

# HASIL CEK\_Dewi, Suryadi, Zuliyah\_Extra-Marital Child\_ Civil Rights\_Constitutional Court\_Sociological.pdf

*by Universitas Ahmad Dahlan Yogyakarta 31*

---

**Submission date:** 08-Dec-2023 10:39AM (UTC+0700)

**Submission ID:** 2252078676

**File name:** ital\_Child\_Civil\_Rights\_Constitutional\_Court\_Sociological.pdf (348.01K)

**Word count:** 5222

**Character count:** 28365

**Sociological Study of The Civil Rights of Extramarital Children Towards Biological Fathers Post Constitutional Court Decision No. 46/PUU-VIII/2010**

Written by:

Riza Kusuma<sup>8</sup>, Pramastya Dewi, Suryadi, Siti Zuliah

Ahmad Dahlan University

e-mail: rizakusuma59@gmail.com, suryadi@law.uad.ac.id, siti.zuliyah@law.uad.ac.id

***Abstract***

*The sociological legal study provides meaning that it examines the nature of humans or human interactions as legal subjects in relation to the law, as well as investigates legal norms. The Sociological Study on Extra-Marital Child's Rights to their Biological Father after the Constitutional Court of Indonesia Decision No. 46/PUU-VIII/2010, examines the legal sociology of recognizing the biological father in light of this decision. Recognition in civil matters for the biological father cannot be enforced, except in cases where it is compulsory under criminal law, as stipulated in Article 280 and 287 of the Civil Code (BW). The rights of Extra-Marital Children (EMC) protected by the Constitutional Court's decision have altered the norm of Article 43(1) of the Marriage Law (UUP) and the law in action regarding the proof of biological paternity. The purpose of this research is to sociologically examine the rights of extra-marital children regarding their biological father after the Constitutional Court's decision, particularly in proving the blood relationship between the child and their biological father based on the Constitutional Court's decision, thereby ensuring the children's civil rights. This research employs a normative-sociological research method, as well as primary and secondary legal materials to support research credibility. The Sociological Study on Extra-Marital Child's Rights after the Constitutional Court's decision faces challenges in its sociological application. In this study, legal sociology only amends the legal norm of Article 43(1) of the Marriage Law as per the Constitutional Court's decision, while the enforceability of proving the civil rights of the biological father cannot be automatically imposed.*

*Keywords: Extra-Marital Child; Civil Rights; Constitutional Court; Sociological.*

## INTRODUCTION

### A. Background of the Problem

Indonesia is a legal state according to Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution. The concept of a legal state, often referred to as "rechtstaat" or "rule of law," was first introduced by Rudolf von Gneist in the 19th century. The existence of law holds significant importance for a nation because, as per J.C.T Simorangkir, S.H., it comprises regulations that have a compelling nature in determining human behavior within the societal context.<sup>1</sup> The expert's explanation of law is understood to mean that law serves as a tool for determining how humans interact within their social environment. Human interactions are facilitated through communication among individuals, and these interactions give rise to legal activities that are sociologically connected. This indicates that, from a sociological perspective, the law also has an influence on the implementation of law in Indonesia.

Sociological law, in this context commonly referred to as legal sociology, comprises elements such as norms, social norms, social institutions, social groups, and social strata.<sup>2</sup> Sociology has a reciprocal

influence due to the presence of various elements. Norms, as the essence of law and playing a significant role in legal sociology, imply that law cannot exist in isolation from society. All actions and behaviors that arise from society contribute to the creation of the law itself. Indonesia, as a legal state, produces legal products known as legislation. Legislation is a written regulation containing legal norms that are generally binding and established or determined by state institutions or authorized officials through procedures outlined in the legislation.<sup>3</sup>

Sociology is a discipline that studies the relationships of human behavior within society. The object of sociological inquiry is human life, the processes of human interaction within society, and the products of human social interactions within society. Therefore, sociological study is a science aimed at examining human life in the context of their interactions within society, both in terms of legal products and the products of social interactions amidst society.<sup>4</sup> The sociological study in this research focuses on the civil rights of extramarital children (ALK) following the Constitutional Court of the Republic of Indonesia Decision No. 46/PUU-VII/2010. The decision granted flexibility in determining the civil rights of ALK with respect to their

<sup>1</sup> Zainal Asikin, *Pengantar Ilmu Hukum* (Jakarta: R Grafindo, 2015) hlm.13.

