

# Juridical Analysis of the MUI *Fatwa* Number 11 of 2012 Against the Decision of the Ngawi Religious Court Number: 25/Pdt.P/2021/PA.Ngw

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## Abstract

The renewal of Islamic family law in Indonesia represents a dynamic response to social developments and the need to fulfill legal protection. In this context, *fatwas* issued by the Indonesian Ulema Council (Majelis Ulama Indonesia/MUI) function as instruments of collective *ijtihad* with the authority to address the problems of the Muslim community. One such issue concerns Islamic family law, particularly the legal status of children born out of wedlock. Decision of the Ngawi Religious Court Number 25/Pdt.P/2021/PA.Ngw demonstrates how an MUI *fatwa* was used as one of the bases in the judge's legal considerations. As a result, the decision expands legal protection for children while simultaneously reflecting the spirit of legal reform grounded in the principles of progressive law: law is for humans, not humans for the law. The research findings indicate that MUI *fatwas* serve as a moral-juridical foundation that broadens the scope of judicial interpretation, enabling the Ngawi Religious Court to issue a ruling that provides a basis for granting maintenance rights and legal protection to children born out of wedlock, even though they formally do not yet have a lineage (*nasab*) relationship with their biological father. This progressive legal approach not only addresses the need for child protection but also encourages the renewal of Islamic family law to be more responsive to the pursuit of public welfare (*maslahah*).

**Keywords:** progressive law, religious court decisions, *fatwa*

## 1. INTRODUCTION

The renewal of Islamic civil law in Indonesia is one of the efforts to accommodate the need for justice in society [1]. A *fatwa* is one of the products of *ijtihad* by scholars that provides guidance and solutions to contemporary legal issues that are not specifically regulated in the Qur'an, Hadith, or Indonesian positive law [2]. The *fatwa* issued by the Indonesian Ulema Council (MUI) is often used as a reference by the religious courts in deciding Islamic civil cases. The use of *fatwas* in religious court decisions also reflects the existence of legal pluralism in Indonesia, where state law, customary law, and Islamic law interact and influence each other. *Fatwas* help ensure that court decisions are not

only legally valid under positive law but also align with the principles of Sharia recognized by the Muslim community [3].

*Fatwas* from the Indonesian Ulema Council (MUI) are often used as references by religious courts in deciding cases related to Islamic civil law, such as inheritance, marriage, and divorce. One of the issues that has become a problem among academics and in civil cases in the religious courts is the status of children born out of wedlock. Children born outside a legally recognized marriage often face discrimination in terms of legal status, inheritance rights, and other civil rights. *Fatwas* from the Indonesian Ulema Council (MUI) and the views of Islamic scholars are often referred to in order to fill legal gaps or provide a fairer interpretation of the law in family law issues, including the status of children born out of wedlock.

A *fatwa* serves as a moral and legal guideline that seeks to balance legal certainty with the welfare of society. The use of *fatwas* as a basis for consideration in religious court decisions has become more prominent, especially in cases that require flexible and contextual legal interpretations in accordance with the evolving needs of society [4]. The decision of the Ngawi Religious Court

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Number 25/Pdt.P/2021/PA.Ngw is one example where a *fatwa* plays a significant role in determining the status of a child born out of wedlock. In this decision, the judge considered the *fatwa* to determine the child's rights, particularly regarding the right to maintenance from the biological father, even though the child's civil status does not establish a genealogical relationship with that father. This decision reflects an effort to update Islamic family law with a more inclusive approach that considers the welfare of the child [5]. Based on this background, research on the contribution of *fatwas* to the Ngawi Religious Court's decision Number 25/Pdt.P/2021/PA.Ngw is relevant for understanding how *fatwas* play a role in the development of Islamic family law in Indonesia. This study also aims to explore the extent to which *fatwas* provide fair and Sharia-compliant solutions for children born out of wedlock, as well as their implications on the current practice of Islamic family law [6].

