



LEGAL IMPLICATIONS OF THE CONSTITUTIONAL COURT DECISION NUMBER 46/PUU-VIII/2010 ON THE INHERITANCE RIGHTS OF CHILDREN BORN OUT OF WEDDING FROM THEIR BIOLOGICAL FATHER IN INDONESIA

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Abstract

The Decision of the Constitutional Court of the Republic of Indonesia No. 46/PUU-VIII/2010 marks an important milestone in the legal status of children born out of wedlock with respect to their biological fathers, who have long been deprived of the civil rights or relationships they should have received from their biological fathers. Until now, Article 43(1) of Law No. 1 of 1879 has served as a barrier to civil relationships between children born out of wedlock and their biological fathers. Prior to the decision of the Constitutional Court of the Republic of Indonesia No. 46/PUU-VIII/2010, children born out of wedlock had legal relationships only with their mothers and their mothers' families. This resulted in severely limited rights for the children, including regarding identity, child support, and inheritance rights. This study aims to analyze changes in the legal status of children born out of wedlock before and after the Constitutional Court's decision, as well as to examine the legal aspects of inheritance rights from the biological father and to identify obstacles in the implementation of inheritance law in Indonesia. In this study, the author employs a normative legal methodology, through a legislative approach, case studies, literature reviews, court decisions, and other legal documents. In the research findings, the author discovered that the implications of the Constitutional Court's decision have opened the door to the recognition of civil relationships between children born out of wedlock and their biological fathers, provided that scientific and legal evidentiary requirements are met. Consequently, from a normative perspective, access to inheritance rights can be considered open. However, this Constitutional Court decision does not explicitly affirm the inheritance rights norms contained within its ruling. Consequently, there is a lack of harmony within Indonesia's inheritance legal system—which incorporates the Civil Code (Burgerlijk Wetboek), the Compilation of Islamic Law, and customary law—leading to uncertainty in judicial practice, interpretive debates, and legal uncertainty. In conclusion, Constitutional Court Decision No. 46/PUU-VIII/2010 affirms the protection of children's rights and the principle of non-discrimination in the form of constitutional justice. The author believes there is a need for technical judicial guidelines, legal certainty, and substantive justice for children born out of wedlock.

Keywords: Constitutional Court Decision, children born out of wedlock, civil rights including inheritance rights, biological father, legal protection, legal certainty.

INTRODUCTION

The relationship and legal status of children within the Indonesian family law system constitute fundamental dimensions of civil law because they determine legal identity, parental responsibility, maintenance, guardianship, and inheritance rights. The legal position of children born outside a lawful marriage has historically been particularly problematic because Indonesian family law has developed through the interaction of statutory law, Islamic law, customary law, and constitutional jurisprudence. Prior to Constitutional Court Decision No. 46/PUU-VIII/2010, Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage restricted the civil relationship of a child born

outside marriage to the mother and the mother's family. This formalistic construction generated uncertainty concerning the child's civil relationship with the biological father and limited the realization of the child's rights. Comparative research has shown that the Indonesian framework has continued to face difficulties in translating the Constitutional Court's ruling into consistent legal practice, particularly in establishing civil relationships between children and biological fathers (Latumahina, 2018). The Constitutional Court's interpretation can therefore be understood as part of the development of progressive constitutional law, in which judicial interpretation seeks to move beyond rigid formalism toward substantive justice (Sarifudin & Abdillah, 2019).

The problem is not merely one of formal legal status but also concerns equality and the protection of children's fundamental rights. Children cannot reasonably be held responsible for the circumstances surrounding their birth. Research on discrimination against children born outside marriage in Indonesia demonstrates that birth status may become a source of unequal treatment and legal vulnerability (Sabrina et al., 2020). This concern is consistent with Akmal (2018), who emphasizes the importance of legal protection for children within the Indonesian legal system, particularly in ensuring that children receive protection from conditions that may place them in a legally vulnerable position. Similarly, studies of Indonesian Islamic family law have shown that the legal classification of children born outside marriage differs between positive law and Islamic law, producing different consequences regarding lineage, maintenance, guardianship, and inheritance (Adi Astiti & Nansarunai, 2020; Sulistiani, 2020). The interaction between Islamic legal principles and national legislation is also important because Indonesian family law develops within a plural legal framework in which Islamic norms may contribute to the formulation and development of national legislation (Kalingga et al., 2022). The protection of children's rights must therefore be understood as a substantive legal obligation rather than merely a formal recognition of status. This is consistent with research emphasizing that children are rights-holders whose civil, developmental, and protection rights require active attention from the state and society (Hasibuan & Yeltriana, 2021).

