, "Pengurusan dan Penyelarasan Fatwa: Pelaksanaan dan Cabaran di Malaysia" *Jurnal Pengurusan dan Penyelidikan Fatwa (JFMR)*, Vol. 1, 2007, 122.

<sup>39</sup> M. Zainul Hasani Syarif, "Kedudukan Fatwa Di Beberapa Negara Muslim : Indonesia, Brunei Darussalam, Malaysia, Mesir, Hikmah: Journal of Islamic Studies, 16 (2), 2020, 185-202, <https://doi.org/10.47466/hikmah.v16i2.174>.

<sup>40</sup> Abdul Hamid Yusoff bin Yunus, "Ijtihad dan Amalannya dalam Pembinaan Fatwa di Malaysia, (Latihan Ilmiah Sarjana Pengajian Islam, Akademi Pengajian Islam, Universiti Malaya), 143 -252.

- i) Giving lectures and lectures in mosques, surau etc.;
- j) Reciting prayers at official government councils

The State Fatwa Committee is responsible for transmitting fatwas to their respective countries by order of the DYMM Sultan or Yang Di-Pertuan Agong or by the committee's own will or by the request of the Islamic community by letter to the Mufti in any matter that has been yet not completed and did not raise any controversy regarding the Sharak law<sup>41</sup>.

In order to establish a uniform procedure for issuing fatwas in each country, a procedure for issuing fatwas was introduced. The procedure for creating or issuing fatwas by the State Fatwa Committee is as follows<sup>42</sup>:

- a) Studies and Research;
- b) Deliberation of the State Fatwa Committee;
- c) Submit a fatwa decision to State Islamic Council;
- d) Obtain approval from the DYMM Sultan or YDPA for the proclamation of fatwas;
- e) Broadcast in news.

Any fatwa decided and promulgated and promulgated by the State Fatwa Committee is binding on every Muslim residing in the country. The State Fatwa Committee also has the right to review fatwas issued by the National Fatwa Commission before they are promulgated and applied in the States. This is because authority regarding Islam rests with the Islamic religious authorities in each state. Nevertheless, the adoption of the Law on State Islamic Administration is recommended on the recommendation of the National Fatwa Committee. Fatwas

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<sup>41</sup> Rang Undang-Undang Pentadbiran Agama Islam Negeri (WilayahWilayah Persekutuan), Pasal 35 (1)

<sup>42</sup> Rang Undang-Undang Pentadbiran Agama Islam Negeri (Wilayah-Wilayah Persekutuan), Pasal 36 (1) hingga (9)

decided at national level should be promulgated without any change or modification.<sup>43</sup>

Fatwas issued by the National Fatwa Committee or the State Fatwa Committee refer to the views of Imam Shafie unless they are inconsistent with the Muslim community. In this situation, the fatwa refers to the views of other Sunnah schools, namely Hanafi, Maliki or Hambali. If the fatwa committee is of the opinion that none of the final qaul of the four scholar can be followed without circumstances contrary to the public interest arising, then the fatwa committee may issue fatwas without being bound by any of the four scholar. This provision was made in order not to create confusion between fatwas and the personal views of certain people on an issue.<sup>44</sup>

In Malaysia, the authority to issue fatwas is the mufti in every state and for the fatwa to be binding it should be proclaimed in the government gazette. However, it is only binding on the Muslims in the country. This means that a statement issued by the mufti cannot be considered a fatwa until it is gazetted and declared in the government gazette. The Mufti is also empowered to amend, amend and abolish fatwas issued as stated under section 36 of the Islamic Law Administration Act (Federal Territory) 1993.

Fatwas that have been promulgated are expected of every Muslim to obey and obey the fatwa, and the court should also socialize the fatwa to be followed in relation to settled matters. Anyone who transmits, develops and disseminates an opinion on the teachings of Islam, Sharia law or anything contrary to the promulgated fatwa commits an error of violating Sharia law on offenses or the ordinance of states. Only the State Fatwa Committee has the authority to amend or revoke fatwas published in the Warta.

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<sup>43</sup> M.Zainul Hasani Syarif, Kedudukan Fatwa Di Beberapa Negara Muslim : Indonesia, Brunei Darussalam, Malaysia, Mesir, 196-202.

<sup>44</sup> Rang Undang-Undang Pentadbiran Agama Islam Negeri (Wilayah-Wilayah Persekutuan), Pasal 42 (1), (2), (3)



In order to coordinate fatwas across the country, the National Council for Islamic Affairs Malaysia (MKI) established the National Fatwa Authority Committee (Komite Fatwa Nasional). This committee is responsible for considering, deciding and issuing all fatwas related to the religion of Islam referred to by the Council of Kings. The Malaysian Islamic Progress Department (JAKIM), as the secretariat of the fatwa committee, is responsible for supporting and implementing all decisions of the committee.

Although the National Fatwa Committee has been established, there are still some weaknesses related to the harmonization of fatwas. The weaknesses identified related to the enforcement of national fatwa decisions at the state level, the approximation of fatwa laws and membership of the fatwa committee. With regard to the enforcement of fatwa decisions, the National Fatwa Committee is not responsible for enforcing a decided fatwa. Only the State Fatwa Committee is responsible for promulgating and enforcing fatwas in their respective countries after obtaining permission from the Sultan DYMM. Normally, fatwas decided by the National Fatwa Committee are discussed again at the level of the State Fatwa Committee, and this committee is under no obligation to promulgate and enforce the fatwa.

Official fatwas issued by the mufti and the Council through the State Fatwa Committee are fatwas recognized and recognized by the Sharia courts. The fatwa proclaimed also authorizes and binds all Muslims in the country. Violating and renegeing on a proclaimed fatwa is a mistake and if convicted by a court, may be subject to appropriate action and punishment according to the provisions of the Islamic law of the State. Based on the provision of state Islamic law regarding fatwas until 2016, the following formulation can be concluded to demonstrate the authority of fatwas<sup>45</sup>:

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<sup>45</sup> Mohd Kamel Bin Mat Salleh, Mohd Al-Adib Bin Samuri, Mohd Izhar Ariff Bin Mohd Kashim, Kedudukan Fatwa dan Pendapat Mufti Sebagai Autoriti Di Mahkamah Syariah Malaysia, *Jurnal of Contemporary Islamic Law* Vol.1 (1), 2016, 4-5.

1. A fatwa should be recognized as authoritative by all Sharia courts (all states except Kelantan). It refers to all levels of Sharia courts i.e. Sharia Low Court, Sharia Middle Court, Sharia High Court;
2. The fatwa proclaimed is binding on the Muslims in the country that proclaimed the fatwa (all countries except Kelantan);
3. The Mufti shall not be arrested or summoned to give an opinion or information on Islamic law either in the Civil Court or the Sharia Court (Federal Territory, Kelantan, Kedah, Negeri Sembilan, Pahang and Sabah). This means that the Mufti cannot be called either as a witness or to give opinions and statements;
4. However, the opinion of the mufti in the form of a written affidavit may be accepted by the court. The courts referred to are 'courts other than sharia' or more accurately civil courts (all states except Sarawak);
5. In proceedings before any court, the submission of a notice of fatwa proclaimed shall be conclusive evidence of the fatwa (Sarawak only);
6. The Mufti and any members of the State Fatwa Council, shall not be prosecuted in any Sharia or civil court for a fatwa which has been proclaimed (Sabah only).

Penalties for violating fatwa decisions continue to vary between states. In Perlis State, those found guilty of insulting a lawfully issued fatwa under the Islamic Law on Religious Administration can be fined up to three thousand ringgit or imprisoned for up to one year, or both. <sup>28</sup> In State Nine, if a person is found to have denounced, insulted, or tampered with a fatwa lawfully issued by the mufti, that person is guilty and shall be liable to a fine not exceeding five thousand ringgit or imprisonment for a term not exceeding three years, or both. <sup>29</sup> While in Perak State, anyone who insults authority or denies, violates or disputes the fatwa issued by the Mufti is guilty and punishable by a fine not exceeding three thousand ringgit or imprisonment for a maximum of two years, or both.

