

Reconciling Religion and Law: The MUI Fatwa and the Constitutional Court's Ruling on Children Born Out of Wedlock

Haris Hidayatulloh

Universitas Pesantren Tinggi Darul Ulum

Abstract

Article 100 of the Compilation of Islamic Law (KHI) and Article 43(1) of Law No. 1 of 1974 on Marriage state that a child born out of wedlock has civil relations only with the mother and her family. However, following the Constitutional Court Decision No. 46/PUU-VIII/2010, such a child is also deemed to have civil relations with the biological father, provided that a biological link is proven through science and technology and/or other legal evidence. This landmark ruling triggered public debate and controversy, notably from the Indonesian Ulema Council (Majelis Ulama Indonesia/MUI), which expressed concern that the decision could indirectly legitimize adultery. In response, MUI issued a firm fatwa asserting that a child born out of wedlock has no lineage (*nasab*), inheritance, guardianship (*wali*), or financial obligations (*nafaqah*) from the biological father, but only from the mother and her family. However, to ensure child protection, MUI mandates the father to provide for the child's needs and issue a mandatory will (*wasiat wajibah*). This study uses a normative juridical method with a literature review approach and descriptive analysis. The fatwa represents a wise, innovative legal stance that upholds Islamic principles while promoting civil rights for the child within the framework of public welfare (*maslahah*).

Keywords: Constitutional Court, MUI Fatwa, Out-of-Wedlock Child, Islamic Family Law

Introduction

In recent decades, many countries around the world have undergone significant legal transformations concerning the civil status of children born out of wedlock. This global shift reflects increasing recognition of children's rights, particularly in alignment with international human rights instruments such as the United Nations Convention on the Rights of the Child. Legal systems in countries such as France, the Netherlands, and South Africa have progressively acknowledged that the legal identity and civil entitlements of children should not be determined solely by the marital status of their parents (Freeman, 2011). These developments aim to eliminate discrimination and uphold the principle of equality before the law.

In the Indonesian context, the status of children born outside of marriage remains a complex and often contested issue, especially within the intersection of civil law and Islamic law. Historically, both the Indonesian Marriage Law No. 1 of 1974 and the Compilation of Islamic Law (KHI) have emphasized that a child born outside of legal marriage only has civil relations with the mother and her family (Pasal 43(1), UU No. 1/1974; Pasal 100, KHI). However, a landmark decision by the Constitutional Court (Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010) redefined this position by ruling that a child born out of wedlock also has civil relations with the biological father, provided that a genetic link is proven through science and technology or other legal evidence. This decision marked a critical legal shift that has drawn praise and criticism from various legal, religious, and civil society groups.

The importance of this study lies in exploring the intersection between legal reform and religious doctrine in the context of Islamic family law. The Indonesian Ulema Council (Majelis Ulama Indonesia/MUI), as the nation's most influential religious authority, responded to the Constitutional Court's ruling with Fatwa No. 11/2012. This fatwa reaffirmed traditional Islamic jurisprudence by denying paternal lineage (*nasab*), inheritance rights, guardianship, and financial responsibility from the biological father in cases of illegitimate birth, except for limited responsibilities such as child support and *wasiat wajibah* (mandatory

bequest). The tension between the progressive legal stance of the Constitutional Court and the conservative interpretation of Islamic law by the MUI highlights a unique legal and theological dilemma that has yet to be fully reconciled in Indonesian law and society.

Previous studies have examined either the legal implications of the Constitutional Court's decision (Rokhmadi, 2015; Sujana, 2015) or the theological basis of MUI's fatwas on family issues (Irfan, 2015; Djamil, 1999). However, there remains a significant gap in the literature concerning a comparative analysis of these two authoritative bodies—the Constitutional Court and MUI—particularly in how each defines and operationalizes the legal identity of children born out of wedlock in Indonesia. Most research tends to focus on either legal theory or Islamic jurisprudence, but rarely bridges the two perspectives within a socio-legal framework.

This study seeks to fill this gap by conducting a normative juridical analysis of the MUI fatwa in response to the Constitutional Court's Decision No. 46/PUU-VIII/2010. Specifically, it investigates how the fatwa reflects efforts to maintain religious orthodoxy while engaging with modern legal realities. Through a library research approach and descriptive-analytical methods, this paper aims to offer a critical understanding of the role of religious authority in shaping public policy and law in contemporary Indonesia. It argues that the MUI's fatwa, although conservative, introduces practical solutions such as *ta'zir* penalties and *wasiat wajibah* to ensure child protection without compromising core Islamic principles.

