
RECONSTRUCTION OF THE REGULATION OF CIVIL RELATIONSHIPS OF CHILDREN BORN OUT OF WEDDING TOWARDS THEIR BIOLOGICAL FATHERS POST CONSTITUTIONAL COURT DECISION NUMBER 46/PUU-VIII/2010

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Abstract

Children born out of wedlock face structural discrimination in the Indonesian legal system, particularly due to the provisions of Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which limits the civil relationship of the child only to the mother and her family. Constitutional Court Decree Number 46/PUU-VIII/2010 emerged as a legal breakthrough that recognizes the civil relationship between children born out of wedlock and their biological fathers based on scientific evidence. However, the decision is declaratory in nature without being accompanied by adequately implementing norms, resulting in a systemic normative gap in practice. This study aims to identify the forms of normative gaps in the regulation of the decision and to formulate the necessary legal reconstruction to establish a fair civil relationship between children born out of wedlock and their biological father. The research uses a normative juridical method with a Legislation Approach, Case Approach and Conceptual Approach. The research results indicate that the legal vacuum includes the absence of a standard biological proof mechanism, unclear scope of civil rights, weak institutional coordination, as well as disharmony with the Islamic inheritance law system. Comprehensive legal reconstruction through the revision of the Marriage Law and the establishment of implementing regulations becomes a necessity to achieve substantive justice for children born out of wedlock.

Keywords : Children born out of wedlock, reconstruction of norms, Constitutional Court Decision Number 46/PUU-VIII/2010

INTRODUCTION

The status of children in the Indonesian legal system is fundamentally differentiated based on the marital status of their parents. Law Number 1 of 1974 concerning Marriage defines a legitimate child as a child born in or as a result of a legal marriage, while a child born outside of a legal marriage, commonly referred to as an illegitimate child or child born out of wedlock, has a civil relationship only with his or her mother and her mother's family.¹ This difference in legal treatment has very broad consequences for illegitimate children, including aspects of identity, civil rights, and status within family relationships. As emphasized by Lili Rasjidi and IB Wyasa Putra, the law should function as a protective instrument that does not differentiate its legal subjects based on birth conditions that are completely beyond the child's control.² Thus, the concept of illegitimate children attached to positive law actually contradicts the spirit of universal human rights protection, where every child regardless of birth status has the right to recognition, identity, and legal protection that is equal to that of a legitimate child.³

¹ Republic of Indonesia, Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019), Article 42 and Article 43 paragraph (1)

² Lili Rasjidi and IB Wyasa Putra, *Law as a System* (Bandung: Remaja Rosdakarya, 1993), pp. 79–82.

³ Republic of Indonesia, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (State Gazette of the Republic of Indonesia 2014 Number 297), Article 2 and Article 3.

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From a human rights perspective, every child has inherent rights from birth that cannot be reduced for any reason, including the marital status of their parents. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia expressly guarantees that every child has the right to survival, growth, and development, and has the right to protection from violence and discrimination, while Article 52 paragraph (1) of Law Number 39 of 1999 concerning Human Rights emphasizes that every child has the right to protection by parents, family, society, and the state.⁴ Legally, regulations regarding Human Rights are contained in Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights. Article 1 number 6 of the law explains that human rights violations are any actions carried out by individuals or groups of people, whether intentionally, unintentionally, or due to negligence, which result in the reduction, obstruction, limitation, and/or elimination of the human rights of an individual or group of people guaranteed by law. Furthermore, these violations also include actions that hinder or eliminate access to legal resolution mechanisms that should be pursued in accordance with applicable provisions.⁵ John Eekelaar, a leading family law expert, stated that the best interest of the child must be the primary principle in all family law regulations, so that any norm that creates discrimination against children based on their birth status is inherently contrary to this principle.⁶ The inconsistency between the constitutionally guaranteed child protection norms on the one hand and the restrictions on civil relations for illegitimate children on the other hand indicates a normative tension that urgently needs to be resolved through comprehensive legal reform.

The most crucial issue for illegitimate children is the lack of a recognized legal relationship with their biological father. Legally, this lack of a civil relationship directly impacts the child's right to maintenance, family name identity, guardianship, and inheritance rights from the father. The Civil Code, within the colonial legal system, does not automatically recognize the biological father of illegitimate children except through a very limited voluntary recognition mechanism.⁷ Philipus M. Hadjon argues that legal protection for the Indonesian people includes preventive and repressive protection, which requires the state to create legal instruments capable of protecting every citizen from arbitrary actions, including in the context of neglecting a biological father's responsibility for the child he or she bears.⁸ This situation creates a morally unjustifiable situation, where a man who is biologically proven to be the father can completely absolve himself of all legal responsibility for his child simply because there is no legal marriage, while the child suffers legal consequences that he or she never chose.

In response to this injustice, the Constitutional Court issued Decision Number 46/PUU-VIII/2010, which was pronounced on February 17, 2012 in a material review case filed by Hj. Aisyah Mochtar alias Machica binti H. Mochtar Ibrahim and her son, Iqbal Ramadhan bin Moerdiono, against Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage.⁹ In its decision, the Constitutional Court stated that children born outside of marriage have a civil relationship with their mother and their mother's family as well as with the man as their father which can be proven based on science and technology and/or other evidence according to law. According to Wahyu Ernaningsih and Putu Samawati, this decision represents a paradigm shift in Indonesian family law from a formalistic approach that only recognizes legal relationships based on marriage ties, to a more substantive approach that recognizes biological reality as the basis for civil relationships.¹⁰ This decision thus becomes a constitutional basis for illegitimate children to demand recognition of civil relations from their biological father, which was previously completely covered by the provisions of Article 43 paragraph (1) of the Marriage Law. Although Constitutional Court Decision No. 46/PUU-VIII/2010 has opened new horizons for the protection of the rights of illegitimate children, its practical implementation faces various serious obstacles. Nurhadi, in his study of Supreme Court Decision No. 329 K/AG/2014, found that religious courts rejected applications for recognition of the status of illegitimate children on the grounds of lack of authority, so that the substance

⁴ Republic of Indonesia, 1945 Constitution of the Republic of Indonesia, Article 28B paragraph (2); Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights (State Gazette of the Republic of Indonesia 1999 Number 165), Article 52 paragraph (1).

