

# Filiation Fatwa on infants less than six months by the Perlis State Fatwa Committee: Technical gaps and implementation measures in Malaysia

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## Abstract

*The implementation of filiation in Malaysia is based on the view of Jumhur and Syafii doctrine, that is, the birth of a child is required to be more than six months from the date of marriage of the biological parents. At the same time, the Perlis State Fatwa Committee (JFN) instead decided to come up with a fatwa regarding infants less than six months old. Following this, a study was conducted to examine two objectives, namely, the technical gaps that hinder the implementation of the filiation fatwa by JFN Perlis; as well as its implementation measures in Malaysia. The present study employs qualitative methodology through interviews and archives. The interviews include two members of JFN Perlis and four Syarii Judges from the Perlis Syariah High Court (MTS), MTS Ipoh, Petaling Syariah Subordinate Court (MRS) and MTS Johor Bahru. The archive study involves legal documentation in Malaysia and child certification application files in SHC Perlis from 2009 to 2019. The results of the analysis found that there were four technical gaps in the gazetting of fatwas that hindered implementation. Following this, the steps presented show the methods that can be used in the implementation of fatwas in Malaysia.*

**Keywords:** Filiation, Less than six months infants, Perlis State Fatwa Committee, Technical Gaps, Implementation measures.

## Introduction

In 2003, the Meeting of the National Council of Islamic Religious Affairs (MKI) Malaysia decided the fatwa on illegitimate children with contractual formula ( *sighah*) as follows:

“(i) A child born out of wedlock either as a result of adultery or rape and he is not from *syubhah* intercourse or not from a child of slavery; (ii) A child is born less than 6 months 2 *lahzah* (seconds) according to the Qamari

Calendar from the date of *tamkin* (intercourse). (b) An illegitimate child shall not be bequeathed to the man who caused its birth or to anyone who claims to be the father of the child. Therefore, they cannot inherit, cannot be *mahrms* and cannot be guardians (*wali*)”<sup>i</sup>

On the other hand, Perlis State Fatwa Committee (JFN) chose to disagree and decided on a fatwa convicting the filiation of infants that are less than six months in 2008. The fatwa was then gazetted in 2013 with *sighah* as follows:

In accordance with subsection 48(6) of the Administration of the Religion of Islam 2006, the Islamic Religious Council and Perlis Malay Customs Council, upon the approval of the Kings and acknowledge by the State Government, hereby makes the following fatwa posted: "Infants born less than six months after his mother being married, can be granted filiation to the mother's husband, unless denied by the husband ”<sup>ii</sup>.

According to the Deputy Mufti<sup>iii</sup>, the beginning of the fatwa was triggered by Mohd Asri as Mufti at the following time. This happens when there is a question from the community to the Mufti Department, and the Mufti Department looks at the shortcomings in the reality of society<sup>iv</sup>. Abdul Hadi<sup>v</sup> added the issue of filiation towards infants under six months is an issue of preserving *maslahah*. Filiation does not mean legalizing adultery, instead looking at the defense of children from slander, shame and hardship<sup>vi</sup>.

*Maslahah* for children is a priority in the discussion of filiation fatwas. Therefore, the effect of the filiation fatwa decided by the members of the JFN Perlis meeting, although not stated in the fatwa, refers to the conviction of all laws on children with the father and vice versa<sup>vii</sup>. In an effort to preserve the shame after the child is filiated, JFN also decided that the marriage certificate of the mother and father for the marriage application of the eldest daughter is not mandatory<sup>1</sup>.

However, at the same time, the study found that there were obstacles in the implementation of the fatwa that had been gazetted despite the implementation at the Perlis state level. Based on the archival study of the child certification application file in Perlis Syariah High Court (MTS), there are two reasons for the judgment that contradict the fatwa of JFN Perlis, whereby firstly, the application case was rejected on grounds contrary to Section 111 of the Perlis Islamic Family Law Enactment (EUKKI) 2006<sup>2</sup>, and secondly, the application case is approved but with the condition of exemption from guardianship and inheritance<sup>3</sup>. Thus, the study details the analysis of the technical gaps that hinder the implementation of the fatwa, before introducing the stage early analysis on implementation measures in Malaysia.

### **Technical gaps that prevent the implementation of the fatwa on the filiation of infants less than six months old**

Based on interviews with four Syarii Judges as the executors, there are three technical gaps that prevent the implementation of fatwas at the legal level. These technical

<sup>1</sup> Letter dated 20 April 2012. Ref: MUFTI@ (S) 351/301 (01) Vol.2 (14).

