

The Status of Children Born Out of Wedlock in Relation to Guardianship and Inheritance Post-Constitutional Court Decision

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Abstract

Constitutional Court Decision Number 46/PUU-VIII/2010 has brought significant changes to the legal status of children born out of wedlock, particularly concerning guardianship and inheritance rights. This study aims to analyze the juridical implications of the decision on the civil rights of children born out of wedlock, especially in terms of guardianship and inheritance. The research employs a normative juridical method with a legislative and judicial decision approach, complemented by analysis of legal doctrines and relevant case studies.

The findings indicate that following the Constitutional Court ruling, children born out of wedlock who can demonstrate biological ties to their fathers through scientific and technological evidence and/or other legally recognized proofs, are entitled to recognized civil rights, including guardianship and inheritance rights. Nevertheless, practical implementation continues to face challenges, primarily regarding the proof of biological relationships and social acceptance. Therefore, there is a need for regulatory harmonization and a more progressive understanding by law enforcement officers in upholding the rights of children born out of wedlock post-Constitutional Court ruling.

Keywords

Children born out of wedlock, guardianship, inheritance, Constitutional Court decision, civil rights.

Introduction

The status of children born out of wedlock represents a complex legal issue within the Indonesian civil law system. Traditionally, children born outside of lawful marriage have faced limitations in their rights, particularly concerning guardianship and inheritance.¹ This is largely due to the legal framework that has historically been based on the principle of marriage as the foundation for recognizing the parent-child relationship in the context of inheritance and guardianship law.

¹ Anisa Rahmawati, *Hak Anak Dalam Perspektif Hukum Waris Indonesia* (Yogyakarta: Pustaka Hukum, 2022), hlm. 45-48.

However, social developments and demands for justice necessitate reforms in these regulations.

A significant change occurred following the Constitutional Court Decision Number 46/PUU-VIII/2010, which recognized legal protection for children born out of wedlock, especially in the context of inheritance and guardianship, provided that the biological relationship can be proven legally.² This ruling marked an important milestone in acknowledging the rights of children born out of wedlock, which had long been neglected. Moreover, the decision reflects the evolution of law prioritizing the protection of children's human rights as part of civil rights.

Nonetheless, the practical implementation of the Constitutional Court's decision still encounters various obstacles. Proving the biological relationship between the child born out of wedlock and the biological father often poses a major challenge, both technically and socio-culturally. Additionally, the absence of detailed technical regulations governing the execution of this ruling results in legal uncertainty on the ground.³ Therefore, a more progressive understanding and interpretation of the law by law enforcement officials is crucial to optimally fulfill the rights of children born out of wedlock.

In the context of guardianship, children born out of wedlock also face challenges regarding the appointment of lawful guardians. Traditionally, guardians are appointed based on legally recognized

² Budi Santoso, "Perlindungan Hukum Anak di Luar Nikah Pasca Putusan MK No. 46/PUU-VIII/2010," *Jurnal Hukum dan Pembangunan*, Vol. 49, No. 1 (2023): 112-130.

³ Rina Marlina, "Hambatan Pembuktian Hubungan Biologis Anak di Luar Nikah dalam Hukum Waris," *Jurnal Ilmu Hukum*, Vol. 14, No. 2 (2021): 87-99.

familial relationships under marriage law, which often results in children born out of wedlock lacking legally recognized guardians. The Constitutional Court ruling opens opportunities for these children to obtain guardianship; however, the legal mechanisms to guarantee this still require further development.⁴ This is essential to ensure comprehensive legal protection for children in both inheritance and guardianship aspects.

This study is important to analyze in depth the implications of the Constitutional Court ruling on the legal status of children born out of wedlock, particularly concerning guardianship and inheritance. By understanding the evolving legal dynamics following the decision, this research aims to contribute academically as well as provide policy recommendations to strengthen legal protection for children born out of wedlock in Indonesia.

Method

This study employs a normative juridical approach, which examines the law as a set of norms codified in statutory regulations and court decisions, with particular reference to Constitutional Court

⁴ Dedi Kurniawan, *Perwalian Anak di Luar Nikah: Perspektif Yuridis dan Sosial* (Jakarta: Rajawali Pers, 2020), hlm. 75-80.