⁵ Dwi Desi Yai Tarina, etc. (2021). *Human Rights Violations in Indonesia and the Causes of the Violations.*

⁶ John Eekelaar, *Family Law and Social Policy*, 2nd ed. (London: Weidenfeld and Nicolson, 1984), p. 59–63.

⁷ Civil Code (Burgerlijk Wetboek), Article 280 and Article 283.

⁸ Philipus M. Hadjon, *Legal Protection for the Indonesian People* (Surabaya: Bina Ilmu, 1987), pp. 25–29.

⁹ Constitutional Court of the Republic of Indonesia, Decision Number 46/PUU-VIII/2010, pronounced on February 17, 2012.

¹⁰ Wahyu Ernaningsih and Putu Samawati, *Indonesian Marriage Law* (Palembang: PT. Rambang, 2006), pp. 113–115.

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of the Constitutional Court Decision was not accommodated in the adjudication process.¹¹ This situation shows that without firm legislative follow-up, even a revolutionary Constitutional Court decision risks failing to reach those who most need legal protection. This problem is exacerbated by the persistent social stigma against illegitimate children in society and limited access to scientific proof technology, which is a primary requirement for recognizing biological relationships, all of which constitute a separate layer of obstacles beyond procedural and institutional constraints.¹²

The fundamental problem in the implementation of the decision lies in its declaratory and constitutive nature without adequate implementing norms, thus giving rise to various forms of legal vacuum (*rechts vacuum*) in practice. Bagya Agung Prabowo emphasized that the unclear scope of civil rights that can be claimed, whether they include inheritance rights, maintenance, guardianship, or the use of the father's surname, creates inconsistent application that leads to legal uncertainty for illegitimate children.¹³ On the other hand, there is also disharmony between the Constitutional Court's decision and the Islamic inheritance law system, considering that in Islamic law children resulting from adultery (*walad al-zina*) do not have a lineage relationship with their biological father, which was later reinforced by the issuance of Fatwa of the Indonesian Ulema Council Number 11 of 2012 even though the fatwa has no binding legal force.¹⁴ This disharmony between the legal systems that apply side by side in Indonesia's pluralistic society is one of the biggest factors hindering the consistent and comprehensive implementation of the Constitutional Court's decision.

The various normative gaps left by Constitutional Court Decision No. 46/PUU-VIII/2010 have persisted for more than a decade without adequate legislative resolution, giving rise to systemic legal uncertainty. Yulia Risa noted that the absence of implementing regulations in the form of Government Regulations or Supreme Court Regulations has led judges and other law enforcement officials to fill these gaps with their own, inconsistent interpretations, including regarding the coordination of birth certificate registration as stipulated in Law No. 23 of 2006 concerning Population Administration.¹⁵ Sudikno Mertokusumo warned that if the normative gaps are allowed to persist, they will encourage inconsistencies in the legal findings of judges and create disparities in decisions that are detrimental to legal certainty, one of the fundamental objectives of the law itself.¹⁶ Therefore, the need for a comprehensive and systematic reconstruction of regulations cannot be postponed any longer, in order to ensure that the spirit of justice embodied in the Constitutional Court Decision can be truly felt by children born out of wedlock as the most vulnerable and most entitled to protection.

This study uses Nurhadi's work entitled "Implementation of Constitutional Court Decision Number 46/PUU-VIII/2010 concerning Children Born Outside of Marriage (Study of Decision Number 329 K/AG/2014)" as the main source of previous research. Nurhadi's study is relevant to the problem in this study, namely by describing the obstacles in the implementation of the Constitutional Court Decision 46/PUU-VIII/2010. The disharmony between the implementation of this decision and the opinions of court judges produces several arguments that will later be used in the preparation of this study.¹⁷ In addition, studies on the status of children born outside of marriage are also widely discussed from the perspective of civil law and child protection. M. Nurul Irfan emphasized that Constitutional Court Decision Number 46/PUU-VIII/2010 is a progressive step in providing legal protection for children born outside of marriage. However, he also emphasized that without further regulations, the decision has the potential to give rise to multiple

¹¹ Nurhadi, " *Implementation of Constitutional Court Decision Number 46/PUU-VIII/2010 concerning Children Born Outside of Marriage (Study of Decision Number 329 K/AG/2014)*," *Judicial Journal*, Vol. 11 No. 2 (2018): 145–162.

¹² Ade Daharis et al., " *The Position of Children Born Out of Wedlock from the Perspective of the Compilation of Islamic Law and Constitutional Court Decisions*," *Collaborative Journal of Science*, Vol. 7 No. 3 (2024): 1456–1467.

¹³ Bagya Agung Prabowo, " *Legal Implications of Constitutional Court Decision Number 46/PUU-VIII/2010 on the Fulfillment of Civil Rights of Children Born Outside of Marriage*," *Ius Quia Iustum Law Journal*, Vol. 19 No. 3 (2012): 378–396.

¹⁴ Amir Syarifuddin, *Islamic Inheritance Law* (Jakarta: Kencana Prenada Media Group, 2012), pp. 145–152; Indonesian Ulema Council, MUI Fatwa Number 11 of 2012 concerning the Status of Children Resulting from Adultery and Their Treatment (Jakarta: MUI, 2012), pp. 3–8.

¹⁵ Yulia Risa, " *Juridical Analysis of Legal Findings on Constitutional Court Decision Number 46/PUU-VIII/2010 on Children Born Outside of Legal Wedlock*," *Res Nullius Law Journal*, Vol. 3 No. 1 (2021): 11–24; Republic of Indonesia, Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013, Article 27.