Related to this research, the researcher found several studies. First, a study by Mardiatus Sholehah entitled 'The Status of a Child Born Out of Wedlock According to MUI *Fatwa* Number 11 of 2012 and the Constitutional Court Decision Number 46/PUU-VIII/2010 on the Status of Children Born Outside of Marriage.' This study focuses on discussing the status of children born out of wedlock according to the MUI *fatwa*. Second, a study by Aulia Nur Alifah in 2019 entitled 'The Status of Children Born Out of Wedlock and Their Legal Protection According to the *Fatwa* of the Indonesian Ulema Council and Positive Law.' This research discusses the legal basis for the status of children born outside of marriage according to the Constitutional Court Decision Number 46/PUU-VIII/2010, when viewed from the perspective of Islamic law, as well as an analysis of Islamic law regarding the rights of children born out of wedlock according to the Constitutional Court Decision Number 46/PUU-VIII/2010 [7]. The difference between the researcher's study and the aforementioned studies is that the researcher focuses more on the role of *fatwas* in the reform of Islamic family law through the analysis of the Ngawi Religious Court Decision Number 25/Pdt.P/2021/PA.Ngw, whereas the first study focuses on the MUI *Fatwa* No. 11 of 2012 on the

status of children born out of wedlock and the understanding of the Constitutional Court Decision No. 46/PUU-VIII/2010 on the status of children born outside of marriage. This research is conducted by reading, reviewing, and analyzing various existing literatures, utilizing library facilities as an information source.

## 2. METHODS

This type of research is a study using the method of library research, which is research where the object of study uses literature data, such as books, as the source of data [8]. The data used in this research are the Decision of the Ngawi Religious Court Number: 25/Pdt.P/2021/PA.Ngw and the laws and regulations that form the basis for the consideration of the decision. This research is a normative legal study. The primary legal material for this research is the court decision, specifically the Decision of the Ngawi Religious Court Number: 25/Pdt.P/2021/PA.Ngw. The data collection technique used in this research is the documentary technique. Data analysis in qualitative research involves organizing, grouping, selecting, and analyzing data to understand its meaning [9].

## 3. RESULTS AND DISCUSSIONS

### 3.1. The Concept of *Fatwa* in Islamic Law

A *fatwa* is essentially an answer or legal opinion provided by scholars or a *fatwa* institution regarding an issue that does not have clear legal provisions in Islamic law sources. Unlike laws, a *fatwa* is not legally binding. However, in practice, *fatwas* hold significant moral and academic weight and are often used as references in legal decision-making in religious courts. Islamic civil law encompasses aspects that regulate relationships between individuals in society, including marriage, divorce, inheritance, and child guardianship [10]. In many cases, society is often faced with confusion when dealing with complex legal issues, such as the status of children born out of wedlock, inheritance rights, or unregistered marriages. This is where *fatwas* serve as a guide, providing clarity on how Islamic law is applied in the context of daily life. *Fatwas* help explain Islamic law in a more specific

and practical context for society. For example, the *fatwa* issued by the Indonesian Ulema Council (MUI) on the status of children born out of wedlock provides a legal foundation that clarifies the rights and obligations of the child towards their parents in accordance with the principles of *maqashid al-shariah* [11].

From the perspective of progressive law, a *fatwa* can contribute to Islamic civil law in the following ways: (1) humanistic approach in Islamic law; (2) flexibility in law enforcement; (3) prioritizing substantive justice.