Decision Number 46/PUU-VIII/2010.⁵ This approach is chosen due to the research's primary focus on analyzing legal norms that govern the status of children born out of wedlock in relation to guardianship and inheritance. Accordingly, the main sources of this research consist of primary and secondary legal materials.

The primary legal materials in this study include statutory regulations such as the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPer), Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019, and Constitutional Court Decision No. 46/PUU-VIII/2010, which forms the legal basis for changes concerning the status of children born out of wedlock. Additionally, the research utilizes secondary legal materials such as legal literature, journal articles, and family law textbooks to provide a theoretical foundation for understanding the legal transformation concerning the civil status of such children.

To support the normative analysis, this study also adopts a conceptual approach, which entails examining fundamental legal concepts such as children's rights, justice, guardianship, and inheritance within the Indonesian legal system, and how these concepts are articulated in the Constitutional Court's ruling and its implementing regulations.⁶ This approach serves to understand the transformation of justice values within Indonesia's positive law following the Court's decision.

⁵ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif:*

Suatu Tinjauan Singkat, (Jakarta: Rajawali Pers, 2010), hlm. 13.

⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2017), hlm. 178.

Data collection was conducted through documentary research (library research), involving the examination of statutory texts, judicial decisions, and other academic documents. This study does not utilize empirical data, as no interviews or field surveys were conducted. All data were analyzed using a qualitative analytical method, focusing on the interpretation of legal norms and the meaning of the Constitutional Court's ruling in the context of legal protection for children born out of wedlock.⁷

This research is descriptive-analytical in nature, aiming to systematically describe how the legal changes introduced by the Constitutional Court's decision affect the legal standing of children born out of wedlock, particularly in matters of guardianship and inheritance. The findings of this study are expected to contribute to the development of national family law and provide recommendations for judicial practice and legal policymaking in Indonesia.⁸

RESULT, DISCUSSION AND ANALYSIS

A. Children Born Out of Wedlock in Islamic Law

⁷ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Malang: Bayumedia, 2006), hlm. 52.

⁸ Bambang Sunggono, *Metodologi Penelitian Hukum*, (Jakarta: RajaGrafindo Persada, 2001), hlm. 40.

In Islamic law, the legal status of a child born out of wedlock—referred to as *al-walad min al-zina* (child of adultery)—is distinct from that of a child born within a lawful marriage. From a *fiqh* (Islamic jurisprudence) perspective, such a child is not recognized as the biological child of the man involved, as the prerequisite of a valid marital bond (*nikah*)—which serves as the basis for establishing *nasab* (lineage)—is absent. This lack of legal recognition directly impacts the child’s rights, particularly in matters of guardianship (*wilayah*) and inheritance (*mirath*), whereby the child is not entitled to inherit from the biological father nor to receive legal guardianship through him.⁹ In the context of guardianship, Islamic law stipulates that the guardian (*wali*) must be a person with a valid legal lineage connection. Since a child born out of zina is not legally affiliated (*nasab*) with the biological father, the father does not have guardianship rights over the child. Instead, guardianship is typically assumed by the mother or a maternal relative, provided that no paternal relative is legally recognized as a guardian under Islamic law.

This principle aims to preserve the purity and clarity of lineage in accordance with *shari'ah*. Clear *nasab* is fundamental in various aspects of Islamic legal doctrine, including matters of inheritance, marriage, and guardianship. As a result, despite the existence of a biological connection, a child born out of wedlock does not have inheritance rights from the biological father. Nonetheless, the child retains inheritance rights from the mother and the maternal family, as the maternal lineage is legally acknowledged. Thus, while there are restrictions regarding the paternal relationship, the child is not entirely excluded from Islamic inheritance law. Regarding guardianship, in

⁹ Kamali, Mohammad Hashim, *Principles of Islamic Jurisprudence*, (Cambridge: Islamic Texts Society, 2003), hlm. 180-182.

situations where there is no legally recognized paternal guardian, the maternal guardian or a judge (*qadhi*) may assume the role of legal guardian to safeguard the child's welfare. This aligns with *fiqh* principles that prioritize the best interests of the child (*maslahah al-mahdl*), thereby allowing for the appointment of a guardian despite the absence of a lawful paternal *nasab*. Some scholars have also explored the possibility of granting legal dispensations or exceptions for children born out of zina in the realms of guardianship and inheritance, especially in cases where social or humanitarian considerations demand enhanced protection. However, such dispensations typically do not override the fundamental principles of *nasab* or grant inheritance rights from the biological father.

