

Juridical Review of the Inheritance Rights of Children Without Formal Status: An Analysis of the Constitutional Court's Decision No. 46/PUU-VIII/2010 in Child Protection Efforts

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Abstract

The Constitutional Court Decision No. 46/PUU-VIII/2010 is a progressive step in upholding justice for out-of-wedlock children, especially in terms of the recognition of civil relations with biological fathers that were not previously legally recognized. The provisions in Article 43 paragraph (1) of Law No. 1 of 1974 limit the legal relationship of out-of-wedlock children only with their mother and family, thus causing injustice in access to inheritance rights. This article aims to juridically examine the changes in legal norms due to the decision and evaluate its implications for the inheritance system and legal protection of children. The method used is a normative juridical approach through the analysis of laws and regulations, legal doctrine, and jurisprudence of the Constitutional Court. The results of the study show that the Constitutional Court's decision has expanded the scope of civil relations between children out of wedlock and their biological fathers, opening up legitimate access to inheritance rights as long as it can be legally proven. This ruling removes previous normative discrimination and strengthens constitutional principles of equality before the law and the protection of children. Thus, this ruling is an important milestone in the reconstruction of the principle of justice in national family law.

1. PENDAHULUAN

Inheritance rights are an integral part of the family law system that ensures the sustainability and legal certainty of the transfer of a person's property after death to his or her heirs. In the context of a legal state like Indonesia, the protection of inheritance rights not only reflects respect for civil law values, but also reflects the state's treatment of the justice and equality of citizens before the law. However, not all children in Indonesia receive the same

legal treatment in the context of inheritance rights, especially children born out of a legally valid marriage or who are often referred to as "children without formal status".¹

Prior to the issuance of the Constitutional Court Decision No. 46/PUU-VIII/2010, the regulation regarding the position of out-of-wedlock children in national law referred to Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage. The article states that "a child born out of wedlock has only a civil relationship with his mother and his mother's family". This provision directly precludes the possibility of a civil legal relationship between the out-of-wedlock child and his biological father, unless legalized through a legal marriage. Consequently, the child does not have inheritance rights to his biological father, even though he is biologically a biological child. This creates legal inequality and discrimination against children simply because of their birth status.²

This condition raises various problems, especially in the realm of inheritance law. Many out-of-wedlock children are visibly related by blood to their biological father but are not legally recognized to receive inheritance, unless there is an administratively valid attestation or recognition. In practice, this makes it difficult for these children to get justice, because the existence of evidence of blood relations alone is not enough to confirm their position as heirs. Thus, the regulation not only ignores the rights of children, but also closes the substantive justice space that the constitution should guarantee. This situation prompted the filing of a lawsuit against Article 43 paragraph (1) of the Marriage Law to the Constitutional Court. The Petitioner considers that the norm is contrary to constitutional principles, in particular Article 28B paragraph (2) of the 1945 Constitution which states that "every child has the right to survival, growth, and development and has the right to protection from violence and discrimination". In its consideration, the Constitutional Court finally granted the request and stated that a child born out of wedlock not only has a civil relationship with his mother and his mother's family, but also with his father as long as it can be proven based on science and technology and/or other evidence according to the law.³

The Constitutional Court Decision No. 46/PUU-VIII/2010 is an important turning point in the protection of children's rights, especially in the context of inheritance. This ruling not only changes the legal construction of the relationship between children out of wedlock and biological fathers, but also paves the way for the recognition of children's inheritance rights without formal status, as long as there is valid and legally convincing evidence. Thus, legal protection of children becomes more inclusive and oriented towards substantive justice, rather than mere administrative formalities. However, the implementation of this decision still leaves challenges, both from the normative, procedural, and social sides. Many problems arise related to the mechanism of proof, administrative recognition, and social resistance to the status of out-of-wedlock children. Therefore, it is necessary to conduct further analysis of the juridical construction of the inheritance rights of children without formal status before and after the Constitutional Court ruling, as well as the extent of its effectiveness in efforts to

¹ Kheesya Arzeeta S Sahid, "The Validity of Land Grants to Adopted Children through the Perspective of Civil Law in Indonesia", *Journal of Humanist Students* 5, no 1 (2025): 321–330.

² Mahkamah Konstitusi Nomor Puu-viii en Amelisa Juliana, "Tinjauan Yuridis Tentang Anak Yang Lahir Di Luar Perkawinan Menurut Keputusan Mahkamah Konstitusi Nomor 46/Puu-Viii/2010", *Civil Law Journal* 3, no 4 (2020): 1–17.

³ Nur Fitri Hariani, Muh. Saleh Ridwan, en Marilang Marilang, "Hubungan Hukum Anak Hasil Surrogate Mother Dengan Ayah Biologis Perspektif Hukum Islam (Telaah Putusan Mahkamah Konstitusi (MK) No. 46/PUU-VIII/2020)", *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam* 8, no 2 (2021): 117–137.

protect children within the framework of national law.⁴

The legal problem underlying this study departs from the existence of norms in Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage which explicitly states that children born out of wedlock only have a civil relationship with their mother and their mother's family. The formulation of this norm automatically closes the opportunity for children out of wedlock, or children without formal status, to have a legal relationship with their biological father, unless legalized through a legal marriage. As a result, the child does not have the legal legitimacy to obtain civil rights from his biological father, including in terms of inheritance.⁵

The problem becomes even more complex when inheritance rights are positioned as a form of legal protection for children. In reality, many children are born from relationships that are not recorded or legally recognized, but have a real biological bond with their biological father. In the event of the death of the biological father, these children do not have a recognized legal status as heirs, so they cannot claim a share of the inheritance as they should. This situation is not only contrary to the principle of justice, but also violates the constitutional right of children to obtain protection from discrimination, as guaranteed in Article 28B paragraph (2) of the 1945 Constitution. On the other hand, the provisions of the laws that prevailed before the Constitutional Court Decision No. 46/PUU-VIII/2010 are formalistic and do not provide room for the proof of biological relationship as the basis of legal relations. This makes it difficult for children out of wedlock to get legal recognition, even if there is scientific evidence such as DNA test results. Such legal provisions create a double disadvantage: children lose legal protection, while the state fails to fulfill its constitutional responsibilities to the most vulnerable citizens.⁶

