

Research Article

Legal Review of Legal Protection for Children Born Out of Wedlock Based on Constitutional Court Decision Number 46/PUU-VIII/2010

Elis Yesika br Rajagukguk¹, Roida Nababan², and Sovia Simamora³

¹ Faculty of Law; Universitas HKBP Nommensen; Medan, Sumatera Utara, Indonesia;

e-mail : elis.yesika@student.uhn.ac.id

² Faculty of Law; Universitas HKBP Nommensen; Medan, Sumatera Utara, Indonesia;

e-mail : roida.nababan@uhn.ac.id

³ Faculty of Law; Universitas HKBP Nommensen; Medan, Sumatera Utara, Indonesia;

e-mail: sovia.simamora@uhn.ac.id

* Corresponding Author : Elis Yesika br Rajagukguk

Abstract: This study aims to analyze legal protection for children born out of wedlock in Indonesia, especially after the issuance of Constitutional Court (MK) Decision No. 46/PUU-VIII/2010. This decision is insignificant in national family law, which expands the civil relationship between children born out of wedlock and their biological fathers, if it can be scientifically proven. Despite significant progress, its implementation still faces challenges, such as social stigma, difficulties in proving biological relationships, and a lack of public legal awareness. The research method used is a normative method with a regulatory and case approach. Data was collected through a literature review, which included primary, secondary, and tertiary legal materials. This research was conducted by analyzing books, journals, legal research results, and relevant official institutional documents. The results of the study indicate that legal protection for children born out of wedlock needs to be strengthened through legal reform, public education, and legal recognition and ratification mechanisms. This is important so that the basic rights of children can be optimally fulfilled, in accordance with human rights principles and applicable laws and regulations. This study recommends concrete steps to increase legal awareness and minimize discrimination against children born out of wedlock. This study aims to analyze legal protection.

Keywords: Children's Rights, Family Law, Legal protection, Marriage law, Social Discrimination.

1. Introduction

Received: August 01, 2025;

Revised: August 16, 2025;

Accepted: August 30, 2025;

Published: September 01, 2025

Curr. Ver.: September 01, 2025



Copyright: © 2025 by the authors.

Submitted for possible open

access publication under the

terms and conditions of the

Creative Commons Attribution

(CC BY SA) license

([https://creativecommons.org/li](https://creativecommons.org/licenses/by-sa/4.0/)

[censes/by-sa/4.0/](https://creativecommons.org/licenses/by-sa/4.0/))

Paragraph 4 of the Preamble to the 1945 Constitution outlines the goal of creating the government as safeguarding the Indonesian nation as a whole, enhancing general welfare, educating the populace, and contributing to the maintenance of global order founded on freedom, lasting peace, and social justice. Regarding welfare, Article 27 paragraph (2) of the 1945 Constitution asserts, "Every citizen is entitled to work and to a dignified life for humanity." As the source of all sources of law, the 1945 Constitution essentially seeks to ensure a decent, safe, peaceful, and prosperous life for all its citizens, including children. Constitutionally, every citizen has civil rights that must be guaranteed and protected. Not all children are born into good circumstances. There are children born from a valid marriage, known as legitimate children. Meanwhile, children born outside of a valid marriage are called illegitimate children. This is because premarital sexual relations have become a wrongful practice that is considered normal. One of the consequences of extramarital sexual relations is the birth of children outside of marriage, which results in their status as children born out of wedlock. In reality, children born out of wedlock often receive a negative view from society.

Protection of children's rights was established in the 1979 Declaration on the Rights of the Child, which was later adopted by the United Nations as the Convention on the Rights of the Child (CRC) (Convention on the Rights of the Child) in 1989 and has been ratified, approved, or signed by 192 countries. Indonesia ratified the CRC in 1990 through Presidential Decree No. 36 of 1990, and 12 years later, Indonesia successfully enacted Law No. 23 of 2002 on Child Protection (UUPA). Efforts to protect children have been around for a long time, both in terms of regulations and implementation, by the government and social organizations. However, these efforts have not yet yielded optimal results in line with the needs and development of Indonesian society, particularly children. This situation is caused by the multidimensional crisis faced by our nation. Various conflicts that occur involve not only adults but also children. As a result, children are increasingly vulnerable to social and criminal issues. Due to economic and social pressures, many children are forced into criminal activities, leading them to face legal consequences.