Modern developments in Islamic legal thought have prompted ongoing debate regarding the rights and protection of children born out of wedlock, particularly as such cases become increasingly prevalent in contemporary society. Certain Islamic legal scholars and jurists have advocated for legal reform to accommodate the rights of such children, arguing against excessive discrimination and emphasizing humanitarian and child rights perspectives. Furthermore, in the judicial practice of various Muslim-majority countries, there is considerable variation in how cases involving children born out of wedlock are handled, ranging from strict adherence to classical jurisprudence to more inclusive

approaches that integrate national legal systems. This demonstrates the influence of social and cultural factors on the implementation of Islamic law in relation to *al-walad min al-zina*.¹⁰

The discretionary authority of judges (*qadhis*) becomes particularly significant in determining guardianship for children born out of wedlock, as it enables case-by-case adaptation guided by principles of *maslahah* (public interest) and *mafsadah* (harm), along with the concrete circumstances of the child. This allows for a more flexible form of legal protection while still maintaining the doctrinal integrity of *nasab* in Islamic law.¹¹ In conclusion, Islamic law provides a clear doctrinal foundation concerning the legal status of children born out of wedlock in relation to guardianship and inheritance, emphasizing the centrality of *nasab* as a primary legal requirement. Although such children are not entitled to inheritance or guardianship from their biological fathers, their legal protection is ensured through maternal guardians and the judicial authority of *qadhis*, all of which continue to generate discussion and adaptation within the evolving landscape of modern Islamic legal thought.¹²

B. The Legal Status of Guardianship for Children Born Out of Wedlock Before and After the Constitutional Court Decision

¹⁰ Kamali, Mohammad Hashim, *Islamic Family Law*, (Kuala Lumpur: Ilmiah Publishers, 2008), hlm. 240-243.

¹¹ Muhammad al-Tahir ibn 'Ashur, *Maqasid al-Sbariah al-Islamiyyah*, (Tunis: al-Dar al-Tunisiyyah, 2006), hlm. 345-347.

¹² Siti Zubaidah, "Perlindungan Hukum Anak di Luar Nikah dalam Hukum Islam," *Jurnal Hukum Islam*, Vol. 12, No. 1 (2020), hlm. 54-58.

Prior to the Constitutional Court's decision, the legal status of guardianship for children born out of wedlock in Indonesia was marked by uncertainty and systemic discrimination. Under prevailing legal norms, such children did not receive the same guardianship protection as those born within a lawful marriage. Consequently, guardianship often defaulted to the state or court-appointed guardians, rather than the biological parents. This severely limited the rights of children born out of wedlock to be raised under the care of their biological parents. The Constitutional Court's ruling brought a transformative shift in the legal position of children born out of wedlock within the guardianship system. The Court affirmed that these children are entitled to equal rights in receiving guardianship from their biological parents, provided that certain conditions are met to safeguard the best interests of the child. The decision effectively eliminated the legal discrimination that had previously obstructed the guardianship relationship between such children and their biological parents.¹³

Following the decision, judicial practice regarding guardianship has undergone adaptation. Judges are now more flexible, prioritizing the principles of justice and child welfare. Biological parents of children born out of wedlock are granted broader opportunities to obtain guardianship rights, so long as such arrangements do not contravene the child's best interests or other prevailing legal norms.¹⁴ Nonetheless, the implementation of the Constitutional Court's decision is not without challenges. Administrative and socio-cultural barriers continue to hinder the full realization of guardianship rights for children born out

¹³ Putusan Mahkamah Konstitusi No. 46/PUU-XV/2017.

