

**MANDATORY WILLS FOR ADULTERY CHILDREN PERSPECTIVE OF**

**JASSER AUDA'S *MAQASID SYARIAH***

**(Study of MUI's Fatwa Number 11 of 2012)**

**THESIS**

By:

Fahma Zakiyatul Ilusvia

19210128



**ISLAMIC FAMILY LAW DEPARTMENT**

**SHARIA FACULTY**

**STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM**

**MALANG**

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## STATEMENT OF AUTHENTICITY

*Bismillahirrahmannirrahim*

With full knowledge and responsibility for the advancement of science, the author confirms this thesis with the title:

**MANDATORY WILLS FOR ADULTERY CHILDREN PERSPECTIVE OF**

**JASSER AUDA'S *MAQASID SYARIAH***

**(Study of MUI's Fatwa Number 11 of 2012)**

Truly original scientific research and does not use or copy other people's data. Thus, the thesis and bachelor's degree obtained are invalid and cannot be canceled if it is later discovered that the thesis has the same content, logic, and facts, in whole or in part.

Malang, 1 September 2023



Fahma Zakiyatul Ilusvia

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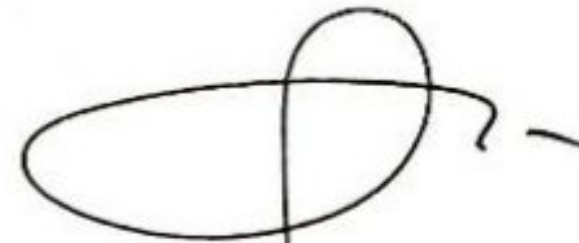
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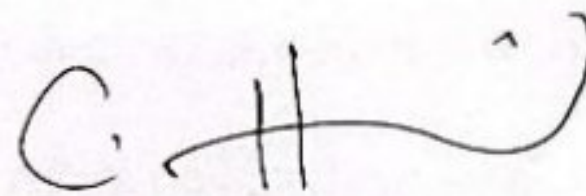
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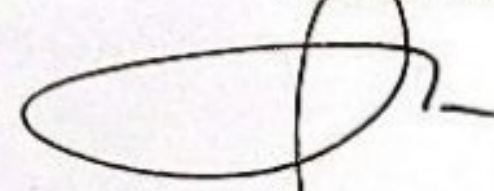


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## MOTTO

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعْفًا خَافُوا عَلَيْهِمْ

فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا

"And fear God those who should leave behind them weak children, whom they fear for their (welfare). Therefore let them fear Allah, and let them speak the right words."

~QS. An-Nisa (5): 9~

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We pray to Allah SWT, the Almighty God, all praise and gratitude for His abundant mercy, sustenance, and grace at every turn of our life's journey. Let us convey our prayers and greetings to Allah's beloved Prophet Muhammad SAW, the final of the prophets, who has brought the light of guidance to all humanity.

On this occasion, the researcher was honored and happy to be able to complete the preparation of a thesis entitled "MANDATORY WILLS FOR ADULTERY CHILDREN PERSPECTIVE OF JASSER AUDA'S MAQASID SYARIAH (Study of MUI's Fatwa Number 11 of 2012)" as part of the final project of the researcher's study in the Islamic Family Law Study Program. The preparation of this thesis is not an effort that the researcher can go through alone but through the support and assistance of various parties who have encouraged and guided the researcher during this research process. On this occasion, the researcher would like to express her deepest gratitude:

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With the completion of this thesis, I hope to bring benefits and positively contribute to the development of science, especially in the field of law, and inspire further research. Finally, the researcher apologizes profusely if there are shortcomings in preparing this thesis and expects criticism and suggestions from various parties for future improvements.

Malang, September 2023

Fahma Zakiyatul Ilusvia

## TRANSLITERATION GUIDELINES

In writing scientific papers, the use of foreign terms is often inevitable. According to the General Guidelines for Spelling, Indonesian foreign words are written (printed) in italics. In the context of Arabic, there are transliteration guidelines as a reference for writing scientific papers.

### A. Consonant

A list of Arabic letters and their transliterations into Latin letters can be found on the following page:

Arabic	Indonesian	Arabic	Indonesian
أ	ʾ	ط	t
ب	b	ظ	Z
ت	t	ع	ʿ
ث	th	غ	Gh
ج	j	ف	f
ح	ḥ	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
ش	.sh	ء	ʾ
ص	ṣ	ي	y
ض	ḍ		

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

## B. Vocal

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

Arabic single vowels whose symbols are signs or vowels, the transliteration of which is as follows:

Arabic letters	Name	Latin letters	Name
أَ	Fatah	A	A
إِ	Kasrah	I	I
أُ	ḍammah	U	U

Double vowels in Arabic are described through a combination of letters and letters, transliteration in the form of a variety of letters, namely:

Sign	Name	Latin letters	Name
أَيُّ	Fathah and ya	Ai	A and I
أَوْ	Fathah and wau	Iu	A and U

كَيْفَ : *kaifa*

هَوَّلَ : *hauila*

## C. Maddah

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

Characters and Letters	Name	Letters and Signs	Name
أَ اِ	Fathah and alif or ya	ā	a and the line above
يِ	Kasrah and ya	ī	i and the line above
وِ	Ḍamma and wau	ū	u and the line above

Example:

مَاتَ : *Māta*

قِيلَ : *Qīla*

رَمَى : *Ramā*

يَمُوتُ : *Yamūtu*

#### D. Ta Marbūṭah

There are two methods of transliteration for ta' marbūṭah, ta' marbūṭah with live vowels such as fathah, kasrah, and ḍammah, which are transliterated as [t]. Meanwhile, ta' marbūṭah with breadfruit-like dead vowels is transliterated as [h].

If a word ending in ta' marbūṭah is followed by a word that uses the clothing word al- and the reading of the word is separate, then ta' marbūṭah is transliterated with [h]. Example:

رَوْضَةُ الأَطْفَالِ : *Rauḍah al-Atfāl*

المَدِينَةُ الفَضِيلَةُ : *Al-Madīnah al-Fadīlah*

الحِكْمَةُ : *Al-ḥikmah*

#### E. Syaddah (Tasydid)

*Syaddah* or *t ashdīd*, exemplified in Arabic writing with the sign symbol tasydīd (ّ), in this transliteration is represented by the repetition of letters (double consonants), which are indicated by .syaddah Example:

رَبَّنَا : *Rabbana*

الْحَقُّ : *Al-Haqq*

If the letter *has tasydīd* at the end of a word and is preceded by the letter harakat kasrah (ـِ), then it is transliterated like the letter maddah (i).

عَلِيٌّ : *'Ali (not 'Aliyy or 'Aly)*

عَرَبِيٌّ : *'Arabi (not 'Arabiyy or 'Arabiy)*

#### F. Clause Words

In the Arabic writing system, the word clothing is denoted by the letter ال(alif lam ma'arifah). In this transliteration guide, the word clothing is translated as usual, namely al-, followed by the letters syamsiah and qamariah. The word clothing does not derive its sound directly from the following letter. Clothing is written separately from the following wordfollows and is connected by a horizontal line (-). Example:

الشَّمْسُ : *Al-Shamsu (not Ash-Shamsu)*

الزَّلْزَلَةُ : *al-zalزالah (not az-zalزالah)*

الْفَلْسَفَةُ : *Al-Falsafah*

الْبِلَادُ : *Al-Bilādu*

#### G. Hamzah

Using an apostrophe (') to transliterate the letter hamzah is valid only when the hamzah is located in the middle or end position of the word.

However, when hamzah is located at the beginning of a word, the use of apostrophes is not symbolized because, in Arabic, the letter alif replaces hamzah in this position. Example:

تَأْمُرُونَ : *ta' murūna*

النَّوْءُ : *Al-Nau'*

شَيْءٌ : *Shai'un*

أَمْرٌ : *Umirtu*

#### **H. Writing Arabic words commonly used in Indonesian**

A transliterated Arabic word, term, or phrase is a word, term, or phrase that has yet to be validated in Indonesian. Words, terms, or phrases that are already common and part of Indonesian vocabulary or have been frequently used in Indonesian writing no longer need to be transliterated as previously described. Examples are the words Qur'an (from the Qur'ān), sunnah, hadith, memorable, and unicameral. However, transliteration is still needed if these words are present in a series of Arabic texts. Example:

*Fī zilāl al-Qur'an*

*Al-Sunnah qabl al-tadwīn*

*Al-'Ibārat Fī 'umūm al-lafẓ lā bi khuṣūṣ al-sabab*

## 1. *Lafz al-Jalalah* (الله)

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

دِينُ اللَّهِ : *dīnullāh*

As for ta' marbūṭah at the end of the word associated with lafz al-jalālah, transliterated with the letter [t]. Example:

رَحْمَةِ اللَّهِ : *rahmatillāh*

## 2. Capital letters

Although the Arabic letter system does not recognize *capital letters* (*All Caps*), in its transliteration, these letters are subject to 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 letters of a person's name (person, place, month) and the first letter at the beginning of a sentence. If the self-name is preceded by the word clothing (al-), then what is written with a capital letter remains the self-name's initial letter, not the clothing word's initial letter. If it is located at the beginning of the sentence, then the letter A of the clothing word uses a capital letter (Al-). The same provision applies to the initial letter of the reference title preceded by the clothing word al-, both when it is in

the text and the reference notes (CK, DP, CDK, and DR).

Example:

*Wa mâ Muḥammadun illā Rasūl*

*Inna awwala baitin wuḍi'a linnāsi lallaẓī bi Bakkata mubārakan*

*Shahru Ramaḍān al-laẓī unzila fih al-Qur'ān*

Al-Ghazālī

Al-Munqiz min al-Ḍalāl

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## ABSTRACT

Fahma Zakiyatul Ilusvia, 19210128, *Mandatory Wills For Adultery Children Perspective Of Jasser Auda's Maqasid Syariah (Study Of MUI's Fatwa Number 11 Of 2012)*, Thesis, Islamic Family Law Departement, Sharia Faculty of State Islamic University Maulana Malik Ibrahim Malang. Supervisor Dr. Zaenul Mahmudi, M.A.

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**Keywords:** Adultery Children, Mandatory Will, Maqasid Sharia.

This research examines the reasons behind MUI's Fatwa Number 11 of 2012, which makes obligatory wills a solution for inheritance for children resulting from adultery, and analyzes the fatwa within the framework of the Jasser Auda's Maqasid Syariah concept. This research uses normative research method with a conceptual approach. The focus of this approach is to understand and analyze the concept of mandatory wills in MUI Fatwa Number 11 of 2012 which explains and interprets it using maqasid sharia.

The results of this study revealed that MUI's Fatwa Number 11 of 2012 makes mandatory wills as a solution for the inheritance of adulterous children. The reasons are. First, unfaithful children are not related to their biological fathers, so they do not have inheritance rights by Islamic law. Therefore, the MUI's Fatwa provides an alternative solution by granting a mandatory will to the adulterous child of the biological father to help the biological father fulfill his responsibilities. In addition, another reason is the protection of the rights of unfaithful children, who should not be discriminated against and given lesser rights than legitimate children. Through compulsory wills, these fatwas try to ensure fairness in the division of inheritance and prevent possible injustices.

Second, this study analyzes mandatory wills as an alternative solution for adulterous children from the perspective of Maqasid Sharia, grouped by Jasser Auda. This includes social aspects and practicality to ensure that unfaithful children are not socially and economically marginalized, legal aspects governing the fair distribution of inheritance by Islamic law, and practical aspects that implement legal agreements governing the rights and obligations of biological parents and the share of the estate acquired by such children. This research provides a comprehensive, solutive, and progressive view of the importance of mandatory wills as an inheritance solution for adulterous children within the framework of Maqasid sharia and its relevance to the principles of social justice and Islamic law.

## خلاصة

فهمة زكية إوسفيا، 19210128، الوصايا الإلزامية للأطفال الزنا من منظور مقاصد جاسر عودة الشرعية (دراسة فتوى المجمع الإسلامي رقم 11 لسنة 2012)، أطروحة، احوال الشخصية، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرف الدكتور زين المحمودي، ماجستير

الكلمات المفتاحية: طفل ، إرادة إلزامية ، مقاصد الشريعة.

تهدف هذه الدراسة إلى بحث الأسباب الكامنة وراء فتوى مجلس العلماء المسلمين رقم 11 لعام 2012 التي تجعل الوصايا إلزامية كحل في الميراث للأطفال الناتجة عن الزنا وتحليل الفتوى في إطار مفهوم المقاصد الشرعية لجاسر عودة. يستخدم هذا البحث أساليب البحث المعيارية مع نهج مفاهيمي. ينصب تركيز هذا النهج على فهم وتحليل مفهوم الوصايا الإلزامية في فتوى MUI رقم 11 لعام 2012 والتي تشرحها وتفسرها باستخدام مقاصد الشريعة.

كشفت نتائج هذه الدراسة أن فتوى مجلس العلماء المسلمين رقم 11 لعام 2012 تجعل الوصايا إلزامية كحل لميراث الأطفال الزناة لأسباب قوية. أولا ، لا يرتبط الأطفال الزناة بأبائهم البيولوجيين ، لذلك ليس لديهم حقوق الميراث وفقا للشريعة الإسلامية. لذلك ، توفر فتوى MUI حلا بديلا في شكل منح وصية إلزامية للطفل الزاني للأب البيولوجي لمساعدة الأب البيولوجي على الوفاء بمسؤولياته. بالإضافة إلى ذلك ، هناك سبب آخر هو حماية حق الأطفال الزناة الذين لا ينبغي التمييز ضدهم ومنحهم حقوقا أقل مقارنة بالأطفال الشرعيين. من خلال استخدام الوصايا الإجبارية ، تحاول هذه الفتاوى ضمان العدالة في تقسيم الميراث ومنع الظلم المحتمل.

ثانيا: تحلل هذه الدراسة استخدام الوصايا الإلزامية كحل بديل للأطفال الزناة من منظور مقاصد الشريعة التي جمعها جاسر عودة. ويشمل ذلك الجوانب الاجتماعية والنفعية لضمان عدم تهميش الأطفال الزناة اجتماعيا واقتصاديا، والجوانب القانونية التي تحكم التوزيع العادل للميراث وفقا للشريعة الإسلامية، والجوانب العملية التي تنفذ الاتفاقيات القانونية التي تحكم حقوق وواجبات الوالدين الطبيعيين ونصيب هؤلاء الأطفال من الميراث. يقدم هذا البحث نظرة شاملة وشمولية وتقديمية لأهمية

الوصايا الإلزامية كحل للميراث للأطفال الزناة في إطار المقاصد الشرعية، فضلا عن صلتها بمبادئ  
العدالة الاجتماعية والشريعة الإسلامية.

## ABSTRAK

Fahma Zakiyatul Ilusvia, 19210128, *Wasiat Wajibah Bagi Anak Zina Perspektif Maqasid Syariah Jasser Auda (Studi Fatwa MUI Nomor 11 Tahun 2012)*, Skripsi, Program Studi Hukum Keluarga Islam, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing Dr. Zaenul Mahmudi, M.A.

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**Kata Kunci:** Anak Zina, Wasiat Wajibah, Maqasid syariah.

Penelitian ini bertujuan untuk mengkaji alasan di balik Fatwa MUI Nomor 11 Tahun 2012 yang menjadikan wasiat wajibah sebagai solusi dalam kewarisan bagi anak-anak hasil zina serta menganalisis fatwa tersebut dalam kerangka konsep Maqasid Syariah oleh Jasser Auda. Penelitian ini menggunakan metode penelitian normatif dengan pendekatan konseptual. Fokus pendekatan ini adalah pemahaman dan analisis konsep wasiat wajibah dalam Fatwa MUI Nomor 11 Tahun 2012 yang menjelaskan dan menginterpretasikannya dengan maqasid syariah.

Hasil penelitian ini mengungkapkan bahwa Fatwa MUI Nomor 11 Tahun 2012 menjadikan wasiat wajibah sebagai solusi bagi kewarisan anak zina dengan alasan-alasan yang kuat. Pertama, anak-anak zina tidak memiliki hubungan nasab dengan ayah biologis, sehingga mereka tidak memiliki hak waris sesuai dengan hukum Islam. Oleh karena itu, fatwa MUI memberikan solusi alternatif berupa pemberian wasiat wajibah kepada anak zina dari ayah biologis untuk membantu ayah biologis memenuhi tanggung jawabnya. Selain itu, alasan lain adalah perlindungan hak anak zina yang tidak seharusnya terdiskriminasi dan diberikan hak-hak yang lebih rendah dibandingkan dengan anak-anak sah. Melalui penggunaan wasiat wajibah, fatwa ini mencoba untuk memastikan keadilan dalam pembagian waris dan mencegah ketidakadilan yang mungkin terjadi.

Kedua, penelitian ini menganalisis penggunaan wasiat wajibah sebagai solusi alternatif bagi anak-anak hasil zina dari perspektif Maqasid Syariah yang dikelompokkan oleh Jasser Auda. Hal ini mencakup aspek sosial dan kemanfaatan untuk memastikan bahwa anak-anak hasil zina tidak terpinggirkan secara sosial dan ekonomi, aspek hukum yang mengatur distribusi harta pusaka secara adil sesuai dengan hukum Islam, dan aspek praktis yang mengimplementasikan perjanjian hukum yang mengatur hak dan kewajiban orang tua biologis serta bagian harta pusaka yang diperoleh oleh anak-anak tersebut. Penelitian ini memberikan pandangan yang komprehensif, solutif, dan progresif tentang pentingnya wasiat wajibah sebagai solusi kewarisan bagi anak zina dalam kerangka Maqasid Syariah, serta relevansinya dengan prinsip-prinsip keadilan sosial dan hukum Islam.

## CHAPTER I

### INTRODUCTION

#### A. Research Background

Inheritance law is one of the essential aspects of the legal system that governs how a person's property will be divided after death. In society, the principle of justice and protection of inheritance rights has become a significant focus in regulating inheritance law. However, in some cases, inheritance law can be subject to discrimination, especially in the context of children born due to adultery.

