

The Rights of Children from Unregistered Marriages: Between Certainty and the Practice of Protection

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Article	Abstract
<p>Keywords: Child Rights; Underhand Marriage; Legal Certainty; Protection.</p> <p>Article History Received: Apr 04, 2025; Reviewed: Apr 15, 2025; Accepted: Apr 21, 2025; Published: Apr 22, 2025.</p>	<p>This study aims to analyze efforts to fulfill children's rights a decade after the Constitutional Court Decision No. 46/PUU-VIII/2010, focusing on the practice of protecting the rights of children born from unregistered marriages, reflecting legal certainty. The methodology used in this research is normative research with a legislative approach and case approach, utilizing primary and secondary legal materials as the main sources of analysis. The results show that Constitutional Court Decision No. 46/PUU-VIII/2010 provides a crucial legal foundation in guaranteeing the rights of children born from unregistered marriages, creating clearer recognition and legal status for these children. Furthermore, the decision opened the possibility for children born from unregistered marriages to request a legal determination through the court system under the Supreme Court's jurisdiction. This study also highlights the alignment between the Constitutional Court Decision and the establishment of other judicial bodies, emphasizing the importance of legal certainty for children born from unregistered marriages, ensuring that they can live, grow, and develop with legally recognized rights.</p>



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Introduction

Marriage is closely related to issues of inheritance and family matters, making it necessary to be officially recorded to maintain legal order. The duties of a marriage registrar are associated with the application of Islamic law, not merely ceremonial. Still, these duties also serve as a means of manifesting the obedience of a Muslim and solidifying the physical and spiritual bond between a man and a woman.¹

One of the issues in marriage that persists in Indonesia is the registration of marriages, particularly regarding the position of marriage registration in a marriage contract. The validity of a marriage, according to the Law Number 1 of 1974 concerning Marriage (Marriage Law), is based on the respective religious laws and beliefs of the individuals involved. This means that marriage registration does not determine the validity of a marriage.²

Marriage between a man and a woman, in essence, is a human instinct or nature as social beings to continue their lineage. According to Article 1 Marriage Law defines marriage as, Marriage is the physical and spiritual bond between a man and a woman as husband and wife with the goal of forming a family (household) that is happy and everlasting based on the One Supreme God.

This definition clarifies that marriage is not only a legal act but also a religious act. Therefore, the validity of a marriage must be based on the laws of each religion and belief followed by the people of Indonesia. This is reflected in the inclusion of the phrase "based on the One Supreme God" in the definition of marriage.³

In its development, issues related to marriage, particularly concerning children, became a subject of debate after the ruling of Decision No. 46/PUU-VIII/2010, which resulted from the judicial review of Law No. 1 of 1974 on Marriage. In its ruling, the Constitutional Court (MK) decided that Article 43 paragraph (2) of the Marriage Law is conditionally unconstitutional, meaning it

¹ Dyah Ochtorina Susanti, "Urgensi Pencatatan Perkawinan (Perspektif Utilities)," *Rechtidee* 11, 2 (2016): 166–81, <https://doi.org/10.21107/ri.v11i2.2428>.

² Yoga Prasetya & Muhamad Hasan Sebyar, "Legal Aspects of the Rights of Children from Siri Marriages," *Jurnal Hukum Keluarga* 1, 1 (2024): 9–17, <https://journal-rabiza.com/index.php/JHK/article/view/1>.

³ Muhammad Latif Fauzi, "Administrative Transgression and Judicial Discretion for The Sake of Citizens' Rights: The Legalisation of Unregistered Marriages in Indonesia," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, 2 (2023): 211-231. <https://doi.org/10.14421/ahwal.2023.16202>.

contradicts the 1945 Constitution under certain conditions. The ruling states that children born outside of marriage have civil relations with their mother and her family, and with the man who is their father, if it can be proven through scientific knowledge and technology and/or other legal evidence that there is a blood relationship, including civil relations with the father's family.

The Constitutional Court granted part of the applicant's request, specifically regarding Article 43 paragraph (1) Marriage Law, which governs the civil status of children born out of wedlock, as conflicting with the 1945 Constitution. In the petition, the applicant requested that Article 2 paragraph (2), which governs marriage registration, and Article 43 paragraph (1), which regulates the civil status of children born out of wedlock, be declared unconstitutional and have no legal force, along with all its consequences.