The Constitutional Court Decision Number 46/PUU-VIII/2010 is an important milestone in the history of family law and child protection in Indonesia. This decision not only corrects the legal norms in Law Number 1 of 1974 which are considered discriminatory against children out of wedlock, but also establishes a new paradigm regarding the legal treatment of child status based on the principle of substantive justice, not merely the formal validity of the administration. The main significance of this ruling lies in its ability to balance legal certainty and social justice in the context of protecting children's rights. The Constitutional Court in its consideration stated that Article 43 paragraph (1) of Law No. 1 of 1974 is contrary to the 1945 Constitution because it is discriminatory against children born outside a legal marriage. The Constitutional Court considers that civil relations cannot be limited only to the biological mother, but must also include the biological father, as long as it can be scientifically proven and/or with other evidence according to the law. This ruling opens the door for children out of wedlock to prove their biological relationship with the biological father, so that they can legally be recognized as having a civil relationship, including the right to inherit.⁷

⁴ Fransiska Tao, Darius Mauritsius, en Husni Kusuma Dinata, "Tinjauan Yuridis Perbuatan Melawan Hukum Terhadap Objek Sengketa Tanah Pekarangan Di Desa Ikan Tuanbesi Kabupaten Malaka (Studi Kasus Putusan Nomor 35/Pdt.G/2023/Pn Atb)", *Petium LawJournal* 1, no 1 (2023): 177–188.

⁵ Sari Pusvita, "Civil Status of Children Outside Marriage in the Constitutional Court Decision and Its Implications on Inherited Property", *Ulul Albab: Journal of Islamic Law Studies and Research* 1, no 2 (2018): 31.

⁶ Ribka Vleotri, Thea Farina, en Ivans Januardy, "Kajian Hukum Terhadap Putusan Pengadilan yang Meniadakan Hak Ahli Waris (Studi Kasus Nomor 0011 / Pdt . P / 2017 / PA . Plk)", *INNOVATIVE: Journal Of Social Science Research* 5 (2025): 3677–3696.

⁷ Atikah Rahmi, "The Function of Marriage Registration Associated with Legal Protection Efforts for Children After the Constitutional Court Decision Number: 46/PUU-VIII/2010", *De Lega Lata* 1, no. 2 (2016): 264–286.

Juridically, the changes brought by the Constitutional Court's Decision expand the scope of legal protection for children, especially in the field of inheritance. A child who was previously prevented from filing an inheritance claim from his biological father now has a legal basis to fight for his rights, as long as he can show valid evidence of the blood relationship. This ruling also explicitly recognizes that the protection of children should not be limited by birth status, since the rights of the child are constitutional rights inherent from birth and cannot be diminished by any reason. From the perspective of the national legal system, this Constitutional Court decision is an important precedent in strengthening the principles of non-discrimination, equality before the law, and respect for children's rights as part of human rights. It also demands a change in perspective in family law enforcement, especially by judicial institutions, civil registries, and agencies related to inheritance rights. This ruling encourages the legal system to not only submit to rigid textual norms, but to be able to accommodate the values of justice that live in society.⁸

The formal status between the child and the father has a significant impact in the context of inheritance. Legally, this formal status refers to the legal recognition of the relationship between the child and the parents, especially in relation to the legalization or registration of the child's birth in the civil registry. In Indonesian society, this legal recognition generally occurs in a registered or state-recognized marriage. Prior to the Constitutional Court ruling, children born out of wedlock had only a civil relationship with their mother, with no right to inheritance from their biological father, even though the child is biologically the flesh and blood of the father. Therefore, this formal status plays an important role in determining a child's inheritance rights, so that legal protection of children out of wedlock is an issue that needs to be changed. Thus, the significance of the Constitutional Court Decision No. 46/PUU-VIII/2010 lies not only in the correction of formal norms, but also in the encouragement of more inclusive and rights-oriented legal transformation. In the context of inheritance, this decision makes it clear that inheritance rights should not be denied just because of the formal status of the child, but must be viewed in the light of biological realities and the constitutional need to protect every child from discrimination. This is a concrete form of constitutional implementation in ensuring fair legal treatment for all citizens, including children born outside the formal marriage system.⁹

Thus, this research will focus on answering two main problems, namely how to regulate the legal arrangement regarding the inheritance rights of children without formal status before and after the Constitutional Court Decision No. 46/PUU-VIII/2010? And, what are the juridical implications of the Constitutional Court Decision No. 46/PUU-VIII/2010 on the protection of inheritance rights of children out of wedlock in Indonesia?

2. Metode Penelitian

This study uses a normative juridical method, which is a legal research approach that relies on literature studies by analyzing secondary data in the form of primary, secondary, and tertiary legal materials. This approach is used to review the applicable laws and regulations as well as relevant court decisions, in this case, especially the Constitutional Court Decision Number 46/PUU-VIII/2010 which is the main focus. Normative juridical research is carried

⁸ Eunike Loist Hutasoit et al., "Perlindungan Hukum bagi Anak Luar Nikah di Indonesia; Studi Komparasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 dan Hukum Islam", *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan dan Ekonomi Islam* 16, no 2 (2024): 420–437.

⁹ Sufyan Ilyas and Misra Anita, "The Status of Children Out of Wedlock: Law No. 1, 1974 concerning Marriage and the Decision of MK No. 46/Puu-VIII/2010 (Comparative Study)", *AL-MURSALAH* 1, no. 2 (2015): 67–78.

out using three types of approaches, namely the statute approach, the conceptual approach, and the case approach. The legislative approach is used to examine the legal norms regulated in Law Number 1 of 1974 concerning Marriage, the Civil Code (KUHPercivil), and the Compilation of Islamic Law (KHI). A conceptual approach is used to understand the basic concepts of inheritance rights and protection of children, especially children without formal status. Meanwhile, the case approach is carried out by examining in depth the Constitutional Court Decision No. 46/PUU-VIII/2010 to understand the Court's legal considerations and their implications for the recognition of inheritance rights of out-of-wedlock children. All data are analyzed qualitatively with the aim of describing and explaining the legal phenomena that are studied systematically and objectively.¹⁰

3. Results and Discussion

1. Legal Arrangements Regarding the Inheritance Rights of Children Without Formal Status Before and After the Decision of the Constitutional Court No. 46/PUU-VIII/2010

