



**ISLAMIC INHERITANCE OF CHILDREN BORN OUT OF
WEDDING POST CONSTITUTIONAL COURT RULING
NO.46/PUU-VIII/2010 CONCERNING THE STATUS OF OUT OF
WEDDING CHILDREN**

*KEWARISAN ISLAM ANAK YANG LAHIR DI LUAR PERKAWINAN
PASCA PUTUSAN MAHKAMAH KONSTITUSI NO.46/PUU-VIII/2010
TENTANG STATUS ANAK LUAR NIKAH*

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ABSTRACT

This research is intended to determine the Islamic inheritance of children born outside of marriage after the Constitutional Court decision no. 46/PUU-VIII/2010 concerning the status of illegitimate children. The problem in this research is: what is the Islamic inheritance law for children born out of wedlock after the decision of the Constitutional Court of the Republic of Indonesia (MKRI) Number 46/PUU-VIII/2010, and what is the impact of the decision of the Constitutional Court of the Republic of Indonesia (MKRI) Number 46/PUU-VIII/2010 regarding the recognition of illegitimate children against inheritance law? The type of research used in this research is library research, namely collecting data through library books or other scientific works related to the problem being studied by dividing data sources into three types, namely primary legal materials, secondary legal materials, and tertiary legal materials. The collected data is then processed using qualitative methods and analyzed using deductive thinking that draws specific conclusions.

Keywords: inheritance law, illegitimate children and status of illegitimate children

ABSTRAK

Penelitian ini dimaksudkan untuk mengetahui kewarisan islam anak yang lahir di luar perkawinan pasca putusan Mahkamah Konstitusi No. 46/ PUU-VIII/2010 tentang status anak luar nikah. Dengan permasalahan dalam penelitian ini adalah, bagaimana hukum kewarisan islam terhadap anak yang lahir di luar perkawinan pasca putusan Mahkamah Kontisusi Republik Indonesia (MKRI) Nomor 46/PUU-VIII/2010, serta bagaimana dampak putusan Mahkamah Kontisusi Republik Indonesia (MKRI) Nomor 46/PUU-VIII/2010 atas pengakuan anak luar nikah terhadap

hukum waris. Jenis penelitian yang digunakan dalam penelitian ini adalah menggunakan library research, yaitu mengumpulkan data-data lewat buku-buku perpustakaan atau karya ilmiah lainnya yang berkaitan dengan masalah yang diteliti, dengan membagi sumber data atas tiga jenis, yakni bahan hukum primer, bahan hukum sekunder, dan bahan hukum tertier. Data yang terkumpul selanjutnya diolah melalui metode kualitatif dan dianalisis dengan menggunakan cara berpikir deduktif yang menarik kesimpulan secara khusus.

Kata Kunci: hukum kewarisan, anak luar perkawinan dan status anak luar perkawinan

A. INTRODUCTION

The problems studied in Islam cover the entire order of human life, one of which is the issue of family law, which continues to be studied by Islamic thinkers in classical and contemporary times, giving rise to legal changes in accordance with the results of their studies in their respective eras, because basically Islam can accept the need for major changes through changes in its religious legal norms (Abdurrahman Wahid, 1994).

Islamic law, especially Islamic inheritance law and social change, are two concepts that, throughout the history of the development of Islamic law, have experienced discourse among experts. Islamic law is considered a transcendental law; therefore, it is considered eternal. The problem, then, is how transcendental Islamic law faces social or cultural changes in society.

The issue of heirs and inheritance often becomes a social problem in a family. The implications sometimes lead to disintegration and disharmony of the integrity of a household (Ahmad Rofiq, 1995). Islam has determined the share and rights of inheritance. The Koran and hadith are very detailed and firm in explaining the position of heirs. A detailed and clear explanation of inheritance issues will create legal certainty for justice seekers. Legal certainty and legitimacy are basic rights for every individual in their life.