In Indonesia, attention to child protection is one of the goals of national development. As stated in Article 1 paragraph of Law Number 35 of 2014 on Child Protection, which states:

"Child protection is: all activities to ensure and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with the dignity and worth of humanity, as well as receive protection from violence and discrimination."

Child protection is a form of legal protection that has legal consequences, therefore a legal guarantee is necessary. Article 34(1) of the 1945 Constitution states, "The poor and abandoned children shall be cared for by the State." Child protection constitutes a vital element in the cultivation of the younger generation, which is essential for national development, specifically within the framework of a just and prosperous society that is both safe and secure, as enshrined in Pancasila and the 1945 Constitution. The notion of child protection encompasses a comprehensive range of dimensions, signifying that it extends beyond the mere safeguarding of the child's life and physical integrity, to also encompass the safeguarding of all rights and interests that are pivotal in facilitating normal growth and development, in spiritual, physical, and social realms.

In the seminar on Child or Youth Protection by Pra Yuwana in 1977, there were two formulations regarding Child Protection, namely:

- a. All conscious efforts made by every individual and government and private institution aimed at ensuring the safety, control, and fulfillment of the physical, mental, and social well-being of children and adolescents in accordance with their interests and fundamental rights.
- b. All conscious efforts made jointly by individuals, families, communities, government agencies, and private entities to secure, and fulfillment of the spiritual and physical welfare of children aged 0-21 years, who are unmarried and have never been married, in accordance with their rights and interests so that they can develop themselves as optimally as possible.

The protection of children's rights is a form of defense of human rights. However, in reality, Indonesia has not had a significant impact on the fulfillment, respect, and protection of children's rights. Especially the rights of children born out of wedlock or children born outside of a valid marriage (children born from a religious marriage, adultery/affair) experience injustice, discrimination, and violations of the human rights of these children. Before the Constitutional Court (MK) Decision No. 46/PUU-VIII/2010, children born out of wedlock only had a civil relationship with their mother and her family, thus not receiving civil rights from their biological father, such as the right to maintenance, custody, and guardianship. This creates injustice and discrimination against children born out of wedlock, resulting in a lack of legal protection and fulfillment of their basic rights.

Regardless of whether the child is legitimate or illegitimate, they did not ask to be born. They have the same rights as those stipulated in Law No. 4 of 1979 on Child Welfare, as follows:

1. Children possess an inherent entitlement to welfare, caregiving, nurturing, and guidance predicated upon love and affection, both within their familial units and in specialized care settings, to facilitate their normative growth and development;
2. Children are entitled to access services that foster the enhancement of their capabilities and social interactions, in alignment with the principles of a just and beneficial state;
3. Children have the inherent right to receive care and protection throughout the duration of pregnancy and subsequent to birth;
4. Children possess the right to be safeguarded from environments that may jeopardize or obstruct their growth and development in a manner that is reasonable.

The Constitutional Court (MK) Decision No. 46/PUU-VIII/2010, issued in 2012, became an important milestone in family law in Indonesia. This decision was made in response to a judicial review petition filed by Hj. Aisyah Mokhtar and her son, Muhammad Iqbal Ramadhan bin Moerdiono, against the provisions of Article 2, paragraph (2) and Article 43(1) of Law No. 1 of 1974, as amended by Law No. 16 of 2019 on Marriage. The Constitutional Court's decision changes the interpretation of Article 43 paragraph (1) of Law No. 1 of 1974 on Marriage, which previously stated that a child born out of wedlock only has a civil relationship with his mother and his mother's family, now states that children born out of wedlock also have a civil relationship with their biological father if this can be scientifically proven, for example through a DNA test. The main change in Law No. 16 of 2019 is that it changes the minimum age for marriage, which was previously different for men and women, to 19 years old for both. This law aims to prevent the negative impacts of child marriage, which can hinder children's development and result in the failure to fulfill their basic rights, such as the right to protection from violence and discrimination, civil rights, health rights, and access to higher education. Under positive law, an out-of-wedlock child must also receive his or her rights to a decent life from his or her biological father, such as maintenance and education costs that will support his or her life.