¹⁶ Sudikno Mertokusumo, *The Discovery of Law: An Introduction* (Yogyakarta: Liberty, 2001), pp. 52–55.

¹⁷ Nurhadi, " *Implementation of Constitutional Court Decision Number 46/PUU-VIII/2010 concerning Children Born Outside of Marriage (Study of Decision Number 329 K/AG/2014)*," *Judicial Journal*, Vol. 11 No. 2 (2018): 145–162.

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interpretations.¹⁸ Wahyuni expressed a similar sentiment, finding that in population administration practices, registering illegitimate children still faces various obstacles. This suggests that problems arise not only in the judicial realm but also in the administrative realm. Therefore, legal protection for illegitimate children remains suboptimal across the board.¹⁹

Based on the background description above, this study examines two main issues: first, the forms of normative gaps in the regulation of Constitutional Court Decision Number 46/PUU-VIII/2010 in the Indonesian legal system; and second, the legal reconstruction needed to realize a fair and functional civil relationship between children born outside of marriage and their biological fathers. This study uses a normative juridical research type, namely research that emphasizes the study of positive legal norms, legal principles, and relevant legal doctrines; as explained by Soerjono Soekanto and Sri Mamudji, normative legal research includes research on legal principles, legal systematics, legal synchronization, legal history, and comparative law.²⁰ In this study, three main approaches are used, namely the Statute Approach which examines all regulations related to children born outside of marriage hierarchically, the Case Approach which analyzes relevant court decisions to understand the ratio decidendi that develops in judicial practice, and the Conceptual Approach which refers to legal doctrines to find new concepts in the framework of regulatory reconstruction, as developed by Peter Mahmud Marzuki.²¹ The data sources in this study consist of primary legal materials in the form of laws and court decisions, secondary legal materials in the form of legal literature and scientific journals related to the subject matter, and tertiary legal materials in the form of legal dictionaries and encyclopedias used to support conceptual understanding, as categorized by Satjipto Rahardjo in the framework of normative legal research.²²

A. DISCUSSION

1. What Forms of Normative Emptiness in the Regulation of Constitutional Court Decision Number 46/PUU-VIII/2010 in the Indonesian Legal System?

The Constitutional Court Decision Number 46/PUU-VIII/2010, which was pronounced on February 17, 2012, was a significant legal breakthrough in the family law system in Indonesia. This decision partially granted the petition for judicial review of Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage against the 1945 Constitution of the Republic of Indonesia. The Constitutional Court stated that the phrase "a child born out of wedlock only has a civil relationship with his mother and his mother's family" is unconstitutional insofar as it is interpreted as eliminating the civil relationship with a man who can be proven based on science and technology and/or other evidence according to law to have a blood relationship as his father. The legal consequence of this decision is the expansion of the meaning of the civil relationship of an illegitimate child not only limited to the mother and her mother's family, but also includes the biological father and his family.²³ However, this declaratory and constitutive decision is not accompanied by adequate technical implementation regulations. The absence of implementing norms is what then gives rise to legal problems at the practical level in society. This condition reflects the existence of a normative vacuum that needs to be studied in depth to understand its implications for the protection of the rights of children born outside of marriage.²⁴

vacuum, or legal vacuum, refers to a situation where there is no legal rule governing a particular issue in society. According to Hans Kelsen's theory, the legal system is a hierarchical system of norms, where lower norms are derived from and must not contradict higher norms. From Kelsen's perspective, a legal vacuum is virtually impossible because judges can interpret and fill the vacuum through legal reasoning. However, contrary to

¹⁸ Nurul Irfan, *Nasab and Child Status in Islamic Law*, (Jakarta: Amzah, 2012)

¹⁹ Wahyuni, "Registration of Children Born Out of Wedlock After Constitutional Court Decision Number 46/PUU-VIII/2010," Scientific Journal of Law and Social Dynamics Vol. 11 No. 2 (2014), p. 74.

²⁰ Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review* (Jakarta: Raja Grafindo Persada, 2003), pp. 13–14.

²¹ Peter Mahmud Marzuki, *Legal Research*, Revised Edition (Jakarta: Kencana Prenada Media Group, 2011), pp. 133–137; Johny Ibrahim, *Theory and Methodology of Normative Legal Research* (Malang: Bayumedia Publishing, 2006), pp. 295–300.

²² Satjipto Rahardjo, *Legal Science* (Bandung: Citra Aditya Bakti, 2000), pp. 31–33.

²³ Ahmad Kamil and M. Fauzan, *Principles of Jurisprudence* (Jakarta: Raja Grafindo Persada, 2008)

²⁴ Chatib Rasyid, "Children Born Out of Wedlock (Legally) Are Different from Children Resulting from Adultery: Constitutional Court Decision No. 46/PUU-VIII/2010," Journal of Law and Justice, Mimbar Edition No. 75 (2012): 23-35.

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Kelsen's view, the factual situation in Indonesia shows that a legal vacuum can still occur when a court decision is not followed up with technical regulations governing its implementation mechanism.²⁵ A legal vacuum can be divided into two types: a legal vacuum within a law (wet vacuum) and a legal vacuum within the legal system as a whole (recht vacuum).²⁶ In the context of Constitutional Court Decision Number 46/PUU-VIII/2010, the vacuum that occurs is more of a wet vacuum because although constitutional norms have been established, there are no statutory regulations that technically regulate their implementation mechanisms. This situation creates legal uncertainty which is contrary to the principle of legal certainty as one of the objectives of law.

