

LEGAL INTERPETATION OF CIVIL RELATIONS BETWEEN OUT OF WEDLOCK CHILDREN AND THEIR FATHERS IN INDONESIAN INHERITANCE LAW

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Abstrak

Penelitian ini membahas makna hukum dari hubungan perdata antara anak luar kawin dengan ayah dan keluarga ayahnya dalam konteks hukum waris di Indonesia. Tujuan utama penelitian adalah untuk mengkaji interpretasi normatif atas frasa “hubungan perdata dengan ayah dan keluarga ayahnya” sebagaimana tercantum dalam Pasal 43 ayat (1) Undang-Undang Perkawinan, setelah Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010, serta menganalisis implikasinya terhadap praktik peradilan, khususnya dalam pemberian hak waris. Metode yang digunakan adalah yuridis normatif dengan pendekatan konseptual dan studi kasus terhadap putusan-putusan pengadilan. Hasil penelitian menunjukkan adanya disparitas putusan hakim yang menggambarkan ketidakkonsistenan dalam penerapan putusan MK, yang berdampak pada ketidakpastian hukum bagi anak luar kawin. Ketidakhadiran norma harmonisasi dan pedoman interpretatif memperparah perbedaan penafsiran antar sistem hukum (perdata, Islam, dan adat). Penelitian ini memberikan kontribusi dengan menawarkan analisis yuridis terhadap frasa kunci tersebut dan menekankan pentingnya perumusan norma implementatif yang terintegrasi untuk menjamin perlindungan hukum dan kesetaraan hak anak tanpa diskriminasi berdasarkan status kelahiran.

Kata kunci: *Hukum Waris, Hubungan Perdata, Anak Luar Kawin, Pembaruan Hukum, Mahkamah Konstitusi*

Abstract

This study examines the legal meaning of civil relations between out-of-wedlock children and their biological father and the father's family within the context of inheritance law in Indonesia. The main objective is to analyze

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Article History	Submitted: 9 March 2025	Accepted: 19 May 2025	Published: 27 May 2025

the normative interpretation of the phrase “*civil relationship with the father and his father's family*” as stated in Article 43 paragraph (1) of the Marriage Law following Constitutional Court Decision No. 46/PUU-VIII/2010, and to assess its implications in judicial practice, particularly in the granting of inheritance rights. This normative juridical research employs a conceptual and case-based approach by reviewing relevant court decisions. The findings indicate disparities in judicial rulings, revealing inconsistencies in the implementation of the Constitutional Court’s mandate, which contribute to legal uncertainty for out-of-wedlock children. The absence of harmonizing norms and interpretative guidelines exacerbates the divergence in legal interpretations among civil, Islamic, and customary law systems. This research contributes by offering a legal analysis of the key phrase and emphasizes the urgency of formulating integrated implementative norms to ensure legal protection and equal rights for all children, regardless of birth status.

Keywords: *Inheritance Law, Civil Relations, Unmarried Children, Legal Reform, Constitutional Court*

INTRODUCTION

Marriage is an institution that governs the physical and emotional bond between a man and a woman as husband and wife, aimed at forming a happy and enduring family. As a result, children may be born outside of a legally recognized union—referred to in Indonesian law as *extra-marital children*. The legal status of these children carries complex implications, particularly regarding their civil rights, including inheritance. Prior to the Constitutional Court Decision No. 46/PUU-VIII/2010, Article 43 paragraph (1) of Law No. 1 of 1974 on Marriage limited the civil relationship of extra-marital children only to their mother and maternal family. This statutory limitation raised issues of justice and legal protection, especially concerning the children's rights to inheritance and recognition from their biological father (Indonesia, Mahkamah Konstitusi, 2010). This raises questions about justice and legal protection for children born out of wedlock in the Indonesian legal system.

