

THE CONSTITUTIONAL COURT'S DECISION ON CHILD OUT OF WEDLOCK IS BASED ON JUSTICE

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Abstract

The aim of this research is to find out and analyze the justice-based review of out-of-wedlock children as a result of the decision of the constitutional court, the implications of the Constitutional Court's decision have provided a new legal breakthrough for the realization of perfecting the legal position of illegitimate children whose regulation. The approach method in this study used a normative juridical approach, the results obtained that The Constitutional Court's decision Number 46/PUU-VIII/2010 has fulfilled the principle of justice, namely the principle of child protection and is an acknowledgment of children's human rights. For children out of wedlock, the Constitutional Court's decision has fulfilled their desire for legal certainty and justice, as well as responding to the subjective sense of injustice that they have felt so far. The decision of the Constitutional Court Number: 46/PUU-VIII/2010 has provided an opportunity for children out of wedlock to be able to obtain law enforcement on the existence of their position as a child due to the marital relationship between their mother and biological father.

Keywords: Child; Constitutional; Court; Justice; Wedlock.

A. INTRODUCTION

Marriage is a physical and spiritual bond between a man and a woman as husband and wife. Marriage is the union of two souls between a man and a woman into one unit in a harmonious household. A household that is fostered with the same vision and mission to create a life that is *sakinah, mawaddah* and *rahmah*.¹ Getting married is a sacred thing that happens an inner birth bond between a man and a woman as husband and wife with the goal of forming an eternally happy family based on God Almighty.²

Humans by nature have the instinct to maintain their lives by obtaining offspring. To get offspring, it is done by marriage.³ The validity of marriage is also often misused by some people who only want to satisfy

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- 1 Peni Rinda Listyawati, Indah Setyowati, Latifah Hanim, Legal Analysis of The Rejection Registration Interfaith Marriages, *IJLR: International Journal of Law Reconstruction*, Volume 4, Number 2, September 2020, page. 110-123.
 - 2 M Riska Anandya Putri Pratiwi, Child Marriage under Indonesian Marriage Law: Legal and Social Analysis, *Law Research Review Quarterly*, Vol 7 No 3 2021, page.285-302.
 - 3 Erlita Puspita Sari, *Kawin Kontrak Ditinjau dari Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan*, Skripsi, Universitas Negeri Jember, 2015, page.1

mere biological needs and certain motives.⁴ The legal consequences of the validity of a marriage are legal protection, rights as Indonesian citizens and legal certainty in the marriage. On the other hand, if the marriage is carried out illegally, the child born in this relationship will be the victim, in which it will be difficult for the child to obtain his rights as a citizen. Although in the Marriage Law all aspects related to marriage have been regulated in it, but there are still things that are not considered in the Marriage Law itself, this is the position of the child outside of marriage.⁵

Marriage Law aims to regulate the perfect, happy and eternal human life in a household, in order to create a sense of affection and love each other. But the fact is, the history of the life of mankind that has been thousands of years old has proved that it is not always that it can be achieved, otherwise it fails or fails completely in the middle of the road, because no agreement is reached or because of it either party or the behavior of both parties contrary to religious teachings.⁶

Outside Marriage is defined as a birth that occurs without a marriage ceremony, for example, a child born in adultery, or it is also included in the definition of an illegitimate marriage based on religious law, as required by Article 2 paragraph (1) of the Marriage Law, or it refers to a legally recognized marriage that is not registered under Article 2 paragraph (1) of the Marriage Law.⁷ In the marriage, offspring are obtained, then the child who becomes the offspring is called the Out-of-Marriage Child, the child does not have a perfect position and protection in the eyes of the law like a legitimate child in general. Children born outside a legal marriage will only get a birth certificate containing the name of the mother, which means that they only have a civil relationship with their mother and their mother's family.⁸

Children are shoots, potential, and the next generation of the nation's ideals. Children have a strategic role in ensuring the existence of the nation and state in the future. In order for them to be able to assume that responsibility, they need to get the widest possible opportunity to grow and develop optimally, physically, mentally, and spiritually. They need to get their rights, need to be protected, and prospered. Therefore all forms of violence against children need to be prevented and overcome. Marsaid quotes the definition of a child in the General Indonesian Dictionary, as a human being who is still small. Marsaid also quoted from Soedjono