<sup>2</sup> Concerning files numbered 09100-006-0088-2017 and 09100-006-0166-2013.

<sup>3</sup> Concerning files numbered 09100-006-0072-2018 and 09100-006-0142-2014.

gaps involve: (i) Incomplete *sighah* fatwa; (ii) Gazettement without coordination of UUKI amendments; and (iii) Fatwas contrary to Judicial Practice and MKI.

### (i) Incomplete *sighah* fatwa

The fatwa is gazetted in *sighah* as follows:

In accordance with subsection 48(6) of the Administration of the Religion of Islam 2006, the Islamic Religious Council and Perlis Malay Customs Council, upon the approval of the Kings and acknowledge by the State Government, hereby makes the following fatwa posted:

"Infants born less than six months after his mother being married, can be granted filiation to the mother's husband, unless denied by the husband".

Based on the following verses, the context of the fatwa verse is concise and does not carry the specific interpretation intended by JFN Perlis. According to Syahrulnizam Saat<sup>viii</sup>, a short statement without a description of the meaning of the statement gives rise to a variety of interpretations that cannot be supported by the implementation of legislation.

"This fatwa only mentions less than six months, it does not denote whether the child was born of adultery or illicit intercourse. None. I mean if we want to discuss in terms of the law, we only look at the text, we cannot look at what is discussed by the drafters, or in the fatwa, we cannot take into account what is discussed by the fatwa committee. We can only take from that verse"<sup>ix</sup>

"If this fatwa is issued with the intention of children born as a result of adultery, it must be stated there. That is in terms of the law. If that is the verse then that is the verse. Because the interpretation varies. If the fatwa committee states the interpretation is like this and like that, then it should be included in the fatwa"<sup>x</sup>

"The meaning of the drafter cannot be taken into account in the legislation, we look at the text. Therefore, to implement it, we have to look at the original interpretation of the fatwa and align it with the Enactment"<sup>xi</sup>

The gazetted fatwa is simple and different from the meaning carried by the members of JFN Perlis as stated by Roslan Esa<sup>xii</sup>. The fatwa reads 'the infant can be filiated to the husband' only, on the other hand, Roslan Esa<sup>xiii</sup> specified that the fatwa means to bequeath the child to the father and at the same time make the child entitled to all rights from the biological father. The matter poses a problem to be implemented at the legal level as the meaning does not apply as long as it is not recorded with the Enactment.

"It did not say that infants born less than six months old can be entitled to the biological father. The verse, mentions can be filiated ( *dibinkan*) only, it did not mention about inheritance, about *faraid* and others. If that is what it means, make amendments. Do it exactly to the meaning intended. Now we can ask what it means, but if the drafters have passed, how do we get to know. That is why in law we cannot look at the intent of the drafters. Include what is meant, do not be open to various interpretations"<sup>xiv</sup>

"When people ask, can I filiate an infant less than six months old? We answered, yes Perlis says yes. But when we look at it, apparently that is all

in the fatwa. Perlis itself has no fatwa on filiation. I just found out and read the original fatwa, this is the only one. Meaning there is none. All other things, 'why can a fatwa be issued, how can a fatwa be issued' are all, not gazzeted and not applicable"<sup>xv</sup>

## (ii) Gazettement without coordination of UUKI amendments

The gazetting of the filiation fatwa is under the Administration of the Religion of Islam Enactment 2006 not under the UUKI Enactment 2006. Thus, at the Perlis Syariah Court itself, the implementation of the fatwa is difficult as it is contrary to the existing Enactment.

"After all, this fatwa came out after our Enactment was gazetted. The Family Enactment is complete, the status of legal children"<sup>xvi</sup>.

Interviewer: "So it means that the fatwa is gazetted but not included in the Enactment?". Judge: "Yes. We prioritize the existing Enactment compared to the fatwa that came out later"<sup>xvii</sup>

According to Mohamad Fauzi<sup>xviii</sup>, the Perlis UUKI Enactment related to the conviction of filiation and the position of illegitimate children has not been amended by any party and still retains the original provisions<sup>4</sup>. Gazettement without the UUKI amendment makes it difficult for the Court to be involved in the implementation of the fatwa.

Moreover, the court is an authoritative body that is not bound by a fatwa de cision<sup>xix</sup> especially when the fatwa is contrary to the existing Enactment. Recognition of the fatwa according to Section 49<sup>5</sup> of the Religious Administration Enactment of the State of Perlis, does not mean binding on the Judge<sup>xx</sup>. This is because, fatwa institutions and judicial institutions are two different and authoritative jurisdictions. The judge is qualified to refer to any view and advance the Enactment in accordance with the claims of the case.

