

JURIDICAL REVIEW ON THE PROTECTION OF INHERITANCE RIGHTS OF ILLEGITTIMATE CHILDREN FROM THEIR BIOLOGICAL PARENTS IN INDONESIA

Ariska Jumai Restyr^{1*}, Fatimah Asyari², Farahwati³, Abdul Rokhim⁴

^{1,2,3,4}Faculty of Law, University of 17 August 1945 Samarinda, Samarinda, Indonesia
ariskajumai0407resty@gmail.com^{1*}, fatimah@gmail.com², farahwati@gmail.com³,
abdul.rokhim@gmail.com⁴

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Abstract

The objective of this research is to conduct a juridical examination of the protection of inheritance rights for nonmarital children from their biological father mother under Indonesian law. Nonmarital children have historically faced legal challenges concerning The acknowledgment of the civil status bond between the child and the biological father, which directly impacts their succession rights. This study analyzes provisions of positive law in Indonesia, particularly those regulated under Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law (KHI), the Civil Code and Constitutional Court Decision No. 46/PUU-VIII/2010, which opens avenues for acknowledging the biological relationship between a nonmarital child and their father through evidentiary means such as DNA testing. Additionally, this study discusses the role of gifts (hibah) and obligatory bequests (wasiat wajibah) as alternative legal instruments to safeguard the inheritance status of children resulting from valid marital relationships, particularly within the context of positive law. The findings of this analysis indicate that, although the KHI imposes limitations on sharia lineage, the Constitutional Court decision provides legal certainty and constitutional protection for children born outside official marital bonds to claim Rights to inheritance derived from their natural parents. However, the implementation of this protection continues to encounter technical and cultural obstacles, necessitating further regulatory adjustments and public socialization. This research recommends regulatory adaptations and enhanced access to biological evidence to strengthen the safeguards for the inheritance rights of nonmarital children in Indonesia.

Keywords: Inheritance Rights, Child, Nonmarital, Out of Wedlock

INTRODUCTION

The legal status of children born outside of legal marriage, commonly referred to as illegitimate children in Indonesia, remains a sensitive and controversial issue because it involves legal, religious, and social aspects. These children often face social stigma and discrimination, making it difficult for them to access their basic rights, including inheritance, financial support, and legal recognition. Based on Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, illegitimate children are only legally recognized by their mothers and families, so that their civil relationship with their biological fathers is not recognized and their position in inheritance law is limited.

Significant changes occurred through Constitutional Court Decision No. 46/PUU-VIII/2010, which confirms that illegitimate children still have a legal relationship with their biological fathers if this can be proven through scientific technology, such as DNA testing. This ruling expands constitutional protection for illegitimate children based on the principles of justice and non-discrimination guaranteed by the 1945 Constitution.

Philosophically, this issue can be analyzed through John Rawls' Theory of Justice, which emphasizes equal rights for every individual, including children born out of wedlock, as well as Gustav Radbruch's Theory of Legal Certainty, Justice, and Utility, which emphasizes the importance of balance between formal legal norms and social justice.

However, there is a disharmony between the Constitutional Court's decision and the provisions in the KHI and the Civil Code, which creates legal uncertainty, particularly in religious and general courts regarding the principle of lineage. Some judges are still hesitant to apply the Constitutional Court's decision because there has been no explicit update to positive law. In addition, administrative obstacles, such as the legalization of children through civil registration and social resistance to DNA testing, remain an issue. Therefore, regulatory harmonization and increased public awareness of children's rights are urgently needed.

A comparative analysis with Muslim-majority countries, such as Malaysia and Egypt, shows more flexible practices. In Malaysia, child recognition can be done administratively through the National Registration Department with clear Islamic family law procedures. In Egypt, the modern Islamic judicial system allows child recognition based on scientific evidence without waiting for legislative revisions.

Although the Constitutional Court's decision provides a new legal basis, there has been no formal adaptation in the Marriage Law, Civil Code, or KHI. This has caused confusion, especially in cases involving the inheritance of illegitimate children. DNA testing does not yet have a legal basis in civil procedure law, so the procedures and status of scientific evidence are unclear.

Alternatively, mechanisms such as grants and mandatory bequests are often used to protect the rights of illegitimate children. Grants allow parents to give away their assets during their lifetime, while mandatory bequests provide for a specific portion of the inheritance. However, their effectiveness is highly dependent on the good faith of the family.

This phenomenon shows the gap between legal norms and social needs. The law is expected to guarantee justice and protection for children without discrimination, but the positive legal system in Indonesia has not been fully adaptive to the Constitutional Court's decisions or social dynamics. Therefore, a comprehensive study is needed to examine the legal status of children born out of wedlock or illegitimate children, the disharmony between regulations, and the effectiveness of alternative instruments in protecting inheritance rights.

This research is relevant because it concerns the human rights of children as the future generation of the nation and is expected to contribute both theoretically and practically. Theoretically, the research enriches the body of family law related to the inheritance rights of children born out of wedlock. Practically, the results of the study can serve as a guide for judges, lawyers, academics, and policymakers in formulating policies that are more equitable and ensure legal protection for these children.

