



The Influence of Fatwas Regarding Illegitimate Children at The Courts in Indonesia

Ahsin Dinal Mustafa¹, Fakhruddin², Roibin³

Universitas Islam Negeri Maulana Malik Ibrahim Malang

Email : ahsin_dm@uin-malang.ac.id¹, dins@syariah.uin-malang.ac.id²,
roibin@syariah.uin-malang.ac.id³

Abstract

*One of the complex and important issues in the context of Islamic family law is the phenomenon of illegitimate children. Among the institutions recognized by society as providing solutions through fatwas (decision) are the Indonesian Islamic Scholars Council (MUI), Nahdlatul Ulama (NU), and Muhammadiyah. This paper aims to explore and analyze this issue in more depth, presenting a perspective that includes aspects of law and society that are manifest in a fatwa, as well as summarizing the significance of the fatwa for decisions in court. This paper uses a qualitative normative approach in the form of library research and analysis of documents in the form of fatwas and decisions that quote fatwas as *ratio decidendi*. Several decisions use this fatwa as a source of material law because there is no explanation regarding the civil rights given to illegitimate children from their biological fathers in the Constitutional Court decisions or other regulations. In several decisions, fatwas are used by judges in the *ratio decidendi* decisions in Indonesia. However, the result is that there is disparity in decisions due to differences in the judges' interpretation of the fatwa they use.*

Keywords: Fatwa; Illegitimate Children; Court Decision.

Abstrak

Salah satu isu yang kompleks dan penting dalam konteks hukum keluarga Islam adalah fenomena anak luar kawin. Diantara lembaga-lembaga yang diakui oleh masyarakat untuk memberikan jalan keluar melalui fatwa yang dijadikan data primer adalah 3 fatwa dari Majelis Ulama Indonesia (MUI), Nahdlatul Ulama (NU), dan Muhammadiyah. Artikel ini bertujuan untuk menjelajahi dan menganalisis isu ini dengan lebih mendalam, menyajikan perspektif yang mencakup aspek hukum dan masyarakat yang berwujud dalam sebuah fatwa, serta merangkum signifikansi fatwa tersebut terhadap putusan di pengadilan. Artikel ini menggunakan metode analisis konten dengan pendekatan normatif kualitatif berupa penelitian pustaka dan analisis dokumen-dokumen yang berupa fatwa-fatwa dan putusan-putusan yang mengutip fatwa sebagai *ratio decidendi*. 11 putusan menggunakan fatwa tersebut sebagai sumber hukum materiil dikarenakan tidak ada penjelasan terkait dengan hak keperdataan yang diberikan kepada anak luar kawin dari ayah biologisnya dalam putusan Mahkamah Kontitusi maupun regulasi lainnya. Hasil penelitian ini adalah fatwa berpengaruh dan digunakan hakim dalam *ratio*

decidendi putusan di Indonesia. Namun, akibatnya adalah terjadi disparitas putusan karena perbedaan penafsiran hakim atas fatwa yang digunakannya.

Kata Kunci: Fatwa; Anak Luar Kawin; Putusan Pengadilan

Introduction

Illegitimate children are a social phenomenon that has become the focus of attention in Indonesian society over the last few decades. This phenomenon includes children born from relationships outside of marriage, either in the context of unregistered marriages, pre-marital relationships, or other situation.(Putri, 2022; Vinanda, 2023) This issue affects various social, cultural and legal aspects in Indonesia, and has significant implications for individuals, families and society as a whole.(Aziiz et al., 2013) In Indonesia, culture, religion and the legal system play an important role in shaping views and treatment of illegitimate children. Even though there are regulations in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law, strong traditional values, such as family and community honor, often conflict with the reality of the existence of illegitimate children.(Asnawi, 2016) Indonesian society is also diverse, with various traditions and cultural norms that influence how illegitimate children are treated in various regions.

Apart from that, Islamic family law in Indonesia plays an important role in regulating this issue based on Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law, however bias has emerged in the issue of illegitimate children following the emergence of the Constitutional Court decision Number 46/PUU-VIII/ 2010. After the Constitutional Court's decision, fatwas (decisions) issued by religious institutions affected the status and rights of illegitimate children.(Fitriyah et al., 2023; Warman, n.d.) However, in the context of Indonesian positive law, the legal recognition of illegitimate children and their rights are often ambiguous and complex.(Peni, 2014) This phenomenon also has broad social impacts. Illegitimate children often face social stigmatization, identity ambiguity, and other challenges that can impact their well-being. Parents of illegitimate children also face dilemmas regarding their children's recognition and legal responsibilities.(Asnawi, 2016)

In Indonesia, Islamic family law and fatwas issued by religious institutions play an important role in regulating various aspects of family life, including marriage and children. One of them is the issue of Fatwa of the Indonesian Islamic Scholars Council (Majelis Ulama Indonesia/MUI) Number 11 of 2012 which explains the issue of the status and position of children resulting from adultery and legal protection efforts for these children. (Amin, 2017; Fatwa MUI Nomor 11 Tahun 2012 Tentang

Contribution of the Fatwa on Illegitimate Children

Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya, n.d.; Fitriyah et al., 2023) One of the complex and important issues in the context of Islamic family law is the phenomenon of illegitimate children. Among the institutions recognized by the public to provide solutions through fatwas are the Indonesian Ulama Council (MUI), Nahdlatul Ulama (NU), and Muhammadiyah.