A number of previous studies have addressed the inheritance rights of extra-marital children through various legal lenses, including civil law, Islamic law, and customary law (Maharani et al., 2024, p. 39). This shows

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that local practices still have not fully adopted the principle of justice in the Constitutional Court's decision. Then, research by P. W. Lestari, et al. (2023) outlines that although the Constitutional Court decision No. 46/PUU-VIII/2010 has provided legal space for the recognition of biologically unmarried children, its implementation in the field is still weak, especially in the context of recognition by biological fathers who are reluctant to conduct DNA tests or avoid civil responsibility (Lestari et al., 2023, p. 111). This reinforces the importance of further research on the effectiveness of legal protection for extra-marital children in the national inheritance system. Furthermore, S. Salma, et al. (2023) highlighted how the Compilation of Islamic Law (KHI) still maintains the position that extra-marital children only have a nasab relationship with their mother, so they cannot inherit from their biological father (Salma et al., 2023, p. 770). They concluded that there was an inconsistency between the Constitutional Court's decision and the norms in KHI, and this had implications for not fulfilling the principles of legal certainty and justice for extra-marital children in the context of Islamic inheritance law. Finally, research by Paburru also shows that although extra-marital children can be recognized and granted inheritance rights through recognition mechanisms and scientific evidence (such as DNA), in practice there are disparities in the granting of inheritance rights depending on the legal form used (Civil Code, KHI, or adat) (Paburru, 2022, p. 109). This raises complex issues of legal uncertainty in implementation in the notarial and court realms

These four studies have contributed to identifying the problem of unclear norms and legal implementation for extra-marital children after the Constitutional Court's decision. However, all of them have not specifically highlighted the juridical interpretation of the phrase "civil relationship with the father and his father's family" and its implications for the disparity of judges' decisions in the context of inheritance law as the main focus. Thus, this research has a novelty that lies in the focus of analyzing the legal meaning of the phrase "civil relationship with the father and his father's family" in Article 43 paragraph (1) as amended by the Constitutional Court Decision. This approach is not only normative, but also compares judicial practices in the application of the inheritance rights of extra-marital children after the decision. In addition, this research also reveals the factors



that cause differences in judges' decisions (disparities), which so far have not been studied in depth, thus making an important contribution to strengthening legal certainty and justice for children outside marriage. This research is important considering that the decision of the Constitutional Court Number 46/PUU-VIII/2010 has opened up opportunities for extra-marital children to have a civil relationship with their biological father, including in terms of inheritance rights (Pusvita, 2018, p. 31). However, the implementation of the decision in judicial practice shows the disparity in judges' decisions, which can lead to legal uncertainty and injustice for unmarried children. In addition, in the context of *ius constituendum*, recommendations are needed to improve regulations to ensure more comprehensive and consistent protection of the rights of unmarried children in the Indonesian legal system.

In the context of inheritance law in Indonesia, the status of extra-marital children is a complex and controversial issue. The Constitutional Court Decision Number 46/PUU-VIII/2010 has opened space for extra-marital children to have a civil relationship with their biological father, provided that it can be proven legally through science and technology or other evidence according to the law (Asnawi, 2013, p. 260). However, the implementation of this decision in judicial practice still raises various questions. One of them is how to interpret the meaning of civil relations between extra-marital children with their father and their father's family in the perspective of inheritance law in Indonesia. In addition, there are disparities in judges' decisions regarding the inheritance rights of extra-marital children after the decision, which creates legal uncertainty and injustice for extra-marital children. The factors that cause this disparity need to be further analyzed to understand the implications of the Constitutional Court's decision on the inheritance rights of unmarried children in judicial practice. This research aims to comprehensively examine these problems in order to contribute to the development of a more just and certain inheritance law in Indonesia.

This research aims to provide an in-depth understanding of how the civil relationship between an unmarried child and his or her father and father's family should be interpreted in the Indonesian inheritance law system. This interpretation is important given the differences in principles



between civil law, Islamic law, and customary law, which affect the recognition of the inheritance rights of extra-marital children. The next objective is to critically examine the extent to which Constitutional Court Decision No. 46/PUU-VIII/2010 has influenced judicial practice in granting inheritance rights to unmarried children, especially the consistency and legal certainty resulting from judges' decisions. This is important because although normatively the Constitutional Court's decision has changed the legal construction, the implementation in the field still shows an imbalance in treatment between cases (Rosyid et al., 2023, p. 106). In addition, this study also aims to identify and analyze the factors that cause the disparity in judges' decisions regarding the granting of inheritance rights to children outside marriage (Hartanto, 2018, p. 32). Such disparities not only reflect inconsistencies in the application of the law, but also indicate the need for legal reform and more explicit jurisprudential guidelines.

