

**ANALISIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010 DALAM PENENTUAN HAK WARIS ANAK LUAR KAWIN BERDASARKAN PUTUSAN NOMOR 169/PDT/2021/PT DKI**

**Oleh**

**I Gusti Ngurah Kesa Janardana, NIM 2214101172**

**Program Studi Ilmu Hukum**

**ABSTRAK**

Penelitian ini bertujuan untuk (1) mengetahui dan menganalisis Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 berkaitan dengan penentuan hak waris bagi anak luar kawin serta (2) mengetahui dan menganalisis pertimbangan hakim sesuai dengan Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 terhadap Putusan Nomor 169/PDT/2021/PT DKI dalam penentuan jumlah harta waris antara anak dari perkawinan sah dengan anak luar kawin. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Sumber bahan hukum meliputi bahan hukum primer berupa peraturan perundang-undangan dan putusan pengadilan, bahan hukum sekunder berupa literatur dan doktrin hukum, serta bahan hukum tersier. Analisis dilakukan secara kualitatif yuridis untuk menelaah kekaburan norma. Hasil penelitian menunjukkan bahwa (1) Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 menegaskan adanya perluasan hubungan keperdataan antara anak luar kawin dan ayah biologisnya melalui pembuktian ilmiah, yang merepresentasikan pergeseran paradigma hukum menuju perlindungan hak anak dan keadilan substantif. Namun demikian, putusan tersebut tidak mengatur secara eksplisit mekanisme maupun proporsi pembagian hak waris, sehingga penentuan hak waris anak luar kawin tetap bergantung pada ketentuan Kitab Undang-Undang Hukum Perdata, khususnya Pasal 863 KUHPerdata, yang masih membedakan kedudukan anak luar kawin dengan anak sah dalam pewarisan. Selanjutnya, (2) pertimbangan hakim dalam Putusan Nomor 169/PDT/2021/PT DKI menunjukkan penerapan Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 dengan mengakui hak keperdataan anak luar kawin terhadap ayah biologisnya sebagai dasar untuk memperoleh hak waris. Namun, pengakuan tersebut tetap dibatasi secara proporsional berdasarkan konstruksi normatif KUHPerdata, sehingga pembagian harta waris antara anak sah dan anak luar kawin tidak disamakan.

**Kata Kunci:** Anak luar kawin, Hak waris, Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010

***ANALYSIS OF CONSTITUTIONAL COURT DECISION NUMBER 46/PUU-VIII/2010 IN DETERMINING THE INHERITANCE RIGHTS OF CHILDREN BORN OUT OF WEDLOCK BASED ON DECISION NUMBER 169/PDT/2021/PT DKI***

***By***

***I Gusti Ngurah Kesa Janardana, NIM 2214101172***

***Legal Studies Program***

***ABSTRACT***

*This study aims to (1) examine and analyze Constitutional Court Decision Number 46/PUU-VIII/2010 regarding the determination of inheritance rights for children born out of wedlock and (2) identify and analyze the judges' considerations in accordance with Constitutional Court Decision Number 46/PUU-VIII/2010 on Decision Number 169/PDT/2021/PT DKI in determining the amount of inheritance between children from legal marriages and children born out of wedlock. This study uses a normative legal research method with a legislative approach, a case approach, and a conceptual approach. The legal sources include primary legal materials in the form of legislation and court decisions, secondary legal materials in the form of literature and legal doctrine, and tertiary legal materials. The analysis was conducted using qualitative legal methods to examine the ambiguity of the norms. The results of the study show that (1) Constitutional Court Decision Number 46/PUU-VIII/2010 confirms the expansion of civil relations between children born out of wedlock and their biological fathers through scientific evidence, which represents a shift in the legal paradigm towards the protection of children's rights and substantive justice. However, the decision does not explicitly regulate the mechanism or proportion of inheritance rights, so that the determination of the inheritance rights of children born out of wedlock still depends on the provisions of the Civil Code, particularly Article 863 of the Civil Code, which still distinguishes between the position of children born out of wedlock and legitimate children in inheritance. Furthermore, (2) the judge's considerations in Decision Number 169/PDT/2021/PT DKI show the application of Constitutional Court Decision Number 46/PUU-VIII/2010 by recognizing the civil rights of children born out of wedlock to their biological fathers as the basis for obtaining inheritance rights. However, this recognition is still limited proportionally based on the normative construction of the Civil Code, so that the distribution of inheritance between legitimate children and children born out of wedlock is not equal.*

***Keywords:*** *Illegitimate children, Inheritance rights, Constitutional Court Decision Number 46/PUU-VIII/2010*