Children born of adultery often face various challenges, not only from a legal point of view but also in society. In some legal and cultural systems, these children face significant legal discrimination, involving inequalities in their inheritance rights. In addition, in some jurisdictions or legal systems based on specific religious laws, children born due to adultery may be granted fewer inheritance rights or even excluded entirely from inheritance. This can lead to these children not acquiring the same rights as children born into legal marriages.

Social stigma and discrimination against their status can often affect their social rights, such as access to education, healthcare, and economic opportunities. Furthermore, discrimination against children born of adultery may be contrary to human rights principles that recognize the right of every individual to fair and equal treatment under the law,

regardless of origin or birth status. This is by the hadith of the Holy Prophet (peace be upon him) as follows:

عَنْ عَبْدِ الرَّحْمَنِ بْنِ هُرْمُزٍ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، قَالَ: " كُلُّ مَوْلُودٍ يُوَلَّدُ عَلَى الْفِطْرَةِ، فَأَبَوَاهُ يُهَوِّدَانِهِ، أَوْ يُنَصِّرَانِهِ<sup>1</sup>"

It means: 'Abd al-Rahman ibn Hormuz al-'Araj narrated from Abu Hurairah (may Allah be pleased with him) that the Holy Prophetsa said: "Every baby is born in a state of fitrah, and its parents are Jews, or Christians."

Maqasid sharia is a fundamental concept in Islamic law that pursues the benefit of individuals and society. This concept attempts to ensure that Islamic law not only focuses on aspects of formality but also achieves the main objectives of Sharia. Maqasid sharias also emphasize the protection of the welfare of individuals, including children. In this context, it is essential to understand whether using a mandatory will to inherit an adulterous child can ensure the well-being of children who do not fault this situation.

In Indonesia, the Council of Indonesian Ulama (MUI) is a religious authority that issues fatwas on various legal issues, including MUI's Fatwa Number 11 of 2012 concerning the Position of Zina Children and their Treatment of Them. This fatwa discusses the inheritance of children resulting from adultery in the context of Islamic law. This fatwa permits the use of mandatory wills as a solution to the estate of adulterous children,

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<sup>1</sup>Abu Hanifah An-Nu'man, *Musnad Abi Hanifah Riwayah Al-Haskafi* (Mesir: t.p., t.t.).

which conventionally in Islamic law are considered illegitimate children, as stated in Legal Provisions number 5 of MUI's Fatwa Number 11 of 2012 concerning the Position of Children Resulting from Zina and Treatment of Them which says that: "The government has the authority to impose *ta'zir* punishments to an adulterer who results in the birth of a child by obliging him to: a) provide for the child's subsistence; b) give away property after he dies through *a mandatory will*."<sup>2</sup>

Constitutional Court Decision Number 46/PUU-VIII/2010 issued by the Indonesian Constitutional Court in 2010. Regulates the issue of inheritance of children out of wedlock and concerns the Concept of Extramarital Children (KALN) in Law No. 1 of 1974 concerning Marriage. In its ruling, the Court stated that: "A child born out of wedlock has a civil relationship with the mother as well as father and his family as evidenced by science and technology or other evidence that according to law has a blood relationship," which can be proven by DNA testing, or official documents made by the civil registry. Of course, this is contrary to the applicable Islamic inheritance law because it indirectly considers children out of wedlock to have the same rights as legitimate children, so they are entitled to inheritance from their biological parents.

Referring to the description above, this study will discuss further *mandatory will* to protect the rights of adulterous children, as mentioned in

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<sup>2</sup> Fatwa Majelis Ulama Indonesia Nomor: 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya.

MUI's Fatwa Number 11 of 2012. This is considered necessary to be studied more deeply to strive for the creation of legal justice in society so as not to cause social inequality and provide a deterrent effect for men who drive the birth of adulterous children.

## **B. Statement of Problem**

Referring to issues described in the previous background, the researcher proposes the problems as follows:

1. Why does MUI's Fatwa Number 11 of 2012 make *mandatory will* a solution for the inheritance of adultery children?
2. How is MUI's Fatwa Number 11 of 2012 that makes a mandatory will as a solution to the inheritance of adultery children from the perspective of Jasser Auda's *maqasid sharia*?

## **C. Objectives of Research**

1. To analyze the reasons for MUI's Fatwa Number 11 of 2012, making a *mandatory will* as a solution for the inheritance of adulterous children.
2. To review MUI's Fatwa Number 11 of 2012, which makes mandatory wills as inheritance for adulterous children according to the perspective of Jasser Auda's *maqasid sharia*.

#### **D. Benefits of Research**

##### **1. Theory**

Theoretically, this research can make new contributions by developing theories, concepts, or a deeper understanding of mandatory wills as inheritance for adulterous children. In addition, this study also has a role in testing or validating existing theories in MUI's Fatwa Number 11 of 2012 concerning the Position of Children Resulting from Zina and their Treatment of Him.

##### **2. Practical**

Practically, this research can develop fundamental skills critical in academia. This process includes mastery of research techniques, in-depth data analysis skills, and invaluable scientific communication skills. In addition, it also contributes to the scientific community and becomes a valuable reference source for researchers, students, and other practitioners interested in digging deeper into the same topic.

#### **E. Operational Definition**

To make it easier for readers to read and understand the meaning conveyed in the study entitled "Mandatory Wills for Adultery Children Perspective of Jasser Auda's *Maqasid Syariah* (Study of MUI's Fatwa Number 11 of 2012)", the researcher will first explain the essential definitions in the title as follows:

### 1. Son of Zina

An adulterous child is a child born of an extramarital relationship between a man and a woman, in which one or both are married to another person,<sup>3</sup> primarily whose biological father is known but does not want to take responsibility for the adulterous child.

### 2. Fatwa

A fatwa is an answer or legal advice to a non-binding injunction request question. Therefore, fatwas are always related to problems that occur, and there need to be answers to the issues that arise.<sup>4</sup>

### 3. *Mandatory will*

A compulsory will is given to heirs or relatives who would not get a share of the estate due to Sharia barriers, even if the testator did not leave the will.<sup>5</sup>

### 4. *Maqasid Sharia*

*Maqasid sharia* is a concept in Islamic law that refers to the primary purpose and intent of sharia or Islamic law. This concept emphasizes that Islamic law is not only limited to rules and regulations but also has broader moral, ethical, and social purposes. *Maqasid Sharia*

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<sup>3</sup> Achmad Arnold and Mulyono Jamal, "Hak-Hak Keperdataan Anak Hasil Zina Dan Anak Luar Nikah Perspektif Hukum Positif Dan Hukum Islam," *Journal of Indonesian Comparative of Law*, No. 1 (2019): 4, <https://doi.org/10.21111/jicl.v2i1.4484>.

<sup>4</sup> Ibnu Elmi A.S. Pelu, "Kedudukan Fatwa Dalam Konstruksi Hukum Islam," *El-Mashlahah Journal*, No. 2 (2019): 171.

<sup>5</sup> Nur Aisyah, "Wasiat Dalam Pandangan Hukum Islam Dan BW," *El-Iqtishady* 1 (2019): 58.

protects five basic principles: religion, soul, reason, property, and heredity.<sup>6</sup>

## F. Research Method

The research method is a fundamental part of research and serves as guidelines for the researcher to achieve her research goals. This research method is designed to make it easier for researcher to conduct research and make every collection and analysis process organized and efficient.

### 1. Types of research

This study used normative research methods, including reviewing literature or secondary data. In this study, the research object studied was an analysis of the MUI's Fatwa on adulterous children's position and treatment.

### 2. Research Approach

The research approach the researcher uses is conceptual, which is used in research to understand, describe, and develop abstract/theoretical concepts in a particular field.<sup>7</sup> This approach focuses on understanding and analyzing the concepts of MUI's Fatwa Number 11 of 2012 in explaining and interpreting Islamic thought and law used in the fatwa.

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<sup>6</sup> Azmi Zamroni Ahmad, "Wasiat Wajibah Dalam Perspektif Hukum Positif Dan Hukum Islam : Analisis Maqāshid Asy-Syarī'ah Jasser Auda," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum*, No. 1 (2018): 58, <https://doi.org/https://doi.org/10.14421/ajish.v52i1.945>.

<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Group, 2010), 137.

### 3. Data type

Various data types can be utilized in normative research, including secondary data written in documents. The term often used to refer to this is legal material. The legal data used in this study is divided into two categories: primary legal data and secondary legal data.<sup>8</sup>

#### a. Primary legal materials

The purpose of primary legal materials is legal materials that are the main reference or reference in research. This study refers to MUI's Fatwa No. 11 of 2012 concerning the Position of Children Resulting from Zina and their Treatment of Him.

#### b. Secondary legal materials

Secondary legal material is also called the second source of law after primary legal material. Secondary legal materials are legal materials that support the interpretation of primary legal materials, namely in the form of articles, books, and keeping data, such as KHI and Constitutional Court Decision Number 46 / PUU-VIII / 2010, which are relevant to the discussion studied. In this study, the secondary legal material used by the researcher was a book entitled Philosophy of Law Grants and Wills in Indonesia by Abdul Ghofur Anshori, then a

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<sup>8</sup> Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, (Bandung: CV. Mandar Maju, 2008), 97.

book entitled *Islamic Heritage Law in Indonesia* by Mardani, and several other books that also discussed inheritance and wills. In addition, the researcher also used journals in this study, including Nur Aisyah's *article in El-Iqtishady Journal* entitled *Wasiat in the View of Islamic Law and BW*, an article entitled *Leadership Model of the Council of Indonesian Ulama (MUI): A Bid for the Future of Transformative Leadership in Indonesia* by Surahman Amin in *Transformation*, article entitled *Legitimacy of the Council of Indonesian Ulama (MUI) in the Latest Political Islam Contestation* by Mohammad Baihaqi in *Politea*, article *Contribution of MUI's Fatwa No.11 of 2012 concerning Children Resulting from Zina and Treatment of Him in Islamic Family Law in Indonesia* by Haniah Ilhami in the journal *Mimbar Hukum – Faculty of Law, Gadjah Mada University* and several other journals related to wills and fatwas.

#### 4. Data processing

Data processing method used after collecting data with the literature study method, the researcher analyzed the data using several ways:

##### a. Examination

Through re-observation of the data that has been collected, the researcher seeks to validate legal research materials related to

*mandatory will* as an alternative for children resulting from adultery, as affirmed in MUI's Fatwa Number 11 of 2012. The goal is to ensure the validity of the legal materials used so that the data contained in the study have recognized quality and can be used as a foundation in this research.

b. Data analysis

In this study, research was carried out to regulate the systematics of legal materials collected to obtain conclusions. This analysis process helps the researcher understand the extent to which MUI's Fatwa No. 11 of 2012 fulfills the objectives of *Jasser Auda's maqasid sharia* and to what time it is relevant in a particular social context. It will also help the researcher craft strong arguments in evaluating and providing a critical perspective on the fatwa based on Jasser Auda's *Maqasid sharia*. This process helps make the phenomenon under study more profound and detailed scientific, academic, and social value.

c. Conclusion

The conclusion becomes the main focus in the last step of the data processing process. From the results of the analysis that has been carried out, decisions can be drawn regarding the extent to which MUI's Fatwa Number 11 of 2012 is relevant in Jasser Auda's concept of maqasid sharia and its implementation in

social and other contexts. This conclusion represents a summary of the results obtained from the object of research, becoming the final result after going through a series of previous data processing stages.

## G. Previous Research

Previous research is needed by the researcher to be used as a comparison to prior studies with topics or themes related to the research being researched, as well as to make it easier for the researcher to determine differences in research compiled by a researcher with previous works so as not to cause thoughts of imitating the work of others or *plagiarism*. Some previous studies include:

1. "Takzir in the form of Living Costs and Mandatory Wills (Study of MUI's Fatwa No. 11 of 2012 concerning the Position of Children Resulting from Zina and Treatment of Him)"<sup>9</sup> is a research written by Anif Rahmawati. The similarity in this study is that discussing Takzir in MUI's Fatwas serves as a complementary punishment under government authority, especially related to violations of the Zina law. In addition, the substance of this fatwa, such as the fulfillment of

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<sup>9</sup> Anif Rahmawati, "Takzir Berupa Biaya Hidup Dan Wasiat Wajibah (Studi Atas Fatwa MUI No. 11 Tahun 2012 Tentang Kedudukan Anak Zina Dan Perlakuan Terhadapnya)" (Undergraduate thesis, Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2016), [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjanz2wOaBAxVqa2wGHfRCCuEQFnoECAkQAQ&url=https%3A%2F%2Fdigilib.uin-suka.ac.id%2F23090%2F2%2F1220310011\\_BAB-I\\_IV-atau-V\\_DAFTAR-PUSTAKA.pdf&usg=AOvVaw0Ly9uV2WTXGPWhXaDOcRIM&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjanz2wOaBAxVqa2wGHfRCCuEQFnoECAkQAQ&url=https%3A%2F%2Fdigilib.uin-suka.ac.id%2F23090%2F2%2F1220310011_BAB-I_IV-atau-V_DAFTAR-PUSTAKA.pdf&usg=AOvVaw0Ly9uV2WTXGPWhXaDOcRIM&opi=89978449).

living expenses and mandatory wills regulated in laws and regulations, is not through the mechanism of Takzir. According to Jasser Auda, the difference with the research to be examined is in the perspective of maqasid sharia.

2. "Heirs of Children Out of Wedlock: The Perspective of Imam Shafi'i and KHI"<sup>10</sup> is a study by Azzubaili and Muhammad Diah. This study discusses the heirs of adulterous children from the perspective of Imam Shafi'i and KHI. In the survey, Imam Shafi'i's view was that unfaithful children do not have a sexual relationship with their biological father, so they can only inherit from the mother's side. Meanwhile, according to KHI, in this study, it was explained that adulterous children can only inherit from mothers and maternal siblings. However, after the Constitutional Court Decision Number 46 / PUU-VIII / 2010, the civil relationship of unfaithful children with their biological fathers can be recognized as long as they can be proven. The similarity in this study with research written by the researcher is that both discuss the rights that adulterous children should receive. However, the difference is that this study does not focus on exploring the civil law relationship between unfaithful children and their biological fathers. Instead, it analyzes *mandatory will* as an alternative solution for adulterous children.

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<sup>10</sup> Azzubaili and Muhammad Diah, "Ahli Waris Anak Di Luar Nikah Perspektif Imam Syafi'i Dan KHI," *Sarwah: Journal of Islamic Law*, no. 46 (2019): 1–14.

3. "Juridical Analysis of the Position of Inheritance Rights for Extramarital Children According to Islamic Law".<sup>11</sup> This study discusses the inheritance rights of children out of wedlock or adulterous children according to the KHI, which previously had no difference from positive law but became different after article 43 of the Marriage Law was canceled by the Constitutional Court, which gave inheritance rights to children resulting from adultery as long as it can be proven by the results of DNA examination so that it can be applied for determination to the District Court for non-Muslims and the Religious Court for Muslims. The existence of this difference does not change the provisions of Islamic Law. The similarity of this study is the protection of the rights of adulterous children, both in the form of subsistence and testamentary grants. The difference from this study is about the focus of the study, if in this study the direction of the study is the Compilation of Islamic Law, then the study to be written by the researcher focuses on MUI's Fatwa No. 11 of 2012 concerning the Position of Children Resulting from Zina and Treatment of Him.
4. *"Mandatory Will for Adultery Children, Analysis of The Compilation of Islamic Law from The Perspective of Maqasid Syariah Al-Syatibi"* is a research conducted by State Islamic University (UIN) lecturer Maulana Malik Ibrahim Malang. This study discusses the *obligatory will* for adulterous children in the KHI perspective of *maqasid sharia*,

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<sup>11</sup> Muhammad Fikri Wardhana and Mohamad Rafi'ie, "Analisis Yuridis Kedudukan Hak Waris Bagi Anak Luar Nikah Menurut Hukum Islam," *Justicia Journal*, No. 1 (2022): 73–84.

according to Imam Al-Syatibi. This study describes the compulsory intention for unfaithful children and explains the *maqasid sharia* according to Al-Syatibi. The similarity in this study is that both discuss mandatory *wills* for adulterous children. The difference is that this study is reviewed from KHI and *maqasid sharia according to Al-Syatibi, while the research to be examined only discusses mandatory wills for adulterous children from the perspective of maqasid sharia with the study of MUI's Fatwa Number 11 of 2012.*

5. "Implementation of *Mandatory Wills*" This study was written by Achmad Jarchosi. This study discusses the implementation of *mandatory wills that apply in Indonesia, and those who can get mandatory wills in Indonesia are adopted children, non-Muslim heirs, and unfaithful children.* This study is similar to research conducted by researcher who both discuss coercive wills for children who commit adultery. The difference is that this study examines mandatory *wills* for adulterous children from the perspective of *Maqasid Sharia* with the study of MUI's Fatwa Number 11 of 2012.
6. "Wills of Obligatory in the Perspective of Positive Law and Islamic Law: Analysis of Maqāṣid ash-Sharī'ah Jasser Auda"<sup>12</sup> research compiled by Azmi Zamroni Ahmad discusses the distribution of *mandatory will* from the perspective of positive law and Islamic law. The similarity of this study is that both discuss the *mandatory will* with

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<sup>12</sup> Ahmad, "Wasiat Wajibah Dalam Perspektif," 55-73.

the analysis of the maqasid sharia views of Jasser Auda. However, the object used in this study is different from the object to be studied, if the object of research is in general, then in this study, the object is the child of adultery.