In 2012, the Constitutional Court decided the judicial review case Number 46/PUU-VIII/2010. In this decision, a problem emerged where children born out of wedlock could obtain civil rights from their biological father and their biological father's family. The phrase civil rights was very broad and received criticism at the time, until now there is no explanation.(Fitriyah et al., 2023) This gives rise to legal uncertainty regarding decisions related to civil rights that can be obtained by illegitimate children. The various fatwas in Indonesia, if used as a *ratio decidendi* by judges in deciding cases, also give rise to legal uncertainty.

The situation of illegitimate children creates complex ethical and legal dilemmas. On the one hand, Islamic family law in Indonesia regulates marriage and determines the legal status of children in the context of marriage. However, in many cases, illegitimate children face legal uncertainty regarding their status, rights and obligations. Constitutional Court Decision Number 46/PUU-VIII/2020 using the phrase "civil rights" to provide legal protection for children born outside of marriage is an example of this ambiguity. The realm of civil rights is very broad, which in Islamic law includes the rights of alimony, marriage guardians and inheritance, making court decisions that quote the Constitutional Court's decision diverse.

Previous research on this theme at the beginning of the Constitutional Court's decision often only studied the Constitutional Court's decision Number 46/PUU-VIII/2020 in conflict with Islamic law or studied its political and legal aspects. (Asnawi, 2013; Aziiz et al., 2013; Peni, 2014) In the next phase, studies began to emerge regarding fatwas in court decisions regarding illegitimate children. However, the discussion is still partial, only examining one particular decision. (Fitriyah et al., 2023; Ilhami, 2018) This article attempts to study more broadly by examining several decisions or determinations since 2018 by looking at various court decisions or rulings regarding illegitimate children, so that the results can be more comprehensive.

An in-depth study of the legal and social dimensions of the phenomenon of illegitimate children in Indonesia is very important. Not only as an Islamic family law issue, but also as a social, cultural and human rights' issue. This article aims to explore and analyze this issue in more depth, presenting a perspective that includes aspects of law and society that are manifest in a fatwa, as well as summarizing the significance of the fatwa

for decisions in court. Of course, the fatwa being discussed is in a different position from the fatwa of the National Sharia Council on sharia economic issues which is more binding. (Utomo & Fakhrudin, 2017). Therefore, the judge's reception of the fatwa regarding illegitimate children in his decision is interesting to study.

Research Method

This article uses a qualitative normative approach in the form of library research and analysis of documents in the form of fatwas and decisions that quote fatwas as *ratio decidendi*. Primary data used in this research are 3 fatwas from MUI, NU, and Muhammadiyah, as well as 11 court rulings or decisions. The analysis method used is content analysis with a qualitative approach. It is expected that this research will provide a more comprehensive insight into the complexity of the issue of illegitimate children in Indonesia, as well as provide a valuable contribution in handling and making positive changes to the situation of illegitimate children in Indonesia.

Results and Discussion

Illegitimate Children and Fatwas

1. The Concept of Illegitimate Children According to Law in Indonesia

"A legitimate child is a child born in or as a result of a valid marriage." This is as stated in Article 42 of Law Number 1 of 1974 and Article 99 letter a of the Compilation of Islamic Law. Based on this, some groups consider that out-of-wedlock children are defined as the same as illegitimate children. According to some parties, children resulting from unregistered marriages are considered illegitimate / out-of-wedlock children. However, many studies agree that children resulting from adultery are included in the criteria for illegitimate children. (Yasin, 2016) This article focuses on the issue of children resulting from adultery in court decisions.

Illegitimate children, children born from relationships outside legal marriage according to Islamic law, are a complex issue in Muslim societies. In the context of Islamic family law, illegitimate children have a special position and are highlighted in Islamic teachings. Some children are born into situations where the men responsible for their birth do not fulfill their obligations to provide financial and emotional support. Illegitimate children are a complex social phenomenon and are often a sensitive issue in Indonesian society, especially after the establishment of the Constitutional Court decision Number 46/PUU-VIII/2010.

Several important points related to recognizing illegitimate children include: *First*, Identity Recognition: Islam emphasizes the importance of

Contribution of the Fatwa on Illegitimate Children

recognizing the identity of illegitimate children. The child has the right to a legal identity and existence.(Andayani et al., 2023; Trisna et al., 2018) *Second*, the Obligation to Provide Support: Men who are responsible for the birth of an illegitimate child have the obligation to provide support for the child. This includes meeting children's basic needs, such as food, clothing and shelter.(Agustin, 2019; SAPUTRO, n.d.) *Third*, educational opportunities: illegitimate children also have the right to receive education and be free from discrimination. Islam encourages education as an important thing in an individual's life. *Fourth*, Legal Protection: In Islamic law, illegitimate children are protected by laws that regulate their rights, including inheritance rights and other legal protections.(Andayani et al., 2023; Zahraini, 2023)

Although Islam provides a clear framework regarding the recognition of illegitimate children, social stigmatism is often a challenge in society. Illegitimate children and their mothers may face social pressure and discrimination. Illegitimate children often face social stigmatism in society. They may be considered illegitimate children, which can result in discrimination and psychological distress.(Baharuddin, 2019) This stigmatism can also affect children's educational and employment prospects.

