

Analysis On The Legal Certainty Of Constitutional Court Decision Number 46/PUU-VIII/2010 As Evidence In Resolving Cases Of Children Born Out Of Wedlock

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Abstract

This research aims to analyze the legal certainty of the Constitutional Court Decision Number 46/PUU-VIII/2010 regarding the legal status of children born out of wedlock. This decision regulates the recognition of rights for children born out of wedlock, who previously often did not receive adequate legal protection. The analysis is carried out by examining the implications of the decision on legal practices in Indonesia, including how the decision can serve as evidence in resolving disputes related to the legal status of children. Additionally, this research also examines the impact of the decision on the protection of children's rights, as well as the response of society and the government in supporting the implementation of the decision. The results of this analysis are expected to provide a better understanding of the role of the Constitutional Court in upholding legal certainty and the rights of children in the social and legal context of Indonesia. The method used in this research is a normative legal research method, which is applied to examine regulations related to the protection for children born out of wedlock under Constitutional Court Decision No. 46/PUU-VII/2010 is incomplete, as the decision requires DNA testing to establish paternity but lacks enforceable regulations to compel such testing. Despite its limitations, the decision reflects the state's effort to protect these children while encouraging compliance with marriage laws to create a more conducive legal environment.

Keywords: *Child, Child Born out of Wedlock, Recognition of Child Born out of Wedlock*

INTRODUCTION

Marriage is an effort made by humans to continue their descendants. Humans as social beings (*homo socius*) cannot live and fulfill their needs without the help and role of others, both to meet material and non-material needs (psychological/biological). The word marriage etymologically comes from the word "kawin". According to the Indonesian Dictionary, marriage is "the process of forming a family with the opposite sex and engaging in sexual relations or intercourse." However, Mahmud Yunus has a different opinion, where he defines marriage as a sexual relationship that is in accordance with what is described by Hazairin (Ja'far, 2021). The term marriage that arises in the midst of community life, namely secret marriage, which has a different meaning from the definition of secret marriage in the past (Nama, 2014).

Marriage, in the definition in Indonesian positive law as stated in Article 1 of Law Number 1 of 1974 concerning marriage (hereinafter referred to as the Marriage Law) is: "Marriage is a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God". Article 1 of the Marriage Law states, Marriage is "a bond involving the physical and spiritual dimensions between a man and a woman as husband and wife" with the aim of forming a happy and everlasting family or household, based on the principle of the Almighty God (Sudarsono, 2005).

The application of norms in the Marriage Law (in this case related to the validity of marriage according to the Law), there are 2 requirements that must be met by prospective married couples before getting married, namely material requirements and formal requirements. Material requirements are related to the individuals who will get married, while formal requirements are related to the procedures for conducting marriages in accordance with the provisions stipulated

by the legislation. The implementation of the Marriage Law and the applicable norms cannot be done separately, but must be carried out sequentially in a marriage process.

Quoting Article 2 paragraph (2) of Law No. 1 of 1974 concerning Marriage which states: "Every marriage shall be recorded according to the applicable statutory regulations". Considering that marriage is considered a legal act that gives rise to rights and obligations, in this case not only limited to the husband and wife, but also to the children born in the marriage, recording a marriage is crucial, aiming to provide strong and valid evidence in the eyes of the law, both in terms of formalities and substance, as it has been documented in the form of an authentic deed, in accordance with the provisions stipulated in Article 1886 of the Civil Code.

Recording a marriage plays a very important role in issuing a birth certificate. This is a strong basis for recognizing the blood relationship and legal status of a child born when their parents are legally married. A child born from a valid marriage, both formally and materially, has full rights in terms of inheritance, legal status, biological relationship with their parents, and as an Indonesian citizen (Usman, 2014). On the other hand, a child born out of wedlock is a child born without a legally recognized marriage bond by the state, the definition of a child born out of wedlock in Black's Law Dictionary is: A child who was not conceived or born in lawful wedlock, nor later legitimated (Garner, 2009). According to Andi Hartanto in his book, a child born to a woman who does not have a valid marriage bond with the man who impregnated her (J. Andi Hartanto, 2008). Therefore, a child born out of wedlock is only recognized to have a civil relationship with the mother, not with the father.