To make it simpler and easier to understand the similarities and differences in this study, the researcher summarizes them in the following table:

Table 1 Previous Research

No	Researcher Identity	Heading	Difference	Equation
1.	Anif Rahmawati, Fatmawati Sukarno State Islamic University Bengkulu	Takzir in the Form of Living Expenses and Mandatory Wills (Study of MUI's Fatwa Number 11 of 2012 concerning the Position of Children Resulting from Zina and Treatment of Him)	<ul style="list-style-type: none"> <li>Mandatory will for adulterous children from the perspective of <i>maqasid sharia</i> on MUI's Fatwa Number 11 of 2012</li> </ul>	<ul style="list-style-type: none"> <li>Takzir and mandatory will for biological fathers against adulterous children Study of MUI's Fatwa Number 11 of 2012</li> </ul>
2.	Azzubaili and Muhammad Diah, State Islamic Institute (IAIN) Lhokseuma	Heirs of Children Out of Wedlock: The Perspective of Imam Shafi'i and KHI	<ul style="list-style-type: none"> <li>This study does not discuss the heirs of children out of wedlock from the perspective of Imam</li> </ul>	<ul style="list-style-type: none"> <li>This study discusses the rights that adulterous children should receive</li> </ul>

No	Researcher Identity	Heading	Difference	Equation
	we, Journal, 2019		<p>Shafi'i and KHI.</p> <ul style="list-style-type: none"> <li>This study does not discuss <i>mandatory will</i> as a solution for adulterous children</li> </ul>	
3.	Muhammad Fikri Wardhana and Mohamad Raf'ie Darul Ulum University, Jombang, Journal, 2022	Juridical Analysis of the Position of Inheritance Rights for Extramarital Children According to Islamic Law	<ul style="list-style-type: none"> <li>This study does not explain the difference in inheritance rights of children resulting from adultery after the cancellation of Article 43 of Law No. 1 of 1974 concerning Marriage by the Constitutional Court</li> <li>The focus of this research is not KHI but MUI's Fatwa Number 11 of 2012</li> </ul>	<ul style="list-style-type: none"> <li>This study raised the theme of the rights of children resulting from adultery</li> </ul>
4.	Zainul Arifin and Zaenul Mahmudi,	<i>Mandatory Will for Adultery Children,</i>	<ul style="list-style-type: none"> <li>This study does not contain an analysis of</li> </ul>	<ul style="list-style-type: none"> <li>Both studies discuss <i>mandatory wills</i> for</li> </ul>

No	Researcher Identity	Heading	Difference	Equation
	Maulana Malik Ibrahim State Islamic University (UIN) Malang, Journal, 2022	<i>Analysis of The Compilation of Islamic Law from The Perspective of Maqasid Syariah al-Syatibi</i>	IHL from the perspective of <i>maqasid Sharia</i> according to Al-Syatibi about <i>mandatory will</i> for adulterous children <ul style="list-style-type: none"> <li>This study discusses the <i>mandatory will</i> for adulterous children from the perspective of <i>maqasid sharia</i> with the study of MUI's Fatwa Number 11 of 2012</li> </ul>	adulterous children
5.	Achmad Jarchosi, State Islamic University (UIN) Sunan Kalijaga Yogyakarta, Journal, 2020	Implementation of <i>Mandatory will</i>	<ul style="list-style-type: none"> <li>This study does not discuss how the implementation of <i>mandatory will</i> in Indonesia for adopted children, non-Muslim heirs, and unfaithful children</li> <li>This study discusses mandatory</li> </ul>	<ul style="list-style-type: none"> <li>This study discusses mandatory <i>wills</i> for adulterous children</li> <li>The research methods used both use normative laws</li> </ul>

No	Researcher Identity	Heading	Difference	Equation
			<i>wills</i> for adulterous children from the perspective of <i>maqasid sharia</i> with the study of MUI's Fatwa Number 11 of 2012	
6.	Azmi Zamroni Ahmad, Ali Maksum Krapyak Student Islamic Boarding School Yogyakarta, Journal, 2018	Wills of Obligatory in the Perspective of Positive Law and Islamic Law: Analysis of Jasser Auda's Maqasid ash-Sharia	<ul style="list-style-type: none"> <li>The difference in this study is that the object used in the study does not discuss at all mandatory <i>wills</i> for adulterous children</li> </ul>	<ul style="list-style-type: none"> <li>The similarity in this study is that both discuss <i>mandatory will</i> with the analysis of maqasid sharia views of Jasser Auda</li> </ul>

## H. Structure of Discussion

The systematics of this research was made to facilitate the preparation and complement the development of material. The composition of the discussion in this study consists of 4 (four) chapters, which are as follows:

Chapter I: Introduction. This chapter will describe the background of the problem and why this research was conducted, namely, why *mandatory will* are used as a solution for adulterous children referring to MUI's Fatwa

No. 11 of 2012. This chapter is intended as a stage of knowledge and description of the problem and the initial step to contain a theoretical framework that will be developed in subsequent chapters. In addition, this section also explains the formation of problem formulations, research objectives, positive research values, research methods, previous research, and presentation structure. All of these components form the basis for a deeper dive into the exploration of this study.

Chapter II: Literature Review. In this chapter, there is an explanation of the problem formulation, research objectives, research benefits, research methods, previous research, and discussion systematics. This chapter serves as an initial stage to understand and describe the problems that will be described further, as well as the first step in forming a theoretical framework that will be developed in subsequent chapters.

Chapter III: Discussion. This chapter elaborates on the results of the analysis of the themes discussed in this study.

Chapter IV: Concluding. In this last chapter, the researcher will provide conclusions from the analyses described in the previous chapter. In addition, the researcher also wrote suggestions as a follow-up to this study.

## CHAPTER II

### LITERATURE REVIEW

#### A. Adultery Children

Zina is an act that is expressly forbidden by Allah SWT, as stated in QS. Al-Isra verse 32 as follows:

وَلَا تَقْرُبُوا الزَّيْنَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

*It means: "And do not approach adultery; adultery is a heinous deed. And a bad way."*

Adultery is considered a heinous act because it can interfere with the benefits of natural law in various aspects, such as the maintenance of bloodlines, protection of honor, avoidance of forbidden things, and the potential to lead to criminal acts.<sup>13</sup>

One of the consequences of adultery is the destruction of lineage, which will cause new problems, including the birth of a child out of wedlock or a child resulting from the affair. The adulterous child referred to here can be defined as a child born of an extramarital bond recognized according to religious norms. In addition, the child can also fall into the category of *jarimah* (criminal act) because it is born as a result of deliberate actions and carried out with consciousness. Children who should have a sexual relationship with their biological father and mother only have a sexual relationship with their mother.

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<sup>13</sup> Ibn al-Qayyim Al-Jauziyah, *ad-Da' wa ad-Dawa'*, Ter.Salim Bazemool (Jakarta: Qisthi Press, 2016), 1.

In reality, all children are born in a state of fitrah. This is in accordance with the words of the Prophet:

عَنْ عَبْدِ الرَّحْمَنِ بْنِ هُرْمُزٍ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، قَالَ: " كُلُّ مَوْلُودٍ يُوَلَّدُ عَلَى الْفِطْرَةِ، فَأَبَوَاهُ يُهَوِّدَانِهِ، أَوْ يُنَصِّرَانِهِ"<sup>14</sup>

It means: 'Abd al-Rahman ibn Hormuz al-'Araj narrated from Abu Hurairah (may Allah be pleased with him) that the Holy Prophetsa said: "Every baby is born in a state of fitnah, and its parents are Jews, or Christians."

The above hadith shows that every child is born in a holy condition, free from moral wrongs committed by his parents. However, unfortunately, he was born as a child of adultery committed by his parents, causing the child to get righteous punishment in the form of insults and ridicule from friends and the surrounding community.

In addition, in the provisions of Islamic inheritance, this adulterous child also does not inherit from his biological paternal line even though his biological father married his mother. From the absence of sexual relations between unfaithful children and their biological fathers, there are significant implications in various juridical aspects. The birth father's position as a separate individual results in the absence of income obligations and inheritance rights and creates several legal restrictions. Suppose the child of adultery is a woman, the biological father does not

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<sup>14</sup>An-Nu'man, *Musnad Abi Hanifa Riwayah Al-Haskafi*.

have permission to interact with her, nor is she eligible to be a guardian in the woman's marriage.<sup>15</sup>

## B. Will and Wills Obligatory

### 1. Definition of Will

In terms of will, it means a corroborated agreement or order.<sup>16</sup>

According to the term, a will is giving property after someone dies to someone else. In this case, there is a situation where the other person in question is not the heir. This situation relates to the principle that heirs should only accept a will if they obtain the consent of other heirs. This is by the hadith of Imam Abu Dawud (2846), which reads as follows:

حَدَّثَنَا عَبْدُ الْوَهَّابِ بْنُ نُجْدَةَ حَدَّثَنَا ابْنُ عَيَّاشٍ عَنْ شُرْحَبِيلَ بْنِ مُسْلِمٍ سَمِعْتُ أَبَا

أُمَامَةَ سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ

حَقَّهُ فَلَا وَصِيَّةَ لِرِوَارِثٍ

Meaning: Having told us Abdul Wahhab bin Najdah, having told us Ibn 'Ayyash, from Shurahbil bin Muslim, I heard Abu Umamah, I heard the Prophet sallallahu 'alaihi wasallam say: "Verily Allah has given rights to everyone who has rights, so there is no will for heirs."<sup>17</sup>

<sup>15</sup> Mardani, *Hukum Kewarisan Islam Di Indonesia*, (Jakarta: PT. Raja Grafindo Persada, 2014), 104.

<sup>16</sup> Nurwan Darmawan, *Hukum Kewarisan Islam*, (Abu Muslim, 2020), 1.

<sup>17</sup>"Hadith of Abu Dawud," *hadits.id*, accessed December 14, 2022, <https://www.hadits.id/hadits/dawud/2486>.

Probate law is *mubah* or permissible. In the context of inheritance, according to Islamic law, the limit on the amount of property that can be testified is a maximum of 1/3 (one-third) of the total property. If the amount of the will exceeds one-third, then this rule mandates the need for the consent of the other heirs.<sup>18</sup>

Wills will be considered valid if they are carried out by people who have *reached puberty*, are intelligent, and willed to the *pleasure of Allah*. In addition, the person who receives the will must also meet five criteria to be considered valid: Islam, reason, *puberty*, independence, and trustworthiness. In article 194, paragraph (1) of the KHI, it is stated that the person who will testify must be 21 years old, and there is no element of coercion in the will.<sup>19</sup> For more details, here are the provisions in the will<sup>20</sup>:

1. Al-Mushi, the heir, must be able to act freely without coercion and have real rights to the inheritance property.
2. Al-Musha lahu, the person who gets the will must be able to receive the will, the heirs must not be included in the beneficiary of the will, and the will obtained must not be misused for illegal purposes.
3. Al-Musha bihi is an inherited property. Inheritance objects here must be transferable. The will amount should be at most one-

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<sup>18</sup> Al-Qadi Abu Shuja' Ahmad ibn Al-Husayn Al-Ashfahani, *Warisan Dan Wasiat: Seri Fikih Sunnah Imam Syafi'i*, (Yogyakarta: Hikam Pustaka, 2021), 12.

<sup>19</sup> Anshori, *Filsafat Hukum Hibah Dan Wasiat Di Indonesia*, 95.

<sup>20</sup> Nur Aisyah, "Wasiat Dalam Pandangan Hukum Islam Dan BW," *El-Iqtishady* 1 (2019): 58.

third after deducting all debts. Because if it exceeds one-third, it will cut the rights of heirs.

4. Sighat is the content of the will that must be clear, concise, not confusing, and executed in front of at least two witnesses.

In principle, a will is a voluntary step, an action arising from personal will, no matter the circumstances. In the context of the interpretation of Islamic law, especially in the Compilation of Islamic Law (KHI), the concept of a will is defined as the act of giving or bequeathing an object to another party, including individuals or institutions, which will then be applied and take effect after the owner of the asset dies. The ruler and the judge were given the authority to require someone to provide a will.<sup>21</sup>

However, rulers or judges also have the power to compel someone to make a will under certain circumstances. Therefore, the concept of understanding *compulsory wills* was created as a step taken by rulers or judges in their role as state representatives. This action involves forcing or establishing a *mandatory will* for a deceased individual, addressed to certain parties, in the context of arranged situations. The concept of *compulsory wills arises* for two reasons: first, due to the reduced capacity of the testator in making decisions and the emergence of obligations through legal provisions or court decisions without regard to the wishes of the testator and beneficiaries

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<sup>21</sup> Mardani, *Hukum Kewarisan Islam Di Indonesia* 119.

of the will. The second reason is the similarity in the division of inheritance, where men receive double the share that women receive.<sup>22</sup>

## 2. Definition of *Mandatory will*

The term "*mandatory will*" emerged in Indonesia due to the combination of two legal systems: Islamic law, which does not recognize the adoption of children, and customary law, which provides equal treatment between adopted and biological children. Establishing *mandatory will* law in Indonesia drew inspiration from legal provisions in Egypt regulated in Law Number 71 of 1365 H and 1946 A.D. In summary, the conclusions of the law are:

- a. *The mandatory will* remains valid even if the previous testator does not testify it;
- b. *Compulsory wills* are for individuals who do not belong to the group of heirs, and they have the right to receive a *mandatory will* without requiring the consent of the heirs;
- c. The maximum limit is 1/3 part of the relic property.<sup>23</sup>

In addition, there is no regulation regarding mandatory wills for adulterous children in the KHI. KHI only regulates and mentions mandatory wills for adopted children against their adoptive parents or vice versa, the amount of property is the same as the regulations, not more than 1/3 part.<sup>24</sup> The IHL also reiterated that the adulterous child

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<sup>22</sup> Mardani, *Hukum Kewarisan Islam Di Indonesia*, 120.

<sup>23</sup> Anshori, *Filsafat Hukum Hibah Dan Wasiat Di Indonesia*, 99.

<sup>24</sup> Pasal 209, Kompilasi Hukum Islam.

only has an inheritance relationship with his mother and his mother's family.

Obligatory will refers to the view that a person is considered to have made a will according to Islamic law, even if no actual will is recorded. This view stems from the principle that if the law has established the obligation to make a will in a situation, then the existence or absence of a physical will does not legally affect the will's existence. This *principle of mandatory will* aims to create justice that is in line with public consciousness.<sup>25</sup>

The legal provisions of *this mandatory will* are based on the word of Allah in QS. Al-Baqarah verse 180, which reads as follows:

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةَ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ  
بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ

It means: "It is obligatory upon you when death is to take anyone among you, if he leaves the property, to testify to both parents and close relatives in a good way, (as) an obligation to the pious."

From this description, *mandatory will* have a solid purpose to regulate the distribution of justice in situations where conventional inheritance law does not fully meet the criteria of justice. In cases where the heir is related by blood to the testator but does not receive a share considered reasonable under inheritance law, a *mandatory will*

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<sup>25</sup> Anshori, *Filsafat Hukum Hibah*, 103.

appears as an alternative solution. Therefore, through the application of a compulsory will, there is the potential for them to receive their due rights in the division of the testator's estate.

### **C. Indonesian Council of Ulama (MUI) and its Istinbath Method**

#### **1. Position of The Council of Indonesian Ulama (MUI)**

The Council of Indonesian Ulama (MUI) is a community religious institution that serves as a forum for Islamic scholars and scholars in Indonesia, which was established on July 26, 1975.<sup>26</sup> MUI is a non-governmental organization that plays a role in drafting Islamic legal views (fatwas) and providing guidance in various aspects of life in Indonesia. MUI has the status of a non-governmental organization recognized by the Indonesian government.<sup>27</sup>

As a non-governmental institution that does not have legal power in Indonesia's system of laws and regulations, MUI's position in the context of law and government is visible. This means that fatwas or statements issued by the MUI have no legally binding legal force. In the Indonesian legal system, only laws made by the government and passed by the legislature have the power of law.

However, the MUI has a leading role as Indonesia's national council of Ulama, responsible for providing guidance and

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<sup>26</sup> Surahman Amin, "Model Kepemimpinan Majelis Ulama Indonesia (MUI): Sebuah Tawaran Untuk Masa Depan Kepemimpinan Transformatif Di Indonesia," *Transformasi* No. 1 (2020): 2.

<sup>27</sup> Yudi Widagdo Harimurti et al, "The Role of Majelis Ulama Indonesia and Its Fatwas within The Indonesian Governance System," *ICETLAWBE*, No. 17 (2020), <https://doi.org/10.4108/eai.26-9-2020.2302535>.

interpretation of Islamic law in various aspects of life. This includes food laws, marriage, worship, and many other parts of Muslims' daily lives.

The Council of Indonesian Ulama (MUI) has two types of media used to provide direction for the community: discourse and fatwa. Discourse comprises *tausiyah*, *tadzkirah*, *amanah*, attitude statements, appeals, and thoughts. While fatwas play an essential role, Wael Hallaq states that fatwa plays a massive role in the development and gradual change of Islamic substance law.<sup>28</sup>

The Council of Indonesian Ulama, often called MUI, has its role when viewed from its identity as *waratsatul anbiya'*, namely:

- a) The title "*waratsatul anbiya'*" or *heir of the prophets*, indicates that the ulama was considered to inherit the knowledge and teachings of the prophets. This confirms the role of scholars in continuing and maintaining religious teachings and providing guidance to the ummah.
- b) As the giver of fatwas or "*Muftis*", clerics can provide Islamic legal views on various contemporary issues and problems. This shows that scholars have deep knowledge of Islamic law and can guide the ummah in making decisions based on religious teachings.

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<sup>28</sup> Mohammad Baihaqi, "Legitimasi Majelis Ulama Indonesia (MUI) Dalam Kontestasi Islam Politik Mutakhir," *Politea*, No. 2 (2019): 29.