Methodology

This study adopts a normative juridical research approach, which focuses on examining legal norms and principles derived from statutory regulations and religious decrees. The primary objective is to analyze the fatwa issued by the Indonesian Ulema Council (Majelis Ulama Indonesia/MUI) in response to the Constitutional Court Decision No. 46/PUU-VIII/2010 concerning the legal status of children born out of wedlock. Normative juridical research is particularly suitable for this study because it enables the investigation of legal concepts, interpretations, and doctrinal conflicts between state law and Islamic jurisprudence.

The research relies heavily on *library research*, which involves collecting and analyzing primary and secondary legal sources. The primary legal materials include the Indonesian Marriage Law No. 1 of 1974, the Compilation of Islamic Law (KHI), the Constitutional Court decision in question, and MUI Fatwa No. 11/2012. Secondary sources consist of academic journals, books, legal commentaries, and previous studies that explore the legal and theological dimensions of the subject.

The analytical technique used is descriptive-analytical. This method involves describing legal concepts and texts, then analyzing them systematically to understand their implications and interrelationships. The descriptive aspect explains the content of legal documents, while the analytical aspect evaluates the consistency, coherence, and compatibility between the Constitutional Court's ruling and the MUI's fatwa. Through this method, the study aims to provide an in-depth understanding of the legal and religious discourse surrounding the status of out-of-wedlock children in Indonesia, and to highlight the broader implications for Islamic family law development in the country.

Results

The fatwa issued by the Indonesian Ulema Council (Majelis Ulama Indonesia/MUI) in response to the Constitutional Court Decision No. 46/PUU-VIII/2010 provides a clear reaffirmation of traditional Islamic views on lineage (*nasab*) and the legal status of children born outside of marriage. The MUI categorically rejects the interpretation of the Constitutional Court that extends civil relations—including inheritance, guardianship (*wali*), and lineage—between a child born out of wedlock and the biological father, even if scientific evidence confirms a biological link.

Affirmation of Maternal Lineage

According to the MUI fatwa, a child born outside of a valid Islamic marriage (*nikah sah*) is only affiliated with the mother and her family. This includes inheritance rights, guardianship rights, and the line of descent. The father, even if proven biologically, is not recognized as a legal parent under Islamic law due to the

absence of a lawful marital contract (*akad nikah*) at the time of conception or birth (MUI Fatwa No. 11/2012).

Rejection of Nasab to the Biological Father

The fatwa explicitly rejects the attribution of lineage (*nasab*) to the biological father in cases of illegitimacy. It references classical Islamic jurisprudence which views *nasab* as contingent upon a valid marriage. Thus, even if paternity can be confirmed through DNA testing or other scientific means, the child does not have a legal relationship with the father under Islamic law. This includes exclusion from inheritance, appointment of the father as guardian, and religious or social responsibilities traditionally associated with fatherhood.

Civil Obligations under *Ta'zir* Sanctions

Despite the strict view on lineage, the MUI introduces a mechanism for child protection rooted in Islamic ethics. The fatwa imposes *ta'zir* (discretionary sanctions) on the biological father who committed *zina* (fornication), compelling him to fulfill certain civil obligations. This includes two specific mandates:

Providing for the Child's Needs: The biological father is required to financially support the child, ensuring the fulfillment of basic needs such as food, shelter, and education.

Mandatory Testament (Wasiat Wajibah): The father is instructed to make a will that benefits the child. This is not framed as inheritance but as a social and moral responsibility.

These provisions reflect a moderate approach by MUI to balance doctrinal integrity with the welfare of the child.

Theological Justification

The fatwa grounds its arguments in the consensus (*ijma'*) of classical scholars and *qawa'id fiqhiyyah* (Islamic legal maxims). One such maxim cited is "*Al-walad lil firash*"—the child belongs to the marital bed. The absence of a valid marriage annuls any paternal claim from a Shariah perspective. Furthermore, MUI argues that attributing *nasab* through DNA would lead to *mafsadah* (harm), such as legitimizing *zina* and undermining family values.

Preventive Intent

Another key finding is the preventive intent (*sadd al-dzari'ah*) behind the fatwa. MUI interprets the Constitutional Court decision as potentially opening the door for the legalization of extramarital relations. By maintaining the prohibition of legal affiliation between the biological father and child, the fatwa seeks to uphold Islamic moral codes and deter societal decline in sexual ethics.

