

## I The Facts

1. Hilmi bin Akmal (“**Hilmi**”) and Aisha binti Abu Bakar (“**Aisha**”), both Muslims, are residents of the state of Johor Darul Takzim. They were married on 4 January 2018. On 1<sup>st</sup> June 2018, Aisha delivered a healthy baby boy. The baby boy was named Haris.
2. Haris’s birth was registered two years later in 2020 as a late registration pursuant to Section 12 of the Births And Deaths Registration Act 1957 (“**BDRA**”). Both Hilmi and Aisha have jointly applied for Hilmi to be registered as the father on Haris’s birth certificate pursuant to Section 13 BDRA. This was accepted by the Director General of National Registration (“**DGNR**”) where “*Hilmi bin Akmal*” is shown in the column reserved for the identity of the father in the birth certificate which was issued.
3. However, in the column for the child’s name, the child’s surname is stated to be “bin Abdullah” rather than “bin Hilmi” being the name of the father, Hilmi bin Akmal.
4. Furthermore, the birth certificate also contained a notation stating “*Permohonan Seksyen 13*” (Section 13 Application) and “*Pendaftaran Lewat Kelahiran*” (Late Registration Of Birth) at the bottom, below the date of registration.
5. On 07.05.2020, the parents made an application to the DGNR to correct the name of the child by removing “bin Abdullah” as the surname of the child and to instead insert “bin Hilmi” in its place.
6. However, on 06.06.2020, the DGNR rejected the Application (“**Impugned Decision**”) on the grounds that:
  - 6.1. The time period between the date of birth and date of marriage was insufficient for the subject to be of the nasab of the father (“*tempoh tarikh*”

*kelahiran dan tarikh perkahwinan tidak mencukupi bagi subjek dinasabkan kepada bapa”);*

- 6.2. The impugned decision was in accordance with a fatwa issued by the Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan bagi Hal Ehwal Ugama Islam Malaysia (“**the National Fatwa Committee**”) in 1981 and 2003 (the “**National Fatwas**”). The said fatwas provide:

*“Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan bagi Hal Ehwal Ugama Islam Malaysia Kali ke 1 yang bersidang pada 26-29.1.1981 telah membincangkan Penamaan Anak Tak Sah Taraf (Anak Luar Nikah). Muzakarah telah memutuskan bahawa:*

*Anak zina atau luar nikah (anak tak sah taraf) sama ada diikuti dengan perkahwinan kedua pasangan ibu bapanya atau tidak hendaklah dibinkan atau dibintikan kepada Abdullah.”*

*...*

*“Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan bagi Hal Ehwal Ugama Islam Malaysia Kali ke 57 yang bersidang pada 10.6.2003 telah membincangkan mengenai Anak Tak Sah Taraf. Muzakarah telah memutuskan seperti berikut:*

- a. Anak Tak Sah Taraf ialah:*
- i. Anak yang dilahirkan di luar nikah sama ada akibat zina atau rogol dan dia bukan daripada persetubuhan syubhah atau bukan daripada anak perhambaan.*
  - ii. Anak dilahirkan kurang dari 6 bulan 2 lazhah (saat) mengikut Takwim Qamariah daripada tarikh tamkin (setubuh).*
- b. Anak tak sah taraf tidak boleh dinasabkan kepada lelaki yang menyebabkan kelahirannya atau kepada sesiapa yang mengaku menjadi*

*bapa kepada anak tersebut. Oleh itu, mereka tidak boleh pusaka mempusakai, tidak menjadi mahram dan tidak boleh menjadi wali.”*

- 6.3. It was also in accordance with the fatwa issued by the Fatwa Committee of Johor pursuant to Section 47 of the Administration Of The Religion Of Islam (State Of Johor) Enactment 2003 (“**ARIJ**”). The said fatwa reproduces the contents of the National Fatwas (the “**Johor Fatwa**”). The Johor Fatwa was published in the Gazette pursuant to Section 49, ARIJ on 12.04.2020.

## **II The Legal Proceedings**

7. Hilmi and Aisha filed an Application for Judicial Review on 24.06.2020 as Haris’s litigation representatives to challenge the Impugned Decision. Leave was granted on 01.07.2020.
8. The Application was filed on 09.07.2020 pursuant to Section 84 of the Courts Of Judicature Act 1964. The court agreed to refer the following constitutional questions to the Federal Court in light of its recent decision in ***Jabatan Pendaftaran Negara & Ors v A Child & Ors (Majlis Agama Islam Negeri Johor, intervener) [2020] 2 MLJ 277.***
- 8.1. Whether Section 49 ARIJ is constitutional in seeking to make fatwas binding, considering that Section 12 of the Syariah Criminal Offences Enactment 1997 makes it an offence for anyone to give, propagate or disseminate any opinion concerning Islamic teachings, Islamic Law or any issue, contrary to any fatwa for the time being in force in Johor;
- 8.2. Whether the Johor Fatwa is subject to, and consistent with, the fundamental rights enshrined in Part II of the Federal Constitution;
- 8.3. Whether the word “surname” in section 13A BDRA includes patronymic surnames?; and

- 8.4. Whether, in performing the registration of the surname for an illegitimate child under section 13A BDRA, the Registrar of Births and Deaths may refer to and rely on the National Fatwas and the Johor Fatwa.

### **III Other Matters**

9. For the purposes of this moot problem:
- 9.1. The Johor Fatwa is fictional.
- 9.2. Parties have agreed that the issue of the jurisdiction of the Federal Court to determine the questions above, in particular the application of Article 128(1)(a) of the Federal Constitution, will not be raised.
- 9.3. Earlier decisions of the Federal Court, in particular (but not limited to) ***Jabatan Pendaftaran Negara & Ors v A Child & Ors (Majlis Agama Islam Negeri Johor, intervener) [2020] 2 MLJ 277*** and ***Sulaiman bin Takrib v Kerajaan Negeri Terengganu (Kerajaan Malaysia, intervener) and other applications [2009] 6 MLJ 354***, are to be revisited.
- 9.4. The status of Haris as an illegitimate child under Johor Islamic law is not in dispute.