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<sup>4</sup> Section 111: "If a woman who marries a man gives birth to a child more than six lunar months from the date of her marriage or within four lunar years after her marriage is dissolved either by reason of the death of the man or by divorce, and the woman in turn do not remarry, then the man shall be deemed to be the father of the child, but the man may, by other means or condemnation, deny the child as his child before the Court" Section 115: "Where a man declares another, either expressly or implicitly, as his lawful child, the man shall be deemed to be the father of the child if, the following conditions are met, namely- (a) no other person is deemed as the father of the child; (b) the difference between the age of the man and the age of the child justifies the relationship between them as father and son; (c) if the child has reached puberty, at which point he may decide, the child has agreed that he be recognized as the child; (d) the man and the mother of the child may be lawfully united in marriage at the time of insemination; (e) the acknowledgment not only acknowledges the child as his child, but also acknowledges the child as his legitimate child; (f) the man is capable of producing a contract; (g) the declaration is made for the sole purpose of conferring a status of validity; or (h) the acknowledgment is clear in meaning and the child is recognized as his biological child" Section 81: "(1) If a woman is negligent or refuses to support an illegitimate child who is unable to support him/herself, with the exception that the child was born as a result of rape, the Court may, when the matter is duly proved, order the woman to give any amount of monthly allowance the Court deems reasonable; (2) The monthly allowance under this section shall be payable from the date of the commencement of the negligence or refusal to bear the maintenance or from a later date as may be specified in the order. Section 86: "Custody of illegitimate children is solely on the mother and the mother's relatives" (*Enakmen Undang-Undang Keluarga Islam Negeri*, 2006)

<sup>5</sup> "(2) A fatwa shall be recognized by all Syariah Courts and Syariah Courts of Appeal in the State of Perlis on all matters stated therein" (*Enakmen Pentadbiran Agama*, 2008)

"Fatwas need to be coordinated with the Enactment, if it is conflicting, we will adhere to the Enactment.... The Enactment is bigger than the fatwa. In the event of a clash, we will adhere to the Enactment"<sup>xxi</sup>

"As long as the UUKI Enactment is not amended, that is how long our plague is bound by the Enactment"<sup>xxii</sup>

Therefore, in the context of the filiation fatwa by JFN Perlis, the Perlis Syariah Court is independent in convicting the law as the executor, moreover as the issue of filiation is a national issue<sup>xxiii</sup>.

### **(iii) Fatwa contrary to MKI and JKSM Practice**

The fatwa on filiation of infants born less than six months decided by JFN Perlis is a decision that is contrary to the fatwa on the status of illegitimate children by MKI. Therefore, implementation is difficult to do as all government policies are bound by the decision of the MKI fatwa, such as the procedure to put the father's name on the child's name (as the son of) by the National Registration Department (JPN).

"There is no real problem with the fatwa that is agreed upon, because the NRD is the main implementer. And the NRD will hold on to the biggest view, which is the Fatwa of the National Council or the Fatwa of the Federal Territory to be used as an SOP in cases such as this"<sup>xxiv</sup>

In addition, the effect of filiation of infants less than six months involves enforcement in other states in terms of the process of marriage of daughters or *faraid* for situations that occur outside the state of Perlis<sup>xxv</sup>. Therefore, agreement at the MKI level is important, because if the MKI convicts the legal status of an infant born less than six months old, other states would also have no objections in the acceptance and implementation<sup>xxvi</sup>.

At the same time, the practice of the Department of Syariah Judiciary Malaysia (JKSM)<sup>6</sup> also places the attachment of the implementers with the sects that are used at the respective state levels. Meaning that Syarii Judges are bound by the practice of the Syafii doctrine in making decisions at the judicial stage even if a Judge agrees with the filiation fatwa by JFN Perlis<sup>xxvii</sup>.

