

Analysis of The Right to Live for Children of Adultery According to MUI Fatwa Number 11 of 2012 and Its Relation to MK Decision Number 46/PUU-VIII/2010

Incoming Manuscript: 10-01-2024 Manuscript Edited: 01-03-2024 Accepted Manuscript: 02-08-2024

A. Putri Dyana Waris, Abbas, Ahmad Muntazar^{*)}

¹⁻³*Department of Family Law, Faculty of Islamic Studies, Universitas Muhammadiyah Makassar, Jl. Sultan Alauddin No.259, Makassar, Indonesia 90221*

Abstract

A child resulting from adultery cannot be assigned to the man who gave birth to him (his father), he can only be assigned to his mother and his mother's family. However, this does not eliminate the father's responsibility to provide for the child's living needs and provide assets after he dies through a mandatory will. MUI fatwa number 11 of 2012 rejected MK decision number 46/PUU-VIII/2010 which had previously been decided regarding children resulting from adultery who have civil rights with their father, if it is biologically proven that the child is a child resulting from adultery between their father and mother. The MUI fatwa stated that the MK decision deviated from Islamic teachings, according to which children resulting from adultery can only be assigned to their mother's family. To decide on a decision related to Islamic law, its formation must be in accordance with the basics of Islamic law and not deviate from it. In an effort to find the right decision for this problem, the author uses literature research by analyzing the MUI Fatwa and also the Constitutional Court's decision which explains the status of children, as well as sources that can provide information related to this research.

Keywords: *living; adultery children; MUI Fatwa.*

How to Cite: A. Putri Dyana Waris (2024). Analysis of The Right to Support for Children of Adultery According to MUI Fatwa Number 11 of 2012 and Its Relation to MK Decision Number 46/PUU-VIII/2010. *Journal of Family Law and Islamic Court* 3 (1), 13-27.

^{*)}Corresponding Author:

putridyanaw@gmail.com

Introduction

The presence of a child is a joy for husband and wife and their family, because children are one of the goals of marriage. A child has the right to grow up with good education by his family, therefore parents also have an obligation to provide the best education for their children.¹ The importance of questioning children is due to its relation to inheritance. In addition, the law wants to ensure that a child born from a mother's womb is legitimate and sociologically does not become a gossip in society by labeling an illegitimate child, illegitimate child, adulterous child, and so on, which in turn can affect the psychology of the child. If a child is born illegitimate, by a wife; for example, a wife commits adultery with another man, then her husband can deny the child by presenting sufficient evidence. The denial is submitted to the court to make a legal decision regarding the child.² The reality in society regarding extramarital relationships is certainly inseparable from the factors that encourage the occurrence of such relationships. According to Gatot Suprapomono, there are several factors that encourage extramarital relationships, namely love, mutual consent, biological demands (seeking satisfaction alone), and economic factors. Many problems will arise due to adultery, one of which is pregnancy outside of marriage, which will cause

social problems that will have an impact on the child.

From the perspective of Islamic law, adultery is a major sin for which the perpetrator will receive severe punishment. Allah SWT says in QS. al-Isra: 32.

وَلَا تَقْرُبُوا الزَّيْنَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

Translation:

“Do not come near to adultery. Indeed, it is an abomination and an evil deed.”³

As for the law, it has been explained in the Qur'an. Although Islamic jurisprudence does not explain a clear definition of a legitimate child, some scholars define a child of adultery as the opposite of a legitimate child. Thus, Islamic law emphasizes that a child must be born at least six months after the marriage or within a period of four months and ten days after the marriage is dissolved.⁴ If less than that, then the child can only be related to his mother or in other words, his guardian can only be from the mother's side.

The position of illegitimate children in society is not so good, they are considered low and despicable because of their unclear status, and in terms of welfare they have different limitations than children in general.

³Kementrian Agama Republik Indonesia, *al-Qur'an Tajwid dan Terjemah*, (Bandung: Sygma Exagrafika,2010),h. 285.

⁴Amir Nuruddin dan Azhari Akmal Tarigan, *Hukum Perdata Islam di Indonesia (Studi Kritis Perkembangan Hukum Islam dari Fikih UU NO. 1 /1974 sampai KHI)* (Jakarta: Prenada Media, 2004,h. 277.

¹Rosnidar Sembiring, *Hukum Keluarga Harta-harta Benda dalam Perkawinan* (Cet. 1; Jakarta Rajawali Pers, 2016) h. 115-116.

²Rosnidar Sembiring, *Hukum Keluarga Harta-harta Benda dalam Perkawinan* h.117.