<sup>2</sup> Alfian Biroli, "Problematika Penegakkan Hukum Di Indonesia (Kajian Dengan Perspektif Sosiologi Hukum)," *Jurnal Pemikiran Sosiologi* 8, no. 2 (2015): 6.

<sup>3</sup> Humas Mahkamah Republik Indonesia (MK RI), "Bimtek Bahas Konstelasi Peraturan Perundang-

Undangan," *mkri.id* (Jakarta, 2021),

<sup>4</sup> Sri Sunarti dan Suhardi, *Sosiologi 1* (Jakarta: Departemen Pendidikan Nasional, 2009) hlm. 163.

biological fathers. This has led to some conflicts and questions in Indonesian law after the issuance of Constitutional Court Decision No. 46/PUU-VII/2010 because, in practice, this decision cannot be implemented absolutely, as the process of proving the blood relationship between the child and their biological father cannot be compelled.

In society, extramarital children (ALK) are often viewed as illegitimate or children without a recognized father. The prevailing stigma in Indonesian society that perceives ALK as children with uncertain origins has made the Constitutional Court's decision a significant step forward in establishing the paternity of a biological father for a child. Under positive law, ALK, who only have legal ties to their mother and her family, face injustice from a societal standpoint because they are considered to be born outside of a legitimate marital bond, even if there was a religious marriage. However, this is not recognized by Indonesian positive law. ALK continues to be seen as children born out of wedlock according to legal standards.

Constitutional Court Decision No. 46/PUU-VIII/2010 provides legal flexibility as a form of antidiscrimination for a child regarding their civil status. A child is still born from a woman as a result of a biological relationship with a man. Thus, a child still has a legal father. This Constitutional Court decision explicitly signifies that a child is undeniably a human being with parents, both a father and a mother. The weakness of this decision lies in the complexity of its proof when it is provided voluntarily. Because

marriage law is a private law, its public aspect is in the form of administration as an authentic act aimed at safeguarding each individual's rights and responsibilities.

The sociological discussion about this Constitutional Court decision makes this research intriguing to analyze as a form of legal correction and as an academic research material for examining the legal perspective more broadly and understanding how the objectives of the law can be achieved through this Constitutional Court decision. Legal sociology examines various social and legal realities within society.

**B. Problem Statement:** Sociologically, how do the civil rights of extramarital children concerning their biological fathers change after the Constitutional Court of the Republic of Indonesia Decision No. 46/PUU-VII/2010?

**C. Research Objectives**

The aim of this research is to sociologically examine the civil rights of children concerning their biological fathers after the Constitutional Court of the Republic of Indonesia Decision No. 46/PUU-VII/2010, especially regarding the proof of the blood relationship between the child and their biological father through evidence based on science and technology and/or other legal means, so that the civil rights of the child can be fulfilled. This research also serves as a discussion tool for readers to explore a broad academic study, particularly in the field of legal sociology.

**D. Literature Review**

**a. Marriage**

Marriage is regulated in Law No. 16 of 2019 on Amendments to

Law No. 1 of 1974 concerning Marriage, hereinafter referred to as the Marriage Law (UUP). According to Article 1 of the Marriage Law, marriage is defined as "the legal bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the One Almighty God." This means that marriage exists due to the bond between a man and a woman for the purpose of establishing a family as an act of worship to the One Almighty God.

On the other hand, in the 1945 Constitution of the Republic of Indonesia (UUD NRI), Article 28B(1) states that "Every person has the right to form a family and to procreate through a lawful marriage." This implies that marriage is a legal bond or can be said to be a contract entered into by a man and a woman to establish a family.

#### b. Constitutional Court Decision

The purpose of Constitutional Court decisions is to uphold the law and justice. These decisions, of course, have their own consequences. Decisions that grant the petition result in the annulment of a norm and do not have binding legal force. Such decisions cannot be detached from the principle of erga omnes, which has legally binding force on the entire nation, requiring all parties to comply with and obey the decision.<sup>5</sup>

#### c. Extramarital Child (ALK)

Extramarital Child (ALK) in Article 272 of the Civil Code states that "a child born out of wedlock, except those born from adultery or incest, is legitimized by the subsequent marriage of their parents if, before the marriage, they acknowledged the child lawfully, or if such acknowledgment is made in the marriage deed itself." In essence, according to Article 272 of the Civil Code, ALK is a child born outside of wedlock, except for children born from adultery or incest. However, this provision in the Civil Code is no longer in effect following the enactment of national law, which is the Marriage Law.