"Because I remember in Perlis, the Judge is the same, he is also bound by the practice of endorsement. When JKSM issues, and the Chief Judge accepts, then all Judges are bound by the endorsement. That is a problem in Perlis. That is why they should sit down and discuss again. Because, even though the Mufti Department has issued such a fatwa and gazetted it, and it has become a law, but its implementation is in Court"<sup>xxviii</sup>

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<sup>6</sup> "Application of the Fiqh doctrine: I would like to draw the attention of Y.A.A. to the decision of the Syariah Court Practice Direction Meeting throughout Malaysia No. 2/2000 on 9-11 October 2000 in Malacca and the decision of the 17th Meeting of the Chief Syariah Judges in Labuan on 27 October 2000 equivalent to 26 Rejab 1421 which agreed and confirmed to adopt the instruction regarding the application of the Fiqh doctrine. The application of the Mu'tabar doctrine should be guided by the policy set by the Ruler for the state that issued credentials (tauliah) to the Syariah Judges. This directive is effective immediately" ( *Arahan Amalan No. 9, 2001*).

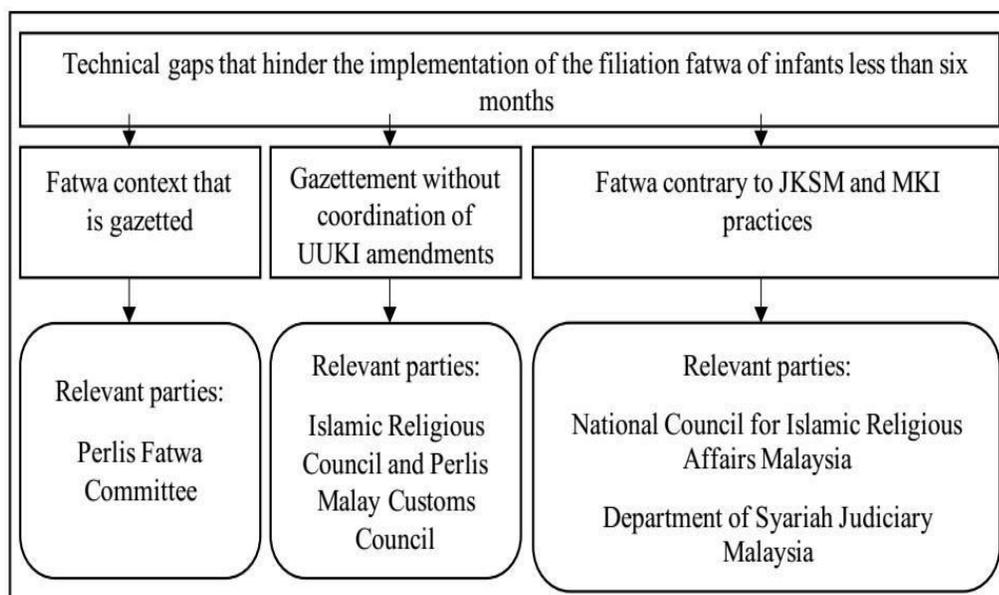


Figure 1.0. Technical gaps that hinder implementation

**Measures to implement the fatwa on the filiation of infants born less than six months in Malaysia**

After analyzing the possibilities and obstacles to the implementation of the fatwa on the filiation of infants born less than six months old, the study presents the stage early analysis of implementation measures in Malaysia through uniformity at the MKI level.

The implementation involves six main agencies, namely: (i) Perlis Fatwa Committee; (ii) Islamic National Council for Islamic Religious Affairs Malaysia; (iii) Syariah Law Drafting Committee; (iv) State Islamic Religious and Customs Council; (v) Syariah Judicial Department of Malaysia; and (vi) the National Registration Department.

**(i) Perlis Fatwa Committee**

There are three implementation steps for the Perlis Fatwa Committee.

**First: Amending the text of the fatwa on the filiation of infants born less than six months old**

JFN Perlis needs to amend the text of the fatwa by JFN Perlis to answer three main issues, namely:

- (a) Infants born less than six months old include children conceived by sexual activity before marriage such as adultery or rape crime.
- (b) The infant is bequeathed to the mother's husband and allows the child to be filiated (*dibinkan*) to the man involved.
- (c) The act of filiation leads to the law which conforms between the child and the father, including in the case of *bunuwwah*, alimony, *mahram*, guardianship (*wali*) and inheritance (*waris*).

The proposed text of the updated fatwa with *sighah* are as follows:

"Infants born less than six months after the mother marries, can be filiated to the mother's husband, unless denied by the husband.

Filiation involves:

- (1) Infants born less than six months by reason of health problems or pregnancy occurring before marriage either from sexual activity or sexual crime.
- (2) Conviction between the child and the father in the matter of *bunuwwah*, maintenance (*nafkah*), *mahram*, guardianship and inheritance"

### **Second: Re-gazette the fatwa text after amendment**

The amended fatwa in detail shall be gazetted under the Administration of the Religion of Islam Enactment and republished. The text of the gazette became the basis for discussions on the implementation of filiation of infants less than six months in Malaysia.