## **B.Status of Out of Wedlock Child According to Indonesia Constitutional Court Decision**

### **1. Profile of Indonesia Constitutional Court**

The idea of establishing a Constitutional Court in the reform era was introduced in the second meeting of the Ad Hoc Committee I of the MPR RI official body (PAH 1 BP MPR). This was after the committee conducted a comparative study of institution in 21 countries in April 2000. This idea was not present during the first amendment of the 1945 Constitution, and no group in the People's Consultative Assembly (MPR) proposed it. MPR experts were influenced by the findings of comparative studies. However, at the MPR's annual meeting in August 2000, the draft for the establishment of the Constitutional Court remained as an alternative and not final yet.<sup>46</sup>

The history of the establishment of the Constitutional Court (MK) begins in 2001 with the adoption of the idea of the Constitutional Court in a constitutional amendment made by the People's Consultative Council (MPR). Section 24(2), Section 24C and Section 7B of the 1945 Constitution as a result of the Third Amendment passed on November 9, 2001. The idea of establishing a constitutional court is one of the developments in modern law and state thought that occurred in the 20th century.<sup>47</sup>

In accordance with Indonesia's Constitutional principles, one of the most important changes made to the Constitution of the Republic of Indonesia in 1945 was the establishment of Constitutional Court. This national agency is responsible for handling special cases relating to the state and ensuring that institution are implemented correctly and in accordance with the will of the people and the ideals of democracy. The existence of the Constitutional Court also helps to maintain a

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<sup>46</sup> Bambang Sutyoso, *Tata Cara Penyelesaian Sengketa di Lingkungan Mahkamah Konstitusi* (Yogyakarta: UII Press, 2009), 2

<sup>47</sup> Mahkamah Konstitusi Republik Indonesia, *Sejarah Singkat*, accessed on April 30, 2023, <https://www.mkri.id/index.php?page=web.Mahkamah&Menu=2>

stable government and correct past experiences of political life due to multiple interpretations of institutions.<sup>48</sup>

The Constitutional Court as referred to in Article 24 paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia is one of the institutions that exercise judicial power in addition to the Supreme Court. This implies that the Court must adhere to the basic principle of exercising judicial power impartially, without external influence, to uphold law and justice.

## **2. Authority of The Constitutional Court**

The Constitutional Court is one of the state institutions that exercise independent judicial powers to harmonize the rule of law. The main function and role of the Constitutional Court is to defend the Constitution to uphold the principles of legal constitutionality. The Constitutional Court's primary purpose is to safeguard the constitution and maintain the principle of legal constitutionality, which is a fundamental aspect of countries that have established the court within their constitutional system<sup>49</sup>. The vision and mission of the Constitutional Court is to uphold the Constitution through a modern and trustworthy judiciary. In addition, the Constitutional Court aims to strengthen the integrity of the Constitutional Court, increase the constitutional awareness of citizen and country administration, and improve the quality of decisions<sup>50</sup>.

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<sup>48</sup> M. Halilurrahman, Abdul Wahid, Putusan Mahkamah Konstitusi RI Dan Fatwa MUI Tentang Kedudukan Anak Zina (Analisis Komparatif), *CENDEKIA: Jurnal Studi Keislaman* Volume 5 Nomor 2, Desember 2019, 158, <https://doi.org/10.37348/cendekia.v6i1.78>

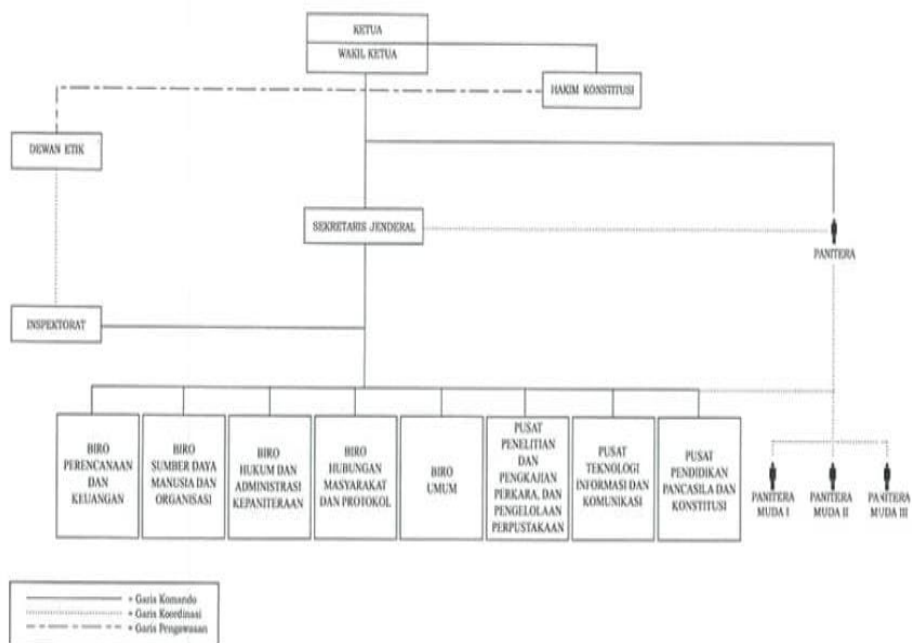
<sup>49</sup> Mahkamah Konstitusi Republik Indonesia, Peran Dan Fungsi Mahkamah Konstitusi, accessed on April 30, 2023, <https://www.mkri.id/index.php?page=web.Berita&id=10958>

<sup>50</sup> Mahkamah Konstitusi Republik Indonesia, Visi dan Misi

### 3. Organisational Structure

Based on the regulation of the secretary general of the constitutional Court Number 3/2019 concerning the organisation and work procedures of the registrar and secretary general of the Constitutional courts as follow :

#### Organisational Structure of Indonesia Constitutional Court<sup>51</sup>



<sup>51</sup> Mahkamah Konstitusi Republik Indonesia, Struktur Organisasi

#### **4.Indonesia Constitutional Court Decision Towards Status of Out of Wedlock Child**

Children born out of wedlock are usually the result of a devious marriage or are commonly referred to as "Nikah Sirri". Various issues exist in Indonesian society regarding the status of children born of Siri marriage. Although children born to Nikah Sirri are recognized and some people in Indonesia accept the situation as it is, when it comes to legal formalities, children born out of wedlock have difficulty understanding their status<sup>52</sup>.

However, the topic of nasab has recently become more and more interesting and important in legal studies in Indonesia. This is because the Constitutional Court issued Decision No. 46/PUU\_VII/2010 which is very controversial about the status of children outside of Indonesia marriage. This decision leads to ongoing polemics in society. This decision also disturbs different parties because it allows the emergence of interpretations that go beyond the established rules. There are fears that the issued decision could lead to the legalization of adultery.

The Constitutional Court's decision was based on an application by Machica Mochtar and Iqbal Ramadhan for judicial review against the Law of the Republic of Indonesia No. 1 of 1974 on Marriage, Article 2 Paragraph (2), which reads: "Every marriage must be registered ." in accordance with applicable laws and regulations and the Law of the Republic of Indonesia No. 1 of 1974 on Marriage, Article 43 Paragraph (1), which reads: "Children born out of wedlock have only a civil relationship with their mother or her family. According to the applicants, it violates Article 28B, paragraphs 1 and 2, of the 1945 Constitution of the Republic of Indonesia, which states: "Every person has the right to found a family and to continue his lineage through lawful marriage, and every child has the right." have the right to survival, growth and development and have the right to protection from violence and discrimination, and Article 28D(1) of the 1945 Constitution of the

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<sup>52</sup> Eric Stenly Holle, Kosenkuensi Putusan Mahkamah Tentang Status Anak Di Luar Perkawinan, Jurnal Konstitusi Pusat Kajian Hukum Konstitusi (PKHK), Universitas Janabadra, Vol NO.1, 2012

Republic of Indonesia which reads: “Every person has the right to recognition. “ , guarantees, protection and certainty of a just justice and equal treatment before the law<sup>53</sup>.

With the enactment of Constitutional Court Decision No. 46/PUU-VIII/2010, Law of the Republic of Indonesia No. 1 of 1974 on Marriage, Article 43 is declared non-binding insofar as it is interpreted to apply to civil relations with eliminate males who can be shown by science and technology and/or other legal evidence to be related by blood to the father. Thus, according to the decision of the Constitutional Court No. 46 / PUU-VIII / 2010, children born in a lawful marriage can receive an inheritance from their biological father. The changes that occur in Article 43(1) have implication for Islamic family Law in Indonesia. The implication of this decision is that the children born out of wedlock have the same rights as children born from legal marriage, namely the right to lineage<sup>54</sup>.

According to the verdict in Constitutional Court Decision No. 46/PUU-VIII/2010, the Court clarifies what the law is (declaratoir) Article 43 paragraph (1) of Law No. 1/1974, which states that "children born out of wedlock only have a civil relationship with their mother and their mother's family," is contrary to the 1945 Constitution insofar as it is interpreted to eliminate the civil relationship of men who can be proven based on science and technology and/or other evidence.