From the perspective of Islamic family law, the central difficulty concerns the concept of *nasab* (lineage). Classical Islamic jurisprudence generally establishes paternal lineage through a valid marital relationship, resulting in a distinction between biological and legally recognized fatherhood. Martoredjo (2021) demonstrates that the status of children born outside marriage must be examined at the intersection of Islamic law and human rights principles. Similar comparative analysis confirms that positive Indonesian law and Islamic law do not always provide identical consequences for children born outside marriage (Husni et al., 2021). At the same time, Jurjani (2021) identifies a significant legal development after Constitutional Court Decision No. 46/PUU-VIII/2010, particularly because scientific and technological evidence may be used to establish a biological relationship between a child and the alleged father. These developments demonstrate a transition from a purely formal concept of parenthood toward a more evidence-based approach to biological affiliation.

Constitutional Court Decision No. 46/PUU-VIII/2010 consequently represents a major paradigm shift. The Court reinterpreted Article 43 paragraph (1) of the Marriage Law by recognizing that a child born outside marriage may have a civil relationship with a man who can be scientifically or legally proven to be the biological father. This approach strengthens the child's rights to identity, maintenance, and other civil interests. In the specific context of inheritance, Falahiyati (2018) examines the rights of children born outside marriage under the Civil Code in relation to Constitutional Court Decision No. 46/PUU-VIII/2010, demonstrating that the Court's decision has significant implications for the legal recognition of inheritance rights of children born outside marriage. Paburru (2022) explains that the decision creates important juridical implications for inheritance when the biological relationship between the child and father can be established. Nevertheless, the decision does not provide a comprehensive mechanism concerning the determination of inheritance shares or the procedural implementation of such rights. The issue of proof is equally significant because DNA testing may become an important evidentiary instrument in establishing biological parenthood, although its legal consequences remain contested within the plural Indonesian legal system (Yuliana & Rahayu, 2022). Falahiyati (2018) further demonstrates that the relationship between the Constitutional Court's decision and the inheritance rights of children born outside marriage cannot be separated from the provisions of the Civil Code. This indicates that the recognition of a civil relationship following the Constitutional Court's decision requires further examination of the specific inheritance regime applicable to the child.

The Constitutional Court's decision must also be examined from the perspective of justice. Tirmidzi et al. (2022) demonstrate that the inheritance position of children born outside marriage raises a tension between principles of legal justice and the Sunni inheritance framework. The debate is therefore not simply whether biological fatherhood can be scientifically established, but whether biological evidence should automatically generate the same legal consequences as *nasab* established through marriage. Jarir, Lukito, and Ichwan (2023) identify this issue as a continuing discursive debate among Indonesian Islamic jurists, particularly concerning the relationship between the

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Constitutional Court's progressive interpretation, Islamic jurisprudence, and Islamic inheritance law. The inheritance dimension is particularly important because Indonesian inheritance law is pluralistic. Under the Civil Code (*Burgerlijk Wetboek*), acknowledgment of an extramarital child may establish inheritance rights under the applicable provisions, whereas Islamic inheritance law generally connects paternal inheritance to legally recognized *nasab*. Falahiyati (2018) specifically identifies the Civil Code as an important legal basis for examining the inheritance rights of children born outside marriage and demonstrates the relevance of Constitutional Court Decision No. 46/PUU-VIII/2010 to the interpretation of those rights. Alif Aisyah Ainur Khoyum *et al.* (2023) demonstrate that Islamic law continues to present significant restrictions on paternal inheritance for children born outside marriage. Similarly, AlFathin, Sadari, and Bahrudin (2023) identify differences between the Civil Code and the Compilation of Islamic Law concerning the distribution of inheritance to children born outside marriage. These differences create the possibility of divergent legal outcomes depending on the legal system applied to the particular family relationship.