Prior to the Constitutional Court Decision No. 46/PUU-VIII/2010, the legal arrangements regarding the inheritance rights of out-of-wedlock children in Indonesia were very limited and tended to be discriminatory. In Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage, the law explicitly states that a child born out of wedlock only has a civil relationship with his mother and his mother's family, without any recognition of the legal relationship between the child and his biological father. This norm indirectly ignores the existence of a clear blood relationship between an out-of-wedlock child and his biological father, since the child is only recognized in the context of his mother's family. This provision causes out-of-wedlock children to have no right to be recognized as heirs of their biological father, even though they are biologically legal descendants who have equal rights to children born in a legal marriage.¹¹

The legal system that existed before this decision viewed birth status as very important in determining the rights of a child, especially in terms of inheritance rights. This creates significant inequities in the division of inheritance, where children born out of marital relationships do not have access to the property they should have inherited from their biological father, even though their blood relationship with the father is clear. This provision is not only contrary to the principle of justice, but also to the human rights that guarantee the equality of every individual before the law. In other words, out-of-wedlock children are seen as not equal to children born in a legal marriage, even though both biologically have the same rights to their parents' inheritance.

The impact of this provision is enormous, given that many children are legally related by blood to their father but are hindered by their birth status that is not legally recognized. They cannot file an inheritance claim on their biological father's property, which should have been their right as biological children. This legal system overrides the substantive rights of such children, since it only recognizes civil relationships recorded in a valid marriage, not based on real biological relationships. This inequality creates large social and legal gaps, where children out of wedlock feel marginalized and do not get the legal protections they need to obtain inheritance rights from their fathers.

In addition, this provision also leads to legal uncertainty for out-of-wedlock

¹⁰ Jonaedi Efendi, *Metode Penelitian Hukum: Normatif dan Empiris* (Jakarta: Prenadamedia Group, 2018).

¹¹ Nazhif Ali Murtadho, "Pilihan Status Hukum pada Pengesahan Anak Luar Kawin dalam Perkawinan Campuran", *Reformasi Hukum* 29, no 1 (2025): 270–276.

children in terms of access to inheritance. These children had no clear legal basis for claiming their inheritance, although they had strong evidence of a blood relationship with their father. Therefore, out-of-wedlock children are often unable to obtain their inheritance, even when evidence to support a blood relationship between the child and the father is present. This situation shows how the law at that time prioritized administrative and formality aspects rather than the substantive rights of children who are related by blood to their parents. With all these inequality, it is clear that the provisions in Article 43 paragraph (1) of Law No. 1 of 1974 cause injustice, both legally and socially, which is detrimental to children born out of wedlock. Prior to this change, out-of-wedlock children were not only limited by laws that did not provide access to inheritance, but also had to face social stigma that often degraded their dignity as individuals.¹²

However, after the Constitutional Court Decision No. 46/PUU-VIII/2010, the legal regulation regarding the inheritance rights of children out of wedlock has undergone significant changes. In its ruling, the Constitutional Court abolished the discrimination that occurred in Article 43 paragraph (1) of Law No. 1 of 1974 and expanded the definition of civil relations of children out of wedlock. The ruling states that a child born out of wedlock legally has the right to enter into a civil relationship with his biological father, as long as the relationship can be proven through science and technology or other evidence according to applicable law. In other words, this ruling gives inheritance rights to children out of wedlock if they can prove a legal blood relationship through legally valid evidence, such as DNA tests or other evidence. This provides an opportunity for out-of-wedlock children to acquire inheritance rights from their biological father without having to go through a marriage process or administrative probate. The following is a comparison table regarding the arrangement of inheritance rights of out-of-wedlock children before and after the Constitutional Court Decision No. 46/PUU-VIII/2010.

Table 1. Comparison of Legal Arrangements Regarding the Inheritance Rights of Children Without Formal Status Before and After the Decision of the Constitutional Court No. 46/PUU-VIII/2010

Aspects	Prior to the Constitutional Court Decision No. 46/PUU-VIII/2010	After the Constitutional Court Decision No. 46/PUU-VIII/2010
Civil Relations Arrangement	Out-of-wedlock children only have a civil relationship with their mother and her mother's family.	Out-of-wedlock children have a civil relationship with the biological father, as long as it can be legally proven.
Inheritance Rights	An out-of-wedlock child is not recognized as an heir from his biological father.	An out-of-wedlock child has the right to inherit property from his biological father if a blood relationship can be proved.
Proof of Relationship	There is no room to prove a biological relationship with a biological father legally.	Out-of-wedlock children can prove a blood relationship with DNA tests or other scientific evidence.
Legal Certainty	Out-of-wedlock children have no legal certainty in terms of	Out-of-wedlock children get legal certainty to apply for

¹² Agus Setiawan, Endrian Widhantara, en Eti Mul Erowati, “Analiss Kedudukan Harta Terhadap Pelaku Praktik Perkawinan Poligami”, *Jurnal Apoen 2*, no 3 (2025).

	inheritance rights from the biological father.	inheritance rights if blood relations are proven.
Verification Process	The legalization of the relationship between the child out of wedlock and the father can only be done if the father marries the mother.	No legal marriage is required to recognize the relationship of an out-of-wedlock child with the biological father.
Principles Upheld	The existence of out-of-wedlock children is determined by the marital status of the parents.	The existence of an out-of-wedlock child is determined by legal biological evidence.
Access to Inheritance Rights	The out-of-wedlock child does not have access to inheritance rights from the biological father.	Out-of-wedlock children have access to inheritance rights from the biological father if they can be proved.
Equality before the Law	Out-of-wedlock children are seen differently and are not given the same rights as legally born children.	This ruling guarantees equality in the rights of children out of wedlock with children born in legal marriage.
Social and Legal Impact	Children out of wedlock often experience social and legal discrimination, especially related to inheritance.	Out-of-wedlock children now receive equal legal recognition, reducing discrimination

As listed in the table above, the most striking difference before and after the verdict is the change in the civil relationship arrangement between the out-of-wedlock child and his biological father. Previously, out-of-wedlock children were only recognized for their civil relationship with their mother and mother's family, while inheritance rights from biological fathers were not recognized at all. However, with this ruling, the civil relationship of an out-of-wedlock child with his biological father can now be recognized, as long as it can be proven by scientific or technological evidence that is valid according to the law. This opens up opportunities for out-of-wedlock children to have inheritance rights from their fathers, which were previously not possible by the existing legal system.