This Constitutional Court ruling effectively became a new guideline for addressing issues related to children born out of wedlock. In Islamic law, however, there is no justification for such a child to inherit from their biological father or the biological father's family, as there is no recognized lineage connection between the child and the father.

This ruling has sparked a discourse in society. Some view the ruling as legalizing adultery or children born out of wedlock, or as an affirmation and legalization of unregistered marriages. In contrast, others view this ruling as a form of guarantee and protection of children's rights.

Children, as the next generation, are certainly highly valued in families, and it is essential to nurture, guide, and protect them to ensure they grow and develop well. A child is a potential, a budding future, and a successor to the nation's ideals, playing a strategic role in the survival of a nation. Therefore, they allowed to grow and develop optimally in terms of physical, mental, and social well-being.⁴

Child protection refers to all activities aimed at ensuring and safeguarding children and their rights so they can live, grow, develop, and participate optimally by their human dignity and worth. It also includes protecting children from violence and discrimination. Efforts to fulfill children's rights a decade after the quo decision have become important to examine, especially about the practice of protecting the

⁴ Husen Abdul Majid, *Mengasuh Anak Menurut Ajaran Islam* (Jakarta: Pustaka Shadra, 2004).

rights of children born from unregistered marriages, which reflects a form of legal certainty.

Method

The main issue in this study will be examined normatively. Normative legal research is a process of identifying legal rules, legal principles, and legal doctrines to address the legal issues at hand.⁵ This study will employ a legislative approach and a case-based approach to gather information on the issue being examined in search of an answer. Furthermore, through the use of primary and secondary legal materials, an analysis will be conducted. The analysis will be descriptive-analytical, which involves analyzing and describing the relevant regulations. The analysis will focus on the issue of unregistered marriages and children's rights post-Decision No. 46 of 2010 by the Constitutional Court, while also outlining the practices that have been applied since the ruling.

Result and Discussion

A. Forms of Legal Certainty in Constitutional Court Decision No.46/PUU-VIII/2010

Certainty is one of the aspects of law, particularly written law. Law without certainty loses its meaning because it cannot serve as a guideline for behavior for everyone. Certainty itself is considered the goal of the law. Societal order is closely linked to legal certainty because order is the essence of certainty. The order allows people to live with certainty, enabling them to carry out the activities necessary for community life.⁶

Certainty refers to a state of being definite, a regulation, or a provision. Law, by its nature, must be certain and just certain as a behavioral guide, and just because the behavioral guidelines must support a system that is deemed reasonable. Only when the law is just and implemented with certainty can it fulfill its function. Legal

⁵ Marzuki Peter Mahmud, *Penelitian Hukum*, Edisi Revisi, (Jakarta: Kencana Prenada Media Group, 2017).

⁶ Febriansyah Ramadhan & Ilham Dwi Rafiqi, "Study of Constitutional Court Decisions Cancelling All Norms in the Law", *Legality: Jurnal Ilmiah Hukum* 29, 2 (2021): 286–308, <https://doi.org/10.22219/ljih.v29i2.15434>.

certainty is a question that can only be answered normatively, not sociologically.⁷

Legal certainty refers to the presence of clear scenarios of behavior that are general and binding for all members of society, including the legal consequences. Legal certainty can also mean matters that can be determined by law in concrete situations.⁸ Legal certainty is the guarantee that the law is enforced, that those entitled under the law can obtain their rights, and that decisions can be implemented. Legal certainty protects illegal activities, ensuring that, in certain circumstances, society can obtain what it expects. The function of law is to create legal certainty because its goal is to establish order in society. Legal certainty is a characteristic that cannot be separated from the law, especially for written legal norms. Law without the value of legal certainty loses its meaning because it can no longer serve as a behavioral guide for everyone.⁹

Legal certainty, in a normative sense, occurs when a regulation is made and enacted definitively because it is clearly and logically organized, leaving no room for doubt or multiple interpretations (ambiguity). Legal certainty refers to the application of law that is clear, consistent, and unchanging, with its implementation not being influenced by subjective circumstances. The legal certainty referred to here is a law that is officially enacted and implemented with certainty by the state. Legal certainty means that every individual can demand the enforcement of the law, and that such demands must be fulfilled.¹⁰

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⁷ Dominikus Rato, *Filsafat Hukum: Mencari, Menemukan, Dan Memahami Hukum*, (Surabaya: LaksBang Yustisia, 2010).