The Constitutional Court of the Republic of Indonesia (MKRI) is an independent judicial authority to administer justice and uphold law and justice. In the 1945 Constitution of the Republic of Indonesia, Article 24 paragraph 2 stipulates the provision "Judicial power is exercised by a Supreme Court and judicial bodies subordinate to it in the general court environment, religious court environment, military court environment, administrative court environment state, and by a Constitutional Court." (Muhammad Thaha Abul Elah Khalifah, 2007).

Regarding the issue of child status, the Constitutional Court issued Decision No. 46/PUU-VIII/2010, which was decided on Friday, February 17, 2010, as a result of the petition for judicial review of

Law Number 1 of 1974 concerning marriage submitted by Hj. Aisyah Mochtar alias Machica bint Mochtar Ibrahim (decision order for Case Number 46/Pdt.P/2008/PA. 2008). and Muhammad Iqbal Ramadhan bin Moerdiono.

This decision then invited pros and cons from various parties, including legal practitioners, academics, NGOs, MUI, and even the public. The Constitutional Court's decision regarding the recognition of children outside of marriage is "surprising." Even though it is a relief for a number of parties, there will be new problems arising from the Constitutional Court's decision. On the basis of the above, the author wishes to dissect the position of children born out of wedlock following the Constitutional Court's decision as previously mentioned. If we use legal analysis and the Constitutional Court's decision in the case of Hj. Aisyah Mochtar, alias Machica, the singer of the song "Ilalang," there are several things that are worth noting. First, the issue of the status of children born out of wedlock in the Machica case boils down to the issue of unregistered marriages. Second, the further development of the analysis is around children born out of wedlock and legitimate children from the perspective of language, law, and the case perspective of the Machica case. Third, regarding the authority of the religious courts.

However, new legal events will certainly have an impact on old legal arrangements (*lex posterior derogat legi priori*). Finally, it is necessary to discuss the implementation of the provisions regarding illegitimate children in Law No. 1 of 1974 concerning Marriage after the Decision of the Constitutional Court of the Republic of Indonesia (MKRI) Number 46/PUU-VIII/2010". It is also necessary to know what impact the decision of the Constitutional Court of the Republic of Indonesia (MKRI) has on the principle of bilateral inheritance in Islam. In this research, the author will analyze Islamic inheritance law for children born outside of marriage following the decision of the Constitutional Court of the Republic of Indonesia (MKRI) Number 46/PUU-VIII/2010.

B. LITERATURE REVIEW

The references in this research are mostly to several hadith books and fiqh books as well as scientific works related to the status of illegitimate children and Islamic inheritance, including; Abdul Ghofur Anshori's work entitled Philosophy of Islamic Inheritance Law, Otje Salman's work entitled Islamic Inheritance Law, al-Kutub al-Sittah (Saheeh al-Bukhāri, Shahīh Muslim, Sunan al-Tirmīẓī, Sunan Abu Daud and so on with their respective sharia books - each), Wahabiah al-Zuhaily's work in Ahmad Rofiq's al-Fiqh al-

Islamī wa Adillatuh entitled "Islamic Law in Indonesia", Oemarsalim's work entitled "Basics of Inheritance Law in Indonesia", Ali Parman's work entitled "Inheritance in the Al-Qur'an", Otje Salman's work entitled "Community's Legal Awareness of Inheritance Law", Sarmadi's work entitled "Transcendence of Justice in Transformative Islamic Inheritance Law", Sudarsono's work entitled "Inheritance Law and the Bilateral System", Suyuti Talib's work entitled "Islamic Inheritance Law in Indonesia", Assad Yunus' work entitled "Principles of Islamic Inheritance Law (Faraidh)".

