



The Effect of the Constitutional Court Decision Number: 46/PUU-VIII/2010 on the Inheritance Rights of Out-of-Wedlock Children in Islamic Inheritance Law

Dwi Anggriani Salsabila A A Sanmas¹, Novyta Uktolseja², Muchtar Anshary Hamid Labetubun³

^{1,2,3} Faculty of Law, Universitas Pattimura, Ambon, Indonesia.

@ : dwianggrianisanmas@gmail.com

Corresponding Author*



Abstract

This article examines the issue of inheritance rights for out-of-wedlock children from the perspective of Islamic law and Indonesian national law, particularly in the aftermath of Constitutional Court Decision Number: 46/PUU-VIII/2010, which marked a shift in the recognition of the civil status of out-of-wedlock children in relation to their biological fathers. This article aims to analyze the impact of Constitutional Court Decision Number: 46/PUU-VIII/2010 on the legal inheritance status of out-of-wedlock children within the frameworks of Islamic law and Indonesia's national legal system. This study employs a normative juridical method with a statutory and conceptual approach. Data sources include primary and secondary legal materials. The research findings indicate that the Constitutional Court decision grants civil legal recognition to out-of-wedlock children with regard to their biological fathers, provided that the relationship can be proven through scientific means or valid legal evidence. This ruling broadens the inheritance rights of out-of-wedlock children under national law. However, in Islamic legal tradition, lineage (nasab) remains the principal basis for inheritance, leading to a tension between sharia principles and state law. The decision also opens a discourse on the harmonization of Islamic law and national law in order to protect the rights of children.

Keywords: Child; Inheritance Law; Constitutional Court Decision

INTRODUCTION

Humans are creatures that have privileges and are given advantages over other creatures. Children in Islamic teachings are seen as entrusted by Allah SWT. As human beings, children have human values that cannot be erased for any reason. Etymologically, the term "son" is also referred to as walad, which reflects reverence as a creature of God.¹ The word al-walad is used to describe the existence of a hereditary relationship, so the words al-walid and al-walidah are interpreted as biological or biological father and mother. In contrast to the word ibn which does not necessarily show a relationship of descent and the word al-ab does not mean that it must be a biological father.

The status or position of a child in Islamic law varies, depending on his or her origin. This origin is the determining factor in determining the status and rights of children, children in Islam can be categorized as biological children, adopted children, milk children, orphans, stepchildren, and children out of wedlock.² M. Nasir Djamil identified several rights of children in Islam, namely the right to religion (*hifdzu al-dien*): Maintaining and practicing religious beliefs correctly, the right to soul (*hifdzu al-nafs*): Protecting the life and safety of individuals, the right to reason (*hifdzu al-aql*): Maintaining health and freedom of thought,

¹ Abdul Wahab Khlaf, *Ilmu Ushul al-Fiqh*, (Kairo: Maktabah al-Dakwah al-Islamiyah Shabab al-Azhar, 1990), p. 95.

² Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab*, (Jakarta: Lentera, 2007), p. 388.

the right to property (*hifdzu al-mal*): Safeguarding the right to ownership and use of property, the right to descendants/*nasab* (*hifdzu al-nasl*): Safeguarding the lineage and honor of the family, The right to honor (*hifdzu al-'ird*): Protecting the dignity and good name of the individual. These rights show that Islam pays universal attention to the welfare of children. Children's rights In the Compilation of Islamic Law (KHI), children are regulated in several parts Chapter XIV: Regulating child maintenance, including custody (*hadhanah*), Chapter XV: Discussing child guardianship and in Article 172 and Article 176 Explaining the rights of children in the distribution of inheritance and Article 186 Stating that children born out of wedlock only have an inheritance relationship with their mother and the family on their mother's side.

In 2012, the history of Marriage Law in Indonesia was colored by tensions related to the decision of the Constitutional Court of the Republic of Indonesia regarding the inheritance rights of children out of wedlock. The Constitutional Court Decision Number 46/PUU-VIII/2010, stated that Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states that children born out of wedlock only have a civil relationship with their mother and mother's family, is contrary to the 1945 Constitution of the Republic of Indonesia. The Constitutional Court emphasized that the provision does not have binding legal force. Through this ruling, the status and rights of out-of-wedlock children, including biological children, related to marriage and inheritance law are equated with legal children born from legally recognized marriages.

