



Inheritance Relationship Between Children Born Out of Wedlock and Their Biological Fathers

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Abstract

The aim of this research is to analyze the Constitutional Court Decision Number 46/PUU VIII/2010 concerning Review of Law Number 1 of 1974 on inheritance rights between illegitimate children and their biological father. The research method used is qualitative research with a descriptive approach and a normative juridical perspective. The research results show that factors that allow someone to receive an inheritance include marital relations, kinship relations, and the emancipation of slaves. Legal considerations in Constitutional Court Decision Number 46 concerning Review of Law Number 1 of 1974 state that illegitimate children have a civil relationship with their mother and family, as well as with a man who is known to be their father based on science. Proof or other valid evidence that establishes the existence of blood relations, including civil relations with the father's family. Meanwhile, analysis of the Constitutional Court Decision Number 46 concerning Review of Law Number 1 of 1974 which is strengthened by Article 43 paragraph 1 of the Marriage Law confirms that a child's relationship with a man as his father is not solely based on the existence of a marriage bond. but it can also be based on evidence of a blood relationship between the child and the man identified as the father.

INTRODUCTION

Inheritance is a science related to the issue of gifts because it concerns the property of the giver, so that if the gift giver dies, he will become the heir. In this regard, donated property is a consideration in inheritance matters, so that a child who receives a gift of property will inevitably be involved in inheritance distribution issues (Gussevi et al., 2023). In inheritance law, it has been determined who the heirs are, who has the right to receive a share of the inheritance, how much each will be, how the distribution will be arranged, and various other things related to inheritance distribution (Satria, 2019; Mandasari et al., 2022; Saputri, 2023; Abdillah et al., 2024). Inheritance law in force in Indonesian society is still plural, meaning that inheritance distribution is subject to civil law in the Civil Code Islamic inheritance law customary

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law (Amiriyah, 2017). The differences in the distribution of heritage occur because Indonesian society is diverse, consisting of various ethnic groups with various customs and customary laws that are different from each other and have their own characteristics (Ananda et al., 2023).

The transfer of one's assets to another person in the form of an inheritance must fulfill three main conditions: the existence of a deceased person (heir), heirs, and the inherited assets (Ansori & Sulaiman, 2022; Nurdin, 2023). If these three main conditions are met, then the transfer of the deceased person's inheritance will automatically be transferred to living people who have the relationship and conditions required to obtain an inheritance, whose shares are determined or regulated in the Alquran (Sarif, 2011). However, the conditions for the death of the heir are very mandatory, the distribution of inherited assets is considered a distribution of inheritance as explained in the Alquran and regulated in Article 171 Letter B of the Compilation of Islamic Law (KHI) (Noor et al., 2023). Based on these provisions, it can be concluded that the distribution of inherited assets is permitted before the heir dies (Jannah & Nurbaedah, 2022).

The issue of inheritance is very important and has always been one of the main topics of discussion in Islamic law because it is inherent in every family. Inheritance issues are prone to conflict in society because of distribution that is considered unfair or parties who feel disadvantaged (Al-Anam, 2018). Therefore, Islamic law provides comprehensive rules regarding inheritance issues contained in the Alquran, such as Surah An-Nisa: 7

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۗ
نَصِيبًا مَّفْرُوضًا ۙ

Meaning: *For men there is a share in what their parents and close relatives leave, and for women there is a share in what their parents and close relatives leave-whether it is little or much. These are obligatory shares (QS. An-Nisa:7)*

In theory, every Muslim person is obliged to divide his inheritance according to Islamic law, and if a dispute occurs it should be resolved before the Religious Court according to its authority to examine, adjudicate, and resolve cases at the first instance. Individuals who are Muslim in the fields of marriage, inheritance, wills, and gifts are made based on Islamic law. The field of inheritance as referred to in paragraph (1) letter b includes determining who the heirs are, determining the inheritance, determining the share of each heir, and carrying out the distribution of the deceased's inheritance (Ramdani, 2010; Hariyadi et al., 2023).