Previous research that has discussed this study includes the following:

1. Mustafa's thesis entitled "The Impact of Constitutional Court Decision No. 46.PUU-VII/2010 Concerning the Legality of the Status of Extramarital Children from an Islamic Civil Law Perspective" focuses on the legal status of illegitimate children as a result of the decision. Constitutional Court No. 46, PUU-VII/2010.
2. Abustan, in his thesis entitled "Analysis of Constitutional Court Decision No. 46.PUU-VII/2010 Concerning Cancellation of Article 43 Paragraph (1) of Marriage Law No. 1 of 1974 Viewed from Islamic Law." This research examines annulment Article 43 Paragraph 1 of Marriage Law No. 1 of 1974. Viewed from Islamic Law as a result of Constitutional Court Decision No. 46. PUU-VII/2010.
3. Adi Guna Sakti, in his thesis research entitled "Inheritance Rights of Extramarital Children After Constitutional Court Decision No. 46. PUU-VII/2010 (Analysis of Decision No. 0156/Pdt/2013/PA.PS). This research examines the status of the inheritance rights of illegitimate children after the Constitutional Court decision No. 46.PUU-VII/2010 (Analysis of Decision No. 0156/Pdt/2013/PA.PS).

The similarity between this previous research and the research that will be carried out by the author is examining Constitutional Court Decision No. 46.PUU-VII/2010. Meanwhile, the difference is that this research focuses more on the Islamic inheritance of children born out of wedlock after Constitutional Court Decision No. 46.PUU-VII/2010.

C. METHOD

This research is library research with a qualitative type of research. Meanwhile, based on the results to be achieved, the research is categorized as pure research because it is theoretical in nature and is abstracted descriptively. Therefore, this research

seeks to reveal and explain the problems of Islamic inheritance law in Indonesia, especially the concept of bilateral inheritance regarding the status of legitimate children.

Considering that this research is qualitative, in collecting the required data, library research is carried out, namely reviewing, adapting, and quoting material from books (literature) or literature that is related to the problem being discussed, either in the form of books, papers, or articles that are considered representative.

D. RESULT AND DISCUSSION

Kewarisan Islam terhadap anak yang lahir di luar perkawinan pasca Putusan Mahkamah Konstitusi Republik Indonesia (MKRI) Nomor 46/PUU-VIII/2010.

MK Decision Number 46/PUU-VIII/2010, dated February 17, 2012, stated that:

Article 43, paragraph (1), Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia. No. 3019), which states:

"Children born out of wedlock only have civil relations with their mother and her mother's family," is contrary to the 1945 Constitution of the Republic of Indonesia insofar as it is interpreted as eliminating civil relations with men, which can be proven on the basis of science and technology and/or other evidence according to the law and turns out to be related to his father by blood.

Based on the description of the law above, children born out of wedlock only have civil relations with their mother and their mother's family. In this case, children born out of wedlock only have inheritance rights from their mother and their mother's family because they have no power. law that supports the validity of the mother's and father's marriage (Sayyid Sabiq, 2006). However, based on the 1945 Constitution of the Republic of Indonesia, children born out of wedlock still have inheritance rights and have a civil relationship with their father as long as it can be proven by science, technology, and other evidence.

According to marriage law in Indonesia, the status of children is divided into two categories: legitimate children and illegitimate children. Legitimate children, as stated in Law No. 1974, Article 42, are children born in or as a result of a valid marriage. And the Compilation of Islamic Law (KHI) article 99, which states: "legitimate children are: (a) children born in or as a result of a valid marriage; (b).

The result of a legal husband and wife's fertilization outside the womb and birth by the wife.

Second, illegitimate children are children who are conceived and born outside of a legal marriage, as stated in national laws and regulations, including:

1. Law No. 1 of 1974, Article 43, paragraph 1 (before the Constitutional Court decision No. 46/PUU-VIII/2010), stated that children born outside of marriage only have a civil relationship with their mother and her mother's family.
2. The compilation of Islamic Law (KHI) article 100 states that children born outside of marriage only have a lineage relationship with their mother and their mother's family.