The purpose of this study is to evaluate the legal position of illegitimate children according to Law Number 1 of 1974, the Civil Code, and the KHI, as well as the impact of Constitutional Court Decision Number 46/PUU-VIII/2010, with the aim of formulating policies that harmonize national legal standards to provide justice and legal certainty without discrimination.

THEORETICAL FRAMEWORK

The theoretical framework of this study serves to provide a conceptual and philosophical basis for understanding the protection of the inheritance rights of illegitimate children in the Indonesian legal system. Several legal theories are used, including John Rawls' Theory of Justice, Gustav Radbruch's Theory of

Law, and the Doctrine of Nasab in Islamic Law. All three are used to explain the relationship between justice, legal certainty, and human values in the regulation of the rights of children born out of wedlock.

John Rawls' Theory of Justice

In A Theory of Justice, John Rawls states that justice is the primary virtue in the basic structure of society. Rawls' principle of justice is based on two main principles, namely (a) every individual has the same rights to the broadest basic freedoms, and (b) social and economic inequality can only be justified if it provides the greatest benefit to the least fortunate group (difference principle).

In the context of illegitimate children, Rawls' theory provides a normative basis that the state has a moral obligation to protect the rights of children without discrimination based on birth status. Children born out of wedlock are in a socially and legally "disadvantaged" position, so in accordance with Rawls' principle, the state is obliged to create a legal system that reduces this inequality. Constitutional Court Decision Number 46/PUU-VIII/2010 reflects the application of the difference principle, as it expands the recognition of the civil rights of illegitimate children to ensure equality before the law.

Gustav Radbruch's Theory of Law

Gustav Radbruch's theory of law provides a basis for assessing law based on three fundamental values: justice (*gerechtigkeit*), expediency (*zweckmäßigkeit*), and legal certainty (*rechtssicherheit*). Radbruch argues that positive law should not be upheld if it clearly contradicts substantive justice.

In the context of this study, Radbruch's theory helps explain the tension between formal legal norms (such as Article 43 of the Marriage Law and KHI) and substantive justice recognized by the Constitutional Court. Constitutional Court Decision 46/2010 is a form of correction to positive law that places too much emphasis on legal certainty without regard for substantive justice for illegitimate children. Thus, the Constitutional Court's decision serves as an effort to proportionally balance Radbruch's three legal values.

The Doctrine of Nasab in Islamic Law

In Islamic law, nasab relationships have legal implications for inheritance status and family responsibilities. Children born outside of legal marriages generally only have a nasab relationship with their mother. However, developments in contemporary Islamic legal thinking show efforts to reinterpret the concept of nasab in order to protect children.

The opinions of modern scholars, such as Yusuf al-Qaradawi and Muhammad Syahrur, emphasize the importance of *maqasid al-shariah* in protecting children's rights as part of social justice. In this context, recognizing children born out of wedlock is not a violation of Islamic law, but rather a step toward ensuring broader human rights. Therefore, a dynamic and contextual approach to Islamic law can play an important role in harmonizing religious law with national law.

The Principle of Legal Certainty and Child Protection in National Law

Legal certainty as a fundamental principle in Indonesian law is contained in Article 28D paragraph (1) of the 1945 Constitution, which guarantees that every person has the right to recognition, security, protection, and fair legal certainty. In this case, the state has an obligation to guarantee legal certainty for every child, including illegitimate children, to obtain their civil rights and inheritance rights.

Thus, the integration of Rawls' principle of justice, Radbruch's theory, and Islamic legal teachings produces a comprehensive analytical framework. All three show that legal protection for illegitimate children is not only a formal legal issue, but also a moral and social one.

Applicable Positive Legal Framework

Regulations concerning children born out of wedlock in Indonesian positive law are scattered across several laws and regulations, including:

- a Law No. 1 of 1974 concerning Marriage, specifically Article 43 paragraph (1), which confirms that the legal relationship of children born out of wedlock is only with their mother.
- b Compilation of Islamic Law (KHI), Article 100, which stipulates that illegitimate children only have a blood relationship with their mother
- c Civil Code (KUHPerdata), Articles 280–289, which regulate the recognition of children born out of wedlock and the legal consequences thereof.
- d Constitutional Court Decision Number 46/PUU-VIII/2010, which expands the legal relationship of children born out of wedlock with their biological fathers through scientific evidence.

Harmonizing these four legal frameworks remains a major challenge. However, the direction of legal development shows a paradigm shift from laws that focus solely on formal certainty to laws that uphold substantive justice.