Legal Dualism Acknowledged

The MUI recognizes the dual legal system in Indonesia, where religious law and civil law operate in parallel. While the Constitutional Court decision may be binding in the civil sphere, MUI asserts its religious authority to define lineage and family law matters in accordance with Islamic norms, especially for Muslims. This leads to the coexistence of two standards for determining child legitimacy—civil (based on scientific and legal evidence) and religious (based on marital validity).

Table 1: Summary of Findings: Analysis of MUI Fatwa No. 11/2012

| Aspect | Findings |
|--|---|
| Affirmation of Maternal Lineage | The child born outside of a valid <i>nikah</i> is only affiliated with the mother and her family. The child has inheritance, guardianship, and descent rights exclusively through the maternal line. |
| Rejection of <i>Nasab</i> to Father | Biological fathers are not recognized as legal parents under Islamic law without a valid marriage. DNA or scientific proof does not establish <i>nasab</i> . Thus, no inheritance, guardianship, or paternal responsibility is granted. |
| Civil Obligations via <i>Ta'zir</i> | Despite rejecting <i>nasab</i> , MUI imposes <i>ta'zir</i> on the biological father: Child Support : Father must provide for basic needs. Wasiat Wajibah : Father |

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|-----------------------------------|---|
| | must allocate inheritance-like support through mandatory will. |
| Theological Justification | Based on <i>ijma'</i> , <i>qawa'id fiqhiyyah</i> , and the maxim “ <i>Al-walad lil firash</i> .” MUI argues attributing <i>nasab</i> via DNA causes <i>mafsadah</i> (harm), including potential legitimization of <i>zina</i> . |
| Preventive Intent | Fatwa applies the principle of <i>sadd al-dzari'ah</i> (blocking harm), aimed at preventing the normalization of extramarital sex by denying paternal legal ties in cases of <i>zina</i> . |
| Legal Dualism Acknowledged | MUI acknowledges coexistence of civil and religious legal frameworks in Indonesia. Civil law may recognize paternal affiliation via DNA, but religious law maintains lineage solely through valid marriage. |

Discussion

The fatwa of the Indonesian Ulema Council (MUI) in response to Constitutional Court Decision No. 46/PUU-VIII/2010 reveals a dynamic legal-religious tension within Indonesia's pluralistic legal system. This section critically discusses the implications, interpretive contrasts, and broader legal-theological ramifications of the case.

Legal Pluralism and Constitutional Dynamics

Indonesia's legal system exemplifies a complex model of legal pluralism, integrating civil, customary (*adat*), and religious—predominantly Islamic—legal traditions. The Constitutional Court, operating as a guardian of the 1945 Constitution, is mandated to uphold civil liberties and ensure equal protection under the law for all citizens. In this capacity, the Court's landmark ruling in Decision No. 46/PUU-VIII/2010 extends civil recognition to children born out of wedlock, allowing them legal connections to their biological fathers, provided the relationship is verifiable through scientific evidence. This decision aligns with international norms on child protection and anti-discrimination, emphasizing the principle that children should not be penalized for the circumstances of their birth (Freeman, 2011).

However, this progressive civil stance stands in stark contrast to the position taken by the Indonesian Ulema Council (MUI), which upholds the orthodoxy of Islamic jurisprudence. MUI's fatwa reiterates the primacy of Shariah principles, which limit *nasab* and associated civil rights solely to children born within valid marital unions. As Bowen (2003) observes, such legal dualism creates interpretive tensions in societies where religious law exerts substantial social authority.

Further complicating this dynamic is the hierarchical structure of legal sources in Indonesia. Although fatwas are not binding in the state legal system, they carry substantial moral weight, particularly within religious courts and among Muslim communities (Wahiduddin Adams, 2004). This legal pluralism, while reflecting Indonesia's socio-cultural diversity, also presents ongoing challenges in harmonizing constitutional mandates with faith-based norms. As Anshary (2014) highlight, effective legal integration requires deliberate dialogical processes and inclusive jurisprudential frameworks.

The Protection versus Legitimacy Debate

The Constitutional Court's Decision No. 46/PUU-VIII/2010 primarily emphasizes the protection of children's rights, grounded in constitutional guarantees of equality before the law and the right to identity. By acknowledging the legal relationship between a child born out of wedlock and the biological father—when substantiated by scientific means such as DNA—the Court seeks to dismantle structural discrimination rooted in marital status (Rokhmadi, 2015). This decision resonates with the spirit of Article 28B of the 1945 Constitution, which safeguards every child's right to recognition and protection.