The Court then ruled that "children born out of wedlock have a civil relationship with their mother and mother's family, as well as with the man as their father who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including with the father's family." This decision is declaratoir constitutief, which means that it certifies that Article 43 paragraph (1) of Law No. 1/1974 is in violation of the 1945 Constitution

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<sup>53</sup> Yulia Risa, Analisis Yuridis Penemuan Hukum Terhadap Putusan Mahkamah Konstitusi No.46/PUU\_VII/2010 Terhadap Anak Yang Dilahirkan Diluar Perkawinan Yang Sah, <https://doi.org/10.34010/rnlj.v3i1.3246>

<sup>54</sup> Dwi Hermanto, Analisis Putusan MK No.46/PUU-VIII/2010 tentang Status Anak hasil Nikah Siri Perspektif Maqasid Syari'ah Imam Al-Syatibi, Mahakim: Journal of Islamic family Law, 6(1), 48-71, <https://doi.org/10.30762/mahakim.V6i1.142>

and then negates and establishes new law on the problem of children's situation outside marriage<sup>55</sup>.

The creation of a new law on the status of children born out of wedlock provides legal protection for the child, so that the responsibilities of the parents, in this case the biological father, extend to the fulfillment of the children's rights. The jurisprudence rendered by the constitutional judges in this case is based on a rational justice in which the civil relationship between father and child can be realized not only through conjugal but also through blood relationship.

This decision is considered a legal reform for the status and rights of illegitimate child in Indonesia. The decision also applies the concept of *Sadd al-Dzariah* to cover the slightest possibility of adultery while protecting children's rights. However, there is still disharmony between decision and arrangements for children born out of wedlock due to adultery in Islamic law.<sup>56</sup>

The Constitutional Court's decision on the *nasab* for children born out of wedlock represents a reform of existing family law in Indonesia, as family law, which is considered sacred, will undergo significant changes through reinterpretation<sup>57</sup>. The birth of this Constitutional Court decision has caused controversy in society. Some support this decision, some even call it the result of a spectacular *ijtihad* by the Constitutional Court. *Ijtihad* of the Constitutional Court that is spectacular and delivers a legal decision that is justice. In the meantime, of course, for some who oppose this decision, it has been in the limelight and has been criticized as being seen as legalizing adultery and initiating violations of other marriage laws.

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<sup>55</sup> Aljuraimy, *Kedudukan Anak Di Luar Perkawinan Pasca Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010 Ditinjau Dari Kitab Undang-Undang Hukum Perdata*, Skripsi (Malang, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim, Malang, 2013), 60.

<sup>56</sup> Habibi, A.R., *The Dynamic of Illegitimate Child Status in Sharia and National law of Indonesia*, 75.

<sup>57</sup> Toha Andiko, *Pembaharuan Hukum Keluarga di Dunia Islam (Analisis Terhadap Regulasi Poligami dan Keberanjakannya dalam Fiqh: Jurnal Nuasa IAIN Bengkulu Vol. XII, No. 2 Desember 2019*, 294.



The opinion of the Panel of Constitutional Judges regarding the position of children outside marriage in decision number 46/PUU-VIII/2010 is as follows:<sup>58</sup>

"Considering that the legal question concerning children born out of wedlock is about the legal meaning of the phrase "born out of wedlock". To get answers in a broader perspective, it is also necessary to answer the question of the legitimacy of children. Naturally, it is impossible for a woman to become pregnant without the meeting between the ovum and spermatozoa either through sexual intercourse or through other means based on technological developments that cause pregnancy. Therefore, it is inaccurate and unfair when the law stipulates that a child born of a pregnancy due to sexual relations outside marriage only has a relationship with the woman as his mother. It would be inappropriate and unfair for the law to release the man who had sexual intercourse that led to the pregnancy and birth of the child from his responsibilities as a father and at the same time the law negated the rights of the son to the man as his father. Moreover, based on technological developments where it is possible to prove that a child is the child of a certain man. The legal effect of the legal event of birth due to pregnancy, which is preceded by sexual relations between a woman and a man, is a legal relationship in which there are reciprocal rights and obligations, whose legal subjects include children, mothers and fathers. Based on the description above, the relationship of a child with a man as a father is not solely due to the marriage bond, but can also be based on proving the existence of a blood relationship between the son and the man as a father. Thus, regardless of the procedure/administration of the marriage, the child born must receive legal protection. If this is not the case, then the aggrieved child is born out of wedlock, even though the child is not sinful because of his birth against his will. Children born without clarity of father often get unfair treatment and stigma in society. The law must provide fair legal protection and certainty for the status of a child born and the rights

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<sup>58</sup> Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010

vested in him, including those of children born even if the validity of the marriage is disputed."

From the above descriptions it can be concluded that the civil relationship between an illegitimate child and his natural father, namely the civil relationship as a result of the recognition of Nasab by the law, both Islamic law and positive law, between law, both Islamic law and also positive law, law arises between the illegitimate child and the man as his father in the form of rights and duties. with a man as his father in terms of mutual rights and duties. Mutual rights and duties include protection, maintenance, care, nafkah, right to inherit one another, right to marital guardianship and mahram relationships based on a review of Islam law and positive law. Mahram relationship based on a review of Islamic law, namely a review of nafkah and iltizam, verification of inheritance, verification of marital guardianship and verification of mahram relationship. The civil relationship can be automatically preserved to the full extent that is preserved by children born into a lawful marriage.

### **C. Filiation of Illegitimate Children**

#### **1. Definition of Filiation**

The concept of children or descendants stated with the term nasab is explained in the fiqh literature. The phrase nasab refers to a family relationship<sup>59</sup>. According to Amir Syarifuddin, nasab is a legal familial tie<sup>60</sup>. Nasab is a grace from Allah S.W.T that is very valuable for every human being<sup>61</sup>. The preservation of filiation is part of the favors that Allah gives to His servants<sup>62</sup>.

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<sup>59</sup> Amir Syarifuddin, *Meretas Kebekuan Ijtihad; Isu-isu Penting Hukum Islam Kontemporer di Indonesia* (Jakarta: Ciputat Press, 2002), 198.

<sup>60</sup> Amir Syarifuddin, *Merentas Kebekuan Ijtihad*, 198.

<sup>61</sup> Nadzri, Meor Muaz Bin Meor, *Pandangan Jabatan Mufti Negeri Perlis Tentang Nasab Anak Luar Nikah (Menurut Perspektif Maqashid Syariah)*, 16

<sup>62</sup> Solihul Aminal Ma'mun, *Mentarij Penetapan Nasab Anak Zina Kepada Ayah Biologis Berdasarkan Konsep Anak & Maqsad Hifz Al-Nasl Vol 16 No 1, Al-Maslahah : Jurnal Ilmu Syariah* 2020), 198-215, <https://doi.org/10.24260/al-maslahah.v16i2.1596>

وَهُوَ الَّذِي خَلَقَ مِنَ الْمَاءِ بَشَرًا فَجَعَلَهُ نَسَبًا وَصِهْرًا وَكَانَ رَبُّكَ قَدِيرًا

“And He it is Who has created man from water and then produced from him two sorts of kindred: by descent and by marriage. Your Lord is All-Powerful.” (Surah al-Furqan:54)

This verse makes it clear that the father of a child is determined by the covenant of marriage and that the child's name has the same right as the father's name. This makes it clear that Islam recognizes the legal descent of a child only through marriage. legally a child through the marital relationship between a man and a woman.

Nasab is a term used in Islamic law to refer to kinship correlations based on descent or genealogy<sup>63</sup>. Etymologically, the word nasab is derived from the Arabic word nasaba. Nasab is also defined as descendants in Big Indonesian Dictionary, especially from father's side or from family ties<sup>64</sup>.

Nasab is the relationship between a child and his father, known as mahram<sup>65</sup>.According Wahbah az-Zuhaili,nasab is a firm foundation for family building,based on the unity of blood or the consideration that one is part of the other.A child is part of his father and a father is part of his child.<sup>66</sup> A child takes nasab from both sides (father and mother), however connection to the father is more dominant than to the mother.The most important meaning of nasab is concerned with paternity, which is closely related to the legitimacy in which the child acquires his legal and religious identity<sup>67</sup>.

In Islamic law, descent has several important implications. First, lineage determines inheritance. According to Islam, inheritance is passed down the lineage.