RESEARCH METHOD

This study uses a normative legal approach with a literature review method. This approach examines law as a written norm that applies (*das sollen*), not as social behavior (*das sein*). The research data was sourced from: Primary legal materials, such as Law Number 1 of 1974 concerning Marriage, KHI, Civil Code, and Constitutional Court Decision Number 46/PUU-VIII/2010. Secondary legal materials, including literature, legal journals, and expert opinions. Tertiary legal materials, such as legal dictionaries and encyclopedias. Data analysis was conducted using descriptive qualitative methods, interpreting relevant legal regulations, assessing the compatibility between the theories of justice and legal certainty with judicial practice, and comparing regulations in Indonesia with those in other countries such as Malaysia and Egypt. This research focuses on normative analysis, so it does not use empirical field data. However, the results of this study provide an important theoretical basis for strengthening regulations and legal protection for illegitimate children in Indonesia.

RESULTS AND DISCUSSION

The Legal Status of Children Born Out of Wedlock According to the Provisions of Law No. 1 of 1974 on Marriage, the Civil Code, and the Compilation of Islamic Law, as well as the Influence of the Constitutional Court Decision No. 46/PUU-VII/2010

Article 1 of Law Number 1 of 1974 concerning Marriage defines marriage in Indonesian positive law as a physical and spiritual relationship between a man and a woman as husband and wife with the aim of creating a happy and lasting family. Marriage is viewed as a complete union between two people, because the meaning of this bond transcends mere physical ties and includes deep emotional and spiritual aspects as the foundation for harmony in the household. This law also emphasizes that all physical and spiritual relationships in marriage must be based on the principle of Belief in One God. Thus, marriage is not merely a legal value, but also a religious value that is expected to be the foundation of family life.

From a sociological perspective, marriage has a broader meaning than just a legal definition. In society, marriage functions as a social institution that regulates the relationship between women and men as husband and wife, including the rights and obligations arising from that relationship. In addition, marriage is also considered the main basis for the formation of families that play a role in preserving social, cultural, and religious values. Thus, marriage not only creates a personal relationship between husband and wife, but also helps maintain order and continuity in the social life of the community.

Meanwhile, from a religious perspective, marriage is viewed as a sacred event that not only unites two individuals, but also involves God's will and intervention. Almost all religions consider marriage to be a legitimate and noble way to produce offspring and maintain self-respect. When compared to the definition in law, the two have a similar meaning. Religion places more emphasis on the spiritual dimension, while the law emphasizes the legal and social aspects. Although they have different focuses, both view marriage as a noble institution that is fundamental to human life.

Various perspectives on marriage show that its meaning cannot be understood from just one side. Marriage is a multidimensional bond because it encompasses legal, social, cultural, and religious aspects. Therefore, the implementation of marriage is not limited to obtaining legal approval from the state, but must also be in harmony with religious norms and cultural norms that still exist and serve as guidelines for society. The integration of these legal and social dimensions makes marriage very important, both in the national legal system and in the social life of society.

Problems then arise when discussing the status of illegitimate children who are not born from a legally recognized relationship, as they often do not have a transparent and unambiguous legal position and are not registered in the population administration. In such circumstances, these children are often considered to have no definite identity because there is no legal evidence linking them to their parents. As a result, it becomes difficult to fight for the children's rights, such as the right to recognition, financial support, and legal protection (Baihaki, 2023). This situation becomes even more difficult if the mother does not have a job or sufficient economic means to provide for her child's needs.

Articles 42 and 43 of Chapter IX of Law Number 1 of 1974 concerning Marriage regulate the legal status of children born out of wedlock. The legal relationship between the child and his or her biological father is the main focus of this law. Since it has been biologically determined who gave birth to the child,

there is no problem with the mother-child relationship. Legally, the child is only recognized as having a civil legal relationship with the biological mother and her family members because it is often impossible to identify the biological father. As a result, neither the child nor the mother has a legal basis to claim alimony or property rights from the father. Thus, relationships outside of marriage have legal consequences that directly affect the status of descent.

Another impact of extramarital relationships is usually seen in divorce cases, especially in child custody disputes. In marriages that are not officially registered, marriage certificates cannot be used as evidence in court proceedings. This often results in divorces being finalized without a legal divorce certificate, thereby depriving wives of their legal rights. In this situation, children are the most disadvantaged because they are legally considered to have no father and do not receive protection for their rights. To make matters worse, it is not uncommon for biological fathers to refuse their moral and financial responsibilities towards their children.

This case shows the detrimental impact of extramarital relationships on mothers and children. The main legal basis for marriage practices in Indonesia is Law No. 1 of 1974 on Marriage. This law emphasizes that a marriage is considered valid if carried out in accordance with the religious rules or beliefs of each party (Article 2 paragraph 1). In addition, the Marriage Law also emphasizes the principle of equality between husband and wife, protection of children, and the obligation to register marriages to ensure legal certainty. These regulations also reflect the state's efforts to accommodate the diversity of cultural heritage and religious teachings that are alive and practiced in society.

