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10.20885/mawarid.vol7.iss2.art9

FATWĀ IN CONTEMPORARY ISLAMIC JUDICIARY: THE ACCOMMODATION OF MUI *FATWĀ* AMONG JUDGES OF INDONESIAN RELIGIOUS COURT

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Info Artikel

Article History:
Received: June 23, 2025
Accepted: August 30, 2025
Published: September 5, 2025

ISSN: 2656-1654

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e-ISSN: 2656-193X

Abstract

Purpose *– This study focuses on the extent to which the application of MUI (Council of Indonesian Ulama) fatwā in the Indonesian Religious Court, particularly in the context of Islamic family law. This issue has led to discursive debates between Indonesian ʿUlamāʾ and some scholars. Some argue that fatwā is not binding because it is not a legal source and there is no fatwā in the hierarchy of Indonesia's legal system. However, MUI fatwās have been used as a legal basis for decisions related to Islamic family law in the Indonesian Religious Court.*

Method *- This research uses sociological jurisprudence as a method for inquiry. This method is based on normative legal research. However, it does not discuss the legal system or regulation; nevertheless, it observes the reactions and interactions that occur in society when the regulation is enforced.*

Findings *– This study concluded that although MUI fatwā is not binding in the Indonesian Legal system, the judges of the Indonesian Religious Court have considered the MUI fatwā as a legal basis in rendering decisions relating to Islamic family law. In other words, the fatwās issued by the Majelis Ulama, which have been used as a legal basis by judges in the Religious Courts for several cases related to Islamic family law in Indonesia, will shift. The issues mentioned deal with the legal status of children out of wedlock, child adoption, interfaith marriage, and Ahmadiyah followers.*

Research contribution *– This study reveals the role of MUI fatwas as a non-formal source of legal legitimacy that, while not legally binding, continues to influence judicial practices in Indonesian Religious Courts concerning Islamic family law.*

Originality/value *– The value of this research rests in its ability to demonstrate the dynamic interaction between religious authority and the positive legal system, thereby opening a broader discourse on the integration of fatwas into national legal practice.*

Keywords: *Fatwā, The Council of Indonesian Ulama (MUI), Legal Reasoning, Indonesian Religious Court*

Abstrak

Tujuan *– Artikel ini berfokus pada sejauh mana penerapan fatwa MUI (Majelis Ulama Indonesia) di Pengadilan Agama Indonesia, khususnya dalam konteks hukum keluarga Islam. Masalah ini secara harfiah memicu perdebatan diskursif antara ulama Indonesia dan beberapa cendekiawan. Beberapa berargumen bahwa fatwa tidak mengikat karena bukan sumber hukum dan tidak ada fatwa dalam hierarki sistem hukum Indonesia. Namun, pada kenyataannya, terdapat fatwa MUI yang telah digunakan sebagai dasar hukum dalam pengambilan keputusan terkait hukum keluarga Islam di Pengadilan Agama Indonesia.*

Metode *– Penelitian ini menggunakan metode sosiologi hukum dalam melakukan penyelidikan. Metode ini didasarkan pada penelitian hukum normatif. Namun, metode ini tidak membahas sistem hukum atau peraturan, melainkan mengamati reaksi dan interaksi yang terjadi di masyarakat ketika peraturan tersebut diterapkan.*

Temuan *– Artikel ini menyimpulkan bahwa meskipun fatwa MUI tidak mengikat dalam kerangka sistem hukum Indonesia, namun hakim-hakim di Pengadilan Agama Indonesia telah mempertimbangkan fatwa MUI sebagai dasar hukum dalam mengambil keputusan terkait hukum keluarga Islam. Dengan kata lain, terdapat pergeseran penggunaan fatwa yang dikeluarkan oleh Majelis Ulama Indonesia sebagai dasar hukum bagi hakim di Pengadilan Agama untuk beberapa kasus terkait hukum keluarga Islam di Indonesia. Masalah yang dibahas meliputi status hukum anak di luar nikah, adopsi anak, pernikahan antaragama, dan pengikut Ahmadiyah.*

Kontribusi Penelitian *–Kontribusi penelitian ini terletak pada pengungkapannya mengenai peran fatwa MUI sebagai sumber legitimasi hukum non-formal yang, meskipun tidak mengikat secara hukum, tetap mempengaruhi praktik peradilan di Pengadilan Agama Indonesia terkait hukum keluarga Islam.*

Keaslian/Nilai *– Nilai penelitian ini terletak pada kemampuannya untuk menunjukkan interaksi dinamis antara otoritas agama dan sistem hukum positif, sehingga membuka diskusi yang lebih luas tentang integrasi fatwa ke dalam praktik hukum nasional.*

Keyword: *Fatwā, Majelis Ulama Indonesia, Alasan Hukum, Pengadilan Agama Indonesia.*

INTRODUCTION

A *fatwā* is a legal opinion or religious regulation promulgated by Muslim scholars called *muftī* in relation to Islamic issues (Alnizar, 2025). *Fatwā* perpetuates a long-standing tradition in Muslim societies that remains stable despite changes in the political atmosphere (Anisa, 2020). *Fatwā* does not merely discuss ritual discourses but also involves daily life issues related to political, social, and economic transactions (Jamaa, 2018).

The essential function of *fatwā* is to respond to religious questions. The person who gives a *fatwā* is a *muftī*, someone who is trusted as an expert in religious matters. The appointment of a *muftī* is not always a formal process (Ibrahim, Arifin, & Abd Rashid, 2015). In a small town, a local mosque leader could be a *muftī* by default. There are also self-proclaimed *fatwā* institutions for Muslim populations in big cities. There are *also fatwās* promulgated by Muslim organizations such as Muhammadiyah, Nahdhatul Ulama, Persatuan Islam (Persis), and the Council of Indonesian Ulama (MUI) (Andriansyah, 2023).

The *fatwās* of the Indonesian Council of *'Ulamā'* that are used as a basis for consideration by judges in the Religious Courts in Indonesia are numerous (Sirry, 2013). However, only four fatwas will be studied in this research, namely *fatwās* on the status of children out of wedlock, child adoption, inheritance of different religions, and fatwas on the *Ahmadiyah* sect (Mustofa, Fakhria, Quintana, Tauziri, & Nainin, 2024). These *fatwās* will be studied in detail regarding their

source and epistemological basis, the method used in determining the *fatwā*, and the position of the *fatwā* in the court decision in question.

In the Muslim world, the position of *fatwā* is quite varied. In some countries such as Malaysia and Brunei Darussalam, *fatwā* is binding on all muslim citizens (Khairuldin, Embong, Anas, Mohd, & Ismail, 2018). In addition, the government of put it as a council within its body structure. Consequently, the *fatwā* issued by the council are not independent. Unlike in Brunei and Malaysia, fatwā in Egypt is not subordinate to the government. Therefore, fatwas are more independent.

In the Indonesian context, *fatwā* is not binding on Muslims because it is not a part of the Indonesian legal system and does not exist in its hierarchy. However, fatwā has recently shifted from being a legal opinion to a legal source (Rusli, Hasyim, & Nurdin, 2020). This can be seen in several cases of religious court decisions, such as the legal status of children out of wedlock, children's adoption, interfaith inheritance, and Ahmadiyah cases (Alnizar, Manshur, & Ma'ruf, 2022).

If asked why only the four *fatwās* are studied and used as the basis for this study, the answer is that the *fatwās* have been explicitly considered by judges in determining decisions or rulings. In addition, these *fatwās* are interesting because many consider them controversial and they attract public attention (Sirry, 2013). There are also those who consider that *fatwās* do not consider aspects of the public interest. There are also those who think that the *fatwās* are too conservative and do not try to accommodate progressivism.