4 Hazar Kusmayanti, Dede Mulyanto, Problematics Culture of Child Marriage In Indramayu In A Legal And Cultural Prespective, *JPH: Jurnal Pembaharuan Hukum*, Volume 7, Number 2, August 2020, page.116-127

5 Luh Putu Putri Indah Pratiw, Pengaturan Terhadap Kedudukan Anak Di Luar Kawin Pasca Putusan Mahkamah Konstitusi No. 46/PUU-Viii/2010, *e-Journal Komunitas Yustisia*, Volume 3 No. 1, 2020, page.13-24

6 Rudyanti Dorotea Tobing, Prevention of Child Marriage Age in the Perspective of Human Rights, *Sriwijaya Law Review*, Vol. 2 Issue 1, January 2018, page.1-17

7 Abdul Kadir Jaelani, Resti Dian Luthviati, The Crime Of Damage After the Constitutional Court's Decision Number 76/PUU-XV/2017, *Journal of Human Rights, Culture and Legal System*, Volume 1, No. 1, 2021, page.31-42

8 J. Andi Hartanto, *Kedudukan Hukum dan Hak Waris Anak Luar Kawin Menurut Kitab Undang-Undang Hukum Perdata*, Laksbang Presindo, Yogyakarta, 2008, page. 53

Dirjisisworo who stated that according to customary law, minors are those who have not yet determined concrete physical signs that they are adults.⁹ An illegitimate child is a child born as a result of a parent's actions that are not in accordance with the provisions, such as a child from the mother's womb before a legal marriage occurred, a child from the mother's womb after a long divorce from her husband, a child from the mother's womb who because of committing adultery with another person, or a child from the mother's womb whose father is not known.¹⁰

The regulation regarding children outside of marriage in the Civil Code, namely children outside of marriage is regulated in Article 272 which stipulates that children outside of marriage, except for children born of adultery and incest, are legalized through marriage which is carried out later by their father. If before the marriage they have confessed to the child or if the acknowledgment occurred in the marriage certificate, then with the recognition of the child, a civil relationship arises between the child and the father of the child (Article 280 of the Civil Code). Meanwhile, children born due to adultery or blood stains may not be recognized without prejudice to the provisions of Article 273 of the Civil Code concerning discordant children.

Act No.1 of 1974 concerning marriage, concerning children out of wedlock and their legal status is not regulated in a limited manner. Article 43 paragraphs (1) and (2) only state that "Children born outside of marriage only have a civil relationship with their mother or with their mother's family". Meanwhile, regarding its legal status, it will be regulated in a government regulation which until now does not exist. The decision of the Constitutional Court of the Republic of Indonesia Number 46/PUUVIII/2010 in terms of material testing, takes a firm breakthrough with regard to children out of wedlock. The Indonesian Constitutional Court Decree number 46/PUU-VIII/2010 lays foundation for a legal status of children born out of wedlock, in which these children are considered to have civil relationships with their biological parents.¹¹ If the marriage law in Article 43 paragraph (2) which states that children out of wedlock only have a civil relationship with the mother and her mother's family only. So, after undergoing a change in the law, the child who was born out of wedlock has a civil relationship with his biological parents, and his family can file a lawsuit in court to obtain recognition.¹²

The reason for the issuance of this decision is that the child out of wedlock gets legal protection. With this decision, it is possible for biological fathers to be responsible for children born outside the marriage relationship. So that it has an impact on the protection for children out of wedlock.

9 Marsaid, *Perlindungan Hukum Anak Pidana Dalam Perspektif Hukum Islam (Maqasid Asy-Syari'ah)*, NoerFikri, Palembang, 2015, page. 56-58.

