

ISLAMIC FAMILY LAW

Legitimacy – Illegitimate child – Birth certificate – National Registration Department – Refusal to register surname – Fatwa – Whether Director General of the National Registration Department has power to ascribe patronymic surname of “bin Abdullah” to illegitimate child – Births and Deaths Registration Act 1957, sections 13 and 13A(2)

A Child & 2 lagi v Jabatan Pendaftaran Negara & 2 lagi
[Civil Appeal No. W-01(A)-365-09/2016], Court of Appeal

Facts The second and third appellants are Muslims who are legally married, while the first, second, and third respondents are the National Registration Department (NRD), the Director General of NRD, and the Government of Malaysia, respectively. The first appellant (“the Child”) was born illegitimate to the third appellant, as the Child was conceived less than six months from the date of their marriage. The Child’s birth was only registered two years later as late registration pursuant to the Births and Deaths Registration Act 1957 (“the Act”). At the time of registration, the second and third appellants had applied for the second appellant’s name to be registered as the father of the Child pursuant to section 13 of the Act¹. However, the Child’s birth certificate issued with his surname stated as “Abdullah” instead, following two *fatwas* issued by the National Fatwa Committee. The appellants argued that this was unfair to the Child as the surname “bin Abdullah” carried with it a stigma amongst the Muslim community and exposed him as a child that is born out of wedlock. The appellants filed for judicial review. The High Court, relying on the two *fatwas*, dismissed the application. Hence, this appeal.

Issue The main issue was whether the second respondent has power under the Act to ascribe the patronymic surname of “bin Abdullah” to an illegitimate Muslim child in place of his father’s name and against his wish.

Held In allowing the appeal, it was held that a *fatwa* cannot prevail over the Act as it is not law and has no force of law, thus cannot form the legal basis for the second respondent to decide on the surname of the illegitimate child. The second respondent has a statutory duty under section 13A(2)² of the Act to register in the birth certificate the second appellant’s name as the Child’s surname. Thus, it was held that the refusal of the second respondent to do so amounted to an abrogation of his power under the Act.

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¹ Provisions as to father of illegitimate child where it allows for the name of the person acknowledging himself to be the father of the illegitimate child to be entered in the register as the name of the child’s father, provided the mother of the child agrees to it.

² Section 13A(2) provides that “The surname, if any, to be entered in respect of an illegitimate child may where the mother is the informant and volunteers the information, be the surname of the mother; provided that where the person acknowledging himself to be the father of the child in accordance with section 13 requests so, the surname may be the surname of that person.”