This certainly has a negative impact on the growth and future of the child. Article 43 paragraph (1) of the Marriage Law stipulates that: "A child born out of wedlock only has a civil relationship with the mother and the mother's family." This norm certainly does not provide a legal solution to children born out of wedlock, as it only focuses on the mother who gave birth, without considering the father who was involved in the pregnancy of the mother. To address this issue, the Constitutional Court Decision Number 46/PUU-VIII/2010 regarding the status of children born out of wedlock was issued, in which the decision interprets Article 43 paragraph (1) of the Marriage Law explained that: "A child born out of wedlock has a civil relationship with the mother and her family as well as the man as the father who can be proven based on science and technology and/or other evidence according to the law has a blood relationship, including a civil relationship with the father's family".

On this day, the knowledge and technology referred to are the use of DNA testing or Deoxyribonucleic Acid as relevant evidence in accordance with the needs in the Constitutional Court decision, DNA testing methods are a genetic testing procedure aimed at detecting changes in genes, chromosomes, and individual proteins. This method is often used to verify family relationships and someone's lineage. The Constitutional Court decision has its own loopholes. Indirectly, this decision benefits men in the position as fathers. This is because the father can refuse to acknowledge the child, either directly or indirectly, or in cases where the father has passed away, given that the evidence required in the decision requires scientific knowledge and technology as evidence, which is not possible to be done to someone who has already passed away, in practice, this certainly makes it difficult for the child to prove biological relationships to their father. In the civil court procedural law practice, there is the principle of *Actori Incumbit Probation*, where the defendant does not acknowledge the lawsuit, so the plaintiff must prove it (Ali & Heryani, 2012). If asked directly by the family of the alleged father of the non-marital child, in practice, it will be difficult for the non-marital child, because there is no legal norm that can compel someone suspected to be their biological father to undergo DNA testing.

Based on research conducted by Faelly Paburru (Paburru, 2022), Faelly Paburru's research analyzes the impact of Constitutional Court Decision Number 46/PUU-VIII/2010 on the legal status of non-marital children in Indonesia. From lineage relationships will arise the right for a father or a father's family from the male lineage to become a marriage guardian for a

daughter(Hamzani, 2016). This research also explores the social and legal implications of these changes, as well as the challenges still faced in their implementation(Paburru, 2022). Furthermore, in a study conducted by Georgina Agatha (Agatha, 2021) in this research, Georgina Agatha highlights the importance of proving and confirming the legal status of children born out of wedlock, especially after the Constitutional Court Decision Number 46/PUU-VIII/2010. By comparing the content of the decision with Islamic legal views, this research identifies differences and similarities in the recognition and protection of children born out of wedlock. Furthermore, in civil law, there are two categories of children born out of wedlock, namely children born out of wedlock who are not acknowledged and children born out of wedlock who can be acknowledged. In relation to children born out of wedlock who cannot be acknowledged, they are classified as being born out of adultery or born out of rape(FIRYAL & LUKMAN, 2022).

Reflecting on the above description, it can be said that despite the issuance of Constitutional Court Decision Number 46/PUU-VII/2010, it can be considered to have issues of legal norm incompleteness, as the proof required by the decision is relatively difficult to be done in practice, in order to accommodate children born out of wedlock to prove blood and civil relationship with their father, with the issue of incompleteness, automatically creating legal uncertainty, which in this case certainly results in injustice for children born out of wedlock, as legal norms related to their rights and positions cannot be implemented or are difficult to be executed. Based on the above description, the researcher will conduct research on whether Constitutional Court Decision Number 46/PUU/VII/2010 provides legal certainty as the basis for proving children born out of wedlock? And what is the conception of the civil protection of Children Born out of Wedlock towards their biological father in Constitutional Court Decision Number 46/PUU/VII/2010 in achieving justice for children born out of wedlock?