One of the problems with inheritance law in Indonesia is related to children born out of wedlock (illegal children), where there is a fundamental difference between Islamic law that applies to Indonesian citizens who are Muslim and civil law that applies to those who comply with or choose the KUH Civil, especially Indonesian citizens of Chinese and European descent. In the explanation of Article 49 of Law Number 3 of 2006 concerning Religious Courts (UU Number 3 of 2006), especially paragraph (a), it is stated that marriage is something that is regulated based on applicable marriage law and implemented according to sharia (Sumaidi, 2017). For children who have been legalized, a clear legal relationship arises between them and their parents, including inheritance rights. However, problems arise when the father refuses to acknowledge or authenticate the child, raising questions about the legal protection provided to the child (Tiflen, 2015).

Cases of adultery often occur in society and hurt the perpetrator and the surrounding environment. Actions like this often result in pregnancy in women, who may not accept the responsibility of the man who impregnated them (Cahya et al.,

2021). As a result, unborn children may be abandoned, and their parentage may become uncertain. As a result, women who become pregnant as a result of adultery can experience emotional stress, for example wanting to commit suicide because of family shame or having an abortion (Romadhiah, 2011). Children born out of wedlock from a relationship between a woman and a man do not have the legal ties of marriage, so they are considered children resulting from adultery. According to the provisions of the Civil Law (KUHPerdata), illegitimate children are equated with illegitimate children from a legal perspective and are not recognized by their biological parents (Aurellia & Halim, 2023). Therefore, children born outside of marriage have no legal relationship with their parents. However, Article 867 of the provisions of the Civil Law (Civil Code) stipulates that the law only regulates the maintenance required for illegitimate children after taking into account the legal heirs (Gushairi, 2022).

In Article 100 of the Compilation of Islamic Law, it is stated that "children born out of wedlock only have a family relationship with their mother and family". It is expressly stated in Article 43 paragraph (2) of Law No.1 of 1974 that it states: "Children born out of wedlock only have a civil relationship with their mother and their mother's family" (Murtadlo, 2014; Rahmiati, 2018).

According to the four mahdzab scholars, it is agreed that the child of adultery does not have a lineage or lineage relationship with the father because the lineage is noble and honorable, whereas adultery is a vile and reprehensible act. As Allah says in the following chapter Al-Isra' verse 32.

وَلَا تَقْرُبُوا الزِّنَىٰ إِنَّهُ كَانَ فَحِشَةً وَسَاءَ سَبِيلًا ۝٣٢

Meaning: *Do not go near adultery. It is truly a shameful deed and an evil way* (QS. Al-Isra': 32)

From the verse above it can be understood that adultery is not permissible and is a disgraceful act. Therefore, something noble (a child) cannot start from something vile (Mubarak, 2019). Cases of adultery often occur in society, resulting in a woman becoming pregnant, and the man who is responsible for the pregnancy does not want to be responsible for the fetus she is carrying (Muzayyanah, 2018). However, children, even though they are born from adultery, are a gift from Allah SWT. This is in line with Article 53 of Law Number 39 of 1999 concerning Human Rights which states that "Every child has the right from conception to live, the right to maintain life, and the right to improve the quality of his life". This article also includes protection for the fetus, ensuring that it grows and develops like other humans (Hidayatullah & Mustafa, 2024).

The Convention on the Rights of the Child which was held on January 26 1990 regulates several aspects that must be implemented by every country (Muchayaroh, 2013). These include ensuring that every child can grow up healthily, receive an education, be protected, have the right to express opinions and access justice (Solihandracem et al., 2023). Indonesia views child protection from three perspectives. First, children are citizens, therefore the state is obliged to protect them. Second, children are a gift and trust from the Almighty, so they have inherent dignity and honor. Third, children are the future and hope of the nation, as guarantors of the nation's ideals and ideals. If we look at the Constitutional Court Decision Number 46/PUU-VIII/2010, children born as a result of adultery have a civil relationship both with the mother and her family, as well as with the biological father and his family as long as this can be proven scientifically (Suleman, 2021).