Men's irresponsibility in supporting illegitimate children financially is a serious problem. These children often live in difficult economic conditions, with limited access to education, food, health care, and adequate housing.(Anisa, 2022; Asnawi, 2013) Ambiguity of Identity: Illegitimate children may face uncertainty of identity, especially if the man in charge does not legally recognize them. (Andayani et al., 2023) This can create difficulties in accessing rights such as birth registration and citizenship.

Men's irresponsibility can cause instability in the families of illegitimate children, especially if single mothers have to overcome major economic and emotional challenges. This can have a negative impact on the development of these children.

Islamic family law in Indonesia has a strong foundation for protecting the rights and welfare of illegitimate children. However, implementing the law and upholding children's rights often faces challenges.(Trisna et al., 2018) The Constitutional Court's Judicial Review Decision on Illegitimate Children Number 46/PUU-VIII/2010 has become the subject of intense debate in the context of Islamic family law in Indonesia. This decision raises the issue of legal recognition of illegitimate children and their rights in the Indonesian legal system. Even though Law no. 23 of 2006 jo 24 of 2013 concerning Population Administration and Minister of Home Affairs Regulation no. 108 and No. 109 of 2019 provides legal protection for illegitimate children resulting from unregistered marriages but they are recorded in the family card, however there is still the problem of not having

legal rights protected for children resulting from adultery. This article outlines the pros and cons associated with the ruling, recognizing the complexity of the issue.

a. Pro: Protection of the Rights of Illegitimate Children

Some circles consider the Constitutional Court's decision regarding illegitimate children to be a legal breakthrough to guarantee children's rights which were previously untouched by law. Several reasons related to the agreement of several groups with the Constitutional Court's decision are as follows: First, Protection of Children's Rights: The Constitutional Court's decision strengthens the protection of the rights of illegitimate children, including the rights to identity, education and financial support. This is in line with the principles of Islamic family law which emphasizes the need to protect children's rights. (Muhibbin, 2022; Zahraini, 2023). The Constitutional Court's decision tends more towards a human rights approach. Even though criticism has emerged regarding the Human Rights in question, whether they are in line with Human Rights in the Islamic view which aims to elevate the dignity of humanity as noble creatures. (Roibin, 2000). Second, Social Justice: This decision reflects efforts to achieve social justice, especially in the context of illegitimate children who are often vulnerable to stigmatism and unclear identity. (Farahi & Ramadhita, 2016) Third, Legal Recognition: This decision provides clearer legal recognition for illegitimate children, who previously may have faced uncertainty in terms of their legal rights.

b. Contra: Challenges in Implementation and Enforcement

Apart from those who agree with the Constitutional Court's decision, several groups also disagree with the Constitutional Court's decision. Some of the reasons for disagreement are as follows: First, identifying men who are responsible for the birth of illegitimate children can be a challenge. This can result in difficulties in enforcing financial obligations. (Baharuddin, 2019) Differences in Views of Islamic Law: Some parties consider that this decision may not be completely in line with the views of Islamic law regarding illegitimate children. This creates uncertainty in the interpretation of Islamic law. (Ayu et al., 2022; Umar et al., 2019) Complex Implementation: Implementation of this ruling can be complex, especially in cases involving differences between national law and religious law. (Mokodompit, 2021; Umar et al., 2019) This requires good cooperation between national legal institutions and religious institutions, where Indonesia has various community organizations with their own legal tendencies and methods.

2. Fatwa on Illegitimate Children in Indonesia

A fatwa is an explanation of a problematic legal issue; comes from the word al-fatā which means young people who are just growing and strong.

Contribution of the Fatwa on Illegitimate Children

The meaning of this language reflects as if the fatwa is an explanation for a problem that has just arisen and there was no law regarding this matter before. (Fauzi, 2017) Fatwa, by its terms, is an official answer to: 1) a question; or 2) important issues regarding dogma or law, which are given by someone who has the authority to do so. This authority is usually held by someone who is commonly referred to as a *mufti*. Meanwhile, people who ask or request for a fatwa are called *mustafti*. (Fauzi, 2017) Yūsuf Al-Qaraḍāwī revealed that *Iftā'* (giving a fatwa) is an explanation of Sharia law regarding a problem as an answer to a questioner's question, whether clear or vague, individual or collective.

The existence of mass organizations such as NU and Muhammadiyah whose existence and role have made a major contribution in shaping the religious paradigm of Indonesian Muslim society. The development of fatwas in Indonesia cannot be separated from the development of the MUI as one of the fatwa issuing institutions. However, there are other institutions such as NU and Muhammadiyah whose legal position is also recognized and obeyed. The pattern that emerges from the development of these fatwas shows that the development of fatwas in Indonesia is dominated by jama'i fatwas issued by special institutions. (Mujib, 2017) Based on this mapping, to represent fatwas in Indonesia, this article examines fatwas regarding illegitimate children in Indonesia through fatwas that emerged from these mass organizations. Indonesia as the country with the largest number of Muslims in the world is a reflection of Muslims in the modern era. In the case of illegitimate children, several fatwas have emerged that raise this issue. There are three fatwas discussed in this article, which are fatwas from MUI, NU, and Muhammadiyah.