RESEARCH METHODS

This research uses the normative juridical research method in its preparation. The normative juridical research method is an approach in legal research that uses the analysis of literature or secondary data by applying deductive methods in thinking(Marzuki, 2019). In this approach, researchers draw specific conclusions based on general premises that have been proven true. This method uses qualitative analysis to investigate legal norms found in legislation (Marzuki, 2013). In this study, the author uses the Statutory Approach, Conceptual Approach, and Case Approach. The Statutory Approach is done by reviewing and examining all related laws and regulations that fall within the legal issue category focused on in this research(Diantha, 2016).

RESULT AND DISCUSSION

The Legal Certainty of Constitutional Court Decision Number 46/PUU/VII/2010 as the basis for proving a child born out of wedlock

A child is someone who has not yet reached the age of eighteen (18), including those still in the womb (Article 1 paragraph 1 of Law Number 23 of 2002 concerning Child Protection), and a legitimate child is a child born within or as a result of a valid marriage (Article 42 of Law Number 1 of 1974 concerning Marriage). However, it is different when a child is born outside normal conditions, such as a child born out of wedlock (Kharlie, 2013). In the Civil Code (hereinafter referred to as KUHPerdata), a child born out of wedlock is known as *Naturalijk Kind*. In fact, these children born out of wedlock exist and cannot be denied that they have become a separate issue for legal thinkers in our country to always pay attention to. According to Ahmad

Tholabi Kharlie, a child born out of wedlock is defined as a child whose position according to the Civil Code does not have any legal or biological ties (Kharlie, 2013).

In the process of legalizing an illegitimate child and granting them inheritance rights, the child must be recognized by their parents. If parents who are already married do not acknowledge or recognize a child born before their marriage, the child's legalization can only be done through a letter of recognition from the Chief of State. Another form of acknowledgment for an illegitimate child must be carried out through the relevant authority, namely the Civil Registry Office, and must be documented in the form of the child's birth certificate and the parents' marriage certificate.

The country has regulated the relationship between a child and their parents, one of which is stipulated in Article 42 of Law Number 1 of 1974 concerning Marriage, while the meaning of a legitimate child in that article is: A child born to a woman as a result of a valid marriage, a child born to a woman within a marriage with a minimum interval of 6 (six) months between the marriage and the birth of the baby, a child born to a woman within a marriage whose timing is less than the usual pregnancy period but not denied by the husband (Syahuri, 2013).

Recognition according to the Marriage Law's view towards an illegitimate child is actually a legal act that can only be done by a father to a child born outside a valid marriage according to the law, or in other words, an illegitimate child only has civil, familial, and all its consequences with the woman who gave birth to him and also with the woman's family, not with the father (Paburru, 2022). According to the Indonesian Dictionary, the term "right" means: "something true, owned, authority, power to do something (because it has been determined by law and regulations), true power over something or to demand something, degree of dignity" (kemdikbud, 2023). While the term "civil law" comes from the word "civil" which refers to civil law and covers regulations regarding individual rights, property rights, and interactions between individuals based on logical principles, both formally and materially (Nazar & Rismawati, 2022).

As for the understanding of position, in this case the position of a child, Position is the place or position of a person in a social group, or the position of one group with other groups or the relationship between one group and a larger group (Suyanto & Narwoko, 2007). If the term position is combined with the term law, then the meaning obtained is the position held by a person according to the applicable law (Yakub & Al-Barri, 2003). In law, the position of a child plays a very important role. According to civil law, a person's position can be acquired due to family relationships, marriage, agreements, acknowledgment, or grant by the State. Acknowledgment of a child is a statement made by someone in a form determined by the Law, stating that the person making the statement is the father or mother of a child born out of wedlock (Kansil, 1995).