METHODS

The type of research used by researchers is qualitative research with a descriptive approach. Qualitative descriptive research aims to obtain information about the current situation (Sugiyono, 2018). The aim of this descriptive research is

to create a systematic, factual and accurate description, depiction or description of the facts, characteristics and relationships between the phenomena being studied (Betteridge, 2015). This research also uses a normative juridical approach, which is carried out by studying and interpreting theoretical aspects related to principles, concepts, doctrine and legal norms regarding evidence. In this research the author uses several approaches, namely the Statutory Approach which examines various statutory regulations relating to the legal issues being investigated, namely Law Number 1 of 1974.

Case Approach: This approach includes analysis of cases that are relevant to the legal problems faced. The cases examined are cases that have received court decisions that have permanent legal force, such as Constitutional Court Decision Number 46/PUU-VIII/2010 concerning Marriage Legal Examinations. The main focus of each decision is the judge's considerations that lead to a decision, which can be used as an argument in resolving legal problems (Baron, 2018; Liu et al., 2021; Sitorus, 2024). To obtain research materials, a study will be carried out through a literature review, namely reviewing legal materials. The research legal material comes from secondary legal sources, namely first, primary legal material from Constitutional Court Decision Number 46/PUU-VIII/2010.

Second, secondary legal materials, namely scientific books related to Constitutional Court decisions, research results related to Constitutional Court decisions, as well as journals and literature related to Constitutional Court decisions. Third, tertiary legal materials, namely legal terminology dictionaries, large Indonesian dictionaries and encyclopedias. Data collection techniques from primary, secondary and tertiary legal materials are obtained through literature review by collecting all statutory regulations, legal documents, books and journals related to the problem. Furthermore, for statutory regulations and documents, the basic understanding or legal principles of each article relating to the issue will be taken, and for books and scientific journals, relevant theories or statements will be extracted. Finally, all the data above will be arranged systematically to facilitate the analysis process (Pratiwi, 2020).

RESULT AND DISCUSSION

Inheritance law is an important part of family law which has an important meaning, often determining and reflecting the family system that applies in society. Inheritance law is closely related to human life, both property and individuals (Sarianti, 2019). When someone dies, leaving behind family and assets or inheritance, the question arises of how the wealth will be distributed. So the law governing inheritance or inheritance is regulated by Islamic inheritance law and the Civil Code (Rahman, 2019).

The field of inheritance has experienced a lot of development because society's needs are increasingly complex and thought patterns are always changing to adapt to the times. Moreover, countries have the characteristics of various groups, including various tribes, cultures, races, and even religions (Amiriyyah, 2015).

As time goes by and conditions continue to change, the applicable laws and regulations regarding inheritance, although quite strict, still face social problems and conflicts. The rapid situation and changes occurring in society have encouraged many Islamic scholars to carry out *ijtihad*, trying to explore the universal and eternal values contained in the Quran and Hadith (Safala, 2016).

One of the discussions in the field of inheritance law is about the causes of inheritance and the obstacles. The reasons a person has the right to inherit are marriage, kinship relations, and the freeing of a slave (Azani & Cysillia, 2022).

Meanwhile, obstacles to inheritance include murder, slavery, and religious differences between heirs, which can invalidate a person's right to inherit the assets of a deceased person. In other words, obstacles to inheritance are actions or circumstances that can eliminate a person's right to inherit inheritance after the causes of inheritance are known (Juwanti, 2018).

Regarding the judge's considerations in Constitutional Court Decision Number 46/PUU-VIII/2010, namely: Illegitimate children have no legal status and often receive discriminatory treatment in society (Sepma & Erwita, 2020). Therefore, the Constitutional Court considers that children born out of wedlock must receive the same legal protection and legal certainty even though the validity of their parent's marriage is still in question because the child is innocent. After all, he was born out of wedlock (Yulita, 2020).