However, the issuance of Decision No. 46/PUU-VIII/2010 on the status of children born out of wedlock sparked public controversy on a national scale. Various responses emerged in response to this ruling, with some groups supporting it (pro) and others opposing it (contra). Those in favor argue that the status of children born out of wedlock is now clearer and that they can be given legal protection against discrimination or anything that threaten the child's safety, as well as reinforce constitutional rights such as the right to life and private rights, because, in addition to having a civil relationship with the mother and her family, the child also has a civil relationship with the biological father. The opposing group argues that this Constitutional Court decision is too controversial because it is seen as interfering with religious matters. In the Compilation of Islamic Law concerning children born out of wedlock, Article 100 of the Compilation of Islamic Law states which states, "A child born out of wedlock only has a blood relationship with his mother and her family." In addition, it also explains the status of children born from the marriage of a man to a woman whom he impregnated before marriage. This is stated in Article 53 paragraph (3) of the Compilation of Islamic Law, which reads:

"If the marriage takes place while the woman is pregnant, it is not necessary to marry after the child is born."

Based on the above description, the researcher is interested in exploring the **"Legal Review of Legal Protection for Children Born Out of Wedlock Based on Constitutional Court Decision Number 46/PUU VIII/2010."** In this study, the researcher will also explore how legal protection for children born out of wedlock is considered by judges following the Constitutional Court Decision No. 46/PUU-VIII/ 2010 and how the implementation of Constitutional Court Decision No. 46/PUU-VIII/2010 is applied in legal practice and societal life, particularly regarding the recognition of the rights of children born out of wedlock and the responsibilities of their biological fathers.

2. Research Method

The research method used in this study is the normative legal method, which is legal research conducted by reviewing library materials or secondary data. The data collection method used in this study is library research. The data collected through this literature study was obtained by gathering data or information from various written sources, such as books, laws and regulations, journals, scientific articles, official documents, and other written sources related to the status and protection of children born out of wedlock. This method was used to understand the theories, concepts, or findings from previous studies relevant to the topic under investigation. In addition, data analysis was carried out using descriptive qualitative methods, namely analyzing the data that had been collected and processed in the form of descriptions and explanations systematically using sentences to obtain systematic and easy-to-understand results or explanations. This was followed by drawing conclusions that began with a general understanding that was already known and ended with specific conclusions.

3.1. General overview of legal protection

3.1.1. Definition of legal protection

The definition of legal terminology in Indonesian according to the KBBI is a regulation or custom that is officially considered binding, which is confirmed by the authorities or government, laws, regulations, and so on to regulate social interaction, standards or rules regarding certain natural events, decisions or considerations made by judges in court, or verdicts.

In general, protection means shielding something from dangerous things, whether that something is an interest or an object or item. In addition, protection also implies the care provided by someone to a weaker person. Thus, legal protection can be interpreted as all efforts made by the government to ensure legal certainty in order to protect its citizens so that their rights as citizens are not violated. and those who violate them will be subject to sanctions in accordance with applicable regulations.

The definition of legal protection is protection provided to legal subjects in the form of legal instruments, both preventive and repressive, written and unwritten. In other words, legal protection is a reflection of the function of law, namely the concept that law can provide justice, order, certainty, benefit, and peace.

The following are opinions quoted from several experts regarding legal protection:

- a.) According to Hetty Hasanah, legal protection is any effort that can guarantee legal certainty, thereby providing legal protection to the parties concerned or those who take legal action.
- b.) According to Setiono, legal protection is an action or effort to protect the public from arbitrary acts by authorities that are not in accordance with legal regulations, to achieve order and peace so that people can enjoy their dignity as human beings.
- c.) According to Satjito Rahardjo, legal protection is the effort to protect the interests of an individual by allocating a human right to that individual to act in the interests of that individual.