¹⁴ Suryanto, B. (2020). "Perwalian Anak di Luar Nikah: Implikasi Putusan MK", *Jurnal Hukum dan Peradilan*, 8(2), hlm. 45-46.

of wedlock. Therefore, regulatory reform and broader legal dissemination are urgently required to ensure the effective and uniform application of the ruling throughout Indonesia.¹⁵

Overall, the Constitutional Court's decision has shifted the legal paradigm regarding guardianship from a discriminatory framework toward a more inclusive and equitable model. It recognizes the child's right to grow and develop in a supportive environment, including the active role of biological parents in fulfilling guardianship responsibilities.

C. The Legal Status of Inheritance Rights for Children Born Out of Wedlock Before and After the Constitutional Court Decision

In the realm of inheritance, children born out of wedlock also faced significant legal discrimination prior to the Constitutional Court's decision. Under the inheritance laws previously in force, such children were not entitled to inherit from their biological fathers unless a legal marriage or formal acknowledgment of paternity existed. As a result, these children were frequently deprived of inheritance rights, despite being biological heirs. The Constitutional Court's ruling marked a

¹⁵ Nugroho, T. (2021). *Permalian Anak di Indonesia Pasca Putusan MK*. Yogyakarta: UGM Press, hlm 120

pivotal turning point in addressing this issue by affirming that a child born out of wedlock who can establish a biological relationship with their father is entitled to a fair share of inheritance, even in the absence of a legally recognized marriage. The Court underscored that the protection of a child's rights must be grounded in principles of justice and humanity, rather than being constrained solely by the formalities of legal marriage.¹⁶

Following this decision, children born out of wedlock now possess a stronger legal foundation to claim inheritance rights in court. The ruling has also influenced the interpretation of inheritance law, which is gradually evolving to accommodate the rights of biological children without discrimination—provided the biological relationship can be legally proven.¹⁷

However, the practical realization of these rights still depends heavily on the existence of accessible and credible mechanisms for proving paternity, such as DNA testing or official acknowledgment documents. Without such mechanisms, children born out of wedlock remain at risk of being effectively denied their inheritance rights. Ultimately, the Constitutional Court's ruling on inheritance rights for children born out of wedlock has prompted the legal system to become more responsive to children's rights and has helped dismantle long-

¹⁶ Kartini, D. (2019). *Hukum Waris Islam dan Nasional*, Jakarta: Rajawali Pers, hlm. 210.

¹⁷ Rahayu, S. (2022). "Kewarisan Anak di Luar Nikah dan Perlindungan Hak", *Jurnal Hukum Nasional*, 15(1), hlm. 89.

standing inequalities attached to their legal status. This represents a significant advancement in ensuring a more just and comprehensive distribution of inheritance, aligned with the evolving values of justice and child protection in Indonesia.¹⁸

Conclusion

The Constitutional Court Decision Number 46/PUU-VIII/2010 has significantly transformed the legal landscape concerning the status of children born out of wedlock, particularly in the domains of guardianship and inheritance. Prior to the ruling, such children faced systemic legal discrimination and uncertainty, especially in accessing guardianship from biological parents and claiming inheritance rights from their biological fathers. The ruling affirms that, upon legally proven biological ties, children born out of wedlock are entitled to civil rights, including guardianship and inheritance, thereby promoting legal equality and protection of children's rights in Indonesia. This progressive interpretation reflects a shift in Indonesian legal thinking—moving away from a rigid, formalistic approach based solely on marital legitimacy toward a more substantive justice-oriented perspective grounded in human rights and child protection. Nevertheless, effective implementation of this decision remains challenged by administrative hurdles, cultural resistance, and the absence of comprehensive regulatory mechanisms.

Therefore, to actualize the full spirit of the Constitutional Court's decision, legal harmonization, clearer procedural frameworks, and increased legal awareness among law enforcement, judiciary, and society are essential. Only through such efforts can the rights of children born

¹⁸ Subekti, R. (2018). *Hukum Kewarisan di Indonesia*, hlm. 215.

out of wedlock be fully protected in a just, non-discriminatory legal system.

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