10 Endang Sumiarni dan Chandera Halim, *Perlindungan Hukum Terhadap Anak dalam Hukum Keluarga*, Universitas Atma Jaya Yogyakarta, 2000, page.4

11 Rohmawati, Ahmad Rofiq, Legal reasonings of religious court judges in deciding the origin of children: a study on the protection of biological children's civil rights, *Ijtihad*, Vol 21, No. 1 June 2021, page.1-19

12 Aris Dwi Susanti, Tinjauan Yuridis Mengenai Kedudukan Dan Pembinaan Anak Luar Kawin Dilihat Dari Segi Hukum Perdata, *Legal Opinion*, Volume 1 Edition 4, 2013, page.1-8

Regarding who the biological father is, it is proven by a legal mechanism in the form of evidence assisted by science and technology. The Constitutional Court's decision is a breath of fresh air for the child out of wedlock because if it is proven who the biological father is, then they can become the heirs of the father. In addition, this child out of wedlock has a civil relationship with the biological father and his family and can claim his rights as a child.¹³

The purpose of this paper is to find out and analyze the justice-based review of children out of wedlock as a result of the decision of the constitutional court, the implications of the Constitutional Court's decision have provided a new legal breakthrough for the realization of the perfection of the legal position of illegitimate children whose regulation.

B. RESEARCH METHODS

This type of research was carried out using a normative juridical approach. This approach was basically carried out by reviewing all laws and regulations related to the legal problems faced, namely regarding the constitutional court's decision on child out of wedlock is based on justice.¹⁴ The normative legal research method could be interpreted as legal research at the level of norms, rules, principles, theories, philosophies, and the rule of law in order to find solutions or answers to problems in the form of legal vacuums, conflicting norms, or ambiguous norms. Thus, the normative legal research method had the characteristics of library research or literature research that was different from the empirical (non-doctrinal) research method which is characterized by field research.¹⁵

C. RESULTS AND DISCUSSION

1. Regulation of the Constitutional Court's decision on illegitimate children

The Indonesian Constitution provides guarantees for children's rights specifically as affirmed Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that every child has the right to survival, growth and development and is entitled to protection from violence and discrimination.¹⁶ A child is very meaningful for parents.¹⁷ Children born outside of a legal marriage only have a relationship with the mother and her mother's family as regulated in Article 43 of Act No. 1 of 1974 concerning Marriage. Consequently, the

13 Azelia Gayaputri, Implementasi Putusan Mahkamah Konstitusi No. 46/ Puu-Viii/2010 Terhadap Anak Luar Kawin Di Wilayah Pengadilan Negeri Semarang Dan Pengadilan Agama Semarang, *Diponegoro Law Journal*, Volume 8, No. 2, 2019, page.877-889

14 Irwansyah, *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel*, Mirra Buana Media, Yogyakarta, 2020, Page.133

15 Yati Nurhayati, Ifrani, M.Yasir Said, Metodologi Normatif dan Empiris dalam Perspektif Ilmu Hukum, *Jurnal Penegakan Hukum Indonesia*, Volume 2, Issue 1, February 2021, page.1-20

16 Rafika Nur, Handar Subhandi Bakhtiar, The Imposition of Sanctions for Children, *Hasanuddin Law Review*, Volume 6 Issue 2, August 2020, page.165-171

17 Suciati, The Impact of Prenatal Education Through Stimulating Quran's Recitation On Child's Growth, *QIJIS: Qudus International Journal of Islamic Studies*, Volume 3, Issue 2, August 2015, page.129-147

child does not have the rights of the biological father, either in the form of a living, education costs, health, guardianship, and inheritance.¹⁸

According to the Constitutional Court, it is naturally impossible for a woman to become pregnant without a meeting between the ovum and spermatozoa, either through sexual intercourse or through other means based on technological developments that lead to fertilization. Therefore, it is inappropriate and unfair when the law stipulates that a child born from a pregnancy due to sexual relations outside of marriage only has a relationship with the woman as the mother.