It is interesting to examine that in terms of nomenclature, "fatwa" products were issued by the MUI (Fatwa of the Indonesian Ulema Council) and Muhammadiyah (Fatwa of the Muhammadiyah Tarjih and Tajdid Council), but not by NU (Decree Results of Bahtsul Masail Nahdlatul Ulama). Even the PBNU thinks that only the Supreme Court has the right to issue a fatwa. "Apart from the Supreme Court, no institution should issue fatwas," said Kiai Said at the closing ceremony of the 2019 National Conference of Alim Ulama and Konbes NU. (PBNU: *Tidak Boleh Ada Lembaga Berfatwa Selain MA | NU Online*, n.d.) "There is no institution that has the authority to issue fatwas," said Kiai Said. As for the results of the bahtsul masail deliberations presented by NU, said Kiai Said, they were only non-binding recommendations as consideration for policy makers. (PBNU: *Tidak Ada Lembaga Fatwa Otoritatif Di Indonesia | NU Online*, n.d.) Thus, it can be concluded that the context of PBNU's statement is that there is no single institution that has the authority to issue fatwas that must be followed. Because fatwas are not binding. Therefore, in this research, the "fatwas" regarding illegitimate children issued by the MUI, NU and

Muhammadiyah are still being studied. Because these three institutions are recognized and provide answers/responses to questions (whether they originate from individuals or certain social causes).

The position of fatwa in Islamic law is very important because society's problems and problems are so complex. So that social phenomena that exist in society can be resolved with fatwas. In contrast to statutory regulations, the status of fatwas receives less attention, or its existence is not recognized, because its status is not mandatory. The majority of Indonesia's population is Muslim. Muslims consider the existence of fatwas to be very important for them. The empirical reality is that it is very clear that there is a tendency to use fatwas rather than national laws in social life. MUI has issued many fatwas to answer various social phenomena that exist in society. (Majelis Ulama Indonesia, 2011)

The MUI responded to the Constitutional Court's decision regarding illegitimate children by issuing Fatwa No. 11 of 2012 concerning Children resulting from Adultery and Their Treatment. (Fatwa MUI Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya, n.d.) The fatwa states that in Islam, children are born in a pure condition and do not carry hereditary sins, even if they are born as a result of adultery. The social approach is also the background for the emergence of this fatwa, stating that "in reality in society, children resulting from adultery are often abandoned because the man who becomes the cause of their birth (biological father) is not responsible for meeting their basic needs, and children are often considered illegitimate and discriminated against because in the certificate birth is attributed only to the mother." (Fatwa MUI Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya, n.d.)

MUI bases its fatwa on the texts of the Holy Quran, Hadith, Ijma', *Atsar*, *Sadd al Dzari'ah* rules, *Ushuliyah* rules, *Fiqhiyah* rules and *Fuqaha* views. In its fatwa, the MUI formulated six things, those are: First, children resulting from adultery have no family relationship with their biological father, nor are they related to marriage guardians, inheritance, and also maintenance with the man who gave birth to them; Second, children resulting from adultery only have a relationship of lineage, inheritance, and livelihood with their mother and their mother's family; Third, children resulting from adultery do not bear the sin of adultery committed by the person who resulted in their birth; Fourth, adulterers are subject to *hadd* punishment by the authorities, in the interest of maintaining *hifzh al nasl* (legitimate offspring); Fifth, the government has the right to impose a *ta'zir* penalty on an adulterous man who results in the birth of a child by requiring him to provide for the child's living needs, by providing for clothing, food and shelter; the man gave his assets after his death using the obligatory will system; and finally, the previous sentence was imposed on

Contribution of the Fatwa on Illegitimate Children

the man to protect the child, not with the aim of establishing a ancestral relationship between the child and the man who resulted in its birth.” (Fatwa MUI Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya, n.d.) The provision of mandatory wills is influenced by positive law in Indonesia in the Compilation of Islamic Law. However, in the Compilation of Islamic Law, the context of a mandatory will is that it is given to an adopted child.

Apart from the MUI, Fatwas also appeared in the realm of Nahdlatul Ulama originating from the Bahtsul Masail Nahdlatul Ulama Institute (LBMNU), at the PBNU level it was called LBM PBNU. LBMNU, as stated in Chapter V Article 17 paragraph 6 of PBNU's Bylaws (Anggaran Rumah Tangga/ART), is tasked with discussing *maudlu'iyah* (thematic) and *waqi'iyah* (actual) issues which will become PBNU's decisions. (*Susunan Lengkap Pengurus LBM PBNU 2022-2027*, n.d.) Even though it is considered traditional by using mu'tabarah books in taking its fatwas, NU's bahtsul masail is considered to be increasingly open and contextual in interacting with the Al-Qur'an. (Pratomo, 2020)

The fatwa regarding illegitimate children appeared in the planned discussion of the Bahtsul Masail Waqi'iyah National Conference of Alim Ulama and Konbes NU NTB, 23-24 November 2017 concerning the Status of Children and the Rights of Children Born Out of Wedlock. However, in the search carried out, this discussion was not in the text of the Results of the National Conference of Alim Ulama and Konbes NU NTB, 23-24 November 2017 even though the phrase appeared in the speech of the General Chair of PBNU. However, the results of the bahtsul masail were found in the research and website of NU online (*Status Nasab dan Hak Waris Anak di Luar Nikah*, n.d.).