Many works discuss *fatwā*, for instance, the position of *fatwā* in the Indonesian legal system. There are several scholarly works that discuss this, namely the article proposed by Slamet Suhartono entitled "Eksistensi *Fatwā* Majelis Ulama Indonesia dalam Perspektif Negara Hukum Pancasila (The existence of *Fatwā* of Indonesian Council of ʿulamāʾ in the Perspective of State Law of Pancasila)" (Suhartono, 2018). He perceived that the *Fatwā* of MUI are not official regulations in Indonesia because the MUI is not an official state institution. However, *fatwā* is one material source of law. Another article that discusses the position of *fatwā* is "Kekuatan Hukum *Fatwā* Majelis '*Ulamāʾ* Indonesia (MUI) dalam Perspektif Peraturan Perundang undangan di Indonesia. (The Legal Force of *Fatwā* of the Council of Indonesian '*Ulamāʾ* in the Perspective of Indonesian Legal System)." Al Fitra Johar who wrote this article arguing that the *fatwā* of MUI has no power to prescribe behavior it as long as it has not become positive law. Therefore, it merely includes an aspiration of law (Johar, n.d.).

Based on the above explanation, it is significant to question why judges of the Indonesian Religious Court refer to *fatwā* as a legal basis in rendering decisions,

what legal reasoning is used by judges in rendering decisions related to Islamic family law in the Indonesian Religious Court, and why *fatwā* shifted from a legal opinion to a legal source. This article focuses on the extent to which the application of MUI (Council of Indonesian Ulama) *fatwā* in Indonesian Religious Courts, particularly in the context of Islamic family law. This issue has led to discursive debates between Indonesian *'Ulamā'* and some scholars.

Regarding the authority of *fatwā*, this article refers to the opinion of Professor Weil B. Hallaq. According to him, three important elements form modern Islamic Law: *muftīs* who issue *fatwās*, Islamic Court Judges, and Islamic Legal Scholars. Of these three elements, *fatwā* is the decisive element in the development of Islamic law in the Islamic world because of its open nature, free from binding rules, and accessibility to all parties for ijtihad in accordance with modern developments. According to Hallaq, however, *fatwā*s are still and have long been used as bases for consideration by judges, in addition to other sources of law. Based on Hallaq's perspective, this research will challenge whether the status of *fatwā* actually has a decisive role as a legal source in rendering decisions relating to several cases of Islamic Family Law in Indonesian Religious Court.

METHOD

The research method employed in this study adopts a sociological jurisprudence approach, combined with the framework of normative legal research. This approach was chosen to examine the relationship between the fatwās of the Indonesian Council of Ulama (MUI) and judicial practices in Religious Courts within the domain of Islamic family law. Unlike purely normative legal research, which is limited to analyzing statutory provisions, sociological jurisprudence enables researchers to understand how fatwās —although not formally recognized in Indonesia's legal hierarchy—are nonetheless considered as part of judges' legal reasoning. Accordingly, this study does not only investigates legal texts and fatwas and observes broader social interactions, institutional responses, and the interplay of religious and legal authority that shape the application of fatwas in judicial practice.

Operationally, this research was conducted through documentary analysis of selected MUI fatwas and relevant Religious Court decisions, specifically concerning the legal status of children born out of wedlock, child adoption, interfaith inheritance, and the Ahmadiyah case. This analysis connects the normative foundations of fatwas—such as references to the Qur'an, Hadith, fiqh principles, and scholarly opinions—with the judicial considerations employed by judges to resolve cases. This process involves identifying the legal reasoning applied by judges, including deductive arguments and

interpretative methods. Through this approach, this study seeks to reveal the role of fatwas as a non-formal source of legal legitimacy that exerts real influence on judicial practices, while also highlighting the dynamic interaction between religious authority and the positive legal system in Indonesia.

RESULT AND DISCUSSION

The Content and Legal Argument of *Fatwās*

Fatwā on Children Born out of Wedlock

The relevant *fatwā* is MUI *fatwā* No. 11/2012 on the legal position of children born out of wedlock and their treatment. The *fatwā* serves as the legal basis for the decision of the Kediri Religious Court No. 005/Pdt.P/2016/PA.Kdr. The *fatwā* itself emerged as a response to the Constitutional Court of Indonesia No. 446/PUU-VIII/2010 stipulated that children born out of wedlock have a civil relationship with their mother and father, as long as it can be proven through knowledge and technology. In addition, the fatwa also replies to the questions from the community of Indonesian Muslims regarding the legal position of children born out of wedlock, especially the legal position on descent (*nasb*), inheritance, guardianship (*wali*), and livelihood (*nafaqah*).

The term child born out of wedlock could be defined as unregistered married or *nikah di bawah tangan* or *nikah siri* in Bahasa Indonesia. It means a marriage held according to Islam but which does not meet the requirements of the Marriage Law. The term *nikah sirri* is commonly used in Indonesia to describe such marriages. Indonesia, as a state based on the rule of law, stands between secular and Islamic law, recognizing the Constitution of 1945 as the law of the land while respecting and ensuring freedom of religion. This kind of marriage is legal under Islamic law as long as the requirements of the rules of Islam are met. However, recognition of marriage before the state must be evidenced by a marriage certificate, as regulated in Law No. 1/1974 and the Compilation of Islamic Law (Amiur Nuruddin & Azhari Akmal Tarigan, 2006).

Marriage in Indonesia can be viewed from the perspective of both Islamic law and national or positive law. Both cannot be separated because they have been reconciled under Law No.1/1974 concerning marriage. In other words, the legal standing of unregistered marriages can be viewed through *ius constitutum* and *ius constituandum. Ius constituendum* means that the law is a normative law or *in abstracto*. Meanwhile, *ius constitutum* means that the law is implemented or *in concrito*. The act of getting married can be called a legal act if it is performed according to the provisions of the law, namely, marriage law No. 1/1974. Essentially, Article 2, paragraphs 1 and 2, insist that a marriage is legal if it meets two requirements. First, marriage is conducted according to Islamic law,

and second, such marriages are registered with a marriage registrar (*Pegawai Pencatat Nikah*). If a marriage fulfills the first requirement, it means that such a marriage has legal status. If both requirements are fulfilled, such a marriage is not merely legal before the law but also has legal standing (Zayyadi, Ridwan, Hidayat, Ubaidillah, & Masuwd, 2023).

The term "child born out of wedlock" can also be defined as an illegitimate child or *walad al-zinā.* Imam al-Kalwāzānī defined a child born out of wedlock as a child born as a result of a relationship between a man and a woman that did not meet religious requirements (M. ibn al-Ḥasan al-Kalwadhānī Abū al-Khaṭṭāb, 1995). Moreover, Wahbah al-Zuhailī defined it as a child born to a mother who does not meet the Islamic requirements of *sharī'ah* (Wahbah Az-Zuhaylī, 1985). Meanwhile, according to Marriage Law No. 1/1974, Article 43, Paragraph 1, a legal child is a child born through a legal marriage, see Law No. 1/1974 concerning Marriage, Article 43 Paragraph 1 (Marriage Law No. 1/1974 Article 43/1, n.d.).

Moreover, a child born from an illegal marriage is considered to be born out of wedlock. It is a sexual relationship between two persons who are not married, and it does not meet the stipulations and requirements of marriage (The Kompilasi Hukum Islam Article 99/1-2, n.d.). The Compilation of Islamic Law states that a legal child is a child born as a result of a legal marriage, *see* Compilation of Islamic Law Article 99 Paragraph 1. To conclude, a child born out of wedlock is a child who is the result of "water of man" and "water of women" which has no disguise (*shubhah*), contract (*'aqd*), and authority (*milk al-yamīn*). The child is as a result of illegal relationship either in the form of heinous act such as adultery or putting the sperm of a man to a woman's uterus through artificial insemination (A. Husain, 2008).