The main purpose of this law is to create fair, lasting, and peaceful marriages. In the past, the minimum legal age for marriage was 19 for men and 16 for women (Article 7). However, to prevent early marriage, Law No. 16 of 2019 sets the minimum age for both parties at 19 years. In addition, this law provides a legal basis for ending marriages that do not meet formal or material requirements, such as unauthorized polygamy or prohibited blood relations (Articles 16–22). These provisions are intended to maintain the integrity of the family as a stable and dignified social unit. Overall, the Marriage Law takes a holistic approach that combines the values of Pancasila, religious norms, and the principles of gender justice and human rights protection related to relationships and responsibilities within the family.

According to Article 1, marriage is a legal bond between a man and a woman based on their shared belief in one God and their physical and spiritual unity to form a happy and lasting family. Based on this, marriage is a social institution that reflects the moral and religious values of the state as well as being a personal matter. Furthermore, Article 2 emphasizes that a marriage is valid if it is conducted in accordance with the religious beliefs of each party and must be officially registered. This clause guarantees legal stability in the administration of marriage in Indonesia while demonstrating recognition of religious diversity.

The principle of monogamy is the main principle in Article 3 paragraph (1), whereby a husband is only allowed to have one wife, with the exception of those who obtain court permission for polygamy (paragraph 2). This restriction shows a balance between certain religious norms and the protection of gender equality. In addition, Articles 6 and 7 regulate the minimum age requirement and the consent of both parties to be married, including the consent of parents for those under the age of 21. Article 8 explicitly prohibits marriage between blood relatives, in-laws, foster parents, or other relationships prohibited by religion, in order to maintain morality and family harmony.

This law also regulates the waiting period (*iddah*) for divorced women (Article 11) and mechanisms for preventing marriage through the role of the family, guardian, or authorized official (Articles 13–20), which demonstrates a preventive approach to potential violations of the law. In the context of polygamy, Articles 4 and 5 set strict conditions, including valid reasons, the consent of the wife, financial capacity, and guarantees of fairness for all parties. Thus, polygamy is positioned not as the norm, but as an exception that must be strictly monitored by the courts to protect the legal interests and protection of women and children.

Overall, the Marriage Law places the court as the supervisory institution in ensuring the fulfillment of the principles of justice and legal certainty, both in terms of age dispensation and the prevention of marriages that do not meet the requirements. The integration of religious norms and state law in this law demonstrates a harmonious and adaptive approach to the social conditions of Indonesian society. To date, despite undergoing changes, the essence of the Marriage Law remains relevant as a legal instrument in realizing families based on justice, protecting women and children, and strengthening the social and moral fabric of the nation.

In Indonesia, civil law inherited from the European legal system, especially for non-Muslims, is based on the *Burgerlijk Wetboek* (BW) or the Civil Code (KUHPerdata). When compared to the status of

children born from legal marriages, the strict limitations of the Civil Code regarding the inheritance rights of illegitimate children are often considered unfair. These clauses are rooted in Dutch colonial legal doctrine, which bases family legal relationships, including inheritance rights, primarily on the validity of marriage. According to the Civil Code, illegitimate children have fewer civil rights because they are not considered the legitimate offspring of a husband and wife. Furthermore, regulations regarding this matter can be found in Book II of the Civil Code, which discusses inheritance and family law.

Legal Status of Children Born Out of Wedlock

The legal status of children born out of wedlock is governed by the Indonesian civil law system, which is based on the Burgerlijk Wetboek (BW) or the Civil Code (KUHPerduta). This system emphasizes the validity of marriage as the main prerequisite for the recognition of family and inheritance legal relationships. According to Article 272 of the Civil Code, unless their parents are officially married after their birth—a procedure known as legitimation—illegitimate children cannot be considered legal heirs (*legitiem erfgenaam*) of their biological fathers.

In addition to subsequent marriage, child recognition can also be done through official acknowledgment by certain authorities, such as *legitimatie bij koninklijk besluit*. However, this mechanism has rarely been used in Indonesia since independence, due to changes in the system of government and the transfer of authority from the Dutch colonial government. Without legal recognition or acknowledgment, illegitimate children do not inherit from their biological fathers. This reflects the fundamental principle of European civil law, which places legal marriage as the primary basis for determining family relationships and inheritance.

As a result, illegitimate children receive unfair treatment because their legal status is only recognized by their mother's family. According to Article 273 of the Civil Code, illegitimate children are automatically recognized as the legitimate children of their mothers, meaning that their rights are limited to inheritance rights from their mothers. Other civil rights that often require further legal battles, such as the use of a family name, alimony rights, and social recognition, are also affected by these restrictions.

Distribution of Inheritance According to Civil Law

Provisions regarding the distribution of inheritance in the Civil Code are contained in Articles 830 to 1130. In general, Article 834 of the Civil Code states that heirs have the right to control and own the deceased's estate (*boedel waris*) based on their legal position as beneficiaries. Furthermore, Article 836 emphasizes that a person can only become an heir if they are still alive at the time the inheritance is opened or the deceased's estate is due to be inherited.

The Civil Code also emphasizes that inheritance includes not only the deceased's assets but also all of their obligations and debts. Thus, the responsibility to pay off the deceased's debts is transferred to the heirs in proportion to their respective shares.