According to Law Number 40 of 1999 about the Press, legal protection is a safeguard offered by the government and/or society to individuals as they perform their duties, rights, responsibilities, and roles according to legal stipulations. Legal protection, outlined in Government Regulation Number 2 of 2002 regarding the Procedures for Protecting Victims and Witnesses in Severe Human Rights Violations, is a required service that law enforcement or security personnel must offer. Its purpose is to provide victims and witnesses with a feeling of physical and psychological safety against threats, harassment, intimidation, and violence from any individual, granted during the investigation, prosecution, and/or trial phases

3.1.2. Forms of Legal Protection

R. La Porta points out in the Journal of Financial Economics that the legal protection offered by a country comes in two forms: anticipatory (prohibitions) and disciplinary (sanctions). Having law enforcement bodies, such as courts, law enforcement officers, police, and groups that resolve disputes outside the courts, is the easiest way to provide legal protection.

The protection referred to is preventive (prohibited) in nature, i.e., creating regulations, while the protection referred to is punitive (sanction) in nature, i.e., enforcing regulations.

There are two legal subjects in civil law, namely natural persons and legal entities. Natural persons or *natuurlijke personen* are individuals or human beings who are considered competent under the law. Individuals as legal subjects are holders or bearers of rights from the moment they are born until they die. Although there is an exception that a baby who is still in its mother's womb is considered to be a legal subject as long as it is in their best interest.

Legal subjects in civil law are legal entities or *rechtspersonen*. Legal entities are groups of individuals or groups of legal entities. According to Satjipto Rahardjo, the law protects a person's interests by allocating power to them to act in their interests in a measured manner. Interests are the target of rights because rights contain elements of protection and recognition.

3.1.3. Purpose of legal protection

Relationships between communities give rise to laws that regulate and protect the interests of each community. The diversity of these legal relationships means that members of society need rules that can ensure balance so that chaos does not occur within society.

Law has the nature and function of regulating human behavior and has the characteristics of commanding and prohibiting. Likewise, law can compel members of society to obey it.

3.2. Review of Marriage

3.2.1. Definition of Marriage

Article 1 of Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 states that 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 lasting family (household) based on the belief in the One Supreme God.

From this definition, several meanings can be found, namely:

- a. Marriage is a physical and spiritual bond between a man and a woman as husband and wife.
- b. A physical and spiritual bond intended to form a happy, lasting, and prosperous family (household).
- c. The foundation of this physical and spiritual bond and the goal of eternal happiness is based on the belief in the One Supreme Being.

Marriage in Islam is called nikah, which is a contract or agreement to bind a man and a woman together, in order to make sexual relations between the two parties lawful, based on the voluntary consent and mutual agreement of both parties to achieve a happy family life filled with love and peace in ways that are pleasing to Allah.

Wirjono Prodjodikoro states that marriage is the cohabitation of a man and a woman who fulfill certain requirements. According to Subekti, marriage is a lawful union between a man and a woman for an extended period of time.

Article 4 of the Compilation of Islamic Law (KHI) states that marriage is valid if it is conducted in accordance with Islamic law as stipulated in Article 2 paragraph (1) of Law No. 1 of 1974 on Marriage. 47 It states, "Marriage is valid if conducted in accordance with the laws of each religion and belief." The issue of marriage, as outlined above, cannot be separated from the issue of sex and sexual relations between men and women, Because marriage is an institution that regulates such sexual relations to make them valid and permissible. Normal human beings naturally believe that the marriage they enter into is to legitimize and make lawful their biological relationship and to obtain legitimate offspring.

3.2.2. Requirements for a Valid Marriage

The requirements for marriage are the basis for a valid marriage. If the requirements are met, then the marriage is valid and gives rise to all the rights and obligations of husband and wife. The valid requirements for marriage are those that make the contract legally binding. If one condition is not met, then the contract is invalid. There are three conditions for a valid contract: the presence of witnesses, a woman who is not permanently or temporarily forbidden to the husband, and the contract must be permanent.