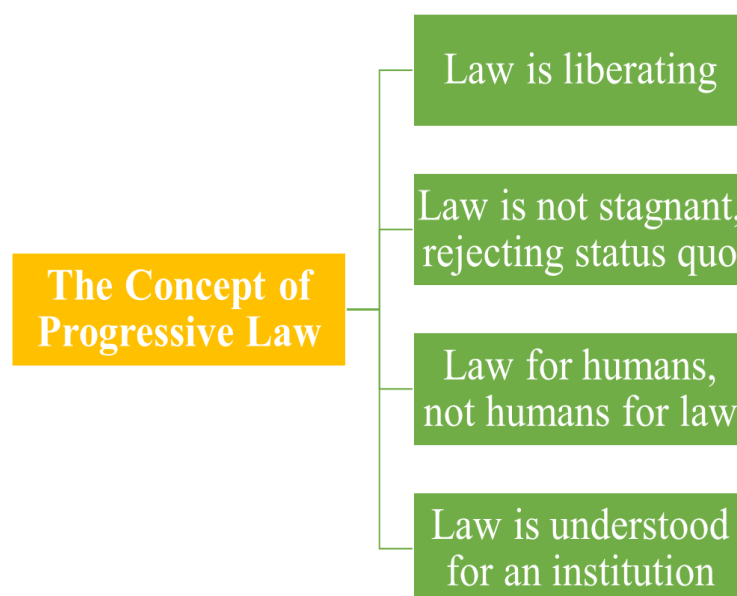
### 3.2. Progressive Legal Theory as the Basis for the Reform of Islamic Family Law

Etymologically, the word 'progressive' comes from the word 'progress' in English, which means advancement. When the words 'law' and 'progressive' are combined, it means that the law should be able to follow the times in order to serve the interests of society based on the moral aspects of the resources of law enforcement officials [12]. In general, progressive legal theory has a liberating nature and is not stagnant, with its main goal being that the law is for humans, not humans for the law. Progressive legal theory is part of the ongoing process of searching for truth. Satjipto Raharjo, the pioneer of progressive law, stated that rule-breaking is crucial in the law enforcement system. In law

enforcement, judges and other law enforcers must dare to free themselves from using standardized patterns and methods that have already become common, including in the United States. This new approach is called rule-breaking

Sociologically, there are two types of judges. First, those who, when adjudicating a case, listen to the voice and the decision of their conscience, and then search for regulations to support the decision of their conscience. Second, judges who, when examining a case, listen to their gut feeling and then look for articles in the law to justify it. The essence of progressive law is not merely about creating and applying the texts of laws and regulations (real making), and then being done with it, but in certain circumstances, legal reasoning requires what is called a legal breakthrough (rule breaking).

When the legal text is deemed incapable of delivering justice to society, law enforcement officers must have the courage to make legal breakthroughs beyond the legal texts. For example, the police, who have the authority to exercise discretion (an effort to not apply the law that should be applied), or the prosecution, which has the authority to exercise *diponeering* (the authority to halt or modify an ongoing legal process). All of these powers are exercised solely based on considerations to protect the greater public interest [13].



**Figure 1.** Framework of Progressive Legal Theory

The application of progressive law in judicial decisions is based on legal foundations, including; the fifth principle of Pancasila, which indicates that the Indonesian nation must have and aspire to create social justice. The spirit of the second and fifth principles of Pancasila aligns with the goals of progressive law, which is to provide justice for the people. In the fourth paragraph of the Preamble to the 1945 Constitution, the goal to be achieved by the government is in line with the objectives of progressive law, which aims to provide justice and happiness to the people [14]. Article 24, paragraph (1) of the 1945 Constitution of the Republic of Indonesia regulates that 'judicial power is an independent power to administer justice in order to uphold law and justice.' A judge who is independent in making decisions is the type of judge needed to drive the wheels of progressive law forward.

### 3.3. The Status of Children Born Outside of Marriage

In Islamic law, the lineage (*nasab*) of a child is heavily dependent on the legitimacy of the parents' marriage. If a child is born from an unlawful relationship according to Sharia, then the child does not have a *nasab* relationship with the father. This is based on a hadith of Prophet Muhammad (*s.a.w*) stating that the child is attributed to the mother and does not have a *nasab* relationship with the biological father. Imam Abu Dawud narrated that 'the child belongs to the mother and does not have the right to be attributed to the father.' The fatwa issued by the Indonesian Ulama Council (*MUI*) No. 11 of 2012 on the Status of Children Born Out of Wedlock and Their Treatment emphasizes that a child born out of wedlock only has a *nasab* relationship with the mother and does not have inheritance rights or guardianship from the biological father [15].