⁸ Tata Wijayanta, "Asas Kepastian Hukum, Keadilan Dan Kemanfaatan Dalam Kaitannya Dengan Putusan Kepailitan Pengadilan Niaga," *Jurnal Dinamika Hukum* 14, 2 (2014): 216–26, <http://dx.doi.org/10.20884/1.jdh.2014.14.2.291>.

⁹ Fence M. Wantu, "Antinomi Dalam Penegakan Hukum Oleh Hakim," *Old Website Of Jurnal Mimbar Hukum* 19, 3 (2007), <https://journal.ugm.ac.id/jmh/article/download/19070/12335>.

¹⁰ Adif Alifi & Munir Munir, "Tinjauan Yuridis Dan Sosiologis Terhadap Fenomena Pernikahan Dan Perceraian di Bawah Tangan di Dusun Tanjung Limau Kecamatan Sapeken," *Proceedings UIN Sunan Gunung Djati Bandung* 1, no. 14 (2021): 33–40, <https://proceedings.uinsgd.ac.id/index.php/proceedings/article/view/218>.

The presence of normative provisions in law not only creates legal certainty but also leads to other issues when these norms result in injustice for certain legal subjects. Such conditions then prompted the petitioner to submit a request to the Constitutional Court, resulting in the ruling of Decision No. 46/PUU-VIII/2010.¹¹

In the petition, the petitioner argued that Articles 2 paragraph (2) and 43 paragraph (1) of the Marriage Law caused harm to the constitutional rights of the petitioner and their child, as outlined in Articles 28B paragraph (1) and (2) and Article 28D paragraph (1) of the 1945 Constitution, namely the right to obtain legal recognition of their marriage and the legal status of their child.

According to the petitioner, their constitutional rights were violated by the legal norms in the Marriage Law. These legal norms are unjust and detrimental, as the petitioner's marriage is valid and by Islamic marriage principles. Referring to the constitutional norm in Article 28B paragraph (1) of the 1945 Constitution, the petitioner's marriage, conducted by Islamic marriage principles, is valid, but it is hindered by Article 2 of the Marriage Law, which makes it invalid according to legal norms. As a result, the application of this legal norm affects the legal status of the child.¹²

Furthermore, the legal provision in Article 34 paragraph (1) is perceived to create unequal treatment before the law and establish discriminatory practices. This discriminatory treatment creates issues, as the legal status of the child becomes unclear and invalid.

After the trial stages, the Constitutional Court ruled in Decision No. 46/PUU-VIII/2010 that the ruling did not change the lineage status of children born out of wedlock. According to the ruling, a child born outside of marriage can still have civil relations with their biological father, regardless of the status of the parent's marriage. This is true as long as it can be proven through scientific knowledge, technology, or other legally recognized evidence that the child has a

¹¹ Ris Mahdalena Oktavia Brsitorus, Rezmia Febrina, and Muhammad Azani, "Implementasi Hak Asuh Anak Dalam Perceraian Pada Pernikahan Di Bawah Tangan Di Pengadilan Agama Pekanbaru," in *Semnashum: Seminar Nasional Hukum*, vol. 2, 2024, <https://journal.unilak.ac.id/index.php/samnashum/article/view/22276>.

¹² Ahmad Fachrur, "Dampak Nikah Di Bawah Tangan Terhadap Hak Hak Pendidikan Formal Anak Menurut Masalah Dan Undang Undang Perlindungan Anak" (Master's Thesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta), accessed April 4, 2025, <https://repository.uinjkt.ac.id/dspace/handle/123456789/74095>.

blood relation with the biological father. However, it is important to note that this ruling does not establish the lineage of children born from adultery with their biological father but rather aims to advocate for the rights and interests of the child. The Constitutional Court does not have the authority to intervene in lineage matters, as lineage is governed by Islamic jurisprudence (*Fiqh*).¹³

Referring to the background of the Constitutional Court's ruling, it can be understood that the main goal was not to link the lineage of children born outside of marriage to their biological fathers, but to affirm that every child, including those born out of wedlock, has the right to comprehensive legal protection to allow them to grow and develop like other children.