Since birth, humans have rights and obligations, so do illegitimate children, they have rights and obligations. Including the right to protection in the civil field as with members of society in general, there should be no discrimination in it.

Although it is recognized that children are legal subjects and also as the next generation of heirs to religion and the nation in the future, in reality there are still many children who have not enjoyed their rights. According to the provisions of Article 34 paragraph (2) of Law Number 1 of 1974, the position of children born outside of marriage will be regulated in Government Regulations, but until now this has not been realized. This means that the legal means available to resolve the problem of children born outside of marriage until now are inadequate.⁵

Thus, an illegitimate child in the narrow sense is a child born from a relationship between a man and a woman, neither of whom is bound by marriage to another person and there is no prohibition against them marrying each other, such children can be legally recognized by their father (Article 280 of the Civil Code).⁶

Thus, the question arises, do children of adultery have the right to support from their parents? Due to the lack of understanding about the status and rights of children of adultery, many

children who are the result of their parents' adultery are neglected and their social status is unclear.

Methods

The research method used by the researcher is the book survey/library research method, which is a research technique that aims to collect data and information with the help of various libraries that are in accordance with this research. Literature study is one of the qualitative research methods where the research is conducted in the library, with documents, archives, and other types of documentation as research materials. Then the researcher will use the data analysis method. Namely the research process in which the collected data is processed to respond to the formulation of the problem. In analyzing qualitative data, there are at least 3 paths that are taken; First: data reduction, namely the process of selecting, focusing on simplification, abstraction and transformation of raw data that emerges from written records. This process continues continuously during the research. In this study, the researcher analyzed data obtained through MUI fatwas, MK decisions and various libraries related to this research. Second: data presentation, namely the activity when a set of information is compiled, providing the possibility of drawing conclusions and taking action. Third: drawing conclusions is an effort that is carried out continuously during research, starting from collecting data, connecting one data with another, reviewing the content to draw conclusions and find messages that are

⁵Rosnidar Sembiring, *Hukum Keluarga Harta-harta Benda dalam Perkawinan*, h. 117-118.

⁶Rosnidar Sembiring, *Hukum Keluarga Harta-harta Benda dalam Perkawinan*, h. 123.

carried out objectively and systematically, then confirming the data sources and whatever in this case the researcher needs as research material.

Results and Discussion

The Law on Children of Adultery According to MUI Fatwa Number 11 of 2012

Indonesian Ulema Council Number 11 of 2012 decided and stipulated a Fatwa on the Position of Children Resulting from Adultery and Their Treatment:⁷

First: General Provisions, in this fatwa, what is meant by a child resulting from adultery is a child born as a result of sexual intercourse outside of a valid marriage according to religious provisions, and is a jarimah (criminal act). Hadd is a type of punishment for a criminal act whose form and level have been determined by the text. Ta'zir is a type of punishment for a criminal act whose form and level are left to the ulil amri (the party authorized to determine the punishment). A mandatory will is a policy of the ulil amri (ruler) which requires a man who causes the birth of a child of adultery to make a will to give property to the child resulting from adultery after his death.

Second: Legal Provisions, a child resulting from adultery does not have a relationship of lineage, marriage guardian, and nafaqah with the man who caused his birth. A child resulting from adultery only has a relationship of lineage, inheritance, and nafaqah with

his mother and his mother's family. A child resulting from adultery does not bear the sin of adultery committed by the person who caused his birth. Adulterers are subject to hadd punishment by the authorities in the interests of maintaining legitimate offspring (hifzh al-nasl). The government has the authority to impose ta'zir punishment on adulterous men who cause the birth of children by requiring them to meet the child's living needs and provide property after he dies through a mandatory will.

In providing property through a mandatory will, it does not mean that the child can be assigned to the man who caused his birth, but rather for the sake of responsibility to the man who caused the child to be born. The punishment as referred to in number 5 in MUI fatwa number 11 of 2012 aims to protect children, not to legitimize the relationship between the child and the man who caused his birth.

In its fatwa, the MUI stated that the reason for its legal considerations was also based on the protection of children's human rights. Protection of human rights is identified with al-maslahah. In Islamic law, al-maslahah aims to elevate the dignity of humanity as a whole in accordance with the purpose of its creation as a caliph who is tasked with preserving this earth.

Mashlahah In terms of objects and strength, there are three types of maslahah, including: *Mashlahah dharuriyah*, *mashlahah* whose existence is directly related to the essential needs of humans, namely

⁷Majelis Ulama Indonesia. *Himpunan Fatwa Majelis Ulama Indonesia (Edisi Terlengkap)* (Jakarta: Penerbit Erlangga, 2020) h. 664-665.

those related to the maintenance and protection of religion, the maintenance and protection of the soul, the maintenance and protection of reason, the maintenance and protection of descendants, and the maintenance and protection of property.