In addition, this ruling also provides legal certainty for children out of wedlock in terms of inheritance rights, which were previously not clearly regulated. Out-of-wedlock children who can prove a blood relationship with their father now have the same right to inherit property from their biological father, as children born in a legal marriage. It also reinforces the principle of equality before the law, abolishes discrimination based on birth status, and ensures that children's rights to legal protection are not limited by aspects of administrative formalities.

However, although this ruling brings significant changes in the arrangement of inheritance rights of children out of wedlock, challenges in its implementation remain. Proving blood ties through DNA tests or other evidence may be a barrier, especially for out-of-wedlock children who do not have easy access to such facilities. In addition, the social stigma against out-of-wedlock children that is still strong in some levels of society can affect the acceptance and application of this inheritance right in real life.

Thus, although the Constitutional Court Decision No. 46/PUU-VIII/2010 brought a wind of change in the Indonesian family legal system, further efforts are needed from

the government and the community to ensure that these changes can be implemented effectively and provide the protection of the rights that all children in Indonesia should have, without exception.

2. Juridical Implications of the Constitutional Court Decision No. 46/PUU-VIII/2010 on the Protection of the Inheritance Rights of Out-of-Wedlock Children in Indonesia

The Constitutional Court Decision No. 46/PUU-VIII/2010 has a significant impact on the protection of inheritance rights of out-of-wedlock children in Indonesia. Juridically, this ruling introduces the principle of substantive justice that emphasizes the recognition of children's rights based on valid evidence, not solely on the basis of parental birth or marital status. Previously, the inheritance rights of out-of-wedlock children were severely limited by the provisions applicable in Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage, which only recognized the civil relationship of an out-of-wedlock child with his mother and mother's family. The Constitutional Court's ruling amending the provision opens up new opportunities for out-of-wedlock children to be recognized as heirs of their biological father, as long as the blood relationship can be legally proven through scientific or technological evidence, such as DNA tests or other legally valid evidence.¹³

The juridical implication of this ruling is a profound change in the inheritance law system in Indonesia. This ruling abolished pre-existing normative discrimination, in which out-of-wedlock children are deemed to have no inheritance rights from their biological father simply because of their birth status. The Constitutional Court affirmed that the principles of human rights and equality before the law should apply to all children, regardless of birth status. Therefore, out-of-wedlock children who can prove a legal blood relationship with their father now have the same rights as children born in a legal marriage to inherit property from their father. Thus, this ruling not only corrects the injustice experienced by out-of-wedlock children, but also strengthens the principle of justice in the Indonesian legal system.

a. Increased Access to Inheritance Rights

One of the most important implications of the Constitutional Court Decision No. 46/PUU-VIII/2010 is the opening of access to inheritance rights for children out of wedlock, which was previously very limited and discriminatory. Prior to this ruling, out-of-wedlock children were not recognized as heirs from their biological father, even though their blood relationship with the father was clear and legal. This is due to the provisions in Article 43 paragraph (1) of Law No. 1 of 1974 which limits the civil relationship of out-of-wedlock children only with their mother and family. In practice, even if the child is a biological descendant of his or her father, they cannot file a claim for inheritance due to their illegitimate birth status under formal law. In other words, although out-of-wedlock children have rights that they should have acquired from their biological fathers, previous laws did not allow them to do so.¹⁴

The Constitutional Court Decision No. 46/PUU-VIII/2010 changed the situation

¹³ M A Putera en S B Willianto, "The Rights of Adopted Heirs in the Perspective of Islamic Religion", *Religion: Journal of Religion, Social ...* 1, no. 1 (2023): 779–791, <https://maryamsejahtera.com/index.php/Religion/article/view/793>.

¹⁴ Nabel Syarif en Fahrudin Ali Sabri, "The Granting of Inheritance to Adopted Children Reviewed from the Composition of Islamic Law and Civil Law", *Al-Muqaranah Journal: Journal of Islamic Law and Thought* 3, no 2 (2025): 1–8.

by opening access for out-of-wedlock children to inherit their biological father's property, as long as the blood relationship can be proven through valid evidence. One of the acknowledged pieces of evidence is the DNA test, which provides a legitimate and accountable tool to prove the biological relationship between the child and the father. Thus, this ruling clearly gives children out of wedlock the same opportunity to acquire inheritance rights from their fathers as children born in legal marriage. This decision eliminated the legal injustice that previously marginalized out-of-wedlock children in their inheritance rights, even though they had a clear blood relationship with their father.

This increased access to inheritance rights also means that out-of-wedlock children now gain the same legal status as children born in legal marriages in terms of inheritance. They are no longer considered second-class citizens in the inheritance law system, where only children born in a legal marriage bond are recognized as legal heirs. With the legal recognition of the inheritance rights of out-of-wedlock children, they now have a fairer chance to receive a share of the inheritance that should be theirs. This is a major step towards legal equality in Indonesia, where every child, regardless of birth status, is entitled to equal legal protection, especially when it comes to inheritance rights.

In addition, the recognition of the inheritance rights of children out of wedlock also strengthens the constitutional principle that guarantees the right of children to be protected from discrimination. In Article 28B paragraph (2) of the 1945 Constitution, it is stated that every child has the right to survival, growth, and development and has the right to protection from violence and discrimination. This ruling demonstrates the state's commitment to eliminating discrimination against out-of-wedlock children and ensuring that they obtain their rights in full, without any unfair restrictions based on their birth status. Thus, this ruling not only gives inheritance rights to children out of wedlock, but also becomes an important milestone in creating a more inclusive and fair legal system for all children in Indonesia.¹⁵

However, although this ruling paves the way for children out of wedlock to obtain inheritance, challenges in its implementation remain. One of the biggest challenges is proving a blood relationship between the child and the biological father, which requires valid scientific evidence, such as DNA testing. Not all out-of-wedlock children have easy access to medical facilities or DNA tests needed to prove such a blood relationship. Therefore, although the law provides an opportunity for children out of wedlock to obtain inheritance, the issue of access and the cost of proving this blood relationship is an obstacle that needs to be overcome. The government needs to pay attention to this by providing support or subsidies for out-of-wedlock children who have difficulty obtaining valid scientific evidence.