The certainty and truth of who the biological father of the child born out of wedlock is known only by the biological mother/woman who gave birth to the child. The consequence for a man who acknowledges a child born out of wedlock is that he will be subject to all the laws of Indonesia related to child issues, including inheritance if he passes away (Paburru, 2022). Unregistered marriages result in children born from such marriages being considered as children born out of wedlock, with legal status limiting their civil relationship only with the mother and not with the biological father. This impacts the child's identity, as the birth certificate only lists the mother's name, and the child is not recognized as the heir of the father, creating discrimination and lack of legal protection for children born out of wedlock. Provisions in the Marriage Law, such as Article 2 paragraph (2) and Article 43 paragraph (1), present legal challenges that contradict the values of humanity and diversity in Indonesia.

Regulations governing children born out of wedlock have become a source of polemic that triggered Hj. Aisyah Mochtar to submit a material review to the Constitutional Court with submission number 211/PAN.MK/2010. In her submission, the Applicant argued that Article 2 paragraph (2) and Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage

overlook the rights and position of children towards their biological father, which potentially harms the legal position of the child. In response to this, in Constitutional Court Decision Number 46/PUU/VII/2010, the Court first considered their authority to adjudicate and the legal position of the petitioners to ensure that they have the legal right to file a lawsuit.

In exercising this authority, the Constitutional Court referred to Article 24C paragraph (1) of the 1945 Constitution and other related regulations that affirm the Court's legitimacy to review the constitutionality of laws. Based on its considerations, the Court concluded that the Applicant's petition aimed at testing the norms in the Marriage Law was within the Court's jurisdiction, thus providing a strong basis to continue the hearing regarding the petition. This decision reflects the commitment of the Constitutional Court in protecting the rights and legal positions of individuals, especially concerning the issue of children born out of wedlock, who are often marginalized in the law.

The petitioners, who are Indonesian citizens individually, filed a petition to test the provisions of Article 2 paragraph (2) and Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, on the grounds that these norms create legal uncertainties that harm the marital status and the legal status of children born from the marriage of Petitioner I. They argue that although the marriage of Petitioner I is valid according to Islamic marriage requirements, the application of Article 2 of the Marriage Law results in the legal status of Petitioner II's child being classified as a child born out of wedlock, creating discriminatory treatment under the law.

The Constitutional Court, in response to the petition, stated that it is unfair if the law only provides for civil relationships between children born out of wedlock from sexual relationships with their mothers only, while their biological fathers are exempt from responsibility. The Court emphasized that advances in technology allow for the proof of biological relationships between children and fathers, so the child's right to recognition and responsibility from their father needs to be acknowledged for the sake of justice. Therefore, the Constitutional Court declared that children born out of wedlock should receive equal legal protection, regardless of their parents' marital status. This is important to prevent harm to innocent children who have no choice about their birth circumstances. By recognizing children's rights towards their biological fathers, the law can create fair treatment and avoid discrimination.

In addition to the aforementioned points, another underlying issue that supports the change in the provision of Article 43 paragraph (1) of the Marriage Law is fundamentally in response to the inappropriateness and unfairness if the law exempts men who engage in sexual relationships that result in pregnancy and child birth from their responsibility as fathers, while at the same time denying the child's rights towards that man as their father (Bachtiar, 2015). The petition related to Article 2 paragraph (2) which states that marriages must be recorded in accordance with prevailing regulations, was not granted. The Constitutional Court's consideration was that marriage registration is not related to the validity of the marriage, as the validity of a marriage is determined by the requirements set by the religion of each prospective spouse. Marriage registration is an administrative obligation (Armanto, 2009).