<sup>63</sup> Abd.Rauf Dato Haji Hassan,Kamus Bahasa Melayu-Bahasa Arab,(Selangor:Exford Fajar,2006)256

<sup>64</sup> Departemen Pendidikan Nasional,Kamus Besar Indonesia Pusat Bahasa,ed 4,(Jakarta:PT Gramedia Pustaka Utama,2011) 952

<sup>65</sup> Ahmad Rafiq, Hukum Perdata Islam di Indonesia, Edisi Revisi, (Jakarta: Rajawali Press, 2015), 177

<sup>66</sup> Wahbah az-Zuhaili, al-Fiqh al-Islami wa Adillatuhu, Jilid 7 (Damaskus: Dar al-Fikr, 1989), 673

<sup>67</sup> Ziba Mir Hosseini, Perkawinan dalam Kontroversi Dua Madzhab: Kajian Hukum Keluarga dalam Islam, terj. Marriage and Trial: a Study of Islamic Family Law (Jakarta: ICIP, 2005),168.

Therefore, in order to determine who is entitled to a share of the inheritance, it is important to establish the parentage relationship to the biological parents. Second, Nasab is related to family rights. According to Islamic law, children born by marriage are entitled to care and maintenance from their parents. Parents are obliged to provide for the care and maintenance of their children. Two definitions of nasab that emerged among jurists (Islamic jurisprudence) were put forward in Abdul Manan's notes, which are as follows:

1. Nasab is the legal relationship between a person and a child born from his wife's womb during a recognised marriage, from a slave with whom he had sexual intercourse, or from a woman with whom he had sexual intercourse accidentally (subhat).

2. Nasab refers to a person's blood link with their parents, ancestors, or other family members<sup>68</sup>.

In Malaysia, descent has meaning in the legal context. Malaysia is a majority Muslim country and Islamic law applies in matters involving descent and family. Islamic law in Malaysia is governed by the Islamic Family Law Law and Mufti Department which applies in each state and each state has its own set of rules.

Children's nasab in Indonesia is not only governed by a single ordinance, but is the result of the interpretation and application of various legal regulations relating to marriage, family, religion and child protection. Regulations governing children's nasab in Indonesia include Law No. 1 of 1974, Compilation of Islamic Law, Civil Code, Indonesia's Ulema Council and Indonesia's Constitutional Court decision. According to Muksal, it can be understood that nasab refers to the bond of blood relationship between a child and their parents, which is obtained through sexual relations within the framework of a lawful marriage under Islamic

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<sup>68</sup> Abdul Manan, *Pembaruan Hukum Islam di Indonesia, Edisi Pertama*, (Jakarta: Kencana Prenada Media Group, 2017), 257

Law. Therefore, nasab is not permissible if only sexual relation are conducted without marital status.<sup>69</sup>

## 2. The Establishment of Filiation

A child's lineage to his or her father can be established through a legitimate marriage, an invalid marriage, or a dubious marriage. According to Amir Syarifuddin, "if the nasab to the mother is natural, then (nasab) children to the father is a legal relationship; specifically, the occurrence of a preceding legal act, in this instance marriage" while a person's nasab to his mother is caused by pregnancy caused by sexual intercourse with a man, whether married or not<sup>70</sup>.

Islam forbids adultery to protect the child's genetic inheritance. As a result, Islam places a high value on lineage purity. In truth, lineage is not only the right of the father, mother, and child in Islam, but it is also the right of Allah SWT, as explained in the Qur'an Surah al-Furqan, verse 54:

وَهُوَ الَّذِي خَلَقَ مِنَ الْمَاءِ بَشَرًا فَجَعَلَهُ نَسَبًا وَصِهْرًا ۗ وَكَانَ رَبُّكَ قَدِيرًا ٥٤

“And it is He who has created from water a human being and made him [a relative by] lineage and marriage. And ever is your Lord competent [concerning creation]”. (Al-Furqan:54)

The lineage of a child to its mother is clearly recognised by birth. However, there are various techniques or procedures for determining a child's ancestry to father:

<sup>69</sup> Muksal Mina, Tinjauan Fatwa MPU Aceh No 18 Tahun 2015 Tentang Nasab Anak Yang Lahir Diluar Nikah (Anak Zina) Terhadap Putusan Mahkamah Konstitusi Nomor 46/PUU\_VII/2010 Tentang Status Anak Lahir Luar Nikah, (Skripsi, Universitas Islam Negeri Ar-Raniry, 2017) 18, <https://repository.ar-raniry.ac.id/eprint/4253>

<sup>70</sup> Ali Abubakar dan Zulkarnain Lubis, Hukum Jinayat Aceh: Sebuah Pengantar, (Jakarta: Kencana Prenada Media Group, 2019), 75.

### 1) A legal marriage

Scholars agree that a child born of a legitimate marriage is legal. The nasab of the child will be restored to the guy who married the mother. According to Islam, a lawful marriage is one that meets the prerequisites and pillars of marriage<sup>71</sup>.

### 2) Fasid or Damaged Marriage

Scholars believe that one of the following methods of establishing nasab is a broken marriage (nikah fasid). Wahbah Zuhaili stated that finding the child's nasab in a corrupt or invalid marriage is the same as determining the child's nasab in a lawful marriage, together with the circumstances and conditions of the marriage. In a lawful marriage, along with its terms and circumstances, since determining the child's nasab can ensure the family's survival. Identifying the nasab can help ensure the child's survival<sup>72</sup>.

### 3) Intercourse with Shubhat

Intercourse with shubhat or Wathi' syubhat is intercourse that is not adultery, but also does not take place inside the context of a legitimate or broken marriage. For example, if a bride is brought to a bridegroom's house without first seeing him, and they have intercourse, or if a husband has intercourse with a woman who is on his bed, and the woman who was having intercourse becomes pregnant and gives birth to a child, the child is related to the man who had intercourse with her<sup>73</sup>.

But these days, cases like this can be solved very easily by taking the DNA evidence from the two women and comparing it to the DNA of the child who is the subject of the dispute. According to the Dictionary of the Dictionary, Fourth Edition, DNA can be classified as deoxyribonucleic acid (the main factor that

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<sup>71</sup> Wahbah al-Zuhaili, al-Fiqh al-Islami wa Adillatuh, Juz 10,32

<sup>72</sup> Wahbah al-Zuhaili, al-Fiqh al-Islami wa Adillatuh, Juz 10,36.

<sup>73</sup> Wahbah al-Zuhaili, al-Fiqh al-Islami wa Adillatuh, Juz 10,37

makes up the genetic material, i.e. the material that determines physical properties) of most living organisms, including some viruses, contained in the cell nucleus of be defined relevant to the organism concerned. Every human body and other organisms carry genes that contain DNA proteins and are found in the cell nucleus<sup>74</sup>. If the conception of a child with his father is also a blunt sign in human life, due to the word of Allah SWT in Surat Al-Ahzab :

أَدْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا ءَابَاءَهُمْ فَاخْوَانُكُمْ فِي الدِّينِ وَمَوْلَاكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ ۚ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا

“ Call them by [the names of] their fathers; it is more just in the sight of Allah. But if you do not know their fathers - then they are [still] your brothers in religion and those entrusted to you. And there is no blame upon you for that in which you have erred but [only for] what your hearts intended. And ever is Allah Forgiving and Merciful”.

According to the Selangor Fatwa Committee's decision dated 17 January 2005, sighth linked to illegitimate children according to syara law is<sup>75</sup>:

1. A child born out of wedlock as a consequence of adultery, rape, or scientific means that are contrary to Islamic law.
2. A child born within 6 months 2 qamariah of "Imkan ad Dukhul" and not the result of suspicious intercourse.
3. A child born more than 6 months 2 qamariah in terms of the time of "Imkan ad Dukhul" after a valid contract, and there is proof in terms of syara' that the child is a child out of wedlock through the iqrar (confession) of those

<sup>74</sup> Fatimah Yusro Hashim, Anisah Che Ngah, Mohammad Azhan Yahya, Ahmad Azam Mohd Shariff, Penentuan Nasab melalui Prinsip Undang-undang Keterangan Islam. Jurnal Undang-undang dan Masyarakat, 2021, 28, 57-66, <https://doi.org.10.17576/juum-2021-28-06>.

<sup>75</sup> Jabatan Mufti Negeri Selangor, <http://www.muftiselangor.gov.my/86-fatwa/sosial-syariah/101-fatwa-tentang-garis-panduan-mengenai-anak-tak-sah-taraf-menurut-hukum-syara> accessed on June 20, 2020

concerned (husband and wife, or one of them), or four witnesses who meet Shariah law requirements.

Members of the Sarawak State Fatwa Board, in coordinating the Sighah Fatwa on Illegitimate Children decided by the 64th Fatwa Committee for Malaysian Islamic Religious Affairs at the National Level on July 27, 2004, agreed to accept the Gazette Sighah of Illegitimate Children as follows:

“An adulterous child or a child born out of wedlock (illegitimate child), whether or not followed by the second marriage of the "father's" parents, must be attributed to "Abdullah".