### **Third: Make an application for the presentation of a fatwa on the filiation of infants born less than six months old**

JFN Perlis, led by the Mufti of Perlis, is required to make an application for presentation at the MKI level to bring a fatwa on the filiation of infants born less than six months old. This is because the filiation fatwa from JFN Perlis is the basis of reference in propositions (*dalil*) and the act of propositions. The presentation covers arguments from Islamic law, the existence of *maslahah* in the community that is proven as well as gaps in the legislation that allows for implementation.

#### **(ii) Islamic National Council of Islamic Religious Affairs Malaysia**

A fatwa on the filiation of infants born less than six months old should be proposed at the MKI level for discussion and implementation at the national level. The motion would take place through the MKI Muzakarah Committee as it involves the application of certain parties, compared to the MKI Muzakarah Committee Meeting which only involves the application of the Conference of Kings (*Raja-Raja*) only<sup>xxix</sup>.

There are four steps that need to be taken by MKI to move the implementation of filiation of infants less than six months old.

#### **First: Receiving a presentation application from JFN Perlis on the proposal for the filiation of infants born less than six months old**

Acceptance of the application is the first step to lead to discussion among scholars in Malaysia. Giving space for a proposal to be presented and debated academically, that will divert from bigotry and prejudice as a process towards the advancement of the values and culture of knowledge.

The proposal of the fatwa text to be presented and debated with *sighah* are as follows:

"Infants born less than six months after their mother is married, can be filiated to the mother's husband, unless denied by the husband.

The filiation include:

- (1) Infants born less than six months by reason of health problems or

pregnancy occurring before marriage either from sexual activity or sexual crime.

(2) Conviction between the child and the father in the matter of *bunuwwah*, maintenance (*nafkah*), mahram, guardianship and inheritance”.

### **Second: Conducting the MKI Muzakarah Committee based on the fatwa issuance guidelines**

MKI clearly states in the fatwa issuance guidelines<sup>xxx</sup>, that:

"In the process of issuing laws or fatwas, most states will usually issue laws or fatwas based on the *qawl muktamad* of the Syafi'i doctrine. If the *qawl muktamad* of the Syafi'i doctrine is contrary to the public interest, any *qawl muktamad* of the Hanafi, Maliki and Hanbali doctrines, or any other doctrines whose method of inference of law is close to these streams may be referred to. If by referring to the *qawl-qawl muktamad*, the Fatwa Committee is of the view that there is a conflict with the public interest, then the Fatwa Committee can use their own *ijtihad*".

The ruling shows that JFN is bound to adhere to the views of the Syafii doctrine in issuing fatwas, but at the same time, any opinion can be considered for implementation as long as it is the opinion of doctrines regardless of Hanafi, Maliki and Hanbali, and it is found that the opinion precedes the opinion of the Syafii doctrine.

The filiation of infants less than six months old has been proven as the *qawl muktamad* of the Hanafi doctrine in the matter of the filiation of an adulterous child by the father's *iqrar* in marriage<sup>xxxix</sup> <sup>xxxii</sup>, and is supported by other scholars' opinion on the filiation of an adulterous child by the father's *iqrar* alone such as Ibn Qudamah <sup>xxxiii</sup>, Ibn Taimiyah <sup>xxxiv</sup>, Ibn Qayyim al-Jauziyah <sup>xxxv</sup> and Salafus soleh such as Hasan al-Basri, Ibrahim Adham, Ishaq bin Rahuyah, Urwah bin Zubair and Sulaiman bin Yasar<sup>xxxvi</sup>.

Thus, the filiation fatwa is eligible to be debated academically and given space to be proposed for its implementation in Malaysia. This views the *maslahah* of implementation as greater. In refining the *maslahah*, MKI can act by perusing:

- a) Problems from illegitimate status. MKI can call agencies directly involved in the issue such as JKM, NGOs for pregnant mothers without marriage and NGOs for children.
- b) The difference in the number of biological fathers who want to be responsible with the actual statistics of illegitimate status children. The reality is, biological fathers who choose to marry and apply for child certification (*pengesahtarafan*) are in very small numbers.
- c) Punishment considerations for mothers and fathers to infants born less than six months old for sexual activity offenses before marriage. This is in response to the fatwa accusation that the adoption of infants born less than six months old is a fatwa that encourages adultery. Biological mothers and fathers who still choose to face punishment for filiation of the child are evidence towards maintenance of *maslahah*.