As with the MUI fatwa, the NU fatwa regarding the status of illegitimate children was also motivated by the Constitutional Court's decision. The result of the NU LBM related to this matter was to state that the Constitutional Court's decision was not completely contrary to *fiqh* (Islamic law). Based on *fiqh* law, a child born out of wedlock is legally positive in detail as follows: First, if the child is born when the mother is not married to anyone, then the child is assigned to the mother only. Second, if the child is born after the mother was married, either by the father who caused the birth or someone else, there are further details, namely, when the child is born more than 6 months old, then it can be assigned to the mother's husband; This is not the case when the child is born less than 6 months old, when that happens it cannot be assigned to the mother's husband” (*Status Nasab dan Hak Waris Anak di Luar Nikah*, n.d.) The sources used are the following books: *Tuhfatul habib*, *Mughnil Muhtaj*, *Fiqhul Islamy wa Adillatuh*, *Syarah Muhadzdzab*, dan *Al-Hawi Al-Kabir*.

Another fatwa emerged from Muhammadiyah which issued a fatwa regarding illegitimate children through questions that appeared in Suara Muhammadiyah. There were two questions that arose from two different people that were asked before the Constitutional Court's decision emerged, but in this article one fatwa was taken that was asked from Martadinata in 2001. ('POSISI ANAK DI LUAR NIKAH', n.d.) The background and questions from the questioner are related to children born out of wedlock who only have a legal relationship with their mother while their biological father has no relationship even though the man ultimately married the woman he impregnated. ('POSISI ANAK DI LUAR NIKAH', n.d.)

Based on these questions, a fatwa emerged that was based on the hadith in the form of the *maqbullah sunnah (al walad lil firasy)*. This hadith is interpreted to mean that in certain cases, biological factors need to be considered in determining the position of a child. The man who impregnates the woman is sentenced to be allowed to marry her before the woman gives birth to a child, as long as the woman is not a woman who is forbidden for men to marry. This is based on Q.S. an-Nisa verses 22-24. Based on this, the marriage is deemed valid. When a girl born from the marriage of a pregnant woman to the man who caused her pregnancy wants to marry in the future, her guardian is that man, because that man has become her legal father. However, when the pregnant woman is unmarried (because she has never committed to a marriage contract) then her guardian is the judge's guardian based on the hadith. In Indonesia, guardianship of judges is carried out by officials or administrators from the local sub-district Office of Religious Affairs (Kantor Urusan Agama/KUA). ("POSISI ANAK DI LUAR NIKAH', n.d.)

Based on this discussion, it can be concluded that there are several unique things in the fatwas regarding illegitimate children in Indonesia. Details can be seen in the following table:

Table 1.
Comparison of Fatwas regarding illegitimate children
from MUI, NU, and Muhammadiyah

MUI	NU	Muhammadiyah
Fatwa No. 11 of 2012 about the position of children born of adultery and their treatment. Set March 10, 2012	Bathsul Masail Waqi'iyah National Conference of Alim Ulama and Konbes NU NTB, 23-24 November 2017 Concerning the Status of Children and the Rights of	Position of Illegitimate Children, Suara Muhammadiyah No. 13th year 86/2001, https://tarjih.or.id/posisi-anak-di-luar-nikah/

Contribution of the Fatwa on Illegitimate Children

Illegitimate Children		
ide-dialectical-ide; deductive-post puritanism	ide-dialectical-ide; deductive-post traditionalism	material-dialectical-ide; deductive-post puritanism
MUI's Fatwa (using Holy Qur'an, Hadith, Ijma', Atsar, Rule of Sadd al Dzari'ah, Rule of Ushuliyah, Rule of Fiqhiyah and the perspective of Fuqaha) representation of NGO (Non Governmental Organization)	Bahtsul Masail NU's Fatwa (using <i>kutub mu'tabarah</i> containing discussion from <i>nash</i>) representation of mass organization	Tarjih Muhammadiyah's Fatwa (using Holy Qur'an and Hadith with Indonesian national context) representation of mass organization
Similarly include discussion point of hadith " <i>al walad lil firasy</i> "		

Source: Processed Data

Observed from the questioner's perspective, there are differences in the background of fatwa and *mustafti*. In detail, it can be seen in the following table:

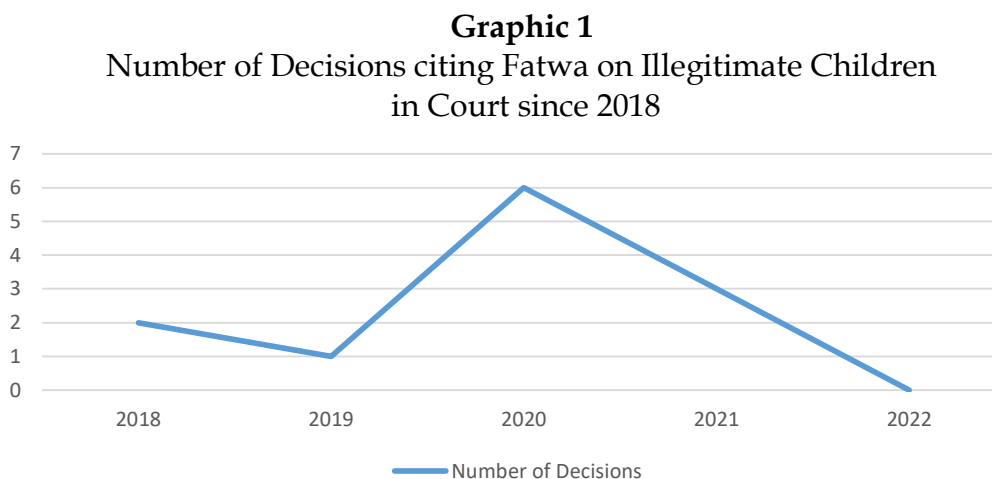
Table 2
Comparative Analysis of *Mufti* and *Mustafti* from Fatwas on Illegitimate Children MUI, NU, and Muhammadiyah

MUI	NU	Muhammadiyah
fatwa representation: official organization, not individual representation <i>Mustafti</i> : social problems.	fatwa representation: official organization, not individual representation <i>Mustafti</i> : social problems.	fatwa representation: official organization, not individual representation. <i>Mustafti</i> : individual (Martadinata, 2001 in Jakarta) - Questions and Answers. However, there is a hierarchy of fatwa tarjih councils in the Muhammadiyah organization; the HPT (Association of Tarjih Decisions)-Questions and Answers-Discourse

Source: Processed Data

3. Impact and Implementation of Fatwas on Illegitimate Children in the Courts

After conducting a search using the keywords "MUI Fatwa Number 11 of 2012" and "Indonesian Islamic Scholars Council Fatwa Number 11 of 2012" in the supreme court decision directory, there is an impact of fatwas issued by Islamic organizations in Indonesia on the decisions of judges in court, especially on MUI fatwas. (Direktori Putusan, n.d.) Since 2018, there have been 11 decisions citing fatwas regarding illegitimate children. All determinations and decisions found appear in the court of first instance. This shows that, although it is not very large compared to the total number of child origin determinations in court, even though fatwas are not binding, they are still used by judges in deciding a case. More details can be seen in the following graph:



Source: Directory of Supreme Court Decisions

Based on the decisions collected, it can be concluded that although not all of them, some decisions use the MUI fatwa as a *ratio decidendi*. This shows that fatwas also contribute to decisions in court as guidelines and sources of material law. (Ilhami, 2018) Socially, the fatwa also acts as social engineering media. (Aris Setiyanto, 2022) In detail, the contents of these decisions are as follows:

Table 3
Decision Citing Fatwa Concerning Illegitimate Children Since 2018

2018	2019	2020	2021
MERAUKE Religious Court	TANJUNG BALAI KARIMUN	WEST JAKARTA Religious Court Decision Number	SLEMAN Religious Court Decision

Contribution of the Fatwa on Illegitimate Children

Decision Number 320/Pdt.G/2018/PA.Mrk, Cancellation of the marriage of the biological father of a biological child who married without a birth guardian (from the plaintiff), rejected	Religious Court Decision Number 0071/Pdt., P/2019/PA.TBK, the origin of the child, the judge stated that the child was the biological child of the applicant and the child had a civil relationship with the biological father limited to the necessities of life until adulthood/standing himself and the obligatory will, granted	213/Pdt.P/2020/PA.JB, obtaining civil rights from the biological father except lineage and inheritance	Number 286/Pdt.P/2021/PA.Smn, obtaining civil rights from biological fathers except marriage and inheritance guardians. Children can be given a mandatory will from their biological father
BANDUNG District Court Decision Number 19/Pid.Pra/2018/PN Bdg, regarding whether the suspect's determination is valid or not, the fatwa issued by an expert witness to explain the legal position of the parties, rejected		SLEMAN Religious Court Decision Number 236/Pdt.P/2020/PA.Smn, obtaining civil rights from biological fathers except marriage and inheritance guardians. Children can be given a mandatory will from their biological father.	SLEMAN Religious Court Decision Number 188/Pdt.P/2021/PA.Smn, obtaining civil rights from biological fathers except marriage and inheritance guardians. Children can be given a mandatory will from their biological father

<p>SLEMAN Religious Court Decision Number 250/Pdt.P/2020/PA.Smn, obtaining civil rights from biological fathers except marriage and inheritance guardians. Children can be given a mandatory will from their biological father.</p>	<p>West Jakarta Religious Court Decision Number 449/Pdt.P/2021/PA.JB, obtaining civil rights from biological fathers except marriage and inheritance guardians.</p>
<p>SLEMAN Religious Court Decision Number 346/Pdt.P/2020/PA.Smn, obtaining civil rights from biological fathers except marriage and inheritance guardians. Children can be given a mandatory will from their biological father.</p>	
<p>SLEMAN Religious Court Decision Number 456/Pdt.P/2020/PA.Smn, obtaining civil rights from biological fathers except marriage and inheritance guardians. Children can be given a mandatory will from their biological father.</p>	