The Constitutional Court's decision raises tensions between positive legal norms and religious values, especially in terms of the concept of inheritance in Indonesia. According to the perspective of religious law, children born out of a valid marriage, including children resulting from adultery, do not have the right to inherit their parents' property, because normatively the child does not have a legal relationship according to religious law.

On the other hand, the Constitutional Court is of the view that children out of wedlock, including children born from adulterous relationships, still have inheritance rights from their biological father if the relationship can be scientifically and technologically proven, so that they are considered to have a *de facto nasab relationship*. According to the provisions of the applicable marriage law, an out-of-wedlock child refers to a child born out of wedlock who meets the requirements for validity according to the provisions of the law. A marriage is considered valid if two main elements are met, namely valid according to religious teachings or beliefs adhered to by each party, and officially recorded in the state administration through marriage registration.

The status and rights of children born from a marriage are highly determined by the fulfillment of the two legal elements, as well as the status and rights of children out of wedlock which depend on whether or not the two legal provisions that govern the validity of a marriage are fulfilled. The Constitutional Court Decision Number 46/PUU-VIII/2010 states that the provisions of Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states that children born out of wedlock only have a civil relationship with their mother and her mother's family. Constitution of the Republic of Indonesia in 1945. This provision is considered unconstitutional if interpreted as eliminating the civil relationship between a child and a man who scientifically or through other legal evidence can be proven to have a blood relationship as his biological father. Therefore, the Constitutional Court stated that Article 43 paragraph (1) of the Marriage Law does not have binding legal force in

its old formulation. The implication of the ruling is that children born out of wedlock, including children from unofficially registered marital relationships (serial marriages),

Legal status and civil rights equivalent to children born in a legal marriage, including in terms of inheritance rights and recognition as biological children. This ruling has a major impact on the Islamic inheritance legal system in Indonesia. Prior to this ruling, out-of-wedlock children did not have the right to inherit property from their biological father. However, after the decision, children out of wedlock have the potential to obtain civil rights, including inheritance rights. This change poses new challenges in the implementation of inheritance law, especially for Muslims who still adhere to Islamic inheritance provisions that base inheritance on a legitimate relationship of descent. Furthermore, this Constitutional Court ruling raises questions about how Islamic law and national law can be harmonized. As a country with a pluralistic legal system, Indonesia must be able to balance Islamic law rules based on sharia with national laws that continue to evolve following social changes. Therefore, there is a need for an in-depth study of how this ruling is applied in the practice of inheritance, especially among Indonesian Muslims.

The implementation of the decision, in fact, has not been fully accepted by all levels of society, especially in an environment that still upholds the provisions of classical inheritance fiqh. Certain scholars and religious leaders reject the recognition of inheritance rights for children out of wedlock against their biological father because it is considered contrary to the principle of nasab in Islamic law.³

This ruling also raises concerns for some scholars and experts of Islamic law. They consider that the recognition of civil rights to an out-of-wedlock child from his biological father may be contrary to the principles of Islamic law. In Islamic law, inheritance rights are given to individuals who have a legal relationship according to the sharia. Therefore, this ruling has the potential to create a discrepancy in inheritance practices between Islamic law and national law, which could lead to legal uncertainty in society. The process of implementing this decision also faces challenges in the inheritance law administration system in Indonesia. One of the main challenges is proving a biological relationship between the out-of-wedlock child and his father which must be supported by valid evidence, such as a DNA test or a court ruling. This evidentiary process is often an obstacle in practice, considering that not all parties have access to or are able to present sufficient evidence to prove the civil relationship. In addition to the legal aspect, the social impact of this decision also cannot be ignored. Indonesian society, which is predominantly Muslim, has strong norms and values regarding marriage and procreation. The recognition of a civil relationship between an out-of-wedlock child and his biological father can cause various reactions in society, both in the form of acceptance and rejection. Therefore, socialization and legal education are needed so that the public understands the implications of this decision and can apply it appropriately without causing wider social problems. As a next step from these social and legal dynamics, it is important for the state to play an active role in creating harmonization between Islamic law norms and national laws. This harmonization is not only important to maintain social cohesion, but also to ensure that the rights of every citizen, including children out of wedlock, are protected without neglecting the religious values that live in society.