In Article 43, paragraph (1) of the Marriage Law (UUP), it is stated that "a child born out of wedlock has only civil relations with their mother and her family." However, according to Constitutional Court Decision No. 46/PUU-VIII/2010, Article 43, paragraph (1) must be read as "A child born out of wedlock has civil relations with their mother and her family, as well as with the man as their father, provided that it can be proven based on science and technology and/or other legal evidence to have a blood relationship, including civil relations with the father's family."

## RESEARCH METHODOLOGY

### A. Type of Research

This research employs a type of normative-empirical / normative sociological legal research.<sup>6</sup> Normative-sociological research is used to analyze or determine the extent to which regulations or laws and the legal system operate effectively. The normative-sociological legal research method is essentially a combination of normative legal approaches with the addition of various empirical elements.<sup>7</sup> The nature of this research is Descriptive Analysis, which is used to analyze data by describing the gathered data without making general or universal conclusions.<sup>8</sup>

### B. Research Materials

Research Materials: This research utilizes library study materials consisting of primary legal sources and secondary legal sources.

1. Primary legal materials used include the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), the Civil Code (KUHPerduta/BW), Law No. 24 of 2003 on the Constitutional Court (UU MK), Law No. 12 of 2011 concerning the Formation of Legislation, Law No. 24 of 2013 on Amendments to Law No. 23 of 2006 concerning Population Administration (UU Amiduk), Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 concerning

Marriage (UU Perkawinan/UUP), and Constitutional Court Decision No. 46/PUU-VIII/2010.

2. Legal materials used include books and library materials, scientific papers/journals/legal research as a means to explain the research that supports the credibility of the legal study.

### C. Data Analysis and Conclusion Drawing Techniques

The analysis in this research is qualitative analysis derived from a literature study, including materials, concepts, legal theories, principles, legislation, and the researcher's own perspective. The conclusion drawing technique in the author's research plan is the Inductive Conclusion Drawing Technique. This technique involves drawing conclusions based on specific facts explained in detail and concluded with general facts as the core of the problem.

## RESEARCH RESULTS AND DISCUSSION

### A. Research Results

1. Sociological Study of the Civil Rights of Extramarital Children Regarding Their Biological Fathers After the Constitutional Court of the Republic of Indonesia Decision No. 46/PUU-VII/2010.

Civil law is a private material law that regulates individual interests.<sup>9</sup> Human beings, as social creatures (zoon politicon), cannot

<sup>6</sup> Yati Nurhayati, Ifrani Ifrani, and M. Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 1–20. <https://doi.org/10.51749/jphi.v2i1.14>.

<sup>7</sup> Zulfadli Barus, "Analisis Filosofis Tentang Peta Konseptual Penelitian Hukum Normatif Dan

Penelitian Hukum Sosiologis," *Jurnal Dinamika Hukum* 13, no. 2 (2013): 309.

<sup>8</sup> Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D* (Bandung: Alfabeta, 2017).

<sup>9</sup> Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 2003) hlm. 9.

act arbitrarily as individuals. This is because humans are bound by norms that exist in society, including religious norms, ethical norms, customary norms, and legal norms.<sup>10</sup> Legal norms are essential in the development of society to achieve order within the community.<sup>11</sup> According to Mr. R. Soepomo in his speech at the Anniversary of Gadjah Mada University in Yogyakarta on August 17, 1947, he stated that:<sup>12</sup>

"The law in society is influenced by the development of society itself, so national civil law must also be able to adapt to the national aspirations according to the aspirations of the Indonesian people."

Civil law is a legacy of the Dutch colonial government, with its regulations encompassed in the Civil Code (Kitab Undang-Undang Hukum Perdata/ KUHPerdata/ Burgerlijk Wetboek or BW). The evolution of the law over time has rendered some parts of the Civil Code no longer applicable, and currently, the Civil Code is no longer a comprehensive civil code that has been in effect since May 1, 1848.<sup>13</sup> This is because, according to the transitional provisions of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), before the formation of new regulations, the regulations from the pre-independence period can still be used. After independence, the government created regulations that

align with societal developments, rendering the Dutch colonial regulations no longer applicable. One of the provisions of the Civil Code that no longer applies comprehensively is Law No. 1 of 1974 concerning marriage (UU Perkawinan/UUP). As long as the provisions regarding marriage in Book I of the Civil Code have been regulated in the UUP, the provisions of Book I of the Civil Code are no longer in effect.<sup>14</sup> Several articles in the Civil Code (BW) related to marriage are no longer in effect after the existence of the Marriage Law (UUP), including articles 26-418a, and even articles 419-432, which govern the institution of emancipation, are not applicable. This is because Article 47 of the Marriage Law states that "*a child who is 18 years old is considered an adult, and therefore, no emancipation is needed for them.*"