- c) The role of scholars in society can be explained through the concept of being a guide and servant of the ummah, which in Arabic is referred to as "*Ra'iy wa Khadim al-Ummah*".
- d) The ulama's primary duties also include the enforcers of *amar makruf* and *nahi mungkar*, which means they play a role in encouraging goodness and preventing evil in society.
- e) One of the critical roles of the cleric was as a pioneer of the renewal movement, or "*al-Taajdid*" in Arabic. Ulama played an important role in renewing religious understanding and practice.
- f) As the originator of the movement for improving the ummah or "*Ishlah al-Ummah*," scholars are responsible for leading efforts for improvement and renewal in society to achieve better welfare and justice.<sup>29</sup>

Although the MUI has a vital role in guiding Islamic law, it does not have the right to determine its official legal status in the Indonesian legal system. Because the legal structure in Indonesia is based on the country's constitution and laws and regulations made by the government and passed by the legislature, although the MUI is critical in providing religious guidance, it cannot create a hierarchical legal system in Indonesia.<sup>30</sup>

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<sup>29</sup> Amin, "Model Kepemimpinan Majelis Ulama Indonesia (MUI): Sebuah Tawaran Untuk Masa Depan Kepemimpinan Transformatif Di Indonesia," 5.

<sup>30</sup> Harimurti et al, "The Role of Majelis Ulama Indonesia and Its Fatwas within The Indonesian Governance System."

## 2. Definition of Fatwa

The term fatwa of Arabic origin is often associated with Islamic law, indicating that it is a legal opinion. However, in the hierarchy of Islamic law, fatwas are not the primary source of law. Fatwas are the result of human thought obtained through the methods established in jurisprudence and are part of the process of *ijtihad*, which is the effort of scholars to produce legal interpretations based on religious principles.

The opinion of legal experts in judicial practice in Indonesia can be referred to as a fatwa. In judicial proceedings, judges consider views on Islamic law, known as fatwas. This fatwa is vital in assisting judges in deciding on various issues. In carrying out its functions, fatwas are based on legal sources in the national legal system. These sources of law include five primary elements, namely laws, customs, judges' decisions (jurisprudence), treaties, and doctrines (opinions of jurists). Thus, fatwas became an essential legal consideration in the judiciary context.<sup>31</sup>

Opinions or advice in the form of fatwas are delivered by Islamic jurists who are members of an organization, such as the Council of Indonesian Ulama, Muhammadiyah, Nahdlatul Ulama, Persis, and other institutions. The position of opinion given by Islamic jurists through this organizational forum is considered equivalent to

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<sup>31</sup> Pelu, "Kedudukan Fatwa Dalam Konstruksi," 170.

doctrine in the field of positive law. The correlation between fatwas and formal legal sources in national legal systems can be seen because fatwas have a significant influence in shaping views and interpretations of the law.

From the determination of several conditions that a mufti must meet in giving fatwas by the scholars of *ushul fiqh*, it can be concluded that two main aspects must be considered to emphasize that the principle of accuracy in fatwas can be achieved, namely:<sup>32</sup>

- a. Leave the business of producing laws or fatwas to those who are experts and charismatic.
- b. The accuracy of fatwa givers who are equipped to issue a law.

The submission of fatwa affairs to professionals ensures that a fatwa is requested from those required to become a mufti. The scholars laid down several conditions of the mufti, among which were the following:<sup>33</sup>

- 1) A mufti must be Muslim. It is a fundamental requirement because the mufti informs about Allah's rules and places the law in truth. In this case, a mufti must be a Muslim who believes in Allah and His Messenger.

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<sup>32</sup> Abdul Manan Ismail and Mek Wok Mahmud, *Dawabit Al-Fatwa Fi Majlis Al-Ifta' Al-Watani Al-Malizi* (Gombak: IIUM Press, 2017), 118-134.

<sup>33</sup> Othman ibn 'Abdul Rahman Abu 'Amru Taqiy al-Din Ibn al-Salah, *Adab Al-Mufti Wa Al-Mustafti* (Madinah: Maktabat al-'Ulum wa al-Hikam, 2002), 94-97.

2) A mufti should ideally have a mixed background, especially those with intelligence and maturity. It is also a simple requirement as it allows one to understand *the khitab* well. Based on the fact that lunatics and children have limitations in understanding and reasoning, it can be concluded that they cannot achieve *sharia* perfectly.

Like doctrine, fatwas are also often used as reinforcement or legal basis for judges in Religious Courts in Indonesia, fatwas used are fatwas that the Supreme Court and the Religious Courts have decided. Looking at the sociological substance, the distinction between fatwas and doctrines becomes clear. Fatwas, as a result of the elaboration of Islamic legal sources such as the Quran and Hadith, have absolute legal powers that are followed and binding for Muslims. The function of fatwas in providing explanations and answers to legal questions is seen in this context as a technical description of *nash-nash* of a general nature.<sup>34</sup>

### 3. Methods and Legal Istinbath Fatwa MUI

In determining its fatwa, MUI uses the method that has been regulated in the Regulation of the Council of Indonesian Ulama Organization concerning Guidelines for Determining Fatwas of the Council of Indonesian Ulama, which was stipulated on June 26, 2016.

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<sup>34</sup> Pelu, "Kedudukan Fatwa Dalam Konstruksi," 172.

Through the Fatwa Commission, MUI generally establishes fatwas on legal (religious) issues. There are two possible issues set by the Fatwa Commission, namely:

- a. Consider questions or requests from various parties, such as the community, government, institutions/organizations, or from MUI itself;
- b. Through analysis of problems arising from changes in people's lifestyles, advances in science and technology, and cultural arts.<sup>35</sup>

MUI has the authority to present experts or experts related to the issue under study before issuing fatwas. The procedures stipulated in MUI's Fatwa Decree Number Istimewa/VII/2012, dated June 1, 2012, regulate the Guidelines and Procedures for Determining Fatwas of the Council of Indonesian Ulama used by MUI to determine fatwas are as follows:

- a. Fatwas stated by MUI is not carried out by individuals themselves but by several individuals with qualified qualifications in dealing with the problems raised. In *Ushul Fiqh*, this method is called the collective *ijtihad (jama'iy)*.
- b. The Fatwa Commission showed a responsive and initiative reaction, even an anticipatory attitude to issues that are part of its territory and responsibility.

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<sup>35</sup> Moh Mundzir, "Metode Penetapan Fatwa Majelis Ulama Indonesia (Analisis Penggunaan Qawaid Fiqhiyyah Sebagai Dalil Mandiri Dalam Fatwa)," *The Indonesian Journal of Islamic of Islamic Law and Civil Law*, no. 1 (2021): 3.

- c. Article 3 states that the MUI's Fatwa Commission uses the Quran, Hadith, *Ijma'*, *Qiyas*, and *mu'tabar postulates* to determine fatwas. This proves that the MUI's Fatwa Commission still holds the argument used by *Jumhur Ulama* as the primary reference.
- d. Article 4, paragraph (2) also states that fatwas must be argumentative, contextual, applicative, and moderate. It is contentious because it shows how much the fatwa considers the situation and conditions under which it will be applied. Then, it is contextual because this will direct the effectiveness or failure of the fatwa while avoiding extreme impressions. Fatwas that need to pay attention to context will encounter difficulties in their implementation, and fatwas that are not moderated will be resistant to contradiction.
- e. Before a fatwa is enacted, it is first reviewed comprehensively to obtain a complete description of the object of the problem and the formulation of the problem, this involves the emerging social impact of religion and the main aspects of various matters related to law (sharia principles) and related issues. This is by the application of Article 5, which leads to the following stages:
  - 1) A comprehensive study is conducted before the fatwa to obtain a complete picture of the object of the problem, including the socio-religious impact and relevant legal aspects.

- 2) This study includes an analysis of the views of past *mujtahid fuqaha*, madhab imams, and respected scholars, as well as related fatwas and opinions of jurists.
- 3) To be fatwa, Comprehensive studies may involve commission members or competent experts in fields related to the issue.

After a comprehensive study, the problems to be fatwa are grouped into several types,<sup>36</sup> namely as follows:

1. Fatwas are enforced on matters with clear laws and foundations and delivered without change.
2. On issues that have different views of the madhhabs, the steps taken are:
  - a. Fatwas are produced through attempts to reach agreement between different views using the method of *al-jam'u wa al-taufi*;
  - b. If agreement cannot be reached, the fatwa is determined through comparison with the principles of the *muqaran jurisprudence*.
3. When faced with issues that do not have a legal view recognized in the madhhab or by the scholars, fatwas are made based on collective ijtihad using the *bayani* and *ta'lili*

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<sup>36</sup> "PERATURAN ORGANISASI MAJELIS ULAMA INDONESIA Nomor : Kep-.../MUI/.../2015," [https://mui.or.id/wp-content/uploads/2020/07/5.-PO-Pedoman-Penetapan-Fatwa-OK\\_68-86.pdf](https://mui.or.id/wp-content/uploads/2020/07/5.-PO-Pedoman-Penetapan-Fatwa-OK_68-86.pdf).

*methods, as well as the process of establishing law followed by scholars of the madhab.*

4. When there are differences of opinion among the members of the Commission during the meeting. No agreement is reached in the determination of fatwas. Differences of views are expressed by arguments explained individually, accompanied by their experiences, with the most careful choice (*ihtiyath*) and efforts to avoid disagreements (*al-khuruuj min al-khilaf*).

The Fatwa Commission carries out the determination of fatwas in MUI. In the process, there are several legal bases in the conclusion of fatwas that need to be considered, as mentioned in Article 2 of the Guidelines for Determining Fatwas of the Council of Indonesian Ulama Number: U-596 / MUI / X / 1997<sup>37</sup>, namely as follows:

1. The decisions in the fatwa should refer to the teachings of the Quran and the purported guidance on the actions of the Prophet and should also be in line with the welfare of the Ummah.
2. If a matter is not explained in the teachings of the Qur'an and the teachings prescribed by the Prophet, as outlined in Article 2, paragraph 1, then the fatwa decision must be by the principles of *Ijma'*, *Qiyas*, and accepted opinions and

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<sup>37</sup> Pedoman Penetapan Fatwa Majelis Ulama Indonesia Nomor: U-596/MUI/X/1997.

based on other legal propositions, such as *istihsan*, *masalih mursalah*, and *sadd az-zari'ah*. In making fatwas, it must also pay attention to the general benefit (*Masalih 'ammah*) and the objectives of sharia law (*maqasid al-shari'ah*).

3. In making fatwa decisions, it is necessary to review the opinions of scholars and legal propositions related to the situation discussed.
4. Experts' opinions on the issue are the primary consideration when making fatwa decisions.

MUI uses the *bayani method* in establishing laws, which means they carry out legal distinctions in terms of language to the text of the Quran and Hadith. In its fatwa on the position of adulterous children and their treatment, the MUI refers to several verses of the Qur'an (Q.S al-Furqan (25): 54, 69-69, Q.S al-Isra' (17): 32, Q.S al-Ahzab (33): 4-5, Q.S an-Nisa (4): 23, Q.S al-An'am (6): 164, Q.S az-Zumar (39): 7) and hadiths from reliable sources such as HR. Bukhari Muslim, HR. Abu Dawud, HR. Turmudzi, HR. Ahmad, and Abu Dawud. In addition to the *Bayani* method, MUI also uses the *istislahi* method or seeks benefits not directly mentioned in the text of the Quran and Hadith. This method is known as the *maqasid method of sharia mursalah and maqasid sharia*, which focuses on the benefits and objectives of the *Shari'a*. By combining these two methods, MUI seeks to provide comprehensive fatwas and pay attention to aspects of

use in understanding and applying Islamic laws regarding the position of adulterous children and their treatment.

One of MUI's responsibilities as an organization is to provide answers (fatwas) for the ummah (Islam), not only to answer the substance of the law but also to maintain the religious impact it causes. In the context of *ijtihad*, there are efforts to support spiritual implications, as seen in the use of the *sadd az-zhari'ah method* and the rules of jurisprudence by MUI in its operations. This principle is further strengthened by the content of article 6, paragraph (4), which emphasizes that in determining fatwas, consideration of public benefit and *maqasid sharia* must be prioritized.<sup>38</sup>

#### **D. *Maqasid sharia***

##### **1. Definition of *Maqasid sharia***

Islamic jurists succeeded in establishing an Islamic legal system and formulating a method of legal discovery called *maqasid sharia*. The concept of *maqasid sharia* emerged and became a significant topic of discussion in the 5th century Hijri. This concept has undergone a conceptual evolution from "value" to approach. As a value, *maqasid sharia* is an integral part of the study of *maqasid sharia* *mursalah*, *istihsan*, and *qiyas* in the science of the origin of jurisprudence. But, over time, the survey of *maqasid sharia* has

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<sup>38</sup> Mundzir, "Metode Penetapan Fatwa Majelis Ulama Indonesia," 4-5.

increasingly confirmed its importance in establishing Islamic law, especially in response to contemporary legal issues.

The pioneer figure in the study of maqasid sharia was Abu Ishaq ash-Shatibi. In his day, the concept of maqasid sharia had developed its conceptual structure in three categories: *daruriyah*, *hajiyyah*, and *tahsiniyah*.<sup>39</sup> These three categories must always prioritize the welfare of the five basic principles: protecting religion, life, reason, property, and offspring. The development of maqasid studies matured when Thahir Ibn Assyria took over, where maqasid was considered a principle in ijtiḥad and became an approach in ijtiḥad. Moreover, maqasid sharia is no longer limited to five essential aspects of human needs but also includes universal values such as tolerance, equality, democracy, and human rights.

Wahbah al-Zuhaili defines maqasid sharia as the values and objectives of sharia implicit in all or most of its laws. These values and goals are considered the basis and essence of Shari'a, expressed by Shari'ah in every provision of law. Furthermore, according to Yusuf Qardawi, *maqasid sharia* is defined as the goal that guides the texts and laws of sharia prevailing in human life. This includes commandments, prohibitions, and permissible things for individuals, families, congregations, or people, which are the purposes behind establishing these laws.

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<sup>39</sup> Faiqotul Himmah Zahroh, "Pandangan Maqasid Al-Syari'ah (Hukum Islam) Perspektif Al-Syatibi Dan Jasser Auda," *Al-I'jaz : Jurnal Studi Al-Qur'an, Falsafah Dan Keislaman*, No. 1 (2021): 21, <https://doi.org/10.53563/ai.v3i1.46>.

From some of the definitions of *maqasid sharia* interpreted by some of the experts above, it can be concluded that the understanding of *maqasid sharia* is a concept in Islamic law that refers to the main goals and intentions of *sharia* or Islamic law, which includes protection of five basic principles, namely religion, soul, reason, property, and heredity. The purpose of *maqasid sharia* is to ensure that Islamic law accommodates the needs and values of society and fulfills the moral goals embodied in *Shari'a*.

The study of *maqasid sharia* theory in Islamic law has several important considerations<sup>40</sup>:

- a. Islamic law is the law that originates from Allah's revelation and is intended for Humanity

Islamic law is not just an ordinary law derived from divine revelation. Therefore, Islamic law has a profound spiritual and moral dimension. The study of *maqasid sharia* helps us understand and apply these laws to achieve religious purposes.

- b. Historical Aspect

The *maqasid theory of sharia* has been an essential part of the history of Islamic law. The Prophet SAW, his companions, and the mujtahidin of the next generation have discussed and applied this theory in the development of Islamic law. This shows the

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<sup>40</sup> Zahroh, "Pandangan Maqasid Al-Syari'ah," 22.

importance of the *maqasid sharia* as an inseparable part of the legacy of Islamic law.

c. Keys to the Success of Ijtihad

*Maqasid sharia* became an essential foundation for mujtahid (Islamic jurists capable of ijihad) in determining law. Knowledge of *maqasid sharia* enables them to understand the intent and purpose behind Islamic laws. Thus, every problem that arises in various aspects of life, such as economic, social, and political, can be returned to the purposes of Islamic law. This helps ensure that the laws established are by the primary definition of the Shari'a, which is to create justice, welfare, and benefit for humanity. In other words, the *maqasid of sharia* is the core guide for mujtahids in their ijihad to adapt Islamic law to the context of the time and place.

The difference between *maqasid sharias* lies in their focus, whereas classical maqasids emphasize protection and maintenance, developed by al-Shatibi. On the other hand, contemporary maqasid concentrates more on development and rights, which Jasser Auda introduced. The concept of *maqasid sharia presented by Jasser Auda created a new paradigm in understanding maqasid sharia in the context of Islamic legal philosophy.*

## 2. *Maqasid Sharia* According to Jasser Auda

One Muslim intellectual figure who actively championed the application of *maqasid sharia* as an approach to analyzing Islamic legal issues was Jasser Auda, an Egyptian scholar. He founded and led the Al-Maqasid Research Centre in the Philosophy of *Islamic Law* (Markaz Dirasat Maqasid Syariah *al-Islamiyah*) based in London, England. This institution studies Jasser Auda's views on *Maqasid Sharia* as a philosophy of Islamic law with a Systems Approach as Islamic Epistemology to deal with the effects of globalization.

Several main reasons support this relevance. First, Jasser Auda is a contemporary intellectual active in an era where globalization is flourishing. Secondly, despite being of European origin, he has a traditional Islamic education background from a region with a majority Muslim population. Third, his role as a representative of the intellectual voice of the Muslim minority living in the Western, non-Muslim majority makes him a decision-maker who must adapt to the reality of the new world in which he lives and moves without always having to rely on religious guidance or edicts from Muslim-majority areas.<sup>41</sup>

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<sup>41</sup> Ari Murti and Toufan Aldian Syah, "Menelaah Pemikiran Jasser Auda Dalam Memahami Maqasid Syariah," *CITIZEN: Jurnal Ilmiah Multidisiplin Indonesia*, No. 2 (2021): 61, <https://doi.org/10.53866/jimi.v1i2.9>.

Jasser Auda divided *the maqasid of Sharia* into three categories<sup>42</sup>, namely:

a. *Maqasid al-'Ammah*

*Maqasid al-'Ammah* refers to a legal orientation involving all universal benefits, such as justice, equality, tolerance, ease, etc. It covers six protection aspects, including the protection of religion, soul, property, reason, heredity, and honor. According to the understanding already described, compulsory wills are seen as transactional acts related to property. They can be described as part of the legal orientation about property protection. Therefore, in addition to protecting and supervising property, development must also be a consideration. In the context of this universal orientation, the concept of property protection and development can be expanded in scope. If initially, in classical Islamic law, the focus was only on the protection of property and the punishment for theft of it, then in the contemporary era, the scope of this system of protection of property needs to evolve into economic development, poverty reduction efforts, or the achievement of general public welfare based on empirical data.