In its consideration, the Constitutional Court stated that laws must guarantee justice through the provision of legal certainty and protection for every child, regardless of their birth status or circumstances. A biological father who refuses to acknowledge his child creates a negative stigma, such as calling the child "illegitimate." This harms the child socially and psychologically, and such adverse effects can be avoided if the father acknowledges his civil relationship with the child.¹⁴

It is unjust for a child to bear the consequences of the marriage status of their parents. In Islam, the concept of "original sin" or the idea that someone inherits the sins of others does not exist. Therefore, regardless of the parent's marital status, the fulfillment of a child's rights is the responsibility of both biological parents.

B. Guarantee of Children's Rights Through Court Determination Alignment

To understand the legal consequences of Constitutional Court Decision No. 46/PUU-VIII/2010 on children born out of wedlock in other cases, and to determine whether the ruling aligns with subsequent judicial practices, we can examine how it has been applied

¹³ Ahmad Muqaffi, Rusdiyah Rusdiyah, and Diana Rahmi, "Menilik Problematika Dispensasi Nikah Dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi UU Perkawinan," *Journal of Islamic and Law Studies* 5, no. 2 (2021), <http://103.180.95.17/index.php/jils/article/view/5914>.

¹⁴ Levana Safira, Sonny Dewi Judiasih, and Deviana Yuanitasari, "Perlindungan Hukum Terhadap Anak Yang Melakukan Perkawinan Bawah Umur Tanpa Dispensasi Kawin Dari Pengadilan," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 4, 2 (2021): 210–250, <https://doi.org/10.23920/acta.v4i2.521>.

in courts regarding cases involving the origin of a child. The following are some examples of court rulings that have decided such matters:

1. Court Decision No. 0274/Pdt.P/2015/PA. Mlg.

Based on Court Decision No. 0274/Pdt.P/2015/PA. Mlg, the petitioners submitted a request regarding the origin of their child. Before this, Petitioner I and Petitioner II had married according to Islamic law on January 20, 2010. At the time of the marriage, Petitioner I was a widower who had not yet officially divorced, and similarly, Petitioner II was a widow who had not officially divorced. From this marriage, a child was born on May 2, 2010. The petitioners then registered formally their marriage on September 13, 2013. In the petition, the Petitioner submits a Petition for the Determination of the Origin of a Child with the arguments that, in its *petitum*, the Petitioner wishes to establish that the child has a civil relationship, a blood relationship, and a biological relationship with the Petitioner. This would serve as the basis for the issuance of a birth certificate. The panel of judges considers this based on the fact that a child born outside of marriage only has a legal/civil relationship with the mother and the mother's family, as the child was not born from a lawful marriage as regulated in Article 43, paragraph (1) of Marriage Law. However, despite this, the child still retains rights. Furthermore, the panel of judges also considers that Islamic law seeks to ensure that society, or individuals who cause the birth of a child out of wedlock, take responsibility for the child's well-being so that the child does not become abandoned. Additionally, the panel references the Constitutional Court's decision (MK) Number 46/PUU-VIII/2010 dated February 17, 2012.

Based on these legal considerations, the panel of judges rules on the case by establishing and granting the Petitioner's request, declaring Petitioner II as the biological parent and Petitioner I as the biological parent. Therefore, according to the law, the child has a civil relationship with their biological father, with the condition of having a limited civil relationship. There is no blood relation, and in matters of inheritance, this can be addressed within the concept of a mandatory will.¹⁵

2. Decision Number 282/Pdt.P/2019/PA.JB

¹⁵ Dwi Arini Zubaidah, "Pencatatan Perkawinan Sebagai Perlindungan Hukum Dalam Perspektif Maqāṣid Asy-Syarī'ah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 12, 1 (2019): 15–28, <https://doi.org/10.14421/ahwal.2019.12102>.