The issue is further complicated by the existence of customary law. Anggraeni (2023) demonstrates that Indonesian inheritance law operates within a plural legal environment in which Islamic law, state law, and customary law may interact or conflict. This pluralism means that the implementation of Constitutional Court Decision No. 46/PUU-VIII/2010 cannot be separated from the broader structure of Indonesian inheritance law. The broader relationship between Islamic law and national legislation is also relevant in understanding this pluralistic framework, as Kalingga, Falahiyati, and Siregar (2022) demonstrate that Islamic principles have contributed to the development of Indonesian national legislation. This reinforces the need to examine inheritance rights through an approach that recognizes the interaction between religious norms and positive law. Suroaji, Hudi, and Munasir (2024), for example, show that the Constitutional Court's approach differs significantly from the classical position of the Shafi'i school, particularly concerning the inheritance consequences of paternal lineage. Maulana *et al.* (2024) likewise identify the continuing tension between *nasab*, inheritance, and the development of scientific evidence, including DNA testing.

The central problem, therefore, is the legal uncertainty created by the absence of a sufficiently detailed mechanism for implementing the civil relationship recognized by the Constitutional Court. Falahiyati (2018) is particularly relevant to this problem because the study links the Constitutional Court's decision directly with the inheritance rights of children born outside marriage under the Civil Code, thereby demonstrating that recognition of a civil relationship must be followed by clarity concerning the concrete legal consequences of that relationship. The uploaded study by Ahmad, Sahbudi, and colleagues similarly concludes that Decision No. 46/PUU-VIII/2010 opened the possibility of civil rights, including inheritance rights, but did not expressly formulate the inheritance mechanism, resulting in uncertainty within the interaction of the Civil Code, Compilation of Islamic Law, and customary law. The study further identifies the need for technical judicial guidelines, harmonization of inheritance norms, and clearer mechanisms for determining inheritance rights.

Recent scholarship also demonstrates that DNA evidence cannot be examined exclusively from the perspective of state law. Disantara *et al.* (2024) argue that the legal standing of DNA evidence in determining the civil relationship between an extramarital child and a biological father must be considered within Indonesia's legal pluralism. Their analysis highlights the tension between the Constitutional Court's recognition of biological relationships and Article 100 of the Compilation of Islamic Law, which continues to establish the maternal relationship as the principal legal relationship for children born outside marriage. This demonstrates that scientific certainty concerning biological parenthood does not automatically resolve the normative question of inheritance.

Accordingly, the principal research gap lies not simply in determining whether Constitutional Court Decision No. 46/PUU-VIII/2010 expanded the civil relationship between children born outside marriage and their biological fathers, but in determining the precise legal consequences of that relationship for inheritance. The study by Falahiyati (2018) strengthens this research gap because it specifically examines the inheritance rights of children born outside marriage in relation to the Constitutional Court decision under the Civil Code, while the present research can extend the analysis by examining the interaction among the Civil Code, Islamic inheritance law, customary law, and evidentiary mechanisms. The existing literature has separately examined constitutional protection, paternity, DNA evidence, Islamic inheritance, the Civil Code, and legal pluralism. However, these dimensions require further synthesis into a coherent model of inheritance that simultaneously accommodates constitutional child protection, the principle of non-discrimination, evidentiary certainty, Islamic *nasab*, Civil Code provisions, and customary inheritance practices. The pluralistic character of Indonesian inheritance law means that legal reform should not merely expand rights in principle but should also provide predictable mechanisms for proving parentage, determining heirship, calculating inheritance shares, and resolving conflicts between competing legal regimes. Therefore, a

specific and comprehensive study is required to harmonize the inheritance rights of children born outside marriage within the Indonesian legal system and to ensure that constitutional recognition is translated into substantive justice and legal certainty.

LITERATURE REVIEW

Legal Protection Theory

Legal protection theory provides an important theoretical foundation for examining the civil rights of children born out of wedlock, particularly following Constitutional Court Decision Number 46/PUU-VIII/2010. According to Hadjon (2023), legal protection constitutes an effort to guarantee and safeguard the rights of legal subjects through available legal instruments. Such protection may take both preventive and repressive forms, namely prevent violations of legal rights and provide remedies when violations occur. In the context of child protection, legal protection must place the child as a rights-bearing legal subject rather than merely as an object of protection. Hasibuan and Yeltriana (2024) emphasize that children's rights, including civil rights, protection, development, and participation, must be respected and fulfilled without discrimination based on social or family circumstances.