Among scholars, there is a dispute regarding the meaning of a child born out of wedlock. Some have said that such the Constitution Court's decision merely applies to unregistered marriages, not to children born from adultery. They argue that the decision tends to have a special character. The legal consequences of Constitutional Court Decision No.46/PUU-VIII/2010 must be restricted to an unregistered marriage (*nikah sirri/nikah di bawah tangan*) as a result of the polygamous marriage between Machica Mukhtar and Moerdiono (Bahruddin Muhammad, 2013). On the other hand, other scholars, such as Mukri Arto, have said that Constitutional Court Decision No. 46/PUU-VIII/2010 was a final and binding response and a verdict of judicial review of Law No. 1/1974 articles 2 (1) and (2). Therefore, the decision of the Constitution Court has been valid as law, and substantially it was general, and not individual in purpose and scope (Arto, 2012, pp. 12–13).

In addition, Mukri Arto argues that the decision was general, covering either unregistered marriages or children born from adultery, considering that the panel did not specifically mention the decision for the meaning of unregistered marriage or for children born from adultery. Therefore, the decision was general, and it meant that a child born out of wedlock, including children born from adultery, had a civil relationship with his/her mother and his/her biological father. This firmly contradicts sacred texts, al-Ḥadith, which state that a child born from adultery does not have a civil relationship with his/her father.

Another notion was proposed by Aldjupri. He concluded that the Constitutional Court decision covered both unregistered marriages and children born from adultery, and he also recognized that such a decision deleted Law No.1/1974 article 43. However, such a decision did not change the provisions of Islamic doctrines that children born outside of marriage do not have a civil relationship with their father. However, to provide legal protection for such children, the biological fathers must provide support and a mandatory testament (Aditya & Waddington, 2021).

Based on the explanation above, we are able to understand the meaning of a child born out of wedlock as the second understanding, namely the legal status of a child born from adultery or *walad al-zinā* in what exists in *fiqh* texts, not others. This is because plain language is limited to unregistered marriages. It is not contrary to what has been prescribed by law number 1 of 1974 and the Compilation of Islamic Law as well as accordance with Islamic jurisprudential doctrines. Unregistered married is legal before the law; it is just that the marriage has not been registered. This is different from children born from adultery. Besides being unregistered, such a birth does not meet the requirements of marriage law and Islamic Jurisprudence. Therefore, this article focuses on the inheritance status of children born from adultery from the perspective of human rights doctrines and conservative views.

Besides, there is an image within society that children born out of wedlock usually face discrimination, and the children are labeled as *anak haram or anak zina* (illegitimate child of adultery). The *fatwā* also mentions that children born out of wedlock are usually neglected by their parents and the community in which they live because the certificate of birth merely indicates their mothers. As mentioned above, according to Islam, all children are born innocent and, therefore, have no inherited sin. Therefore, the *fatwā* insists that all children are born innocent and are merely victims of their parents' actions.

The Legal Basis of MUI Fatwā No. 11/2012

The fatwa is based on several verses of the Qur'an, Hadith, *Qawa'idah Fiqhiyyah*, and opinions of Muslim scholars (The MUI Fatwa No.11 of 2012 on Legal Status of Children Born out of

Wedlock, n.d.). The relevant verses of Qur'an are Q.S al-Furqan [25];54 "He who created man from water, then He made man (have) offspring and *musaharah* and Your Lord is the Most Powerful", Q.S al-Isra [17];32 "And do not approach adultery; verily, adultery is an abominable act. And an evil way", surah al-Furqan [25];68-69 "And those who do not worship other gods from Allah and do not kill the soul which Allah has forbidden, Allah excepts with a just cause, and do not commit adultery; whoever does such a thing, whoever does so, he will have his sins avenged, i.e., his punishment will be multiplied for him on the Day of Resurrection and he will remain with that punishment, in a state of humiliation", Q.S al-Ahzab [33];4-5 "And He has not made your adopted children your own biological children. That is the only words from your mouth. Allah tells the truth and shows the way.

Call them (the adopted children) by (using) the names of their fathers; that is more just in the sight of Allah. Allah, and if you do not know their fathers, then call them your brothers in religion and your brothers in religion and your ancestors, ", Q.S an-Nisa [4]:23 "(and forbidden to you) the wives of your natural children (daughters-in-law)", and Q.S az-Zumar [39]: 7 "And a sinner shall not bear the sin of another. Then, to your Lord, you shall return, and He shall tell you what you have done. Surely, he knows best what is hidden in in your bosom."

Besides the verses of *the Qur'an*, the *fatwā* is also based on several *Hadith* (The MUI Fatwa> No.11 of 2012 on the Legal Status of Children Born out of Wedlock, n.d.), namely a *Hadith* which explains that the child is attributable to the owner of the bed/husband of the woman who gave birth (*firash*), while adulterers should be punished. The relevant Hadis is from 'Aisya (may Allah be pleased with her) reported that she said: Sa'ad ibn Abi Waqqas and Abd ibn Zam'ah fought over a child and then Sa'd said: O *Rasulallah*, this child is the son of my brother 'Utbah ibn Abi Waqqas. 'Utbah ibn Abi Waqqas told me that this is his son; notice the resemblance. 'Abd ibn Zum'ah also said*:* "This child is my brother, O Messenger of Allah; he was born from the owner of the bed (*firasy*) of my father from his mother. Then the Messenger of Allah looked at the child's appearance and saw a clear resemblance to 'Utbah, and said: "This child is your brother, O 'Abd ibn Zum'ah. The child is for the owner of the bed/husband of the woman, and the adulterer is to be punished with a stone. and veil yourself from him, O Sawdah Bint Zam'ah! Aisha said, "She never saw Sawdah at all". The Hadith was narrated by Bukhari and Muslim (Muh{ammad Ibn Isma'il al-Bukhari, 2013) (AL-Imam Abu al-Husayn Muslim al Hajjaj al-Qusyairian-Naysaburi, 2013).

Another relevant Hadith from Abu Dawud is also cited by MUI *fatwā*, namely "From 'Amr ibn Syu'aib (may Allah be pleased with him) from his

father from his grandfather he said: O Messenger of Allah, verify so-and-so is my son, I committed adultery with his mother during the days of *jahiliyyah*, the Messenger of Allah said: "There is no acknowledgment of children in Islam, the affairs of the time have passed. The child is for the owner of the bed/husband of the woman who gave birth (*firasy)*, and the adulterer is the stone (punishment)" (Abu Dawud, 2013).

Another Hadith explains that a child born out of wedlock is merely related to his/her mother. This Hadis is from Abu Dawud as follows; "The Prophet said about the child of adultery: "To the family of his mother."(Abu Dawud, 2013)

There is also a Hadith that explains that a child born out of wedlock does not have inheritance rights from a man who has caused his/her birth. The Hadith from 'Amr ibn Syu'aib reported from his father from his grandfather that the prophet said: "Whoever fornicates with a woman, whether free or slave, his child is a child of adultery and does not inherit and does not bequeath "(Imam al-Hafidh Abu Isa Muhammad bin Isa Bin Thawrah Bin Musa Bin Bin Ad-dahhak as-Sulami at-TirmiziSunan at-Tirmizi, n.d.).

The *fatwā* is also based on a Hadith which prohibits *zinaā* (adultery), namely a Hadis from Abi Marzuq (may Allah be pleased with him) reported: We were with Ruwaifi 'ibn Sabit fought in Jarbah, a village in the Maghrib, and he made a speech: "O people, I am a man of the people. I convey what I have heard from the Messenger of Allah, peace be upon him I convey what I heard from the Messenger of Allah at the battle of Hunain when he said: 'It is not lawful for anyone who believes in Allah and His Messenger to pour his semen on the crops of others (adultery)" (Ahmad ibn Hanbal, n.d.).

The consensus of *ʿUlamāʾ* (*ijmaā' of ʿulamāʾ*) is also a legal consideration of the *fatwā*. The consensus is *Ijmā'* of the scholars, as articulated by Imam Ibn 'Abd al-Barr in *at-Tamhīd*. He said that if a man commits adultery with a woman who has a husband, he will give birth to a child. The child is not related to the man who committed adultery, but to the husband of the mother, provided that he does not disown the child.