Based on Decision Number 282/Pdt.P/2019/PA.JB, the Petitioners filed a petition for the determination of the origin of the child. Prior to this, the Petitioners were a married couple who solemnized their marriage according to Islamic law on November 15, 2016. From their marriage, a daughter was born on July 10, 2019. Subsequently, the Petitioners registered their marriage on August 16, 2019. In the petition, the Petitioner submits a Petition for the Determination of the Origin of the Child with the arguments that, in its *petitum*, the Petitioner seeks to establish that the child has a civil relationship, and/or a blood relationship, and/or a biological relationship with Petitioner I and Petitioner II. This would serve as the basis for the issuance of a birth certificate. In the petition, the Petitioner references the Constitutional Court's Decision Number 46/PUU-VII/2010, which essentially states that based on the Constitutional Court's ruling, a child born outside of marriage also has a civil legal relationship with the father and the father's family.

The panel of judges considers the Constitutional Court's Decision Number 46/PUU-VIII/2010 dated February 17, 2012, as the basis for their decision. Furthermore, the panel of judges also refers to and cites Article 28 D, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states: "Everyone has the right to recognition, guarantee, protection, and fair legal treatment, as well as equal treatment before the law."

Based on these legal considerations, the panel of judges concludes that the Petitioners have successfully proven their claims. Therefore, the Petitioner's request is deemed valid and should be granted. Specifically, it is declared that the child of the Petitioners is the legitimate child of Petitioner I and Petitioner II. Accordingly, under the law, the child has a blood relationship, including a civil relationship, with both the father and mother, as well as with the father's and mother's families, encompassing the relationship of descent.¹⁶

The Constitutional Court's Decision No. 46/PUU-VIII/2010 regarding the status of children born out of wedlock has provided benefits to the parties involved in cases concerning children born outside of marriage, who have long been in a state of legal uncertainty. At the very least, this decision offers some benefits. However, as

¹⁶ Syarif Hidayatullah, "Aktualisasi Kewarisan Pada Nikah Di Bawah Tangan Perspektif Hukum Di Indonesia," *SANGAJI: Jurnal Pemikiran Syariah Dan Hukum* 5, 1 (2021): 33–52, <https://doi.org/10.52266/sangaji.v5i1.601>.

previously discussed, a child born outside of marriage does not necessarily have the same status and rights as a legitimate child. This should be understood as a form of punishment for the adultery committed by the parents, which led to the birth of a child out of wedlock.

In the first ruling, the benefit is felt by the child, as the biological father is held accountable for providing civil rights to the child. Although legally, as considered by the panel of judges, the child cannot inherit property from the father based on *furudul muqadaroh*, which refers to the inheritance distribution according to inheritance laws, this creates an incomplete application of the principle of benefit for the child. However, the panel of judges has already provided a solution by granting the child the right to inherit property through the concept of *wasiat wajibah* (mandatory will). In the second ruling, in the researcher's view, this principle has been fulfilled, both for the mother and the child she gave birth to, by allowing the father's name to be recorded on the birth certificate as the legitimate child of both parents. In this way, the child receives full civil rights from the biological father, which are civil rights without any limitations.¹⁷

C. Practice of Protection for Children Born from Unregistered Marriages

The presence of law in society serves to integrate and coordinate interests that are often in conflict with one another. Therefore, the law must be able to integrate these interests in such a way that conflicts are minimized as much as possible. The existence of conflicting interests within society, which is then integrated by the law, demonstrates that the law also protects for these societal interests. This situation is constructed as legal protection.¹⁸

The law aims to integrate and coordinate various interests in society because, in the course of interest negotiations, protection of a particular interest can only be achieved by limiting other conflicting interests. Legal protection must consider stages, as legal protection arises from legal provisions and regulations that are provided by

¹⁷ Eko Pujiyono & Ilham Dwi Rafiqi, "Penyuluhan Hukum Dampak Perkawinan Siri Bagi Masyarakat Di Kelurahan Keputih Kota Surabaya," *Jurnal Pengabdian Masyarakat Pesisir* 2, 2 (2023): 37–44, <https://doi.org/10.30649/jpmp.v2i2.97>.

