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HARMONIZATION OF THE REGULATION OF INHERITANCE RIGHTS OF CHILDREN BORN OUT OF WEDDING

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Abstract

The regulation regarding the inheritance rights of illegitimate children from biological fathers still raises legal issues due to the disharmony between Law Number 1 of 1974 concerning Marriage, Constitutional Court Decision Number 46/PUU-VIII/2010, and the Compilation of Islamic Law. These differences in regulations create legal uncertainty regarding the position of illegitimate children in obtaining inheritance rights from their biological fathers. This study aims to analyze the regulation of inheritance rights of illegitimate children from biological fathers based on the provisions of Indonesian positive law and examine the harmonization of these regulations from the perspective of the Marriage Law and the Compilation of Islamic Law. This study is a normative legal research using a statutory approach, a conceptual approach, and a case approach. Legal materials are analyzed qualitatively through literature studies. The results of the study indicate that Constitutional Court Decision Number 46/PUU-VIII/2010 has expanded the civil relationship of illegitimate children with their biological fathers as long as it can be proven based on science and technology or other evidence according to law. However, the implementation of inheritance rights still faces obstacles due to the lack of harmony in the Compilation of Islamic Law. Therefore, regulatory harmonization is needed to ensure legal certainty, justice, and legal protection for the civil rights of illegitimate children.

Keywords: Children Out of Wedlock, Biological Father, Inheritance Rights, Compilation of Islamic Law, Constitutional Court Decisions

INTRODUCTION

Marriage is a legal institution that plays a strategic role in establishing civil relationships between husband, wife, and children. Through a legal marriage, the state recognizes the legal status of the parties and the resulting legal consequences, including kinship, custody, and inheritance rights. Therefore, the validity of a marriage is the primary basis for determining the legal status of children born from that relationship. In Indonesia, the regulation of marriage is regulated by Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019. This defines marriage as a physical and spiritual bond between a man and a woman with the goal of forming a happy and eternal family based on the One Almighty God (Mukhdalifa, Sukiati & Tanjung, 2026).

The status of children born out of wedlock is an issue that continues to generate debate in legal practice and research. Prior to Constitutional Court Decision Number 46/PUU-VIII/2010, Article 43 paragraph (1) of Law Number 1 of 1974 only recognized the civil relationship between illegitimate children and their mothers and their mothers' families. This regulation resulted in the legal consequence of not recognizing the civil relationship between illegitimate children and their biological fathers, including in aspects of inheritance rights, maintenance, and other legal protections. This situation was deemed not to fully reflect the principles of justice and protection of children's rights as guaranteed by the constitution and human rights instruments (Loho, 2020).

The development of national law underwent significant changes after the Constitutional Court, through Decision Number 46/PUU-VIII/2010, stated that children born out of wedlock have a civil relationship with a man who can be proven by science and technology and/or other legal evidence as their biological father. This decision broadened the meaning of the civil relationship so that it was no longer limited to the relationship with the biological mother alone, but also opened up opportunities for recognition of the legal relationship with the biological father as long as it met the requirements of valid proof. The Constitutional Court's decision is seen as protecting children's constitutional rights and as an effort to achieve substantive justice in family law in Indonesia (Sabirin, 2021).

However, the implementation of Constitutional Court Decision No. 46/PUU-VIII/2010 still faces various challenges. One major issue is the lack of harmony between the Marriage Law and the Compilation of Islamic Law (KHI). In the KHI, the inheritance relationship of illegitimate children is essentially limited to the relationship with the mother and her mother's family, leading to differing interpretations when the Constitutional Court's decision is used as a basis for claiming inheritance rights from the biological father. These differences in norms have implications for legal uncertainty and have the potential to result in inconsistent court decisions regarding inheritance cases involving illegitimate children (Susanto, Puspitasari & Marwa, 2021).

