

## ABSTRACT

Aljuraimy. 07210047. Child Outside Marriage Position After the Constitutional Court Decision No. 46/PUU-VIII/2010 In Review From the Indonesian Civil Code. Thesis. Department: Al-ahwal al-Syakhshiyah. Faculty: Sharia. State Islamic University of Maulana Malik Ibrahim Malang. Supervisor: Mujaid Kumkelo, M.H.

---

**Keywords:** Child Outside of Marriage, KUH.Perdata, The Constitutional Court

Constitutional Court on February 17, 2012 issued Decision Number: 46/PUU-VIII/2010 about the position of children outside of marriage. This ruling is the latest breakthrough regarding the position of the child outside of marriage, which at first had a child outside of marriage is only a civil relationship with her mother and her mother's family alone, can have a civil relationship with his father and his father's family. This decision stems from the judicial review request Machica Mochtar to Article 2 paragraph (2) and Article 43 paragraph (1) of Law no. 1/1974. In the applicant's request, the two articles are considered contrary to Article 28B paragraph (1) and paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution

Based on the the material law above, then the formulation of the issues raised in this study is to examine the legal considerations in the decision of the judges of the Constitutional Court No. 46/PUU-VIII/2010. As well as examine the legal provisions in Article 43 paragraph (1) of Law No. 1 post of 1974 Constitutional Court decision Number: 46/PUU-VIII/2010 terms of Indonesian Civil Code.

Judging from the formulation of the problem, this research includes the study of normative legal, using the approach of the legislation (state approach) and the approach to the case (case approach). Primary legal materials used in this study is the Constitutional Court Decision Number: 46/PUU-VIII/2010 and Indonesian Civil Code.

From the results it is concluded that the consideration of the law in the Constitutional Court Decision Number: 46/PUU-VIII/2010 is a civil relation between father and son may be based on blood relation, and the rights of a child, regardless of marital status of the parents, should receive protection and law certainty.

Article 43 paragraph (1) of Law no. 1/1974 contains provisions on the recognition of illegitimate children, so that not all damages received by children outside of marriage can be protected by law, especially the loss soisal-psychology. Proof of the relationship between the child outside marriage with the biological father through DNA testing, can be equipped or can be proved by other evidence which has been regulated by the Law