The maintenance and protection of religion is protecting a person to be religious according to his/her beliefs with the prohibition of slandering and insulting religion, the prohibition of deviating from the religion that is embraced, the prohibition of blaspheming religion, the prohibition of always acting anarchically and causing damage. The maintenance and protection of the soul is the maintenance and protection of all rights to a decent life, including the maintenance and protection of freedom of action, freedom of thought, freedom of speech, freedom of residence and so on that are related to human rights. The maintenance and protection of reason is the maintenance and protection from something that can damage reason, maintaining it with noble values, studying useful knowledge and always thinking positively. The maintenance of descendants is the maintenance and protection of every child with a clear status, must be treated as part of society that must grow and develop around their parents, both physically and spiritually. To ensure the preservation of these descendants, in Islamic law it is forbidden to have sexual relations outside of marriage, and the establishment of a marriage institution that is prescribed by law. And the maintenance and protection of

property is maintaining and protecting property from all forms of injustice, theft, fraud and destruction.

Analysis of the Right to Support for Children of Adultery According to MUI Fatwa Number 11 of 2012 and its Relation to MK Decision Number 46/PUU-VIII/2010

In the provisions of law number 5 and 6 of the MUI fatwa number 11 of 2012, it is explained that the government has the authority to impose ta'zir punishment on adulterous men who cause the birth of a child by requiring him to meet the child's living needs and provide property after he dies through a mandatory will. In providing property through a mandatory will, it does not mean that the child can be traced to the man who caused the birth, but rather for the sake of responsibility to the man who caused the child to be born. The punishment as referred to above aims to protect the child, not to legitimize the relationship between the child and the man who caused the birth.

To decide and determine the MUI fatwa number 11 of 2012, the Indonesian Ulema Council considered that in Islam, a child is born in a pure condition and does not carry hereditary sin, even if he is born as a result of adultery; that in the reality of society, children resulting from adultery are often neglected because the man who caused their birth is not responsible for fulfilling their basic needs, and often the child is considered an illegitimate child and discriminated against because on their birth certificate it is only attributed to the mother; that regarding this problem, the Constitutional Court, with the consideration of providing

protection to children and giving punishment to the man who caused their birth to be responsible, stipulates the Constitutional Court Decision Number 46/PUU-VIII/2010 which in essence regulates the position of children born outside of marriage having a civil relationship with their mother and their mother's family and with the man as their father who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with their father's family; that regarding this decision, questions have arisen from the community regarding the position of children resulting from adultery, especially related to the relationship of lineage, inheritance, nafaqah and marriage guardian of the child resulting from adultery with the man who caused their birth according to Islam; that therefore it is deemed necessary to stipulate a fatwa regarding the position of children resulting from adultery and their treatment to be used as a guideline.

From the analysis above, the author can conclude that a child born outside of a legal marriage does not receive an inheritance from the man who caused his birth. However, the man must provide a living or fulfill the needs of life and provide property to the child when he dies through a mandatory will as a form of fulfilling human rights.

To determine the MUI fatwa number 11 of 2012, the Indonesian Ulema Council

uses the following legal basis, among others:⁸

Word of Allah subhanahu wa ta'ala. God's Word that regulates lineage, in surah al-Furqan: 54.

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

Translation:

"It was He (also) who created humans from water (semen), then He made humans (to have) offspring and musaharah (fecundation). Your God is Almighty."

God's word prohibits adultery and things that bring it closer to adultery, which is found in surah al-Isra: 32 and surah al-Furqan: 68-69.

وَلَا تَقْرُبُوا الزَّوْجَ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

Translation:

"And do not come near to adultery; it is indeed an abomination and an evil way."

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

Translation:

"And those who do not associate partners with Allah with other gods, do

⁸Majelis Ulama Indonesia. *Himpunan Fatwa Majelis Ulama Indonesia (Edisi Terlengkap)*, h. 655-656.

not kill those whom Allah has forbidden except for the right (reason), and do not commit adultery. Whoever does this will surely suffer sin. For him, the punishment will be doubled on the Day of Resurrection and he will remain with that punishment in humiliation.”

God's Word which explains the importance of clarity of lineage and the origins of kinship, is found in surah al-Ahzab: 4-5 and surah al-Nisa': 23.