In contrast, the Indonesian Ulema Council (MUI) frames its position from the perspective of *legitimacy*, prioritizing the preservation of Islamic family structures. For MUI, establishing *nasab* (lineage) without the foundation of a valid *nikah* (Islamic marriage contract) contravenes Shariah principles. Classical Islamic

jurisprudence, particularly within the Shafi'i and Hanafi schools, restricts lineage rights—including inheritance, guardianship, and family affiliation—to children born within legitimate unions (Nuruddin & Tarigan, 2004; Rofiq, 1995).

This position reflects the doctrine of *hifz al-nasab* (protection of lineage), one of the core objectives of Islamic law (*maqashid al-shari'ah*) that aims to maintain the clarity and integrity of family ties (Kamali, 2008). In this framework, child protection is upheld through the mother's lineage and welfare, while doctrinal boundaries regarding paternal affiliation remain uncompromised. Consequently, the debate reflects not merely a legal dispute but a broader ideological tension between universal human rights standards and religious moral order in Indonesia's plural legal system.

Bridging the Divide: *Ta'zir* and *Wasiat Wajibah*

One of the most innovative aspects of the MUI Fatwa No. 11/2012 is its attempt to offer a balanced and context-sensitive legal remedy that bridges doctrinal integrity with the moral imperative to protect children. While rejecting the attribution of *nasab* to children born out of *zina*, the fatwa introduces *ta'zir*—a discretionary punishment under Islamic law—as a mechanism to impose civil responsibility on the biological father. This includes compelling him to provide for the child's basic needs, such as financial maintenance and education, even though he is not legally recognized as the father within the framework of *nasab* (MUI, 2012; Mahfudz, 2010).

Additionally, the fatwa mandates the use of *wasiat wajibah* (mandatory bequest), which requires the father to allocate a portion of his estate to the child upon his death. This approach ensures financial security without categorizing the child as a rightful heir—thus preserving the theological boundary of inheritance limited to lawful descendants. The basis for this practice can be found in the *Kompilasi Hukum Islam* (KHI) Article 209, which also applies *wasiat wajibah* in the context of adopted children and other non-heirs (Djamil, 1999).

This dual strategy—*ta'zir* and *wasiat wajibah*—exemplifies a dynamic form of *ijtihad*, or legal reasoning, that harmonizes evolving social needs with enduring religious principles (Irfan, 2015). It reflects an adaptive capacity within Islamic jurisprudence to address complex issues like child legitimacy without compromising foundational ethical commitments, as supported by scholars such as Fathurrahman (1999) and Irfan (2015), who emphasize the importance of protecting the rights of the most vulnerable in society.

Social and Ethical Considerations

MUI's concern regarding the Constitutional Court's decision stems from a broader moral anxiety that granting civil recognition to children born out of wedlock could inadvertently legitimize or even encourage extramarital relationships. This perspective is grounded in the Islamic legal principle of *sadd al-dzari'ah* (blocking the means to harm), which aims to prevent potential pathways to moral corruption by restricting access to actions that might lead to prohibited outcomes (Kamali, 2008). In this context, legal recognition of lineage from a biological father without a valid marriage is seen as a door to normalizing *zina* (fornication), thereby eroding the sanctity of marriage and the family structure in Muslim society.

While the intent behind this approach is to preserve moral order, it also raises significant ethical concerns. By denying paternal recognition and associated rights, the fatwa risks marginalizing innocent children—who are themselves not culpable for the circumstances of their birth. This exclusion can lead to lifelong stigma, social rejection, and psychological harm. Research by UNICEF (2019) confirms that legal inclusion and state-supported protections significantly enhance the well-being, education, and social development of children born outside formal marriage.

Legal scholars increasingly argue that ensuring children's civil and social rights does not equate to condoning extramarital relationships. As Freeman (2011) contends, protecting children's dignity is a matter of human rights, not moral compromise. Therefore, the ethical challenge lies in distinguishing between condemnation of *zina* and the protection of those innocently affected by it—a nuance that religious and legal institutions must carefully navigate to uphold both justice and compassion.