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<sup>42</sup> Azmi Zamroni Ahmad, "Wasiat Wajibah Dalam Perspektif Hukum Positif Dan Hukum Islam : Analisis Maqāsid Asy-Syarī'ah Jasser Auda," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum*, No. 1 (2018): 62, <https://doi.org/10.14421/ajish.v52i1.945>.

b. *Maqasid al-Khassah*

Particular Orientation (*Maqasid al-Khassah*) refers to legal purposes related to specific discussions, such as family law regulations relating to child welfare or economic law concerning monopoly protection. *Maqasid al-Khassah* is a concrete application of *Maqasid al-'Ammah*. In the context of a compulsory will, its purpose is to preserve the property owned by the testator so that it can be distributed to those entitled to receive it. A will is one of the unique ways of safeguarding property within the framework of property protection in general.

c. *Maqasid al-Juz'iyah*

Specific Orientation (*Maqasid al-Juz'iyah*) refers to a particular law's goals, such as encouraging honest behavior, reducing difficulties in fulfilling obligations, providing food assistance to needy people, etc. Hierarchically, *Maqasid al-Juz'iyah* is a derivative or applicative form of *Maqasid al-Khassah*. In practice, *Maqasid al-Juz'iyah* will be more detailed and specific than *Maqasid al-Khassah* itself. In the context of a mandatory will, its purpose is to preserve the testator's estate so that it can be given to the party entitled to receive it. A mandatory will is a concrete form of this particular purpose. Although originally, a will in Islamic law was

encouraged, a mandatory will has the nature of being enforceable. This is because the beneficiary of the mandatory will is not the heir entitled to the inheritance. However, they are considered worthy to receive part of the estate from the testator for specific reasons.

Through his work entitled *Maqasid Al Shariah as Philosophy of Islamic Law: A System Approach*, Jasser Auda made two approaches: the first to time and history and the second to the system approach. The first step taken by Jasser Auda was to apply historical and time methods to shape the map of the development of Islamic law from the time of Traditional Islam to Modern Islam and Postmodern Islam.<sup>43</sup> This analysis discovered variations in epistemological thought patterns in Islamic legal science and their impact on diverse ethical attitudes.

a. Traditional Islamic Era

There are four variants of the approach, the first of which is *Scholastic Traditionalism*, which firmly adheres to one of the traditional schools of fiqh as the highest source of law and only allows ijihad when there are no more legal provisions that can be taken from the school adhered to. Second, *Scholastic Neo Traditionalism*, which is more open to more than one school as a reference to law, without limitation to one particular school. Third, *Neo Literalism*, which follows only one specific school. Finally,

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<sup>43</sup> Murti and Shah, "Menelaah Pemikiran Jasser Auda," 62.

*Ideology-Oriented Theories*, whose characteristic is rejecting democracy and the democratic system because it is considered fundamentally incompatible with Islamic principles.

b. Islam Modern

Thinkers of this period generally have similar characteristics, namely that these thinkers sought to combine the knowledge they gained from traditional Islamic education with the understanding and ideas they gained through Western education. They see that this combination can produce a more relevant approach to responding to the challenges of modern times. In doing so, they created new concepts and thought strategies to renew the understanding of Islam.

In addition, these thinkers also sought to develop new schools of interpretation that were in line with the science and rational thought that grew in the modern world. They wanted their performances to be more coherent and relevant to the demands of the times. In doing so, they present a more inclusive and in-depth understanding of religion and are more open to science and discoveries. Overall, the efforts of these thinkers reflect their commitment to bridging the gap between Islamic tradition and modern progress, as well as making valuable contributions to the development of Islamic thought that is more inclusive, relevant, and appropriate to the demands of the times.

c. Islam Postmodern

This approach generally relies on the deconstruction method as the primary tool. In this context, deconstruction refers to the attempt to detail, examine, and tear down the structure and authority of the Nash (classical texts in Islam). This approach also adopts semiotic theory, which explains that readers do not always lead directly to reality, so deeper interpretation and understanding are needed.

In addition, this approach also takes a historical approach to the understanding of Islamic law, which means they look at the development of Islamic law from a historical point of view. They also refer to the Mu'tazilite school as the theoretical foundation supporting their interpretation.

3. *Dimensions of Maqasid Sharia* According to Jasser Auda

After examining Islamic legal thinkers' various methods and approaches, which can be categorized as traditionalism, modernism, and postmodernism, Jasser Auda proposed a second approach involving a systems approach. This approach aims to establish a new frame of mind in the development of Islamic law in the contemporary era. Jasser Auda identifies six epistemological characteristics in Islamic law on which this approach is based:<sup>44</sup>

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<sup>44</sup> Murti and Shah, "Menelaah Pemikiran Jasser Auda," 61.

a. Cognition (*Cognitive Nature*)

Within the framework of Islamic theological thought, fiqh results from a process of human reasoning and reflection, known as *ijtihad*, on *nash* texts (Qur'an and *hadith*) to understand their hidden meanings and practical implications. Fiqh scholars and *mutakallimun* (Islamic theologians) agree that Allah cannot be considered a "faqih" because nothing is hidden from Him. Therefore, fiqh is the result of human understanding and can have weaknesses and shortcomings. In the context of the contemporary philosophy of science, it is recognized that science, including religious concepts and theories compiled by *fuqaha* and scholars, can contain misunderstandings and inaccuracies. Therefore, the understanding of fiqh at a certain period, a certain level of education, the level of human literacy in a particular era, and the development of science can be debated and can change.

More specifically, distinguishing between the revelations in Qur'anic verses and the *ulama* or *fuqaha*'s interpretation of those verses is often tricky in the more classical traditions of Islamic epistemology. For example, in the context of *ijma* (consensus of scholars), although there are significant differences in *ijma* decisions, some

scholars consider it a qat'i (definite proposition), and even rejecting ijma is regarded as an infidel act. However, Jasser Auda has a different view, namely that ijma is not an independent source of law but only a consideration mechanism used by various parties in policymaking.

b. Wholeness

Systems theory supports the idea that any cause-and-effect relationship, in reality, should be understood as an integral part of the broader picture of reality itself. This concept encourages the integration of a holistic and systemic mindset into the foundations of an understanding of Islamic law. This approach significantly benefits the Islamic philosophy of law, as it allows the development of a broader and inclusive view.

In the context of Islamic law, applying systemic thinking allows the development of a point of view capable of considering, reaching out, and covering aspects that may not have been thought of before. This means that Islamic law is viewed from a cause-and-effect point of view and within a broader framework that considers the interrelationships between the various elements in the legal system.

By applying a systems approach, the Islamic philosophy of law can be more responsive to the times, accommodate complexities in social and moral realities, and bridge the gap between traditional legal understandings and the demands of the contemporary world. In other words, the systemic approach allows for a more contextual and relevant knowledge of Islamic law by elevating a more profound and comprehensive quality of thought.

c. *Openness (Self Renewal)*

Systems theory distinguishes between open and closed systems. In the context of Islamic law, the relevant procedure is available. Throughout history, all schools and most jurists have agreed that *ijtihad* is essential in Islamic law. Nash (Islamic legal texts) have limitations, while the events and situations that arise in society are very diverse.

The mechanisms of *openness* and *self-renewal* in Islamic law depend on two factors. First, the cognitive, cultural factor is the human frame of mind and understanding of reality related to the outside world. For example, in Islamic law, the concept of "*urf*" is used to accommodate or accept cultural differences and customs of different societies from Arab societies. Second is self-

renewal through a philosophical approach that proposes that Islamic jurists could also benefit from Greek philosophical thought.

In other words, an open and self-renewing understanding of Islamic law is based on integrating a frame of mind relevant to reality and available to interdisciplinary thinking. This allows Islamic law to remain relevant and adaptive in the face of the challenges and changing times.

d. *Interrelated Hierarchy*

In this context, Jasser Auda uses *concept-based categorizations* to apply this method to the basic principles of ushul fiqh (basic principles of Islamic law). This approach has the advantage of being integrative and systemic, which means it integrates various concepts and aspects of the Islamic legal system. The images used in this method involve judgment as true or false and include multi-dimensional groups of criteria. In other words, a legal conclusion is not based solely on a single parameter but considers a wide array of related factors and dimensions.

One important implication of this method is that both issues that fall into the categories of *daruriyat* (basic

needs), *hajiyyat* (desired conditions), and *tahsiniyyat* (needs of beautification or refinement nature) are considered to have equal importance. This means that in legal judgment, not only issues relating to basic needs take precedence, but also needs of a beautification and refinement nature are considered equally important. Thus, this method provides a more inclusive approach to evaluating issues of Islamic law, considering various aspects and interests in society.

e. *Multidimensionality*

In a religious context, systematic analysis shows that the mindset often used in traditional schools of Islamic law is usually limited to a more than one-dimensional approach. This method only focuses on one factor in a case, so often, the fatwas given are based on only one single proposition. Jasser Auda argues that to overcome this problem, contemporary fiqh scholars should turn to a *maqasid* frame of mind, which prioritizes texts considering existing social conditions rather than simply assuming that one text contradicts another. Auda also encourages readers to evaluate and apply a multidimensional approach to Islamic legal theory in the contemporary era to avoid overly simplistic views.

f. *Purposefulness/Maqasid-based approach*

The culmination of this systems approach is the existence of purpose or *purposefulness*, especially in the context of Maqasid theory. Maqasid theory is a contemporary project that aims to develop and reform Islamic law, including attempts to design a new paradigm in the modern era. To achieve this goal, the methodology that becomes an essential foundation involves the principles of rationality, benefit, justice, and morality. This effort is expected to significantly contribute to developing the theory of usul fiqh, which is the basis of Islamic legal thinking.

From the description above, *Maqasid Sharia* can be a valuable foundation for developing fair solutions and by the principles of Islamic law. *Maqasid Sharia* stresses the importance of protecting five basic principles, including heredity. As a solution to the inheritance of adulterous children, the approach that can be taken is to combine the concept of *Maqasid sharia* with mandatory wills. A compulsory will is a form of will that must be enforced to ensure that the rights of children born from adultery are recognized and protected. In this case, a mandatory will can be used to draw up a legal agreement governing the rights and obligations of biological parents towards adulterous children, including in the case of

inheritance. Thus, the principles of *Maqasid sharia*, such as the protection of offspring, can be carried out by carrying out a mandatory will, so that the rights of the child remain protected within the framework of just Islamic law and based on the moral and ethical objectives of the Shari'a.

## CHAPTER III

### DISCUSSION

#### A. The Reason for Fatwa MUI Number 11 of 2012 Makes *Mandatory Will* as an Inheritance Solution for Adultery Children

MUI's Fatwa Number 11 of 2012 concerning the Position of Children Resulting from Zina and Treatment Against It stipulates that children born from adultery are given an equal position with children born in legal marriages. However, the fatwa also states that adulterous children do not have inheritance rights from their biological fathers. Even so, the birth father still has to bear the responsibility for the child. This is realized by sanctioning the biological father to meet the needs of his child through the allowance of a certain amount of property through a mandatory will when the father dies.<sup>45</sup>

Based on the brief description that has been explained, it can be seen that the things that underlie MUI's Fatwa Number 11 of 2012 concerning the Position of Children Resulting from Zina and Treatment of It make *mandatory wills* as a solution for inheritance for adulterous children, namely:

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<sup>45</sup> Iga Syukrillah Hendrawan, "Kedudukan Waris Anak Di Luar Nikah ( Studi Komparasi Antara Putusan Mahkamah Konstitusi Dengan Fatwa Majelis Ulama Indonesia )," *Jurnal Inklusif*, No. 1 (2019): 55, [https://www.syekhnujati.ac.id/jurnal/index.php/inklusif/article/download/3743/pdf\\_3](https://www.syekhnujati.ac.id/jurnal/index.php/inklusif/article/download/3743/pdf_3).

## 1. The position of the adulterer child<sup>46</sup>

The position of children resulting from adultery, as stated in MUI's Fatwa Number 11 of 2012, is a statement that shows recognition of the rights and legal status of children born from the affair. In the fatwa, the MUI expressly recognizes that children born due to adultery have an equal standing with children born in legal marriages. That is, they have equal rights in terms of legal protection and social security and recognition as equal citizens with children born into legal marriages.

This recognition reflects the efforts taken by the MUI to minimize discrimination against children who have no control over their birth situation. Children of adultery do not choose to be born in such conditions and should not be discriminated against. It also aims to protect children's fundamental rights, such as the right to identity, education, and well-being, so that they can grow and develop in a safe and fair environment.

By recognizing the equal standing between adulterous and legitimate children, the fatwa provides a more equitable legal basis for these children in dealing with the social challenges and situations they may experience. It is also a positive step in ensuring that Islamic law is applied to respect

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<sup>46</sup> Hendrawan, "Kedudukan Waris Anak Di Luar Nikah," 59.

the principles of justice and the protection of human rights, especially for children in difficult situations.

In Islamic law itself, it considers child protection as one of the primary responsibilities. Islamic law seeks to prevent children from being harmed, abused, or forced into unwanted situations. Child rearing, according to the view of Islamic law, is carried out through three aspects<sup>47</sup>:

- a. Efforts to protect the process of child development begin with actions to prevent marriage between individuals with family relationships.
- b. The maintenance of the child's life, life, and future is carried out through rules about the obligations of parents towards their children.
- c. Legal protection and hereditary status of children are guaranteed by complying with the requirements that must be met in a valid marriage.

As such, this fatwa reflects an effort to respect the rights and dignity of adulterous children in a society based on the values of justice and humanity. This is by what is stated in MUI's Fatwa Number 11 of 2012, which reads as follows:

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<sup>47</sup> Haniah Ilhami, "Kontribusi Fatwa Mui No.11 Tahun 2012 Tentang Anak Hasil Zina Dan Perlakuan Terhadapnya Dalam Hukum Keluarga Islam Di Indonesia," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, No. 1 (2018): 10, <https://doi.org/10.22146/jmh.29048>.

5. The government has the authority to impose *ta'zir* punishment on adulterers resulting in the birth of children by requiring them to:
  - a. Sufficient for the child's living needs;
  - b. Giving away property after he dies through a *mandatory will*.
2. Have no inheritance rights<sup>48</sup>

An essential point in MUI's Fatwa Number 11 of 2012 is recognizing that children resulting from adultery have an equal position with legitimate children in Islamic law. However, there are significant differences in terms of inheritance rights. Although adulterous children are afforded equal legal protection, the fatwa also affirms that these children do not have inheritance rights from their biological fathers.

This decision is consistent with the conventional Islamic legal view of inheritance. In Islamic law, inheritance is divided according to the provisions stipulated in the Quran and hadith, whereby the legitimate child of a legal marriage has a clearly defined right of inheritance. The adulterous child, however, is not considered an heir in conventional Islamic inheritance law.

In this context, the fatwa reflects an understanding and application of Islamic law rooted in tradition. It also reflects consistency with the longstanding view of Islamic law on inheritance. Although adulterous children are granted other rights, such as the right to earn a living and other legal

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<sup>48</sup> Hendrawan, "Kedudukan Waris Anak Di Luar Nikah," 61.

protections, inheritance remains a different matter in conventional Islamic law.

Within the framework of Islamic law, the implementation of restrictions on sex between a child born from an extramarital relationship and the man responsible for his birth is considered a concrete step in ensuring strict enforcement of the law. The motivation behind this arrangement is to maintain the sanctity of the child's kinship and carry out religious provisions related to the child's origin and fate. Therefore, the fatwa attempts to provide an alternative in the form of a mandatory will, which allows the biological father to leave a certain amount of inheritance to the adulterous child. However, this is not a legal obligation. Thus, although conventional inheritance rights are not granted, efforts are taken to provide solutions that at least offer the opportunity to obtain a share of inheritance for children resulting from adultery in Islamic law.

### 3. Protection of children's rights<sup>49</sup>

Protection of children's rights is one of the primary considerations in issuing MUI's Fatwa Number 11 of 2012. This fatwa expressly states that adulterous children have the same rights as legitimate children, including the right to earn a

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<sup>49</sup> Hendrawan, "Kedudukan Waris Anak Di Luar Nikah," 58.

living from their biological father. In this context, children resulting from adultery are given equal legal protection to children born in legal marriages.

This reflects concern and justice for children's fundamental rights, such as the right to fulfill their basic needs. In this case, the biological father's presence is considered essential to ensure that the children are not abandoned and can get the support they need, including financial support. Therefore, recognizing children's rights in this fatwa is a solid legal basis to ensure that children who commit adultery receive equal protection with legitimate children.

However, since adulterous children do not have conventional inheritance rights, this fatwa presents an alternative solution using mandatory wills. The biological father can leave a certain amount of estate to the adulterous child through a mandatory will, although this is not a legal obligation. This allows further recognition of children's rights and efforts to ensure that children receive the share of inheritance they deserve.

Thus, this fatwa not only attempts to maintain a balance between the principles of Islamic law governing inheritance and the protection of children's rights but also provides practical solutions to ensure the welfare of adulterous children

in the context of Islamic law in Indonesia. It reflects concern for children's rights and efforts to give equal protection to them, in line with the principles of justice and humanity.

#### 4. Alternative solutions<sup>50</sup>

The alternative solution found in MUI's Fatwa Number 11 of 2012 is a step that reflects an understanding of the complexity of the situation of children who commit adultery in the context of Islamic law. Since adulterous children do not have the conventional right of inheritance like legitimate children from legal marriages, this fatwa seeks solutions that can provide opportunities for them to receive the share of the estate they deserve.