The Constitutional Court, as an institution of judicial power in Indonesia, has the authority to carry out judicial review (material review) of laws regarding the 1945 Constitution of the Republic of Indonesia (UUD 1945). Decisions made by the Constitutional Court are final and require no legal action for review. In principle, the judge's decision cannot be discussed, let alone blamed; this is a principle that applies universally. The amendment to Article 43, paragraph (1), of the UUP shall apply *mutatis mutandis* automatically as an amendment to the law.

The Constitutional Court has decided the Application for Review of Law Number 1 of 1974 concerning Marriage against the 1945 Constitution of the Republic of Indonesia submitted by Hj. Aisyah Mochtar alias Machica bint H. Mochtar Ibrahim and Muhammad Iqbal Ramadhan bin Moerdiono with decision no. 46/PUU-VIII/2010.

Regarding the existence of children outside of marriage (Article 43, Paragraph [1] of Law Number 1 of 1974), the Panel of Judges of the Constitutional Court observed that every pregnancy must begin with the meeting of the ovum with spermatozoa either through sexual intercourse or through other means in accordance with technological advances (Suprianta, 2007). So the relationship between a child born to a man as the father is not only based on marriage but also on the child's blood relationship with a man, which can be proven by science and/or technology or other legally valid evidence.

It is an injustice if a man who has had a relationship with a woman is free from responsibility. Moreover, children born out of wedlock have received a bad stigma in society. A child like that must receive legal protection from the state, even though the marital status of his parents is still in dispute.

Based on these considerations, the Panel of Judges at the Constitutional Court is of the opinion that Article 43 paragraph (1) of

Law Number 1 of 1974 must be read: "Children born out of wedlock have a civil relationship with their mother and their mother's family and with a man as their father, which can be proven to be true. based on science and technology and/or other evidence according to the law of having blood relations, including civil relations with his father's family" (Constitutional Court Decision No. 46/PUU-VIII/2010).

From Constitutional Court Decision No. 46/PUU-VIII/2010, in full, several points can be taken regarding the purpose of amending Article 43 paragraph (1) of the Marriage Law, namely: guaranteeing the rights of children to receive care, maintenance, education and living costs, protection, and so on, from their father as he should. Providing legal clarity that every man must be responsible for his actions and the consequences arising from his actions, in this case causing the birth of children. They cannot escape from this responsibility.

The Constitutional Court, in considering the existence of Article 2, Paragraph 2, of Law Number 1 of 1974, states that the legal meaning of marriage registration as an administrative requirement for marriage does not determine the validity of a marriage. The purpose of registration is for the benefit, and with this registration, the marriage relationship will have definite legal force.

It's just that this article seems less binding because it can be understood that a marriage remains valid without registration. To provide binding force, the editorial should read: "Every marriage can only be proven to be valid after it is registered according to statutory regulations," as accommodated in Article 7 paragraph (1) of Presidential Instruction. Number 1 of 1991 concerning the Compilation of Islamic Law. Another solution is to combine articles 1 and 2 into one article.

In accordance with the considerations of the Panel of Constitutional Judges, which we have stated previously, the considerations are very logical and aim to create benefits in the form of protection for the child outside of marriage so that he or she gets guaranteed life and no longer experiences a negative stigma in everyday interactions because of the sins of both people. old.

This is in accordance with the principle of Ushul Fiqh: "A leader's actions regarding the management of the lives of his people must be based on the principle of benefit." However, the addition to Article 43, paragraph (1), made by the Constitutional Court through its decision no. 46/PUU-VIII/2010 is not limited to the right to protection but has a very broad meaning as well as the meaning attached to legitimate children.

In general, there are various meanings in Article 43 of Law No. 1 of 1974, namely the use of the term "civil relations." So far, the meaning of civil relations includes the legal relationship, rights, and obligations between the child and his father and mother, which can be in the form of: (1) lineage relationships; (2) mahram relations; (3) the relationship between rights and obligations; (4) the relationship of inheritance (mutual inheritance), which is the continuation of the relationship of rights and obligations due to lineage when they were both still alive; and (5) the marriage guardian relationship between the father and his daughter.