Children born out of wedlock still come from a relationship between a man and a woman. Therefore, the Constitutional Court considers it unfair if children born out of wedlock only have a relationship with a woman as their mother, and the law exempts the man who caused the child's pregnancy and birth from responsibility as a father. As a result, the law eliminates the child's rights to the man as his father. Regardless of the pros and cons that occur in society, what is clear is that the Constitutional Court's decision has been decided and pronounced in a plenary session which is open to the public, meaning that the decision is final and legally binding (Devy & Muliadi, 2020). The Constitutional Court's decision, which is final and generally binding, certainly has legal consequences or juridical implications. This also includes decisions of the Constitutional Court. As is known, so far illegitimate children only have a legal relationship with their mother and her mother's family, according to Law no. 1 of 1974 so in the birth certificate of an illegitimate child only the mother's name is written, not the father's name unless there is recognition or validation of the child by the father (Marasti & Hikmatiar Al Qindy, 2023). Therefore, with the pronouncement of the Constitutional Court's decision, it is also necessary to consider the substance of the birth certificate of an illegitimate child. From an administrative law perspective, it will certainly have an impact on changes in the substance of birth certificates for illegitimate children, which will also impact the rights and obligations between father and child (Mansari & Devi, 2020).

Constitutional Court Decision Number 46/PUU-VIII/2010 concerning the status of illegitimate children, if analyzed based on the opinion above, is an example of a Constitutional Court decision that has negative implications because it is final and binding (Adjani & Salam, 2023). The consequences of this Constitutional Court decision created a legal vacuum because it caused controversy among the public, and also conflicted with what was regulated in the Civil Law Law (KUHPperdata). If forced, it will create new problems. Therefore, there is an urgent need to establish more specific regulations governing illegitimate children (Aiko, 2021).

Article 43 paragraph 1 of the Marriage Law is enforced because the relationship between a child and a man as the father is not solely based on the existence of a marriage bond, but can also be based on evidence of the existence of a blood relationship between the child and the man as the father (Trianti et al., 2020). Thus, whatever the issue of marriage procedures, the children born must receive legal protection. If not, then the ones who suffer are children born out of wedlock (Mawaddah & Zulfadli, 2023).

Because Article 43 paragraph (1) of the Marriage Law was changed by Constitutional Court Decision Number 46/PUU-VIII/2010, the current legal norm, both in the Civil Code, is that a child born out of wedlock has a civil relationship with the mother and her family, as well as the man as the father, which can be proven based on science and technology or other evidence recognized by law to establish blood relations, including civil relations with the father's family (Ramlah,

2021). This means that the law allows an illegitimate child or his representative to submit an application to his biological father in court, and if it is proven based on science and technology or other evidence recognized by law to establish a blood relationship, then it is valid to establish a civil relationship with the father biological and at the same time with his family.

CONCLUSION

Analysis of Constitutional Court Decision Number 46/PUU VIII/2010 concerning Review of Law Number 1 of 1974, where in Article 100 of the Compilation of Islamic Law (KHI) it is stated that "children born out of wedlock only have a bloodline relationship with their mother and family". This is explicitly stated in Article 43 paragraph (2) of Law Number 1 of 1974 which states "Illegitimate children only have a civil relationship with their mother and family". Meanwhile, reviewing the Constitutional Court Decision Number 46/PUU VIII/2010 concerning Review of Laws -Law Number 1 of 1974, where Article 43 paragraph 1 of the marriage law is enforced because the relationship between a child and a man as the father is not valid based solely on the existence of a marriage bond. But it can also be based on evidence of the existence of a blood relationship between the child and the child the man is the father. Thus, whatever the issue of marriage procedures, the child born must receive legal protection. Otherwise, the person who is born out of wedlock will be harmed, even though the child is not at fault because he was born out of wedlock.

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