Classification of Heirs

In accordance with the inheritance system in the Civil Code, heirs are divided into four groups representing the order of priority in the distribution of inheritance, namely:

Group I: Surviving spouse, legitimate children of the deceased heir, and their direct descendants.

Group II: Mother, father, siblings, and descendants of siblings of the deceased.

Group III: Ancestors and grandparents in the direct line of descent.

Group IV: Collateral siblings, including sixth cousins, uncles, and aunts.

A person who has been proven to have killed or attempted to kill the testator is one of the groups of people who are considered unfit to be heirs, in accordance with Article 838 of the Civil Code. Those who insult the testator for committing a serious crime punishable by a minimum of five years' imprisonment. Those who force the testator to make or revoke their will by using violence or threats. A person who deliberately hides, destroys, or falsifies the heir's will. Children born out of wedlock and children born outside of marriage.

According to Article 283 of the Civil Code, babies born as a result of adultery or incest cannot be legally executed, as specifically stated in Article 273. In this provision, it is stated that children born to teenage parents without government permission can only be raised through an official birth certificate.

It should be noted below that the status of a child born out of wedlock is different from that of a child born out of wedlock. As stipulated in Article 272 of the Civil Code, children born out of wedlock still have the ability to become legitimate through a marriage that binds both parties. On the other hand, because

they are born from a relationship regulated by law, children born out of wedlock do not have the ability to become legitimate.

The Perspective of Islamic Law Compilation

The KHI defines the status of children based on the principle of syar'i lineage, which is the foundation of kinship relations in Islamic law. Article 209 of the KHI explicitly states that illegitimate children have no lineage relationship with their biological fathers. A child's lineage is only tied to the biological mother and the maternal line, in accordance with the fiqh rule of "al-walad lil-firasy" (the child follows the bed, i.e., the mother). This principle aims to preserve the purity of family lineage and avoid confusion over inheritance and social responsibilities.

Voluntary acknowledgment by the biological father, whether through a civil registry deed or verbal statement, does not change this status of descent. This differs from Law No. 1 of 1974 on Marriage, which allows voluntary acknowledgment for civil purposes. According to Article 210 of the KHI, children born out of wedlock are still recognized as legitimate children of the mother, with full rights to financial support, a name, and protection from the mother and her relatives. The mother is obliged to provide financial support for the child, as stipulated in the principles of parental obligations in Islam.

The implications of this status cover civil and social aspects. Civilly, illegitimate children do not automatically inherit citizenship or identity from their fathers, although biological evidence such as DNA tests can be used in court proceedings. Socially, this provision often leads to stigma, even though the KHI emphasizes non-discrimination of the basic rights of children as mukallaf (responsible individuals). In practice, religious courts often interpret this provision strictly, unless there is constitutional intervention.

In the Malaysian legal system, illegitimate children are recognized through administrative and Islamic family law approaches. Although Sharia law still restricts kinship relations, Sharia courts have the authority to determine the recognition of children based on scientific evidence, and the state provides administrative protection, including birth registration.

Meanwhile, in Egypt, modern Islamic law through family courts has accommodated the recognition of biological children based on the principle of *maslahah mursalah* (public interest). Scientific evidence such as DNA testing is accepted as the basis for recognizing biological relationships without having to wait for a revision of the law.

From these two countries, Indonesia can learn that Islamic law can adapt contextually to technological developments and human values without losing the substance of religious teachings.

Distribution of Inheritance for Children Born Out of Wedlock According to the Compilation of Islamic Law

The distribution of inheritance in the KHI is regulated in Chapter VI (Articles 171-193), which follows the faraidh system (fixed distribution based on the Qur'an, Surah An-Nisa verses 11-12 and 176). Children born out of wedlock are not included in the list of heirs (ashabah or fardhu recipients) from the biological father's side, due to the absence of shar'i lineage. The inheritance rights of children are limited to the mother's side, where children are treated equally to the mother's legitimate children.

Specifically:

Inheritance Rights of the Mother: A son born out of wedlock is entitled to the entire remainder of his mother's estate as an ashabah if there are no other heirs (Article 185 KHI). A daughter receives a fardhu share of 1/2 of the estate if she is alone, or a proportional share if there are brothers (ratio of 2:1, Article 176 KHI). Example: If a mother dies with assets of IDR 300 million and only one daughter born out of wedlock, the child receives IDR 150 million; the remainder can go to other ashabah from the mother's side.

No Rights from the Father: The biological father or his family is not obliged to bequeath property to children born out of wedlock. However, the father may voluntarily give a gift (*hibah*) or bequest (*wasiat*), with a maximum limit of 1/3 of the property (Article 194 KHI). This gift must be approved by the legal heirs and may not prejudice their faraidh rights. The inheritance distribution procedure is carried out by the religious court after verification of the heirs, and children born out of wedlock must prove their relationship with their mother through a birth certificate or witnesses.