Source: Directory of Supreme Court Decisions

These decisions show that the fatwa regarding illegitimate children (still) contributes at a practical level in the Religious Courts as a guide for judges, filling legal gaps, and as a source of material law. Although from a historical perspective, the emergence of the fatwa was influenced by and in

Contribution of the Fatwa on Illegitimate Children

response to the Constitutional Court decision Number 46/PUU-VIII/2010 which had been issued earlier, but in the end the fatwa influenced the law, namely the court's decision/determination. This is partly because there is legal uncertainty regarding the phrase "civil rights" in the Constitutional Court decision so that the judges use the fatwa to carry out *ijtihad*.

This research also found that the civil rights granted by the judge from biological fathers to their biological children are different and can be typified into four things, namely: first, in the form of civil rights in the form of necessities for life until adulthood/sufficiency and obligatory wills only; second, in the form of civil rights which are limited by lineage and inheritance; third, in the form of civil rights which are limited by marriage guardians and inheritance; fourth, in the form of civil rights which are limited by marriage guardians and inheritance but also have the possibility of being given a mandatory will from their biological father.

Conclusion

Based on the discussion above, it can be concluded that in the context of family law in Indonesia, fatwas on children out of wedlock have great significance. This fatwa provides important guidance in addressing issues related to illegitimate children, which are often complex and sensitive. In fact, some rulings use the fatwa as a source of material law because there is no explanation related to civil rights granted to illegitimate children from their biological fathers in the Constitutional Court decision or other regulations. In some decisions, fatwas are used by judges in *the ratio decidendi* of decisions in Indonesia. However, the result is that there is a disparity in the decision due to the judge's interpretation of the fatwa he uses.

References

Books

Amin, M. (2017). *Fatwa dalam Sistem Hukum Islam*. eLSAS.

Journals

Andayani, D. P., Sinaulan, R. L., & Felicitas, S. M. (2023). Perlindungan Hukum Bagi Anak Luar Kawin yang Disembunyikan Identitasnya oleh Pewaris Terkait Bagian Warisannya Menurut Hukum Perdata. *SENTRI: Jurnal Riset Ilmiah*, 2(9), <https://doi.org/10.55681/sentri.v2i9.1489>

Anisa, L. N. (2022). Status Hak Anak Diluar Nikah Pasca Putusan Mahkamah Konstitusi Republik Indonesia (RI) Nomor:46/PUU-

- VIII/2012. *Investama: Jurnal Ekonomi dan Bisnis*, 7(1), <https://ejournal.iaingawi.ac.id/index.php/investama/article/view/625>
- Aris Setiyanto, D. (2022). Fatwa Sebagai Media Social Engineering (Analisis Fatwa MUI di Bidang Hukum Keluarga Pasca Reformasi) | *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum*. 3 (1) <https://doi.org/10.22515/al-ahkam.v3i1.1342>
- Asnawi, H. S. (2013). Politik Hukum Putusan MK No. 46/PUU-VIII/2010 Tentang Status Anak di Luar Nikah: Upaya Membongkar Positivisme Hukum Menuju Perlindungan HAM. *Jurnal Konstitusi*, 10(2), 239-260. <https://doi.org/10.31078/jk1023>.
- Asnawi, H. S. (2016). Dasar Hukum Hakim Mahkamah Konstitusi dalam Memutuskan Perkara NO.46/PUUVIII/2010 tentang Status Hukum Anak di Luar Nikah (Perspektif Hukum Islam Dan Hak Asasi Manusia). *Fikri: Jurnal Kajian Agama, Sosial Dan Budaya*, 1(1), 45-78. <https://doi.org/10.25217/jf.v1i1.7>
- Ayu, I., Pratiwi, P., Sudiarmaka, K., & Sanjaya, B. S., (2022). Kedudukan Hak Waris Anak Luar Kawin Ditinjau dari Pasal 863 Kitab Undang-Undang Hukum Perdata (KUHPERDATA)(STUDI KASUS DESA Batuagung Jembrana, *Jurnal Komunitas Yustisia*, 5(1). <https://doi.org/10.23887/jatayu.v5i1.45931>
- Aziiz, C. I., Dirksen, A. G. N., & Atmadja, I. B. P. (2013). Implikasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Tentang Kedudukan Anak Luar Kawin Terhadap Kompilasi Hukum Islam. *Kertha Semaya*, 1(04). <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/5260>.
- Baharuddin, A. Z. (2019). Review terhadap Putusan Mahkamah Konstitusi Tentang Status Anak di Luar Nikah. *Al-'Adl*, 12(1), 154-166. <http://dx.doi.org/10.31332/aladl.v12i1.1388>.
- Farahi, A., & Ramadhita, R. (2016). Keadilan bagi Anak Luar Kawin dalam Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. *De Jure: Jurnal Hukum dan Syar'iah*, 8(2), Article 2. <https://doi.org/10.18860/j-fsh.v8i2.3778>
- Fauzi, N. A. F. (2017). Fatwa di Indonesia: Perubahan Sosial, Perkembangan dan Keberagamaan. *Jurnal Hukum Novelty*, 8(1), <https://doi.org/10.26555/novelty.v8i1.a5524>
- Fitriyah, Parnomo, B., & Hidayati, R. (2023). Putusan MK No. 46/PUU-VIII/2010 tentang Status Anak di Luar Nikah dan Fatwa MUI No. 11 Tahun 2012 dalam Perspektif Maqashid Syari'ah Al-Khamsah. *Jurnal MercatoriA*, 16(1). <https://doi.org/10.31289/mercatoria.v16i1.8929>