The requirements for conducting a marriage according to Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 are stipulated in Articles 6 to 12 as follows:

1. The consent of both prospective spouses (Article 6(1)).
2. The consent of both parents/guardians for prospective spouses who are under 21 years of age (Article 6, paragraphs (1), (2), (3), (4), (5), and (6)).

3. The prospective bride and groom are at least 19 years old, and the prospective bride is at least 16 years old (Article 7, paragraph (1)).
4. The prospective groom and prospective bride are not related by blood or family ties that would prohibit marriage (Article 8).
5. They are not already married to another person (Article 9).
6. For husbands and wives who have divorced, then remarried each other, and divorced again for the second time, their religion and beliefs do not prohibit them from marrying a third time. (Article 10)
7. Not being in a waiting period for a female bride who is a widow.

The validity of marriage in Indonesia is regulated in Article 2 of Law No. 1 of 1974, which states:

1. Marriage is valid if it is conducted in accordance with the laws of each religion and belief.
2. Every marriage must be registered in accordance with the applicable laws and regulations. Hazairin states: "For Muslims, it is not possible to marry in violation of their own religious laws. The same applies to Christians and Hindus-Buddhists as found in Indonesia."

3.2.3. Purpose of Marriage

Marriage is a means to achieve peace of mind and tranquility, to maintain purity from immoral acts, as well as a source of pleasure, happiness in life, a means of protecting oneself from falling into the abyss of disgrace, as well as a cause for obtaining righteous offspring who will bring benefits to humans in their lives in this world and after death. One of the principles of Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 is that the purpose of marriage is to form a happy and lasting family. Husbands and wives need to help and complement each other so that each can develop their personality and achieve spiritual and material well-being. In other words, the purpose of marriage is to form a happy, lasting, and prosperous family, therefore the Marriage Law adopts the principle of making divorce difficult, requiring specific reasons and must be done in court.

The purpose of marriage according to Law Number 16 of 2019, which is an amendment to Law Number 1 of 1974, is to form a happy and lasting family. Additionally, this law emphasizes the protection of children's rights and the improvement of family quality:

- Forming a happy and lasting family: The primary purpose of marriage is to create a harmonious, prosperous, and enduring family.
- Protection of children's rights: This law also sets age limits for marriage, with the aim of protecting children's rights, particularly the right to survival, development, and protection from violence and discrimination.
- Improving family quality: With the minimum age for marriage and other regulations, this law seeks to improve family quality through the formation of more mature and responsible families.

3.3. Review of Legitimate Children and Children Born Out of Wedlock

3.3.1. Definition of Children Born Out of Wedlock

An illegitimate child refers to a child born to a woman who is not in a legal marriage with the man who fathered her. In the meantime, out-of-wedlock refers to a relationship between

a man and a woman that may lead to children, while their connection is not established within a lawful marriage agreement defined by positive law and their religious beliefs.

Based on the explanation above, it is clear that a child born to parents who are not legally married according to Islamic principles is considered an illegitimate child. Religious scholars agree that a child cannot be legally recognized as the offspring of his father if his birth occurs before six months after the marriage, because they believe six months is the minimum gestation period from marriage to birth. Consequently, if a child is born less than six months after the marriage of his parents, the father cannot claim parental legitimacy.

3.3.2. Legal Relationship between Legitimate Children and Children Born Out of Wedlock with Their Parents

The status of a child as legitimate or born out of wedlock greatly affects the legal relationship between the child and both parents. A child born out of wedlock only has a relationship with the mother and the mother's family in accordance with Article 43(1) of Law No. 1 of 1974 on Marriage.