Based on the description above, it appears that the legal status of extra-marital children after the decision of the Constitutional Court Number 46/PUU-VIII/2010 still leaves various interpretative and implementative problems in the Indonesian inheritance law system. The unclear meaning of the phrase "civil relationship with the father and his father's family" has led to disparities in judges' decisions, which in turn affects the legal certainty and protection of the civil rights of unmarried children. Through a normative approach balanced with jurisprudential studies, this research is expected to provide theoretical and practical contributions in answering these issues, as well as an argumentative basis in encouraging the formation of fairer and more consistent regulations. Thus, this research is not only academically relevant, but also has urgency value in supporting national legal reform that guarantees equal rights for every child, regardless of their marital status.

LITERATURE REVIEW

In legal research that focuses on the status of extra-marital children in the context of inheritance rights, the theoretical basis functions as a conceptual footing and analytical tool to understand and critically assess the applicable legal provisions, both in terms of normative and practice. In this case, the two main theories used as a framework are Justice Theory and Legal Certainty Theory.

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Justice Theory

Justice Theory, as developed by John Rawls in his work *A Theory of Justice*, emphasizes the principle of "justice as fairness" (Insha Afreen, 2024, p. 3052). Rawls states that justice is a basic principle in social arrangements, where everyone is entitled to the same basic freedoms, and social inequality must be regulated to benefit the most disadvantaged in society (Christian et al., 2025, p. 599). In the context of this research, this theory is relevant in assessing whether the legal treatment of extra-marital children, especially in granting inheritance rights from the father and his father's family, is in accordance with the principles of distributive justice that guarantee equal rights. The use of this theory will help answer the first and second problem formulations, which concern the recognition of the civil relationship of extra-marital children with their biological father and how their inheritance rights should be distributed fairly in legal practice.

Legal Certainty Theory

As stated by Sudikno Mertokusumo, legal certainty is a guarantee that the law is carried out, that those entitled according to the law can obtain their rights and that decisions can be implemented. While legal certainty is inherently interconnected with the concept of justice, it is important to note that law is not the same as justice. Law is characterized by its general applicability, binding nature, and equalizing function, whereas justice is inherently subjective, individual, and non-uniform (Nur, 2023, p. 256).

Then, according to Van Apeldoorn, legal certainty can also mean things that can be determined by law in concrete matters. Legal certainty refers to the guarantee that legal provisions are implemented effectively, that individuals with legal rights can access their rights, and that judicial determinations are subject to law enforcement mechanisms. Legal certainty is a justiciable protection against arbitrary action which means that a person will be able to obtain something that is expected in certain circumstances (Halilah & Arif, 2021, p. 61). Grammatically, certainty comes from the word certain, which means fixed letter, must and certainly, which is an important foundation in answering normative issues arising from the disparity in judges' decisions in cases of inheritance of children outside marriage. Legal certainty means clarity of norms and protection from arbitrary actions through consistent application of the law. In this context, although there has



been a Constitutional Court decision that provides space for extra-marital children to inherit from their fathers, the disparity in court decisions creates legal uncertainty. Therefore, this theory is used to assess whether the Indonesian legal system has provided adequate and consistent legal protection for extra-marital children in relation to inheritance rights.

These two theories of justice and legal certainty are not only complementary, but also become important instruments in analyzing the substance of Article 43 paragraph (1) of the Constitutional Court's decision, as well as the judicial practices that occurred afterwards. With the theory of justice, it will be seen to what extent the state strives to protect vulnerable groups such as extra-marital children. Meanwhile, the theory of legal certainty will evaluate the consistency of norms and their application in judicial decisions. Both are very relevant to explain the urgency of reformulating norms or implementing guidelines in the national inheritance law system to make it more just and certain.

RESEARCH METHODS

This study employs a normative juridical method, which focuses on analyzing secondary legal sources such as statutory regulations, court decisions, legal doctrines, and scholarly literature relevant to the research topic (Rizkia & Fardiansyah, 2023, p. 120). This method is appropriate because the research does not rely on empirical data but instead aims to examine the legal meaning of the phrase "*civil relationship with the father and his father's family*" within the context of inheritance law in Indonesia. The normative juridical approach is particularly suitable for interpreting legal norms, assessing consistency among legal frameworks, and evaluating their application in judicial practice.