This solution comes in the form of permission to use a mandatory will. A compulsory choice is a written statement made by a person during his lifetime that specifies that a specific part of his estate will go to a particular beneficiary. In this context, the biological father can use a mandatory will to leave a particular inheritance to the adulterous child.

This decision reflects efforts to provide a fairer alternative to the inheritance of adulterous children. Although this is not a legal obligation for biological fathers, mandatory will allow the father to fulfill his moral responsibilities towards

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<sup>50</sup>Ahmad Baihaki, "Upaya Pemenuhan Hak-Hak Keperdataan Anak Yang Lahir Di Luar Perkawinan," *Jurnal Hukum Sasana*, no. 1 (2023): 204, <https://doi.org/https://doi.org/10.31599/sasana.v9i1.2428>.

the child. It also creates a legal mechanism that protects adulterous children in the event of inheritance, which can avoid injustice or confusion in future inheritance division.

Given this alternative solution, the fatwa attempts to strike a balance between the principles of Islamic law governing inheritance and the protection of children's rights. This provides an opportunity for the biological father to take responsibility for the adulterous child, at least in terms of the economic aspect. In addition, this solution also reflects a broader understanding of Islamic law that is flexible and can accommodate complex situations in society. Thus, these alternative solutions create a middle ground appropriate to Indonesia's social and legal context while protecting children's rights.

#### 5. Public interest and justice<sup>51</sup>

In the formulation of MUI's Fatwa Number 11 of 2012, the importance of considering the public interest and the principle of justice became a highly emphasized factor. In this context, the fatwa recognizes that partiality for adulterous children in inheritance matters is an important step to achieve broader social justice and to prevent injustices that can occur in inheritance distribution.

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<sup>51</sup> Asep Lukman Daris Salam, "Analisis Hukum Hak-Hak Nasab Anak Luar Nikah Menurut Putusan Mahkamah Konstitusi Nomor 46/PUU/VIII/2010," *As-Sakinah* , No. 1 (2023): 57, <https://doi.org/https://doi.org/10.51729/sakinah11132>.

These considerations take into account various aspects, including social and economic. With precise arrangements regarding the inheritance rights of adulterous children, they may become abandoned and get the financial support they need. This will impact the well-being of these children and may also burden society or the government to provide social support.

By allowing compulsory wills, this fatwa attempts to prevent the possibility of injustice in the division of inheritance and to ensure that adulterous children are not marginalized. This enables biological fathers to fulfill their responsibilities towards such children, at least in terms of economic aspects. Thus, this fatwa creates a mechanism to mitigate the risk of injustice and inequality in treating adulterous children.

In addition, this fatwa reflects a commitment to achieving social justice in society and ensuring that Islamic law can adapt to complex and changing societal situations. Thus, in addition to considering the rights of children resulting from adultery, this fatwa also considers the broader social impact and justice in the context of inheritance. This is a positive step in creating a balance between Islamic law principles and the public interest and justice.

Related to the philosophical and sociological studies above, MUI's response was revealed through MUI's Fatwa Number 11 of 2012, which has two central roles in the framework of Islamic family law in Indonesia.<sup>52</sup> The first is in theoretical studies, where the fatwa establishes norms regarding the status and position of adulterous children. The second role is in the practical realm, where the fatwa is used as a guide for judges in drafting fair regulations.

From the explanation above, it is illustrated that one of the targets to be obtained by MUI's Fatwa Number 11 of 2012 is a step to provide a more straightforward explanation related to Constitutional Court Decision Number 46/PUU-VIII/2010, which describes the problem of legal relations between father and son resulting from adultery. Moreover, this fatwa also aims to ensure that no hereditary relationship exists between the child of the affair and the man responsible for his birth. As an alternative solution to ensure the safeguarding of the rights that should be possessed by children born from extramarital relations on the part of the men involved, the MUI's Fatwa decided to implement the punishment of *ta'zir* in the form of *mandatory testamentary* obligations for the child.

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<sup>52</sup> Ilhami, "Kontribusi Fatwa Mui No.11 Tahun 2012," 6.

## **B. *Mandatory will as an Alternative Solution for Adultery Children According to The Perspective of Jasser Auda's Maqasid sharia***

Jasser Auda suggests that the *maqasid of sharia* has given many roles to reform contemporary Islamic law. In the context of handling adulterous children, *Maqasid sharia* can be a valuable foundation for developing fair solutions according to Islamic law principles. *Maqasid sharia* is a concept that contains the essence of benefit or benefit to humanity. The primary purpose of sharia itself is to achieve benefits for the community. Both the first and second approaches see that the primary goal of Islamic law is to achieve mutual welfare and benefit to society.

*Maqasid Sharia* stresses the importance of protecting five basic principles, including heredity. As a solution to the inheritance of adulterous children, the approach that can be taken is to combine the concept of *Maqasid sharia* with mandatory wills. A compulsory will is a form of will that must be enforced to ensure that the rights of children born from adultery are recognized and protected. In this case, a mandatory will can be used to draw up a legal agreement governing the rights and obligations of biological parents towards adulterous children, including in the case of inheritance.

From the explanation of *Maqasid sharia* by Jasser Auda in the previous chapter, mandatory wills as an alternative solution for adulterous children can be analyzed from various aspects as follows<sup>53</sup>:

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<sup>53</sup> Murti and Shah, "Menelaah Pemikiran Jasser Auda Dalam Memahami Maqasid Syariah," 61.

a. Cognition (*Cognitive Nature*)

In Islamic law, understanding law and human reasoning, as mentioned in the concept of *ijtihad*, is very important. *Fiqh*, or understanding of Islamic law, is the result of human cognition in contemplating *nash texts* (such as the Quran and hadith) to understand their meaning and application. However, the explanation also needs to be revised to include that the understanding of *fiqh* can have weaknesses and inaccuracies because it comes from human understanding, which can be limited. This is relevant when discussing compulsory wills for adulterous children because human cognitive factors also influence understanding the law.

b. Wholeness

In understanding Islamic law, a systems and holistic approach is an important aspect that reflects wholeness. It allows for understanding laws involving causation as part of a broader picture. Thus, when discussing compulsory wills for adulterous children, a holistic approach allows for assessments that cover a more comprehensive range of aspects of the Islamic legal system, bridging the gap between traditional legal understandings and the demands of the contemporary world.

c. *Openness (Self Renewal)*

Renewal and openness in Islamic law are essential to maintain relevance in a changing context. In understanding Islamic law, opening the law to reform considers various factors, including cognitive factors, such as the human frame of mind and experience, and cultural factors. This is relevant when discussing compulsory wills for adulterous children because legal reform can consider social and cultural developments.

d. *Interrelated Hierarchy*

In understanding Islamic law, *the concept-based categorization* method includes a variety of factors and dimensions in legal judgment. This is relevant when discussing compulsory wills for adulterous children as it allows for an inclusive assessment of different societal aspects and interests.

e. *Multidimensionality*

Within the more traditional framework of Islamic law, there is often a tendency to understand law in one dimension. However, the multidimensional approach, as Jasser Auda advocates, includes more factors, such as social and cultural conditions, in understanding Islamic law. This is relevant when discussing mandatory wills for adulterous children as it allows for a more comprehensive and contextual assessment.

f. *Purposefulness/Maqasid-based approach*

The *Maqasid-based approach*, which seeks purpose and expediency in Islamic law, reflects the culmination of the systems approach. This is relevant when discussing compulsory wills for adulterous children because the purposes and benefits of Islamic law can help design a more appropriate and adaptive view of the law in the face of changing times.

Thus, mandatory wills as an alternative solution for adulterous children can be analyzed by considering three categories of *Maqasid sharia*: legal, social, expediency, justice, and practical. This helps ensure that the implementation of the law is in line with the moral and ethical objectives of the Shari'a and achieves broader social benefits.

MUI's Fatwa number 11 of 2012 is relevant to the view of the core of *maqasid sharia*, which emphasizes the focus on aspects of expediency as the primary goal in Islamic law. This principle is in line with the concept of *maqasid sharia*, which directs Islamic laws to achieve benefit for society. Thus, the view of *maqasid sharia* that places benefit as the main goal is also contained in MUI's Fatwa number 11 of 2012, emphasizing the importance of paying attention to benefits in understanding and applying Islamic laws.

## CHAPTER IV

### CLOSING

#### A. CONCLUSION

By the explanation described in previous chapters, the researcher can draw the following conclusions:

1. Islamic law emphasizes child protection as a top priority, realizing it in three dimensions: the protection of child seeds, the survival and welfare of children, and the protection of legality and child life. MUI's Fatwa Number 11 of 2012 regarding mandatory wills for adulterous children has several underlying reasons; first, it affirms that unfaithful children are entitled to the same protection as children in general, even if they are unrelated to their biological father. Second, to assert that an adulterous child does not have the right of inheritance of the man who caused his birth, this fatwa provides an alternative in the form of a mandatory will when the biological father dies. Third, to protect children's right to basic needs, including the support of their biological father. Fourth is a moral solution for the birth father to fulfill responsibilities towards the child through a mandatory will. Lastly, it is in the public interest and justice, given the risk of adulterous children being abandoned without the financial support they need if there is no precise legal arrangement.
2. Jasser Auda highlighted the critical role of *maqasid sharia* in the reform of contemporary Islamic law, especially in the context of

handling adulterous children. *Maqasid sharia*, which emphasizes the benefit of humanity, becomes a valuable foundation for developing legal solutions that are just and by Islamic principles. This view is in line with the primary objective of sharia, which aims to achieve the benefit of society. One concrete application of the concept of maqasid sharia *in the context of adulterous children is merging the concept of maqasid sharia with mandatory wills.* A mandatory will, which ensures the rights of an unfaithful child are recognized and protected, can be used to draw up a legal agreement governing the rights and obligations of the biological parents towards the child, including in the case of inheritance. This education should cover legal, social, and practical aspects of implementing mandatory wills. In addition, there needs to be cooperation between scholars, jurists, and the government in developing applicable guidelines to regulate such cases fairly and according to the principles of *Maqasid Sharia*. Jasser Auda's *analysis of maqasid sharia* and systems approach provides a comprehensive and contextual foundation for understanding and addressing issues like this; it is hoped that the community can face challenges in handling adulterous children better while ensuring that children's rights are well protected.

## **B. SUGGESTION**

From the conclusions above, several suggestions can be proposed, namely:

1. The importance of increasing public understanding of the rights and protection of adulterous children and the solution of mandatory wills in inheritance. Broader dissemination of information about these policies, including children's rights, biological fathers' moral obligations, and mandatory testamentary ordinances, can help communities understand the importance of protection and support for adulterous children. In addition, it is also necessary to improve the understanding of Islamic law *and maqasid sharia* that underlies this policy so that the community can better accept and implement it. With better education and experience, it is hoped that adulterous children can get their proper rights while minimizing the risk of neglect in society.
2. Intensify understanding of the concept of *Maqasid sharia* and the use of mandatory wills as legal tools in handling adulterous children. This education should cover legal, social, and practical aspects of implementing mandatory wills. In addition, there needs to be cooperation between scholars, jurists, and the government in developing applicable guidelines to regulate such cases fairly and according to the principles of *Maqasid Sharia*. With a better understanding of the concept of *Maqasid sharia* and the implementation of mandatory wills, it is hoped that the community can face challenges in handling adulterous children better while ensuring the rights of these children are well protected.

## BIBLIOGRAPHY

### Book

- Al-Ashfahani, Al-Qadhi Abu Syuja' Ahmad bin Al-Husain. *Warisan Dan Wasiat: Seri Fikih Sunnah Imam Syafi'i*. Yogyakarta: Hikam Pustaka, 2021.
- Al-Jauziyah, Ibnul Qayyim. *Ad-Da' Wa Ad-Dawa'*. Jakarta: Qisthi Press, 2016.
- An-Nu'man, Abu Hanifah. *Musnad Abi Hanifah Riwayah Al-Haskafi*. Mesir, n.d.
- Anshori, Abdul Ghofur. *Filsafat Hukum Hibah Dan Wasiat Di Indonesia*. Yogyakarta: Gajah Mada University Press, 2018.
- Darmawan, Nurwan. *Hukum Kewarisan Islam*. Abu Muslim, 2020.
- Ibn al-Salah, Othman ibn 'Abdul Rahman Abu 'Amru Taqiy al-Din. *Adab Al-Mufti Wa Al-Mustafti*. Madinah: Maktabat al-'Ulum wa al-Hikam, 2002.
- Ismail, Abdul Manan, and Mek Wok Mahmud. *Dawabit Al-Fatwa Fi Majlis Al-Ifta' Al-Watani Al-Malizi*. Gombak: IIUM Press, 2017.
- Mardani. *Hukum Kewarisan Islam Di Indonesia*. Jakarta: PT. Raja Grafindo Persada, 2014.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2010.
- Nasution, Bahder Johan. *Metode Penelitian Ilmu Hukum*. Bandung: CV. Mandar Maju, 2008.

## Journal

Ahmad, Azmi Zamroni. "Wasiat Wajibah Dalam Perspektif Hukum Positif Dan Hukum Islam : Analisis Maqāṣid Asy-Syarī'ah Jasser Auda." *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 52, no. 1 (2018): 55–73. <https://doi.org/https://doi.org/10.14421/ajish.v52i1.945>.

Aisyah, Nur. "Wasiat Dalam Pandangan Hukum Islam Dan BW." *El-Iqtishady* 1 (2019): 54–61.

Amin, Surahman. "Model Kepemimpinan Majelis Ulama Indonesia (MUI): Sebuah Tawaran Untuk Masa Depan Kepemimpinan Transformatif Di Indonesia." *Transformasi*, no. 1 (2020): 1–16.

Arifin, Zainal, and Zaenul Mahmudi. "Mandatory Wills for Adultery Children , Analysis of the Compilation of Islamic Law from the Perspective of Maqasid Syariah Al-Syatibi." *NAJAH: International Journal of Law and Society* 1, no. 1 (2022): 36–47. <https://doi.org/10.0000/ijls.2022.4>.

Arnold, Achmad, and Mulyono Jamal. "Hak-Hak Keperdataan Anak Hasil Zina Dan Anak Luar Nikah Perspektif Hukum Positif Dan Hukum Islam." *Journal of Indonesian Comparative of Law* 2, no. 1 (2019): 1. <https://doi.org/10.21111/jicl.v2i1.4484>.

Azzubaili, and Muhammad Diah. "AHLI WARIS ANAK DI LUAR NIKAH PERSPEKTIF IMAM SYAFI ' I DAN KHI." *Sarwah: Journal of Islamic Law*, no. 46 (2019): 1–14.

- Baihaki, Ahmad. "Upaya Pemenuhan Hak-Hak Keperdataan Anak Yang Lahir Di Luar Perkawinan." *Jurnal Hukum Sasana* 9, no. 1 (2023): 187–209. <https://doi.org/https://doi.org/10.31599/sasana.v9i1.2428>.
- Baihaqi, Mohammad. "Legitimasi Majelis Ulama Indonesia (MUI) Dalam Kontestasi Islam Politik Mutakhir." *Politea*, no. 2 (2019): 19–48.
- Harimurti, Yudi Widagdo, Encik Muhammad Fauzan, Indah Purbasari, and Indra Yulianingsih. "The Role of Majelis Ulama Indonesia and Its Fatwas within The Indonesian Governance System." *ICETLAWBE*, no. 17 (2020). <https://doi.org/10.4108/eai.26-9-2020.2302535>.
- Hendrawan, Iga Syukrillah. "Kedudukan Waris Anak Di Luar Nikah (Studi Komparasi Antara Putusan Mahkamah Konstitusi Dengan Fatwa Majelis Ulama Indonesia)." *Jurnal Inklusif* 4, no. 1 (2019): 47–64. <https://www.syekh Nurjati.ac.id/jurnal/index.php/inklusif/article/download/3743/pdf/3>.
- Ilhami, Haniah. "Kontribusi Fatwa Mui No.11 Tahun 2012 Tentang Anak Hasil Zina Dan Perlakuan Terhadapnya Dalam Hukum Keluarga Islam Di Indonesia." *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 30, no. 1 (2018): 1. <https://doi.org/10.22146/jmh.29048>.
- Jarchosi, Achmad. "PELAKSANAAN WASIAT WAJIBAH." *ADHKI: Journal of Islamic Family Law* 2, no. 1 (2020): 77–90. <https://doi.org/10.37876/adhki.v2i1.34>.
- Mundzir, Moh. "Metode Penetapan Fatwa Majelis Ulama Indonesia (Analisis

Penggunaan Qawaid Fiqhiyyah Sebagai Dalil Mandiri Dalam Fatwa).” *The Indonesian Journal of Islamic of Islamic Law and Civil Law*, no. 1 (2021): 1–18.

Murti, Ari, and Toufan Aldian Syah. “Menelaah Pemikiran Jasser Auda Dalam Memahami Maqasid Syariah.” *CITIZEN: Jurnal Ilmiah Multidisiplin Indonesia* 1, no. 2 (2021): 60–67. <https://doi.org/10.53866/jimi.v1i2.9>.

Pelu, Ibnu Elmi A.S. “Kedudukan Fatwa Dalam Konstruksi Hukum Islam .” *El-Mashlahah Journal*, no. 2 (2019): 167–81.

Salam, Asep Lukman Daris. “Analisis Hukum Hak-Hak Nasab Anak Luar Nikah Menurut Putusan Mahkamah Konstitusi Nomor 46/PUU/VIII/2010.” *As-Sakinah* 1, no. 1 (2023): 35–60. <https://doi.org/https://doi.org/10.51729/sakinah11132>.

Wardhana, Muhammad Fikri, and Mohamad Rafi’ie. “Analisis Yuridis Kedudukan Hak Waris Bagi Anak Luar Nikah Menurut Hukum Islam.” *Justicia Journal* 11, no. 1 (2022): 73–84.