Overall, the opening of access to inheritance rights for children out of wedlock through the Constitutional Court Decision No. 46/PUU-VIII/2010 is a positive step that affirms that every child, regardless of birth status, has the same rights before the law. This ruling gives out-of-wedlock children an equal position with children born in legal marriage, ensuring that they are no longer neglected in the division of inheritance. Despite the challenges in its implementation, this ruling is a milestone in creating a fairer and more equal legal system for all children in Indonesia.

b. Strengthening the Principles of Non-Discrimination and Equality before the Law

¹⁵ Noor Izzati Amelia et al., "Tinjauan Yuridis terhadap Sengketa Wakaf dalam Praktik Peradilan Agama", *Hukum Inovatif: Jurnal Ilmu Hukum Sosial dan Humaniora* 2, no April (2025).

The Constitutional Court Decision No. 46/PUU-VIII/2010 has very profound implications in strengthening the principle of non-discrimination and equality before the law, which is an integral part of the Indonesian legal system. This principle has been stated in Article 28B paragraph (2) of the 1945 Constitution, which guarantees that "every child has the right to survival, growth, and development and has the right to protection from violence and discrimination". Prior to this ruling, out-of-wedlock children were discriminated against in terms of inheritance rights because the law did not recognize their civil relationship with their biological father. Although out-of-wedlock children are legally related by blood to their father, they are not given the same right to inherit their biological father's estate, simply because their birth status is not registered in a legal marriage. This creates a clear inequality between children born in a legal marriage and children born out of wedlock, even though both have an equal right to inheritance from their parents.¹⁶

With the Constitutional Court decision No. 46/PUU-VIII/2010, the Court emphasized that birth status should not be a barrier in providing legal protection for children. This ruling opens up equal access to inheritance rights for children out of wedlock with children born in a legal marriage, provided that the blood relationship with the biological father can be legally proven through scientific evidence or other evidence recognized by law. Thus, this ruling abolishes the discrimination that previously existed in the arrangement of inheritance rights of out-of-wedlock children, and ensures that every child, regardless of his or her birth status, has the same right to legal protection and inheritance rights from their parents.

This strengthening of the principle of non-discrimination also affirms the state's commitment to eliminating unfair treatment of children born out of wedlock. Prior to this ruling, many out-of-wedlock children were looked down upon or marginalized in various aspects of legal life, including in terms of inheritance. They do not seem to have an equal place with other children born in a legal marriage bond, even though they are legally related by blood to their father. The Constitutional Court Decision No. 46/PUU-VIII/2010 changed this view by affirming that children's rights do not depend on their birth status, but must be recognized based on the constitutional rights inherent to each individual from birth.

In addition, this ruling also has a significant impact on the protection of human rights in Indonesia, as it provides fairer and more equal recognition for all children, regardless of their birth status. The recognition of the inheritance rights of out-of-wedlock children shows that the Indonesian legal system now prioritizes substantive justice, where inheritance rights are not only determined based on administrative formalities or parental status, but are also based on valid biological evidence. This creates a more inclusive legal space that is responsive to the social realities that exist in society, where many children are born outside the bonds of a legal marriage but are still entitled to the same legal protection as other children.

The implementation of this ruling also shows that the Indonesian legal system is getting closer to international standards in terms of protecting children's rights. Countries that uphold the principles of human rights and equality before the law often emphasize that the protection of children's rights should not be limited by factors of birth status, but should be based on the principles of justice and the recognition of their constitutional

¹⁶ In Bidang et al., "Juridical Review of the Rights and Position of Persons with Disabilities in the Field of Inheritance Law According to the Civil Code", *Journal of the Faculty of Law* 15, no. 3 (2025).

rights. This Constitutional Court ruling is a major step in ensuring that Indonesia follows these principles, creates equality before the law and avoids discrimination against children out of wedlock in all aspects of the law, including inheritance rights.

However, although the principle of non-discrimination has been strengthened through this ruling, social challenges remain. Social stigma against out-of-wedlock children still exists in society, and although the law has changed, social acceptance of these changes may take time. This suggests that while the legal system can change significantly, social change also needs to be encouraged to ensure that the rights granted by the law are widely accepted by society. Therefore, it is important for the government to continue a broader socialization program to increase public understanding of the rights of children out of wedlock and reduce existing stigma.

Overall, the Constitutional Court's decision No. 46/PUU-VIII/2010 not only strengthens the principles of non-discrimination and equality before the law, but also provides a guarantee of fairer protection of inheritance rights for all children, without exception. By recognizing that children's rights are independent of their birth status, this ruling is moving Indonesia towards a fairer and more equal legal system, as well as eliminating discrimination that has long limited out-of-wedlock children's access to their rights.

c. Changes in the Family Law Perspective

The Constitutional Court Decision No. 46/PUU-VIII/2010 not only has an impact on the inheritance rights of out-of-wedlock children, but also encourages significant changes in the perspective of Indonesian family law as a whole. Previously, the Indonesian family law system prioritized administrative formalities in recognizing the status of children, especially children out of wedlock. These children are only recognized in the legal system if their parents are bound by a legal marriage, while children born out of a legal marriage are considered not to have the legal status equivalent to a child born in a legal marriage. The recognition of children out of wedlock before this ruling focuses more on the administrative status of the parents, namely marriage, without considering the biological rights of the child which should also be recognized by law.

With this ruling, the Indonesian family law system has undergone a profound paradigm shift. Today, the law prioritizes the principle of substantive justice, which means that a child's legal status is no longer considered only on the basis of whether their parents are bound in a legal marriage, but also on evidence that could show a blood relationship between the child and their parents. This opens up space for out-of-wedlock children to be recognized as heirs from their biological father, as long as such blood relationship can be proven through legally valid evidence. Therefore, this change is not only a matter of inheritance rights, but also related to the legal perspective on the status of out-of-wedlock children in the context of family law, which has been marginalized.