The *fatwā* uses several *Qāʿidah Uṣūliyyah* and *Qāʿidah Fiqhiyyah* as additional legal sources. The relevant *Qāʿidah Uṣūliyyah* are "*al-aṣl fī al-nahy yaqtaḍī fasād al-manhiyy ʿanhu*" (Basically, the prohibition of something requires the destruction of the prohibited act), "*lā ijtihāda fī mawriḍ al-naṣṣ*" (there is no *ijtihād* in the presence of *nass*). As for the *Qa>'idah Fiqhiyah* as follows: "*li al-wasāʾil ḥukm al-maqāṣid*" (The law of means is to follow the law of the outcome to be destination), "*al-ḍararu yudfaʿu bi-qadr al-imkān*" (All things harmful must be avoided wherever possible), "*al-ḍararu lā yuzālu bi-al-ḍarar*" (It is not permissible to remove the harm by introducing another harm), and "*Darʾ al-mafāsid*

muqaddam ʿalā jalb al-maṣāliḥ" (Avoiding damage takes precedence over bringing about wellbeing).

The notions of classical and modern Muslim scholars are also quoted in the MUI fatwa. They are Ibn Ḥajar al-ʿAsqalānī, Imām al-Sayyid al-Bakrī, Ibn Ḥazm, Ibn Taymiyyah, Ibn Nujaym, Ibn ʿĀbidīn, wa Wahbah al-Zuḥaylī, Ibn Ḥajar al-ʿAsqalānī. For instance, it was narrated from Imām al-Shāfiʿī that there are two interpretations of the meaning of the Hadisth "The child belongs to the owner of the bed/husband." First, the child belongs to the owner of the bed/husband as long as he does not deny it. If the owner of the bed/husband denies the child (does not acknowledge him/her) with a procedure that is recognized as valid in *syari'ah*, such as committing a *li'an*, then the child is declared not to be his.

Second, if there is a dispute (regarding the paternity of the child) between the owner of the bed/husband and the man who adulterated his wife/slave, then the child belongs to the owner of the bed/husband. The meaning of "For the adulterer is a stone" is that the adulterer is deprived and hopeless. The meaning of the word *al-ʿākhār* with two *fatḥahs* is adultery. Some scholars are of the opinion that the word is only used for adultery committed at night. Therefore, the meaning of despair here is that the adulterous man does not have the right of *nasb* to the child born from his adultery. The choice of the word despair here is in accordance with the Arab tradition, which states, "For him there is a stone" or: "there is a stone in his mouth" for someone who has given up hope.

Some argue that the meaning of stone here is the punishment of stoning. Imam Nawawi states that this opinion is weak because the punishment by stoning is only reserved for adulterers who are *muḥṣan* (married). On the other hand, this hadith is not intended to explain the legal position of stoning but is intended to simply deny the rights of the child or children over the adulterer. Therefore, Imam Subki states that the first opinion is more appropriate with the wording of the hadith, because it can state in general that the deprivation (of the right to paternity) includes all groups of adulterers (*muḥṣan* or not *muḥṣan*).

The modern Muslim scholar, Wahbah az-Zuhaili, also commented on this issue. Dr. Wahbah al-Zuhaili's opinion entitled " *Aḥkām al-Awlād al-Nātiǧīn ʿan al-Zinā*" was delivered at the 20th *Dawrah* of the *Majma' Fiqh Islāmi* in Makkah on December 25-29, 2010, basically explaining that if a man commits adultery with a woman who has a husband and then gives birth to a child, there is a consensus of scholars, as stated by Imam Ibn Abd al-Barr in "*at-Tamhid*" which confirms that the child is not related to the man who committed adultery, but rather to the husband of the mother, provided that he did not marry her, husband of the mother, provided that he does not disown the child through *li'an*.

On the other hand, if he commits adultery with a woman who is not married and she gives birth to a child, then according to the majority of scholars of the eight *mazhabs*, the child only has a kinship relationship with the mother, even if there is a confession from the man who had sex with her. This is because the child is attributable to a man who committed adultery. This reasoning follows because this is essentially opening the door to adultery, whereas we are commanded to close the door that leads to the (*sad adh dhari'ah*) to maintain the purity of the lineage from immoral behavior.

The Legal Provisions of MUI Fatwa No 11/2012

Under this MUI *Fatwā*, first, the child of adultery does not have a relationship of lineage, guardianship of marriage, inheritance, and *nafaqah* with the man who caused his birth. Second, the child of adultery only has a relationship of *nasb*, inheritance, and *nafaqah* with the mother and her family. Third, the child of adultery does not bear the sin of adultery committed by the person who caused the child's birth. Fourth, the adulterer is subject to *hadd* punishment by the authorities in the interest of preserving legitimate offspring (*ḥifẓ al-nasl*). Fifth, the government is authorized to impose *ta'zir* punishment on a male adulterer who causes the birth of a child by obliging him to: a. Provide for the needs of the child. Bequeath the child his property after his death through *waṣiyyah wājibah*. Sixth, the punishment referred to in number five aims to protect the child, not to legalize the *nasb* relationship between the child and the man who caused the birth.

Besides issuing legal *fatwās*, the MUI also provides several recommendations to the House of Representatives and the government. The relevant recommendations to this subject are as follows: First, the House of Representatives and the Government are requested to immediately draft legislation that sets forth: a. severe punishment against the perpetrators of adultery that can serve as *zawajir* and *mawani'* (deterring the perpetrators and those who have not yet committed adultery); b. Categorizing adultery as a general offense, not a complaint offense, because adultery is a crime that tarnishes the nobleness of human dignity. Second, the government should be urged to prevent the occurrence of adultery through strict laws and their enforcement. Third, the government is urged to protect children born of adultery and prevent neglect, especially by punishing the man who caused their birth. Fourth, the government is urged to efficiently provide birth certificates for the children of adultery, but not to attribute them to the man who caused the birth. Fifth, the government must educate the public on not discriminating against children born of adultery. The determination of the *nasb* of adulterated children to the mother is intended to protect the child's *nasb* and other related

religious provisions, not as a form of discrimination.

Fatwā on Children Adoption

The *fatwā* relevant here is fatwa no. U-335/MUI/VI/1982. The Indonesian Council of *'Ulamā'* issued several provisions concerning adoption as follows: First, Islam recognizes legitimate offspring (*nasb*), namely children born from marriage. Second, adoption with the understanding that the child breaks the relationship of descent (*nasb*) with the father and his biological mother is contrary to *syari'ah* law. Third, for an adoption that does not change the status of the child's lineage and religion, it is done out of a sense of social responsibility to care for, nurture, and educate them with compassion, like one's own children; a praiseworthy act and a good deed encouraged by Islam. Fourth, the adoption of Indonesian children by foreign nationals is not only contrary to Article 34 of the 1945 Constitution, but also degrades the dignity of the nation.

Legal Basis for MUI Fatwā No. U-335/MUI/VI/1982

The legal bases for the *fatwā* above are as follows: the verse of Q.S al-Ahzab [33]: 4 "And, he has not made your adopted sons your own children; that is only what you speak from your mouth only. Allah tells the truth, and He shows the right path.", Q.S al-Ahzab [33]: 5 "Call them (adopted children) by their fathers' names; that is the fairest in the eyes of Allah. If you do not know their fathers, then (call them as) your brothers in religion and originally (freed slaves)", Q.S al-Ahzab: 49 "Muhammad is not the father of any other man, but he is the Messenger of Allah and bears the Seal of the Prophets. And Allah knows everything" (The MUI Fatwa No. U-335/MUI/VI.1982 on Children Adoption, n.d.).

I addition to verses of the Qur'an, the fatwa is also based on several Hadith, namely Hadith from Imam Bukhari and Imam Muslim "and Abu Zar who heard the Messenger say: "No one should acknowledge (give allegiance) to a father, and he knows that it is not his father, but he has disbelieved his father." Hadis From Sa'ad bin Abi Waqqas that the Messenger of Allah (Peace be upon Him) said, "Whoever recognizes (allegiance) to not his father when he knows that he is not, paradise is forbidden to him, Hadith was Narrated by 'Abd Allah bin 'Umar bin Khattab Verily he said: 'We did not call Zaid bin Harisah but (we called) Zaid bin Muhammad, until the verse was revealed in Qur'an: Call them by the name of their father (biological father) that is more just in the sight of Allah."