³ Wahbah Zuhaili, *Fiqh Islam wa Adillatuhu*, (Damaskus: Dar al-Fikr, 2007), p. 328.

The role of religious institutions, law enforcement officials, and community leaders is crucial in providing a proportionate and balanced understanding, so that the implementation of the Constitutional Court Decision Number: 46/PUU-VIII/2010 can be accepted and implemented effectively in a pluralistic legal system in Indonesia. In addition, from the point of view of children's rights, this ruling can be considered a positive step in the protection of human rights. Therefore, with the recognition of a civil relationship with the biological father, out-of-wedlock children can gain access to other civil rights, such as alimony, identity recognition, and inheritance. However, it should be noted that the application of this decision must not contradict the religious and cultural values embraced by the Indonesian people. The Constitutional Court's opinion on children born out of wedlock, which is defined as illegitimate children, states that it is naturally impossible to conceive without sexual intercourse. Therefore, it is not appropriate for the law to stipulate that children born out of wedlock only have a relationship with their mother. Therefore, it is unfair if the law exempts men who have sexual relations that result in pregnancy and the birth of the child from his responsibilities as a father, and deprive the child of the rights of the child to the father. The legal consequence of the birth of a child out of wedlock, which is carried out between a woman and a man without a legal bond, is the formation of a legal relationship in which there are reciprocal rights and obligations, whose legal subjects include children, mothers, and fathers.⁴ From the decision that a child born out of wedlock has a civil relationship with his mother and his mother's family as well as with a man as his father which can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with his father's family.⁵

METHODS OF THE RESEARCH

The type of research used in this writing is a normative juridical research type. According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues 'faced. The approaches used in this legal research are the statute *approach* and the conceptual approach. The legal materials used are primary and secondary legal materials.

RESULTS AND DISCUSSION

A. Children Out of Wedlock in Islamic Warus Law and National Law

According to Islamic inheritance law, children born out of adultery are not recognized as having a nasab relationship with their biological father. Consequently, the child has no right to inherit from the man who adulterated his mother, and vice versa the man also has no right to inherit from the child. The child's inheritance is only attributed to his mother, so his inheritance rights only come from his mother and his mother's family. This is based on the rules of fiqh which comes from the hadith of the Prophet Muhammad PBUH: "The child is for the owner of the bed, and for the adulterer it is a stone (loss)." (HR. Bukhari and Muslim). This hadith is used as the basis that only the legitimate husband (the owner of the bed) can be linked by his fate to the child born in marriage. Meanwhile, children resulting from

⁴ Lina Nur Anisa, "Status Hak Anak Diluar Nikah Pasca Putusan Mahkamah Konstitusi Republik Indonesia (RI) Nomor: 46/PUU-VIII/2012". *Investama: Jurnal Ekonomi dan Bisnis* 7, no 1, (2022), p.37.

⁵ Jumni Nelli, "Putusan Mahkamah Konstitusi Tentang Status Anak di Luar Perkawinan dan Relevansinya pada Pembaharuan Hukum Keluarga Milenial di Indonesia". *Hukum Islam* 21, no. 1 (2021), p. 79.

⁶ Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana, 2013), p. 35.

adultery (children out of wedlock) cannot be attributed to the biological father, because the relationship is not valid according to the sharia. So in the Islamic inheritance system, there is no reciprocal inheritance rights between an out-of-wedlock child and his biological father. Even so, Islam emphasizes that the sin of adultery is the responsibility of the parents, not the child. According to the Hanafi school, a child out of wedlock is a child born before six months after the occurrence of the marriage contract. The determination of nasab in Islamic law is based on the existence of a legal marital relationship. Therefore, if a man and a woman are married, then divorced and separated far away, but the woman gives birth to a child, then the child is still considered to have a legal relationship with her ex-husband.