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِّن قَلْبَيْنِ فِي جَوْفِهِ ۖ وَمَا
جَعَلَ أَزْوَاجَكُمْ الَّتِي تُظَاهِرُونَ مِنْهُنَّ
أُمَّهَاتِكُمْ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَٰلِكُمْ
قَوْلُكُمْ بِأَفْوَاهِكُمْ ۗ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي
السَّبِيلَ ۗ أُدْعُوهُمْ لِأَبَائِهِمْ هُوَ أَفْطَرُ عِنْدَ اللَّهِ
فَإِن لَّمْ تَعْلَمُوا آبَاءَهُمْ فَاِخْوَانُكُمْ فِي الدِّينِ
وَمَوَالِيكُمْ ۗ يَوْلَىٰ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُم
بِهِ ۚ وَلَكِن مَّا تَعَمَّدَتْ قُلُوبُكُمْ يَوَكَّانَ اللَّهُ
عَفْوَرًا رَّحِيمًا

Translation:

“Allah did not make for a person two hearts in his sockets; and He did not make your wives whom you zihar your mothers, nor did He make your adopted children your (own) biological children. These are just words in your mouth. Allah says something is right and He shows the (right) way. Call them (the adopted children) by (using) their father's name; that is just in the sight of Allah, and if you do not know their fathers, (call them as) your brothers in religion and your brothers. And there is

no sin on you if you make a mistake about it, but (there is sin) what your heart intends. Allah is Most Forgiving, Most Merciful.”

وَحَلَآئِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ

Translation:

“And forbidden to you are the wives of your biological sons (your sons-in-law).”

God's Word confirms that a person does not carry the sins of others, nor does the child of adultery bear the sins of the adulterer, in surah al-An'am: 164 and surah az-zumar: 7.

قُلْ أَعْيَرَ اللَّهُ ابْنِي رَبًّا وَهُوَ رَبُّ كُلِّ شَيْءٍ وَلَا
تَكْسِبُ كُلُّ نَفْسٍ إِلَّا عَلَيْهَا وَلَا تَزِرُ وَازِرَةٌ وِزْرَ
أُخْرَىٰ ثُمَّ إِلَىٰ رَبِّكُمْ مَرْجِعُكُمْ فَيُنَبِّئُكُمْ بِمَا كُنْتُمْ
فِيهِ تَخْتَلِفُونَ

Translation:

“Say (Muhammad), is it (proper) for me to seek a God other than Allah, when He is the Lord of all things. For every sin a person commits, he himself is responsible. And one will not carry the burden of another's sins. Then to your Lord you will return, and He will tell you what you previously disputed.”

وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ ثُمَّ إِلَىٰ رَبِّكُمْ مَرْجِعُكُمْ
فَيُنَبِّئُكُمْ بِمَا كُنْتُمْ تَعْمَلُونَ ۗ إِنَّهُ ۗ عَلِيمٌ بِذَاتِ
الصُّدُورِ

Translation:

“And a person who sins does not bear the sins of others. Then to your Lord

you will return, and He will tell you what you have done. Indeed, He is All-Knowing of what is stored in (your) chest.”

Hadith Rasulullah *shallallahu ‘alaihi wa sallam*⁹. Hadith which explain that the child is given to the owner of the mattress or the husband of the woman who gives birth (firsasy), include::

عن عمرو بن شعيب، عن أبيه، عن جده، قال: قام رجل فقال: يا رسول الله، إن فلانا ابني عاهرت بأمه في الجاهلية، فقال رسول الله صلى الله عليه وسلم: «لا دعوة في الإسلام، ذهب أمر الجاهلية، الولد للفراش وللعاهر الحجر».

Meaning:

“From Amru bin Syu’aib from his father from his grandfather he said: Someone said: O Messenger of Allah, indeed so-and-so is my son, I committed adultery with his mother when it was still the time of ignorance. The Messenger of Allah also said: There is no recognition of children in Islam, the affairs of the time of ignorance have passed. The child is for the owner of the bed or the husband of the woman who gave birth (firsasy) and for the adulterer is a stone (punished).” (Narrated by Abu Dawud)

The hadith explains that children resulting from adultery are given to their mothers, among others:

⁹Majelis Ulama Indonesia. *Himpunan Fatwa Majelis Ulama Indonesia (Edisi Terlengkap)*, h. 657-658.

قال النبي صلى الله عليه وسلم في ولد الزنا
"لأهل أمه من كانوا"...