The legal relationship that an illegitimate child has with his/her biological mother as well as his/her biological mother's family, illegitimate children also only get inheritance rights¹⁹ over their mother's assets. This provision contains injustice for the mother and her child, because to be able to conceive a child, of course there is a direct role from the parties involved. man as biological father. Because the father does not acknowledge or is not married to the woman, the civil relationship is severed with the father, even though the legal relationship is very necessary for the child to be able to claim the right of reasonable maintenance like other children in general.²⁰

The legal consequence of a legal event of birth due to pregnancy which was preceded by sexual intercourse between a woman and a man is a legal relationship in which there are rights and obligations in a reciprocal manner whose legal subjects are the child, mother and father. Thus, the relationship between a child and a man as a father is not solely due to marital ties but can also be based on proving the existence of a blood relationship between the child and the man as the father. Then the Constitutional Court concluded that Article 43 paragraph (1) is contrary to the 1945 Constitution as long as it is interpreted to eliminate civil relations with men who can be proven based on science and technology and/or other evidence according to the law that turns out to have blood relations as the father. So that the verse must read, "Children born out of wedlock have a civil relationship with their mother and their mother's family as well as with a man as their father which can be proven based on science and technology and/or other evidence according to the law having blood relations, including civil relationship with his father's family.

Regarding the recognition of this child out of wedlock, the Constitutional Court of the Republic of Indonesia as one of the independent judicial powers to administer justice to uphold law and justice, on Monday, 17 February 2012 made a decision that surprised many parties, namely the issuance of the Constitutional Court Decision.

18 M. Atho Mudzhar and Khoiruddin Nasution, *Hukum Keluarga di Dunia Islam Modern: Studi Perbandingan dan Keberanjakan UU Modern dari Kitab-Kitab Fikih*, Ciputat Press, Jakarta, 2003, page.182.

19 O A Victoria, ME Ersoy, Adopted Foreigners Inheritance By Indonesian Citizen, *Sultan Agung Notary Law Review*, 2020, Volume 1, Number 2, November 2019, page. 82-96,

20 Margareta Sevilla Rosa Angelin, Farida Danas Putri, Akbar Prasetyo Sanduan, Dilema Hak Mewaris Anak Luar Kawin Dalam Persepektif Hukum Perdata, *Jurnal Hukum Magnum Opus*, Volume 4 No. 2 August 2021, page.159-169

Number 46/PUU-VIII/2010 related to the recognition of the legal status of children out of wedlock, whose full order reads as follows:

Judging, Declaring:

- a. Granting the petition of the petitioners in part;
- b. Article 43 paragraph (1) of Act No. 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number: 3019) which states, "Children born outside of marriage only have a civil relationship with his mother and his mother's family", is contrary to the 1945 Constitution of the Republic of Indonesia as long as it is interpreted as eliminating civil relations with men which can be proven based on science and technology and/or other evidence according to the law that turns out to be related by blood as the father;
- c. Article 43 paragraph (1) of Act No. 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number: 3019) which states, "Children born outside of marriage only have a civil relationship with his mother and his mother's family", do not have binding legal force as long as it is interpreted to eliminate civil relations with men which can be proven based on science and technology and/or other evidence according to the law that turns out to have blood relations as the father, so the verse must be read, "Children born out of wedlock have a civil relationship with their mother and their mother's family as well as with a man as their father which can be proven based on science and technology and/or other evidence according to law to have blood relations, including civil relations with their father's family";
- d. Reject the petition of the applicants for other than and the rest;
- e. Ordered to publish this decision in the State Gazette of the Republic of Indonesia as appropriate.

The decision issued by the Constitutional Court is in accordance with the 1945 Constitution, especially Article 28B paragraph (2) and Article 28D paragraph (1). In Article 28B paragraph (2) of the 1945 Constitution which states "every child has the right to survive, grow, and develop and has the right to protection from violence and discrimination". After the issuance of this decision, a child out of wedlock can continue his life, grow and develop as a legitimate child with his rights as a child fulfilled. The child is also protected from discrimination because he is a child out of wedlock who sometimes gets bad treatment from the surrounding environment.