This provision remains valid even though there is no direct evidence of the existence of a physical relationship, because the existence of marriage is considered a sufficient reason to establish a nasab relationship. The Hanafi school emphasizes that children born less than six months after marriage do not have a nasab relationship with their husbands, so they are included in the category of children out of wedlock.⁷ According to the Hanbali madhhab, as stated by Ibn Qudamah, a child born out of wedlock cannot be mistaken for the man who defiled him. The child only has a nasab relationship with his mother and the mother's family. This provision applies absolutely, whether there is a recognition from the male side (*istilhaq*) or not. Regarding whether a man is allowed to marry a daughter born from a relationship outside of marriage, Ibn Qudamah in the book *Syarh al-Kabir* explains that there are seven women who are forbidden to marry because of the relationship of nasab, namely: mother, daughter, sister, aunt on the father's side, aunt on the mother's side, daughters of brothers, and daughters of sisters. So the book also explains that the prohibition of marriage because nasab includes nasab that comes from marriage, slave ownership, and adultery. Thus, in principle, it is unlawful to marry a girl who is the result of a marital relationship or from adultery.

Fiqh adheres to a fairly firm understanding regarding legitimate children. Although there is no clear and firm definition regarding a legitimate child, it can be seen from the definition of the verses of the Qur'an and Hadith, it can be given that a legitimate child is a child born by reason and in a valid marriage. In addition, it is referred to as an adulterous child (*walad alzina*) who only has a nasab relationship with his mother. Implicitly, in the Qur'an it is explained in Surah Al-Mu'minum verses 5-6: *Walladziina hum lifuruujihim haafizhuun Illa 'ala azwaajihim au maa malakat aymanuhum fa innahum ghairu maluumiin* Meaning: And those who guard their genitals, except for their wives or slaves that they have, then they are blameless in this respect.

Surah Al-Isra' verse 32: *Wa laa taqrabuz zina innahu kana faahi shatanw wa saaa'a sabeela* Meaning: And do not approach adultery; Indeed, adultery is an abominable act. and a bad path. The above prohibitions of the Qur'an are not only intended for everyone to maintain their own honor, but also more importantly to avoid the worst consequences of violating the prohibition. The birth of an adulterous child is actually the result of the violation of Allah's prohibitions. An out-of-wedlock child is a child born from a relationship between a man and a woman outside a legal marriage bond, as stipulated in Law Number 1 of 1974 concerning Marriage. According to the term used or known in civil law, it is called *natuurlijk kind* (natural child). A child born out of a valid marriage, in contrast to the definition of an adulterous

⁷ Nur Shadiq Sandimula, "Status Dan Hak Anak Luar Nikah Perspektif Madzhab Hanafi". *An -Nizam: Jurnal Hukum dan Kemasyarakatan* 14, no. 01 (2020), p. 58-59.

child known in civil law, in civil law, the term adulterous child is a child born from the relationship of two people, a man and a woman who are not husband and wife, where one or both are bound by a marriage with another person. Therefore, the out-of-wedlock child referred to in civil law is a child who is seeded and born out of wedlock and other terms that are not interpreted as adultery.⁸ In the context of Indonesian national law, which uses the inheritance legal system based on civil law and also considers court decisions, there have been developments in the recognition of the rights of children out of wedlock. Initially, Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage states that: "A child born out of wedlock only has a civil relationship with his mother and his mother's family."

This provision essentially affirms that an out-of-wedlock child only has inheritance rights from his mother and has no legal relationship with his biological father, similar to the provisions in Islamic law. However, through the Constitutional Court Decision Number: 46/PUU-VIII/2010, there was an important change in the paradigm of inheritance law for children out of wedlock. The Constitutional Court in the ruling, stated that an out-of-wedlock child who has a (biological) blood relationship with his father and can be scientifically and/or technologically proven, such as through DNA tests, can also have a civil legal relationship with his biological father. The Constitutional Court's decision indirectly opens up opportunities for children out of wedlock to get inheritance rights from their biological father, as long as there is legal recognition or proof. Thus, Indonesia's current national legal system tends to be more inclusive in providing legal protection for children out of wedlock, while still paying attention to the principles of justice and humanity, especially in terms of inheritance rights. The application of inheritance rights for out-of-wedlock children in national law still requires additional legal measures, such as recognition from the biological father or determination by a court. Without this, the rights of children out of wedlock in inheritance are still juridically limited. It should be noted that inheritance law in Indonesia can be sourced from three legal systems: customary inheritance law, Islamic inheritance law, and civil inheritance law (BW/KUHPercivil). Therefore, the legal status of inheritance of children out of wedlock can vary depending on the legal system used in an inheritance case.