This theoretical perspective is particularly relevant to children born out of wedlock because their birth status is not the result of an autonomous legal choice made by the child. Consequently, the deprivation or limitation of civil rights solely on the basis of birth status may generate structural vulnerability. Constitutional Court Decision Number 46/PUU-VIII/2010 represents an important development in this respect because it expanded the civil relationship of a child born out of wedlock beyond the mother and the mother's family to include the biological father where the biological relationship can be established through scientific or other legally recognized evidence. The attached study by Ahmad *et al.* (2024) confirms that the decision opened legal space for recognizing the civil relationship between a child born out of wedlock and the biological father and thereby strengthened the constitutional protection of the child's civil rights.

The recognition of the biological father is therefore not merely an issue of paternal identification but also concerns the legal consequences arising from the civil relationship. Ahmad *et al.* (2024) explain that the expanded civil relationship may encompass identity, maintenance, and inheritance interests. However, the same study identifies a significant regulatory gap because the Constitutional Court's decision does not expressly establish a detailed mechanism for exercising inheritance rights from the biological father. Thus, from the perspective of legal protection theory, recognition of the biological relationship should be followed by effective legal mechanisms that enable children to exercise the civil rights arising from that relationship. This argument is also consistent with the broader child-protection perspective found in the attached study by Hasibuan and Yeltriana (2024), which emphasizes that child protection should position children as rights-holders and requires the state and other stakeholders to respect, protect, and fulfill children's rights. Therefore, legal protection theory in this study is used not only to examine whether the Constitutional Court has recognized the child's civil relationship with the biological father, but also to evaluate whether such recognition provides effective protection of the child's economic and inheritance rights.

Theory of Justice

The theory of justice constitutes a second theoretical foundation for analyzing the inheritance rights of children born out of wedlock following Constitutional Court Decision Number 46/PUU-VIII/2010. Rawls (1971), through the concept of justice as fairness, emphasizes the importance of equal basic rights and fair distribution of social and legal benefits. Differences in treatment may only be justified when they improve the position of those who are least advantaged. This principle is particularly relevant to children born out of wedlock because birth status is not a condition chosen by the child. Consequently, imposing adverse civil consequences on children because of the circumstances of their parents may constitute an unjust distribution of legal rights and burdens. Before Constitutional Court Decision Number 46/PUU-VIII/2010, Article 43 paragraph (1) of the Marriage Law restricted the civil relationship of children born out of wedlock to their mother and the mother's family. As a result, children were deprived of legal consequences associated with the biological father, including recognition, maintenance, and potential inheritance rights. Ahmad *et al.* (2024) similarly identify the pre-decision framework as producing a significant limitation on the civil rights of children born out of wedlock. From a Rawlsian perspective, Constitutional Court Decision Number 46/PUU-VIII/2010 can therefore be interpreted as a corrective constitutional intervention intended to reduce an existing structural inequality. The Court recognized that a biological relationship established through scientific or other legally valid evidence may generate a civil relationship between the child and the biological father. This approach moves away from an exclusively formalistic conception of parenthood and provides a basis for greater substantive equality. Ahmad *et al.* (2024) explicitly relate the decision to the principles of non-discrimination, equality before the law, and the best interests of the child.

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Nevertheless, recognition of a civil relationship does not automatically resolve the question of distributive justice in inheritance. Justice requires not only recognition of legal status but also the availability of an effective mechanism through which the recognized right can be exercised. In this respect, the absence of clear rules concerning inheritance shares, heirship determination, and inheritance distribution may continue to place children born out of wedlock in a disadvantaged position. The attached research identifies this problem as a consequence of the absence of detailed inheritance provisions in the Constitutional Court's decision.

The theory of justice is therefore employed in this study to examine whether the post-decision legal framework has achieved substantive equality for children born out of wedlock. The analysis does not assume that equality necessarily requires identical inheritance treatment under every legal system. Rather, it evaluates whether differences in inheritance treatment can be legally and constitutionally justified and whether the resulting legal arrangement adequately protects children who bear no responsibility for their parents' marital circumstances.