In addition, according to 'Ali as-Shabuni, just as Islam has annulled *zhihar*, it has annulled *tabanni*. Similar to *tabanni* (adopting a child), Islam has forbidden it because *tabanni* attributes a child to someone other than his father, and this is a major sin that incurs the wrath and curse of God. Indeed, Imam Bukhari and Muslim have reported

Hadis from Sa'ad bin Abi Waqqas that the Messenger of Allah said: "Whoever recognizes (boasts) himself to one who is not his father, it is obligatory for him to receive the curse of Allah, the angels, and all mankind, and Allah will not accept from him *tasarruf* and testimony."

In line with the above notion, Mahmud Syaltut opined that to understand Islamic law on the issue of "*tabanni*" it is necessary to understand that "*tabanni*" takes two forms. One of them is where a person takes another person's child to be treated like his own biological child, in order to provide love, education, and other necessities, and legally the child is not another needs, and legally the child is not his child. "*Tabanni*" is something that should be done by those who are well-off but are not blessed with children. It is good to take someone else's child who has sufficient wealth, to seed the affection of his mother and father (because he is an orphan), or to educate him and give him a chance to learn because the biological parents are not well-off (poor). There is no doubt that such an endeavor is commendable and encouraged by religion and is rewarded. It is permissible for the adoptive father to bequeath a portion of his inheritance to his adopted child as a preparation for his future so that he will have a peaceful life.

Fatwā on Interfaith Inheritance

The Indonesian Council of *ʿUlamāʾ* issued a *fatwaā* on interfaith inheritance at its national conference in July 2005. The relevant fatwa is Fatwa No.5/MUNAS VII/MUI/9/2005. The background of issuing *fatwā* according to MUI was that there had been a frequent occurrence of interfaith inheritance, and there were often opinions that allowed interfaith inheritance; therefore, MUI deemed it necessary to establish a *fatwa* on interfaith inheritance.

The Legal Basis of MUI fatwā No.5/MUNAS VII/MUI/9/2005

The legal basis of the MUI *fatwā* are the verses of the Qur'an, Hadith, and several laws relating to inheritance (The MUI Fatwa> No 5/MUNAS VII/MUI/9/2005 on Interfaith Inheritance, n.d.). The relevant verses of the Qur'an are Q.S an-Nisa [4]; 11 "Allah has prescribed for you (the division of inheritance for) your children. Namely, the share of a son is equal to the share of two daughters; and if the children are more than two, then two-thirds of the property is left behind for them; if there is only one daughter, then she gets half of the estate. To two mothers and fathers, to each of them one-sixth of the property left behind, if the deceased has children; if the deceased has no children and he is inherited by his mother and father (only), then his mother receives a third; if the deceased has several brothers, then his mother gets one-sixth. (The divisions above) after the fulfillment of the will or the payment of his debts. (About) your parents and your children, you do not know which of

them is closer in benefit to you; this is the decree of Allah. Verily Allah is All-Knowing, All-Wise." Q.S an-Nisa [4]: 141). "...Allah will never give way to the disbelievers to destroy the believers."

The Hadith of the Apostle of Allah from Usamah ibn Zaid states that the Prophet Muhammad (P.B.U.H.) said, "Muslims do not inherit from a disbeliever, and a disbeliever does not inherit from a Muslim. (Narrated by *muttafaq 'alaih*). Abd Allah ibn Umar reported: the prophet said: 'There is no inherit each other between two adherents of different religions.'" (Narrated by Ahmad, the four Imam of Hadith and Turmuzi)

The *fatwā* is also based on several civil laws, namely Law number 1 of 1974 concerning marriage, the regulation of government or PP. no 9 of 1975 concerning the Implementation of Law no 1/1974 on Marriage, Presidential Instruction no 1 of 1991 concerning the Compilation of Islamic Law, and opinion of Commission C of *Fatwā* Session at the seventh of MUI National Conference in 2005. The *fatwā* issued provisions, namely: 1. Islamic inheritance law does not grant the right of mutual inheritance between people of different religions (between Muslims and non-Muslims); and 2. Bequeathing property to people of different religions can only be done through grants, wills, and/or gifts.

Fatwā on Ahmadiyah

The relevant *fatwā* is MUI *fatwā* No. 11/MUNAS VII/MUI/15/2005 on Ahmadiyah. The *fatwā* serves as the legal basis for the decision of the Tanjungpinang Religious Court No. 0025/Pdt.P/2015/PA.TPI. According to Dr. K.H.A. Sahal Mahfudz, as quoted by Khoiruddin Nasution, stated that the *fatwā* was issued and determined by MUI after going through several stages, namely inter-regional coordination meetings, regional deliberations, and correspondence such as telephone calls and emails addressed to the Indonesian Ulema Council. This shows that the issue concerning Ahmadiyah is a serious problem for the lives of Muslims in Indonesia (Khoiruddin Nasution, 2008).

The MUI's consideration in issuing *fatāw* is based on several rationales. First, the Ahmadiyyah sect continues to try to develop its understanding in Indonesia, although there is already an MUI *fatwā* and their existence has been banned. Second, the effort to develop the Ahmadiyah has caused public unrest. Third, some people asked for reaffirmation of the MUI *fatwā* on Ahmadiyyah in connection with the emergence of various opinions and reactions among the people. Fourth, to fulfil the demands of the community and maintain the purity of Islamic aqidah, the Indonesian Ulama Council deems it necessary to reaffirm the *fatwā* on the Ahmadiyah.

The Legal Basis of MUI Fatwā No. 11/MUNAS VII/MUI/15/2005

The *fatwā* is based on several verses of the Qur'an, Hadith, *Qāʿidah Fiqhiyyah*, and the opinions of Muslim Scholars. (The MUI Fatwā No. 11/MUNAS VII/MUI/15/2005 on Ahmadiyyah, n.d.) The relevant verses of Qur'an are Q.S al-Ahzab {[33];40 "Muhammad is not the father of any man among you, but he is the Messenger of Allah and the Seal of the Prophets; and Allah knows all things", surah Q.S al-An'am [6];153 "and that this (which We command you) is My straight path, so follow it. and do not follow (other) paths, for they will scatter you from His path. This is what Allah has commanded you, that you may fear.", Q.S al-Maidah [5];105 "O you who believe! Take care yourselves. no one who goes astray will harm you when you are guided."

Besides the verses of *the Qur'an*, the *fatwā* is also based on several hadith, namely a hadis which explains that there is no prophet after Muhammad. The relevant hadith is from Al-Bukhari (Hadith no. 3453) "The Messenger of Allah said: There will be no prophet after me" (Abi Abd Allah MuhamAbi Isya Muhammad Ibn Isya Ibn Thawrah at-Tirmidzimad Ibn Ismail Ibn Ibrahim ibn Al-Mugirah al-Bukhari, n.d.), and a hadith reported by Tirmidzi (hadis no. 2439) "he Messenger of Allah said: "Apostasy and prophethood has been cut off; therefore, there will be no no apostle or prophet after me" (Abi Isya Muhammad Ibn Isya Ibn Thawrah at-Tirmidzi, 2016).