This shift in perspective requires the judiciary and civil registry institutions to adapt their views on the legal relationship between out-of-wedlock children and their parents, especially biological fathers. Previously, civil records and judicial institutions may have prioritized administrative processes that require legalization through marriage to recognize the status of children. However, with this ruling, these institutions must be more open to scientific evidence and other legal evidence that proves blood connections, such as DNA test results. This requires those institutions to design more inclusive procedures, which rely not only on the administration of the marriage but also on tangible evidence proving the relationship between the child and their parents.

This change also led to a renewal in the doctrine of family law in Indonesia, which has relied too much on administrative formalities as the basis for the recognition of civil relations between parents and children. This Constitutional Court decision opens up opportunities for the application of principles of justice that are more relevant to the social reality, where many children are born out of a legal marriage but still have the same right to be recognized and treated fairly by the law. It also strengthens the position of children in the family law system, which is no longer seen as a marginalized party simply because of their birth status. In this context, the Indonesian legal system is beginning to move towards a more substantial recognition of children's rights, which assesses the quality of the relationship between children and their parents based on clear evidence, rather than solely on the basis of parental marriage.

However, these changes also bring challenges to their implementation, especially related to procedural adjustments in legal institutions. Judicial and civil registry institutions need to adjust their policies and procedures to ensure that out-of-wedlock children who have valid evidence of a blood relationship with their biological father can obtain fair recognition in the family law system. In addition, it is also important for the public to accept this change, as some people still view out-of-wedlock children with negative social stigma, which can affect acceptance of this legal decision.

This change in the perspective of Indonesian family law also opens up opportunities for further reforms in the family law system as a whole, to make it more inclusive and fair. In addition to inheritance rights, the recognition of the legal relationship of out-of-wedlock children also has implications for children's access to other rights, such as the right to education, the right to legal protection, and the right to receive support from their biological father. This ruling marks the first step in designing a family law system that is more responsive to social realities and more focused on the principle of substantive justice, where children's rights are recognized regardless of their parents' marital status.

Overall, this shift in the perspective of family law reflects a larger shift in the Indonesian legal system, which now prioritizes justice, equality, and human rights, and is more responsive to the needs and social realities that exist in society. With these changes, family law in Indonesia is increasingly developing into a fairer, more inclusive, and more in line with the values of justice expected by the constitution and society.

d. Challenges in Implementation of Decisions

Although the Constitutional Court Decision No. 46/PUU-VIII/2010 provides legal recognition of the inheritance rights of out-of-wedlock children, challenges in its implementation remain and require serious attention. One of the biggest challenges that arises is the mechanism of proving the biological relationship between the child and the biological father. Although this ruling leaves room for children out of wedlock to obtain inheritance rights from their fathers, it can only be done if the blood relationship can be proven by a legally valid means, such as through a DNA test. This proving process can be a major obstacle, especially for children who do not have easy access to medical facilities or laboratories for DNA testing, which often costs a lot of money. For many families with limited economies, the cost of doing this kind of test can be very burdensome, so out-of-wedlock children may have a hard time proving their biological relationship to the biological father. This is certainly a big challenge in implementing the decision that has been given by the Constitutional Court, considering that DNA tests are

the only way that is most recognized by law to prove a legal blood relationship.¹⁷

In addition, proving a biological link can also be an issue in areas with limited access to health facilities that can provide DNA testing. Not all regions in Indonesia have adequate medical facilities to conduct such tests, and even if they do, they are often costly for many families, especially in remote areas or for those with low incomes. Therefore, although in theory the Constitutional Court's decision gives rights to children out of wedlock, in practice there are still many children who will find it difficult to take advantage of this right due to limited access to the necessary scientific evidence.

In addition to the technical problem of proof, there are also other challenges that are more social and cultural in nature. In some regions or communities in Indonesia, the stigma against children out of wedlock is still very strong. Children born out of wedlock are often looked down upon, and many parents of out-of-wedlock children are reluctant or embarrassed to acknowledge their blood relationship with the child's biological father. This leads to social resistance to the recognition of out-of-wedlock children as the legal heirs of their biological father. Even if there is enough evidence to prove a blood relationship through DNA testing, these social and cultural barriers can be a barrier factor to legitimate legal recognition. In many cases, societies that still hold traditional values may reject or doubt the sustainability of acceptance of the rights of out-of-wedlock children, which could affect the effective implementation of legal decisions.

Furthermore, in some communities or families, this social resistance can also affect the administrative recognition of the status of out-of-wedlock children, including in the process of registering a valid birth certificate or filing a claim for inheritance. Reluctant recognition or even refusal to recognize out-of-wedlock children as heirs can prolong the process of recognizing the child's rights. This is also related to the lack of knowledge or understanding among the public about the rights of out-of-wedlock children which are now regulated by the Constitutional Court decision. Without effective socialization of this ruling, many parties, both at the family, community, and law enforcement levels, may not fully understand or accept this change in the law.

In addition, the challenges in the implementation of this decision also involve the participation of legal and state administrative institutions. Judicial institutions, civil registries, and related agencies need to adapt to these changes to ensure that existing procedures can support out-of-wedlock children in obtaining their rights. Courts and civil records should be trained to handle inheritance cases involving out-of-wedlock children more sensitively and understand the importance of biological evidence in determining the civil status of children. However, in the absence of clear procedures and adequate operational standards, many institutions may have difficulty in implementing these judgments appropriately, which can lead to inconsistencies in the recognition of inheritance rights of out-of-wedlock children in different regions.

To address these challenges, it is important for governments and relevant agencies to provide more massive socialization programs on the rights of children out of wedlock and ways to prove their blood relationship with a biological father. The government also needs to pay attention to the accessibility of scientific evidence such as DNA tests by providing cost support or access to medical facilities in underserved areas. Without clear and strategic measures, despite the Constitutional Court's ruling granting

¹⁷ Leni Losia Lambiombir, Muhammad H. Soepeno, en Revvy S.M. Korah, "Juridical Review of the Position and Rights of Persons with Disabilities in the Field of Inheritance According to the Civil Code", *Journal of the Faculty of Law* 15, no. 3 (2025).

legal rights to out-of-wedlock children, many of them still find it difficult to avail themselves of these rights due to evidentiary barriers and social stigma.