Previous studies have generally discussed the legal implications of Constitutional Court Decision No. 46/PUU-VIII/2010 on the civil status of illegitimate children or highlighted the protection of children's rights from a human rights perspective (Putri, 2022; Surakarta & Bustomi, 2023; Al-Amruzi, 2021; Baihaki, 2023). However, studies specifically analyzing the harmonization of inheritance rights regulations for illegitimate children from biological fathers by comparing the Marriage Law, Constitutional Court Decisions, and the Compilation of Islamic Law are still relatively limited. This harmonization is crucial for providing legal certainty for law enforcement officials and the public in determining the legal status of illegitimate children regarding their biological father's inheritance (Mujaddidi, 2022).

Based on the above description, this study aims to analyze the inheritance rights of illegitimate children from biological fathers after the Constitutional Court Decision Number 46/PUU-VIII/2010 and examine the harmonization of its regulations from the perspective of the Marriage Law and the Compilation of Islamic Law. This study is expected to provide

academic contributions to the development of inheritance law in Indonesia as well as become a consideration in the formation of legal policies that are able to realize legal certainty, justice, and protection of the civil rights of illegitimate children.

RESEARCH METHODS

This research is a normative legal research that aims to examine and analyze legal norms regarding the inheritance rights of illegitimate children from biological fathers following the Constitutional Court Decision Number 46/PUU-VIII/2010. Normative legal research views law as a norm contained in legislation, court decisions, and scholarly doctrines so that the analysis focuses on the synchronization, consistency, and application of legal norms to the issues studied (Rosidi, Zainuddin & Arifiana, 2024). The research approaches used include the statutory approach, the conceptual approach, and the case approach. The statutory approach is used to examine the provisions in Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, the Civil Code, the Compilation of Islamic Law, and other laws and regulations related to the civil status and inheritance rights of illegitimate children. A conceptual approach is used to analyze the concepts of civil relations, inheritance rights, legal certainty, justice, and legal protection based on expert doctrine. Meanwhile, a case-based approach is used to examine the ratio decidendi of Constitutional Court Decision Number 46/PUU-VIII/2010 as the basis for changing the civil relationship between illegitimate children and their biological fathers (Rosidi, Zainuddin & Arifiana, 2024).

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, the Civil Code, the Compilation of Islamic Law, and Constitutional Court Decision Number 46/PUU-VIII/2010. Secondary legal materials consist of law books, scientific journal articles, research findings, and expert opinions relevant to family law, inheritance law, and the protection of children's rights. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other supporting sources that help explain the legal terms and concepts used in this research (Rosidi, Zainuddin & Arifiana, 2024). The collection of legal materials was conducted through library research by reviewing various laws and regulations, court decisions, scientific literature, and journals related to the research object. Furthermore, all legal materials were analyzed using qualitative legal analysis methods through grammatical, systematic, and teleological interpretation to obtain legal arguments regarding the harmonization of inheritance rights for illegitimate children from biological fathers. The results of the analysis were then compiled descriptively and analytically to systematically answer the research problem formulation and produce legal recommendations in accordance with the principles of legal certainty, justice, and benefit (Rosidi, Zainuddin & Arifiana, 2024).

RESULT AND DISCUSSION

The status of children under Indonesian law has broad legal consequences, not only relating to family relationships, but also to civil rights and obligations, including the right to receive support, maintenance, recognition of legal status, and inheritance rights. In principle, a child's legal status is determined by the validity of the marriage of both parents, as stipulated in Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019. This regulation places a legal marriage as the basis for the birth of a civil relationship between a child and both parents, so that the legal status of illegitimate children is treated differently from the outset compared to children born within a legal marriage (Mahadewi & Larasati, 2026).

Prior to Constitutional Court Decision Number 46/PUU-VIII/2010, Article 43 paragraph (1) of Law Number 1 of 1974 stipulated that children born outside of marriage only have a civil relationship with their mother and their mother's family. This provision resulted in the absence of a civil relationship between illegitimate children and their biological fathers,

even if the blood relationship could be proven. The legal consequences of this regulation not only affected aspects of care and support but also eliminated the child's right to receive a share of the inheritance from their biological father. This situation has drawn criticism for years because it was deemed not to reflect the principles of justice and not to provide adequate legal protection for the best interests of the child (Marpaung et al., 2026).