Meanwhile, based on the decision of the Constitutional Court, the status of children born outside of marriage was established through Constitutional Court Decision No. 46/PUU-VIII/2010. This decision emphasizes that children born outside of marriage have the same rights and status as other children. Decision No. 46/PUU-VIII/2010 is a manifestation of the rule of law in protecting human rights (HAM). This decision was based on a material judicial review of Articles 2,

paragraph (2) and 43, paragraph (1) of Law No. 1 of 1974. From the perspective of progressive law introduced by Satjipto Rahardjo, law should not be rigid and must be able to adapt to social developments [16]. In this context, the protection of children born out of wedlock should not be based solely on rigid rules but must also consider substantive justice. Therefore, the court's decision allowing the biological father's name to be recorded on the child's birth certificate represents a more humane legal interpretation, oriented toward the best interests of the child.

### 3.4. The Influence of MUI Fatwa No. 11 of 2012 on the Verdict of the Ngawi Religious Court Decision No. 25/Pdt.P/2021/PA.Ngw

The fatwas issued by the Indonesian Ulama Council (*MUI*) and other fatwa institutions are often used as guidelines in resolving various issues that have not been clearly regulated in formal legal provisions, one of which is the status of children born outside of marriage. The influence of these *fatwas* can be seen in various court decisions, including in the decision of the Ngawi Religious Court. In this case, the judge applied a progressive legal approach by considering the *fatwa* as a basis for determining the legal status of a child born out of wedlock. *MUI Fatwa* No. 11 of 2012 emphasizes that children born out of wedlock only have a *nasab* (lineage) relationship with their mother, but still have the right to receive maintenance and protection from their biological father [17]. This consideration became relevant in the judge's decision, which did not solely rely on rigid legal texts but also took into account child protection aspects and the rights of the child within society.

In the decision of the Ngawi Religious Court, the judge not only considered positive law such as Article 43 of Law Number 1 of 1974 on Marriage or the Constitutional Court Decision Number 46/PUU-VIII/2010, but also accommodated the values found in the *fatwa* [18]. In cases involving children born out of wedlock, the *fatwa* not only provides normative guidance but also serves as a basis for the judge to make decisions that prioritize the best interests of the child. The judge in this case recognized that although under Islamic law, a child born out of wedlock does not have a lineage connection with their father, the child still requires

protection and recognition in civil law. Therefore, the court decided to allow the inclusion of the biological father's name on the child's birth certificate as a form of legal recognition that is more just and inclusive [19].

The decision reflects the judge's courage to explore, follow, and understand the values of law that live in society (living law), while prioritizing the principles of utility and child protection [20]. The judge emphasized that although the lineage relationship cannot be legally recognized, there still exists a limited civil relationship that legally binds the biological father to be responsible for his child. This step aligns with the principles of progressive law, positioning the judge as an agent of change who does not merely enforce the law rigidly but as a creator of justice in a dynamic social reality. Overall, the fatwa has contributed to shaping a more dynamic and progressive Islamic civil law. Through decisions that take the *fatwa* into account, Islamic law in Indonesia has become more flexible in facing the ever-evolving social realities. The fatwa functions not only as a religious guideline but also as a tool that helps create fairer, more responsive, and humane laws. In an era of continuous change, the role of fatwa in progressive law is increasingly relevant, where law is understood not only as a set of rules to be followed but also as a means to create justice for all segments of society [21].

### 3.5. Implementation of Progressive Law in MUI Fatwa Number 11 of 2011 and the Religious Court Decision Number 25/Pdt.P/2021/PA.Ngw

Progressive law in implementing MUI Fatwa Number 11 of 2012 and the Ngawi Religious Court Decision Number 25/Pdt.P/2021/PA.Ngw is reflected in the courage of the religious court to explore substantive justice values, going beyond the rigid boundaries of normative law. In the case, although the child whose determination was being requested was born outside of a formal marriage and, according to the MUI *Fatwa*, only had a lineage and civil rights connection with the mother and her family [22], the panel of judges took a progressive approach by recognizing a limited civil relationship between the child and the biological father.