If what is meant by a civil relationship is as defined above, the status of an illegitimate child is automatically the same as that of a legitimate child. However, the problem is not that simple. In this article, there are various interpretations that conflict with each other.

The former chairman of the Constitutional Court, Mahfud MD, emphasized that the Constitutional Court's decision regarding children outside of legal wedlock does not mention the question of the lineage of the man who caused the birth of the child." The ruling of the Constitutional Court No. 46/PUU-VIII/2010 (children born outside of legal marriage) does not speak about nasab at all.

In line with Mahfud MD, according to former Constitutional Judge Akil Mochtar on the Marriage Law and also the Constitutional Court decision no. 46/PUU-VIII/2010, there is only a general legal rule (*lex generalis*) in regulating the status and position of children. Meanwhile, there are other regulations that are more specific in nature (*lex specialis*), such as the Civil Code and the Religious Courts Law, which are complemented by the compilation of Islamic law.

From the explanation above, there are at least two important points that can be taken from the Constitutional Court's decision. First, the civil relations in the decision above have nothing to do with Nasab. Second, related to the aim of protecting children's rights, the Constitutional Court no. 46/PUU-VIII/2010 does not differentiate between illegitimate children, whether they are children born as a result of an unregistered marriage or children as a result of adultery. These two points are what give rise to controversy. It is known that these two points seem to conflict with the understanding that has developed so far, both the understanding related to the regulations in force in this country and the understanding of jurisprudence.

The Indonesian Ulema Council (MUI) assessed that Constitutional Court Decision No. 46/PUU-VIII/2010 is very excessive, goes beyond the limits, is reckless, is "overdosed," and is contrary to Islamic teachings and Article 29 of the 1945 Constitution. The MUI

views that the Constitutional Court's decision has very broad consequences, including legalizing family relationships, inheritance, guardianship, and maintenance between a child resulting from adultery and the man who gave birth to it, where this is not permitted by Islamic teachings.

Looking at the many interpretations of the article above, it appears that this illustrates that illegitimate children, from the perspective of Indonesian national law, cannot simply be determined globally. The Constitutional Court should review the explanation of the criteria for illegitimate children and civil relations in Constitutional Court Decision No. 46/PUU-VIII/2010.

If it is connected to Law No. 1 of 1974, illegitimate children have two meanings that are fundamentally different:

- a. A child born from the relationship of a man who is in a religious marriage relationship with a woman but does not have legality because the marriage was not registered in accordance with the provisions of the applicable legislation.
- b. Children born without a legal marriage are only due to the biological relationship between a man and a woman without a marriage bond in accordance with their respective religions and beliefs.

Bearing in mind the provisions of Article 2, Paragraph 1, of Law No. 1 of 1974, with regard to the child, as in point 'a', it is correct to say that the child has a perfect civil relationship (lineage, guardianship, inheritance, and maintenance) with both his mother and father, as stated in Constitutional Court Decision No. 46/PUU-VIII/2010.

By considering the aspects of protecting children outside of marriage and religious diversity in Indonesia, it is seen that Article 43, Paragraph 1, of Law No. 1 of 1974, if tested with the 1945 Constitution, should have been added with the sentence "and determined in accordance with the religion and beliefs".

Relating to children born without marriage (Point b), So that illegitimate children truly receive legal protection and do not participate in bearing the inherited sins of their parents, in Article 43 of Law No. 1 of 1974, a paragraph must be added that specifically binds the child's biological parents to be responsible for providing care and certainty in obtaining education and protection for their biological child. So even though the religion of the child or the child's biological father determines that there is no civil relationship between the illegitimate child and his biological father, he is burdened with the obligation to provide care and certainty in obtaining education and protection for his biological child, as intended by Arti-

cle 45 paragraphs (1 and 2) of Law Number 1 of 1974, jo. Article 1 Paragraph (1) of Law No. 23 of 2002 concerning child protection.