Legal Certainty Theory

Legal certainty theory constitutes the third analytical foundation of this study. Legal certainty requires legal norms to provide sufficiently clear, predictable, and consistent guidance regarding the rights and obligations of legal subjects. In Radbruch's conception, justice, utility, and legal certainty constitute fundamental elements that must operate in a balanced manner within a legal system. This theory is highly relevant to Constitutional Court Decision Number 46/PUU-VIII/2010 because the decision provides greater certainty concerning the civil status of children born out of wedlock but does not completely resolve the consequences of such recognition in the field of inheritance. Ahmad *et al.* (2024) identify the decision as a fundamental change because it recognizes a civil relationship between the child and the biological father where the relationship can be established through scientific or legally recognized evidence. However, the decision does not establish detailed rules regarding inheritance shares, procedures for determining heirs, or the technical distribution of inherited assets.

1. Legal certainty concerning the status of children born out of wedlock

The first dimension of legal certainty concerns the legal status of children born out of wedlock. The Constitutional Court's reinterpretation of Article 43 paragraph (1) established that the civil relationship of such children may extend to the biological father when the biological relationship is proven scientifically or through other legally recognized evidence. This provides an important legal basis for recognizing the child as a legal subject with civil rights connected to the biological father. The significance of this development lies in the shift from a purely formal approach based on marital status toward an approach that recognizes biological reality within the boundaries of legal proof. Accordingly, scientific evidence, including DNA testing, may become relevant in establishing the factual basis of the civil relationship.

2. Legal certainty in the exercise of inheritance rights

The second dimension concerns the exercise of inheritance rights. Although recognition of the civil relationship creates a normative basis for considering inheritance claims, Constitutional Court Decision Number 46/PUU-VIII/2010 does not specify the detailed mechanism for determining the inheritance rights of children born out of wedlock. The attached research specifically identifies the absence of rules concerning inheritance shares, determination of heirs, and distribution procedures as a source of legal uncertainty. This gap is particularly significant because recognition of the civil relationship and realization of inheritance rights are legally distinct stages. The first concerns whether a child can establish a civil relationship with the biological father, whereas the second concerns the consequences of that relationship within the applicable inheritance regime. Without clear rules governing the second stage, constitutional recognition may remain difficult to implement consistently.

3. Legal certainty within Indonesia's plural inheritance system

The third dimension concerns the plurality of inheritance law in Indonesia. Indonesian inheritance law involves, among others, the Burgerlijk Wetboek (Civil Code), Islamic inheritance law as reflected in the Compilation of Islamic Law (KHI), and customary law. These systems may employ different concepts concerning parentage, inheritance entitlement, and the legal consequences of biological relationships. The attached research identifies this plurality as one of the principal sources of legal uncertainty following Constitutional Court Decision Number 46/PUU-VIII/2010. The Civil Code adopts a legal framework in which recognition of an extramarital child may generate inheritance consequences, while Islamic inheritance law places greater emphasis on *nasab*. Consequently, the Constitutional Court's biological approach and the Islamic law concept of lineage may produce different legal consequences. This problem is not merely theoretical. The attached research concludes that the absence of harmonized and technical regulations may generate divergent interpretations and inconsistent judicial decisions. It consequently recommends clearer judicial guidelines, harmonization between the Civil Code and the Compilation of Islamic Law, clearer rules concerning inheritance shares, and accessible mechanisms for establishing biological

relationships. The discussion of legal certainty is also relevant to the broader application of the Compilation of Islamic Law. The study by Hizbullah *et al.* (2024) demonstrates that insufficient public understanding of KHI provisions concerning family property can contribute to family disputes, indicating the practical importance of clear and accessible legal norms in family-law matters. Although that study concerns joint property rather than inheritance, its findings reinforce the broader proposition that clarity and public understanding of KHI provisions are important for reducing family-law conflicts. Accordingly, legal certainty theory is used in this study to assess whether Constitutional Court Decision Number 46/PUU-VIII/2010 has provided sufficient normative clarity and implementation consistency concerning the inheritance rights of children born out of wedlock. The analysis focuses on the gap between constitutional recognition of the biological relationship and the absence of a sufficiently detailed inheritance mechanism. In this framework, legal certainty requires not only recognition of the child's legal status but also clear standards of proof, determination of heirship, inheritance shares, and procedures for resolving conflicts between the Civil Code, Islamic law, and customary law.