¹⁸ Ibnu Rusydi, "Tinjauan Yuridis Terhadap Hak Waris Anak Hasil Perkawinan Siri," *Jurnal Ilmiah Galuh Justisi* 7, 1 (2019): 1–10, <http://dx.doi.org/10.25157/jigj.v7i1.2145>.

society, which essentially represent an agreement among the members of that society to regulate behavioral relationships between individuals and between individuals and the government, which is seen as representing the interests of society.¹⁹

Legal protection reflects the safeguarding of dignity and human rights, as well as the recognition of the fundamental rights of legal subjects based on legal provisions, protecting them from arbitrary actions. It acts as a collection of rules or norms that can protect one thing from another. In the view of Sudikno Mertokusumo, legal protection is the guarantee of human rights and obligations in fulfilling personal interests as well as in relationships with other individuals.²⁰

Constitutionally, the responsibility of providing protection is a duty of the state through its various state apparatus. The state plays a crucial role in protecting its citizens. Legal protection for citizens is the state's responsibility to ensure justice, security, and the safety of society. Efforts to protect citizens legally also include the protection of children's rights from various threats or actions that may disrupt their dignity and rights.

The condition of vulnerability regarding the unfulfilled rights of children becomes more complex when the child is born from an unregistered marriage, as discussed in this article. An unregistered marriage is the same as a marriage that is not officially recorded. An "unregistered marriage" or "marriage not recorded" refers to a marriage that meets the conditions and requirements by Islamic law but has not been registered or is yet to be registered at the Office of Religious Affairs (KUA).

This meaning conveys that a marriage conducted under the table does not necessarily undermine the rights of the child born from such a marriage. This is because, as a creation of Allah SWT and a social being, a child has the right to life, freedom, and protection from

¹⁹ M. Sanusi, Azi Ahmad Tadjudin, and Sofia Gussevi, "Urgensi Isbat Nikah Bagi Perkawinan Dibawah Tangan (Studi Kasus Pada Warga Di Desa Ciherang Kecamatan Pasawahan Kabupaten Purwakarta)," *Muttaqien; Indonesian Journal of Multidisciplinary Islamic Studies* 3, no. 2 (2022), <http://ejournal.staimuttaqien.ac.id/index.php/mtq/article/view/383>.

²⁰ Dinda Ediningsih Dwi Utami and Taufik Yahya, "Akibat Hukum Nikah Siri Terhadap Hak Anak Dan Isteri Ditinjau Dari Kompilasi Hukum Islam," *Zaaken: Journal of Civil and Business Law* 3, 2 (2022): 228–45, <https://doi.org/10.22437/zaaken.v3i2.14767>.

parents, family, society, the nation, and the state, from the moment of conception to birth.

Starting from this, the alignment between the court's ruling in the previous section and the Constitutional Court's decision demonstrates the practice of protecting the rights of children born from unregistered marriages. In addition, children's rights have been substantially regulated in various child-related regulations. The issuance of Constitutional Court Decision No. 46/PUU-VIII/2010 provides legal recognition for children born out of wedlock, who were previously often marginalized. These children now have the right to be acknowledged by their biological father, which is an important step in providing legal protection. This is crucial to ensure that these children are not treated as illegitimate, which often results in them losing fundamental rights, including the right to education and legal protection.

A review of Article 43, paragraph (1) of Marriage Law reveals that it grants legal legitimacy to the blood relationship between a child and their biological father, offers legal protection for the child's fundamental rights, ensures fair treatment of every child, affirms the civil relationship between the child and the biological father as well as the father's family, confirms the obligation of the biological father, protects the child's inheritance rights, guarantees the future and rights of the child as any other child, and emphasizes that every man must be responsible for his actions and the consequences that arise from his behavior.²¹

Following the issuance of Constitutional Court Decision No. 46/PUU-VIII/2010, a legal relationship arises between a child born out of wedlock and the biological father in the civil relationship system. With the establishment of this civil relationship, the rights attached to the biological child also carry civil obligations for the biological father. Specifically, this ruling has legal implications for two key matters: inheritance rights and the right to maintenance that the child may receive.

In general, an heir is someone who has a blood relationship (legitimate descent), a relationship by lawful marriage (known as *mushaharah*), or a relationship of *al-wala'* (emancipation from slavery).

