

## **ABSTRACT**

The existence of the Constitutional Court of the Republic of Indonesia No.46/PUU-VIII/2010 give justice to the status of illegitimate children, particularly in the field of civil relationship. This thesis discusses the legal protection of illegitimate children before and after the issuance of the decision of the Constitutional Court No.46/PUU-VIII/2010. The preparation of the thesis was conducted using normative research. The study concluded that the protection of children outside of marriage law before the Constitutional Court under Article 43 paragraph (1) that a civil relationship with the mothers occur directly (by law), with reference to the contents of Article 43 paragraph (2) and Article 66 of Law then the old rules about marriage illegitimate child can apply again. While the legal protection after the Constitutional Court decision and guarantee legal certainty to the mother and child outside of marriage to be demanding civil rights, as long as the procedure can be proved through evidence at trial in the form of a blood relationship with the alleged father, through DNA testing techniques. The Constitutional Court decision forced the endorsement, then the inheritance rights shall apply in the Civil Code. For those citizens who are Muslims, the Constitutional Court can be used in children results unofficial marriages. For children of adultery in the Islamic concept of protection refers to the MUI Fatwa No.11 of 2012.

**Keywords:** Decision of the Constitutional Court, Legal Protection, Child Outside Marriage.

## **ABSTRAK**

Keberadaan Putusan Mahkamah Konstitusi Republik Indonesia Nomor 46/PUU-VIII/2010 memberikan rasa keadilan bagi status anak luar kawin, khususnya dalam bidang hubungan keperdataan. Tesis ini membahas mengenai perlindungan hukum anak luar kawin sebelum dan sesudah terbitnya putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. Penyusunan tesis dilakukan dengan metode penelitian yuridis normatif. Hasil penelitian menyimpulkan bahwa perlindungan hukum anak luar kawin sebelum putusan Mahkamah Konstitusi diatur dalam Pasal 43 ayat (1) yakni hubungan perdata dengan ibu terjadi secara langsung (demi hukum), dengan merujuk pada isi Pasal 43 ayat (2) dan Pasal 66 Undang-Undang Perkawinan maka peraturan lama tentang anak luar kawin dapat berlaku lagi. Sedangkan perlindungan hukum pasca putusan Mahkamah Konstitusi yakni memberikan jaminan dan kepastian hukum kepada ibu dan anak luar kawin untuk dapat menuntut hak-hak keperdataan, selama dapat membuktikan melalui prosedur pembuktian di persidangan berupa adanya hubungan darah dengan bapak yang disangkakan, melalui tehnik pemeriksaan DNA. Putusan Mahkamah Konstitusi ini merupakan bentuk pengakuan secara paksa, maka berlakulah hak waris dalam KUH Perdata. Bagi warga negara yang beragama Islam, putusan Mahkamah Konstitusi ini dapat digunakan pada anak hasil pernikahan siri. Bagi anak zina dalam konsep Islam maka perlindungannya merujuk kepada Fatwa MUI Nomor 11 Tahun 2012.

Kata kunci: Putusan Mahkamah Konstitusi, Perlindungan Hukum , Anak Luar Kawin.