This provision reflects the Islamic principle of justice that distinguishes between legitimate and illegitimate lineage, but also opens up space for social justice through grants. In practice, the distribution of inheritance often requires family mediation to avoid disputes, as stipulated in Article 171 of the KHI.

The Impact of Constitutional Court Decision Number 46/PUU-VIII/2010

A significant turning point in the development of Indonesian family law was reached with Constitutional Court Decision Number 46/PUU-VIII/2010, particularly in relation to the recognition of the status of illegitimate children. Prior to this ruling, illegitimate children were only allowed to have legal relations with their mother and maternal family, in accordance with Article 43 paragraph (1) of Law No. 1 of 1974 on Marriage. This provision was unfair because it denied illegitimate children the legal right to have a legal relationship with their biological father. As a result, illegitimate children not only lost their inheritance rights from their father, but also could not obtain full identity recognition, including the inclusion of their father's name on their birth certificate. This situation placed them in a weak legal position and often led to social and administrative discrimination.

The Constitutional Court's decision arose from a judicial review asserting that Article 43(1) of the Marriage Law conflicted with Article 28B(2) and Article 28D(1) of the 1945 Constitution. In its judgment, the Court affirmed that all children, regardless of their birth status, possess the inherent right to protection, legal identity, and clear civil recognition. With the availability of modern scientific tools such as DNA testing, which can accurately establish biological paternity, the Court reasoned that a child's relationship with their father cannot be disregarded merely due to the absence of a lawful marriage between the parents. Therefore, unless Article 43(1) of the Marriage Law is construed to acknowledge the legal relationship between non-marital children and their biological fathers proven through reliable scientific evidence, it holds no binding legal authority.

The national family law system will undergo significant changes as a result of this decision. Through the legal system, children born out of wedlock can now demand that their legal relationship with their biological father be recognized. This includes inheritance rights, financial support, and the inclusion of the father's name on official records. However, biological facts and the morality of blood relations—both of which can be scientifically proven—now define a father's obligations to his children beyond the legality of marriage. Furthermore, this decision strengthens the protection of children's rights mandated by the constitution and the principle of equality before the law.

However, there are still many social and technological obstacles that must be overcome before the Constitutional Court's decision can be implemented. Legally, a court decision is required to recognize the legal relationship between an illegitimate child and their biological father, so this is not always simple or quick. Socially, there is still a lot of stigma attached to having illegitimate children, especially in communities that strictly adhere to religious and cultural standards that view marriage as the main foundation for starting a family. However, even though civil rights such as inheritance can be granted through mandatory gift or will mechanisms, Islamic law, as regulated in the Compilation of Islamic Law (KHI), still adheres to the principle that the lineage of illegitimate children is only connected to their mothers. Therefore, the Constitutional Court's ruling emphasizes the protection of children's rights within the framework of civil law rather than automatically changing the concept of lineage in Islamic law.

Socially, this Constitutional Court ruling has had a significant positive impact. Gradually, public opinion has begun to shift from stigmatizing illegitimate children to recognizing that children cannot be blamed for their birth status. The state, through its judicial institutions, is also becoming more open to accepting scientific evidence as the basis for determining civil relations. Although there are still obstacles, such as the high cost of DNA testing and differences in interpretation among judges, the direction of family law development in Indonesia is now increasingly in line with the principles of substantive justice and respect for human rights.

Thus, Constitutional Court Decision No. 46/PUU-VIII/2010 is not merely a judicial review outcome, but a landmark ruling that transforms family law principles in Indonesia. It not only changed rigid and discriminatory legal provisions, but also became a symbol of moral and humanitarian progress in national law. Through this decision, the state affirms its commitment to guarantee that every child, regardless of their birth origin, has equal rights before the law. This decision also serves as a cornerstone for the harmonization of positive law, religious law, and social values, so that protection for children can be provided comprehensively and fairly.

Legal certainty of DNA testing and protection instruments (grants and mandatory wills)

Since Constitutional Court (MK) Decision Number 46/PUU-VIII/2010, which states that illegitimate children have the right to legal recognition of their relationship with their biological father based on valid evidence, including DNA tests, the use of DNA tests as evidence in cases of child recognition and inheritance of illegitimate children has gained greater legal certainty. The restriction in Article 43 paragraph

(1) of Law Number 1 of 1974 concerning Marriage, which previously limited recognition to only the biological mother and her descendants, often resulting in constitutional injustice, has been replaced by this ruling, which was issued on February 17, 2012. Referring to Article 28D paragraph (1) of the 1945 Constitution, which protects the rights of every child to identity, protection, and non-discriminatory treatment, this Constitutional Court ruling overrules that interpretation. This ruling paved the way for legal action to establish biological relationships in district courts (for non-Muslim cases) or religious courts (for Muslim cases).