²¹ *Ibid.*

About a child's inheritance rights from a male, the child must have a legitimate blood relation to the male (biological father).²²

Regarding the child's right to maintenance, which is interwoven with the context of the Constitutional Court decision, the child born out of wedlock has a blood relationship with both the mother and the father, and their family, which can be proven through scientific knowledge and technology or other legal evidence. This obligation is a legal duty to provide maintenance for the child. Since a child born from a biological relationship outside of a lawful marriage is, by nature, no different from a legitimate child, the father is legally required to provide for the child's maintenance and well-being.

Conclusion

The Constitutional Court Decision No. 46/PUU-VIII/2010 provides an important legal foundation in guaranteeing the rights of children born from unregistered marriages. This creates recognition and clearer legal status for these children. Furthermore, the issuance of the Constitutional Court's decision opens the door for the recognition of the rights of children born from unregistered marriages, which can now be requested for a ruling through the courts under the jurisdiction of the Supreme Court. This demonstrates the alignment between the Constitutional Court's decision and the rulings of other judicial institutions, while also emphasizing the importance of legal certainty for children born from unregistered marriages, ensuring that they can live, grow, and develop with legally recognized rights.

References

- Alifi, Adif. & Munir Munir. "Tinjauan Yuridis Dan Sosiologis Terhadap Fenomena Pernikahan Dan Perceraian Di Bawah Tangan Di Dusun Tanjung Limau Kecamatan Sapeken." *Proceedings UIN Sunan Gunung Djati Bandung* 1, no. 14 (2021): 33-40, <https://proceedings.uinsgd.ac.id/index.php/proceedings/article/view/218>.
- Brsitorus, Ris Mahdalena Oktavia. Febrina, Rezmia. and Azani, Muhammad. "Implementasi Hak Asuh Anak Dalam Perceraian

²² Sindi Yorita et al., "Tinjauan Yuridis Status Anak Di Bawah Tangan Dalam Hak Menerima Warisan," *Athena: Journal of Social, Culture and Society* 1, 1 (2023): 26-32, <https://doi.org/10.58905/athena.v1i1.5>.

- Pada Pernikahan Di Bawah Tangan Di Pengadilan Agama Pekanbaru.” In *Semnashum: Seminar Nasional Hukum*, Vol. 2, 2024.
<https://journal.unilak.ac.id/index.php/samnashum/article/view/22276>.
- Fachrur, Ahmad. “Dampak Nikah Di Bawah Tangan Terhadap Hak Pendidikan Formal Anak Menurut Masalah Dan Undang Undang Perlindungan Anak.” Master’s Thesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta. Accessed April 4, 2025.
<https://repository.uinjkt.ac.id/dspace/handle/123456789/74095>.
- Hidayatullah, Syarif. “Aktualisasi Kewarisan Pada Nikah Di Bawah Tangan Persektif Hukum Di Indonesia.” *SANGAJI: Jurnal Pemikiran Syariah Dan Hukum* 5, no. 1 (2021): 33–52, <https://doi.org/10.52266/sangaji.v5i1.601>.
- Latif Fauzi, Muhammad. "Administrative Transgression And Judicial Discretion For The Sake Of Citizens’ Rights: The Legalisation of Unregistered Marriages in Indonesia", *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, 2 (2023): 211-231. <https://doi.org/10.14421/ahwal.2023.16202>
- Mahmud, Marzuki Peter. “Penelitian Hukum Edisi Revisi.” *Jakarta: Kencana Prenada Media Group*, 2017.
- Majid, Husen Abdul. “Mengasuh Anak Menurut Ajaran Islam.” *Pustaka Shadra, Jakarta*, 2004.
- Muqaffi, Ahmad. Rusdiah Rusdiah, and Rahmi, Diana. “Menilik Problematika Dispensasi Nikah Dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi UU Perkawinan.” *Journal of Islamic and Law Studies* 5, no. 2 (2021). <http://103.180.95.17/index.php/jils/article/view/5914>.
- Prasetia, Yoga & Hasan Sebyar, Muhamad. "Legal Aspects of the Rights of Children from Siri Marriages", *Jurnal Hukum Keluarga* 1, 1 (2024): 9–17, <https://journal-rabiza.com/index.php/JHK/article/view/1>
- Pujiyono, Eko. & Rafiqi, Ilham Dwi. “Penyuluhan Hukum Dampak Perkawinan Siri Bagi Masyarakat Di Kelurahan Keputih Kota Surabaya,” *Jurnal Pengabdian Masyarakat Pesisir* 2, 2 (2023): 37–44, <https://doi.org/10.30649/jpmp.v2i2.97>
- Ramadhan, Febriansyah. & Rafiqi, Ilham Dwi, "Study of Constitutional Court Decisions Cancelling All Norms in the