The first identifiable normative gap is the absence of regulations regarding the mechanisms and procedures for proving the blood relationship between an illegitimate child and their biological father. The Constitutional Court's ruling only states that civil relationships can be proven "based on science and technology and/or other legal evidence," without detailing the technical procedures. Proof through DNA (²⁷Deoxyribonucleic Acid) testing , one of the most accurate scientific methods, requires significant costs, and not all laboratories in Indonesia have the capacity to conduct it. There are no regulations governing who bears the costs of the examination, whether it can be forced upon the male suspected of being the biological father, and what to do if the individual refuses to be examined. This lack of regulation makes it difficult for many mothers of illegitimate children to prove their child's blood relationship with their biological father. This situation ultimately hinders the implementation of the Constitutional Court's ruling, which aims to protect children's constitutional rights. Without clear evidentiary procedures, the Constitutional Court's ruling has the potential to become a non -executable norm .²⁸

The second form of normative gap relates to the absence of regulations regarding the scope and limits of the civil rights that illegitimate children can obtain from their biological fathers. The Constitutional Court ruling states that illegitimate children have a "civil relationship" with their biological fathers, but does not explicitly explain what this civil relationship encompasses. The fundamental question that arises is whether this civil relationship includes inheritance rights, maintenance rights, guardianship rights, the right to use the father's surname, or is limited to certain rights.²⁹ In Indonesia's civil law system, which adheres to legal pluralism, there are differences in regulations between the Civil Code, Islamic Law, and Customary Law regarding the rights of illegitimate children. This ambiguity has given rise to varying interpretations among legal practitioners and the general public. Consequently, there is inconsistency in the application of the Constitutional Court ruling in various courts.³⁰ This normative gap regarding the scope of civil rights has the potential to give rise to injustice and discrimination against illegitimate children.

The third form of normative gap is the lack of institutional coordination between government agencies in implementing the decision. Civil registration, as the domain of the Population and Civil Registration Office, marriage validation as the domain of the Religious Affairs Office or the Court, and civil disputes as the domain of general courts or religious courts, each operate within different regulatory frameworks. There are no regulations governing how these institutions should synchronize their handling of applications for recognition of illegitimate children.³¹ This lack of coordination leads to overlapping authority and procedural confusion for those seeking to manage the legal status of illegitimate children. For example, the question of whether a court ruling regarding a child's blood relationship with the biological father automatically serves as the basis for changing a birth certificate at the Population and Civil Registration Office. The lack of harmonized technical

²⁵ Hans Kelsen, *Pure Theory of Law* , translated by Max Knight (Berkeley: University of California Press, 1967), pp. 78-82.

²⁶ Sudikno Mertokusumo, *The Discovery of Law: An Introduction* (Yogyakarta: Liberty, 2001), pp. 52-55.

²⁷ Ahmad Rifai, *Legal Discovery by Judges in the Perspective of Progressive Law* (Jakarta: Sinar Grafika, 2011), pp. 89-93.

²⁸ Habiburrahman, " *Children Born Out of Wedlock in the Constitutional Court Decision* ," Journal of Law and Justice, Issue No. 75 (2012): 45-58.

²⁹ Bagya Agung Prabowo, " *Legal Implications of Constitutional Court Decision Number 46/PPU-VIII/2010 on the Fulfillment of Civil Rights of Children Born Outside of Marriage* ," Ius Quia Iustum Law Journal Vol. 19 No. 3 (2012): 378-396.

³⁰ M. Yahya Harahap, *Civil Procedure Law* (Jakarta: Sinar Grafika, 2005), pp. 234-238.

³¹ Siti Malikhatul Badriyah, *Legal Discovery System in Prismatic Society* (Jakarta: Sinar Grafika, 2016), pp. 67-72.

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guidelines (³²juklak) and implementing guidelines (³³juknis) between institutions creates significant bureaucratic obstacles. This situation, in turn, harms the best interests of the child, which should be the top priority.

The fourth form of normative gap relates to the absence of regulations regarding legal protection for parties involved in the process of recognizing illegitimate children. There are no regulations that protect men accused of being biological fathers from the possibility of false claims or paternity fraud . On the other hand, there is also no protection for mothers and children from the possibility of rejection or denial of responsibility by scientifically proven biological fathers. The absence of regulations regarding sanctions for parties who deliberately refuse to fulfill civil obligations towards their biological children also represents a crucial form of normative gap. ³³Furthermore, there are no regulations regarding the protection of the privacy of genetic data obtained from DNA testing in the process of proving blood relations. The absence of comprehensive legal protection for all parties creates an imbalance in bargaining position that can be abused. This gap has the potential to give rise to new, more complex legal issues in the future.³⁴

The fifth form of normative gap is the lack of harmonization between the Constitutional Court Decision and the laws and regulations governing inheritance, both in the Compilation of Islamic Law and the Civil Code. From the perspective of Islamic law, which is adhered to by the majority of the Indonesian population, children resulting from adultery (*walad al-zina*) do not have a blood relationship with their biological father and therefore do not have the right to inherit from him. ³⁵The Constitutional Court's general ruling does not provide clarity on how to harmonize this with established Islamic legal provisions. The Indonesian Ulema Council, through Fatwa Number 11 of 2012, has stated that children resulting from adultery do not have blood relationship, marriage guardianship, inheritance, and maintenance with the man who caused their birth, but this fatwa is not legally binding. The disharmony between the Constitutional Court decision, the Compilation of Islamic Law, and the MUI fatwa creates confusion in the Muslim community regarding the legal status of illegitimate children. ³⁶The absence of regulations that bridge this difference gives rise to counterproductive legal dualism. This normative gap in the aspect of harmonization demonstrates the complexity of family law issues in Indonesia's pluralistic society.