“Illegitimate Child" is:

1. A child born out of wedlock either as a result of adultery or rape, and he is not from syubhah intercourse or not from the child of slavery;
2. Children born less than 6 months 2 seconds according to the Qamariah Calendar from the date of the marriage contract.
3. "Illegitimate Child" cannot be attributed to the man who caused the birth or to anyone who claims to be the father of the child. Therefore, they cannot inherit, cannot become mahrams, and cannot be guardians.

After examining the views and suggestions presented, the meeting agreed to accept the decision taken by the Muzakarah of the Fatwa Committee for Islamic Religious Affairs of Malaysia at the 64th level on July 27, 2004<sup>76</sup>.

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<sup>76</sup>Jabatan Mufti Sarawak,  
<https://muftinegeri.sarawak.gov.my/modules/web/pages.php?mod=webpage&sub=page&id=98> accessed on June 20, 2020



Negeri Sembilan Statue Mufti<sup>77</sup> issued a fatwa on nasab of illegitimate children taraf iaitu on January 12, 2002 for parties and on behalf of the Jawatankuasa Syariah: If a baby is born less than 6 months after the date of the marriage contract, then the child is haram dinasabkan for the mother's husband or the man who caused the child's pregnancy. If a baby is born more than six months and less than four years after the date of the marriage contract and it is known with certainty or certainty that the pregnancy occurred before the marriage contract, or that the husband did not have intercourse after the marriage contract, or that the semen of the man did not enter the womb, the child is prohibited from being related to the mother's husband or the man who caused the pregnancy of the mother who gave birth to the child. The husband has to deny that the baby is his child. The authority registering the birth is prohibited under paragraph (1) from marrying or giving birth to a baby. and (2) to the husband of the child's mother or to the man who caused the pregnancy of the mother who gave birth to the child.

In Indonesia, MUI Fatwa No. 11/2012 was issued by the Indonesian Ulema Council. MUI emphasised, among other reasons, that children born of adultery do not have a nasab, wali nikah inheritance, or nafaqah relationship with the guy who caused their birth. MUI, on the other hand, reminded the government of its obligation to protect abused children and avoid neglect. According to the MUI, with the Constitutional Court's decision, there is no difference in status between children born outside of marriage and children born through an official marriage. As reported, the central MUI has issued Fatwa No. 11 of 2012 on the Position of Children Born of Zina. In that direction. Even MUI published the MUI Fatwa, which is as follows:

"The child of adultery does not have a relationship of nasab, wali nikah, inheritance, and nafaqah with the man who caused his birth. In addition, the child

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<sup>77</sup> Jabatan Mufti Negeri Sembilan,  
<http://www.muftins.gov.my/index.php/arkib2/himpunan-fatwa/169-fatwa-mufti-negeri-sembilan/502-anak-luar-nikah>

of adultery only has a relationship of nasab, inheritance and nafaqah with his mother and his mother's family"<sup>78</sup>.

This MUI fatwa affirms the protection of children. One of them, by obliging the man who causes the birth of a child to fulfill the needs of the child. In addition, the fatwa also protects children from nasab confusion, namely children born of adultery do not have nasab relations, marriage guardians and inheritance<sup>79</sup>.

In the article 272 of the Civil Code gives a clear statement on the different definitions of adulterous and illegitimate children. The difference stems from the status of parents having sexual relations without being bound by legal marriage. If the parents are a bachelor and a girl, the child born is called the illegitimate child, or are married to another person, the child of the sexual relationship is called the child of the sexual relationship, married to someone else, then the child of intercourse is called the child of adultery. Contrary to Islamic law, any non-marital sex is considered adultery, whether or not one or both are married to another person. Adultery, whether or not one or both are married to someone else. not. Therefore, Islam's definition of children born out of wedlock is narrowed and only focuses on children who have committed adultery<sup>80</sup>

### 3. Illegitimate Child

The illegitimate child in Arabic terms is called "walad al-zina" which means adulterous child or child out of wedlock. Based on the discussion of the fuqaha about the nasab a child, in general it can be formulated that an adulterous

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<sup>78</sup> Fatwa MUI No. 11 Tahun 2012, Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya

<sup>79</sup> Auliya Nur Alifah, Kedudukan Anak Hasil Zina dan Perlindungan Hukumnya Menurut Fatwa MUI dan Hukum Positif, Skripsi (Semarang, Fakultas Syari'ah dan Hukum, Universitas Islam Negeri Walisongo, Semarang, 2019), 1

<sup>80</sup> Ahmad Tirmidzi, Zaenul Mahmudi, Moh Toriquddin, Hak Waris Anak Luar Nikah Perspektif Keadilan Hukum Hans Kelsen dan Waris Sunni (Studi PMK Nomor 46/PUU-VIII/2010), Jurnal Al-Ijtima'iyah, 8(2), 285, accessed on May 5<sup>th</sup> 2023, <http://repository.uin-malang.ac.id/14633/>

child refers to a child born as a result of adultery and not from a legal marriage or syubhah intercourse<sup>81</sup>.

According to the Mazhab Syafi'i, illegitimate children are children born of extramarital sexual relations. In Islamic law, marital relationships between men and women that are not bound by marriage are called adultery. Zaina is also understood to mean sexual relations between men and women without a valid marriage, carried out consciously and without doubt<sup>82</sup>.

Islamic Law divides children into two categories; legitimate child and illegitimate child.<sup>83</sup> A legitimate child is a child born from a legal marriage according to sharia and its pillar, and an illegitimate child is a child born from an invalid marriage. According to Zaenul Mahmudi, Indonesian Law also has two definitions for children born outside of marriage, which legitimate and illegitimate. Legitimate children are those born from a marriage that is not registered but is considered valid under Islamic Law, while illegitimate children are those born from adultery.<sup>84</sup>

Various names and terms are used to refer to illegitimate children in Malaysia. However, the usage of the phrase "illegitimate child" by official authorities in Malaysia has caused a controversial and ongoing debate among community members. The debate primarily revolves around the actual definition of the term "illegitimate child" in Malaysia, specifically whether it pertains to a child conceived through adultery or any other means.<sup>85</sup>

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<sup>81</sup> Abd. Ghani Ahmad dan Nuarrual Hilal Md. Dahlan, 'Kewajipan Menanggung Nafkah Anak Tak Sah Taraf: Satu Kajian Kes Di Negeri Kedah, 2016, 216.

<sup>82</sup> Faisal Nikmatullah, 'Hukum ayah Menikahi Anaknya Dari Hasil Zina (Studi Komparatif Mazhab Hanafi Dan Syafi'i)', *Jurnal Hukum Perdata Islam* Vol.20 No.2, 2019, 397, <https://doi.org/10.37035/syakhsia.v20i2.2358>

<sup>83</sup> Abdul Manan, *Aneka Masalah Hukum Material Dalam Praktik Peradilan Agama* (Medan: Pustaka Bangsa Press, 2003), 102

<sup>84</sup> Zaenul Mahmudi, 'The Status of Children Born Out of Wedlock In Indonesia Context with Special Reference to Their Inheritance Right Perspective of Maqasid Al-Shariah', *Advances in Social Science, Education and Humanities Research*, volume 192, 1st International Conference on Indonesian Legal Studies (ICILS 2018): 114 <https://doi.org.10.2991/icils-18.2018.21>

<sup>85</sup> Wan Abdul Fatah Wan Ismail, Ahmad Syukran Baharuddin, Lukman Bin Abdul Mutalib, Zulfiqar Mamat, 'A Comparative Study of The Illegitimate Child Term From Shariah And Malaysia Legal Perspective', *Humanities and Social Sciences* 8, 2020, 106, <https://doi.org/10.18510/hssr.2020.8412>

The term child of adultery was replaced with child born out of wedlock. Later, it was made more acceptable by changing it to illegitimate child. This was done to show that society is aware of and empathizes with the emotions of children who born out of wedlock, especially in religious societies.<sup>86</sup> Muhammad Aunurrochim and Mohammad Zakwan<sup>87</sup> state that the term “out of wedlock child” is used in Fiqh Islam, whereas “illegitimate child” is used in sharia Law in Malaysia.

An adulterous child is defined as a child born without a legal marriage between a man and a woman. The term illegitimate child, according to The Enactment of the Islamic Family law (Selangor State) refers to children who do not have a legal blood relationship. The appropriation law states:

“it is not valid to the extent that it relates to a child, that is a child born out of wedlock and not a child of shubhah intercourse”.<sup>88</sup>

According to the Fatwa gazzetted in Federal Territories, a child born out of wedlock is a child from<sup>89</sup> :

- Intercourse happens before the aqad of marriage either due to adultery or rape; or
- Through any scientific method contradict with the shari’a rulings, and not a child born from syubhah intercourse, or a child from slavery; or
- A child born in a period of less than six months from the date of marriage through Qamari Calendar.