Meaning:

"The Prophet said about children resulting from adultery: "For the mother's family..." (HR. Abu Dawud)

Hadith which explains that there is no inheritance relationship between a child resulting from adultery and the man who caused its birth, including:

عن عمرو بن شعيب، عن أبيه، عن جده، أن رسول الله صلى الله عليه وسلم قال: «أبما رجل عاهر بجرة أو أمة فالولد ولد زنا لا يرث ولا يورث»

Meaning:

“From Amru bin Shua’aib from his father from his grandfather that the Messenger of Allah saw said: “Anyone who commits adultery with a woman, whether free or slave, then his child is the result of adultery, he does not inherit and does not inherit.” (HR. Al-Tirmidzi)

The hadith which explains that children are born into the world in a pure state, without sin, includes:

عن أبي هريرة رضي الله عنه قال: قال النبي صلى الله عليه وسلم: «كُلُّ مَوْلُودٍ يُوَلَّدُ عَلَى الْفِطْرَةِ فَأَبَوَاهُ يُهَوِّدَانَهُ أَوْ يُنَصِّرَانَهُ أَوْ يُمَجِّسَانَهُ».

Meaning:

"From Abu Hurairah he said: The Prophet said: Every child is born in a fitrah condition, it is his parents who make him a Magian Jew." (HR. Al-Bukhari and Muslim)

Ijma' Ulama, as stated by Imam Ibnu Abdil Barr in *At-Tauhid* (8/183) if someone commits adultery with a woman who has a husband, then gives birth to a child, then the child is not assigned to the man who committed adultery with her, but to the mother's husband, provided that he does not deny the child.¹⁰

وأجمعت الأمة على ذلك، نقلاً عن نبيها
صلى الله عليه وسلم ، وجعل رسول الله صلى
الله عليه وسلم كلَّ ولد يولد على فراشٍ لرجل
: لاحقاً به على كل حال ، إلى أن ينفيه
بلعانٍ ، على حكم اللعان.

"The Ummah has *ijma'* (agreed) on this matter based on the hadith of the Prophet and Rasullullah SAW which stipulates that every child born to a mother and her husband is ascribed to his father (the mother's husband), unless he rejects the child with *li'an*, then the law *li'an* law."

This was also conveyed by Imam Ibnu Qudamah in the Book of *Al-Mugni* (9/123) as follows:

¹⁰Majelis Ulama Indonesia. *Himpunan Fatwa Majelis Ulama Indonesia (Edisi Terlengkap)*, h. 659.

وأجمعوا على أنه إذا وُلد على فراشٍ فادَّعاه
آخر أنه لا يلحقه...

"The scholars agree (*Ijma'*) that a child who is born from a mother and has a husband, then someone else claims (to be the father), then he is not attributed to his father.."

Atsar Shahabah, Caliph Umar bin Al-Khatabah advised to always treat children resulting from adultery well, as written by Imam Ash-Shan'ani in *Al-Mushannaf* Chapter 'itq walad Az-zina hadith number 13871

Qa'idah Sadd al-Dzari'ah, namely by closing the slightest opportunity for adultery to occur and its legal consequences.

Qa'idah Ushuliyah:

الأصلُ في النهي يقتضي فسَادُ المنهي عنه

"Basically, a prohibition on something requires the destruction of the act that is being prohibited."

لَا اجْتِهَادَ فِي مَوْرِدِ النَّصِّ

"There is no *ijtihad* before the text."

Qa'idah Fiqh:

لِلْوَسَائِلِ حُكْمُ الْمَقَاصِدِ

"The law of means is to follow the legal achievement that is being aimed at."

الضَّرُّ يُدْفَعُ بِقَدْرِ الْإِمْكَانِ

“All harm (danger) must be avoided as much as possible.”

الضَّرُّ لَا يُزَالُ بِالضَّرِّ

“This danger cannot be eliminated by introducing another danger.”

دَرءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

“Avoiding *mafsadat* takes priority over bringing *mashlahah*.”¹¹

With the legal basis above, it can be seen that the fatwa issued by the MUI is based on strong evidence and is in accordance with existing Islamic teachings.

The Constitutional Court of the Republic of Indonesia issued a decision that tried and stated: Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia Number 3019) which states, “A child born out of wedlock only has a civil relationship with his/her mother and his/her mother's family”, does not have binding legal force as long as it is interpreted as eliminating the civil relationship with a man who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship as his/her father, so that the paragraph must be read, “A child born out of wedlock has a civil relationship with his/her mother and his/her mother's family as well as with a man as his/her father who can be

proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with his/her father's family”. The Constitutional Court concluded that Article 43 paragraph (1) is in conflict with the 1945 Constitution. Therefore, the Constitutional Court, with one of its dictums, reviewed the provisions of Article 43 paragraph (1) to become “a child born out of wedlock has a civil relationship with his mother and his mother's family and with a man as his father who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with his father's family”. This decision is a decision issued based on humanitarian values so that children who are born receive legal justice.