### **Third: Gazetting the filiation fatwa at the National level**

The agreed fatwa must be brought to the His Royal Highness (DYMM) of the Conference of Rulers for approval and endorsed for its implementation. After obtaining the

consent of His Majesty the Council of Rulers, it is understood that the fatwa has been gazetted at the National level. Gazettement of fatwas on filiation of infants born less than six months old must be done to achieve the Federal legal reference standard. Then, the gazetted fatwa must be followed by action:

- a) Publication of the gazetted fatwa through MKI's official website. The post should be accompanied by clear details of statements and propositions (*dali*).
- b) Announcements and explanations need to be done by all agencies under JAKIM to provide awareness and understanding to all Malaysian Muslims. Explanations can be conducted through Friday sermon activities, weekly lectures at the Mosque, religious programs through electronic media and writing on internet media.
- c) Amendments to the guidelines for the naming and status of illegitimate children that have been published and referenced by all government agencies since 1998. The amendments are important for the reference of the NRD's procedures in the registration of children for Muslims.

The amendment involves the issuance of a statement of infants born less than six months old from the explanation of an illegitimate child, as well as complying with the fatwa on filiation of infants born less than six months old, whereby an illegitimate child is a child born to a mother out of wedlock, and a child born during wedlock but denied by the father.

#### **Fourth: Establish a Shariah Law Drafting Committee**

The establishment of the Syariah Law Drafting Committee by MKI is an important step after the gazetting. This is because, the Committee consisting of Federal Representatives and State Representatives helps to examine and formulate the legislation draft of the fatwa.

#### **(iii) Syariah Law Drafting Committee**

Members of the Syariah Legislation Committee appointed by MKI must include the State Government representatives such as members of the State Islamic Religious and Customary Council, Federal Government representatives such as representatives of the Malaysian Syariah Judiciary Department as well as academics. There are three steps that need to be expedited by the appointed members of the Drafting Committee.

#### **First: Form a draft legislative amendment proposal**

The draft formed should include two important matters, namely the proposed amendment to the UUKI Enactment, and the proposed amendment to the Syariah Criminal Enactment.

- a) Amendments to the UUKI Enactment  
Amendments need to be brought to the consultation table for a thorough implementation process. The two parts that need to be proposed amendments are:
  - a. Who is associated with the father. Amendments need to be made with the condition of six months of pregnancy for the conviction of the child's filiation to the birth within the marriage period of the parents.  
At the same time, amendments towards proof of DNA testing for children denied by the father should be included as evidence in that section. This is because DNA testing is the mother's right to clear the charges and convict the child's filiation.

- b. Conditions for valid confession. Amendments involve the condition of marriage occurring at the time of insemination to the condition of marriage occurring at the time of childbirth.
- b) Amendment of the Syariah Criminal Enactment  
The amendment is intended only for certain states which do not have the provisions of the Section in relation to extramarital intercourse. For example, for the state of Perlis, the Syariah Criminal Enactment only provides Section 15 for the offense of extramarital pregnancy. The provision applies to pregnant women out of wedlock only, but does not convict the men as perpetrators.  
Therefore, an amendment is proposed for the uniformity of the State Syariah Criminal Enactment in the provision of punishment for extramarital intercourse. The following amendments should include details of the father who applied for certification of an infant born less than six months old. The conviction of the sentence from the provision becomes a condition of the conviction of the child's filiation on the biological father.

### **Second: Refer to the Attorney General's Chambers**

As the legal advisor to the Federal Government and the State Government in Civil and Syariah law<sup>xxxvii</sup>, the Attorney General's Chambers is an important agency to pave the way for the implementation of filiation of infants less than six months in Malaysia.

The Attorney General's Chambers can act as an advisor to the Syariah Law Drafting Committee regarding the Enactment amendments draft and its implementation strategy at the National level.

### **Third: Bringing the motion to amend the Enactment to the Parliamentary conference**

The Drafting Committee needs to bring the amendment motion to the Parliament conference so that implementation can be carried out uniformly. The jurisdiction of Parliament in the determination of State Syariah Law is enshrined in Clause 76<sup>7</sup> of the Federal Constitution<sup>xxxviii</sup> provided that it obtains consent from negotiations with the State Government. The motion passed by the parliamentary session should help the implementation of the filiation of infants born less than six months old within the National implementation framework.