Regarding the matters of civil law discussed above, the discussion of Extramarital Children (ALK) and their civil rights is regulated using the Marriage Law (UUP). The Civil Code (BW) regarding the civil rights of children is used as an enforcement tool for Constitutional Court Decision No. 46/PUU-VIII/2010, which is discussed in this research. Constitutional Court Decision No. 46/PUU-VIII/2010 decided on changing the content of Article 43, paragraph (1) of the Marriage Law, which initially

19

<sup>10</sup> Neng Yani Nurhayani, *Hukum Perdata* (Bandung: Pustaka Setia, 2015) hlm. 13.

<sup>11</sup> *Ibid.*, hlm. 14.

<sup>12</sup> *Ibid.*, hlm. 15.

13

<sup>13</sup> *Ibid.*, hlm 53

<sup>14</sup> Riduan Syahrani, *Seluk Beluk Dan Asas-Asas Hukum Perdata* (Alumni, 1989) hlm. 35.

**stated, "a child born out of wedlock has civil relations only with their mother and her family." It was changed to "A child born out of wedlock has civil relations with their mother and her family, as well as with the man as their father, provided that it can be proven based on science and technology and/or other legal evidence to have a blood relationship, including civil relations with the father's family."**

Legally, a Constitutional Court decision is one of the processes through which law is created. Some processes through which law is created include law as a result of a social contract, law as a result of a political process, law as a result of decisions made by rulers, and law as a result of judicial decisions.<sup>15</sup> A Constitutional Court decision is a process of law creation as a result of a judicial decision, which is a law used by other judges in the resolution of cases they handle, often referred to as jurisprudence.

Talking about the sociology of law, the sociological study of Constitutional Court Decision No. 46/PUU-VIII/2010 will be divided into four parts, including:<sup>16</sup>

- a. The Study of Law as a Norm in Upholding Order,
- b. Study on Social Stratification in the Application of Law,
- c. The Study of Legal Structure,
- d. Study of Social/Legal Changes.

The Constitutional Court Decision No. 46/PUU-VIII/2010 in

the Study of Law as a Norm in Upholding Order is interpreted in accordance with Article 24C paragraph (1) of the 1945 Constitution, which states that Constitutional Court decisions are final. This means that the Constitutional Court Decision has had the force of law since it was read in the Constitutional Court session. A court decision that has the force of law final has a binding legal effect for implementation. The Constitutional Court is also granted authority by Article 86 of Law No. 24 of 2003 on the Constitutional Court to further regulate matters necessary for the smooth implementation of its tasks and authority. In accordance with Article 7 paragraph (1) of Law No. 12 of 2011, it is stated that Constitutional Court regulations are considered a type of regulation recognized to have legal force, as long as it is mandated by higher legal regulations or established based on its authority. This demonstrates that a Constitutional Court decision is a tool in upholding order and orderliness in society and the state, as Constitutional Court decisions are a product of positive law emanating from the judiciary as a form of revising positive laws, such as the Marriage Law, to conform with the 1945 Constitution.

Furthermore, the study of Social Stratification in the Application of the Law suggests

<sup>33</sup> Rianto Adi, Sosiologi Hukum Kajian Hukum Secara Sosiologis (Jakarta: Yayasan Pustaka Obor Indonesia, 2021) hlm.9-14.

<sup>16</sup> Ibid, hlm. 94-106



that this Constitutional Court Decision may not be able to be executed due to differences in social status and roles in society. Differences in social status and roles in society can also occur if examined using conflict theory.<sup>17</sup> Conflict theory is one form of awareness that even within a rule in the form of a decision, there are always differing opinions regarding a decision that involves changes in meaning within the legal context.

Next, in the Study of Legal Structure, this Constitutional Court decision has a relationship between legal drafting, legal implementation, and legal enforcement. The UUP, which serves as a corrective material for this Constitutional Court decision, is the product created by the legal drafting authority, which is the DPR, responsible for making laws. The legal implementation, in the context of this Constitutional Court decision, is carried out by the community itself. The community, as the subject implementing the law specified in Article 43(1) of the UUP, ultimately led to the issuance of Constitutional Court Decision No. 46/PUU-VIII/2010. Legal enforcement in this case falls under the responsibility of the Constitutional Court judges who issued this decision.