METHOD

This research employs a normative-juridical method—a form of legal research focusing on the study of legal norms, principles, and doctrines through literature review. This approach relies on the analysis of secondary legal materials to examine relevant legal rules. This method was selected because the research focuses on analyzing Constitutional Court of the Republic of Indonesia Decision Number 46/PUU-VIII/2010 and its implications for the inheritance rights of children born out of wedlock regarding their biological fathers.

The research does not utilize empirical data; instead, it analyzes primary, secondary, and tertiary legal materials within the Indonesian national legal system.

The approaches employed include:

1. Statute approach

This approach involves examining relevant regulations—such as the Marriage Law (specifically Article 43 paragraph (1)), the *Burgerlijk Wetboek* (Civil Code), and the Compilation of Islamic Law—to identify the norms governing the status and inheritance rights of children born out of wedlock.

2. Case approach

This approach focuses on analyzing Constitutional Court Decision Number 46/PUU-VIII/2010, particularly the legal reasoning (*ratio decidendi*) and its implications for the evolution of inheritance law concerning children born out of wedlock in Indonesia.

3. Conceptual approach

This approach is used to examine relevant theoretical concepts—such as legal protection, justice (Rawls, 1971), and legal certainty (Radbruch)—as a basis for evaluating the implementation of the Constitutional Court's decision. Through these three approaches, this research aims to provide a comprehensive analysis of the implications of the Constitutional Court's decision regarding the inheritance rights of children born out of wedlock, as well as the challenges associated with its implementation within the Indonesian legal system. Data collection in this normative legal research focuses on identifying relevant secondary legal materials. Data is obtained by examining primary, secondary, and tertiary legal materials related to the legal issue under investigation. In this study, data collection is directed toward analyzing the implications of the Constitutional Court of the Republic of Indonesia Decision Number 46/PUU-VIII/2010 regarding the inheritance rights of children born out of wedlock from their biological fathers.

Data collection is carried out using three primary methods:

1. Library research

Conducted by reviewing legal literature—such as books, journals, scholarly articles, and prior research—concerning children born out of wedlock, civil law relationships, and inheritance law. This technique is used to establish a theoretical foundation, specifically regarding theories of legal protection, justice, and legal certainty.

2. Case study analysis

Conducted by analyzing Constitutional Court Decision Number 46/PUU-VIII/2010, focusing on the legal reasoning (*ratio decidendi*), changes in legal norms, and the implications for the inheritance rights of children born out of wedlock.

3. Legal document study

Conducted by examining relevant regulations—such as the Marriage Law, the *Burgerlijk Wetboek* (Civil Code), and the Compilation of Islamic Law—to compare applicable norms and identify instances of harmonization or conflict within the inheritance legal system.

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Through these three techniques, the research aims to generate systematic and comprehensive data to support a juridical analysis of the inheritance rights of children born out of wedlock following the Constitutional Court's decision.

Data analysis in normative legal research involves the systematic processing of legal materials to address the research problem. This analysis is conducted through the inventory, interpretation, and examination of legal materials to construct legally sound arguments that meet scientific standards. In this study, the analysis focuses on the implications of the Constitutional Court of the Republic of Indonesia Decision Number 46/PUU-VIII/2010 regarding the inheritance rights of children born out of wedlock vis-à-vis their biological fathers.

The data analysis techniques employed comprise three approaches:

1. Descriptive-analytical analysis

Used to systematically outline legal norms concerning the status of children born out of wedlock and their inheritance rights as stipulated in the Marriage Law, the Burgerlijk Wetboek (Civil Code), the Compilation of Islamic Law, and the Constitutional Court decision. Subsequently, the relationship between changes in these norms and their legal implications is analyzed.

2. Prescriptive analysis

Used to formulate arguments and propose solutions regarding the identified legal issues. This approach focuses on the need to harmonize inheritance regulations to ensure legal certainty for children born out of wedlock.

3. Interpretative analysis

Used to interpret legal norms and the Constitutional Court decision, particularly given that the decision does not explicitly regulate inheritance mechanisms. Interpretation is essential to understand the significance of the expanded civil relationship and its implications for the status of heirs.

Through these three techniques, this study aims to produce a comprehensive analysis encompassing norm descriptions, legal interpretations, and normative recommendations regarding the inheritance rights of children born out of wedlock within the Indonesian legal system.