Besides that, the MUI *fatwā* also cited the Decision of *Majmaʿ al-Fiqh al-Islāmī* Organization of the Islamic Conference (OIC) Number 4 (4/2) at the Second Congress in Jeddah, Saudi Arabia, on 10-16 *Rābiʿ al-Ṣānī* 1406 H/ 22-28 December 1985 A.H. on the *Qodiyāny* sect, which among others states that the *Ahmadiyyah* sect that believes in Mirza Ghulam Ahmad as the prophet after Prophet Muhammad and received revelation is apostate and out of Islam because denying the teachings of Islam which are *qath'i* and agreed by all Islamic scholars that Muhammad as the last prophet and apostle. Indeed, what Mirza Ghulam Ahmad claimed about his prophethood, about his message and about the revelation to him is a clear denial against religious teachings that are already known to be *qath'i* (certain) and convincing in the teachings of Islam, namely that Muhammad the Prophet is the last Prophet and Messenger and there will be no more revelations that will be revealed to anyone after that. The belief, as taught by Mirza Ghulam Ahmad, made him and his followers apostates, leaving Islam. The *Qodiyāny* sect and the *Lāhorīyah* are the same, although the latter (*the Lāhorīyah*) believes that Mirza Ghulam Ahmad was only a shadow and an extension of the Prophet Muhammad" (The MUI Fatwa> No. 11/MUNAS VII/MUI/15/2005 on Ahmadiyyah, n.d.).

Legal Provision of MUI Fatwā No. 11/MUNAS VII/MUI/15/2005

This *fatwā* issued three stipulations: 1. Reaffirming MUI's *fatwā* in the National Conference II in 1980, which stipulates that the Ahmadiyya Sect is outside Islam, heretical, and misleading, and Muslims who follow it are apostates (out of Islam); 2. Those who have already followed the Ahmadiyya Sect should immediately return to the teachings of Islam haq. immediately return to the teachings of Islam *ḥaqq* (*al-rujūʿ ilā al-ḥaqq*), which is in line with al-Qur'an and al-Hadith; 3. The government is obliged to prohibit the spread of the government is obliged to prohibit the spread of Ahmadiyya's ideas throughout Indonesia and freeze the organization and close all of its activities.

The Reference to the MUI *Fatwā* in Religious Court Judges Decisions

Cases of Children

Kediri Religious Court

There are numerous cases relating to the issues of children born out of wedlock in Indonesian Religious Courts. However, there is one case that is very strong and interesting, namely the judgment of the Religious Court of Kediri, Number 0005/Pdt. P/2016/PA.Kdr. This case initially began with a petition for the paternity of a child in 2015. The petitioners were a husband and wife who had gotten married officially in front of the Kantor Urusan Agama (the Religious Affair Agency) in 2013; however, they had a child soon after they got married. The child was born on January, 20 2013. Meanwhile, they have not gotten married officially before 2013 either. Therefore, it may be said that the child was born out of wedlock because the child was conceived before his parents were officially married.

In addition, the parents petitioned the Religious Court of Kediri in 2015 to have their child legally recognized. This must be done because they have a problem when they are going to make a family card. The officer of civil affairs at the time denied the request because the child was conceived before marriage. Based on this situation, such petitioners were regarding the petition to legalize their child in order to be legal before the law. The judges who were assigned and decided on the case were Mr. Drs. Mochammad Fathnan, M.H.I, Mr. Drs. Maftukin, M.Sy., and Mr. Drs. Moch. Muchsin, M.Sy.

The petitioners submitted both primary and secondary petitions to the court. The primary petition was for the legal recognition of their child was a legal child. The secondary petition is if the judges cannot agree with the petition, the judges render a fair verdict.

In their consideration, the panel of judges based their decision on the Law of Marriage Number 1/1974 Article 42 and the Compilation of Islamic Law (KHI) Article 99 Paragraph 1, which states that a legal child is one who was born as a consequence of a legal

marriage. In addition, the judges also based their consideration on the compilation of Islamic law article 100, which states, "a child who was born out of wedlock is merely relates legally to his/her mother and his/her mother" (The Decision of Kediri Religious Court No. 005/Pdt.P/2016/PA.Kdr, n.d.).

In addition, the panel based their verdict on Indonesian Constitution Court number 46/PUU-VIII/2010, stating that marriage law number 1/1974 article 43 paragraph 1 provides that "a child who was born out of wedlock merely relates legally to his /her mother and his/her mother's family" and is not binding legally as long as it is interpreted to eliminate civil relations with a man who is related by blood as his/her father, as long as it is proven scientifically and technologically. Therefore, such paragraph must be read "a child who is born out of wedlock has civil relations to his/her mother and his/her mother's family and also has civil relation to his/her father and his/her father's family."

Against the verdict of the Indonesian Constitution Court, the panel of judges considered the *fatwā* of MUI number 11/2012 on a child born out of wedlock and the treatment of him/her, namely that first, a child born out of wedlock has no kinship relationship, guardian, inheritance, or maintenance rights from a man who resulted in his/her birth. Second, a child born out of wedlock has only a kinship relationship, inheritance, and guardianship with his/her mother and his/her mother's family. Third, a child born out of wedlock does not bear the sin of adultery committed by the person who caused their birth. Fourth, adulterers are subject to *hadd* by authorities to maintain legitimate offspring. Fifth, the government has the authority to impose a *ta'zir* punishment on a man who caused the birth of a child, namely, to provide for the needs of such child and bequeath property after he passes away through *waṣiyyah wājibah*. Sixth, the punishment above does not legalize kinship relations; however, it only protects such children.

Jambi Religious Court

The case initially arose from a petition to the Religious Court of Jambi in 2013, which was rejected. The case number is 0122/Pdt. P/2013/PA.Jmb. Petitioners I and II are a husband and wife who were married in August 24, 2007, in Jambi. During their marriage, they were not blessed with children. They sought fertility treatment. However, their efforts were unsuccessful. As such, they really want the presence of a child in their lives. Therefore, they planned to adopt a child born in 2013.

In their consideration, the judges recognized that the biological father of the child had not taken responsibility for his child. He left home and never returned to his family. Meanwhile, the child's mother did not work and had no income to guarantee the living costs for her and her child. This is why the mother of child put her son up for

adoption for the sake of her child. In addition, she was confident that the petitioners would be able to look after her child well because the petitioners had a permanent income as workers of state-owned enterprises. Therefore, it likely guaranteed a better future for their daughter.

The judges also considered several regulations from the perspective of Islam, namely that Islam permits adoption for those who have no children with the intention of protecting the children, particularly for abandoned children. Adoption in Islam is merely a shift of responsibility, fulfilling living costs, education, and religion from the biological parent to the poster parent. However, it does not sever the relationship between children and their biological parents, as mentioned in the Compilation of Islamic Law, Article 171, letter (h), and also in Qur'an al-Ahzab, verse 4. In addition, there is a civil relationship between foster parents and adopted children. An adoptive parent who is not able to receive a testament can receive an obligatory testament (*waṣiyyah wājibah*) of up to one-third from their adopted children. The same is true for children; they will receive *waṣiyyah wājibah* if they do not receive a testament, as stated in the Compilation of Islamic Law article 209. Adopting children also requires permission from their biological parents, guardians, or legal entities with guardianship over the children.

In addition, adopting children whose parents are Muslims can only be performed by someone who is Muslim. This is in line with what has been stated in the fatwa of the MUI No. U 335/MUI/VI/82 on June, 10 1982. The fatwa also insists that the position of adoption is a person who is a stranger (*ajnabiyah*) to such a family. Therefore, the legal position of the child did not change in relation to descend (*nasb*) and *mahram*.

In addition to the considerations above, the judges in this case based their decision on the principles of Islamic law and several regulations of the Indonesian legal system, namely, the Law of Children Protection No. 23/2002, Article 3, the Law of Religious Court No. 3/2006, Article 49 letter (a), figure 20, as the first revision of the Law of Religious Court No.7/1989, the Law No.12/2006 on Citizenship Article 5 verse 2, Supreme Court Leaflet No.3/2005, The Compilation of Islamic Law Article 171 letter (h) and Article 29, and the MUI fatwa No U. 335/MUI/VI/82.