This research applies three legal approaches: statutory, conceptual, and case-based (Efendi & Rijadi, 2022, p. 188). The statutory approach is used to analyze the legal norms in Law No. 1 of 1974 on Marriage, the Civil Code, and the Compilation of Islamic Law, particularly those regulating civil status and inheritance rights. The conceptual approach is employed to explore relevant legal concepts such as *extra-marital children*, *heir status*, and *civil relations*, in light of doctrinal developments and legal theories, including theories of justice and legal certainty. The case approach is used



to examine key judicial decisions—most notably Constitutional Court Decision No. 46/PUU-VIII/2010—and analyze how courts have interpreted and applied the relevant norms.

The types of legal materials used consist of primary legal materials, namely laws and regulations and court decisions relevant to the topic; secondary legal materials, namely literature, scientific journals, articles, and legal expert opinions; and tertiary legal materials, in the form of legal dictionaries and encyclopedias that support the understanding of terms and concepts (Efendi et al., 2016, p. 304). The technique of collecting legal materials is carried out through literature studies by tracing legal sources from print and electronic media, including indexed journals, current regulations, and decisions that have permanent legal force.

Analysis of legal materials is carried out qualitatively, by prioritizing legal interpretation methods, especially grammatical and systematic interpretation, to understand the sound of norms and their placement in the legal system as a whole (Kadriah & Sumarna, 2024, p. 25). The data obtained will be analyzed descriptively, to describe the state of the law as it is, and prescriptively, to provide solutions or normative recommendations to legal problems found. With this approach, it is expected that the research results can answer legal issues that have been formulated critically and thoroughly.

RESULTS AND DISCUSSION

General Concept of Civil Relations in the Indonesian Legal System

In the Indonesian legal system, **civil relations** refer to legal interactions between legal subjects—whether individuals or legal entities—within the private sphere, particularly concerning rights and obligations in daily life (Amalia et al., 2024, p. 64). The Civil Code (KUHPerdata) regulates various aspects of civil relationships, including family law, marriage, and inheritance (Gultom et al., 2023, p. 402). In family law, the Civil Code governs legal status within the family unit, such as guardianship, parental authority, and child-parent relationships, Marriage law stipulates the requirements for a valid marriage and the resulting legal rights and duties of each spouse, Inheritance law regulates the distribution of the estate of a deceased person, including determining who qualifies as an heir and the respective shares (Suwasta et al., 2024, p. 19).



Beyond the Civil Code, Indonesia recognizes a plural legal system encompassing Islamic law and customary (adat) law, particularly in family and inheritance matters. Islamic law, applicable to Muslim citizens, provides inheritance distribution rules based on Sharia, such as allocating a share to sons that is twice that of daughters, as prescribed in the Qur'an (Malayudha et al., 2023, p. 57). Meanwhile, customary laws vary widely across regions. For instance, in the Minangkabau matrilineal system, inheritance passes through the mother's lineage, granting daughters a central role in property succession (Keliat & Sembiring, 2024, p. 6). This diversity of legal systems reflects the legal pluralism that exists in Indonesia, where the Civil Code, Islamic law, and customary law coexist and apply according to the context and legal subject. However, this pluralism also poses its own challenges in practice, especially when there is overlap or conflict between provisions in the various legal systems. For example, in the case of a mixed marriage between couples of different religions or customs, determining which law applies in terms of inheritance can be complex and requires careful adjustment and interpretation (Yudistira, 2024, p. 16).

Therefore, a comprehensive understanding of the concept of civil relations in the Indonesian legal system is very important, especially for legal practitioners, academics, and the general public (Anggara et al., 2022, p. 356). This is necessary so that every individual can know and understand their rights and obligations in various aspects of civil life, as well as to ensure that the implementation of the law can run fairly and in accordance with the expected principles of justice and legal certainty.