A child born out of wedlock only has a civil relationship with the mother and her family (Article 43 Paragraph (1) of Law Number 1 of 1974 concerning Marriage). The birth of a child out of wedlock has several consequences, including the fact that there is no obligation on the part of the father to take responsibility, which raises concerns that the rights of the child born out of wedlock will not be fulfilled. Article 43(1) of Law No. 1 of 1974 on Marriage, prior to the Constitutional Court Decision No. 46/PUU-VIII/2010, addressed the issue

Constitutional Court Decision No. 46/PUU-VIII/2010 has raised hopes for children born out of wedlock to receive protection of their rights without being affected by their parents' marriage administration, however, in this case, the child's status does not automatically change to that of a legitimate child; to change the status of an illegitimate child to that of a legitimate child, legal recognition is required. Every legal recognition of a child must be reported by the parents to the relevant authority within 30 (thirty) days from the date the child's parents entered into marriage and Obtaining a marriage certificate (Article 50(1) of Law No. 24 of 2013 amending Law No. 23 of 2006 on Population Administration), "the recognition of a child is only valid for a child whose parents have entered into a valid marriage according to religious law and state law (Article 50 Paragraph (2) of Law No. 24 of 2013 on Amendments to Law No. 23 of 2006 on Population Administration)," so that the rights of the child in question can be fulfilled, but in reality, not all marriages are registered in society, as registration is not considered important but merely an administrative requirement, resulting in the failure to fulfill the child's rights in full.

3.3.3 Rights and obligations of legitimate children and children born out of wedlock

Used as a weapon to fight for and advocate for someone whose rights have been violated. Indeed, the issue of children born out of wedlock is not explicitly addressed in the CRC or other conventions such as the Covenant on the Rights of the Child in Islam. This is understandable because the issue falls under civil law. If we refer to Law Number 23 of 2002 concerning Child Protection, which has been revised twice through Law Number 35 of 2014 and Law -Law No. 17 of 2016, at least four principles of children's rights that must be protected are outlined, namely: 1) The right to live, grow, and develop; 2) Non-discrimination; 3) The best interests of the child; and 4) Respect for the child's opinion. An illegitimate child who has been recognized by his father has civil rights. The civil relationship between the child and the father who recognizes him not only benefits the child, but also grants the biological father the right to receive support from the child born out of wedlock once the child reaches adulthood. This is the absolute reciprocal relationship between the child born out of wedlock and the father who has requested recognition. This maintenance obligation is not based on the child's rights and status as an heir, but rather because the maintenance obligation toward parents is more humanitarian in nature than legal in nature. In short, to acknowledge an illegitimate child, which has civil law consequences between the child and the father and

mother who acknowledge it, the man who has impregnated the woman illegally must marry the child obtained before the marriage (wedding) takes place.

Illegitimate children, once recognized by the relevant institution, do not have the same inheritance rights as legitimate children. The recognition of illegitimate children means that they are entitled to protection. According to Said, the essence of legal protection for children encompasses protection in the fields of public law and civil law, while non-legal protection covers the fields of social welfare, health, and education.

The application of the principle of civil rights of children born out of wedlock to biological fathers can be analogized with children born out of wedlock who have been recognized by their biological parents as stipulated in Article 280 of the Civil Code. This is because there are no legal facilities that can be used to follow up on the Constitutional Court's decision regarding children born out of wedlock. From a civil law perspective, children who have been recognized by their parents, even if they are children born out of wedlock, will have civil relations with their biological father and mother. The recognition of a child born out of wedlock creates a civil relationship between the child and the father and mother who recognize them, giving rise to reciprocal obligations such as the right to a family relationship, provision of financial support, guardianship, the right to use a name, inheritance, child care, and so on. The party acting as the marriage guardian for the child born out of wedlock is the judicial guardian. Therefore, as stipulated in Article 286 of the Civil Code, any person with an interest in the recognition of the child born out of wedlock may file a lawsuit to have the recognition revoked.

The inheritance rights of illegitimate children are not as extensive as those of legitimate children. Legitimate children can directly inherit their parents' estate, while illegitimate children who are recognized by their father can inherit together with the next group of intestate heirs. The recognition of children born out of wedlock in terms of inheritance rights as regulated in Articles 862-867 of the Civil Code is only intended for Chinese descendants. The condition for children born out of wedlock to inherit the deceased's estate is that there must be legal recognition by the parents who conceived the child. This legal relationship arises after the parent acknowledges the child born out of wedlock. In other words, a child born out of wedlock has the right to inherit the deceased's estate if the biological father acknowledges the child. The amount to be received depends on the legitimate portion.