Facing the various forms of normative gaps described above, concrete steps are needed to fill these gaps in order to achieve legal certainty and justice for illegitimate children. The establishment of implementing regulations in the form of Government Regulations or at least Ministerial Regulations that technically regulate the implementation mechanism of the Constitutional Court Decision is an urgent need. ³⁷These regulations should cover procedures for proving blood relations, the scope of civil rights, institutional coordination, legal protection for the parties, and harmonization with the prevailing legal system. ³⁸During the transition period before the implementation of implementing regulations, the role of judges as law enforcers is crucial in conducting legal discovery (*rechtsvinding*) to fill these normative gaps. The Supreme Court can issue Circulars or Supreme Court Regulations as guidelines for judges in handling cases related to illegitimate children. These efforts need to be carried out comprehensively and systematically so that the Constitutional Court's decision is not merely a symbolic victory that has no real impact on protecting the rights of illegitimate children. Success in filling these normative gaps will determine the effectiveness of the Constitutional Court's decision in providing substantive justice for children who are innocent of their birth status.³⁹

³² Yulia Risa, " *Juridical Analysis of Legal Findings on Constitutional Court Decision Number 46/PUU-VIII/2010 on Children Born Outside of Legal Wedlock* ," Res Nullius Law Journal Vol. 3 No. 1 (2021): 11-24.

³³ Elwi Danil, Shidarta, et al., *Upholding the Law Without Breaking the Law* (Jakarta: Raja Grafindo Persada, 2015), pp. 112-118.

³⁴ Thomas E. Davitt, *Basic Values in Law* (Yogyakarta: Pallmal, 2012), pp. 156-162.

³⁵ Amir Syarifuddin, *Islamic Inheritance Law* (Jakarta: Kencana Prenada Media Group, 2012), pp. 145-152.

³⁶ Indonesian Ulema Council, *Fatwa Number 11 of 2012 concerning the Status of Children Resulting from Adultery and Their Treatment* (Jakarta: MUI, 2012), pp. 3-8.

³⁷ Ishaq, *Basics of Legal Science* (Jakarta: Sinar Grafika, 2016), pp. 203-208.

³⁸ B. Sutioso, *Methods of Legal Discovery* (Yogyakarta: UII Press, 2006), pp. 134-140.

³⁹ Adam Dwi Kambela and Dio Ashar Wicaksana, " *Constitutional Court Decision Number 46/PUU-VIII/2010 concerning Children Born Out of Wedlock: A Legal Analysis* ," Journal of Justice Dialectical Vol. 1 No. 1 (2023): 15-28.

2. Legal Reconstruction of the Civil Relationship of Children Born Outside of Marriage to Their Biological Fathers

Legal reconstruction of the civil relationship between illegitimate children and their biological fathers is a legal necessity, given the normative vacuum left by Constitutional Court Decision No. 46/PUU-VIII/2010, which has persisted for more than a decade without adequate legislative resolution. Legal reconstruction in this context is defined as a systematic effort to build a normative framework capable of concretely operationalizing the Constitutional Court's decision in practice. The theoretical basis for this reconstruction is based on the progressive legal theory put forward by Satjipto Rahardjo, who asserts that the law must continually transform to serve human needs, rather than forcing humans to submit to the rigidity of irrelevant legal texts.⁴⁰ The urgency of this reconstruction is further strengthened when linked to the principle of the best interest of the child adopted in Law No. 35 of 2014 concerning Child Protection, which requires the state to ensure that every regulation places the child's best interests as the primary consideration.⁴¹ Without systematic reconstruction, the Constitutional Court's decision will remain merely a norm that is beautiful in text but sterile in practice. Therefore, legal reconstruction must be built comprehensively by filling every normative gap that has been identified.

The first normative gap, concerning the absence of a mechanism for proving blood relations between illegitimate children and their biological fathers, requires detailed and operational normative reconstruction. The proposed normative construction is the establishment of a Government Regulation specifically governing procedures for proving blood relations, in which DNA testing is designated as the primary evidence with perfect probative power if it demonstrates a genetic match of at least 99.9%. The regulation should stipulate that DNA testing must be conducted by laboratories accredited by the National Accreditation Committee and registered in a system managed by the Ministry of Health.⁴² If the male suspected of being the biological father refuses to undergo DNA testing, a norm should be constructed stating that such refusal can be used as a strong presumption of paternity and become the basis for a court decision, as is applied in the German and French legal systems. The normative reconstruction should also stipulate that the costs of DNA testing are borne by the male suspected of being the biological father if the results of the test prove blood relations. If not, the costs are borne by the plaintiff or subsidized by the state through legal aid mechanisms for applicants who cannot afford it, considering that DNA testing currently requires costs that are burdensome for most mothers of illegitimate children.⁴³ This reconstruction of the evidentiary procedure will ensure that the mechanism for enforcing the rights of illegitimate children is accessible, standardized, and reliable for all levels of society.

Reconstructing the second normative gap concerning the scope of civil rights for illegitimate children born to biological fathers requires the construction of firm norms while still adhering to the principle of proportional justice. A norm needs to be constructed that, in a limited but comprehensive manner, stipulates that recognized civil relationships include the right to maintenance, the right to be recognized in a birth certificate, the right to education and health care costs, and the right to inheritance in a measurable, proportional capacity.⁴⁴ In constructing norms regarding inheritance rights, an approach should be adopted that differentiates between illegitimate children born from ordinary relationships and children born from unregistered marriages, considering that the two categories have different contexts and deserve different normative treatment.⁴⁵ A proportional reconstruction would be to grant ex lege inheritance rights of half the share of legitimate children, as previously

⁴⁰ Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law*, (Yogyakarta: Genta Publishing, 2009), pp. 5–7.

⁴¹ Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Article 2 and Article 3.

⁴² R. Kambali, " *Proving the Biological Relationship of Children Born Out of Wedlock Through DNA Testing in the Perspective of Indonesian Law* ," *Journal of Law and Justice*, Vol. 8, No. 2 (2019), pp. 279–280.

⁴³ Patrick Beaumont and Jonathan Fitchen, " *Parentage and International Private Law* ," in *Journal of Private International Law*, Vol. 12, no. 1 (2016), p. 17–21.