In deciding case number: 46/PUU-VIII/2010 concerning the position of children born outside of marriage, the Constitutional Court is guided by legal sources. This is done so that every decision issued by the Constitutional Court can clearly identify what legal sources are the basis for the constitutional judges to decide the case, in addition to that, so that the decision issued can provide legal certainty and justice to the parties to the case. In deciding case number: 46/PUU-VIII/2010 concerning the position of children born outside of marriage, it can be seen from the contents of the decision that the panel of judges of the Constitutional Court based their decision on the following legal bases: Article 24C paragraph (1) of the 1945

¹¹Majelis Ulama Indonesia. *Himpunan Fatwa Majelis Ulama Indonesia (Edisi Terlengkap)*, h. 660.

Constitution and Article 10 paragraph (1) letter a of Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226, hereinafter referred to as the Constitutional Court Law).

In addition, other considerations that are the basis for the decision of the panel of judges of the Constitutional Court which is the main case submitted by the applicant who feels that his constitutional rights have been violated are first, in article 2 paragraph (2) of Law number 1 of 1975 concerning marriage, the application was not granted by the panel of judges of the Constitutional Court because they were of the opinion that the argument submitted by the applicant was legally unfounded. This is based on the fact that the article only explains about marriage registration, while marriage registration does not determine the validity of a marriage. Meanwhile, a valid marriage is a marriage that is carried out according to religion and belief as stated in article 2 paragraph (1) of the Marriage Law. The purpose of marriage registration is to guarantee recognition and respect for the rights and freedoms of others, and to fulfill just demands in accordance with moral considerations, religious values, security, and public order in a democratic society. Second, article 43 paragraph (1) of Law number 1 of 1975 concerning marriage. The petition filed

by the applicant was granted by the panel of judges of the Constitutional Court. This is based on nature, it is impossible for a woman to become pregnant without having sexual intercourse, that logically a pregnant woman must have a meeting between the ovum and spermatozoa either through sexual intercourse or through other means based on technological developments that cause fertilization. Proof of the relationship between the child and the father who impregnated the mother which caused the birth of the child is not only with evidence of marriage alone but also other evidence with science and technology and other evidence that is valid according to law that can prove the relationship between the child and the father.¹²

The Constitutional Court issued the ruling on February 17, 2012. With this ruling, it can be ascertained that children born out of wedlock have civil rights with their biological father. This then became a bright spot regarding the status of the child. This is based on the fact that the law must provide protection and fair legal certainty for the status of a child born and the rights that exist, including for children born even though the validity of their marriage is still disputed.

In relation to the Constitutional Court ruling number: 46/PUU-VIII/2010, the Indonesian Ulema Council is the first religious institution to respond and firmly state its rejection of the

¹²<https://putusan3.mahkamahagung.go.id/>. Diakses pada pukul 16: 49, tanggal 03 Januari 2023. Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. Pdf. H. 33-34.

Constitutional Court ruling because it is considered to have deviated from the teachings of Islam. In response to the Constitutional Court ruling, the MUI has conducted a study in accordance with Islamic law and the results of the study then issued a fatwa number: 11/MUNASVIII/MUI/3/2012 concerning the Position of Children from Adultery and Their Treatment. This fatwa dispelled various doubts (confusion) among Muslims and stated firmly the position of children resulting from adultery in Islam, so that Muslims no longer need to feel hesitant about adhering to the rules of Islamic law that have been established by Allah and not other rules made by humans.¹³

The Indonesian Ulema Council stated that it would not revoke the fatwa on the status of children resulting from adultery and their status under Islamic law. The Indonesian Ulema Council maintains that children born out of wedlock cannot have a civil relationship with their biological father. Islamic law states that children resulting from adultery only have a relationship with their mother. The Indonesian Ulema Council's view will not change unless the Constitutional Court can provide other evidence based on Islamic law.