Cases of Interfaith Inheritance

This provision was considered in a case determining the heirs. The case was registered at the Religious Court of West Jakarta No. 0443/Pdt.P/2015/PA-JB. The case originated from the death of a man who had eleven brothers and sisters. He was born in Surabaya on October 25, 1938. He was married on November 3, 1967, and passed away on August 31, 2015. During the marriage, he was not

blessed with children. As mentioned earlier, had eleven brothers and sisters. Six of them were siblings, and the remaining five were half-brothers. The siblings are all Christians, while the half-brothers are Muslims. Because the deceased was not blessed with children, they adopted two. When such a man passed away, his heirs petitioned the Religious Court of West Jakarta to make decisions about the heirs. Therefore, the petitioners were the wife, two adopted children, and five half-brothers.

First, the court ruled that the deceased's siblings converted to Christianity in 1967. Therefore, they were forbidden to inherit because there was a different faith between the devisor and his siblings. The judges based their decisions on the Compilation of Islamic Law article 171 letter (c), which states that heirs are people who, at the time of death, have blood and marital relations with the decedent, are Muslim, and are not forbidden by law to become heirs. The judges also adhered to MUI fatwa No. 5/MUNAS MUI/9/2005, which states that Islamic inheritance does not recognize interfaith inheritance. Sharing inheritance in the context of interfaith inheritance can only be performed through *waṣiyyah wājibah.*

The judges explicitly cited the fatwa of the MUI as a legal consideration in their decision. Therefore, it is important to understand why they considered fatwas as part of the legal basis for their decisions. Fatwas are not binding on judges and are not part of the Indonesian legal system. Of course, this relates to the legal sources, legal approaches, and legal interpretations of the judges. However, if we try to search and discover the legal considerations of judges, we can find that legal sources for them are inseparable from the Law of Marriage No.1/1974, the Law of Religious Courts No.7/1989, which was revised into Law No.3/2006 and Law No.50/2009, the Compilation of Islamic Law Article 171 letter (c), and MUI Fatwa No. 5/MUNAS MUI/VII/9/2005.

The Case of Marriage Registration and Ideology of Ahmadiyah

In essence, petitioners filed an application for Marriage Validation *Istbat Nikah* of their marriage, which was held on February 13, 2014, to obtain official proof of the marriage that petitioners carried out and to take care of the ID cards of petitioners, Family Card, and work affairs, as well as for the management of all future documents that require a citation of the marriage certificate documents in the future that require an excerpt of the marriage certificate, such as taking care of a child's birth certificate. In short, petitioners need a marriage certificate to obtain legal certainty as citizens, while they do not have evidence of their marriage. The Panel of Judges concluded that there had indeed been a marriage between petitioner I (Indra bin Bacok) and petitioner II (Siti Khadija binti Khairil) on February 13, 2014., and the marriage has fulfilled the terms and conditions of

marriage (Decision of Tanjungpinang Religious Court No. 0025/Pdt.P/2015/PA.TPI, n.d.).

Considering that even though the conditions and pillars of marriage had been fulfilled, Petitioner I and Petitioner II were adherents of the Ahmadiyah congregation, and in the trial both of them stated that they would not be willing to leave the Ahmadiyya Congregation, the Religious Affairs Office of East Bintan Sub-district refused to register their marriage because petitioner I and petitioner II refused to make a statement letter and repented that they would not become followers of the Ahmadiyya Congregation (JAI), recite the two *kalimah shahada*, and were willing to establish prayer in accordance with the procedures taught by Islam witnessed by the Indonesian Ulema Council (MUI) of East Bintan Sub-district, as shown in Exhibit P.5 and P.5 (Decision of Tanjungpinang Religious Court No. 0025/Pdt.P/2015/PA.TPI, n.d.).

Considering, that based on the Fatwa of the Indonesian Ulema Council at Munas II MUI in 1980 which was strengthened again with MUI Fatwa Number: 11/MUNAS VII/MUI/15/2005 dated July 28, 2005 AD coincides 21 Jumadil Akhir 1426 H, about Ahmadiyah Sect as follows 1. Reaffirming the fatwa of MUI in National Conference II Year 1980 that the Ahmadiyah sect is outside Islam, heretical, and misleading, and that Muslims who follow the Ahmadiyah sect are apostates (out of Islam). 2. For those who have already followed the Ahmadiyya Sect to immediately return to the true teachings of Islam (*al-ruju' ila al-haqq*), which is in line with the Qur'an and al-Hadith. 3. The government is obliged to prohibit the spread of the Ahmadiyya ideology. Based on the explanation above, it is clear how the legal position or legal standing of MUI Fatwa No. 11/MUNAS II/MUI/15/2005, which was made by the Tanjungpinang Religious Court No. 25/Pdt.P/2015/PA.TPI places the fatwa as one of the basic considerations of the panel of judges. Therefore, the position of the MUI fatwa has a strong legal standing against the decision of the Tanjungpinang Religious Court (Decision of Tanjungpinang Religious Court No. 0025/Pdt.P/2015/PA.TPI, n.d.).

The Legal Basis of Tanjungpinang Religious Court

The panel of judges considered the Joint Decree of the Minister of Religious Affairs, Attorney General, and Minister of Home Affairs of the Republic of Indonesia Number: 3 Year 2008, Number: KEP-033/A/JA/6/2008, and Number: 199 Year 2008 about Warning and Order to Adherents, Members, and/or Administrators of the Indonesian Ahmadiyah Congregation (JAI) and the Citizens. The contents consist of 7 (seven) paragraphs as follows:

First: Giving warning and ordering to the citizens society not to tell, advocate or seek public support to interpret public support for the interpretation of a

religion adhered to in Indonesia or carry out religious activities that resemble the religious activities religious activities that deviate from the basic teachings of that religion.

Second, issue a warning and order to the adherents, members, and/or management members of the Jemaat Ahmadiyah Indonesia (JAI), as long as they claim to be Muslim, to stop the spread of interpretations and activities that deviate from the main teachings of Islam, namely the spread of ideas that recognize the existence of prophets Islam, namely the spread of ideas that recognize the existence of prophets with all their teachings after the Prophet Muhammad SAW.

Third, adherents, members, and/or members of the management of the ((JAI) who do not heed the warnings and orders as referred to in the first and second dictums may be subject to sanctions in accordance with the provisions of laws and regulations, including the organization and its legal entity.

Fourth, give warnings and orders to citizens to maintain and preserve religious harmony and the peace and order of social life by not performing unlawful acts and/or actions against adherents, members, and/or members of the management of Jemaat Ahmadiyah Indonesia (JAI).

Fifth, people who do not heed the warning and orders as referred to in the first and fourth dictums can be subject to sanctions in accordance with the provisions of the regulations. The fourth dictum can be sanctioned in accordance with the provisions of laws and regulations. Sixth: Ordering the Government and local government apparatuses to take guidance measures in the context of security and supervision of the implementation of this Joint Decree. Seventh: This Joint Decree shall be effective from the date of its enactment.

CONCLUSION

This study identified fatwas as a new legal source for Indonesian Religious Courts, as an additional source of law in general, and as a source in the absence of other specific regulations. Regarding the legal reasoning used by judges in determining the law in religious courts, it can be conveyed that they use deductive legal reasoning, which is an approach that prioritizes logical reasoning in fact-finding. This method begins with three steps or processes: determining axioms or major premises, determining minor premises, and drawing conclusions as the last step or process. The judges used a mixed method for interpretation. It can be seen from the research that religious court judges have not completely considered the social interests in their decisions, taking a conservative approach. Recognizing the increasing importance of Fatwa from the MUI in religious court decisions, such Fatwa must be diligently scrutinized to allow for a changing

world and the role of Islamic law in that world.

REFERENCES

A. Husain. (2008). *Aḥkām Walad al-Zinā fī al-Fiqh al-Islāmi>*. Najjah al-Waṭaniyyah University.

Abi Isya Muhammad Ibn Isya Ibn Thawrah at-Tirmidzi. (2016). *Sunan at-Tirmidzi*. Cairo: Da>r at-Ta'sil.

Abi Abd Allah MuhamAbi Isya Muhammad Ibn I>sya> Ibn Thawrah at-Tirmi>dzimad Ibn Ismail Ibn Ibrahim ibn Al-Mugirah al-Bukhari. (n.d.). *Sunan at-Tirmi>dzi>*. Cairo: Da>r at-Ta'si>l.