### **(iv) Islamic Religious Council and State Customs**

The gazetting of the fatwa on the filiation of infants born less than six months old at the MKI level became the basis of reference for discussions between members of the JFN

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<sup>7</sup> Article 76. Power of the Parliament to enact laws for the States in certain matters: (1) Parliament may enact laws on any of the matters mentioned in detail in the List of States, but only as follows, namely: (a) for the purpose of carrying into effect any treaty, agreement or convention between the Federation and any other country, or any decision of an international organization of which the Federation is a member; or (b) for the purpose of promoting uniformity of law between two or more States; or (c) if so requested by the Legislative Assembly of any State; (2) No law shall be made pursuant to paragraph (a) of Clause (1) on any matter of Muslim law or Malay customs or on any matter of law or custom in the State of Sabah and Sarawak and no Bill for a law under that paragraph shall be brought in any one House of Parliament until the Government of any State concerned has been consulted.

and the State Islamic Religious Council and State Customs Council (MAIN). Consequently, there are three steps that is required by MAIN.

### **First: Gazette the filiation fatwa through the Administration Enactment**

The decision of the approved fatwa is presented by the Islamic Religious Council and State Customs to the DYMM Sultan or Raja for approval. After being approved by the DYMM, the fatwa gazetting process is effective under the Islamic Religious Administration Enactment for each state.

### **Second: Form the State Syariah Law Drafting Committee**

The Council is required to form a State Syariah Law Enactment Committee to discuss the proposed amendments to the UUKI Enactment and the Syariah Criminal Enactment which have been drafted by the Syariah Law Enactment Committee appointed by MKI. The preparation of the draft with the reference of the Attorney General's Chambers facilitates the uniformity of amendments at the state level.

### **Third: Ensure that the Enactment after the amendment is approved and implemented**

After the State Drafting Committee produces the details of the Enactment amendment, the Council needs to acquire the consent of the DYMM Sultan or Raja to gazette the provisions into the UUKI Enactment and the Syariah Criminal Enactment. The validation and provision of the legal text is dependent on the respective states.

### **(v) Department of Syariah Judiciary Malaysia**

As the implementer, there are two aspects that need to be given attention by JKSM.

### **First: Drafting of Practice Direction of the Department of Syariah Judiciary Malaysia**

JKSM needs to enact the JKSM Practice Direction which binds the Syarii Judges to the practice of the doctrine based on the policy set by the ruling Ruler of a state as stated:

“Application of the Fiqh doctrine: I would like to draw the attention of Y.A.A. to the decision of the Syariah Court Practice Direction Meeting throughout Malaysia No.2/2000 on 9-11 October 2000 in Malacca and the decision of the 17th Meeting of Chief Syariah Judges in Labuan on 27 October 2000 equivalent to 26 Rejab 1421 have agreed and confirmed to adopt the instruction regarding the application of the Fiqh doctrine. The adoption of Mu'tabar doctrine should be guided by the policy set by the Ruler for the state that issues "*tauliah*" to Syarie Judges. This directive is effective immediately”<sup>xxxix</sup>

This act is important, as a party facing various cases, Syarii Judges should be given freedom of *ijtihad* as long as it is within the provisions of the four main doctrines, namely the Syafii, Hanafi, Maliki and Hanbali doctrines.

**Second: Refer to the UUKI Enactment and Syariah Crimes after the amendment**

The Syarii judge in conference for the child certification application case must refer to the UUKI Enactment after the amendment in giving the decision and reasons for the judgment. In addition, Syarii Judges have the power to convict offenses under the Syariah Criminal Enactment against biological parents as applicants before convicting the legitimacy of the child.

**(vi) National Registration Department**

The last step in the implementation of filiation of infants less than six months is at the NRD level, as follows:

**Recognize marriage certificates and legitimate status from the Syariah Court**

After the application for child legitimate status is approved at the Syariah Court level, the application will be extended to the NRD for birth certificate registration. Thus, the NRD only needs to place two main conditions for birth registration for infants born less than six months old, namely (i) the mother's marriage certificate with the biological father, and (ii) a certificate confirming the child's status from the Syariah Court. If the applicant provides the two documentations, the child registration process allows the name of the biological father to be included in the birth registration certificate.