From the perspective of inheritance law, blood relations are one of the foundations for the birth of inheritance rights, as recognized in the Indonesian civil law system. However, the existence of this blood relationship is not always followed by recognition of the legal relationship if it is not supported by statutory provisions. As a result, illegitimate children were vulnerable to losing their civil rights, despite their factual biological relationship with their fathers. This situation demonstrates a discrepancy between scientific developments that can prove biological relationships through technology, such as DNA testing, and the legal norms in force at the time (Gobel, Dungga & Muhtar, 2026).

The development of national law underwent fundamental changes after the Constitutional Court issued Decision Number 46/PUU-VIII/2010, which reinterpreted Article 43 paragraph (1) of the Marriage Law. The Constitutional Court emphasized that children born out of wedlock have a civil relationship not only with their mother and her family, but also with a man who can be proven by science and technology and/or other legal evidence to be their biological father. This decision marked a significant milestone in the development of family law in Indonesia because it expanded the civil rights of illegitimate children without eliminating provisions regarding the validity of the marriage itself (Anggraini, Sukiati & Iwan, 2026).

Although the Constitutional Court Decision expanded the civil relationship between illegitimate children and their biological fathers, the implementation of inheritance rights remains controversial in practice. Some argue that the expansion of civil relations automatically includes inheritance rights, while others argue that the Constitutional Court Decision only recognizes civil relations in general without explicitly regulating the mechanism for inheritance distribution. The differences in interpretation are increasingly complex because the Compilation of Islamic Law still maintains the regulation that the lineage of illegitimate children is only connected to the mother and the mother's family, thus causing disharmony in the norms in its application (Anggraini, Sukiati & Iwan, 2026).

Based on these conditions, it is understandable that the regulation of inheritance rights for illegitimate children from biological fathers in Indonesian positive law is still in a transitional phase between the development of court decisions and applicable normative regulations. Constitutional Court Decision No. 46/PUU-VIII/2010 has opened up broader protection for the civil rights of illegitimate children, but has not been fully accompanied by harmonization of laws and regulations, particularly in Islamic inheritance law. Therefore, further analysis is needed regarding the implications of the Constitutional Court Decision on the implementation of inheritance rights for illegitimate children in order to achieve legal certainty, justice, and balanced legal protection for all parties.

Constitutional Court Decision No. 46/PUU-VIII/2010 is one of the decisions that brought fundamental changes to the development of family law in Indonesia. Through this decision, the Constitutional Court reinterpreted Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage by expanding the civil relations of children born out of wedlock. Prior to this ruling, the civil relationship of illegitimate children was only recognized with the mother and her mother's family. Following the Constitutional Court ruling, a civil relationship can also be established with the biological father, provided his existence can be proven through science and technology and/or other legal evidence. This change demonstrates a paradigm shift from a formalistic approach to protecting the constitutional rights of children as legal subjects who must obtain legal certainty without being burdened with the legal consequences of their parents' actions (Anggraini, Sukiati & Iwan, 2026).

The Constitutional Court's legal reasoning is based on the principle that every child has the constitutional right to legal protection and recognition of their identity, as guaranteed by the 1945 Constitution of the Republic of Indonesia. Therefore, a scientifically proven biological relationship cannot be ignored simply because the child is born out of wedlock. This ruling also confirms that a man's responsibility as a biological father cannot be absolved solely because he lacks a marital bond with the child's mother. Thus, the Constitutional Court's ruling provides the legal basis for the emergence of civil relationships, which have previously been unrecognized in Indonesia's positive legal system (Gobel, Dungga & Muhtar, 2026).

From the perspective of inheritance law, this expansion of civil relationships has significant legal consequences. Civil relationships essentially encompass various rights and obligations between parents and children, including the right to maintenance, support, use of the family name, and inheritance rights. Therefore, the view has emerged that recognizing a civil relationship with a biological father logically also opens up the opportunity for illegitimate children to obtain inheritance rights, provided the biological relationship has been proven under applicable legal provisions. This view is based on the principle that inheritance rights are part of civil rights and are inseparable from the legal relationship between the testator and the beneficiary (Gobel, Dungga & Muhtar, 2026).