⁴⁴ Wahyu Ernarningsih and Putu Samawati, *Indonesian Marriage Law*, (Palembang: PT. Rambang, 2006), pp. 113–115.

⁴⁵ Nurul Irfan, *Lineage and Status of Children in Islamic Law*, (Jakarta: Amzah, 2012), pp. 96–99.

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stipulated in Article 863 of the Civil Code, because this construction has been tested historically and provides a balance between recognizing children's rights and protecting the interests of other heirs. The construction of norms regarding guardianship needs to state that even if an illegitimate child receives recognition of a civil relationship with the biological father, guardianship remains with the biological mother unless there is a court decision based on the child's best interests. The right to use the biological father's surname must be recognized normatively if there has been a court ruling regarding the biological relationship, because name identity is a fundamental child right guaranteed by the Convention on the Rights of the Child.⁴⁶ Normative clarity regarding the scope of civil rights is a non-negotiable foundation for realizing substantive justice for illegitimate children.

The third normative gap regarding institutional coordination between government agencies requires integrative and legally binding institutional reconstruction. The necessary reconstruction is the establishment of a norm in the form of a Presidential Regulation requiring an integrated coordination mechanism between the Population and Civil Registration Office, the Office of Religious Affairs, the District Court, the Religious Court, and the Ministry of Social Affairs in handling applications for recognition of the status of illegitimate children.⁴⁷ Within the framework of this reconstruction, it is necessary to construct a norm that stipulates that court decisions regarding blood relations have erga omnes legal force that must be recognized by all government agencies, so that one court decision is sufficient as the basis for processing all population documents.⁴⁸ The construction of a norm regarding the renewal of birth certificates needs to stipulate that the Population and Civil Registration Office is required to register the name of the biological father within fourteen working days of receiving a legally binding court decision, accompanied by the threat of administrative sanctions for officials who refuse without valid reasons. Supreme Court regulations need to be constructed to standardize procedures for applications for determining biological relationships across all courts, including evidentiary standards, affordable court fees, and a definitive timeframe for case resolution.⁴⁹ Institutional reconstruction is not merely a technical administrative issue, but rather an integral part of fulfilling citizens' constitutional rights that must be realized in real terms.

Reconstruction of the fourth norm's gap regarding legal protection for the parties must be built on the principle of a just balance of rights and obligations. It is necessary to construct a norm that provides protection for men accused of being biological fathers from the possibility of false claims (paternity fraud), by stipulating that applications proven to be based on false evidence can be subject to criminal sanctions in accordance with the provisions regarding making false statements in the Criminal Code and the obligation to pay compensation. On the other hand, the reconstruction of the norm must provide equal protection for mothers and children by constructing a provision that biological fathers who are scientifically proven but ignore their support obligations can be subject to sanctions, including the possibility of an income withholding order mechanism or direct deduction of income as implemented in various countries in the child support enforcement system .⁵⁰ The construction of a norm regarding genetic data protection needs to stipulate that DNA data obtained in proving biological relationships is confidential, cannot be transferred to third parties without consent, and must be destroyed after the case has permanent legal force, which needs to be integrated with Law Number 27 of 2022 concerning Personal Data Protection which recognizes genetic data as sensitive personal data. The reconstruction of legal protection norms must include granting explicit legal standing to adult illegitimate children to independently file applications for the establishment of biological relationships, as the right to know one's ancestry is a fundamental right inherent in every individual. A balance of legal protection for all parties is essential to prevent normative reconstruction from creating new injustices while addressing old ones.

The fifth normative gap, related to the disharmony between the Constitutional Court Decision and the Islamic inheritance law system, requires the most complex reconstruction because it touches on the highly

⁴⁶ J. Satrio, *Family Law on the Position of Children in Law*, (Bandung: Citra Aditya Bakti, 2000), pp. 192–195.

⁴⁷ Philipus M. Hadjon, *Legal Protection for the Indonesian People*, (Surabaya: Bina Ilmu, 1987), p. 29.

⁴⁸ Jimly Asshiddiqie, *Regarding the Law*, (Jakarta: Rajawali Pers, 2011), pp. 234–235.

⁴⁹ Supreme Court of the Republic of Indonesia, *Blueprint for Judicial Reform 2010–2035*, (Jakarta: Supreme Court of the Republic of Indonesia, 2010), p. 51.

⁵⁰ Nigel Lowe and Gillian Douglas, *Bromley's Family Law*, 11th ed., (Oxford: Oxford University Press, 2015), p. 809–813.

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sensitive theological dimension. The proposed reconstruction is the adoption of a bifurcated system model, or a two-track system, that distinguishes between civil relations stemming from biological paternity and legal paternity, so that both systems can operate side by side without negating each other.⁵¹ For citizens subject to Islamic law, a civil relationship recognized through a court decision does not necessarily create a lineage relationship in the fiqh sense. Therefore, the consequences of Islamic law, such as inheritance rights based on lineage and marital guardianship rights, remain invalid. However, the biological father remains burdened with the obligation to provide for the family based on the principle of responsibility (dhaman), not on lineage.⁵² This reconstruction aligns with the opinion of contemporary scholars who state that even though the child of adultery does not have a lineage with the biological father, positive law can impose civil obligations on the man who caused the child's birth based on considerations of benefit and prevention of harm.⁵³ It is necessary to construct norms in the amendment to the Compilation of Islamic Law that explicitly recognize the obligation of i'adah or material assistance from the biological father to the child out of wedlock as a legal obligation that can be enforced by religious courts, regardless of the existence or absence of a lineage relationship according to fiqh. This two-track model reconstruction is the most realistic solution for the pluralistic Indonesian context and avoids confrontation between state law and the religious values adhered to by the majority of the population.