In the excerpt of the decision of the Religious Court submitted as evidence by the petitioner in their application to the Constitutional Court, it can be seen that the purpose of the petitioner in submitting it is for marriage proof, considering that in this case, the previous marriage was held secretly (not recorded). Marriage proof is a request for marriage confirmation submitted to the Religious Court to declare the validity of the marriage and have legal force (Hijawati & Sardana, 2023). In Article 43 paragraph (1) of the Marriage Law, it requires proof of paternity with knowledge and technology, nowadays the proof with relevant knowledge and technology is through DNA testing (Deoxyribonucleic Acid). Where later the biological father or biological father status can be proven or disproven with the closest possibility to certainty with DNA testing, a test where the nucleic acid that stores all genetic information in the human body (Kolkman, 2000). This article likely stems from the fact that at that time there were no

techniques or medical sciences that could be used as a definite reference to determine if a child is descended from a specific man, so it was impossible to investigate who the biological father of a child is. However, considering the advancement of medical science regarding DNA, it is only fitting to deviate from Article 287 of the Civil Code because now proving who the father of a child is has become very easy (Satrio, 2000).

It can be understood from the explanation above, that the birth of a child outside of marriage does not automatically ensure the establishment of a family relationship, in this case regarding the civil status and lineage of the child, between the father and mother who conceived them. However, this relationship can only occur after recognition (acknowledgment), then a family relationship arises with all its consequences, especially the inheritance rights between the child and the parents who acknowledge them. If a family relationship between a child and the father's or mother's family who acknowledge him/her has not yet been established, then the relationship can only be established through child legitimization (wetting), which is a further step beyond acknowledgment.

In the case of an illegitimate child, the child can only establish civil relationships with his/her father through an acknowledgment of the illegitimate child. Articles 280 and 281 of the Civil Code confirm that by acknowledging the illegitimate child, a civil relationship between the child and the father or mother arises. Acknowledgment of the illegitimate child can be done through an authentic deed, if it has not been done in the birth certificate or at the time of marriage. Considering that the Civil Code prohibits acknowledgment of children born out of adultery and incest. This Constitutional Court decision does not distinguish between children born out of adultery and children born out of incest, because both groups of children cannot obtain acknowledgment from the parent who gave birth to them, thereby losing their rights and status towards their parents. As stipulated in articles 273 and 283 of the Civil Code: "A child born to parents who, without obtaining dispensation from the Government, cannot marry each other, cannot be legitimized except by acknowledging the child in the birth certificate." "A child born out of adultery or incest, cannot be acknowledged without diminishing the provisions of Article 273 concerning children born out of incest."

Furthermore, this Constitutional Court Decision No. 46/PUU-VII/2010 can be considered not fulfilling the fundamental philosophical and ideological values of Pancasila as the ground norm that should be upheld in every law applicable in Indonesia. This should further be enshrined in Article 28D paragraph (1) and (2), which states that all legal norms in Indonesia should have principles of legal certainty and justice in their formation and application.

And also the Decision of the Indonesian Constitutional Court No. 46/PUU-VII/2010, especially regarding the proof of children born out of wedlock, should be reassessed to follow the dynamics of Indonesian society, especially in the case of forced DNA tests for men suspected to be the biological father. Considering that in practice, the Constitutional Court Decision Number 46/PUU-VIII/2010, can be considered too difficult to implement because there is no norm that can force men suspected to be the biological father to take a DNA test. This certainly has legal implications that can eliminate the opportunity for children born out of wedlock to "regain" their rights, and give the impression of freeing men suspected to be the biological father from obligations and responsibilities towards their biological children.