However, Constitutional Court Decision No. 46/PUU-VIII/2010 does not explicitly regulate the inheritance distribution mechanism or the amount of inheritance rights that illegitimate children can receive. The decision only recognizes the existence of a civil relationship with the biological father without changing the inheritance law provisions stipulated in the Civil Code and the Compilation of Islamic Law. Consequently, in practice, there are still differing interpretations regarding whether this expansion of the civil relationship automatically gives rise to inheritance rights or whether further regulation through legislation or court decisions is required in each specific case (Sabirin, 2021).

This issue becomes even more complex when linked to the provisions of the Compilation of Islamic Law, which still defines illegitimate children as having a kinship relationship only with their mother and her mother's family. From an Islamic legal perspective, inheritance relationships are closely linked to legitimate kinship relationships according to sharia. Therefore, the expansion of civil relationships based on the Constitutional Court Decision is often viewed as not necessarily changing the inheritance provisions in the Compilation of Islamic Law. This difference in legal construction has given rise to a dualistic regulation between positive law and Islamic law, potentially creating legal uncertainty in the resolution of inheritance disputes (Sabirin, 2021).

On the other hand, modern legal developments demonstrate a tendency to strengthen the protection of children's rights regardless of their birth status. Various studies emphasize that child protection must be based on the best interests of the child and the principle of non-discrimination. Therefore, the recognition of civil relationships between illegitimate children and their biological fathers should be viewed as a form of protection of the child's human rights, not as a form of legalization of extramarital relationships. Thus, the implementation of the Constitutional Court Decision must be interpreted proportionally to provide legal certainty while maintaining the values developed in the national legal system (Rosidi, Zainuddin & Arifiana, 2024).

Based on this explanation, Constitutional Court Decision Number 46/PUU-VIII/2010 has provided a new legal basis for recognizing civil relationships between illegitimate children and their biological fathers. However, this decision has not fully resolved the issue of inheritance rights due to the continuing disharmony between the Constitutional Court decision, the Marriage Law, the Civil Code, and the Compilation of Islamic Law. This situation demonstrates the need for harmonization of legal regulations so that the recognition of civil relationships does not stop at merely administrative aspects but also provides legal certainty for

the implementation of civil rights, including inheritance rights for illegitimate children from their biological fathers.

Constitutional Court Decision Number 46/PUU-VIII/2010 has brought about important developments in family law in Indonesia, particularly regarding the recognition of civil relationships between illegitimate children and their biological fathers. However, this development has not been fully accompanied by harmonization of regulations in various laws and regulations. Consequently, there are still differences in legal construction between Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and judicial practice in determining the inheritance rights of illegitimate children. This situation has implications for the emergence of legal uncertainty, potentially hindering the fulfillment of children's civil rights and creating disparities in decisions in resolving inheritance disputes (Rosidi, Zainuddin & Arifiana, 2024).

From a positive legal perspective, the Constitutional Court's decision is final and binding, and therefore has legal force and must be followed by all state administrators and law enforcement officials. Therefore, the interpretation of Article 43 paragraph (1) of the Marriage Law, as decided by the Constitutional Court, should serve as a reference in determining the civil relationship between illegitimate children and their biological fathers. This civil relationship is not limited to administrative aspects of population but also encompasses other civil rights and obligations, as long as they do not conflict with applicable laws and regulations.

On the other hand, the Compilation of Islamic Law still stipulates that children born out of wedlock have a blood relationship only with their mother and their mother's family. This regulation is based on the principles of Islamic inheritance law, which establishes a legitimate blood relationship as the basis for inheritance rights. Consequently, a paradigm difference arises between the Constitutional Court's decision, which uses an approach to protecting children's constitutional rights, and the Compilation of Islamic Law, which relies on the concept of blood relationship in Islamic law. These paradigm differences cannot be resolved solely through textual interpretation of norms, but rather require a systematic approach that takes into account the objectives of legal formation, societal development, and the protection of children's human rights.