Zahroh, Faiqotul Himmah. “Pandangan Maqasid Al-Syari‘ah (Hukum Islam) Perspektif Al-Syatibi Dan Jasser Auda.” *Al-I’jaz : Jurnal Studi Al-Qur’an, Falsafah Dan Keislaman* 3, no. 1 (2021): 19–30. <https://doi.org/10.53563/ai.v3i1.46>.

## **Thesis**

Rahmawati, Anif. "Takzir Berupa Biaya Hidup Dan Wasiat Wajibah (Studi Atas Fatwa MUI No. 11 Tahun 2012 Tentang Kedudukan Anak Zina Dan Perlakuan Terhadapnya)," Undergraduate thesis, Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2016. [https://digilib.uin-suka.ac.id/id/eprint/23090/2/1220310011\\_BAB-I\\_IV-atau-V\\_DAFTAR-PUSTAKA.pdf](https://digilib.uin-suka.ac.id/id/eprint/23090/2/1220310011_BAB-I_IV-atau-V_DAFTAR-PUSTAKA.pdf).

## **Regulation**

"Fatwa Majelis Ulama Indonesia Nomor: 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya," n.d.

Kompilasi Hukum Islam (2018).

Pedoman Penetapan Fatwa Majelis Ulama Indoneisa Nomor: U-596/MUI/X/1997 (1997).

## **Website**

"Hadits Abu Dawud." hadits.id. Accessed March 7, 2023. <https://www.hadits.id/hadits/dawud/2486>.

"PERATURAN ORGANISASI MAJELIS ULAMA INDONESIA Nomor : Kep-.../MUI/.../2015," n.d. <https://mui.or.id/wp-content/uploads/2020/07/5.-PO->

[Pedoman-Penetapan-Fatwa-OK 68-86.pdf](#)

**FATWA  
MAJELIS ULAMA INDONESIA**

**Nomor: 11 Tahun 2012**

**Tentang**

**KEDUDUKAN ANAK HASIL ZINA DAN PERLAKUAN TERHADAPNYA**



Komisi Fatwa Majelis Ulama Indonesia (MUI), setelah :

**MENIMBANG**

- a. bahwa dalam Islam, anak terlahir dalam kondisi suci dan tidak membawa dosa turunan, sekalipun ia terlahir sebagai hasil zina;
- b. bahwa dalam realitas di masyarakat, anak hasil zina seringkali terlantar karena laki-laki yang menyebabkan kelahirannya tidak bertanggung jawab untuk memenuhi kebutuhan dasarnya, serta seringkali anak dianggap sebagai anak haram dan terdiskriminasi karena dalam akte kelahiran hanya dinisbatkan kepada ibu;
- c. bahwa terhadap masalah tersebut, Mahkamah Konsitusi dengan pertimbangan memberikan perlindungan kepada anak dan memberikan hukuman atas laki-laki yang menyebabkan kelahirannya untuk bertanggung jawab, menetapkan putusan MK Nomor 46/PUU-VIII/2010 yang pada intinya mengatur kedudukan anak yang dilahirkan di luar perkawinan mempunyai hubungan perdata dengan ibunya dan keluarga ibunya serta dengan laki-laki sebagai ayahnya yang dapat dibuktikan berdasarkan ilmu pengetahuan dan teknologi dan/atau alat bukti lain menurut hukum mempunyai hubungan darah, termasuk hubungan perdata dengan keluarga ayahnya;
- d. bahwa terhadap putusan tersebut, muncul pertanyaan dari masyarakat mengenai kedudukan anak hasil zina, terutama terkait dengan hubungan nasab, waris, nafaqah dan wali nikah dari anak hasil zina dengan laki-laki yang mengakibatkan kelahirannya menurut hukum Islam;
- e. bahwa oleh karena itu dipandang perlu menetapkan fatwa tentang kedudukan anak hasil zina dan perlakuan terhadapnya guna dijadikan pedoman.

**MENGINGAT**

- 1. Firman Allah SWT:

a. Firman Allah yang mengatur nasab, antara lain :

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

*“Dan Dia (pula) yang menciptakan manusia dari air lalu dia jadikan manusia itu (punya) keturunan dan mushaharah dan adalah Tuhanmu Maha Kuasa. (QS. Al-Furqan : 54).*

b. Firman Allah yang melarang perbuatan zina dan seluruh hal yang mendekati ke zina, antara lain:

وَلَا تَقْرُبُوا الزِّنَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

“Dan janganlah kamu mendekati zina; sesungguhnya zina itu adalah suatu perbuatan yang keji. Dan suatu jalan yang buruk” (QS. Al-Isra : 32).

وَالَّذِينَ لَا يَدْعُونَ مَعَ اللَّهِ إِلَهًا آخَرَ وَلَا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَلَا يَزْنُونَ وَمَنْ يَفْعَلْ ذَلِكَ يَلْقَ أَثَامًا يُضَاعَفْ لَهُ الْعَذَابُ يَوْمَ الْقِيَامَةِ وَيَخْلُدْ فِيهِ مُهَانًا

“Dan orang-orang yang tidak menyembah tuhan yang lain beserta Allah dan tidak membunuh jiwa yang diharamkan Allah (membunuhnya) kecuali dengan (alasan) yang benar, dan tidak berzina, barang siapa yang melakukan yang demikian itu, niscaya dia mendapat (pembalasan) dosanya, yakni akan dilipat gandakan azab untuknya pada hari kiamat dan dia akan kekal dalam azab itu, dalam keadaan terhina” (QS. Al-Furqan: 68 – 69)

c. Firman Allah yang menjelaskan tentang pentingnya kejelasan nasab dan asal usul kekerabatan, antara lain:

وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ ادْعُوهُمْ لِآبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَاِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ

“Dan Dia tidak menjadikan anak-anak angkatmu sebagai anak kandungmu (sendiri). Yang demikian itu hanyalah perkataanmu dimulutmu saja. Dan Allah mengatakan yang sebenarnya dan Dia menunjukkan jalan (yang benar).

Panggilah mereka (anak-anak angkat itu) dengan (memakai) nama bapak-bapak mereka; itulah yang lebih adil pada sisi Allah, dan jika kamu tidak mengetahui bapak-bapak mereka, maka (panggilah mereka sebagai) saudara-saudaramu seagama dan maula-maulamu. (QS. Al-Ahzab: 4 – 5).

وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ

“... (dan diharamkan bagimu) isteri-isteri anak kandungmu (menantu)” (QS. Al-Nisa: 23).

d. Firman Allah yang menegaskan bahwa seseorang itu tidak memikul dosa orang lain, demikian juga anak hasil zina tidak memikul dosa pezina, sebagaimana firman-Nya:

وَلَا تَكْسِبُ كُلُّ نَفْسٍ إِلَّا عَلَيْهَا وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ ثُمَّ إِلَىٰ رَبِّكُمْ مَرْجِعُكُمْ فَيُنَبِّئُكُمْ بِمَا كُنْتُمْ فِيهِ تَخْتَلِفُونَ

Dan tidaklah seorang membuat dosa melainkan kemudharatannya kembali kepada dirinya sendiri; dan seorang yang berdosa tidak akan memikul dosa orang lain. Kemudian kepada Tuhanmulah kamu kembali, dan akan diberitakan-Nya kepadamu apa yang kamu perselisihkan. (QS. Al-An'am : 164)

وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ ثُمَّ إِلَىٰ رَبِّكُم مَّرْجِعُكُمْ فَيُنَبِّئُكُم بِمَا كُنتُمْ تَعْمَلُونَ إِنَّهُ عَلِيمٌ بِذَاتِ الصُّدُورِ

“Dan seorang yang berdosa tidak akan memikul dosa orang lain. Kemudian kepada Tuhanmulah kembalimu lalu Dia memberitakan kepadamu apa yang telah kamu kerjakan. Sesungguhnya Dia Maha Mengetahui apa yang tersimpan dalam (dada)mu. (QS. Al-Zumar: 7)

## 2. Hadis Rasulullah SAW, antara lain:

a. hadis yang menerangkan bahwa anak itu dinasabkan kepada pemilik kasur/suami dari perempuan yang melahirkan (firas), sementara pezina harus diberi hukuman, antara lain:

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا أَنَّهَا قَالَتْ اخْتَصَمَ سَعْدُ بْنُ أَبِي وَقَّاصٍ وَعَبْدُ بْنُ زَمْعَةَ فِي غُلَامٍ فَقَالَ سَعْدٌ هَذَا يَا رَسُولَ اللَّهِ ابْنُ أَخِي عْتَبَةَ بْنِ أَبِي وَقَّاصٍ عَهْدَ إِلَيَّ أَنَّهُ ابْنُهُ انْظُرْ إِلَيَّ شَبَّهِهُ وَقَالَ عَبْدُ بْنُ زَمْعَةَ هَذَا أَخِي يَا رَسُولَ اللَّهِ وُلِدَ عَلَيَّ فِرَاشِ أَبِي مِنْ وَلِيدَتِهِ فَنَظَرَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَيَّ شَبَّهِهُ فَرَأَى شَبَّهَا بَيْنَنَا بَعْتَبَةَ فَقَالَ هُوَ لَكَ يَا عَبْدُ بْنُ زَمْعَةَ الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ وَاحْتَجِبِي مِنْهُ يَا سَوْدَةَ بِنْتَ زَمْعَةَ قَالَتْ فَلَمْ يَرَ سَوْدَةَ قَطُّ (رواه البخارى ومسلم)

Dari 'Aisyah ra bahwasanya ia berkata: Sa'd ibn Abi Waqqash dan Abd ibn Zam'ah berebut terhadap seorang anak lantas Sa'd berkata: Wahai Rasulullah, anak ini adalah anak saudara saya 'Utbah ibn Abi Waqqash dia sampaikan ke saya bahwasanya ia adalah anaknya, lihatlah kemiripannya. 'Abd ibn Zam'ah juga berkata: "Anak ini saudaraku wahai Rasulullah, ia terlahir dari pemilik kasur (firas) ayahku dari ibunya. Lantas Rasulullah saw melihat rupa anak tersebut dan beliau melihat keserupaan yang jelas dengan 'Utbah, lalu Rasul bersabda: "Anak ini saudaramu wahai 'Abd ibn Zam'ah. Anak itu adalah bagi pemilik kasur/suami dari perempuan yang melahirkan (firas) dan bagi pezina adalah (dihukum) batu, dan berhijablah darinya wahai Saudah Binti Zam'ah. Aisyah berkata: ia tidak pernah melihat Saudah sama sekali. (HR. Al-Bukhari dan Muslim)

عن عمرو بن شعيب عن أبيه عن جده قال: قام رجل فقال: يا رسول الله، إن فلاناً ابني، عَاهَرْتُ بِأَمِهِ فِي الْجَاهِلِيَّةِ، فقال رسول الله صلى الله عليه وسلم: لا دعوة في الإسلام، ذهب أمر الجاهلية، الولد للفراش، وللعاهر الحجر (رواه أبو داود)

“Dari 'Amr ibn Syu'aib ra dari ayahnya dari kakeknya ia berkata: seseorang berkata: Ya Rasulullah, sesungguhnya si fulan itu anak saya, saya menzinai ibunya ketika masih masa jahiliyyah, Rasulullah saw pun bersabda: “tidak ada pengakuan anak dalam Islam, telah lewat urusan di masa

*jahiliyyah. Anak itu adalah bagi pemilik kasur/suami dari perempuan yang melahirkan (firasy) dan bagi pezina adalah batu (dihukum)” (HR. Abu Dawud)*

b. hadis yang menerangkan bahwa anak hasil zina dinasabkan kepada ibunya, antara lain:

قال النبي صلى الله عليه وسلم في ولد الزنا " لأهل أمه من كانوا"  
(رواه أبو داود)

*Nabi saw bersabda tentang anak hasil zina: “Bagi keluarga ibunya ...” (HR. Abu Dawud)*

c. hadis yang menerangkan tidak adanya hubungan kewarisan antara anak hasil zina dengan lelaki yang mengakibatkan kelahirannya, antara lain:

عن عمرو بن شعيب عن أبيه عن جده أن رسول الله صلى الله عليه وسلم قال: " أيما رجل عاهر بجرة أو أمة فالولد ولد زنا ، لا يرث ولا يورث " ( رواه الترمذى - سنن الترمذى ١٧١٧ )

*“Dari ‘Amr ibn Syu’aib ra dari ayahnya dari kakeknya bahwa Rasulullah saw bersabda: Setiap orang yang menzinai perempuan baik merdeka maupun budak, maka anaknya adalah anak hasil zina, tidak mewarisi dan tidak mewariskan“.*  
(HR. Al-Turmudzi)

d. hadis yang menerangkan larangan berzina, antara lain:

عن أبي مرزوق رَضِيَ اللهُ عَنْهُ قال غزونا مع رُوَيْفِعِ بْنِ ثَابِتِ الْأَنْصَارِيِّ قَرْيَةً مِنْ قُرَى الْمَغْرِبِ يُقَالُ لَهَا جَرَبَةُ فَقَامَ فِيهَا خَطِيْبًا فَقَالَ أَيُّهَا النَّاسُ إِنِّي لَا أَقُولُ فِيكُمْ إِلَّا مَا سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ قَامَ فِيْنَا يَوْمَ حَنْيْنٍ فَقَالَ لَا يَحِلُّ لِأَمْرِيءٍ يَأْمَنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ يُسْقِيَ مَاءَهُ زَرْعَ غَيْرِهِ ( أَخْرَجَهُ الْإِمَامُ أَحْمَدُ وَ أَبُو دَاوُدَ )

*Dari Abi Marzuq ra ia berkata: Kami bersama Ruwai’fi’ ibn Tsabit berperang di Jarbah, sebuah desa di daerah Maghrib, lantas ia berpidato: “Wahai manusia, saya sampaikan apa yang saya dengar dari Rasulullah saw pada saat perang Hunain seraya berliu bersabda: “Tidak halal bagi seseorang yang beriman kepada Allah dan Rasul-Nya menyiram air (mani)nya ke tanaman orang lain (berzina)’ (HR Ahmad dan Abu Dawud)*

e. hadis yang menerangkan bahwa anak terlahir di dunia itu dalam keadaan fitrah, tanpa dosa, antara lain:

عن أبي هريرة رضي الله عنه قال قال النبي صلى الله عليه وسلم كل مولود يولد على الفطرة فأبواه يهودانه أو ينصرانه أو يمجسانه (رواه البخاري ومسلم)

*Dari Abi Hurairah ra ia berkata: Nabi saw bersabda: "Setiap anak terlahir dalam kondisi fitrah, kedua orang tuanyalah yang menjadikannya seorang yahudi, nasrani, atau majusi. (HR al-Bukhari dan Muslim)*

3. Ijma' Ulama, sebagaimana disampaikan oleh Imam Ibn Abdil Barr dalam "al-Tamhid" (8/183) apabila ada seseorang berzina dengan perempuan yang memiliki suami, kemudian melahirkan anak, maka anak tidak dinasabkan kepada lelaki yang menzinainya, melainkan kepada suami dari ibunya tersebut, dengan ketentuan ia tidak menafikan anak tersebut.

"وأجمعت الأمة على ذلك نقلاً عن نبيها صلى الله عليه وسلم، وجعل رسول الله صلى الله عليه وسلم كل ولد يولد على فراش لرجل لاحقاً به على كل حال، إلا أن ينفيه بلعان على حكم اللعان"

*Umat telah ijma' (bersepakat) tentang hal itu dengan dasar hadis Nabi saw, dan Rasul saw menetapkan setiap anak yang terlahir dari ibu, dan ada suaminya, dinasabkan kepada ayahnya (suami ibunya), kecuali ia menafikan anak tersebut dengan li'an, maka hukumnya hukum li'an.*

Juga disampaikan oleh Imam Ibnu Qudamah dalam Kitab al-Mughni (9/123) sebagai berikut:

وأجمعوا على أنه إذا ولد على فراش رجل فادعاه آخر أنه لا يلحقه  
*Para Ulama bersepakat (ijma') atas anak yang lahir dari ibu, dan ada suaminya, kemudian orang lain mengaku (menjadi ayahnya), maka tidak dinasabkan kepadanya.*

4. Atsar Shahabat, Khalifah 'Umar ibn al-Khattab ra berwasiat untuk senantiasa memperlakukan anak hasil zina dengan baik, sebagaimana ditulis oleh Imam al-Shan'ani dalam "al-Mushannaf" Bab 'Itq walad al-zina" hadits nomor 13871.
5. Qaidah Sadd al-Dzari'ah, dengan menutup peluang sekecil apapun terjadinya zina serta akibat hukumnya.
6. Qaidah ushuliyah :

الأصل في النهي يقتضي فساد المنهي عنه

*"Pada dasarnya, di dalam larangan tentang sesuatu menuntut adanya rusaknya perbuatan yang terlarang tersebut"*

لا اجتهاد في مورد النص

*"Tidak ada ijtihad di hadapan nash"*

7. Qaidah fihiyyah :

لِلْوَسَائِلِ حُكْمُ الْمَقَاصِدِ

“ Hukum sarana adalah mengikuti hukum capaian yang akan dituju “

الضَّرَرُ يُدْفَعُ بِقَدْرِ الْإِمْكَانِ

“Segala mudharat (bahaya) harus dihindarkan sedapat mungkin”.

الضَّرَرُ لَا يُزَالُ بِالضَّرَرِ

“Bahaya itu tidak boleh dihilangkan dengan mendatangkan bahaya yang lain.”

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

“Menghindarkan mafsadat didahulukan atas mendatangkan masalahat.

يُتَحَمَّلُ الضَّرَرُ الْخَاصُّ لِدَفْعِ الضَّرَرِ الْعَامِّ

“Dharar yang bersifat khusus harus ditanggung untuk menghindari dharar yang bersifat umum (lebih luas).”

إِذَا تَعَارَضَتْ مَفْسَدَتَانِ أَوْ ضَرَرَانِ رُوِيَ أَعْظَمُهُمَا ضَرَرًا بَارْتِكَابِ  
أَخْفَهُمَا

“Apabila terdapat dua kerusakan atau bahaya yang saling bertentangan, maka kerusakan atau bahaya yang lebih besar dihindari dengan jalan melakukan perbuatan yang resiko bahayanya lebih kecil.”