Abu> Da>wu>d. (2013). *Sunan Abu> Da>wu>d*. Da>r al-Fikr, Juz 2 no. 227.

Aditya, R. I., & Waddington, L. B. (2021). The Legal Protection Against Child Marriage in Indonesia. *BESTUUR*, *9*(2), 126. https://doi.org/10.20961/bestuur.v9i2.55144

Ahmad ibn Hanbal. (n.d.). *Musnad Ahmad ibn Hanbal*. Cairo: Muassasah ar-Risa>lah, Da>r al H}adi>s}, al-Qa>hirah 1969, juz 28 no. 16990.

Aldjufri. (n.d.). Hak Waris Anak di Luar Nikah menurut Hukum Islam. *Journal of Lex et Societatis, Vol. IV, No. 1, (2016), 101*, *Vol. IV, No. 1, (2016), 101*(2016), 101.

AL-Imam Abu al-Husayn Muslim al Hajjaj al-Qusyairian-Naysaburi. (2013). *Sah}i>h} Muslim*. Bairut-Libanon: (Da>r al-Fikr,.

Alnizar, F. (2025). The Language of Exclusion: Ideology and Power in the Fatwa of the Majelis Ulama Indonesia on Ahmadiyah. *Journal of Islamic Law*, *6*(1), 67–88. https://doi.org/10.24260/jil.v6i1.3338

Alnizar, F., Manshur, F. M., & Ma'ruf, A. (2022). Following the Global Rejection: The Motives of Majelis Ulama Indonesia's Fatwas on Ahmadiyah. *Studia Islamika*, *29*(3), 519–546. https://doi.org/10.36712/sdi.v29i3.15349

Amiur Nuruddin & Azhari Akmal Tarigan. (2006). *Hukum Perdata Islam di Indonesia: Studi KritisPerkembangan Hukum Islam dariFiqih, UU No 1 Tahun 1974 sampai KHI*. Jakarta: PT Kencana Prenada Media Group.

Andriansyah, Y. (2023). Analysis of Fatwas by the National Sharia Board-Indonesian Council of Ulama on the Stock Market. *Millah: Journal of Religious Studies*, *22*(2), 525–552. Scopus. https://doi.org/10.20885/millah.vol22.iss2.art9

Bahruddin Muhammad. (2013, Desember). Akibat Hukum Putusan Mahkamah Konstitusi No. 46/PUU/VII/2010 terhadap Pembagian Hak Waris Anak Luar Perkawinan. *Badan Peradilan Agama Mahlamah Agung*. Retrieved from https://badilag.mahkamahagung.go.id/artikel/18859-akibat-hukum-putusan-

Decision of Tanjungpinang Religious Court No. 0025/Pdt.P/2015/PA.TPI.

Ibrahim, B., Arifin, M., & Abd Rashid, S. Z. (2015). The role of fatwa and mufti in contemporary muslim society. *Pertanika Journal of Social Sciences and Humanities*, *23*(SpecialIssue11), 315–326. Scopus. Retrieved from Scopus.

Imam al-Hafidh Abu Isa Muhammad bin Isa Bin Thawrah Bin Musa Bin Bin Ad-dahhak as-Sulami at-TirmiziSunan at-Tirmizi. (n.d.). *Sunan at-Tirmizi*. (Bairut-Libanon: Dar al-Fikr, 2013, Juz 3 no. 2113.

Jamaa, L. (2018). Fatwas of the Indonesian council of ulama and its contributions to the development of contemporary Islamic law in Indonesia. *Indonesian Journal of Islam and Muslim Societies*, *8*(1), 29–56. Scopus. https://doi.org/10.18326/ijims.v8i1.29-56

Johar, A. F. (n.d.). Kekuatan Hukum Fatwa Majelis Ulama Indonesia (Mui) Dari Perspektif Peraturan Perundang-Undangan di Indonesia | Oleh: Al Fitri Johar, S.Ag., S.H., M.H.I. (11/1)—Direktorat Jenderal Badan Peradilan Agama. Retrieved June 8, 2022, from https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/kekuatan-hukum-fatwa-majelis-ulama-indonesia-mui-dari-perspektif-peraturan-perundang-undangan-di-indonesia-oleh-al-fitri-johar-s-ag-s-h-m-h-i-11-1

Khairuldin, W. M. K. F. W., Embong, A. H., Anas, W. N. I. W. N., Mohd, H., & Ismail, D. (2018). The application of technology in the dissemination of fatwas: A study on religious institutions in Malaysia. *International Journal of Civil Engineering and Technology*, *9*(7), 1590–1596. Scopus. Retrieved from Scopus.

Khoiruddin Nasution. (2008). Fatwa> Majelis Ulama Indonesia tentang Aliran Ahmadiyah. *Millah: Journal of Religious Studies*, *VII*(2008), 6.

Lina Nur Anisa. (2020). Kedudukan Fatwa Majelis Ulama Indonesia Terhadap Hukum Positif Indonesia. *Jurnal Investama*, *Vol. 4*(No.1).

M. ibn al-Ḥasan al-Kalwadhānī Abū al-Khaṭṭāb. (1995). *Al-Tahdhīb fī 'Ilm al-Farā'id wa al-Waṣāyā*. T.Tp: Maktabah al-Abyakan.

Marriage Law No. 1/1974 Article 43/1.

Muh{ammad Ibn Isma>'i>l al-Bukha>ri. (2013). *S}ah}i>h} al-Bukha>ri>*,. Bairu>t: Da>r al-Fikr.

Mustofa, K. N., Fakhria, S., Quintana, M. K., Tauziri, Y., & Nainin, D. M. (2024). Religious Authority and Family Law Reform in Indonesia: The Response and Influence of the Indonesian Ulema Council on Interfaith Marriage. *JURIS (Jurnal Ilmiah Syariah)*, *23*(2), 383–393. https://doi.org/10.31958/juris.v23i2.11849

Rusli, R., Hasyim, M. S., & Nurdin, N. (2020). A NEW ISLAMIC KNOWLEDGE PRODUCTION AND FATWA RULINGS: How Indonesia's Young Muslim Scholars Interact with Online Sources. *JOURNAL OF INDONESIAN ISLAM*, *14*(2), 499. https://doi.org/10.15642/jiis.2020.14.2.499-518

Sirry, M. (2013). Fatwas and their controversy: The case of the Council of Indonesian Ulama (MUI). *Journal of Southeast Asian Studies*, *44*(1), 100–117. Scopus. https://doi.org/10.1017/S0022463412000641

Suhartono, S. (2018). Eksistensi Fatwa Majelis Ulama Indonesia dalam Perspektif Negara Hukum Pancasila. *AL-IHKAM: Jurnal Hukum & Pranata*

Sosial, *12*(2), 448–465. https://doi.org/10.19105/al-lhkam.v12i2.1255

The decision of Kediri Religious Court No. 005/Pdt.P/2016/PA.Kdr.

The Kompilasi Hukum Islam Article 99/1-2.

The MUI Fatwa> No 5/MUNAS VII/MUI/9/2005 on Interfaith inheritance.

The MUI Fatwa> No. 11/MUNAS VII/MUI/15/2005 on Ahmadiyyah.

The MUI Fatwa> No.11 of 2012 on Legal Status of Children Born out of Wedlock,.

The MUI Fatwa No. U-335/MUI/VI.1982 on Children Adoption.

Wahbah Az-Zuhaylī. (1985). *Al-Fiqh Al-'Islāmī wa 'Adillatuh* (Vol. 8). Dār al-Fikr.

Zayyadi, A., Ridwan, Hidayat, A., Ubaidillah, & Masuwd, M. A. (2023). Understanding of Legal Reform on Sociology of Islamic Law: Its Relevance to Islamic Family Law in Indonesia. *Al-Manahij: Jurnal Kajian Hukum Islam*, 249–262. https://doi.org/10.24090/mnh.v17i2.7584