B. Constitutional Court Decision Number: 46/PUU-VII/2010

The Constitutional Court Decision Number: 46/PUU-VIII/2010 which was read on February 17, 2012, the Constitutional Court of the Republic of Indonesia made a legal innovation by stating that Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage is contrary to the 1945 Constitution. Previously, children born out of wedlock were considered not to have a legal relationship with their biological father. The judiciary stated that the provisions in the Marriage Law should read: "A child born out of wedlock has a civil relationship with his mother and his mother's family, as well as with a man recognized as his father based on scientific and technological evidence and/or other legal evidence that shows a blood relationship, including a civil relationship with the father's family." The Constitutional Court (MK) Decision Number: 46/PUU-VIII/2010 is a very monumental decision in the history of family law and children's rights in Indonesia. This decision was born in response to an application to test the constitutionality of Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which in its initial formulation stated that: "A child born out of wedlock only has a civil relationship with his mother and his mother's

⁸ R. Soetojo Prawirohamidjojo, *Hukum Waris Kodifikasi*, (Surabaya: Airlangga University Press, 2000), p. 16.

family." This provision has been used as a legal basis for decades that children out of wedlock do not have any legal relationship with their biological father, including in terms of inheritance, alimony, recognition, and identity registration. As a result, many children are biologically clearly related by blood to a man, but are unable to claim his rights because their parents' marriage is not legally valid.

This request for a review was submitted by a mother named Machica Mochtar, who has the child of the late Moerdiono, a national figure and former Minister of State Secretary. Although Moerdiono is factually the biological father of the child, because the relationship between the two is not recorded by state law, the child did not obtain a civil legal relationship with his father. Based on its consideration, the Court stated that the provisions of Article 43 paragraph (1) of the Marriage Law are contrary to Article 28B paragraph (2) of the 1945 Constitution, which reads: "Every child has the right to survival, growth and development and has the right to protection from violence and discrimination." The Court considered that limiting the legal relationship of an out-of-wedlock child to his mother was discriminatory and violated the human rights of the child. In fact, a child cannot choose to be born from a legal or illegal relationship. It is a legal subject that should be protected by the state regardless of birth status.

The Court's decision affirms that Article 43 paragraph (1) of the Marriage Law is *conditionally unconstitutional* to the 1945 Constitution, and must be reinterpreted as follows: "A child born out of wedlock has a civil relationship with his mother and his mother's family as well as with a man as his father which can be proven based on science and technology and/or other evidence according to law to have a blood relationship as a father." This ruling explicitly opens the space for an out-of-wedlock child to have a civil legal relationship with his biological father, provided that it can be legally proven scientifically and/or legally. This proof can be done through various means, such as DNA tests, written confessions, witness statements, or court decisions. As a result, children out of wedlock can now claim alimony, identity recognition, and even inheritance rights, if the relationship can be proven.

The Supreme Court's Constitutional Court Decision Number: 46/PUU-VIII/2010 does not necessarily remove the importance of legal marriage ties, but accommodates social realities that are often more complex than the existing legal system. The Constitution also states that the protection of children is part of the constitutional mandate and should not be limited by the legality of the parental relationship. Therefore, the state has an obligation to remove the forms of discrimination inherent in the status of children out of wedlock. The legal basis underlying *rechtfinding* aims to affirm that children born out of wedlock are also entitled to legal protection. The Panel of Constitutional Judges is of the opinion that it is important to ensure fair legal protection and certainty of the status of the child, including the rights attached to it, even for children born of marriages whose validity is still in dispute.

The decision of the Constitutional Court of the Republic of Indonesia brings a legal update that clarifies the relationship between an out-of-wedlock child and his father. The blood relationship in a biological sense between the child and the father can now be affirmed through the legal process. This ruling opens up opportunities for a father, as a legal subject, to be held accountable for the out-of-wedlock child. This responsibility is recognized both as a biological father and a legal father, through a proven mechanism based on science, modern technology, and/or other legal evidence. Recognition of out-of-wedlock children by biological fathers can be done in two ways, namely: 1) Direct recognition by biological

fathers. 2) Endorsement made by the biological father of the out-of-wedlock child. The decision of the Constitutional Court of the Republic of Indonesia strengthens the position of the mother in representing the out-of-wedlock child to apply for recognition of his biological father. If the biological father does not voluntarily give a confession, then legal action can be taken. After the biological father gives a confession, a civil relationship automatically arises between the biological father and his family and the recognized illegitimate child. This recognition creates a legal relationship between father and child, as stipulated in Article 280 of the Civil Code, which states that "With the recognition of a child out of wedlock, a civil relationship is born between the child and his father or mother."⁹ Although there are provisions regarding the recognition of out-of-wedlock children, it should be noted that the Decision of the Constitutional Court of the Republic of Indonesia Number: 46/PUU-VIII/2010 does not regulate the birth certificate of out-of-wedlock children or the legal consequences of the decision on the birth certificate.