In relation to the legal material contained therein, MUI Fatwa No. 11 of

2012 formulates in detail the legal status of children resulting from adultery, the rights attached to them, and guidelines for the government in protecting these rights. This formulation is one of the guidelines that helps judges when there is a legal vacuum. Until other binding regulations are issued, MUI Fatwa No. 11 of 2012 is a source of law for judges' considerations in resolving disputes in the field of family law, especially in determining the status and legal position of children born from adultery.¹⁴ In contrast to the fatwa, the Constitutional Court decision Number: 46/PUU-VII/I2010 states that a child born out of wedlock has a civil relationship with a man who can be proven by science as his biological father. The Indonesian Ulema Council views the Constitutional Court decision as having very broad consequences, including legitimizing the relationship of lineage, inheritance, guardianship, and maintenance between a child resulting from adultery and the man who caused his birth, where such a thing is not permitted by Islamic teachings. The Indonesian Ulema Council considers the decision to be inconsistent with Islamic law because it is based on considerations of human thought without considering religious law.¹⁵

¹³M. Halilurrahman dan Abdul Wahid, *Putusan Mahkamah Konstitusi RI dan fatwa MUI tentang Kedudukan Anak Zina (Analisis Komparatif)*, CENDEKIA: Jurnal Studi Keislaman, Vol. 5 No. 2 (Desember 2019), h. 155-156..

¹⁴Haniah Ilhami, *Kontribusi Fatwa Majelis Ulama Indonesia Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya Dalam Hukum Keluarga Islam Di Indonesia*, *Mimbar Hukum*, Vol. 30 No. 1 (Februari 2019), h. 14.

¹⁵M. Halilurrahman dan Abdul Wahid, *Putusan Mahkamah Konstitusi RI dan fatwa MUI*

In the brief description above, it can be concluded that the MUI Fatwa Number 11 of 2012 is contrary to the Constitutional Court Decision Number 46/PUU-VIII/2010. However, besides these differences, both also have similarities in terms of legal considerations for their issuance. Namely to fulfill the rights of a child born from an adulterous relationship, as a form of human rights. Human rights are basic rights that are owned by humans, according to their nature. Human rights include the right to life, the right to freedom or liberty, the right to property and other basic rights that are inherent in the human person and cannot be violated by others.

Human rights are essentially not solely from humans themselves but from God Almighty, which are brought from birth. In relation to this decision, the rights of children that are the focus of the Constitutional Court's consideration are the rights of children as stated in Law No. 23 of 2002 concerning Child Protection. The articles relating to children's rights are in article 4 which reads: "Every child has the right to live, grow, develop, and participate fairly in accordance with human dignity and dignity, and to receive protection from violence and discrimination". Based on the existing reality, the MUI fatwa number 11 of 2012 concerning children of adultery who may not be held accountable to their father's family but still have the right to support from their father is the most correct and wise legal implication because it is

tentang Kedudukan Anak Zina (Analisis Komparatif), h. 157.

in accordance with Islamic teachings and does not trivialize human rights.

Conclusion

From the results of this study, the author can conclude two things that are the core of the formulation of the research problem, namely: First, that a child resulting from adultery cannot be related to the man who caused his birth (his father), he can only be related to the mother and his mother's family. However, this does not eliminate the father's responsibility to meet the child's living needs and provide property after he dies through a mandatory will. Second, that the MUI fatwa number 11 of 2012 rejects the Constitutional Court decision number 46/PUU-VIII/2010 concerning the status of a child resulting from adultery who has civil rights with his father if biologically it is proven that the child is the result of adultery between the father and mother, as a form of human rights. From the two opinions, the author tends to agree more with the MUI fatwa, on the grounds that the Constitutional Court decision number 46/PUU-VIII/2010 deviates from Islam, because in the Qur'an and al-sunnah it is clearly stated that a child born from adultery is only related to his mother and cannot be related to his father. In this case, the author is of the opinion that MUI fatwa number 11 of 2012 is the wisest legal implication because it is in accordance with Islamic law and still pays attention to human rights.