According to the author, harmonization of regulations should not be interpreted as the elimination of one legal regime, but rather as an effort to harmonize norms to provide legal certainty without eliminating the characteristics of each legal system. In this context, the Constitutional Court Decision can be positioned as the basis for recognizing the civil relationship between illegitimate children and their biological fathers, while the mechanism for implementing inheritance rights still requires more comprehensive regulation through legislative reform and adjustments to the Compilation of Islamic Law. Thus, the recognition of civil relationships does not give rise to multiple interpretations in judicial practice and remains in line with the principles of family law applicable in Indonesia (Agustina, 2003; Marzuki, 2021).

This harmonization also needs to consider the principles of legal protection and the best interests of the child. Children cannot be held responsible for their birth status because this situation is entirely beyond their control. Therefore, the state is obligated to ensure that every child receives equal legal protection without discrimination, including certainty regarding their civil rights. This approach aligns with developments in international law, which places child protection as part of the fulfillment of human rights, which must be realized through national legal policies (Mukhdalifa, Sukiati & Tanjung, 2026).

Furthermore, harmonization of regulations is also crucial to provide clearer guidelines for judges in examining and deciding inheritance cases involving illegitimate children. As long as there are no clear regulations regarding the implementation of the Constitutional Court's decision on inheritance rights, the potential for differing decisions in cases with similar

characteristics remains open. This situation contradicts the principle of legal certainty, one of the primary objectives of legal formation. Therefore, it is necessary to establish norms that explicitly regulate the relationship between the recognition of civil relationships and the exercise of inheritance rights to eliminate doubt in judicial practice (Mukhdalifa, Sukiati & Tanjung, 2026).

Based on the analysis, this study argues that harmonization of inheritance rights regulations for illegitimate children born to biological fathers must be established through three main instruments. First, strengthening the synchronization of norms between the Marriage Law, the Compilation of Islamic Law, and Constitutional Court Decision Number 46/PUU-VIII/2010 to eliminate conflicting regulations regarding civil relations for illegitimate children. Second, establishing implementation guidelines that provide certainty regarding the requirements for proving biological relations, the scope of civil rights, and the mechanism for implementing inheritance rights. Third, strengthening legal protection for children through an approach that places legal certainty, justice, and benefit as a whole in resolving inheritance cases. Through this harmonization, it is hoped that regulations regarding inheritance rights for illegitimate children born to biological fathers will no longer create legal uncertainty, but will instead be able to provide fair legal protection while maintaining the consistency of the national legal system.

CONCLUSIONS

Based on the research findings, it can be concluded that the regulation of inheritance rights for illegitimate children from biological fathers in Indonesian positive law has undergone significant development following the issuance of Constitutional Court Decision No. 46/PUU-VIII/2010. This decision has expanded the civil relationship between illegitimate children and their biological fathers, provided that the relationship can be proven based on science and technology and/or other legal evidence. This expansion of civil relationships protects children's constitutional rights and provides a legal basis for the recognition of civil rights that previously lacked adequate protection. However, this recognition of civil relationships has not been fully followed by clear regulations regarding the implementation of inheritance rights, thus still giving rise to differences in interpretation in practice.

This research also found that there is still disharmony between Law No. 1 of 1974 concerning Marriage, Constitutional Court Decision No. 46/PUU-VIII/2010, and the Compilation of Islamic Law regarding the legal status of illegitimate children vis-à-vis their biological fathers. These differences have implications for the lack of legal certainty in the implementation of inheritance rights, particularly for communities subject to the provisions of the Compilation of Islamic Law. Therefore, regulatory harmonization is needed through synchronization of norms between laws and regulations, the development of guidelines for the implementation of the Constitutional Court Decision that provide certainty regarding the scope of inheritance rights for illegitimate children, and regulatory reforms that can accommodate legal developments without ignoring the principles of family law applicable in Indonesia. This harmonization is expected to achieve legal certainty, justice, and legal benefits in a balanced manner, while providing more effective protection for the civil rights of illegitimate children from their biological fathers.

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