This approach aligns with the Constitutional Court Decision Number 46/PUU-VIII/2010, which emphasizes that a child born outside of marriage also has a civil relationship with their biological father if it can be proven [23]. The judge did not solely rely on formal legal texts but took a middle ground to protect the child's rights, including the right to identity, legal recognition, and welfare. The progressive law applied in this decision demonstrates a commitment to humanity, justice, and child protection, while still respecting the principles of Islamic law as reflected in the MUI Fatwa, but interpreted in a contextual and responsive manner to social realities.

The implementation of the principles of progressive law in MUI Fatwa Number 11 of 2011 is reflected in the emphasis on maintaining the welfare and protecting the rights of the child, even if their birth occurs outside the bond of marriage [24]. This *fatwa* affirms that from the perspective of *maqāsid al-sharī'ah*, the well-being and justice for the child must be prioritized, so their biological status is recognized without disregarding religious norms that prioritize lineage. Thus, the MUI Fatwa views the application of Islamic law as not solely based on the textuality of the texts, but on the objectives of sharia to minimize harm (*dharar*) and maximize benefit (*maslahah*).

Furthermore, MUI Fatwa Number 11/2011 encourages religious institutions and judicial authorities to adopt an inclusive approach when handling cases involving children born out of wedlock. This includes recommendations for implementing regulations at the Ministry of Religious Affairs and local government levels to accommodate procedures for determining the child's status, facilitating access for parents to submit requests, and ensuring that there is no discrimination or delay that harms the applicant's rights. This approach reflects the spirit of progressive law, emphasizing procedural flexibility and the humanization of the judicial process.

In the Ngawi Religious Court Decision Number 25/Pdt.P/2021/PA.Ngw, the judge applied the principles of progressive law by giving special attention to the social and psychological context of the parties involved, rather than merely examining the formalities of lineage and administrative

requirements. The panel of judges considered evidence related to the welfare of the child, including needs for financial support, emotional stability, and inheritance rights, rather than simply rejecting the request due to the failure to meet the requirements of a valid marriage. Thus, this decision prioritizes the objectives of sharia to ensure the protection of the child's rights as an individual with dignity [25].

Furthermore, the decision exemplifies the application of the principles of openness (*al-jihāzah*) and fair examination (*al-qidā' al-'ādil*), where the judge did not limit the parties' ability to present witnesses and evidence. The judge even actively facilitated the summons of witnesses that supported the biological parents' testimony, and took into account the applicant's ability to bear the costs of the child's maintenance and education. This proactive approach aligns with the progressive approach that demands the judiciary be restorative, aimed at correcting imbalanced conditions, rather than retributive or merely normative [26].

Finally, the combination of MUI *Fatwa* Number 11/2011 and the Ngawi Religious Court Decision Number 25/2021 demonstrates an ideal model for the implementation of progressive law in the context of a child's lineage [27]. The *fatwa* provides the normative and value-based foundation, while the judicial decision illustrates a concrete, humane, and just application in practice. Together, they prove that Islamic law is capable of transforming in accordance with social dynamics without losing its fundamental values, in order to provide optimal protection for vulnerable parties, especially children born outside the bond of marriage.

#### 4. CONCLUSIONS

Based on this research, it can be concluded that the MUI *fatwa* plays a crucial role as a moral-legal foundation that fills gaps and provides contextual interpretation in Islamic family law. In the Ngawi Religious Court Decision Number 25/Pdt.P/2021/PA.Ngw, the use of the *fatwa* allowed the judge to adopt a more flexible approach, not solely confined to rigid legal texts, resulting in a decision that is

more focused on the welfare and protection of the rights of children born out of wedlock.

Second, the judges of the Ngawi Religious Court integrated the MUI *fatwa* with the spirit of progressive law, placing substantive justice and child protection as priorities, in addition to referring to Article 43 of the Marriage Law and Constitutional Court Decision No. 46/PUU-VIII/2010. Thus, the judges not only ensured formal legal certainty but also upheld tangible justice for children born out of wedlock, for example, through the provision of child support and functional recognition of lineage.

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