Jurisprudential Debates on *Nasab* and Paternity

The MUI's position on the denial of *nasab* (lineage) to children born out of wedlock reflects the dominant opinion within classical Sunni jurisprudence, especially in the Shafi'i and Hanbali schools. These traditions

emphasize the legitimacy of marriage as the legal foundation for establishing paternal affiliation. The principle “*al-walad lil-firash*”—the child belongs to the marital bed—is frequently invoked to justify the exclusive recognition of *nasab* within lawful marriage (Rofiq, 1995). Thus, in most traditional views, even scientific proof such as DNA testing is not sufficient to confer legal lineage in the absence of *nikah*.

However, alternative views have emerged, especially among contemporary Islamic legal scholars who advocate for reformist interpretations. Scholars such as Yusuf al-Qaradawi and Jasser Auda support the idea that modern realities, including advancements in science and shifts in social structures, require renewed *ijtihad* (independent legal reasoning). They argue that the *maqashid al-shari'ah* (objectives of Islamic law), particularly *hifz al-nasl* (protection of lineage) and *hifz al-nafs* (protection of life), can justify paternity recognition through DNA evidence if it serves the greater good (*maslahah*) (Auda, 2008).

This approach opens the door to reconciling Islamic law with constitutional frameworks and child protection imperatives. In pluralistic nations like Indonesia, where religious and state laws coexist, such jurisprudential flexibility is essential to bridging normative Islamic principles with evolving human rights norms and scientific capabilities (Nuruddin & Tarigan, 2004). Legal discourse, therefore, must remain responsive to both theological foundations and empirical realities.

Implications for Legal Education and Policy

The divergence between the MUI fatwa and the Constitutional Court's ruling underscores the critical need for integrated legal education that fosters competence in both civil and religious legal systems. In a context like Indonesia's, where legal pluralism is constitutionally recognized and religious norms continue to shape public morality, legal professionals must be equipped with interdisciplinary knowledge. This includes a solid grounding in Islamic jurisprudence (*fiqh*), statutory law, and contemporary human rights discourse. As Fathurrahman (1999) argues, developing legal solutions in a plural society requires jurists who can synthesize traditional values with modern legal reasoning.

Moreover, the case highlights the necessity of institutionalized dialogue between religious authorities and state legal bodies. Legal dualism in Indonesia cannot be effectively addressed through fragmented or unilateral approaches. Instead, sustainable legal harmonization must be built upon collaborative platforms that enable mutual recognition of constitutional rights and religious identity. Such efforts can help prevent polarization while promoting legal frameworks that reflect both the nation's plural character and shared ethical values (Nuruddin & Tarigan, 2004).

The Constitutional Court's decision and MUI's response offer a unique opportunity to strengthen institutional synergy. Creating spaces for structured engagement—such as joint legal forums, interfaith commissions, or judicial consultation boards—can foster legal coherence. In doing so, Indonesia can model a nuanced approach to legal pluralism that safeguards vulnerable populations while respecting the religious convictions of its majority Muslim population.

Conclusion

The Constitutional Court Decision No. 46/PUU-VIII/2010 and the subsequent fatwa issued by the Indonesian Ulema Council (MUI) represent two distinct yet interrelated legal responses to the evolving status of children born out of wedlock in Indonesia. While the Constitutional Court embraced a rights-based and scientific approach, affirming the child's civil relationship with the biological father through DNA or legal evidence, the MUI reaffirmed traditional Islamic jurisprudence by restricting such relationships strictly to the mother and her family unless a valid marriage existed.

The MUI fatwa does not recognize *nasab*, inheritance, guardianship, or financial responsibility from the biological father in cases of *zina*. However, as a form of ethical and social responsibility, it mandates *ta'zir* sanctions on the father, requiring him to provide for the child's needs and issue a *wasiat wajibah* (obligatory bequest). This approach demonstrates an effort to uphold the moral boundaries of Islamic law while addressing the humanitarian need to protect innocent children from social and economic vulnerability.

This study concludes that both legal instruments—although stemming from different paradigms—seek to address the same core issue: the civil rights and dignity of children born outside of legal marriage. The Constitutional Court highlights state responsibility and legal equality, while MUI emphasizes moral order and religious identity. The challenge lies in harmonizing these frameworks to ensure legal clarity, uphold

religious values, and protect the best interests of the child. Thus, the MUI fatwa can be viewed as a strategic and balanced legal *ijtihad* that preserves doctrinal integrity while introducing meaningful solutions to a complex social issue in Indonesia's plural legal system.

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