RESULTS AND DISCUSSION

The presentation of data in this study focuses on changes in legal norms regarding the status of children born out of wedlock, comparing the situation before and after the Constitutional Court of the Republic of Indonesia Decision Number 46/PUU-VIII/2010.

1. Before the Constitutional Court Decision

Article 43 paragraph (1) of Law Number 1 of 1974 limited the civil law relationship of a child born out of wedlock solely to the mother and the mother's family; consequently, no legal relationship existed with the biological father, including regarding inheritance rights.

2. After the Constitutional Court Decision

Constitutional Court Decision Number 46/PUU-VIII/2010 expanded the civil law relationship of a child born out of wedlock to include not only the mother but also the biological father, provided the biological link can be proven scientifically and legally. This change opens up broader access to civil rights, including the possibility of inheritance rights.

3. Implications for inheritance rights

In principle, the expansion of this civil law relationship creates the opportunity for a child born out of wedlock to claim inheritance rights from their biological father. However, due to the absence of technical regulations within the Constitutional Court's decision, its implementation continues to give rise to differing interpretations in judicial practice. Constitutional Court of the Republic of Indonesia Decision Number 46/PUU-VIII/2010 expanded the definition of the civil law relationship between a child born out of wedlock and their biological father. While Article 43 paragraph (1) of the Marriage Law previously recognized the relationship only with the mother and the mother's family, the Constitutional Court's decision recognized such a relationship with the biological father as well, based on scientific and legal evidence.

This change gives rise to several legal implications, namely:

1. Right to maintenance

A child born out of wedlock is entitled to care and maintenance from the biological father as a form of legal responsibility.

2. Right to identity

The child gains stronger recognition of legal identity, including the link to the biological father within legal administrative records.

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3. Right to inheritance

Recognition of the civil law relationship opens the possibility of inheritance rights from the biological father; however, the technical mechanisms and distribution methods have not yet been regulated, leading to continued uncertainty.

4. Responsibility of the biological father

The Constitutional Court's decision affirms that a biological father cannot evade legal responsibility toward a child with whom he shares a blood relationship. Nevertheless, the implementation of inheritance rights still faces normative challenges due to the pluralistic nature of Indonesia's inheritance law system (comprising the *Burgerlijk Wetboek* [Civil Code], the Compilation of Islamic Law, and customary law). These differing systems have the potential to cause conflicts of norms and a lack of uniformity in judicial rulings.

Theoretically, the Constitutional Court of the Republic of Indonesia Decision Number 46/PUU-VIII/2010 can be understood as a form of constitutional justice—an effort by the state to guarantee the protection of citizens' fundamental rights through a progressive interpretation of the Constitution. In this ruling, the Constitutional Court interpreted Article 43 paragraph (1) of the Marriage Law substantively, extending the civil legal relationship of a child born out of wedlock to include not only the mother but also the biological father. From a scholarly perspective, the ruling is grounded in human rights principles, specifically the principles of non-discrimination and equality before the law. Birth status cannot serve as a basis for differentiating rights, as doing so conflicts with the principle of child protection—as stipulated in the Convention on the Rights of the Child—which guarantees every child's right to an identity and protection without discrimination.

Furthermore, the Constitutional Court based its considerations on the principle of the "best interests of the child," holding that any legal policy concerning children must prioritize their best interests regarding their growth, development, and the protection of their rights. In this context, recognizing the relationship with the biological father serves as a mechanism to protect the child's rights to identity, financial support, and inheritance. Thus, Constitutional Court Decision Number 46/PUU-VIII/2010 represents not merely a change in legal norms but also reflects the evolution of modern law grounded in human rights, child protection, and substantive justice. The research findings indicate that the Constitutional Court of the Republic of Indonesia Decision Number 46/PUU-VIII/2010 is closely linked to the legal theories serving as the analytical framework: legal protection, justice, and legal certainty.

1. Theory of legal protection

According to Hadjon (1987), legal protection aims to safeguard the rights of legal subjects against discriminatory provisions. The Constitutional Court decision expanded this protection by recognizing the civil law relationship of a child born out of wedlock not only with the mother but also with the biological father, thereby guaranteeing rights regarding identity, financial support, and potential inheritance.