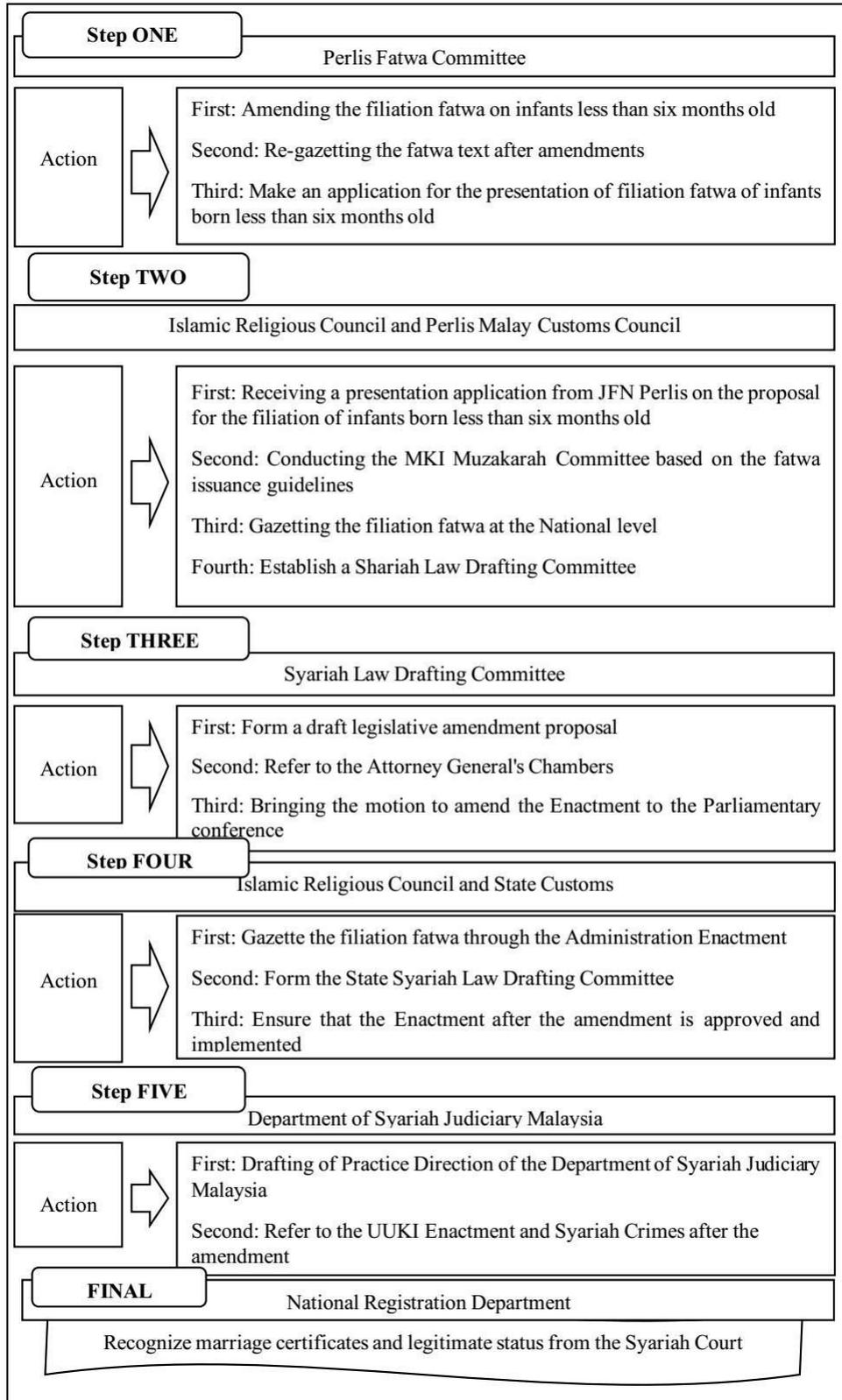


Figure 2.0. Measures for the implementation of filiation of infants less than six months in Malaysia

## Conclusion

Based on the findings of the study, it was found that there are technical gaps that hinder the implementation of the fatwa by JFN Perlis which need to be improved. If the right steps are taken by the parties involved such as JFN Perlis itself, MKI, MAIN, JKSM and JPN, the implementation of the fatwa on the filiation of infants less than six months is not impossible to be implemented in an integrated manner in Malaysia.

In the details of the debate on public *masalah*, MKI needs to work with the Ministry of Women, Family and Community Development to understand the issue of harm to illegitimate children so that the fatwa decision can give justice to the affected parties. This is because, the study found that the provisions ( *dali*) and act of provisions in the case of filiation of infants less than six months is basically in accordance with the Islamic law and is the *qawl muktamad* of Imam Abu Hanifah's doctrine on filiation of infants from adultery in the marriage of biological parents. Thus, research and analysis on the harms and problems faced by those affected by the illegitimate status helps towards the amendment of the existing fatwa as well as enabling its implementation in Malaysia.

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