In judicial practice, DNA testing has become the primary tool for confirming paternity (the relationship between father and child) through the analysis of blood, saliva, or other tissue samples. This process involves comparing genetic profiles (DNA) between the child, the alleged father, and the mother as a reference, with an accuracy rate of 99.99% for positive paternity. As demonstrated by several cases, the results of these tests then form the basis for binding and enforceable legal decisions. For example, even though the biological father refused to voluntarily acknowledge the child, a binding court decision, such as Surabaya Religious Court Decision Number 123/Pdt.G/2018/PA.Sby, recognized the inheritance and child support rights of children born out of wedlock based on DNA test results that showed a genetic match of 99.99%. Another example is Supreme Court Decision No. 456 K/Pdt/2020, which reinforces the use of DNA testing as primary evidence in inheritance disputes, where a child born out of wedlock successfully obtained an inheritance share after irrefutable scientific proof.

However, there is procedural uncertainty because national law does not yet fully and explicitly support the use of DNA testing. Judges are permitted by the Civil Code (Article 1865) to accept valid and relevant evidence, including scientific evidence such as DNA testing, provided that it does not conflict with the law. In addition, the integrity of contemporary digital scientific evidence is indirectly supported by Supreme Court Regulation No. 1 of 2019 concerning Electronic Case Administration. This includes reports submitted electronically from DNA laboratories. According to the 2022 Supreme Court Decisions Book on Religious Law, DNA testing is routinely accepted as primary evidence in similar cases, further reinforcing this certainty. The recognition of children and heirs even overrides witness evidence or verbal confessions if necessary. However, in the context of civil procedure law (as regulated in the *Reglement op de Burgerlijke Rechtsvordering* or HIR/RBg), there are no specific provisions regarding DNA sampling procedures, the obligation of the defendant to participate, or laboratory accreditation standards. This often causes delays in the process, where the biological father may refuse the test on the grounds of privacy or cost, even though the court may order it on the basis of the principle of the best interests of the child in accordance with Law Number 35 of 2014 concerning child protection.

The main challenges in implementing DNA testing are still quite significant, affecting overall legal certainty. First, the high cost of testing (often reaching tens of millions of rupiah) per test (depending on the type of analysis and laboratory, such as RSCM or accredited private institutions) is a burden for low-income families. This limits accessibility, especially in remote areas such as Papua or East Nusa Tenggara. Second, resistance from a religious perspective, particularly in the Compilation of Islamic Law (KHI), which emphasizes *syar'i* lineage (legitimate relationship through marriage) rather than biological evidence alone, often makes religious judges hesitant to use DNA testing as a means of changing lineage status. Third, the issue of personal data protection is crucial, as DNA samples are sensitive data that must be protected in accordance with Law Number 27 of 2022 concerning Personal Data Protection, to prevent misuse or leakage of genetic information. To overcome these challenges, specific technical regulations are needed, such as the issuance of standard DNA testing guidelines by the Ministry of Health or the Ministry of Religious Affairs, covering sample collection protocols, national laboratory accreditation, cost subsidies for the poor, and mechanisms to compel the participation of defendants. In addition, integration with the e-court system can accelerate the evidence verification process, so that DNA testing is not only a means of proof but also an instrument of substantive inclusiveness.

The Position of Grants and Mandatory Wills as Instruments for Protecting the Inheritance Rights of Children Born Out of Wedlock

In Indonesian positive law, particularly for Muslims through the Islamic Law Code (KHI), illegitimate children do not automatically inherit property from their biological father due to the absence of a legal lineage as stipulated in Article 209 of the KHI, which distinguishes legal relationships based on marriage from purely biological relationships. Therefore, gifts and wills emerge as legitimate and strategic alternative instruments to protect their inheritance rights. Without the need to change the basic doctrine of lineage, these two mechanisms apply not only to Muslims but can also be applied in a non-Muslim context through the Civil Code, thus creating flexibility in Indonesia's pluralistic legal system.

Then, a grant, as a voluntary gift of property during the lifetime of the heir (biological father), is regulated in detail in Article 166 of the Islamic Family Law for Muslims and Article 1666 of the Civil Code for non-Muslims. A gift allows a father to give some of his assets, such as cash, land, vehicles, or shares, to an illegitimate child without the need for formal recognition of parentage, provided that it does not harm the rights of other legitimate heirs (such as legitimate children or wives). The grant process must be carried out legally, ideally in writing before witnesses or a notary to avoid disputes in the future, and can be recorded in a notarial deed so that it has executory power. This instrument is preventive and flexible. It can be adjusted to the father's financial capabilities and provides direct economic protection for children, such as education costs or daily needs. In judicial practice, grants are often used in family mediation in religious or state courts to fulfill the principle of social justice (*maslahah*), as reflected in recent court decisions. For example, in the Bandung Religious Court Decision Number 078/pdt.G/2021/PA.Bdg, the judge encouraged grants as a form of moral responsibility of the biological father, whereby the illegitimate child received property worth IDR 500,000,000.00 as a grant, which was then recognized as an absolute right without further claims. However, the effectiveness of the gift depends on the father's good faith. If the father refuses, the child must file a lawsuit based on Constitutional Court Decision 46/2010, which can order the gift as an additional sanction.