2. Theory of justice

From the perspective of Rawls (1971), justice demands equal treatment without discrimination. The Constitutional Court decision aligns with this principle by eliminating the disparity in status faced by children born out of wedlock—who were previously deprived of civil rights vis-à-vis their biological fathers—thereby providing substantive justice for the child, who bears no fault for the circumstances of their birth.

3. Theory of legal certainty

According to Radbruch, the law must ensure justice, utility, and certainty. The Constitutional Court decision provides certainty regarding the legal status of children born out of wedlock; however, it does not yet fully provide certainty regarding inheritance aspects, as the technical mechanisms for distribution, the quantum of rights, and the harmonization with the **Burgerlijk Wetboek** (Civil Code) and the Compilation of Islamic Law have not yet been regulated. This situation creates the potential for divergent interpretations in judicial practice.

Thus, while the Constitutional Court decision strengthens legal protection and justice for children born out of wedlock, further regulation is still required to ensure legal certainty regarding the consistent exercise of inheritance rights.

CONCLUSION

This study finds that the Constitutional Court of the Republic of Indonesia Decision Number 46/PUU-VIII/2010 has fundamentally altered the legal status of children born out of wedlock within the Indonesian legal system. Previously, Article 43 paragraph (1) of the Marriage Law recognized civil relationships only with the mother and the mother's family, thereby precluding legal ties with the biological father. Following the Constitutional Court's decision, this restriction was removed through the recognition of a civil relationship between the child and the biological father based on scientific and legal evidence, transforming the child's status into a legal subject with

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broader civil rights. In principle, this change also opens the possibility of recognizing inheritance rights from the biological father, as civil relationships encompass not only maintenance and identity but also rights to the estate. However, the Constitutional Court's decision does not provide detailed regulations regarding the mechanism for inheritance distribution, the determination of shares, or the procedures for establishing heirship. This regulatory gap creates legal uncertainty, particularly given the pluralistic nature of Indonesia's inheritance law system (comprising the *Burgerlijk Wetboek*, the Compilation of Islamic Law, and customary law). Divergent legal constructs—specifically the biological approach found in the *Burgerlijk Wetboek* versus the concept of *nasab* (lineage) in Islamic law—pose a risk of inconsistent court rulings.

Thus, it can be concluded that Constitutional Court Decision Number 46/PUU-VIII/2010 has legitimized the civil relationship between a child born out of wedlock and their biological father and has opened the way for inheritance rights. Nevertheless, in the absence of more harmonized and technical regulations, legal certainty and substantive justice in the implementation of these rights have not yet been fully achieved. Research findings indicate that while the Constitutional Court of the Republic of Indonesia Decision Number 46/PUU-VIII/2010 recognizes the civil law relationship between a child born out of wedlock and their biological father, it does not yet provide detailed regulations regarding inheritance. This legislative gap creates the potential for legal uncertainty and inconsistent rulings; therefore, the following regulatory strengthening measures are required:

1. **Revision of the Marriage Law**
Article 43 of Law Number 1 of 1974 requires updating to clarify the legal consequences of the civil law relationship—specifically regarding inheritance rights—thereby preventing multiple interpretations.
2. **Supreme Court technical guidelines**
The Supreme Court needs to issue a Supreme Court Circular Letter (SEMA) or implementation guidelines for the Constitutional Court decision. These should regulate standards of proof, the determination of heirs, and inheritance distribution mechanisms to ensure greater consistency in court rulings.
3. **Harmonization of the Burgerlijk Wetboek (Civil Code) and the Compilation of Islamic Law**
Synchronization between civil law and Islamic law is necessary to reduce normative conflicts regarding the basis of inheritance, particularly between the biological approach and the concept of *nasab* (lineage).
4. **Access to DNA testing**
The state must ensure that proving biological relationships via DNA testing is easier, faster, and more affordable so that the rights of children born out of wedlock can be effectively realized.
5. **Regulation of inheritance share amounts**
Clear regulations are needed regarding the inheritance share for children born out of wedlock—whether equal, limited, or determined through specific mechanisms like *wasiat wajibah* (mandatory bequest)—to avoid reliance on judicial interpretation.
6. **Adjustment of the nasab concept in Islamic law**
An approach involving *ijtihad* (independent legal reasoning) or a renewal of legal thought is required to distinguish between formal *nasab* and biological relationships, ensuring the protection of children's rights without disregarding Islamic legal principles.

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