The comprehensive legal reconstruction outlined ultimately requires a supreme legal instrument that integrates all normative constructs within a coherent legislative framework. The most appropriate instrument is a revision of Law Number 1 of 1974 concerning Marriage by adding a separate chapter that comprehensively regulates illegitimate children, including norms on evidentiary procedures, the scope of civil rights, institutional coordination, legal protection for the parties, and harmonization with diverse legal systems.⁵⁴ This legal revision needs to be preceded by in-depth academic study through the preparation of an Academic Paper involving various stakeholders, including family law experts, religious leaders, child protection organizations, and representatives of communities directly impacted by the normative vacuum.⁵⁵ Before the legal revision can be completed, the Supreme Court needs to immediately issue a Supreme Court Regulation as a short-term instrument that provides binding guidelines for all judges in handling cases related to illegitimate children, thus creating consistency and predictability in court decisions. This legal reconstruction must also be accompanied by a systematic outreach program to the public and government officials regarding the rights of illegitimate children and the available mechanisms, because even good norms will be ineffective if they are not known to those who need them most. Ultimately, the proposed reconstruction of norms is a collective moral statement that every child, regardless of how he or she is born, deserves equal protection and recognition from the state.

E. Conclusion

The conclusion of this study shows that Constitutional Court Decision Number 46/PUU-VIII/2010 is an important milestone in the development of family law in Indonesia, particularly in providing recognition of the civil relationship between children born out of wedlock and their biological fathers. This decision has progressively shifted the legal paradigm that previously limited civil relations between children only to the mother and her mother's family, to be more inclusive by opening up space for recognition of biological fathers based on scientific evidence. However, the results of this study also emphasize that the declarative nature of the decision has not been accompanied by adequate technical regulations, resulting in various forms of normative vacuums (rechts vacuum) in practice. These vacuums include the absence of a standard mechanism for proving biological relationships, unclear scope of civil rights that can be claimed, weak coordination between authorized institutions, minimal legal protection for the parties, and disharmony

⁵¹ John Eekelaar, *Family Law and Social Policy*, 2nd ed., (London: Weidenfeld and Nicolson, 1984), p. 59–63.

⁵² Wahbah Al-Zuhaili, *Al-Fiqh Al-Islami wa Adillatuh*, Juz VII, (Damascus: Dar Al-Fikr, 1985), p. 681–684.

⁵³ Yusuf Al-Qaradawi, *Min Hadyi Al-Islam: Fatawa Mu'ashirah*, Juz III, (Kuwait: Dar Al-Qalam, 2000), p. 502–505.

⁵⁴ Maria Farida Indrati Soeprapto, *Legal Science: Types, Functions, and Content Material*, (Yogyakarta: Kanisius, 2010), pp. 44–46.

⁵⁵ Bayu Dwi Anggono, *The Development of Law Formation in Indonesia*, (Jakarta: Constitution Press, 2014), pp. 179–181.

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with other legal systems such as Islamic inheritance law and population administration law. This condition ultimately has implications for legal uncertainty, disparity in court decisions, and the less than optimal fulfillment of the rights of children born outside of marriage, so that the main objective of the Constitutional Court's decision to provide substantive justice has not been fully achieved.

In the Constitutional Court Decision Number 46/PUU-VIII/2010 before the reconstruction, it was emphasized that “a child born out of wedlock has a civil relationship with his/her mother and his/her mother’s family as well as with the man as his/her father which can be proven based on science and technology and/or other evidence according to law.” This formulation is still general, abstract, and does not provide certainty regarding how this relationship is realized concretely in practice. Therefore, through a comprehensive legal reconstruction as described in this study, the decision needs to be reinterpreted into a more operational norm, namely: “A child born out of wedlock has a civil relationship with his/her mother and his/her mother’s family as well as with his/her biological father which is proven through a mechanism of scientific evidence and/or other valid legal evidence, with legal consequences in the form of rights to identity, livelihood, education, health, legal protection, and other civil rights including proportional inheritance rights, the implementation of which is expressly regulated in laws and regulations through a simple, affordable, and coordinated mechanism between institutions.” This reconstruction emphasizes the shift from declarative norms to implementative and applicable norms, incorporating elements of procedural certainty, clarity of rights, and balanced legal protection for all parties. Thus, the reconstruction is expected to bridge the gap between norms and practice, strengthen the effectiveness of Constitutional Court decisions, and create a legal system that is fairer, more responsive, and oriented toward the best interests of children as legal subjects who must be maximally protected.

REFERENCES

Jurnal

Adam Dwi Kambela dan Dio Ashar Wicaksana, "Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 tentang Anak Luar Kawin: Sebuah Analisis Hukum," *Journal of Justice Dialectical* Vol. 1 No. 1 (2023)

Ade Daharis dkk., "Kedudukan Anak Luar Kawin dalam Perspektif Kompilasi Hukum Islam dan Putusan MK," *Jurnal Kolaboratif Sains*, Vol. 7 No. 3 (2024)

Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Kencana Prenada Media Group, 2012), hlm. 145–152; Majelis Ulama Indonesia, *Fatwa MUI Nomor 11 Tahun 2012 tentang Kedudukan Anak Hasil Zina dan Perlakuan Terhadapnya* (Jakarta: MUI, 2012)

Bagya Agung Prabowo, "Implikasi Hukum Putusan Mahkamah Konstitusi Nomor 46/PPU-VIII/2010 terhadap Pemenuhan Hak-hak Keperdataan Anak Luar Kawin," *Jurnal Hukum Ius Quia Iustum* Vol. 19 No. 3 (2012)

Chatib Rasyid, "Anak Lahir di Luar Nikah (Secara Hukum) Berbeda Dengan Anak Hasil Zina: Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010," *Jurnal Mimbar Hukum dan Peradilan Edisi* No. 75 (2012)

Dwi Desi Yayi Tarina, dll (2021). “Kasus Pelanggaran Hak Asasi Manusia Di Indonesia dan Penyebab Terjadinya Pelanggaran,”