C. Legal Status of Inheritance of Out-of-Wedlock Children Before and After the Decision of the Constitutional Court Number: 46/PUU=VIII/2010

The legal status of inheritance of children out of wedlock in the Indonesian legal system before the Constitutional Court Decision Number: 46/PUU-VIII/2010 is very limited and tends to be discriminatory because it is based on a legal construction that places the validity of marriage as the main basis for the formation of legal relations between children and fathers. Based on Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, children born out of wedlock only have a civil legal relationship with their mother and their mother's family. Prior to this decision of the Constitutional Court, the provisions regarding the status of children out of wedlock in the Indonesian legal system were expressly regulated in Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which stated: Children born out of wedlock only have a civil relationship with their mother and their mother's family.

Out-of-wedlock children are seen as not having any legal relationship with their biological father. As a result of the law, children cannot claim inheritance rights from the father, cannot record the father's name on the birth certificate, and are not entitled to alimony, inheritance, or legal recognition. Juridically, his rights are limited only to his mother and his mother's family. This provision is in line with some principles in Islamic law, where children born from extramarital relationships do not have a nasab and inheritance relationship with a man who adulterates his mother.

Fundamental changes to these conditions began to be seen after the issuance of the Constitutional Court Decision Number: 46/PUU-VIII/2010. This decision is an answer to the request for a material review of Article 43 paragraph (1) of the Marriage Law by Machica Mochtar, a public figure who has a child from a relationship with a national figure who is not recorded as an official state marriage, in her decision. The Constitution Court states that the provisions in the article are discriminatory against children out of wedlock and contrary to the constitution, especially Article 28B paragraph (2) of the 1945 Constitution, which guarantees the right of every child to survival, protection, and freedom from discrimination.

The Constitution Mahkama then states that an out-of-wedlock child not only has a civil relationship with his mother and his mother's family, but can also have a legal relationship

⁹ <http://www.hukumonline.com/klinik/detail/lt4ff514fbcefcf/apakah-anak-hasil-perkawinan-Siri-Right-Inheritance?>

with his biological father, insofar as it can be proven based on science and technology (e.g., DNA tests), or other legal evidence. So that the legal status of children out of wedlock has changed from previously only related to the mother, to it may also have a civil relationship with the father, including in terms of inheritance rights.

These changes have major implications in the practice of national inheritance law. Prior to the Constitutional Court's ruling, if a child was born out of wedlock and his father died, the child could not file an inheritance claim, as he was not recognized as an heir based on the legal relationship. However, after the decision of the Constitutional Court, if the child can prove blood relations with his father, then civil rights, including inheritance, can be prosecuted through the courts. That is, even if a child is born from a relationship that is not legal according to the state or religion, he is still recognized as part of the paternal lineage within the framework of national law, and thus entitled to an inheritance according to the applicable portion. This is a form of legal protection of children's rights regardless of their birth status.

It is important to note that although this Constitutional Court ruling had a major impact on national civil law (especially those referring to the Civil Code), it did not automatically change the principles of Islamic inheritance law used in the Religious Courts. According to Islamic law, children out of wedlock still do not have inheritance rights from their father, because there is no legal relationship of *nasab*. In this context, religious courts cannot grant sharia inheritance rights to children out of wedlock except through the mechanism of grants or obligatory wills, which are not pure inheritances, but special gifts that are justified by sharia on the basis of humanity and *maslahat*¹⁰.