The Protection Concept of Children born out of Wedlock Towards Their Biological Fathers Post the Decision of the Constitutional Court Number 46/PUU/VII/2010

Marriage in general will result in children born out of wedlock, whether legally recognized or not. Considering that children are the most vulnerable and fragile party in the eyes of the law worldwide. Therefore, the United Nations Convention on the Rights of the Child (hereinafter referred to as the Convention on the Rights of the Child) was established. It has several main aspects of the protection concept for children, covering the Rights of the child, Non-Discrimination Principle, Best Interest of the Child, Child Participation, Protection from

Violence and Exploitation, Education and health (United Nations, 1990). Legally, a biological father who wishes to acknowledge his child voluntarily also faces obstacles if he wants to acknowledge a child born out of wedlock because the acknowledgment of a child born out of wedlock can only be done in one way, namely by making a child acknowledgment deed and there must also be consent from the child's biological mother (Lubis, 2016). The state should protect and respect the interests of the fundamental rights of children born out of wedlock. As explained in the principle of recognition and respect for human rights, which means, in all matters related to citizens, the state must guarantee, protect, and respect human rights in general and the rights of citizens in particular. In the United Nations Convention, recognition of civil status in the form of identity, name, and citizenship should be provided by the state, not only depending on the legality of marriage but also as Constitutional Rights, Civil Rights, it is a very fundamental and constitutional right (Lubis, 2016).

It is crucial to acknowledge the interwoven legal and ethical aspects that underlie the Court's decision in order to comprehend it. The Constitutional Court reaffirms the requirement for marriages to comply with set legal standards, rooted in religious doctrine and national law, through the rejection of the review of Article 2, paragraph (2) of the Marriage Law. Prioritizing compliance with legal regulations serves a twofold purpose: preserving the importance of marriage as a fundamental part of Indonesian culture and values, and protecting the rights of children born in lawful marriages. The Court's ruling shows a conscious effort to strengthen the legal system for family connections, demonstrating a dedication to upholding these institutions in line with societal norms and religious beliefs. The Court's position highlights the essential role of legal marriages in maintaining social stability and ensuring legal protection for family members, emphasizing the need for children's rights to align with these existing norms. This choice strengthens both the formalities of marital law and emphasizes the societal importance of following legal and ethical standards in marriage, ensuring that legal protections in family law align with societal expectations.

When making this decision, it is important to recognize the legal and ethical factors that support the Court's judgment. The Constitutional Court rejects the request to reconsider Article 2, paragraph (2) of the Marriage Law, affirming the necessity for all marriages to comply with established legal norms based on religious teachings and Indonesian law. This focus on adhering to recognized legal procedures serves two purposes: it upholds the importance of marriage as a crucial societal institution in Indonesia's cultural and moral framework, as well as ensures that offspring from marriages recognized by law receive complete legal protection of their rights. This ruling reinforces the legal framework for family relationships and emphasizes the importance of society adhering to these norms. It affirms the need to protect marriage as a legally recognized and socially endorsed institution for maintaining family stability and societal organization. Thus, the decision shows the Court's commitment to preserving a fair legal system that respects personal rights while also following regulations. Marriage remains the foundation for family relationships, ensuring legal stability and honoring Indonesian cultural beliefs.

The implications of this decision extend beyond legal principles, impacting the wider social awareness by highlighting the balance between personal rights and community responsibilities. By referring to Article 28J, paragraph (2) of the 1945 Constitution, the Constitutional Court emphasizes that individuals must uphold the rights of others while exercising their own personal rights. This choice shows that although it is important for children to be acknowledged by their biological fathers, this acknowledgment must be done within legal boundaries that uphold public order and ethical standards. The Court's stance reminds citizens of the duties that come with their personal freedoms, especially in relation to starting a family and the responsibilities of becoming a parent. The Court emphasizes that individual freedoms must be balanced within a collective legal and ethical system. It states that rights concerning family

must adhere to public interest and societal norms, enhancing the stability of family law in Indonesia.