Habiburrahman, "Anak Luar Nikah dalam Putusan Mahkamah Konstitusi," *Jurnal Mimbar Hukum dan Peradilan Edisi* No. 75 (2012)

Nurhadi, "Implementasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 tentang Anak di Luar Kawin (Kajian Putusan Nomor 329 K/AG/2014)," *Jurnal Yudisial*, Vol. 11 No. 2 (2018)

Patrick Beaumont dan Jonathan Fitchen, "Parentage and International Private Law," dalam *Journal of Private International Law*, Vol. 12, No. 1 (2016)

R. Kambali, "Pembuktian Hubungan Biologis Anak di Luar Nikah Melalui Tes DNA dalam Perspektif Hukum Indonesia," *Jurnal Hukum dan Peradilan*, Vol. 8, No. 2 (2019)

Thomas E. Davitt, *Nilai-Nilai Dasar di dalam Hukum* (Yogyakarta: Pallmal, 2012)

Wahyuni. “Pencatatan Anak Luar Kawin Setelah Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010.” *Jurnal Ilmiah Hukum dan Dinamika Masyarakat* Vol. 11 No. 2 (2014)

Yulia Risa, "Analisis Yuridis Penemuan Hukum terhadap Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 terhadap Anak yang Dilahirkan di Luar Perkawinan yang Sah," *Res Nullius Law Journal* Vol. 3 No. 1 (2021)

RECONSTRUCTION OF THE REGULATION OF CIVIL RELATIONSHIPS OF CHILDREN BORN OUT OF WEDDING TOWARDS THEIR BIOLOGICAL FATHERS POST CONSTITUTIONAL COURT DECISION

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Mohammad Raja Avatar et al

Buku

- Ahmad Kamil dan M. Fauzan, *Kaidah-Kaidah Hukum Yurisprudensi* (Jakarta: Raja Grafindo Persada, 2008)
- Ahmad Rifai, *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif* (Jakarta: Sinar Grafika, 2011)
- Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Kencana Prenada Media Group, 2012)
- Bayu Dwi Anggono, *Perkembangan Pembentukan Undang-Undang di Indonesia*, (Jakarta: Konstitusi Press, 2014),
- B. Sutioso, *Metode Penemuan Hukum* (Yogyakarta: UII Press, 2006)
- Elwi Danil, Shidarta, dkk., *Menegakkan Hukum Tanpa Melawan Hukum* (Jakarta: Raja Grafindo Persada, 2015)
- Hans Kelsen, *Pure Theory of Law*, diterjemahkan oleh Max Knight (Berkeley: University of California Press, 1967)
- Ishaq, *Dasar-Dasar Ilmu Hukum* (Jakarta: Sinar Grafika, 2016)
- Jimly Asshiddiqie, *Perihal Undang-Undang*, (Jakarta: Rajawali Pers, 2011)
- John Eekelaar, *Family Law and Social Policy*, 2nd ed., (London: Weidenfeld and Nicolson, 1984)
- Johny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006)
- J. Satrio, *Hukum Keluarga tentang Kedudukan Anak dalam Undang-Undang*, (Bandung: Citra Aditya Bakti, 2000)
- Lili Rasjidi dan I.B. Wyasa Putra, *Hukum Sebagai Suatu Sistem* (Bandung: Remaja Rosdakarya, 1993)
- Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan: Jenis, Fungsi, dan Materi Muatan*, (Yogyakarta: Kanisius, 2010)
- M. Yahya Harahap, *Hukum Acara Perdata* (Jakarta: Sinar Grafika, 2005)
- Nigel Lowe dan Gillian Douglas, *Bromley's Family Law*, 11th ed., (Oxford: Oxford University Press, 2015)
- Nurul Irfan, *Nasab dan Status Anak dalam Hukum Islam*, (Jakarta: Amzah, 2012)
- Peter Mahmud Marzuki, *Penelitian Hukum, Edisi Revisi* (Jakarta: Kencana Prenada Media Group, 2011)
- Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat Indonesia*, (Surabaya: Bina Ilmu, 1987)
- Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*, (Yogyakarta: Genta Publishing, 2009)
- Siti Malikhatul Badriyah, *Sistem Penemuan Hukum dalam Masyarakat Prismatic* (Jakarta: Sinar Grafika, 2016)
- Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2003)
- Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar* (Yogyakarta: Liberty, 2001)
- Wahbah Al-Zuhaili, *Al-Fiqh Al-Islami wa Adillatuh*, Juz VII, (Damaskus: Dar Al-Fikr, 1985)
- Wahyu Ernaningsih dan Putu Samawati, *Hukum Perkawinan Indonesia*, (Palembang: PT. Rambang, 2006)
- Yusuf Al-Qaradawi, *Min Hadyi Al-Islam: Fatawa Mu'ashirah*, Juz III, (Kuwait: Dar Al-Qalam, 2000)

Peraturan Perundang-Undangan

- Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan (Lembaran Negara RI Tahun 1974 Nomor 1, Tambahan Lembaran Negara RI Nomor 3019)
- Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan sebagaimana telah diubah dengan Undang-Undang Nomor 24 Tahun 2013
- Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak
- Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia (Lembaran Negara RI Tahun 1999 Nomor 165)

Lainnya

- Mahkamah Agung Republik Indonesia, *Cetak Biru Pembaruan Peradilan 2010–2035*, (Jakarta: Mahkamah Agung RI, 2010)
- Mahkamah Konstitusi Republik Indonesia, *Putusan Nomor 46/PUU-VIII/2010*, diucapkan pada 17 Februari 2012.
- Majelis Ulama Indonesia, *Fatwa Nomor 11 Tahun 2012 tentang Kedudukan Anak Hasil Zina dan Perlakuan Terhadapnya* (Jakarta: MUI, 2012)