D. The Impact of the Constitutional Court Decision Number: 46/PUU-VIII/2010 on Islamic Inheritance Law in Indonesia

The Constitutional Court Decision Number: 46/PUU-VIII/2010 has brought great influence on the national legal system, especially in terms of the recognition of civil relations between children out of wedlock and their biological fathers. Juridically, this decision is a progressive step in protecting children's rights and fulfilling the principle of non-discrimination as guaranteed in the 1945 Constitution of the Republic of Indonesia. Meanwhile, when faced with the Islamic inheritance law system, which is the legal basis in the jurisdiction of the Religious Courts in Indonesia for Muslims, serious questions arise about the extent to which such decisions can affect the practice and norms of Islamic law, especially regarding the inheritance rights of children out of wedlock. The position of children out of wedlock in Islamic law has long been established through *ijma'* (consensus) of scholars and is based on a *sahih* hadith, namely: "The child is for the owner of the bed (husband), and for the adulterer it is a stone (loss)." (HR. Bukhari and Muslim). This hadith is used as a basis that a child born from a relationship outside of marriage that is valid according to *shari'i*, does not have a *nasab* relationship with the man who adulterated his mother, and therefore does not have inheritance rights against him. The majority view of the *madhhab* (Hanafi, Maliki, Shafi'i, and Hanbali) is that children out of wedlock only inherit from their mother and not from their biological father, because the relationship does not produce a valid *nasab*. The Constitutional Court Decision Number: 46/PUU-VIII/2010, on the other hand, states that children out of wedlock who can be proven to have a biological

¹⁰ Wahbah az-Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, Jilid 9 (Damaskus: Dar al-Fikr, 2002), p. 608

relationship with a man can have a civil relationship with that man, including in terms of inheritance. This is an interpretation of national law based on the principles of child protection and social justice, so that there is a normative tension between national law and Islamic law in the context of inheritance. This tension became very real in the jurisdiction of the religious judiciary which was obliged to apply the Compilation of Islamic Law as a reference for the inheritance law of Muslims in Indonesia.

According to the Compilation of Islamic Law, there is explicitly no provision that gives inheritance rights to children out of wedlock from their fathers. Articles 171–214 of the KHI state that inheritance can only occur between people who have a legal relationship or through a valid marriage. Therefore, in practice, the Religious Court still refers to the principles of Islamic law, so that children out of wedlock are not included in the list of heirs of their biological father, even though the Constitutional Court's ruling has made room for the recognition of civil relations. However, the indirect impact of the Constitutional Court's Decision is the emergence of legal awareness among Islamic practitioners and academics to find a middle ground. One of the solutions that is now being developed is through the mechanism of a mandatory will, namely giving a share of the property to parties who are not entitled to sharia inheritance on the basis of considerations of justice and compassion. This concept is known in contemporary jurisprudence and has been adopted in several Muslim-majority countries, such as Egypt and Morocco. A compulsory will can be used as an instrument to give rights to children out of wedlock without violating the limits of Islamic inheritance law. In addition to a will, another solution that is sometimes taken is a grant during life, which is the gift of property from the biological father to the out-of-wedlock child before his death. Therefore, there is no violation of inheritance law, because the grant is made outside the context of the heir's death and is not part of *tirkah* (inheritance). In Indonesia, Religious Courts have begun to accept and consider these options as a form of juridical compromise between Islamic law and the decisions of the Constitutional Court, although they are still on a case-by-case basis and have not been explicitly regulated in binding regulations.

The decision of the Constitutional Court is the opening of the space for legal debate and fatwas within Islamic organizations, such as the Indonesian Ulema Council (MUI) and Nahdlatul Ulama (NU). Some scholars have begun to voice the need for a reinterpretation of Islamic inheritance law in the context of a modern and plural country like Indonesia. They are of the view that biological *nasab* can be considered socially and morally, although not in the context of *mahdhah* worship. On the other hand, most other scholars still hold the classic principle that inheritance rights only arise from a relationship of *nasab* that is valid according to the sharia. At the normative level, the Constitutional Court's Decision does not invalidate Islamic law, but rather provides an alternative space within the framework of national law. Therefore, this decision does not necessarily bind religious courts in Islamic inheritance decisions, but can be used as a legal basis in the litigation process in the District Court or as a consideration in the deliberative settlement of cases. This reflects Indonesia's pluralistic and dynamic legal system, where various legal systems coexist and complement each other according to the context and legal identity of the parties. The Constitutional Court Decision Number: 46/PUU-VIII/2010 has become an important milestone in the Indonesian national legal system, especially regarding the recognition of children out of wedlock in civil relations with their biological fathers. This decision reinterprets Article 43 paragraph (1) of Law

Number 1 of 1974 concerning Marriage which originally stated that children out of wedlock only have a civil relationship with their mother and their mother's family.