So based on the description above regarding children born out of wedlock, they really must receive legal protection because children born out of wedlock are not the fault of the child but rather the fault of the father and mother. And children born out of wedlock do not share in the inherited sins of their parents.

Basically, discussing the position of illegitimate children according to Islamic law means discussing the position of the child towards his father. The position in question is whether or not there is a birth connection between the child and his biological father, so that it can be determined whether he is a legitimate child with all legal rights and consequences or vice versa. The position of a child towards its mother immediately applies because of birth, whether the birth is the result of sexual intercourse that is in accordance with the sharia or that violates the sharia.

Islam teaches that children who are born legally in accordance with the provisions of Islamic teachings have a good and honorable position. The child has a relationship with his father and mother. The conclusion is that a child can be linked to his father if he is born into a legal marriage. Meanwhile, children born outside of a legal marriage or children of adultery cannot be connected to their father, but only to their mother. Because family relationships are blessings, and blessings are not given by Allah as a result of the actions of Jarimah. Meanwhile, children outside of marriage come from sperm that is not respected according to Sharia.

The child of adultery cannot be connected to his father; an illegitimate child does not have a legitimate lineage, according to Sharia. Meanwhile, children born as a result of suspicious relationships, whether doubtful in the contract or suspicious in the action, have the same position as children born from a legal marriage, without the slightest difference. If the person committing the skepticism does not acknowledge the child, then the child's lineage relationship cannot be denied at all; in fact, the man is forced to admit it. There is a classification and division of children's status in Islamic law (Muhammad Daud, 1987). It is not intended to discriminate against children who are born, because Islam recognizes that every child is born in a state of purity and nature. Children who are born as a result of their parents' violation of norms cannot be blamed. It is his parents who must be responsible for their actions before Allah SWT. As Allah SWT says in QS. al-An'am/6:164.

قُلْ أَغَيْرَ اللَّهِ أَبْغَىٰ رَبًّا وَهُوَ رَبُّ كُلِّ شَيْءٍ ۚ وَلَا تَكْسِبُ كُلُّ نَفْسٍ إِلَّا عَلَيْهَا ۚ وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ ۚ ثُمَّ إِلَىٰ رَبِّكُم مَّرْجِعُكُمْ فَيُنَبِّئُكُم بِمَا كُنتُمْ فِيهِ تَخْتَلِفُونَ

Translation:

Say, "Will I seek a God other than Allah, when He is the Lord of all things? And no one commits a sin, but his harm returns to himself, and a sinner will not bear the sins of others. Then to your Lord you will return, and He will report to you what you dispute" (Ministry of Religion of the Republic of Indonesia, 2010).

Even though Islam does not intend to burden children born as a result of intimate relations outside of marriage, in Islam, maintaining the purity of the lineage is one of the elements that must be maintained properly and with great care. That is why, in Islamic legal literature, the division of children's status cannot be avoided. As a further consequence of the legal position of an illegitimate child, namely the absence of a family relationship with his father, he has several legal consequences, namely:

- 1) There is no mutual inheritance.

The absence of a birth connection between an illegitimate child and his biological father means that the child cannot inherit from his father. This is because lineage is one of the factors in the occurrence of inheritance. What is meant by mutual inheritance also includes inheritance from closest relatives, such as brothers, uncles, and so on. Likewise, the father's family cannot inherit from the child. The reason for denying inheritance rights to children of adultery from their father is because of the severance of the lineage relationship, unless there is a lineage acknowledgment from the father that the child is not the result of adultery. As for Li'an's child, he can be related to his mother's husband as long as there is recognition from his mother's husband, even if that recognition is not in accordance with his heart.

- 2) I cannot be a guardian for an illegitimate or adult child.