BIBLIOGRAPHY

Ahmad, Rumadi. (2015). *Fatwa Hubungan Antaragama di*

- Indonesia. Jakarta: PT Gramedia Pustaka Utama.
- Al-Dahhak, Muhammad bin Isa bin Saurah bin Musa. (1431 H.). *Sunan al-Tirmidzi*, Mesir: *Syirkah Maktabah wa Mathba'ah Musthafa al-Baabiy al-Halbiy*.
- Al-Ja'fi, Abu Abdillah bin Ismail al-Bukhari. (1993). *Shahih Bukhari*. Damaskus: *Daar Ibni Katsir*.
- Al-Naisaburi, Abu al-Hassain Muslim bin al-Hajjaj al-Qusyairi. (1334 H). *Shahih Muslim*. Turki: *Daar al-Taba'ah al-'Aamirah*.
- Al-Sijistani, Abu Dawud Sulaiman bin al-Asy'ats. (1431). *Sunan Abu Dawud*. Bairut: *Al-Maktabah al-Ashriyah*.
- Arnold, Achmad; Jamal, Mulyono. (2019). *Hak-hak Keperdataan Anak Hasil Zina dan Anak Luar Nikah Perspektif Hukum Postif dan Hukum Islam*. Journal Indonesian Comparative of Syariah Law. Vol. 2 (No.1).
- Bahri, Syamsul. (2015). *Konsep Nafkah dalam Hukum Islam*: Kanun Jurnal Ilmu Hukum. Vol. 17 (NO. 2).
- Bukhari. (2016). *Nafkah Anak di luar Nikah Kaitannya dengan Lembaga Peradilan Adat*: Jurnal Sarwah, Vol. 15 (No. 2).
- Fishabilillah, Fadhila. (2015). *Kewenangan dan Hak Mahkamah Konstitusi: Hukum Tata Lembaga-Lembaga Negara*. Halilurrahman, M.: Wahid, Absul (2019) *Putusan Mahkamah Konstitusi RI dan fatwa MUI tentang Kedudukan Anak Zina (Analisis Komparatif)*, CENDEKIA: Jurnal Studi Keislaman, Vol. 5 (No. 2).
- <https://putusan3.mahkamahagung.go.id/>. Diakses pada pukul 16: 49, tanggal 03 Januari 2023. Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. Pdf. H. 33-34
- Huda, Syamsul. (2015). *Zina dalam Perspektif Hukum Islam dan Kitab Undang-Undang Hukum Pidana*, Hunafa: Jurnal Studia Islamika, Vol. 12 (No. 2).
- Ilhami, Haniah. (2019). *Kontribusi Fatwa Majelis Ulama Indonesia Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya Dalam Hukum Keluarga Islam Di Indonesia*, Mimbar Hukum, Vol. 30 (No. 1).
- Kementrian Agama Republik Indonesia. (2010). *Al-Qur'an Tajwid dan Terjemah*. Bandung: Sygma Exagrafika.
- Luthfi, Hanif. (2019). *Mengenal Lebih Dekat MUI*. Jakarta Selatan: Rumah Fiqih Publishing.
- Majelis Ulama Indonesia. (2020). *Himpunan Fatwa Majelis Ulama Indonesia (Edisi Terlengkap)*. Jakarta: Penerbit Erlangga.

- Nuruddin, Amiur; Akmal Tarigan, Azhari. (2004). *Hukum Perdata Islam di Indonesia (Studi Kritis Perkembangan Hukum Islam dari Fikih UU No 1/1974 sampai KHI)*. Jakarta: Prenada Media.
- Saifullah. (2006). *Buku Pedoman Metodologi Penelitian*. Malang: Fakultas Syariah UIN.
- Salim, Abu Malik Kamal bin al-Sayyid. (2010). *Shahih Fiqih Sunnah wa Adillatuhu*. Cairo: Darut Taufiq Lit-Tirats.
- Sembiring, Rosnidar. (2016). *Hukum Keluarga Harta-harta Benda dalam Perkawinan*, Jakarta: Rajawali Pers
- Subaidi. (2014). *Konsep Nafkah Menurut Hukum Perkawinan Islam: Isti'dal: Jurnal Studi Hukum Islam*. Vol. 1 (No. 2).
- Suhartono, Slamet. (2017). *Eksistensi Fatwa Majelis Ulama Indonesia dalam Perspektif Negara Hukum Pancasila*. Al-Ihkam Jurnal Hukum dan Pranata Sosial. Vol. 12 (No. 2).
- Syafitri, Evita Roesnilam; Nuryono, Wiryo. (2020) *Studi Kepustakaan Teknik Konseling "Dialectical Behavior Therapy"*. Jurnal BK UNESA, Vol. 11 (No.1).
- Uddin, Azhar. (2022). *Kewajiban Laki-laki Pezina Menafkahi Anak Hasil Zinanya dalam Fatwa MUI No. 11 Tahun 2012 (Analisis Berdasarkan Qawa'id Fiqhiyyah*. Maqasid: Jurnal Studi Islam, Vol. 1 (No. 1).
- Wahyudi, Ary. (2021). *Eksekutorial Putusan Ptun Sebagai Lembaga Yudikatif*, POLITEA : Jurnal Politik Islam, Vol. 4 (No.1).
- Wahyudi, Heri Fadli. (2018). *Metode Ijtihad Komisi Fatwa Majelis Ulama Indonesia dan Aplikasinya dalam Fatwa*, Cakrawala: Jurnal Studi Islam, Vol. 13 (No. 2).