In addition, the Court's decision discreetly emphasizes the importance of increased societal knowledge about the legal consequences of affairs outside of marriage. By basing its ruling on public order principles, the Constitutional Court highlights the significance of responsible behavior, encouraging individuals to be cautious in their decisions, thus promoting a collective understanding of responsibility. This element of the decision is especially significant in the Indonesian setting, where longstanding cultural and religious beliefs heavily influence societal norms related to marriage and family. The Court's emphasis on the societal and legal repercussions of cheating supports following cultural and religious norms, highlighting that personal choices in private have wider effects on society. As a result, the decision acts as a prompt that honoring marriage institutions, based on law and societal norms, is crucial for upholding public order and enhancing legal and ethical unity in Indonesian community.

In a wider legal framework, this ruling sparks important discussions in family law, specifically focusing on children's rights. The decision requires a comprehensive review of existing laws to ensure they align with modern views on family dynamics and fairness, particularly in addressing the concerns and entitlements of children born to unmarried parents. The Court's recognition of these rights in a controlled context indicates a willingness to consider legislative adjustments that could better cater to these children without disturbing the current framework of marriage laws. This choice prepares for possible changes to achieve a balance between personal rights and societal expectations, indicating that legal safeguards should adapt to shifting social conditions while maintaining the core principles of marriage in Indonesian legislation. By doing this, the Court encourages legislators to consider laws that support the legal acknowledgment of every child, thus advancing a family law framework that is fair and in line with current societal beliefs.

In summary, the decision of the Constitutional Court strongly confirms the rights of children born outside of marriage and the importance of following Indonesia's laws and customs regarding marriage. Through creating a structure that acknowledges and safeguards the rights of these children within the confines of legal marriage, the Court sets a legal standard that promotes a fair and accountable method to family law. This groundbreaking ruling not only expands safeguards for at-risk individuals but also highlights the crucial link between individual rights and societal duties, promoting a legal system that is fair and culturally aware of Indonesia. The decision confirms that personal freedoms are crucial but should be practiced in a way that honors the group's rights and common beliefs. By making this ruling, the Constitutional Court shows its dedication to supporting a family law system that follows societal morals and promotes a fair and equal structure for everyone.

CONCLUSION

Protection for children born out of wedlock should ideally be holistic and also include its juridical aspects. Despite the issuance of Constitutional Court Decision No. 46/PUU-VII/2010, children born out of wedlock do not automatically obtain their status from their biological father, because in practice, although Constitutional Court Decision No. 46/PUU-VII/2010 requires "DNA testing" as evidence, there is no regulation in Indonesia that can force someone to undergo DNA testing. Therefore, protection for children born out of wedlock can be considered incomplete.

The Constitutional Court has been quite accurate in providing protection for children born out of wedlock in many aspects. However, Constitutional Court Decision No. 46/PUU-VII/2010 is not without loopholes, considering the implementation of the decision faces

challenges in practice based on the above description, making the application of the decision incomplete.

Despite its incompleteness, the protection that the state aims to provide for children born out of wedlock in Constitutional Court Decision No. 46/PUU-VII/2010 is not only focused on ensuring the protection of children born out of wedlock, but also on efforts for individuals planning to marry to comply with the applicable laws as thoroughly as possible. This aims to create a conducive legal environment for married couples and children resulting from the marriage.