The area referred to in this legal consequence is the Kasah area (guardianship over people in marriage). If the illegitimate child happens to be a woman, then when she is an adult and is about to get married, she has no right to be married by a man who unlawfully interferes with her mother or other guardian based on lineage.

Impact of the Decision of the Constitutional Court of the Republic of Indonesia (MKRI) Number 46/PUU-VIII/2010 on the recognition of illegitimate children on inheritance law

1. Negative impact

According to the author, the negative impact that emerged after Constitutional Court Decision No. 46/PUU-VIII/2010 is considered to violate Islamic teachings and the Islamic legal order. Islamic law states that the status of illegitimate children in the second category is equated with the status of children of adultery and adulterous children; therefore, it has the following legal consequences:

- a. There is no lineage relationship with his father. The child only has a lineage relationship with his mother. The father is not obliged to provide support for the child, but biologically, he is still his child. So the relationship that arises is only human, not legal.
- b. There is no mutual inheritance from the father because the lineage relationship is one of the causes of inheritance.
- c. A father cannot be a guardian for an illegitimate child. If the illegitimate child happens to be a woman and is an adult and wants to get married, then her biological father has no right to marry her.

However, in this case, when looking at the status of children from an Islamic perspective, children are born clean and do not bear the burden of their parents' sins. Islam does not recognize the concept of hereditary sin or the transfer of sin from one party to another. So according to the author, Islamic teachings that regulate the status of children born out of wedlock will be a burden on the child in the future rather than burdening the parents, but there are also Islamic laws that regulate other things regarding the position of children that have more benefits.

2. Positive impact

According to the author, the positive impact of Constitutional Court Decision Number 46/PUU-VIII/2010 states that Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage which reads "Children born outside of marriage only have a civil relationship with their mother and her mother's family" is contrary to the 1945 Constitution and does not have binding legal force as long as it is interpreted as eliminating civil relations with a man who can be proven based on science and technology and/or other evidence according to the law turns out to be blood related to his father, so the paragraph must be read, "Children born out of wedlock have a civil relationship with their mother and their mother's family and with

a man as their father who can be proven based on science and technology and/or other evidence according to law to have a blood relationship, including a civil relationship with his father's family."

If analyzed, the legal logic of this decision has consequences for the existence of an illegitimate child's relationship with his biological father, including the existence of rights and obligations between illegitimate children and their biological father, both in the form of maintenance, inheritance, and so on. This, of course, applies if proof is first carried out through science and technology, such as DNA testing and so on, which states that it is true that the illegitimate child has a blood relationship with the man as his biological father. In this case, there is an opportunity for illegitimate children to obtain the right to support, inheritance, and so on.

According to the author, another positive impact caused by this regulation is that a man who wants to have an unregistered marriage because he wants to avoid responsibility for the child born from the marriage will think twice after this regulation regulates the status of children born outside the country. Marriage has a civil relationship with both biological parents.

E. CONCLUSION

It is an injustice if a man who has had a relationship with a woman is free from responsibility. Moreover, children born out of wedlock have received a bad stigma in society. A child like that must receive legal protection from the state, even though the marital status of his parents is still in dispute. Based on these considerations, the Panel of Judges of the Constitutional Court is of the opinion that Article 43 paragraph (1) of Law Number 1 of 1974 must be read: "Children born outside of marriage have a civil relationship with their mother and their mother's family and with a man as their father, which can be proven based on science and technology and/or other evidence according to the law, have blood relations, including civil relations with the father's family."

From a decision that is considered to have positive and negative impacts, the positive impact of this change in regulations is that every child has the right to receive recognition of his biological father's lineage and also has the right to receive inheritance from his biological father's lineage, while the impact The negative thing is that this regulation seems to give people the green light to freely carry out private marriages and also seems to legalize relationships that occur before marriage, but apart from that, the value and sub-

stance of the law are expected to be able to bring goodness and justice to humans.

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