Overall, the challenges in the implementation of the Constitutional Court Decision No. 46/PUU-VIII/2010 show that although the resulting legal changes are very important, further steps from the government, society, and relevant institutions are urgently needed to ensure that the rights of out-of-wedlock children can be fully accepted and recognized. It is not just about the application of the law, but also about removing the social and cultural barriers that hinder the recognition of out-of-wedlock children in the legal system and in the life of society.

e. Policy Reform to Facilitate the Implementation of Decisions

To ensure the effectiveness of the implementation of the Constitutional Court Decision No. 46/PUU-VIII/2010, in-depth policy reform is needed, both from the normative and procedural sides. One of the first steps that needs to be taken is the preparation of clearer and more detailed regulations regarding the procedure for recognizing the inheritance rights of out-of-wedlock children. The regulations should cover a wide range of aspects, from the mechanism of proving the blood relationship between the out-of-wedlock child and the biological father, to the administrative procedures that must be followed to ensure that out-of-wedlock children obtain their inheritance rights without protracted bureaucratic obstacles.

One of the main issues that needs to be addressed is the accessibility of DNA tests or other scientific evidence that can prove a biological relationship between the child and his biological father. DNA testing is one of the legal ways to prove a blood relationship, but high costs and limited access to medical facilities are often obstacles, especially for children who come from underprivileged families or who live in remote areas. Therefore, the government needs to design policies that can reduce the cost of DNA testing and provide subsidies or cost assistance to families who cannot afford it. This could include funding for DNA tests performed at government laboratories or state-appointed medical service providers, as well as funding for other scientific evidence needed to support inheritance claims.

In addition, to ensure that the rights of out-of-wedlock children are widely recognized, it is very important that there is a massive and comprehensive socialization of this law change. Many societies, especially in areas with more conservative cultures, still view out-of-wedlock children with certain social stigma. Therefore, efforts to educate the public about the rights of out-of-wedlock children are essential to ensure that they are not neglected or treated discriminatorily. This socialization must include various communication channels, both through mass media, social media, and direct education to the community at the village or sub-district level. This educational program will not only help people understand the rights of out-of-wedlock children, but it can also reduce the social stigma that often prevents them from obtaining their rights.

This policy reform must also involve improvements in the state administrative system. Judicial institutions, civil registries, and other related agencies need to update their procedures to make it easier to file inheritance rights for out-of-wedlock children. For example, the procedure for registering birth certificates for out-of-wedlock children and filing inheritance claims should be simplified and more open, so that these children do not have difficulty getting the legal recognition they need. The government must also ensure that this administrative process focuses not only on the status of formalities, but also on the recognition of the substantive rights of children, which includes the

recognition of their blood relationship with the biological father, even if no legal marriage is recorded in the state administration. In addition, legal institutions need to be given special training to handle cases involving out-of-wedlock children. Judges and administrative officers in judicial and civil registry institutions must be equipped with adequate knowledge of the rights of out-of-wedlock children and how the procedures apply to the recognition of their inheritance rights. This training should also include an understanding of how to manage valid biological evidence, such as DNA tests, as well as how to avoid discrimination in the process of recognizing the inheritance rights of out-of-wedlock children.

This policy reform should also include the establishment of monitoring and evaluation mechanisms to assess the extent to which the implementation of these decisions is successful on the ground. The government needs to ensure that the policies taken actually provide benefits to the out-of-wedlock children and that there are no obstacles in the process of applying for their inheritance. This can be done by engaging independent agencies or civil society organizations to oversee the policy implementation process and provide constructive feedback for further improvement.

Overall, this comprehensive and inclusive policy reform will not only ensure the effectiveness of the implementation of the Constitutional Court Decision No. 46/PUU-VIII/2010, but will also strengthen the Indonesian legal system to be more in favor of justice and equality. The government needs to ensure that these policies are accessible to all levels of society, without exception, and that every child, regardless of their birth status, can obtain his or her rights fully and without hindrance. With these measures, Indonesia can create a legal system that is more equitable, equitable, and responsive to the needs of the community, and better able to protect children's rights in the future.

The Constitutional Court Decision No. 46/PUU-VIII/2010 has brought major changes in the Indonesian family law system, especially in terms of the protection of inheritance rights of out-of-wedlock children. By recognizing the right of out-of-wedlock children to inherit property from their biological father, this ruling reinforces the principles of substantive justice and equality before the law. Nevertheless, the implementation of this ruling still faces challenges, both in terms of proof and social resistance. Therefore, further efforts are needed to strengthen regulations and policies that support the effective implementation of this decision.

Discussion

The Constitutional Court Decision No. 46/PUU-VIII/2010 has a profound impact on the regulation of inheritance rights of children out of wedlock in Indonesia. Prior to the decision, Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage explicitly limited the legal relationship between children out of wedlock and their biological father. This article states that children born out of wedlock only have a civil relationship with their mother and her mother's family. This provision directly prevents out-of-wedlock children from being recognized as heirs from their biological father, even though they are genetically legal descendants. As a result, even if the child is legally related by blood to his father, they have no right to the inheritance they should have received, simply because his birth status is considered invalid in formal law.¹⁸

This creates a profound injustice in the Indonesian legal system, as children who

¹⁸ Marchanida Firly Nabila et al., "Procedures and legal consequences of adoption of children whose parents are not clearly known", *Multidisciplinary Journal of Academic Sciences* 2, no 2 (2025): 257–265.

biologically have the right to inherit property from both their parents, must be prevented by their birth status that is not registered in a legal marriage. This situation shows that there is a loophole in the legal system that limits children's rights only on the basis of the administrative legalization of their parents' marriage, rather than on the fact of a real biological relationship between the child and the parents. Further, this discriminatory provision closes the space for children out of wedlock to obtain inheritance justice, despite the fact that they are legally related by blood to their father.

The Constitutional Court Decision No. 46/PUU-VIII/2010 changed this situation by granting recognition of the inheritance rights of out-of-wedlock children. In its ruling, the Constitutional Court considered that Article 43 paragraph (1) of the Marriage Law which limits civil relations only to the mother and her mother's family is contrary to the constitution, especially with Article 28B paragraph (2) of the 1945 Constitution which guarantees the right of children to live, develop, and receive protection from violence and discrimination. The Constitutional Court states that out-of-wedlock children also have the right to enter into a civil relationship with their biological father, as long as the relationship can be proven by legal evidence, such as DNA test results or other scientific evidence.