The Constitutional Court's decision is a final decision related to the judicial review of the law, which in this case is Article 43 paragraph (1) of Act No. 1 of 1974. Therefore, this Constitutional Court's Decision applies as a law so that its substance is general, not individual and not casuistic, in accordance with the provisions of Article 56 paragraph (3) in

conjunction with Article 57 paragraph (1) of Act No. 24 of 2003 concerning the Constitutional Court. And because of that, the decision of the Constitutional Court is also the legal norm that applies to all Indonesian citizens regarding the legal relationship between a child and his parents and all the consequences, whether the child is a child born to a woman who is pregnant with a man without ties of marriage (a child of adultery), and after the child was born these two men and women never bound themselves in a legal marriage bond nor after the child was born then the two women and the man bound themselves in a legal marriage bond (child out of wedlock), or the child is born to a woman who is impregnated by a man in a marriage bond that does not have certainty and has no legal force, because the event of the marriage is not in accordance with the applicable laws (under hand marriage).

After providing a solution (or at least providing legal certainty) to illegitimate children who were born after the issuance of the Constitutional Court's decision Number 46/PUU-VIII/2010 (curative), the Constitutional Court tried with the Constitutional Court's decision to prevent similar cases from happening again. This is not the Court's attempt to legalize adultery. On the contrary, it is an effort to prevent the Constitutional Court from happening (or it can be said to suppress) cases of the birth of a child out of wedlock, in addition to giving sanctions or in soft language is to give the biological father responsibility for the continuation of the child (out of wedlock). In addition, with the Constitutional Court's decision, it should not only be debated about things that happened before the Constitutional Court's decision was decided, but how each element of society and the government builds strong national morals to prevent similar things from happening to the next generation of the Indonesian nation.

2. The Constitutional Court's decision on illegitimate children is based on justice

In the Civil Code, children out of wedlock/married are divided into three types, namely: (1) if one or both parents are still bound by another marriage, then they have sexual relations with another woman or man which results in pregnancy and childbirth, then the child is called the child of adultery.²¹ (2) if the parents of the child outside of marriage are still single, they have sexual relations, and are pregnant and give birth to a child, then the child is a child out of wedlock (a natural child).²² (3) In addition, the term discordant child in the Civil Code is also known, namely a child born from a relationship between a man and a woman who is forbidden to marry as specified in Article 30 of the Civil Code because they have blood relations. Of the three divisions, only children out of wedlock in the category of natural children can get their civil rights

21 J. Andy Hartanto, *Hukum Waris: Kedudukan dan Hak Waris Anak Luar Kawin Menurut "Burgerlijk Wetboek" Pasca Putusan Mahkamah Kontitusi*, Laksbang Justitia, Yogyakarta, 2013, page.30.

22 Abul 'Ala Maududi, *Kejamkah hukum Islam* Gema Insani Press, Jakarta, 1991, page.81.

like legitimate children, only if there is an acknowledgment from their parents against them. Meanwhile, this does not apply to children out of wedlock in the category of adulterous and discordant children. But adulterous children and discordant children can demand a living as needed depending on the ability of their biological parents. This condition is a form of discrimination for children born out of wedlock.

Philosophically, the 1974 Marriage Law, GHR of 1898 and BW (*Burgerlijk Wetboek*) have a fundamental difference, which is in the 1974 Marriage Law considers the validity of marriage based on religion, while GHR and BW consider the validity of marriage only in terms of civility.²³ According to Murtadla Mutahhari, discrimination against children out of wedlock is against the concept of justice for individuals. For Murtadla, the concept of justice is known in four ways: first, fair means balance in the sense of a society that wants to survive and be established, then the society must be in a state of balance, where everything in it must exist with the proper level and not with the same rate. Second, fairness is equality and disclaimer of any difference. Justice is meant to maintain equality when the rights have the same, because justice requires equality. Third, fair is maintaining individual rights and giving rights to everyone who is entitled to them. Justice like this is social justice in living in the community, and in the state. Fourth, fair is maintaining the right to continue existence.²⁴

Gustav Radbruch states that law is the bearer of the value of justice, according to him the value of justice is also the basis of law as law. The value of justice in law will be achieved if there is no equality of rights before the law. The value of justice is material that must be the content of the rule of law. While the rule of law is a form that must protect the value of justice. So, if the content of the rule of law does not contain the material of justice, then the value of justice will never be achieved.²⁵