The Study of Social or Legal Changes in this Constitutional Court decision pertains to changes in values altered within Article 43(1)

of the UUP. This involves the alteration of ALK's legal relationships, which were initially limited to the mother and her family, to include the biological father as long as it can be proven through science and technology or other legal evidence. Studying social change is challenging because the proof of ALK and their biological fathers cannot be compelled immediately, as there is currently no applicable legislation to enforce such proof forcibly. This is due to the voluntary nature of establishing proof between ALK and their biological fathers through the means of science and technology or other legal evidence.

Regarding the civil rights of a child, it is essential to understand that the child will obtain various civil rights if the establishment of the biological father, as outlined in the Constitutional Court decision, can be executed. The child will acquire several rights, including the following:<sup>18</sup>

1. Limited Civil Rights (obtained by the acknowledged ALK):
  - a. Limited alimony rights from the acknowledging parent,
  - b. Limited inheritance rights from the acknowledging parent (1/3 share of legitimate child),
  - c. Not under parental authority but under guardianship.

---

<sup>17</sup> Ibid, hlm 102

<sup>18</sup> Bernadeta Resti Nurhayati, "Hak Keperdataan Anak" (Universitas Katolik Soegijapranata, 2021).

2. Full Civil Rights (Obtained by Legitimized ALK):<sup>19</sup>
  - a. Full alimony rights (both parents),
  - b. Full inheritance rights,
  - c. Under the authority of parents.

The issues regarding the acknowledgment of ALK by the biological father in this MK decision actually have significant legal benefits in achieving the purpose of the law. The weakness lies in proving the acknowledgment of ALK by the biological father. According to Article 49 paragraph 2 of Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration (Amiduk Law), it is stated that "*Acknowledgment of a child only applies to a child whose parents have entered into a lawful marriage according to religious law but not yet recognized by state law.*" Acknowledgment of a child in Article 49 paragraph (2) refers to the recognition of a father toward his child born from a marriage that is legally recognized by religious law and approved by the child's biological mother.<sup>20</sup> The administration of ALK who is

acknowledged is explained in paragraph (3) of that article.

## B. Discussion

Marriage in Indonesia obtains legal recognition under the law as long as it is conducted according to the religious or belief system followed and is not in violation of the prevailing legal regulations.<sup>21</sup> The implementation of marriage in Indonesia, according to UUP Article 2 paragraph (2), must be registered. The authority responsible for recording marriages is the Office of Religious Affairs (KUA) for those of the Islamic faith and the Civil Registry for non-Muslims. This registration is essential to establish legal recognition because marriage is also considered a civil legal binding.<sup>22</sup> However, many people still engage in undocumented marriages or so-called "secret marriages." The problem that often arises from undocumented marriages is that they are considered illegal, which means that the wife and children born from such marriages do not enjoy legal protection, such as legal relationships with their fathers. Article 43 paragraph (1) of the UUP states that "a child born out of wedlock only has a legal relationship with the mother and her family." With the issuance of Constitutional Court Decision No. 46/PUU-VIII/2010, children born from unregistered marriages will have the

<sup>19</sup> Pengesahan dalam hak keperdataan yang didapat oleh anak, menurut pasal 50 UU Amiduk adalah hanya berlaku bagi anak yang orangtuanya telah melaksanakan perkawinan sah menurut hukum agama dan hukum negara, yang artinya bahwa pengesahan status seorang anak yang lahir dari perkawinan yang telah sah menurut hukum agama, pada saat pencatatan perkawinan dari kedua orang tua anak tersebut telah sah menurut hukum negara.

<sup>20</sup> UU No. 24 Tahun 2013 Tentang Perubahan Atas UU No. 23 Tahun 2006 Tentang Administrasi Kependudukan, Kementerian Hukum Dan Hak Asasi Manusia (bagian Penjelasan)

<sup>21</sup> Rio Satrio, "Dispensasi Kawin Di Pengadilan Agama Pasca Revisi Undang-Undang Perkawinan," *Pengadilan Tinggi Agama Bandung*, 2019, 1.

<sup>22</sup> Achmad Irwan Hamzani, "Nasab Anak Luar Pasca Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 12, no. 1 (2015): 1.

same legal status and legal rights as registered marriages.<sup>23</sup>

The Constitutional Court Decision is final and binding from the moment it is pronounced in an open plenary session for the public. This means that the decision must be executed from that moment onwards.<sup>24</sup> Constitutional Court decisions with final and binding characteristics can be difficult to implement because they often require follow-up with new legal instruments. Additionally, this process usually involves complex formal and procedural legal steps.<sup>25</sup> Decisions in sociological studies on the civil rights of children born out of wedlock (ALK) can also be challenging in their implementation.

