

Implementasi Putusan Mahkamah Konstitusi Nomor 46/PU-VIII/2010 Terhadap Anak Tanpa Perkawinan Sah

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ABSTRAK

Penelitian dilakukan guna (1) mengetahui Bagaimana pengaturan status anak tanpa perkawinan dalam perspektif hukum nasional, (2) Untuk mengetahui mengenai Bagaimana akibat hukum terhadap anak tanpa perkawinan menurut Putusan Mahkamah Konstitusi Nomor 46/PU-VIII/2010. Jenis penelitian yang digunakan adalah penelitian hukum normatif, dengan sifat penelitian deskriptif kualitatif. Teknik kepustakaan digunakan untuk mengumpulkan data, yang kemudian diperiksa secara deskriptif dan kualitatif untuk menunjukkan hasil yang diantisipasi dan menarik kesimpulan tentang masalah tersebut. Penelitian menghasilkan (1) Agar anak luar kawin memiliki hubungan hukum dengan ayah biologisnya, diperlukan tindakan hukum melalui pengakuan. Agar anak luar kawin memiliki hubungan hukum dengan ayah biologisnya, diperlukan tindakan hukum melalui pengakuan. Pada semua sumber-sumber hukum yang Penulis gunakan sebagai rujukan di atas memberikan peluang untuk dilakukan pengakuan maupun pengesahan. Meski demikian, perlindungan hukum yang diberikan masih belum maksimal. Perlindungan hukum menjadi kabur karena ketentuan dalam UU Adminduk yang mensyaratkan agar ayah dan ibunya harus melangsungkan perkawinan secara agama terlebih dulu untuk melakukan pengakuan maupun pengesahan. (2) Putusan Mahkamah Konstitusi yang menyatakan hubungan anak luar kawin dengan ayah biologisnya adalah hubungan darah, dijadikan dasar hukum untuk pemenuhan hak hak anak astra / anak luar kawin. Dilahirkan dari hubungan diluar perkawinan yang tidak sah menurut menurut Putusan Mahkamah Konstitusi Nomor 46/PU-VIII/2010 membawa konsekuensi tidak adanya hubungan hukum keperdataan antara anak astra/anak luar kawin dengan ayah biologisnya. Hubungan keperdataan anak astra hanya dengan ibu kandungnya.

Kata Kunci: Perkawinan, Mahkamah Konstitusi, Perlindungan Hukum.

Implementation of Constitutional Court Decision Number 46/PU-VIII/2010 Regarding Children Without Legal Marriage

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ABSTRACT

The research was conducted in order to (1) find out how the status of children without marriage is regulated in the perspective of national law, (2) To find out about the legal consequences for children without marriage according to the Constitutional Court Decision Number 46/PU-VIII/2010. The type of research used is normative legal research, with a qualitative descriptive research nature. Library techniques are used to collect data, which are then examined descriptively and qualitatively to show anticipated results and draw conclusions about the problem. The research resulted in (1) In order for children outside of marriage to have a legal relationship with their biological father, legal action is required through recognition. In order for children outside of marriage to have a legal relationship with their biological father, legal action is required through recognition. All legal sources that the Author uses as references above provide opportunities for recognition or ratification. However, the legal protection provided is still not optimal. Legal protection becomes unclear because of the provisions in the Population Administration Law which require that the father and mother must first have a religious marriage in order to carry out recognition or ratification. (2) The Constitutional Court's decision stating that the relationship between an illegitimate child and his biological father is a blood relationship, is used as a legal basis for fulfilling the rights of an illegitimate child/child outside marriage. Being born from an illegitimate relationship outside marriage according to Constitutional Court Decision Number 46/PU-VIII/2010 has the consequence that there is no civil legal relationship between an illegitimate child/child outside marriage and his biological father. The civil relationship of an illegitimate child is only with his biological mother.

Keywords: Marriage, Constitutional Court, Legal Protection.