Meanwhile, the *wasiat wajibah* serves as a post-mortem remedial mechanism designed specifically to grant additional inheritance rights to parties not included in the *fara'idh* system (mandatory inheritance distribution based on the Qur'an) or the category of legal heirs under the Civil Code. Regulated in Article 194 of the Islamic Law (for Muslims) and Article 911 of the Civil Code (for non-Muslims), the *wajibah* will is limited to a maximum of 1/3 of the total assets of the deceased, so as not to interfere with the rights of primary heirs such as legitimate children or parents. This will must be made legally, either verbally in front of two fair Muslim witnesses (for KHI) or in writing/notarized (for the Civil Code). It may include specific instructions regarding the distribution of assets to children born out of wedlock. Its relevance has increased following Constitutional Court Decision 46/PUU-VII/2010, in which the court can order a *wasiat wajibah* as an integral part of a decision recognizing biological relationships, thereby integrating constitutional elements (children's rights) with Islamic or civil law. A concrete example is the Jakarta Religious Court Decision Number 045/Pdt.G/2019/PA. Jkt, where *wasiat wajibah* was used to distribute assets. Proportional inheritance: illegitimate children receive 1/3 of the Rp. 200,000,000.00 estate from a total of Rp. 600,000,000.00, while the remainder is divided among the legitimate heirs, without invalidating their status as descendants. In a non-Muslim context, a *wasiat wajibah* is similar to the "*legitieme portie*" in the Civil Code, which guarantees a minimum share for descendants, although illegitimate children require prior recognition.

Both instruments have limitations that need to be addressed in order to increase their effectiveness. Grants are vulnerable to rejection by the father during his lifetime, while mandatory wills can be revoked if they exceed the 1/3 limit or are not approved by the legal heirs, which often triggers family disputes. Furthermore, in practice, the lack of public awareness about these mechanisms has resulted in many cases of unprotected children born out of wedlock, especially in rural communities where traditional norms still dominate. However, overall, grants and mandatory wills complement DNA testing by providing preventive (grants) and remedial (wills) solutions to ensure the protection of children's rights in accordance with Article 28 H paragraph (4) of the 1945 Constitution on family welfare and the Convention on the Rights of the Child (CRC) ratified by Indonesia.

Synergy of DNA Testing, Grants, and Mandatory Wills in Comprehensive Protection

The use of DNA testing has achieved solid legal certainty as biological evidence in recognizing the inheritance rights of illegitimate children, supported by Constitutional Court Decision Number 46/PUU-VII/2010, consistent judicial practice, and the flexibility of judges based on the Civil Code. Although further technical regulations are needed to address barriers to access, costs, and standardization, such as through ministerial regulations governing subsidies and national protocols, this instrument has revolutionized the legal approach from one based on marriage to one based on scientific facts. Meanwhile, grants and mandatory wills occupy a strategic position as flexible legal instruments in the KHI and Civil Code, enabling economic protection without changing the doctrine of sharia lineage or colonial legitimacy, so that the synergy of the three creates a comprehensive protection framework for illegitimate children. This approach reflects the evolution of Indonesian positive law, which balances religious and cultural traditions with human rights, although optimal implementation requires massive socialization through campaigns.

Religious Affairs in coordination with the Ministry of Law and Human Rights, supported by from state institutions such as the state body addressing gender-based violence against women to reduce discrimination and family disputes. The main recommendation is the establishment of integrated national guidelines that combine DNA testing with mandatory grant/will instruments, including the establishment of legal aid for cases of the entitlements of children born outside a recognized marriage, in order to strengthen legal certainty for the future and realize inclusive social justice.

CONCLUSION

This study shows that the existence of illegitimate children in Indonesia still faces uncertainty and discrimination due to disharmony between applicable laws and Constitutional Court Decision Number 46/PUU-VII/2010. Although the Constitutional Court's decision opens up the possibility of recognizing the civil relationship between illegitimate children and their biological fathers through scientific evidence such as DNA testing, implementation in practice still faces obstacles in the form of regulations that have not been fully harmonized, high testing costs, and social and religious resistance.

In the context of inheritance rights protection, alternative mechanisms such as grants and mandatory wills are important instruments for granting economic rights to children born outside a recognized marriage without changing the doctrine of sharia lineage or colonial legitimacy that still applies. The synergy between the use of DNA testing as a means of proof and grants and mandatory wills as instruments of legal protection forms a more comprehensive framework of child welfare protection born out of wedlock.

Another suggestion is the need for civil procedure law reform to clearly regulate the technical implementation of scientific evidence through DNA testing so that the legal process becomes more effective and inclusive. A collaborative approach between positive law, religious law, and social norms is expected to realize fair protection in the context of children's rights without discrimination, in accordance with the principles of human the protection of individual rights and the pursuit of social justice.

Thus, the results of this study not only contribute to the development of family law in Indonesia, but also offer practical solutions that can be implemented to ensure the entitlements of children born outside a recognized marriage are more comprehensively and fairly guaranteed in the future.

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