Juridical Construction of Extra-marital Children and its Implications for Civil Rights

In the Indonesian legal system, the civil status of out-of-wedlock children has evolved significantly, particularly after Constitutional Court Decision No. 46/PUU-VIII/2010. Prior to this decision, based on Article 43 paragraph (1) of Law No. 1/1974 on Marriage, children born outside of marriage were recognized only as having a civil relationship with their mother and maternal family. This legal provision reflected a traditional and limited approach to civil rights, excluding the biological father from legal responsibility or inheritance obligations (Indonesia, Mahkamah Konstitusi,



2010). Decision No. 46/PUU-VIII/2010 introduced a fundamental shift by asserting that out-of-wedlock children also have a civil relationship with their biological father, provided that a blood relationship can be legally proven using scientific or other valid evidence (Ramadhan, 2025, p. 48). As a result, the decision formally extended civil rights such as maintenance and inheritance. However, this recognition has not been followed by consistent implementation, due to normative contradictions with Islamic legal provisions and a lack of harmonizing instruments.

In the perspective of Islamic law, the nasab of extra-marital children is not linked to their biological father, so there are no inheritance rights between the two (Amalatul, 2023, p. 50). This creates a dilemma in the application of the Constitutional Court's decision, because on the one hand there are efforts to provide legal protection and justice for extra-marital children, but on the other hand must consider the applicable Sharia provisions. Research by Nurlaelawati and van Huis (2019) shows that despite efforts to adopt concepts from the human rights framework into Islamic family law in Indonesia, such adaptations often face resistance as they are perceived to threaten the religious character of the law (Nurlaelawati & Huis, 2019, p. 382).

A comparison with legal systems in other countries, such as Malaysia, shows a different approach in regulating the status and rights of extra-marital children. In Malaysia, the decision regarding the nasab of an unmarried child rest entirely with the mother and her family, in accordance with the Shafi'i school of thought widely practiced in the country. As a result, extra-marital children in Malaysia may lose their civil rights, including financial rights, custody rights, and inheritance rights from their biological father (Tohari et al., 2024, p. 2149). This situation is different from Indonesia after Constitutional Court Decision No. 46/PUU-VIII/2010, where there is legal recognition of the civil relationship between an unmarried child and his/her biological father, although the implementation still faces various challenges.

Legal Interpretation of the Phrase "Has a Civil Relationship with the Father and his Father's Family"

Article 43 paragraph (1) of Law Number 1 Year 1974 concerning Marriage originally stated that "Children born outside of marriage only



have a civil relationship with their mother and their mother's family" (Pratiwi et al., 2020, p. 14). This provision confirms that extra-marital children do not have a legal relationship with their biological father, so civil rights such as maintenance, care, and inheritance from the father are not legally recognized. However, this view raises debates regarding the protection of children's rights and the principle of justice in Indonesian family law. The debate reached its peak with the Constitutional Court (MK) Decision Number 46/PUU-VIII/2010 which changed the interpretation of Article 43 paragraph (1). The Constitutional Court stated that children born outside of marriage have a civil relationship not only with their mother and mother's family, but also with their biological father, provided that it can be proven that there is a blood relationship through science and technology or other evidence that is valid according to law (Imam Arif Zamani, 2025, p. 13). This decision aims to provide fairer legal protection for children born out of wedlock and recognizes the biological father's responsibility for the child.

Nevertheless, the implementation of the Constitutional Court's decision has various implications in the Indonesian legal system (Zuhdi et al., 2025, p. 48). In the perspective of Islamic law, for example, the nasab of an extra-marital child is not linked to his biological father, so there are no inheritance rights between the two. This creates a dilemma in the application of the Constitutional Court's decision, because on the one hand there is an effort to provide legal protection and justice for extra-marital children, but on the other hand it must consider the applicable sharia provisions. In addition, the Constitutional Court's decision also raises challenges in judicial practice, especially in relation to proving the biological relationship between an unmarried child and his or her father. Courts are required to ensure that the evidence used, such as DNA tests, meets applicable scientific and legal standards. This is important to prevent misuse or manipulation of evidence that could harm one of the parties. Therefore, clear guidelines are needed for judges in handling cases of this kind, to ensure consistency and legal certainty in the decisions taken (Kusumo et al., 2021, p. 31).