The decision of the Constitutional Court No. 46/PUU-VIII/2010, in examining Article 43 paragraph (1) of the Marriage Law (UUP), was essentially aimed at providing protection for children, especially those born out of wedlock (ALK). This protection was evident in the expanded interpretation of Article 43 paragraph (1) of the UUP, allowing children born out of wedlock to have civil rights related to their biological fathers, provided that they can prove it as indicated in the Constitutional Court's decision. Upon closer examination of the decision, there is no evidence of a forced execution of establishing civil relationships with the biological father of children born out of wedlock. As such, it seems that the Constitutional Court's decision primarily

accomplished its role in altering the legal norm within Article 43 paragraph (1). The legal norm, originally stating that children born out of wedlock were only bound by their mother and her family in terms of civil relationships, was expanded to include the possibility of obtaining civil rights through their biological fathers, albeit subject to proof of credibility through scientific knowledge or other legal evidence. Sociologically, the enforceability of this decision appears to be challenging, given the limitations associated with individual civil rights. Another difficulty arises from the absence of authentic administrative proof of a marriage between the child's biological father and mother. This is supported by Article 55 of the UUP, which stipulates that the origin of a child can only be proven through an authentic birth certificate. If such a document is not available, proof can be established through examination based on qualifying evidence. Overcoming these challenges may be possible with the revision or amendment of the laws related to Article 43 paragraph (1) of the UUP regarding the establishment of civil relationships with the biological father of children born out of wedlock under legal circumstances.

The Constitutional Court's decision provides a signal that the institution for recognizing children, established as a form of protection for children born out of wedlock, appears to be revived. However, Article 55 of the Marriage Law (UUP) seems to be in

<sup>23</sup> Ibid, hlm. 2

<sup>24</sup> M. Agus Maulidi, "Menyoal Kekuatan Eksekutorial Putusan Final Dan Mengikat

20  
Mahkamah Konstitusi," *Jurnal Konstitusi* 16, no. 2 (2019): Abstrak.

<sup>25</sup> Ibid

contradiction with the intention of reviving the child recognition institution through this Constitutional Court decision. Sociologically, this decision has a positive impact on the protection of children against societal stigmas associated with children born out of wedlock. It is important to note that this research is based on the positive law of Indonesia and does not consider Islamic positive law in the context of children born out of wedlock due to illicit relationships. The Constitutional Court, as a judicial institution authorized to review laws against the 1945 Constitution, should be capable of creating legal products that strengthen the executory power of its decisions, ensuring that the final judgments are not merely victories on paper but also contribute to achieving the objectives of the law.

## CONCLUSION

### A. Conclusion

The decision of the Constitutional Court of the Republic of Indonesia No. 46/PUU-VIII/2010 introduced a new norm regarding the implementation of Article 43 paragraph (1) of the Marriage Law (UUP) which leads towards protecting the civil rights of children born out of wedlock with respect to their biological fathers. Children born out of wedlock, as a result of legal consequences for their parents, have the same rights to know their origin, specifically, their biological fathers. The implementation of this Constitutional Court decision is deemed challenging. The execution of this decision is not straightforward, as there is currently no specific legislation that further clarifies the details of

Article 43 paragraph (1) of the Marriage Law, serving as an enforcement tool.

### B. Recommendations

It is advisable to strengthen the implementation of a Constitutional Court decision by taking follow-up actions related to the laws that have been examined, in this case, Article 43 paragraph (1) of the Marriage Law (UUP). This is because there is currently no legal enforcement mechanism to compel the proof of paternity for children born out of wedlock to gain their rights of legal recognition of their biological fathers.