REFERENCES

- Agatha, G. (2021). *Pembuktian Dan Pengesahan Anak Luar Kawin Serta Akibat Hukumnya Setelah Berlaku Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Dalam Pandangan Hukum Islam*. Universitas Indonesia.
- Ali, A., & Heryani, W. (2012). *Asas-Asas Hukum Pembuktian Perdata*. Prenada Media Group.
- Armanto, F. (2009). *Hukum Perkawinan Di Indonesia*. Nuansa Aulia.
- Bachtiar. (2015). *Problematisasi Implementasi Putusan Mahkamah Konstitusi Pada Pengujian UU Terhadap UUD*. Ralih Asa Sukses.
- Diantha, M. P. (2016). *Metodologi Penulisan Hukum Normatif*. Prenada Media Group.
- FIRYAL, F., & LUKMAN, F. X. A. (2022). ANALISIS KEDUDUKAN HUKUM HAK WARIS ANAK LUAR KAWIN SEBAGAI PENGANTI DARI AHLI WARIS. *Imanot: Jurnal Kemahasiswaan Hukum & Kenotariatan*, 1.
- Garner, B. A. (2009). *Black's Law Dictionary* (9th ed.). MNS & Legal co.
- Hamzani, A. I. (2016). Nasab Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. *Jurnal Konstitusi*, 12(1), 57. <https://doi.org/10.31078/jk1214>
- Hijawati, & Sardana, L. (2023). *Isbat Nikah Sudut Pandang Undang-Undang Perkawinan*. 103.
- J. Andi Hartanto. (2008). *Kedudukan Hukum dan Hak Waris Anak Luar Kawin Menurut Kitab Undang-Undang Hukum Perdata*. Laksbang Presindo.
- Ja'far, K. (2021). *Hukum Perkawinan Islam di Indonesia*. Arjasa Pratama.
- Kansil, C. S. T. (1995). *Modul Hukum Perdata*. Pranadya Paramita.
- kemdikbud. (2023). *Kamus Besar Bahasa Indonesia*. <https://kbbi.kemdikbud.go.id/>.
- Kharlie, A. T. (2013). *Hukum Keluarga Indonesia*. Sinar Grafika.
- Kolkman, W. D. (2000). *Hukum Tentang Orang, Hukum Keluarga dan Hukum Waris di Belanda dan Indonesia*. Pustaka Larasan.
- Lubis, M. R. P. (2016). Kedudukan Hukum Anak Luar Kawin Menurut Undang Undang Perkawinan No 1 Tahun 1974 Pasca Lahirnya Putusan Mk Ri No 46/Puu-Vii/2010 Terhadap Ibu Kandung Dan Ayah Biologis. *Premise Law Journal*, 10.
- Marzuki, P. M. (2013). *Penelitian Hukum*. Kencana Prenada Media Group.
- Marzuki, P. M. (2019). *Penelitian Hukum ; Edisi Revisi* (Vol. 14). Kencana.
- Nama, Z. (2014). Makna Yuridis Status Hukum Hak Waris anak Hasil Dari Perkawinan Siri Menurut Kompilasi Hukum Islam. *Arena Hukum*, 7(1), 50.
- Nazar, T. H., & Rismawati, N. (2022). Hak Keperdataan Bagi Anak Diluar Kawin Dalam Sistem Hukum Di Indonesia. *Syakhsyah Jurnal Hukum Keluarga Islam*, 2(1).
- Paburru, F. (2022). *Implikasi Yuridis Kedudukan Anak Luar Kawin Pasca Ditetapkannya Putusan Mahkamah Konstitusi Nomor: 46/PUU-VIII/2010*. Universitas Islam Sultan Agung.
- Satrio, J. (2000). *Hukum Keluarga Tentang Kedudukan Anak Dalam Undang-Undang*. Citra Aditya Bakti.
- Sudarsono. (2005). *Hukum Perkawinan Nasional*. Rineka Cipta.

Suyanto, B., & Narwoko, J. D. (2007). *Sosiologi Teks Pengantar dan Terapan*. Kencana.

Syahuri, T. (2013). *Legislasi Hukum Perkawinan di Indonesia, Pro-Kontra Pembentukannya Hingga Putusan Mahkamah Konstitusi*. Kencana Prenada Media Group.

United Nations. (1990, September). *Convention on the Rights of the Child*.
<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

Usman, R. (2014). Prinsip tanggung Jawab Orangtua Biologis terhadap Anak Di Luar Perkawinan. *Jurnal Konstitusi*, 11(1), 189.

Yakub, S., & Al-Barri, M. D. Y. (2003). *Kamus Induk Istilah Ilmiah Seri Intelektual*. Target Pass.