Analysis of Judicial Practice: Disparity in Judges' Decisions in Granting Inheritance Rights to Unmarried Children

In judicial practice in Indonesia, the granting of inheritance rights to extra-marital children shows disparity or non-uniformity in judges' decisions. Although Constitutional Court Decision Number 46/PUU-VIII/2010 has recognized the civil relationship between an unmarried child and his or her biological father, implementation at the judicial level still varies. Some court decisions grant inheritance rights to unmarried children, while others deny them, reflecting legal uncertainty in the enforcement of these rights (Sari, 2024, p. 102). One example of a decision that grants inheritance rights to extra-marital children is Supreme Court Decision Number 688 PK/Pdt/2016 (Salamintargo, 2022, p. 1586). In this case, extra-marital children who have been legalized through their parents' marriage are recognized as having the same inheritance rights as legal children. However, in other decisions, such as Decision Number 533/Pdt.G/2010/PN.MDN, the court rejected the claim of inheritance rights of extra-marital children because they were not considered as legitimate heirs (Husni & Retnowulandari, 2025, p. 478).

This disparity can be caused by differences in judges' interpretations of the applicable laws and regulations, as well as the influence of local social and cultural values. Some judges may be more inclined to consider aspects of substantive justice and the protection of children's rights, while others adhere to formal legal provisions that limit the inheritance rights of extra-marital children. This difference in approach creates legal uncertainty for extra-marital children in fighting for their rights. In addition, another factor influencing the disparity in decisions is the lack of binding guidelines or jurisprudence regarding the granting of inheritance rights to extra-marital children. Although Constitutional Court Decision No. 46/PUU-VIII/2010 has provided a legal basis, its implementation at the judicial level still requires further interpretation. This shows the need for harmonization between positive law, Islamic law, and customary law in determining the inheritance rights of extra-marital children (Arasistawa, 2024, p. 66).

To achieve legal certainty and justice for extra-marital children, comprehensive legal reform efforts are needed. This includes the revision of relevant laws and regulations, the preparation of guidelines for judges in



deciding related cases, and increasing public understanding of the rights of unmarried children. Thus, it is hoped that there will be uniformity in judicial decisions and better legal protection for unmarried children.

The Urgency of Harmonizing Inheritance Law and Formulating Implementative Guidelines for Children Out of Wedlock

In the Indonesian legal system, the regulation of the inheritance rights of extra-marital children shows complexity due to the diversity of applicable legal sources, namely civil law, Islamic law, and customary law. Each system has different provisions regarding the status and rights of children born outside a legal marriage (Muhammad Muslim & Izza Afdania, 2024, p. 59). Civil law, for example, provides space for the recognition of extra-marital children through certain procedures, allowing for a civil relationship with their biological father. On the other hand, Islamic law traditionally limits the *nasab* of an unmarried child to the mother and her family, without recognizing a legal relationship with the biological father (Saputra & Saputra, 2024, p. 45). Meanwhile, customary laws in various regions have diverse approaches, reflecting local cultural values that sometimes differ significantly from one another (Kalesaran, 2021, p. 194).

This difference creates challenges in achieving legal certainty and justice for extra-marital children. The Constitutional Court Decision Number 46/PUU-VIII/2010 which recognizes the civil relationship between an unmarried child and his biological father is a progressive step in providing legal protection. However, the implementation of this decision is faced with resistance and diverse interpretations, especially from the perspective of Islamic law adopted by the majority of Indonesia's population. Research by Nurlaelawati and van Huis (2019) revealed that despite efforts to adapt human rights norms into Islamic family law, acceptance of the concept still faces significant challenges (Nurlaelawati & Huis, 2019, p. 356). In this context, harmonization between the three legal systems is urgent. Harmonization aims to harmonize normative differences so as to create legal unity that provides optimal protection for extra-marital children. This process requires intensive dialogue between stakeholders, including scholars, academics, legal practitioners and representatives of indigenous communities, to formulate legal norms that are inclusive and



responsive to social realities. For example, the integration of substantive justice principles from civil law with moral and spiritual values from Islamic and customary law could be a constructive approach in the formulation of a comprehensive legal policy.