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<sup>86</sup> Paizah Haji Ismail, Anak Tak Sah Taraf Dari Perspektif Syariah Dan Perundangan Islam Di Malaysia, Jurnal Fiqh, No 10 (2013) 77-90, 78, <https://doi.org/10.22452/fiqh.vol10no1.4>

<sup>87</sup> Muhammad Aunurrochim Mas’ad, Mohammad Zakwan Nafis Bin Mohd Zamri, Status Anak Luar Nikah: Satu Kajian Ke Atas Hak Harta Pusaka Mengikut Fiqh Islam Dan Undang-Undang Syarak Wilayah Persekutuan, Universiti Sains Malaysia, Artikel, 2018, 2.

<sup>88</sup> Enakmen Undang-undang Keluarga Islam (Negeri Selangor) 2003, seksyen 2.

<sup>89</sup> Umar Mukhtar Mohd Noor, Nasab of A Child That Probably Resulted From Zina (Fornication), Mufti of Federal Territory’s Office accessed on 30 Oct 2019, <https://muftiwp.gov.my/en/artikel/al-kafi-li-al-fatawi/3980-al-kafi-1524-nasab-of-a-child-that-probably-resulted-from-zina-fornication>

Fatwa regarding the guidelines for illegitimate children under Selangor's Syarak Law, which published on April, 28 2005 define an illegitimate child as :

1. Childre born without marriage are either the result of adultery, rape or scientific means that are illegal under syarak law.
2. Children born less than six month after the "imkan ad-dukhol" and not as a result of syubhah intercourse.

A child born more than six month and two lahzah after the "imkan ad-dukhol" after a valid marriage contract, and there is syarak evidence that the child is an illegitimate child through the iqrar (confession), of those involved (husband and wife of one of them, or four witnesses who meet the legal requirements.<sup>90</sup>

In the Indonesia Civil Code there are three status levels for children outside marriage, namely:

1. Children born out of wedlock who have not been recognized by their parents.
2. Children born out of wedlock recognized by one or both parents.
3. An illegitimate child becomes a legitimate child when the parents enter into a legal marriage.

According to the Indonesian Civil Code, the definition of an illegitimate child is divided into two types as follows:

1. Illegitimate children in the broadest sense are illegitimate children due to adultery, and discord.

Zina children are children born of extramarital relationships between males and females, in which one or both are linked to another person by marriage. while sumbang children are children born of a relationship between a man and a woman, the law prohibits either of them from marrying each other

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<sup>90</sup> Warta Kerajaan Negeri Selangor No 9, Jil.58, (Mufti Selangor, 500-2; PU.Sel.AGM.0007 Jld 2

2. Extramarital children in the strict sense are children who were born outside of a legal marriage.

Adulterers and illegitimate children cannot have a relationship with their father and mother. Even if the legalization of the child is enforced, there is still no legal effect (Article 288 of the Civil Code). Legal consequences (Article 288 of the Civil Code). The child's situation is very unfortunate, but in practice there are extenuating circumstances, since the nature of the adultery and *sumbang* is usually known only to the perpetrators themselves. adultery itself.

Regarding the definition of illegitimate children themselves, the Kelantan State Islamic Family Law No. 6, 2002, for example, states "Illegitimate level in relation to a child, meaning born out of wedlock and not a child of *Shubhah* intercourse"<sup>91</sup>

The same expression is also found in the Selangor State Islamic Family Law No. 2, 2003<sup>92</sup>, Federal Territory Islamic Family Law, 1984<sup>93</sup> Malacca Islamic Family Law Enactment No. 12, 2002, Perlis Islamic Family Law Administration Enactment No. 7, 2006, Perak Islamic Family Law Enactment No. 6, 2004, Penang Islamic Family Law Enactment No. 3, 2004, Johor Islamic Family Law Enactment No. 17, 2003.

#### 4. Filiation of an Illegitimate Child

The adulterous or illegitimate child is often neglected by the man who caused his birth. This child is also considered an illegitimate child and is discriminated against by some people because of its descent from its mother. For this reason, some people who want to preserve the virtue of this illegitimate child consider that this illegitimate child is attributed to his biological father.

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<sup>91</sup> Enekmen Undang-Undang Keluarga Islam Kelantan No. 6, 2002, sek. 2(1) di bawah perkataan "tak sah taraf"

<sup>92</sup> Undang-undang Keluarga Islam Negeri Selangor No. 2, 2003 Seksyen 2

<sup>93</sup> Undang-undang Keluarga Islam Wilayah Persekutuan, 1984 Seksyen 2

There are two ways of attributing adulterated children, one of which the fuqaha agrees is non-permissible and second, there is disagreement among scholars as to whether it should be attributed to adulterated children<sup>94</sup>.

1. The illegitimate child is attributed directly to the biological father, even if there is no application from the father. This method is accepted. The Fuqaha advises not to attribute the forged child's lineage to the biological father.

2. The illegitimate child is attributed to the biological father if there is a request from the biological father and there are no obstacles to its attribution. The fuqaha does not agree with this second method. Most fuqaha do not require this as the first method, while some others do. However, those who need the second method have different opinions about the conditions under which it is needed.

There are differing opinions among scholars on the position of biological fathers in the context of fiqh law<sup>95</sup>:

i. The view of the Jumhur Ulama

It is not permissible to attribute an illegitimate child to a biological father and therefore can be no inheritance or guardianship between them.

ii. The view of Imam Abu Hanifah, Ibn Taimiyah and Ibn Rahawaih

It is not permissible to attribute the illegitimate child to the biological father unless the adulterous couple marry before the birth of the child. In this case, guardianship and inheritance may be disputed.

iii. Abd Karim Zaidan's view

It is permissible by law (Qadhaan) to attribute illegitimate children to biological father, but the decision is essentially between him and Allah.

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<sup>94</sup> Abdul Hafiz Bin Othman, Aplikasi Hukum Nasab Anak Zina: Kajian Terhadap Fatwa Negeri-Negeri, 6

<sup>95</sup> Lukman Abdul Mutalib, Mohamad Azhan Yahya, Isu Penasaban Anak Luar Nikah Kepada Bapa Biologi Dari Sudut Pandang Siasah Syar'iyah Di Malaysia, Muzakarah Fiqh & Interatinal Fiqh Conference, 2016, 243-244.

#### iv. Hassan Al-Basri and Ibn Siri's View

Hassan Al-Basri and Ibn Sirrin allow the nasab of the illegitimate child to be attributed to the biological father even if the adulterous couple did not marry and can obtain guardianship and inheritance right provided the adulterus are punished by hudud. They rely on the hadith of Rasulullah S.A.W in the case of Juraij.

However, this view is applied in cases where the woman is pregnant but not married or in iddah, and if she is married then the child is attributed to her husband without hesitation. The existence of significant opinion among Scholars shows that the issue of the nasab of illegitimate children is a matter of Ikhtilafiyah.<sup>96</sup>

The view that the adulterous child could be attributed to the biological father placed several conditions on the admissibility of the attribution. There are terms that are agreed and terms that are not agreed as follows<sup>97</sup>:

1. The biological father of the adulterous child marries the adulterous mother to achieve the purpose of pregnancy.
- 2 - The birth father of the fake child does not confess that the child is a fake child.
3. Fornication is committed after the punishment is inflicted, as stated by Ibn Sirin and Ibrahim al Nakhaie.
4. The biological father must have repented.

The difference in setting the conditions of the adulterous child between those who agree to attributed the adulterous child to its biological father is aimed at preventing the act of adultery from being used as a tool to achieve a desire like the Desire to achieve distance is the obstacle to the truth of marriage. However,

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<sup>96</sup> Abdul Mutalib, Lukman, Isu Penasaban Anak Luar Nikah Kepada Bapa Biologi Dari Sudut Pandang Siasah Syar'iyah Di Malaysia, 245.

<sup>97</sup> Othman, Aplikasi Hukum Nasab Anak Zina, 12.



these conditions do not satisfy the arguments put forward for attributing adultery to biological fathers, such as the condition of marriage<sup>98</sup>.

Out-of-wedlock children can obtain a civil relationship with their father, namely by giving recognition to out-of-wedlock children. Article 280 and Article 281 of the Civil Code confirm that with the recognition of a child out of wedlock, a civil relationship arises between the child and the father or mother. Recognition of a child out of wedlock can be made by an authentic deed, if it has not been made in the birth certificate or at the time of marriage<sup>99</sup>.

