

**ANALISIS YURIDIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR  
46/PUU-VIII/2010 TENTANG STATUS ANAK DI LUAR PERKAWINAN  
SEBAGAI DASAR PERTIMBANGAN HAKIM DALAM MEMUTUS  
PERKARA HAK WARIS ANAK DI LUAR PERKAWINAN**

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**ABSTRAK**

Penelitian ini bertujuan untuk mengetahui: (1) dasar pertimbangan Hakim Mahkamah Konstitusi dalam memutuskan hak waris anak bagi anak di luar perkawinan. (2) perbedaan hak waris anak sah dalam perkawinan dengan hak waris tidak sah dalam perkawinan. (3) relevansi dari putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Tentang Status Anak Di Luar Perkawinan yang dijadikan acuan oleh Hakim untuk memutus perkara status hak waris anak di luar perkawinan. (4) rekonstruksi hukum yang dapat diakomodasi oleh hakim kedalam hukum perkawinan berkenaan dengan putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Tentang Status Anak Di Luar Perkawinan. Jenis Penelitian yang digunakan oleh peneliti adalah penelitian hukum normatif, yakni melalui pendekatan peraturan perundang – undangan, dan pendekatan konseptual. Sumber bahan hukum yang digunakan yaitu Undang - Undang Dasar 1945, KUHPerdara, Hukum Adat, dan Putusan MK. Hasil penelitian menunjukkan bahwa (1) Kekuatan hukum putusan Mahkamah Konstitusi adalah mengikat dan setiap anak berhak atas segala bentuk perlindungan. (2) Terdapat perbedaan hak waris anak sah dan anak tidak sah di dalam perkawinan. (3) Relevansi dari keluarnya putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Tentang Status Anak Di Luar Perkawinan mencerminkan dari adanya prinsip persamaan di hadapan hukum (*equality before the law*) dimana ini menegaskan bahwa setiap orang berhak atas pengakuan, jaminan, perlindungan, dan kepastian hukum yang adil serta perlakuan yang sama dihadapan hukum. (4) Dalam Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 tentang Status Anak di luar perkawinan, Hakim dapat menggunakan ilmu pengetahuan dan teknologi untuk menentukan status ayah seorang anak di luar perkawinan.

**Kata Kunci :** Anak di luar perkawinan, hak waris, putusan, Mahkamah Konstitusi

**JURIDICAL ANALYSIS OF THE RULING OF THE CONSTITUTIONAL  
COURT NUMBER 46/PUU-VIII/2010 CONCERNING THE STATUS OF  
CHILDREN OUT OF MARRIAGE AS A BASIS FOR JUDGES'  
CONSIDERATIONS IN DECIDING CASES ON THE INHERITANCE  
RIGHTS OF CHILDREN OUT OF MARRIAGE**

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***Abstract***

*This research aims to find out: (1) the basic considerations of Constitutional Court Judges in deciding on children's inheritance rights for children outside of marriage. (2) the difference between the legal inheritance rights of children in marriage and the inheritance rights of illegitimate children in marriage. (3) the relevance of the Constitutional Court decision Number 46/PUU-VIII/2010 concerning the Status of Children Outside of Marriage which is used as a reference by Judges to decide cases regarding the inheritance rights of children outside of marriage. (4) legal reconstruction that can be accommodated by judges into marriage law regarding the Constitutional Court decision Number 46/PUU-VIII/2010 concerning the Status of Children Outside of Marriage. The type of research used by researchers is normative legal research, namely through a statutory and regulatory approach and a conceptual approach. The sources of legal material used are the 1945 Constitution, the Civil Code, Customary Law, and Constitutional Court Decisions. The research results show that (1) The legal force of the Constitutional Court's decision is binding and every child has the right to all forms of protection. (2) There are differences in the inheritance rights of legitimate children and illegitimate children in marriage. (3) The relevance of the decision of the Constitutional Court Number 46/PUU-VIII/2010 concerning the Status of Children Out of Wedlock reflects the principle of equality before the law, which confirms that everyone has the right to recognition, guarantees and protection. , and fair legal certainty and equal treatment before the law. (4) In the Constitutional Court Decision Number 46/PUU-VIII/2010 concerning the Status of Children outside of marriage, Judges can use science and technology to determine the status of the father of a child outside of marriage.*

***Keywords:*** *Children out of wedlock, inheritance rights, decision, Constitutional Court.*