- Law", *Legality: Jurnal Ilmiah Hukum* 29, 2 (2021): 286–308, <https://doi.org/10.22219/ljih.v29i2.15434>
- Rato, Dominikus. "Filsafat Hukum: Mencari, Menemukan, Dan Memahami Hukum." *Surabaya: LaksBang Yustisia*, 2010.
- Rusydi, Ibnu. "Tinjauan Yuridis Terhadap Hak Waris Anak Hasil Perkawinan Siri." *Jurnal Ilmiah Galuh Justisi* 7, no. 1 (2019): 1–10, <http://dx.doi.org/10.25157/jigj.v7i1.2145..>
- Safira, Levana. Dewi Judiasih, Sonny. and Yuanitasari, Deviana. "Perlindungan Hukum Terhadap Anak Yang Melakukan Perkawinan Bawah Umur Tanpa Dispensasi Kawin Dari Pengadilan." *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 4, no. 2 (2021): 210–25, <https://doi.org/10.23920/acta.v4i2.521>.
- Sanusi, M. Ahmad Tadjudin, Azi and Gussevi, Sofia. "Urgensi Isbat Nikah Bagi Perkawinan Dibawah Tangan (Studi Kasus Pada Warga Di Desa Ciherang Kecamatan Pasawahan Kabupaten Purwakarta)." *Muttaqien; Indonesian Journal of Multidiciplinary Islamic Studies* 3, no. 2 (2022). <http://ejurnal.staimuttaqien.ac.id/index.php/mtq/article/view/383>.
- Susanti, Dyah Ochtorina. "Urgensi Pencatatan Perkawinan (Perspektif Utilities)." *Rechtidee* 11, no. 2 (2016): 166–81, <https://doi.org/10.21107/ri.v11i2.2428..>
- Utami, Dinda Ediningsih Dwi. & Yahya, Taufik. "Akibat Hukum Nikah Siri Terhadap Hak Anak Dan Isteri Ditinjau Dari Kompilasi Hukum Islam." *Zaaken: Journal of Civil and Business Law* 3, no. 2 (2022): 228–45, <https://doi.org/10.22437/zaaken.v3i2.14767..>
- Wantu, Fence M. "Antinomi Dalam Penegakan Hukum Oleh Hakim." *Old Website Of Jurnal Mimbar Hukum* 19, no. 3 (2007). <https://journal.ugm.ac.id/jmh/article/download/19070/12335>.
- Wijayanta, Tata. "Asas Kepastian Hukum, Keadilan Dan Kemanfaatan Dalam Kaitannya Dengan Putusan Kepailitan Pengadilan Niaga." *Jurnal Dinamika Hukum* 14, no. 2 (2014): 216–26, <http://dx.doi.org/10.20884/1.jdh.2014.14.2.291..>
- Yorita, Sindi. Sofyan, Ahmad. Zalsa Yulinda, Astrid S. Safitri, E. Ernawati, and H. Hardiani. "Tinjauan Yuridis Status Anak Di Bawah Tangan Dalam Hak Menerima Warisan." *Athena: Journal of Social, Culture and Society* 1, no. 1 (2023): 26–32, <https://doi.org/10.58905/athena.v1i1.5>.

Zubaidah, Dwi Arini. "Pencatatan Perkawinan Sebagai Perlindungan Hukum Dalam Perspektif Maqāṣid Asy-Syarī'ah." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 12, no. 1 (2019): 15–28, <https://doi.org/10.14421/ahwal.2019.12102>.

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