Regarding the recognition of children born out of wedlock, this is categorized into two parts, namely<sup>100</sup>:

1. Not to be recognized, namely children born of:

- a. Adulterous relationships, so-called adulterous children (adultery).
- b. Discordant or incestuous relationships are referred to as discordant children.

2. Can be recognized, namely:

a. If they are recognized, they are referred to as legally recognized biological children (erkedkinderen). These recognized children can also be legalized.

b. If they are not recognized, they are called natural children recognized by law (natuurlijk niet erkend kinderen). Children born of adultery or illegitimacy may not be recognized by the person who committed adultery.

There is a dispensation granted by the President under Article 28. President under Articles 283 and 273 of the Civil Code. Based on this provision, adulterous and discordant children cannot be compelled to be acknowledged by the man who

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<sup>98</sup> Engku Muhammad Tajuddin Engku Ali, Ahmad Tirmizi Taha dan Zulkifli Mohd, *Penasaban Anak Tak Sah Taraf (Isu -Isu Fiqh Kontemporari)*, Kuala Terengganu: Universiti Sultan Zainal Abidin, 15-44

<sup>99</sup> Efendi Perangin, *Hukum Waris*, (Jakarta : PT Raja Grafindo Persada), 2008, 28.

<sup>100</sup> Abd.Latif, *Status Nasab Anak Luar Nikah dan Warisnya Ditinjau Menurut Peraturan Perundang-Undangan dan Hukum Islam*, 10-11. (Warta Kerajaan Negeri Selangor No 9, Jil.58, (Mufti Selangor, 500-2; PU.Sel.AGM.007 Jld 2)

committed adultery. forced credit for the man who sired her. The basis for this is the principle of civil law, which states that in marriage law the rules and norms in force in society must be respected, among which there is also an obstacle to a man marrying the mother of the child.

## 5. Factors of Illegitimate Child Birth

The moral decline, particularly among adolescents, has led to the prevalence of promiscuity and adultery, leading to extramarital pregnancies and the birth of illegitimate children. Islam has forbidden all means that can lead to adultery and thus births outside marriage, especially as they are capable of aborting and disposing of innocent children<sup>101</sup>.

وَلَا تَقْتُلُوا أَوْلَادَكُمْ خَشْيَةَ إِمْلَاقٍ نَحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ إِنَّ قَتْلَهُمْ كَانَ خِطْئًا كَبِيرًا

“And do not kill your children for fear of poverty. We provide for them and for you. Indeed, their killing is ever a great sin”

The factors that lead to the birth of illegitimate children are:

### 1. Adultery

Adultery is extramarital sex between a man and a woman. Etymologically, adultery is sexual intercourse between a man and a woman who does not belong to him, and there is no shubhah in the relationship<sup>102</sup>. Adultery is a cursed act forbidden by Allah and promised by Allah a painful punishment for the offender as it says in the Quran Surah Al-Isra, verse 31:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَتَّبِعُوا خُطُوتِ الشَّيْطَانِ وَمَنْ يَتَّبِعْ خُطُوتِ الشَّيْطَانِ فَإِنَّهُ يَأْمُرُ بِالْفَحْشَاءِ  
وَالْمُنْكَرِ وَلَوْ لَا فَضْلُ اللَّهِ عَلَيْكُمْ وَرَحْمَتُهُ مَا زَكَا مِنْكُمْ مِنْ أَحَدٍ أَبَدًا وَلَكِنَّ اللَّهَ يُزَكِّي مَنْ يَشَاءُ  
وَاللَّهُ سَمِيعٌ عَلِيمٌ

<sup>101</sup> Mustafa Daud, Tamadun Islam Edisi Maktab Perguruan, (Kuala Lumpur: Utusan Publications & Distributors Sdn Bhd, 2004, 11.

<sup>102</sup> Mohd Said Ishak, Hudud dalam Fiqh Islam, (Johor: Penerbit Universiti Teknologi Malaysia), 2003, 5.

“ O you who have believed, do not follow the footsteps of Satan. And whoever follows the footsteps of Satan - indeed, he enjoins immorality and wrongdoing. And if not for the favor of Allah upon you and His mercy, not one of you would have been pure, ever, but Allah purifies whom He wills, and Allah is Hearing and Knowing”.

The main cause of adultery is promiscuity between men and women. Promiscuity not caring about halal and haram leads to committing things that contribute to adultery. In addition, the pursuit of lust is also a major factor in the incidence of adultery among adolescents in Malaysia and Indonesia. There is no denying that this group of teenagers are among those who are easily swayed by negative elements, making them do something without thinking about the consequences, which destroys their personality and morals<sup>103</sup>. Parents play a role in helping children grow up in a healthy and positive lifestyle<sup>104</sup>.

## 2. Incest

Incest is a phenomenon well known in Malaysia and Indonesia. Sumbang mahram is sexual intercourse that goes against the shara because it involves consanguinity and it is forbidden to marry forever. Incest is also considered a crime and in this case it is more about sexual assault<sup>105</sup>.

## 3. Prostitution

Prostitution is the act of selling oneself for money. Clients pay for the services of a prostitute. The main factor behind the occurrence of prostitution is economic. Most women are involved in prostitution due to economic circumstances

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<sup>103</sup> Ahmad Redzuan Mohd Yunus, *Gejala Sosial Dalam Masyarakat Islam : Punca Dan Penyelesaian*, (Kuala Lumpur: Utusan Publication), 2003, 3.

<sup>104</sup> Mohd Yunus, Ahmad Redzuan, *Gejala Sosial dalam Masyarakat Islam*, 4.

<sup>105</sup> Mohd Ismail Mustari, *Menjadi Belia Cemerlang*, (Kuala Lumpur: PTS Profesional Publishing Sdn. Bhd, 2007, 11.

that force them into this heinous act. For them, prostitution is also the best alternative to earn money without hard work<sup>106</sup>.

#### 4.Rape

Raping is the act of violating a woman's honor.Raping is also recognized as a form of sexual assault, in which women are forced to have sexual intercourse against their will. The factors that encourage the raping cases are due to the influence of the mass media existence of pornographic videos circulating on the Internet<sup>107</sup>.

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<sup>106</sup> Mohd Yunus,Ahmad Redzuan,Gejala Sosial Dalam Masyarakat Islam,45

<sup>107</sup> Suzana Ghazali,Buatmu Wanita:Sebagai Anak Isteri Ketahui Hakmu,(Shah Alam:Buku Prima Sdn Bhd),2009,268.

**CHAPTER III**  
**COMPARISON BETWEEN PERLIS FATWA AND INDONESIA**  
**CONSTITUTIONAL COURT DECISION**

**A.The Similarity of Perlis Fatwas And Indonesia Constitutional Court Decision**

1.Both the Fatwa of Perlis and Indonesia Constitutional Court Decision recognize the status of illegitimate child as children who have the same right as legitimate child.

2.Both the Fatwa of Perlis and Indonesia Constitutional Court Decision provide affirmation that illegitimate child have a lineage or civil relationship with their biological father.

3.Both the Fatwa of Perlis and Indonesia Constitutional Court Decision emphasize the importance of protecting the right of children.

**B.The Difference of Perlis Fatwas And Indonesia Constitutional Court Decision**

1.The Fatwa of Perlis is based on the interpretation of Islamic Sharia Law issued by Mufti Department,while Constitutional Court Decision is based on the interpretation of the constitution and positive law in Indonesia.

2.The Fatwa of Perlis applies in the state of Perlis,while Constitutional Court Decision applied nationwide in Indonesia.

3.DNA testing is carried out as a determination of nasab in Indonesia even though it is denied nasab by the biological father, the extramarital child can still be declared to his biological father but DNA testing as a determination of nasab in Malaysia does not apply and if denied by the biological father, the child cannot be declared to his biological father.

4. The Fatwa of Perlis is issued by Mufti Department after discussion among Islamic scholar, while Constitutional Court Decision is the result of a decision made by Constitutional Judges after examination and research of the case.

### **C. Implication of Fatwa Perlis and Indonesia Constitutional Court Decision on The Children**

The Perlis fatwa, which allows descent of illegitimate children to the biological father if not denied, has sparked controversy as it contradicts other fatwas in Malaysia. This fatwa is also said to be the cause of adultery. Even when the fatwa attributing children to Abdullah is applied, cases of adultery are increasing every year. The attribution of children to Abdullah makes the community feel that adultery is normal because there are too many people have the adultery mark on their name.

