

**TINJAUAN YURIDIS TENTANG KEDUDUKAN HAK WARIS ANAK
LUAR KAWIN DALAM PERSPEKTIF KOMPILASI HUKUM ISLAM
(KHI) DAN PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-
VIII/2010**

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ABSTRAK

Penelitian ini bertujuan untuk (1) mengetahui relevansi dilakukannya *judicial review* terhadap Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 dikaji berdasarkan peraturan perundang-undangan yang berlaku dan (2) mengetahui konsekuensi yuridis kedudukan hak waris anak luar kawin bagi para pihak pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. Jenis penelitian yang digunakan adalah penelitian yuridis normatif. Pendekatan yang digunakan dalam penelitian ini adalah pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Sumber bahan hukum yang digunakan adalah bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier yang telah diperoleh kemudian dianalisis untuk memperoleh konklusi yang relevan dengan permasalahan penelitian ini. Hasil penelitian ini menunjukkan bahwa (1) relevansi dilakukannya *judicial review* terhadap Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 karena ketentuan dalam Pasal 43 ayat (1) UU No. 1 Tahun 1974 hanya mengatur anak diluar perkawinan hanya mempunyai hubungan perdata dengan ibunya dan keluarga ibunya dimana hal ini bertentangan dengan hak konstitusional sebagai warga negara dalam Pasal 28B ayat (1) dan ayat (2) serta Pasal 28D ayat (1) Undang-Undang Dasar 1945 dan (2) konsekuensi yuridis kedudukan hak waris anak luar kawin pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 adalah diakuinya anak luar kawin sebagai anak yang sah berarti akan mempunyai hubungan waris dengan bapak biologisnya tanpa harus didahului dengan pengakuan dan pengesahan, dengan syarat dapat dibuktikan adanya hubungan biologis antara anak dan bapak biologis berdasarkan ilmu pengetahuan, misalnya melalui tes DNA.

Kata Kunci: anak, hak waris, luar kawin.

**JURIDICIAL REVIEW CONCERNING THE POSITION OF HUMAN
RIGHTS OF HERITAGE OUTSTANDING IN THE PERSPECTIVE OF
ISLAMIC LAW COMPILATION (KHI) AND CONSTITUTION COURT
DECREE NUMBER 46/PUU-VIII/2010**

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ABSTRACT

This study aims to (1) find out the relevance of conducting a judicial review of the Constitutional Court Decision Number 46/PUU-VIII/2010 assessed based on applicable laws and regulations and (2) knowing the juridical consequences of the position of inheritance rights of children outside marriage to parties after the Decision Constitutional Court Number 46/PUU-VIII/2010. This research used normative juridical research. The approach that used in this research was statute approach, case approach, and conceptual research. The sources of legal materials that used in this research are primary legal materials, secondary legal materials and tertiary legal material that have been obtained and the analyzed to obtain conclusions relevant to the problem of this study. This research showed that (1) the relevance of conducting a judicial review of the Constitutional Court Decision Number 46/PUU/VIII-2010 because the provisions in Article 43 paragraph (1) of Law Number 1 of 1974 only regulate children outside of marriage only having civil relations with his mother and his mother's family where this contradicts the constitutional rights as citizens in Article 28B paragraph (1) and paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution and (2) the juridical consequences of the position of inheritance rights of children outside of marriage after the Constitutional Court Decision Number 46/PUU-VIII/2010 is the recognition of an out-of-wedlocked child as a legitimate child means that he will have an inheritance relationship with his biological father without having to be preceded by recognition and endorsement, on condition that a biological relationship between the child and the biological father can be based on science, for example through DNA testing.

Keywords: *child, inheritance rights, outside marriage.*