Contribution of the Fatwa on Illegitimate Children

- Fox, S. (2023). Illegitimacy: Family & Stigma in England, 1660–1834. *Women's History Review*, 32, 922–923. <https://doi.org/10.1080/09612025.2023.2240525>
- Ilhami, H. (2018). 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(1), Article 1. <https://doi.org/10.22146/jmh.29048>
- Lust, K. (2020). Bitter Fruits of “A Merry Life?” Survival Chances of Children Born Out of Wedlock in Nineteenth-century Rural Estonia. *Journal of Family History*, 45, 20–38. <https://doi.org/10.1177/0363199019881476>
- Muhibbin, Moch. (2022). Implikasi Hukum Putusan Mahkamah Konstitusi Terhadap Perlindungan Hak Perempuan dan Anak. *Yudisia : Jurnal Pemikiran Hukum Dan Hukum Islam*, 13(2), 199–216. [10.21043/yudisia.v13i2.15754](https://doi.org/10.21043/yudisia.v13i2.15754)
- Pratomo, H. (2020). Transformasi Metode Bahtsul Masail Nu Dalam Berinteraksi Dengan Al-Qur'an. *Jurnal Lektur Keagamaan*, 18(1), Article 1. <https://doi.org/10.31291/jlk.v18i1.620>
- Rahbari, L. (2022). Marriage, Parentage and Child Registration in Iran: Legal Status of Children of Unmarried Parents. *Social Sciences*. <https://doi.org/10.3390/socsci11030120>
- Roibin, R. (2000). Islam dan HAM: Tarik Menarik antara Absolutisme dan Relativisme. *el Harakah: Jurnal Budaya Islam*, 2(1), Article 1. <https://doi.org/10.18860/el.v2i1.4723>
- Trisna, P., Windari, R. A., & ... (2018). Implementasi Undang-Undang Nomor 24 Tahun 2013 Tentang Administrasi Kependudukan Dalam Penerbitan Akta Kelahiran Anak Luar Kawin Di Dinas *Jurnal Komunitas* <https://ejournal.undiksha.ac.id/index.php/jatayu/article/view/28738>
- Utomo, N. C. H., & Fakhruddin, F. (2017). Penyerapan Fatwa Dewan Syariah Nasional Dalam Peraturan Otoritas Jasa Keuangan Tentang Pasar Modal Syariah. *Journal of Islamic Business Law*, 1(3), Article 3. <http://urj.uin-malang.ac.id/index.php/jibl/article/view/503>
- Yasin, I. F. (2016). Analysis of Constitutional Court Decision No. 46 /PUU-VIII / 2010 on Judicial Review Act No. 1 of 1974 in The Concept Laqith and Wasiat Wajibah. *Jurnal SMART (Studi Masyarakat, Religi, dan Tradisi)*, 2(01), Article 01. <https://doi.org/10.18784/smart.v2i01.300>

Others

- Direktori Putusan.* (n.d.). Retrieved 24 December 2024, from <https://putusan3.mahkamahagung.go.id/search.html?q=%22Fatwa+MUI+Nomor+11+Tahun+2012%22>
- Fatwa MUI Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya.
- Majelis Ulama Indonesia. (2011). *Himpunan Fatwa MUI Sejak 1975*. Erlangga.
- PBNU: Tidak Ada Lembaga Fatwa Otoritatif di Indonesia | NU Online.* (n.d.). Retrieved 7 November 2023, from <https://nu.or.id/nasional/pbnu-tidak-ada-lembaga-fatwa-otoritatif-di-indonesia-UCbFN>
- PBNU: Tidak Boleh Ada Lembaga Berfatwa Selain MA | NU Online.* (n.d.). Retrieved 7 November 2023, from <https://www.nu.or.id/nasional/pbnu-tidak-boleh-ada-lembaga-berfatwa-selain-ma-Y8vSH>
- Status Nasab dan Hak Waris Anak di Luar Nikah.* (n.d.). NU Online. Retrieved 7 November 2023, from <https://islam.nu.or.id/bahtsul-masail/status-nasab-dan-hak-waris-anak-di-luar-nikah-CiIly>
- Susunan Lengkap Pengurus LBM PBNU 2022-2027.* (n.d.). NU Online. Retrieved 7 November 2023, from <https://www.nu.or.id/nasional/susunan-lengkap-pengurus-lbm-pbnu-2022-2027-QPNa5>