According to the Perlis Mufti Department, illegitimate children are castrated to cover up the disgrace of the child and family. Covering up shame is something important in religion, as shown in the Hadith collected by the Mufti Department of Perlis:

وَمَنْ سَتَرَ مُسْلِمًا سَرَّهُ يَوْمَ الْقِيَامَةِ

“Whoever covers a Muslim's shame, Allah will cover his shame on the Judgement Day”.

Don't we feel that too much evidence of adultery in the name of the community indirectly becomes an insult to adultery because it reduces the community's shame of committing adultery? Perli's fatwa is an ijtihad that sets the tone of jurists' opinions. Take the current reality and look at the trends that will prevail<sup>108</sup>.

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<sup>108</sup> Prof Dato Arif Perkasa Dr. Mohd Asri Bin Zainul Abidin, Masalah Nasab Anak Kurang Daripada Enam Bulan Perkawinan, accessed on Oct 30, 2020 <https://muftiperlis.gov.my/index.php/minda-mufti/150-masalah-nasab-anak-kurang-daripada-enam-bulan-perkawinan>

The decision of the Indonesia Constitutional Court that granted the judicial review of article 43(1) of law number 1 of 1974 so that the article has to be read as : "Children born out of wedlock only have a civil relationship with their mother and their mother's family and with the man as their father who can be proven based on science and/or other evidence according to the law to have a blood relationship, including a civil relationship with the father's family".

In accordance with the reasoning of the constitutional judges presented earlier, the reasoning is very logical and aims to realize the benefit in the form of protection for children born out of wedlock, so that they have a guarantee of life and no longer face a negative stigma because of the sins of their community Parents. The importance of fair protection and legal certainty of the status of children born and the rights to which they are entitled, including the rights of children born, even if their validity is still disputed<sup>109</sup>.

The positive impact of Constitutional Court Decision No. 46/PUU-VIII/2010 on child protection is to improve the mentality of children born outside of marriage. Children without ties to biological fathers, according to him, develop very deviative, such as offender disorders, tend to be destructive (suicide, criminal behavior). Many children who used to never get their rights, because they were born out of wedlock, after the Constitutional Court's decision will get their full rights. Out-of-wedlock children are often discriminated against and stigmatized in schools and neighborhoods as "illegitimate children". With this designation, it will damage the child's psychology<sup>110</sup>.

Every child is born in a state of purity, has a father and a mother, even if legally there are relationships that are not based on a legal marriage but can be scientifically proven to be truthful and can be proven to be the biological child of the person concerned. Children have rights that must be fulfilled by their parents.

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<sup>109</sup> D.Y. Witanto, *Hukum Keluarga dan Hak Kedudukan Anak Luar Kawin :Pasca Keluarnya Putusan MK tentang Uji Materil UU Perkawinan*, (Jakarta:Prestasi Pustaka), 2012, 42.

<sup>110</sup> Rokhmadi, *Status Anak Di Luar Perkawinan Pasca Putusan Mahkamah Konstitusi No.46/PUU-VIII/2010*, *Sawwa:Jurnal Studi Gender*, 11(1), 1-24, <https://doi.org/10.21580/sa.v11.1.1444>

So far, extramarital children only have a relationship with the mother and her family, which affects the children, so that they experience internal pressure in their relationships. The biological father also appears in the lawsuit to be absolved of responsibility for his actions that led to the child's birth<sup>111</sup>.

The birth of illegitimate children can have negative effects on family institutions and society in both Malaysia and Indonesia. Various issues are discussed about the impact of illegitimate children, including issues related to Nasab, Nafkah, guardianship, custody and administration of heirlooms, and its relation to basic public administration. The birth of illegitimate children can cause problems related to nasab, nafkah, guardianship, custody and management of heirlooms. The birth of illegitimate children can negatively affect family institutions. Nikah Khitbah can be an alternative to reducing the rate of adultery and illegitimate children, thereby helping to overcome the social problems associated with having children out of wedlock.

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<sup>111</sup> J.Satrio, Hukum Keluarga Tentang Kedudukan Anak Dalam Undang-Undang, (Jakarta: Citra Aditya Bakti), 2008, 10.



## **CHAPTER IV**

### **CLOSING**

#### **A. Conclusion**

Based on the research conducted on the comparison of the Perlis Fatwa and the Indonesian Constitutional Court's decision regarding the status of illegitimate children, it can be concluded that:

1. Fatwa Perlis allows the nasab of illegitimate children to be attributed to the biological father to cover the disgrace of the family and protect the child from stigma and discrimination that may arise due to their status as illegitimate children.
2. After the decision of Constitutional Court No.46/PUU\_VII/2010, children born out of wedlock not only have a civil relationship with the mother and her family, but also can establish a civil relationship with their biological father if they are recognized by him or can be proven through science and technology.
3. The Perlis Fatwa and the Constitutional Court Decision both have a significant implication and a consideration of *maslahah* (benefit) and *mafsadah* (disadvantage) which focus on the protection and interests of the child. Although there are differences of opinion in this matter, the desired goal is to provide legal certainty, protection, and equal rights for illegitimate children to an extent.

#### **B. Suggestion**

1. In considering the *maslahah* and *mafsadah* of illegitimate adoption, it is important to strike a balance between individual interests, social justice, and religious and societal norms. Overall, there is a need to discuss and conduct more in-depth investigations to gain a fuller understanding when considering the various implications of adoption without ignoring the views of *fuqaha*.
2. The author suggests future researchers to enrich the perspective and perspective when considering the issue of the status of adulterous children and to harmonize

between legislation and fatwa. Hopefully, this dissertation can serve as a basis for further research on nasab in illegitimate children.

3. The government in Malaysia and Indonesia should find a solution to curb the increase in adultery in the community, especially among teenagers. The increase in adultery occurring in the community will lead to the problem of the nasab of illegitimate children.

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## APPENDIX



**Tajuk :**  
**Anak Tak Sah Taraf**

---

Kategori: **Munakahat**

Tahun: **2012**

Status Pewartaan: **Diwartakan**

Negeri: **Perlis**

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**Keputusan :**

“Anak yang lahir kurang 6 bulan selepas ibunya berkahwin, boleh dibinkan kepada suami ibunya, kecuali jika dinafikan oleh si suami”.



NEGERI PERLIS

## Warta Kerajaan

DITERBITKAN DENGAN KUASA  
*GOVERNMENT OF PERLIS GAZETTE*  
*PUBLISHED BY AUTHORITY*

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**Jil. 56**

**17hb Januari 2013**

**No. 2**

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**No. 7.**

**ENAKMEN PENTADBIRAN AGAMA ISLAM 2006**  
(Enakmen 4 Tahun 2006)

FATWA DI BAWAH SEKSYEN 48

**ANAK TAK SAH TARAF**

Mengikut peruntukan subseksyen 48(6) Enakmen Pentadbiran Agama Islam 2006, Majlis Agama Islam dan Adat Istiadat Melayu Perlis, setelah diperkenankan oleh Raja Pemerintah dan memaklumkan Kerajaan Negeri, dengan ini menyebabkan fatwa berikut disiarkan, iaitu:

“Anak yang lahir kurang 6 bulan selepas ibunya berkahwin, boleh dibincang kepada suami ibunya, kecuali jika dinafikan oleh si suami.”

Bertarikh 26 Disember 2012  
[SUK.Ps. 05/392]

HAJI ABDUL MALIK BIN HUSSIN  
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| No  | Day/Date                                | Subject of Consultation             | Signature |
|-----|---|-------------------------------------|-----------|
| 1.  | Thursday, 9 <sup>th</sup> February 2023 | Thesis Proposal                     |           |
| 2.  | Tuesday, 2 <sup>nd</sup> March 2023     | Revision of Thesis Proposal         |           |
| 3.  | Tuesday, 7 <sup>th</sup> March 2023     | Thesis Proposal Approval            |           |
| 4.  | Monday, 3 <sup>rd</sup> April 2023      | Revision After Sempro               |           |
| 5.  | Friday, 14 <sup>th</sup> April 2023     | Consultation Chapter I-II           |           |
| 6.  | Friday, 28 <sup>th</sup> April 2023     | Revision Chapter I-II               |           |
| 7.  | Wednesday, 3 <sup>rd</sup> May 2023     | Consultation Chapter III - IV       |           |
| 8.  | Thursday, 25 <sup>th</sup> May 2023     | Revision Chapter III-IV             |           |
| 9.  | Tuesday, 6 <sup>th</sup> June 2023      | Consultation Abstract, Bibliography |           |
| 10. | Friday, 9 <sup>th</sup> June 2023       | ACC                                 |           |

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