## REFERENCES

- Adi, Rianto, 2021, *Sosiologi Hukum Kajian Hukum Secara Sosiologis*. Jakarta, Yayasan Pustaka Obor Indonesia.
- Asikin, Zainal, 2015, *Pengantar Ilmu Hukum*. Jakarta, RajaGrafindo.
- Asy'ari, Syukri, Meyrinda Rahmawaty Hilipito, dan Mohammad Mahrus Ali, "Model Dan Implementasi Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang (Studi Putusan Tahun 2003-2012)." *Jurnal Konstitusi* Vol 10, No. 4 (2016).
- Barus, Zulfadli, "Analisis Filosofis Tentang Peta Konseptual Penelitian Hukum Normatif Dan Penelitian Hukum Sosiologis.", *Jurnal Dinamika Hukum* Vol 13, No. 2 (2013).
- Biroli, Alfian, "Problematika Penegakkan Hukum Di Indonesia (Kajian Dengan Perspektif Sosiologi Hukum).", *Jurnal Pemikiran Sosiologi* Vol 8, No. 2 (2015).
- Hamzani, Achmad Irwan. "Nasab Anak

- Luar Kawin Pasca Putusan Mahkamah Konstitusi.*” Jurnal Konstitusi Vol 12, No. 1 (2015).
- Maulidi, M. Agus. “*Menyoal Kekuatan Eksekutorial Putusan Final Dan Mengikat Mahkamah Konstitusi.*” Jurnal Konstitusi Vol 16, No. 2 (2019).
- Nurhayani, Neng Yani, 2015, *Hukum Perdata*, Bandung, Pustaka Setia.
- Nurhayati, Bernadeta Resti, 2021, “*Hak Keperdataan Anak.*”, Bahan Ajar.
- Nurhayati, Yati, Ifrani Ifrani, dan M. Yasir Said. “*Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum.*” Jurnal Penegakan Hukum Indonesia Vol 2, No. 1 (2021).
- Humas Mahkamah Republik Indonesia, 2021, “*Bimtek Bahas Konstelasi Peraturan Perundang-Undangan.*” mkri.id. Jakarta, <https://www.mkri.id/index.php?page=web.Berita&id=17426&menu=2#:~:t>
- ext=“Peraturan perundang-undangan adalah peraturan,-undangan%2C” kata Nuryanti.
- Satrio, Rio, 2019, “*Dispensasi Kawin Di Pengadilan Agama Pasca Revisi Undang-Undang Perkawinan.*” Website Pengadilan Tinggi Agama Bandung.
- Subekti, 2003, *Pokok-Pokok Hukum Perdata*. Jakarta, Intermasa.
- Sugiyono, 2017, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D*. Bandung, Alfabeta,.
- Suhardi, Sri Sunarti, 2009, *Sosiologi 1*. Jakarta, Departemen Pendidikan Nasional.
- Syahrani, Riduan, 1989 *Seluk Beluk Dan Asas-Asas Hukum Perdata*, Bandung, Alumni.
- UU No. 24 Tahun 2013 Tentang Perubahan Atas UU No. 23 Tahun 2006 Tentang Administrasi Kependudukan.*

# HASIL CEK\_Dewi, Suryadi, Zuliyah\_Extra-Marital Child\_ Civil Rights\_ Constitutional Court\_ Sociological.pdf

## ORIGINALITY REPORT

10%

SIMILARITY INDEX

7%

INTERNET SOURCES

7%

PUBLICATIONS

5%

STUDENT PAPERS

## PRIMARY SOURCES

- 1** Novendri M. Nggilu, Dian Ekawaty Ismail, Tri Sulistyowati, Mohamad Rivaldi Moha. "Constitutional crisis: intensifying disobedience to the decisions of the Indonesian Constitutional Court", Revista Chilena de Derecho, 2023  
Publication 1%
- 2** [sister.untagsmg.ac.id](http://sister.untagsmg.ac.id)  
Internet Source <1%
- 3** [jurnal.unismuhpalu.ac.id](http://jurnal.unismuhpalu.ac.id)  
Internet Source <1%
- 4** Nur Mohamad Kasim, Indra Saputra Daud. "Application of The Concept of Maslahah by Judges to Issuance of Marriage Dispensation Due to Pregnancy in Religious Courts", Jambura Law Review, 2022  
Publication <1%
- 5** [dukcapil.bengkulukota.go.id](http://dukcapil.bengkulukota.go.id)  
Internet Source <1%

6	<a href="http://ijsrm.in">ijsrm.in</a> Internet Source	<1 %
7	<a href="http://jurnal.peneliti.net">jurnal.peneliti.net</a> Internet Source	<1 %
8	Submitted to Universitas Tidar Student Paper	<1 %
9	<a href="http://dikdaya.unbari.ac.id">dikdaya.unbari.ac.id</a> Internet Source	<1 %
10	Johan Beckmann. "Some recent developments in the legal relationship between parent and child", Education and the Law, 2001 Publication	<1 %
11	Submitted to Muhammad David Test Account Student Paper	<1 %
12	Wijaya Natalia Panjaitan, Frandy Septior Nababan. "Legal Consequences of Amendment And/Or Implementation of Homologation Outside Court Authorization", Batulis Civil Law Review, 2023 Publication	<1 %
13	Submitted to Atma Jaya Catholic University of Indonesia Student Paper	<1 %
14	<a href="http://ple.ppj.unp.ac.id">ple.ppj.unp.ac.id</a> Internet Source	<1 %