In addition to normative harmonization, it is also necessary to formulate clear implementative guidelines or jurisprudence for law enforcement officials in handling cases related to the inheritance rights of extra-marital children. These guidelines serve as a reference in the judicial process, ensure the consistency of decisions, and minimize the disparities that have occurred so far. Research by BA Kusumo, et al. (2021) highlights the importance of these guidelines in providing legal certainty and preventing biased or discriminatory interpretations of extra-marital children (Kusumo et al., 2021, p. 34). Thus, efforts to harmonize inheritance law and formulate implementative guidelines are crucial steps in ensuring the protection of the rights of extra-marital children in Indonesia. This is in line with the principles of justice and legal certainty that form the basis of the national legal system. Collaboration between various elements of society and the government is needed to realize a legal system that is inclusive, fair and responsive to the growing social dynamics.

Theoretical Reflections and Recommendations for National Inheritance Law Reform

In the Indonesian legal system, the status and inheritance rights of extra-marital children are still a complex debate due to differences between civil law, Islamic law, and customary law. Although the Constitutional Court Decision No. 46/PUU-VIII/2010 has recognized the civil relationship between an unmarried child and his or her biological father, the implementation of this decision is faced with the challenge of harmonization with the prevailing norms of Islamic and customary law. This difference in interpretation and application of the law creates legal uncertainty and potential discrimination against unmarried children in obtaining their rights. Justice theory demands that every individual, including unmarried children, receive equal treatment before the law without discrimination. Meanwhile, legal certainty theory emphasizes the importance of consistency and predictability in the application of the law. However, in the context of the inheritance rights of extra-marital children



in Indonesia, these two principles have not been fully realized. The disparity in court decisions in similar cases shows a lack of clear standards, hindering the achievement of substantive justice for extra-marital children.

To overcome these problems, it is necessary to reform national inheritance law through an *ius constituendum* approach that considers social realities and the need to protect the rights of extra-marital children. The formulation of new norms that integrate the principles of the three systems of civil, Islamic and customary law can be a solution in closing the gap of disparity and legal uncertainty. This approach is in line with efforts to reconstruct the inheritance rights of extra-marital children based on the values of justice (Gunarto et al., 2021, p. 227). In addition, clear implementative guidelines are needed for law enforcers in handling cases related to the inheritance rights of extra-marital children. These guidelines should be prepared by considering harmonization between civil, Islamic and customary law, so as to provide legal certainty and prevent disparity in decisions. Research by Nurlaelawati and van Huis (2019) highlights the importance of the interaction between Islamic, customary and human rights norms in shaping an inclusive and fair family law system in Indonesia.

Thus, the harmonious integration of civil, Islamic and customary law systems in national inheritance law reform is essential to create a responsive, fair and inclusive legal order for extra-marital children. Collaboration between policymakers, academics, legal practitioners and the community is needed to formulate regulations that not only meet the standards of justice and legal certainty, but also respect the cultural diversity and values embraced by Indonesian society.

CONCLUSION

The Constitutional Court Decision No. 46/PUU-VIII/2010 marked a significant legal advancement by recognizing the civil relationship between out-of-wedlock children and their biological fathers, including potential legal ties to the father's extended family. However, the interpretation of the phrase "*civil relationship with the father and his father's family*" remains ambiguous in judicial practice. This ambiguity has led to inconsistencies in court decisions, particularly regarding inheritance rights, resulting in legal uncertainty and hindering the realization of substantive justice for out-of-wedlock children. This study finds that the disparity in judicial rulings is



rooted in the absence of a unified interpretative standard, as well as the tension between civil, Islamic, and customary legal norms. The legal framework, although normatively expanded through the Constitutional Court's decision, lacks sufficient procedural and doctrinal guidance for consistent implementation. The novelty of this research lies in its focused juridical analysis of the key phrase in Article 43 paragraph (1) of the Marriage Law, as amended by the Constitutional Court, and in its identification of the normative and institutional factors that perpetuate judicial disparity. The findings underline the urgent need for the formulation of implementative norms and harmonization across inheritance law systems civil, Islamic, and customary—within the *ius constituendum* framework. Such harmonization is essential to establish a coherent and inclusive legal order that ensures equal protection under the law for all children, regardless of their birth status, and strengthens the integrity and certainty of the Indonesian inheritance law system.

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