The importance of this decision lies in the provision of inheritance rights that have been neglected for children out of wedlock. Previously, children born out of wedlock did not have access to inheritance from their father, even though they were biological children. With this ruling, out-of-wedlock children can now be recognized as heirs from their biological father, provided they can prove their blood relationship through valid evidence. This proof can be done using scientific methods such as DNA tests that have been recognized as legally valid. Thus, this ruling provides a fairer opportunity for children out of wedlock to get the rights they naturally deserve.

This ruling also introduces a major change in the family law paradigm in Indonesia, which previously prioritized the formal status of marriage as the basis for recognizing the legal relationship between children and parents. In the legal system that existed before the decision, the status of an out-of-wedlock child was considered the main obstacle in the recognition of inheritance rights. However, by recognizing the civil relationship of an out-of-wedlock child with his biological father, this ruling prioritizes the principle of substantive justice based on clear biological evidence, not just on administrative formalities. These changes encourage the legal system to pay more attention to the biological realities that exist in society, which in turn provides more real and fair legal protection for such children.¹⁹

However, although the Constitutional Court's ruling brought a wind of change, its implementation on the ground still faces a number of challenges. One of the main challenges is the problem of proving the biological relationship between the child and the father. Although DNA testing is one of the legitimate ways to prove blood relations, not all out-of-wedlock children have access to this test, especially if they live in an area with limited health facilities or have economic limitations. In addition, DNA tests themselves are not always cheap and can be an obstacle for many out-of-wedlock children who want to file an inheritance claim. Therefore, even though the law has provided space for the recognition of inheritance rights of children out of wedlock, access to proof is still a considerable obstacle.

In addition to the issue of proof, another challenge that may arise is social resistance to the recognition of inheritance rights of out-of-wedlock children. In Indonesia, the social

¹⁹ Yohana Putri, Magdalena Lumbantobing, en Eko Yudhistira, "Tinjauan Yuridis Terhadap Keabsahan Perjanjian Pengangkatan Anak Di Bawah Tangan Dalam Perspektif Hukum Perdata Indonesia", *Sriwijaya Journal of Private Law* 2, no 1 (2020).

stigma against children out of wedlock is still quite strong, and this can affect public acceptance of legal recognition of children out of wedlock as heirs. Many people still view children out of wedlock with a negative view, even though the law has given them equal rights. Therefore, in addition to legal reform, broader social reforms are also needed to change society's view of children out of wedlock, so that they can be accepted fairly without discrimination.²⁰

The implementation of this Constitutional Court decision also requires supportive policies to facilitate access for out-of-wedlock children to prove their biological relationship with their biological father. The government needs to provide facilities that are more accessible to the public, such as subsidies for DNA tests or other administrative attestation fees needed for the recognition of these civil relationships. In addition, the government also needs to conduct more intensive socialization about the rights of children out of wedlock so that the public better understands and accepts the changes that occur in family law.

In terms of the legal system, this ruling also demands changes in the way judicial and civil registry institutions manage cases involving children out of wedlock. The rigid legal system that previously relied on administrative formalities must now be able to accommodate the values of social justice that are more alive in society. Relevant institutions need to be trained to be more sensitive to this issue and apply the law more inclusively. Thus, the justice system in Indonesia can be more on the side of children who have been marginalized and pay more attention to their welfare and substantive justice.

Overall, although the Constitutional Court's decision No. 46/PUU-VIII/2010 brought major changes in the protection of inheritance rights of children out of wedlock, its implementation on the ground requires more comprehensive support. The government, the judiciary, and society need to work together to ensure that the rights of out-of-wedlock children can be properly recognized and protected. It is not only about granting inheritance, but also about providing true justice and eliminating the discrimination that has been experienced by children born out of legal marriage. With the right steps, this ruling can be an important milestone in creating a fairer and more inclusive family law system for all children in Indonesia.

4. Conclusion

The Constitutional Court Decision No. 46/PUU-VIII/2010 has brought significant changes in the arrangement of inheritance rights of out-of-wedlock children in Indonesia. Prior to this ruling, the provisions in Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage expressly limited the legal relationship of out-of-wedlock children only to their mothers and mother's family, resulting in out-of-wedlock children not being recognized as heirs of their biological fathers even though they are genetically legal descendants. This creates a profound legal injustice for such children, as they cannot access inheritance rights from their fathers simply because of their illegitimate birth status. With the issuance of the Constitutional Court Decision No. 46/PUU-VIII/2010, out-of-wedlock children are now recognized as having inheritance rights from their biological father, as long as they can prove a valid blood relationship through scientific evidence or other evidence. This ruling opens up fairer access for children out of wedlock to inheritance rights and removes previously discriminatory discrimination in the Indonesian legal system. Juridically, this ruling reinforces the principle of substantive justice that places more emphasis on valid biological

²⁰ Rahmad Setyawan, "Implikasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Terhadap Kedudukan Anak Di Luar Perkawinan", *Ahwaluna | Jurnal Hukum Keluarga Islam* 1, no 1 (2024): 318–337.

evidence, rather than just on limited administrative formalities.

Although this ruling brings very positive changes, its implementation in the field still faces some challenges, especially in terms of proving a blood relationship between the child and his biological father. Access to these evidence, such as DNA tests, can be a barrier for many out-of-wedlock children, especially those who live in areas with limited facilities or who cannot afford the cost of the test. In addition, social resistance to the status of out-of-wedlock children is still an obstacle to the acceptance of inheritance rights for these children in society. Therefore, supportive policies are needed, such as reducing the cost of DNA tests or subsidies for other evidence, as well as broader socialization of the rights of children out of wedlock. Overall, the Constitutional Court Decision No. 46/PUU-VIII/2010 is a major step towards the creation of a fairer and more inclusive legal system. However, for this ruling to be effectively implemented, further efforts are needed from the government, judicial institutions, and the community to overcome the existing challenges, as well as ensure that the inheritance rights of out-of-wedlock children can be recognized and properly protected. Thus, this ruling is not only an important milestone in the history of Indonesian family law, but also a concrete step in creating legal equality and better protection for all children in Indonesia, without exception.

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