Through this decision of the Constitutional Court, children born out of wedlock are also recognized as having a civil relationship with a man who can be scientifically proven to be his biological father. The major implications of this ruling include civil rights including inheritance, which were previously expressly not recognized in Islamic law against out-of-wedlock children. In the context of Islamic inheritance law, the existence of an out-of-wedlock child theologically does not have the status of heir to his biological father because the main principle in Islamic law requires the existence of a valid marital bond to determine the fate. Children out of wedlock are only entitled to inherit from their mother and relatives from the maternal line, as affirmed in various opinions of scholars and madhhab of fiqh. Therefore, when the Constitutional Court Decision provides a legal basis for children out of wedlock to obtain a civil relationship with their father, this creates normative tension with the principles of Islamic inheritance law that have been embraced by most Muslims in Indonesia. The decision of the Constitutional Court is considered to have a significant influence on the legal structure of Islamic inheritance, especially in practice in religious courts which have strictly adhered to the rules of fiqh. When national law gives recognition to children out of wedlock on the basis of a biological relationship that can be proven through DNA technology and other evidence, there is a shift in the concept of paternal legitimacy from being based on a marriage contract to being based on blood relations.

This certainly creates pressure on the Islamic legal system which is based on the nasab shar'i, which is a legitimate lineage according to religious law. Religious judges are also faced with a dilemma between maintaining the purity of Islamic law and fulfilling the constitutional demands stemming from the Constitutional Court's ruling. Overall, the Constitutional Court Decision Number. 46/PUU-VIII/2010 does not directly change Islamic inheritance law, but has shifted the paradigm of national law in understanding the position of children out of wedlock. It is a trigger for a more open legal discourse on the protection of children's rights, as well as encouraging the development of adaptive and contextual Islamic law without having to violate the main principles of sharia.

CONCLUSION

The Constitutional Court Decision Number: 46/PUU-VIII/2010 became an important turning point in the national legal system regarding the status of children out of wedlock. Through this decision, children out of wedlock are recognized as having a civil relationship with their biological father if it can be scientifically proven. This recognition carries legal consequences for the child's civil rights, including inheritance rights, which were previously restricted. However, in the context of Islamic law, children out of wedlock still do not have inheritance rights to their father because they do not have a legal relationship according to sharia. The tension between these two legal systems demands a harmonization of laws to ensure the protection of children's rights without neglecting religious principles.

REFERENCES

Abdul Wahab Khlaf, *Ilmu Ushul al-Fiqh*, Kairo: Maktabah al-Dakwah al-Islamiyah Shabab al-Azhar, 1990.

<http://www.hukumonline.com/klinik/detail/lt4ff514fbcefc/d/apakah-anak-hasil-perkawinan-Siri-Right-Inheritance>.

Jumni Nelli, "Putusan Mahkamah Konstitusi Tentang Status Anak di Luar Perkawinan dan Relevansinya pada Pembaharuan Hukum Keluarga Milenial di Indonesia". *Hukum Islam* 21, no 1, (2021).

Lina Nur Anisa, "Status Hak Anak Diluar Nikah Pasca Putusan Mahkamah Konstitusi Republik Indonesia (RI) Nomor: 46/PUU-VIII/2012". *Investama: Jurnal Ekonomi dan Bisnis* 7, no 1, (2022).

Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab*, Jakarta: Lentera, 2007.

Nur Shadiq Sandimula, "Status Dan Hak Anak Luar Nikah Perspektif Madzhab Hanafi". *An-Nizam: Jurnal Hukum dan Kemasyarakatan* 14, no. 01 (2020).

Peter Mahmud Marzuki, *Legal Research*, Jakarta: Kencana, 2013.

R. Soetojo Prawirohamidjojo, *Hukum Waris Kodifikasi*, Surabaya: Airlangga University Press, 2000.

Wahbah Zuhaili, *Fiqh Islam wa Adillatuhu*, Damaskus: Dar al-Fikr, 2007.