Efforts to protect the rights of children out of wedlock in Indonesia are clearly found in the decision of the Constitutional Court Number 46/PUU-VIII/2010 which was decided on Monday, February 13, 2012. The decision of the Constitutional Court Number: 46/PUU-VIII/2010 has provided opportunities for out of wedlock child to be able to obtain law enforcement on the existence of his position as a child due to the husband and wife relationship carried out by his mother and biological father. The state is also obliged to provide legal protection for children's rights, namely by putting them into legal rules regarding the protection of the civil rights of illegitimate children, especially regarding

23 Fathol Hedi, Abdul Ghofur Anshori, Harun, Legal Policy of Interfaith Marriage in Indonesia, *Hasanuddin Law Rev*, Vol 3 Issue 3 December 2017, page.263-276

24 Murtadha Muthahhari, *Keadilan Ilahi: Asas Pandangan-Dunia Islam*, Mizan, Jakarta, 1995, page.53-58.

25 Ahmad Farahi, Ramadhita, Keadilan Bagi Anak Luar Kawin Dalam Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010, *De Jure : Jurnal Hukum dan Syari'ah*, Vol. 8, No. 2 2016, page. 74-83

the inheritance rights of illegitimate children, especially after the issuance of the Constitutional Court Decision Number: 46/PUU-VIII /2010.

The Constitutional Court through its decision has given extraordinary respect to the position of this child out of wedlock, agrees with the Panel of Judges of the Court which has provided an extraordinary legal breakthrough to the child out of wedlock. The legal politics of the Constitutional Court is based on the principle of "equality before the law", namely the principle of "equality before the law." This principle is contained in the 1945 Constitution Article 28B paragraphs (1) and (2) and Article 28D paragraph (1) which reads: "*Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law*". This is of course in line with the principles of the rule of law which include 5 (five) things, one of which is the principle of equality before the law (equality before the law) discriminate against certain people or groups of people.²⁶

The presence of a child is the fruit of marriage and as the basis of descent.²⁷ Children out of wedlock with legitimate children are the next generation of the nation who deserve protection of their human rights in the same way as legitimate children without any discrimination. Naturally, the rights of children out of wedlock from the time they are in the womb, grow and develop to adulthood should be respected. And the Court through its decision has given the maximum award to the child out of wedlock even though the validity of the marriage of his parents is still in dispute. The existence of children in the family is something that is very meaningful. The child has a different meaning for every person. Some people assume that the child is a connector descent, as a future investment, the child is the hope to be backrest at a time when the elderly.²⁸ After all, children out of wedlock are creatures created by God who of course have the right to live properly as is the case with legitimate children, because the right to life is given by God since the child, including the child out of wedlock, is born.

Taking into account the legal considerations that have been given by the Judges of the Constitutional Court regarding the recognition of the position of children out of wedlock, it is clear that the decision of the Constitutional Court has provided a new legal breakthrough for the realization of the perfection of the legal position of children outside of wedlock, whose regulations in the Marriage Law have not been finalized. On the other hand, the child out of wedlock is expected to grow up like

26 Habib Shulton Asnawi, Politik Hukum Putusan MK No. 46/PUU-VIII/2010 Tentang Status Anak di Luar Nikah: Upaya Membongkar Positivisme Hukum Menuju Perlindungan HAM, *Jurnal Konstitusi*, Volume 10, No. 2, June 2013, page.239-260

27 Dewa Ayu Gita Trisna Dewi, Desak Gde Dwi Arini, Ni Gusti Ketut Sri Astiti, Kekuatan Hukum Akta Kelahiran Anak Luar Kawin, *Jurnal Interpretasi Hukum*, Vol. 2, No.3 December 2021, page.496-500

28 Hamam, The Status of Outside Marriage Children (The Study of Constitutional Court Regulation No. 46/PUU-VIII/2010 on February 27th, 2012 Based on the Fuqaha' Perspective), *International Journal of Educational Research & Social Sciences*, Vol. 2 No.3 June 2021, page.574-584

other children properly, especially with the help of his biological father. Thus the Constitutional Court's decision has opened up opportunities for illegitimate children to obtain their rights as children to be protected by both parents and at the same time get guarantees for their survival to be able to be independent.