تَصَرَّفُ الْإِمَامِ عَلَى الرَّعِيَّةِ مُنَوَّطٌ بِالْمَصْلَحَةِ

“Kebijakan imam (pemerintah) terhadap rakyatnya didasarkan pada kemaslahatan.”

MEMPERHATIKAN : 1. Pendapat Jumhur Madzhab Fikih Hanafiyyah, Malikiyyah, Syafi'iyah, dan Hanabilah yang menyatakan bahwa prinsip penetapan nasab adalah karena adanya hubungan pernikahan yang sah. Selain karena pernikahan yang sah, maka tidak ada akibat hukum hubungan nasab, dan dengan demikian anak zina dinasabkan kepada ibunya, tidak dinasabkan pada lelaki yang menzinai, sebagaimana termaktub dalam beberapa kutipan berikut:

a. Ibn Hajar al-‘Asqalani:

نقل عن الشافعي أنه قال: لقوله “الولد للفراش” معنيان: أحدهما هو له ما لم ينفه، فإذا نفاه بما شرع له كاللعان انتفى عنه، والثاني: إذا تنازع رب الفراش والعاهر فالولد لرب الفراش” ثم قال: “وقوله: “وللعاهر الحجر”، أي: للزاني الخيبة والحرمان، والعهر بفتحين: الزنا، وقيل: يختص بالليل، ومعنى الخيبة هنا: حرمان الولد الذي يدعيه، وجرت عادة العرب أن تقول لمن خاب: له

الحجر وبفيه الحجر والتراب، ونحو ذلك، وقيل: المراد بالحجر هنا أنه يرحم. قال النووي: وهو ضعيف، لأن الرجم مختص بالمحصن، ولأنه لا يلزم من رجمه نفي الولد، والخبر إنما سيق لنفي الولد، وقال السبكي: والأول أشبه بمساق الحديث، لتعم الخيبة كل زان”

*Diriwayatkan dari Imam Syafe'i dua pengertian tentang makna dari hadits “ Anak itu menjadi hak pemilik kasur/suami “ .*

*Pertama : Anak menjadi hak pemilik kasur/suami selama ia tidak menafikan/mengingkarinya. Apabila pemilik kasur/suami menafikan anak tersebut (tidak mengakuinya) dengan prosedur yang diakui keabsahannya dalam syariah, seperti melakukan Li'an, maka anak tersebut dinyatakan bukan sebagai anaknya.*

*Kedua : Apabila bersengketa (terkait kepemilikan anak) antara pemilik kasur/suami dengan laki-laki yang menzinai istri/budak wanitanya, maka anak tersebut menjadi hak pemilik kasur/suami.*

*Adapun maksud dari “ Bagi pezina adalah Batu “ bahwa laki-laki pezina itu keterhalangan dan keputus-asaan. Maksud dari kata Al-'AHAR dengan menggunakan dua fathah (pada huruf 'ain dan ha') adalah zina. Ada yang berpendapat bahwa kata tersebut digunakan untuk perzinaan yang dilakukan pada malam hari.*

*Oleh karenanya, makna dari keputus-asaan disini adalah bahwa laki-laki pezina tersebut tidak mendapatkan hak nasab atas anak yang dilahirkan dari perzinaannya. Pemilihan kata keputus-asaan di sini sesuai dengan tradisi bangsa arab yang menyatakan “Baginya ada batu” atau : Di mulutnya ada batu” buat orang yang telah berputus asa dari harapan.*

*Ada yang berpendapat bahwa pengertian dari batu di sini adalah hukuman rajam. Imam Nawawi menyatakan bahwa pendapat tersebut adalah lemah, karena hukuman rajam hanya diperuntukkan buat pezina yang muhsan (sudah menikah). Di sisi yang lain, hadits ini tidak dimaksudkan untuk menjelaskan hokum rajam, tapi dimaksudkan untuk sekedar menafikan hak anak atas pezina tersebut. Oleh karena itu Imam Subki menyatakan bahwa pendapat yang pertama itu lebih sesuai dengan redaksi hadits tersebut, karena dapat menyatakan secara umum bahwa keputus-asaan (dari mendapatkan hak anak) mencakup seluruh kelompok pezina (muhsan atau bukan muhsan).*

- b. Pendapat Imam al-Sayyid al-Bakry dalam kitab “*I'anatu al-Thalibin*” juz 2 halaman 128 sebagai berikut:

ولد الزنا لا ينسب لأب وإنما ينسب لأمه

*Anak zina itu tidak dinasabkan kepada ayah, ia hanya dinasabkan kepada ibunya.*

- c. Pendapat Imam Ibn Hazm dalam Kitab *al-Muhalla* juz 10 halaman 323 sebagai berikut :

والولد يلحق بالمرأة إذا زنت و حملت به ولا يلحق بالرجل

*Anak itu dinasabkan kepada ibunya jika ibunya berzina dan kemudian mengandungnya, dan tidak dinasabkan kepada lelaki.*

2. Pendapat Imam Ibnu Nujaim dalam kitab “*al-Bahr al-Raiq Syarh Kanz ad-Daqaiq*”:

( وَيَرِثُ وَلَدُ الزَّانَا وَاللَّعَانِ مِنْ جِهَةِ الْأُمِّ فَقَطُ ) ؛ لِأَنَّ نَسَبَهُ مِنْ جِهَةِ الْأَبِ مُنْقَطِعٌ فَلَا يَرِثُ بِهِ وَمِنْ جِهَةِ الْأُمِّ ثَابِتٌ فَيَرِثُ بِهِ أُمُّهُ وَأُخْتُهُ مِنَ الْأُمِّ بِالْفَرَضِ لَا غَيْرُ وَكَذَا تَرِثُهُ أُمُّهُ وَأُخْتُهُ مِنْ أُمِّهِ فَرَضًا لَا غَيْرُ

*Anak hasil zina dan li'an hanya mendapatkan hak waris dari pihak ibu saja, karena nasabnya dari pihak bapak telah terputus, maka ia tidak mendapatkan hak waris dari pihak bapak, sementara kejelasan nasabnya hanya melalui pihak ibu, maka ia memiliki hak waris dari pihak ibu, saudara perempuan seibu dengan fardh saja (bagian tertentu), demikian pula dengan ibu dan saudara perempuannya yang seibu, ia mendapatkan bagian fardh (tertentu), tidak dengan jalan lain.*

3. Pendapat Imam Ibn 'Abidin dalam Kitab “*Radd al-Muhtar 'ala al-Durr al-Mukhtar*” (Hasyiyah Ibn 'Abidin) sebagai berikut :

(ويرث ولد الزنا واللعان بجهة الأم فقط) لما قد مناه في العصابات أنه لا أب لهما

*Anak hasil zina dan li'an hanya mendapatkan hak waris dari pihak ibu saja, sebagaimana telah kami jelaskan di bab yang menjelaskan tentang Ashabah, karena anak hasil zina tidaklah memiliki bapak.*

4. Pendapat Ibnu Taymiyah dalam kitab “*al-Fatawa al-Kubra*” :

وَاخْتَلَفَ الْعُلَمَاءُ فِي اسْتِلْحَاقِ وَلَدِ الزَّانَا إِذَا لَمْ يَكُنْ فِرَاشًا ؟ عَلَى قَوْلَيْنِ . كَمَا ثَبَتَ عَنِ النَّبِيِّ ﷺ { صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ الْحَقُّ ابْنُ وَوَلِيدَةَ زَمْعَةَ بْنِ الْأَسْوَدِ بْنِ زَمْعَةَ بْنِ الْأَسْوَدِ ، وَكَانَ قَدْ أَحْبَلَهَا عُتْبَةُ بْنُ أَبِي وَقَّاصٍ ، فَاخْتَصَمَ فِيهِ سَعْدٌ وَعَبْدُ بْنُ زَمْعَةَ ، فَقَالَ سَعْدٌ : ابْنُ أَخِي . عَهْدَ إِلَيَّ أَنَّ ابْنَ وَوَلِيدَةَ زَمْعَةَ هَذَا ابْنِي . فَقَالَ عَبْدُ : أَخِي وَأَبْنُ وَوَلِيدَةَ أَبِي ؛ وَوُلِدَ عَلَى فِرَاشِ أَبِي . فَقَالَ النَّبِيُّ ﷺ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : هُوَ لَكَ يَا عَبْدُ بْنُ زَمْعَةَ الْوَلَدُ لِلْفِرَاشِ ، وَلِلْعَاهِرِ الْحَجْرُ ؛ احْتَجَّيْ مِنْهُ يَا سَوْدَةَ { لَمَّا رَأَى مِنْ شَبْهِهِ الْبَيْنَ بَعْتَبَةَ ، فَجَعَلَهُ أَخَاهَا فِي الْمِيرَاثِ دُونَ الْحُرْمَةِ .

*Para ulama berbeda pendapat terkait istilah (penisbatan) anak hasil zina apabila si wanita tidak memiliki pemilik kasur/suami atau sayyid (bagi budak wanita). Diriwayatkan dalam hadits bahwa Rasulullah SAW menisbatkan anak budak wanita Zam'ah ibn Aswad kepadanya (Zam'ah), padahal yang menghamili budak wanita tersebut adalah Uthbah ibn Abi Waqqosh. Sementara itu, Sa'ad menyatakan : anak dari budak wanita tersebut adalah anak saudaraku (Uthbah), dan aku*

(kata Sa'ad) ditugaskan untuk merawatnya seperti anakku sendiri". Abd ibn Zam'ah membantah dengan berkata : "anak itu adalah saudaraku dan anak dari budak wanita ayahku, ia dilahirkan di atas ranjang ayahku". Rasulullah SAW bersabda: "anak itu menjadi milikmu wahai Abd ibn Zam'ah, anak itu menjadi hak pemilik kasur dan bagi pezina adalah batu", kemudian Rasulullah bersabda : "Berhijablah engkau wahai Saudah (Saudah binti Zam'ah – Istri Rasulullah SAW)", karena beliau melihat kemiripan anak tersebut dengan Utbah, maka beliau menjadikan anak tersebut saudara Saudah binti Zam'ah dalam hal hak waris, dan tidak menjadikannya sebagai mahram.

5. Pendapat Dr. Wahbah al-Zuhaili dengan judul "Ahkam al-Aulad al-Natijin 'an al-Zina" yang disampaikan pada Daurah ke-20 Majma' Fiqh Islami di Makkah pada 25 – 29 Desember 2010 yang pada intinya menerangkan bahwa, jika ada seseorang laki-laki berzina dengan perempuan yang memiliki suami dan kemudian melahirkan anak, terdapat ijma ulama, sebagaimana disampaikan oleh Imam Ibn Abdil Barr dalam "al-Tamhid" (8/183) yang menegaskan bahwa anak tersebut tidak dinasabkan kepada lelaki yang menzinainya, melainkan kepada suami dari ibunya tersebut, dengan ketentuan ia tidak menafikan anak tersebut melalui *li'an*. Sementara, jika ia berzina dengan perempuan yang tidak sedang terikat pernikahan dan melahirkan seorang anak, maka menurut jumhur ulama madzhab delapan, anak tersebut hanya dinasabkan ke ibunya sekalipun ada pengakuan dari laki-laki yang menzinainya. Hal ini karena penasaban anak kepada lelaki yang pezina akan mendorong terbukanya pintu zina, padahal kita diperintahkan untuk menutup pintu yang mengantarkan pada keharaman (*sadd al-dzari'ah*) dalam rangka menjaga kesucian nasab dari perilaku munkarat.
5. Pendapat, saran, dan masukan yang berkembang dalam Sidang Komisi Fatwa pada Rapat-Rapat Komisi Fatwa pada tanggal 3, 8, dan 10 Maret 2011.

Dengan bertawakkal kepada Allah SWT

#### MEMUTUSKAN

**MENETAPKAN : FATWA TENTANG ANAK HASIL ZINA DAN PERLAKUAN TERHADAPNYA**

**Pertama : Ketentuan Umum**

Di dalam fatwa ini yang dimaksud dengan :

1. Anak hasil zina adalah anak yang lahir sebagai akibat dari hubungan badan di luar pernikahan yang sah menurut ketentuan agama, dan merupakan *jarimah* (tindak pidana kejahatan).
2. *Hadd* adalah jenis hukuman atas tindak pidana yang bentuk dan kadarnya telah ditetapkan oleh nash
3. *Ta'zir* adalah jenis hukuman atas tindak pidana yang bentuk dan kadarnya diserahkan kepada *ulil amri* (pihak yang berwenang menetapkan hukuman)
4. Wasiat wajibah adalah kebijakan *ulil amri* (penguasa) yang mengharuskan laki-laki yang mengakibatkan lahirnya anak

zina untuk berwasiat memberikan harta kepada anak hasil zina sepeninggalnya.

**Kedua**

**: Ketentuan Hukum**

1. Anak hasil zina tidak mempunyai hubungan nasab, wali nikah, waris, dan nafaqah dengan lelaki yang mengakibatkan kelahirannya.
2. Anak hasil zina hanya mempunyai hubungan nasab, waris, dan nafaqah dengan ibunya dan keluarga ibunya.
3. Anak hasil zina tidak menanggung dosa perzinaan yang dilakukan oleh orang yang mengakibatkan kelahirannya.
4. pezina dikenakan hukuman *hadd* oleh pihak yang berwenang, untuk kepentingan menjaga keturunan yang sah (*hifzh al-nasl*).
5. Pemerintah berwenang menjatuhkan hukuman *ta'zir* kepada lelaki pezina yang mengakibatkan lahirnya anak dengan mewajibkannya untuk :
  - a. mencukupi kebutuhan hidup anak tersebut;
  - b. memberikan harta setelah ia meninggal melalui *wasiat wajibah*.
6. Hukuman sebagaimana dimaksud nomor 5 bertujuan melindungi anak, bukan untuk mensahkan hubungan nasab antara anak tersebut dengan lelaki yang mengakibatkan kelahirannya.

**Ketiga**

**: Rekomendasi**

1. DPR-RI dan Pemerintah diminta untuk segera menyusun peraturan perundang-undangan yang mengatur:
  - a. hukuman berat terhadap pelaku perzinaan yang dapat berfungsi sebagai *zawajir* dan *mawani'* (membuat pelaku menjadi jera dan orang yang belum melakukan menjadi takut untuk melakukannya);
  - b. memasukkan zina sebagai delik umum, bukan delik aduan karena zina merupakan kejahatan yang menodai martabat luhur manusia.
2. Pemerintah wajib mencegah terjadinya perzinaan disertai dengan penegakan hukum yang keras dan tegas.
3. Pemerintah wajib melindungi anak hasil zina dan mencegah terjadinya penelantaran, terutama dengan memberikan hukuman kepada laki-laki yang menyebabkan kelahirannya untuk memenuhi kebutuhan hidupnya.
4. Pemerintah diminta untuk memberikan kemudahan layanan akte kelahiran kepada anak hasil zina, tetapi tidak menasabkannya kepada lelaki yang mengakibatkan kelahirannya.
5. Pemerintah wajib mengedukasi masyarakat untuk tidak mendiskriminasi anak hasil zina dengan memperlakukannya sebagaimana anak yang lain. Penetapan nasab anak hasil zina kepada ibu dimaksudkan untuk melindungi nasab anak dan ketentuan keagamaan lain yang terkait, bukan sebagai bentuk diskriminasi.

**Keempat**

**: Ketentuan Penutup**

1. Fatwa ini berlaku pada tanggal ditetapkan, dengan ketentuan jika di kemudian hari ternyata dibutuhkan perbaikan, akan diperbaiki dan disempurnakan sebagaimana mestinya.
2. Agar setiap muslim dan pihak-pihak yang memerlukan dapat mengetahuinya, menghimbau semua pihak untuk menyebarluaskan fatwa ini.

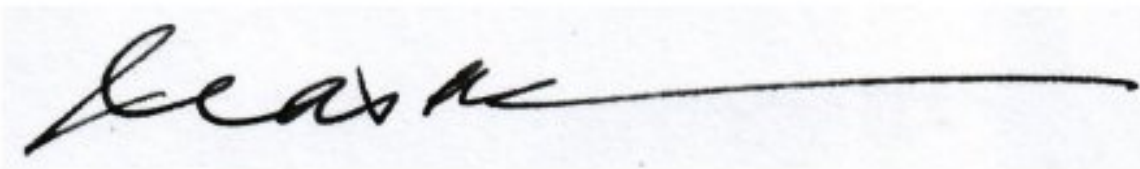
Ditetapkan di : Jakarta

Pada tanggal : 18 Rabi'ul Akhir 1433 H  
10 M a r e t 2012M

**MAJELIS ULAMA INDONESIA  
KOMISI FATWA**

Ketua

Sekretaris



**PROF. DR. H. HASANUDDIN AF, MA**



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CONSULTATION PROOF

Name : Fahma Zakiyatul Ilusvia  
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Department : Islamic Family Law  
Supervisor : Dr. Zaenul Mahmudi, MA.  
Thesis Title : Mandatory Wills For Adultery Children Perspective Of *Maqasid Sharia* Jasser Auda (Study of Fatwa MUI Number 11 of 2012)

No	Day/Date	Consultation Materials	Signature
1	November 3, 2022	Thesis Proposal	
2	November 14, 2022	Thesis Proposal	
3	November 18, 2022	Thesis Proposal	
4	December 12, 2022	Thesis Proposal	
5	December 22, 2022	ACC Thesis Proposal	
6	March 27, 2023	CHAPTER I	
7	May 5, 2023	CHAPTER II	
8	June 22, 2023	CHAPTER III	
9	August 3, 2023	CHAPTER IV & Abstract	
10	August 11, 2023	ACC Thesis & ACC Abstract	

Malang, 1 September 2023

Acknowledged by:

Head of Department Islamic Family Law

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