15	<a href="http://www.trijurnal.lemlit.trisakti.ac.id">www.trijurnal.lemlit.trisakti.ac.id</a> Internet Source	<1 %
16	Submitted to Indiana University Student Paper	<1 %
17	Submitted to Universitas 17 Agustus 1945 Semarang Student Paper	<1 %
18	Submitted to University of Nottingham Student Paper	<1 %
19	<a href="http://digilib.unkhair.ac.id">digilib.unkhair.ac.id</a> Internet Source	<1 %
20	<a href="http://ojs.umb-bungo.ac.id">ojs.umb-bungo.ac.id</a> Internet Source	<1 %
21	<a href="http://proceedings.unimal.ac.id">proceedings.unimal.ac.id</a> Internet Source	<1 %
22	<a href="http://e-journal.ikhac.ac.id">e-journal.ikhac.ac.id</a> Internet Source	<1 %
23	<a href="http://journal.jfpublisher.com">journal.jfpublisher.com</a> Internet Source	<1 %
24	<a href="http://jurnal.unpad.ac.id">jurnal.unpad.ac.id</a> Internet Source	<1 %
25	<a href="http://www.coursehero.com">www.coursehero.com</a> Internet Source	<1 %



- |    |  |      |
|----|--|------|
| 26 | Agung Mas Triwulandari. "Problematika Pemberian Bantuan Hukum Struktural dan Non Struktural Kaitannya dengan Asas Equality Before The Law", Jurnal Ilmiah Kebijakan Hukum, 2020<br>Publication | <1 % |
| 27 | Andi Muliadi. "Cultural Heritage Zoning System of Otanaha Fort Gorontalo City: Its Implementation in Regional Regulations", Estudiante Law Journal, 2023<br>Publication                        | <1 % |
| 28 | Daniel Lev. "Legal Evolution and Political Authority in Indonesia", Brill, 2000<br>Publication   | <1 % |
| 29 | Mimin Mintarsih, Lukman Mahdami. "The Legal Status of Mut'ah Marriage in Indonesia", Jurnal Penelitian Hukum De Jure, 2021<br>Publication  | <1 % |
| 30 | <a href="https://repository.uinsaizu.ac.id">repository.uinsaizu.ac.id</a><br>Internet Source   | <1 % |
| 31 | "The Asian Yearbook of Human Rights and Humanitarian Law", Brill, 2023<br>Publication  | <1 % |
| 32 | Anak Agung Gede Duwira Hadi Santosa, Kadek Agus Sudiarawan, I Made Marta Wijaya. "The Employment Cluster of Omnibus  | <1 % |

Law: Embodiment the Concept of  
Nachtwakerstaat or Welfarestate?", Fiat  
Justisia: Jurnal Ilmu Hukum, 2021

Publication

33

[repository.uinjkt.ac.id](https://repository.uinjkt.ac.id)

Internet Source

<1 %

34

[www.iiste.org](http://www.iiste.org)

Internet Source

<1 %

35

Piotr Z. Pomianowski. "Napoleonic Divorce  
Law in Poland (1808-1852)", Brill, 2022

Publication

<1 %

36

Zainuddin Zainuddin, Zaki Ulya. "Recording  
Siri's Marriages In Obtaining Legal Certainty  
(Reflections on the rise of Siri marriages in  
Aceh)", Syariah: Jurnal Hukum dan Pemikiran,  
2021

Publication

<1 %

37

[jurnal.fh.unila.ac.id](http://jurnal.fh.unila.ac.id)

Internet Source

<1 %

38

[ojs.unud.ac.id](http://ojs.unud.ac.id)

Internet Source

<1 %

39

Amien Ru'ati, Garciano Nirahua, Ronny  
Soplantila. "Kekuatan Eksekutorial Putusan  
Mahkamah Konstitusi Yang Bersifat Final Dan  
Mengikat di Indonesia", PATTIMURA Legal  
Journal, 2022

Publication

<1 %

Exclude quotes On

Exclude matches Off

Exclude bibliography On