The status of children born out of wedlock is regulated in Chapter XII of the Civil Code concerning Paternity and the Origin of Children. The status and position of children born out of wedlock differs from that of legitimate children. Children born out of wedlock only have the same status as legitimate children, both biologically and legally, after they have been legitimized or absolutely recognized by their father and mother. Article 280 of the Civil Code states that the recognition of a child born out of wedlock establishes a civil relationship between the child and its father and mother as a legitimate child. Such recognition must be accompanied by marriage between the man who impregnated the woman and the woman who was impregnated. The legal consequence of absolute recognition of an illegitimate child is that it creates civil rights between the illegitimate child and his or her parents. This recognition means that a father (husband) can have illegitimate children and creates reciprocal obligations between parents and their children. Before being recognized by the institution of recognition, a child born out of wedlock does not have civil rights with his father. However, after such recognition, a child born out of wedlock is entitled to the identity of his parents, financial support, care, guardianship, and even inheritance from both his father and mother, albeit to a limited extent.

4. Conclusion

Legal protection for children born out of wedlock in Indonesia has long faced injustice and discrimination, especially prior to Constitutional Court (MK) Decision No. 46/PUU-VIII/2010. Previously, these children only had a legal relationship with their mother and her family, without receiving civil rights from their biological father, such as financial support, maintenance, and inheritance. This Constitutional Court decision is important in providing fairer legal protection by recognizing the civil relationship between children born out of wedlock and their biological fathers if it can be scientifically proven, such as through DNA testing.

However, the implementation of legal protection still faces various obstacles, including social, cultural, and administrative ones. Therefore, it is recommended that the state and all relevant parties:

1. Legal Reform: Strengthen the legal framework that protects children born out of wedlock by revising regulations to allow for the recognition of biological paternity and equal inheritance rights.
 2. Improving Legal Education: Educating the public about the rights of children born out of wedlock to reduce social stigma and increase legal awareness.
 3. Providing Easy Access: Simplifying the legal recognition process for these children, including providing effective validation and legal recognition mechanisms.
- Harmonizing the Law: Aligning regulations between Islamic law and positive law to ensure comprehensive and fair protection for children, while respecting the religious and social values of Indonesian society.

With these steps, it is hoped that the rights of children born out of wedlock can be optimally fulfilled in accordance with human rights principles and applicable regulations.

References

- 1945 Constitution (Jakarta, Secretary General & Registrar of the Constitutional Court of the Republic of Indonesia, 2009), p. 54
- A. Mukti Arto, Discussion on the Constitutional Court of the Republic of Indonesia Decision Number 46/PUU-HIV/2010 dated February 27, 2012, concerning the amendment of Article 43 of the UUP, (Discussion Material for Judges of the Ambon PTA and Ambon PA Together with Court Officials on March 16, 2012 at the Ambon PTA Auditorium) p. 1
- Abdul Manan, 2008, Various Issues in Islamic Civil Law in Indonesia, Kencana, Jakarta, p. 80 .Faqihuddin Abdul Kodir and Lies Marcoes Natsir, Fikih Hak Anak: Menimbang Pandangan Alquran, Hadis, Dan Konvensi Internasional Untuk Perbaiki Hak-Hak Anak, I (South Jakarta: Yayasan Rumah Kita Bersama, 2022). p. 59
- Asnawi, Habib Shulton. 2013. Legal Politics of Constitutional Court Decision No. 46/PUU-VIII/2010 on the Status of Children Born Out of Wedlock: Efforts to Dismantle Legal Positivism Towards Human Rights Protection, Journal of Constitution Vol. 10 No.2, June.
- Bambang Sunggono, Legal Research Methods. Op. Cit, p. 10.
- Bismar Siregar, "Legal Aspects of the Protection of Children's Rights: A Review," Law and Children's Rights, (Jakarta: Rajawali, 1986), pp. 22-23.
- Burhan Bungin, Qualitative Research Data Analysis, Raja Grafindo Persada, Jakarta, 2007, p. 10.
- Compilation team for the Central Dictionary for Language Development and Improvement, Great Dictionary of the Indonesian Language, Second Edition, 1st printing (Jakarta: Balai Pustaka, 1991) Page 595
- Constitutional Court Decision Number 46/PUU-VIII/2010 and Law Number 1 of 1974 Concerning CST. Kansil, Introduction to Indonesian Law and Legal System, (Jakarta: Balai Pustaka, 2009), p. 40
- Dr. Abdul Aziz Muhammad Azzam and Dr. Abdul Wahab Sayyed Hawwas, op.cit., p. 100
- H.R. Sardjono and Frieda Husni Hasbullah, Bunga Rampai Perbandingan Hukum perdata (Comparative Civil Law Anthology), p. 143.
- Hazairin, 1975, Review of Marriage Law No. 1 of 1974, Tintamas, Jakarta, p. 5.

