

## **Legal Implications of Constitutional Court Decision Number 46/PUU-VIII/2010 on Inheritance Rights of Children Born Out of Wedlock**

**Febrihadi Suparidho<sup>1</sup>, Ade Sultan Muhammad<sup>2</sup>, R. Fahmi Natigor Daulay<sup>3</sup>**

Fakultas Hukum Ilmu Sosial dan Ilmu Politik Universitas Mataram

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### **Abstract**

*This study aims to determine the legal implications of the Constitutional Court Decision Number 46/PUU-VIII/2010 on the inheritance rights of illegitimate children. In the Indonesian legal system, referring to Law Number 1 of 1974 concerning Marriage, it states that illegitimate children only have a civil relationship with their mother, so they are not entitled to inheritance from their father. However, the Constitutional Court's decision changed this paradigm by recognizing the civil relationship of illegitimate children with their biological father if it can be proven scientifically and technologically, such as through DNA testing. This study uses a normative legal research method with primary and secondary legal materials. The results of the study indicate that the legal implications of the Constitutional Court's Decision provide fairer and more equal legal protection for illegitimate children in obtaining recognition of inheritance rights from their father which can be proven scientifically from the science and technology recognized by applicable law.*

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### **Corresponding Author:**

**Febrihadi Suparidho**

Fakultas Hukum Ilmu Sosial dan Ilmu Politik Universitas Mataram

Email: [febrihadi.s27@staff.unram.ac.id](mailto:febrihadi.s27@staff.unram.ac.id)

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## **1. INTRODUCTION**

Marriage according to the Big Indonesian Dictionary (KBBI) is the matter (affairs and so on) of mating; the sexual meeting of male and female animals; a marriage that is truly carried out in accordance with the ideals of a happy married life. And according to Law Number 1 of 1974 concerning Marriage, it explains that marriage is a physical and spiritual 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. This definition is also reinforced by experts such as Wirjono Prodjodikoro who sees marriage as living together regulated by law. Then if we look at Article 2 of the Compilation of Islamic Law, Marriage according to Islamic Law is marriage, namely a very strong contract (*mistaqan ghalidan*) to obey Allah's commands and carrying it out is worship.

Whether or not a marriage is valid can be seen in Article 2 of the Marriage Law, paragraph (1) states "A marriage is valid if it is carried out according to the laws of each religion and its beliefs. Then in paragraph (2) it states "Every marriage is recorded according to the applicable laws and regulations". In the provisions of Article 2 paragraphs (1) and (2) it is explained that a valid marriage must fulfill these 2 elements, not only according to the

law of the religion but must also be registered such as at the religious affairs office (KUA) for those who are Muslim and at the Civil Registry Office (KCS) or the Population and Civil Registry Service (Disdukcapil) for those who are Catholic, Protestant, Hindu, Buddhist and other religions recognized by the State.

In the legal system in Indonesia, referring to Law Number 1 of 1974 concerning Marriage, it states that a child born outside of marriage does not have a civil relationship with his father, as stipulated in Article 43 paragraph (1) of the Marriage Law. This is because he was born outside of a legal marriage as referred to in Article 2 paragraph (2) of the Marriage Law. The legal position of the child born outside of marriage is considered unfair and detrimental to constitutional rights as regulated and guaranteed by Article 28 B paragraph (1) and paragraph (2) and Article 28 D paragraph (1) of the 1945 Constitution.

## 2. RESEARCH METHOD

The type of research used in this study is a type of normative legal research, namely legal research based on secondary data. Where this method is a research method that focuses on legal norms and applicable legal principles. In normative legal research, the data collected is qualitative and comes from primary and secondary legal materials.

## 3. DISCUSSION

### **Legal Implications of Constitutional Court Decision Number 46/PUU-VIII/2010 on Inheritance Rights of Children Born Out of Wedlock**

#### **A. Main Points of Constitutional Court Decision No. 46/PUU-VIII/2010**

The Constitutional Court of the Republic of Indonesia through decision Number 46/PUU-VIII/2010 dated 17 February 2012 has made a legal breakthrough by deciding that Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage is contrary to the 1945 Constitution. Because an illegitimate child does not have a relationship with his father. The provisions of the Marriage Law should read: "A child born out of wedlock only has a civil relationship with his mother and his mother's family and with a man as his father who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with his father's family."

#### **B. Legal Implications of Children's Inheritance Rights Out of Wedlock**

##### **1) Changes in Legal Status of Children Born Out of Wedlock**

Following the Constitutional Court's ruling, illegitimate children who can prove their biological relationship with their biological father gain a new legal status as civil law subjects who have a civil relationship with their father and his family. This means that they are no longer considered as parties who are completely "outside the legal relationship" with their father.

##### **2) Declaration of Inheritance**

With the existence of a civil relationship recognized by law, an illegitimate child obtains inheritance rights from his biological father. This refers to the basic principle in inheritance law that inheritance can be received by parties who have a blood relationship or a legitimate civil relationship with the testator.

##### **3) Proof Mechanism**

The next implication is the need for a mechanism to prove biological relationships, either through recognition by the biological father, court decisions, DNA tests, birth certificates or evidence from witnesses.

Constitutional Court Decision Number 46/PUU-VIII/2010 changed the paradigm of illegitimate children, which previously stated that illegitimate children only had a civil relationship with their mother and their mother's family. Unlike their biological father, who does not have a civil relationship with an illegitimate child, either with the father or the father's family. From the absence of a civil relationship, it closes the inheritance rights of illegitimate children from the father or the father's family.

Following the Constitutional Court's decision Number 46/PUU-VIII/2010, illegitimate children have a civil relationship with their father and the implication is that illegitimate children can become heirs and receive inheritance rights from their biological father which can be proven scientifically, one of which is by means of a DNA test and/or according to applicable legal provisions.

In short, the Constitutional Court's decision provides fairer and more equal legal protection for children born outside of marriage, and brings about important changes in the inheritance law system in Indonesia.

#### 4. CONCLUSION

Constitutional Court Decision Number 46/PUU-VIII/2010 has significant implications for the inheritance rights of illegitimate children. This decision removes the provisions that limit the inheritance rights of illegitimate children, stating that illegitimate children have a civil relationship with their biological father if it can be proven through science and technology or other evidence. The decision also provides legal protection for illegitimate children as heirs and the same inheritance rights as legitimate children in marriage.

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