Based on the principle of justice, it would be very fair and wise to give the same treatment to the child out of wedlock in terms of obtaining his civil rights from his biological father by not discriminating in treatment with children born from legal marriages, especially the equal treatment of rights to grow, develop and guarantee to live to be independent as a child. Because children out of wedlock, especially children born out of wedlock as a result of an unregistered marriage carried out by their biological father who is still bound by a legal marriage with his wife, are actually children born from marriages who are religiously recognized as legitimate children; Moreover, it can be believed and confirmed that the relationship like husband and wife carried out by the mother of this illegitimate child with his biological father which caused this illegitimate child to be born is clearly based on a mutually loving relationship between the mother and her biological father, but for some reason marriage cannot be carried out openly, then the marriage is carried out in disguise, even though it is religiously considered valid.²⁹

The decision of the Constitutional Court Number: 46/PUU-VIII/2010 dated 17 February 2012 has provided opportunities for out-of-wedlock children to be able to obtain law enforcement on the existence of their position as a child due to the marital relationship between their mother and biological father. The implication is the acknowledgment of a child out of wedlock (biological consequences) as a legitimate child, meaning that the child has an inheritance relationship with his biological father without having to be preceded by acknowledgment and ratification, provided that it can be proven that there is a biological relationship between the child and the biological father based on scientific evidence, for example through DNA test results.³⁰ The state is also obliged to provide legal protection for children's rights, namely by putting them into legal rules regarding the protection of the civil rights of illegitimate children, especially regarding the inheritance rights of illegitimate children, especially after the issuance of the Constitutional Court Decision Number: 46/PUU-VIII /2010.

The Constitutional Court's decision Number 46/PUU-VIII/2010 has fulfilled the principles of child protection and is an acknowledgment of children's human rights. For children out of wedlock, the Constitutional Court's decision has fulfilled their desire for legal certainty and justice, as

29 I Nyoman Sujana, *Kedudukan Hukum Anak Luar Kawin Dalam Perspektif Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010*, Aswaja Pressindo, Yogyakarta, 2015, page.218

30 Muhammad Iqbal Bangun & A. Zarkasi, Analisis Putusan Mahkamah Konstitusi No.46/Puu-Viii/2010 Tentang Status Anak Yang Lahir di Luar Perkawinan Yang Sah, *Limbago: Journal of Constitutional Law*, Vol. 1 No. 1 (2021), page.111-131

well as responding to the subjective sense of injustice that they have felt so far. The Constitutional Court's decision which provides an opportunity to create a civil relationship between a child out of wedlock and his biological father can be said to have fulfilled commutative justice. It (*iustitia commutativa*) is justice that gives each person what is his or her share by equating achievement with contra-achievements based on one's rights. As is well known, a child has the right to know his origin and to obtain maintenance and inheritance rights from his parents. The existence of this Constitutional Court Decision has fulfilled the right of a child out of wedlock to have complete parents, so that he has a legal relationship not only with his mother, but also with his father and his father's family.³¹

D. CONCLUSION

The Constitutional Court's decision Number 46/PUU-VIII/2010 has fulfilled the principle of justice, namely the principle of child protection and is an acknowledgment of children's human rights. For children out of wedlock, the Constitutional Court's decision has fulfilled their desire for legal certainty and justice, as well as responding to the subjective sense of injustice that they have felt so far. The decision of the Constitutional Court Number: 46/PUU-VIII/2010 has provided an opportunity for children out of wedlock to be able to obtain law enforcement on the existence of their position as a child due to the marital relationship between their mother and biological father.

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31 Rosalinda Elsin Latumahina, Perwujudan Keadilan Bagi Anak Luar Kawin Melalui Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010, *Yuridika*, Volume 29 No 3, September-December 2014, page.61-379

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