- Hetty Hasanah, "Consumer Protection in Consumer Financing Agreements for Motor Vehicles with Fiduciary," article accessed on June 1, 2015, from <http://jurnal.unikom.ac.id/vol3/perlindungan.html>.
- Irma Setyowati Soemitro, *Legal Aspects of Child Protection*, (Jakarta: Bumi Aksara, 1990), p. 14
- Kusumadewi, "Legal Consequences for Children Born Out of Wedlock in the Distribution of Inheritance Following Law Number 35 of 2014 concerning Child Protection, (Bandung: Fokusmedia, 2014), p. 54
- Lutfiyah, N. (2002). Pros and Cons of Constitutional Court Decision Number 46/PuuVIII/2010 Regarding the Status and Rights of Children Born Out of Wedlock. *Mahabits: Journal of Family Law*, 3(02), 144-155.
- M. Yahya Harahap, *National Marriage Law*, CV. Zahir Trading Co, 1975, Medan, p. 11.
- Muhammad Fachri Said, "Legal Protection for Children from a Human Rights Perspective," *JCH (Journal of Legal Scholars)* 4, no. 1 (2018): 141, <https://doi.org/10.33760/jch.v4i1.97>, pp. 145-146
- Mulia, Siti Musdah. 2010. *Islam and Human Rights: Concepts and Implementation*. Yogyakarta: Naufan Pustaka.
- Musfir Aj-Jahrani, *Polygamy from Various Perspectives*, Gema Insani Press, 1997, Jakarta, p. 15.
- Patent Holders Need Legal Protection," *Republika*, May 24, 2004.
- Rafael La Porta, "Perlindungan Investor dan Tata Kelola Korporasi; *Jurnal Ekonomi Keuangan*", No. 58, (Oktober 1999): hlm. 9.
- Rahayu, 2009, *Transportation of Persons*, etd.eprints.ums.ac.id. Government Regulation of the Republic of Indonesia Number 2 of 2002 Concerning Procedures for the Protection of Victims and Witnesses in Cases of Gross Violations of Human Rights Law of the Republic of Indonesia Number 23 of 2004 Concerning the Elimination of Domestic Violence
- Satjipto Rahardjo, *Ilmu Hukum (Legal Science)*, 6th edition (Bandung: PT. Citra Aditya Bakti, 2006), p.54
- Satjipto Rahardjo, *Other Aspects of Law in Indonesia*, (Jakarta: Kompas, 2003), p. 121.
- Setiono, "Rule of Law," (Surakarta: Master's Thesis, Faculty of Law, Sebelas Maret University, 2004), p. 3.
- Soemiyati, *Islamic Marriage Law and Marriage Law*, Liberty, 1986 Yogyakarta, p.15.
- Subekti, *Principles of Civil Law*, 1992, PT. Intermasa, Bandung, p. 1.
- The 1945 Constitution (Jakarta, Secretary General & Registrar of the Constitutional Court of the Republic of Indonesia, 2009)
- Wiryo Prodjodikoro, *Marriage Law in Indonesia*, Sumur, 1984, Bandung, p. 7.