



Inheritance of Extramarital Children Determined as Legal Children After the Constitutional Court Decision No. 46/PUU-VIII/2010

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Abstract

This article analyzes aspects of family law in terms of inheritance of extramarital-children, from legality to implementation, and the role of judicial institutions in protecting the inheritance rights of extramarital-children who have the status of legal children after the Constitutional Court Decision No. 46/PUU-VIII/2010, whose existence was rejected by their biological father. An out-of-wedlock child designated as a legal child is entitled to civil rights from his father, ensuring the fulfillment of the rights of extramarital-children is the responsibility of the parents, governments, and the state. The purpose of this article is to raise awareness and optimize the implementation of the protection of the inheritance rights of extramarital-children who have been determined as legal children by the court as parties. This article uses normative research by referencing several inheritance laws and regulations in force in Indonesia and factual facts. Two approaches are used, the statutory and conceptual, to obtain the desired research results. The findings showed that extramarital-children who were not recognized by the biological father did not have the right to inherit with the biological father as well as the father's family because they did not have a sexual relationship. The Constitutional Court decision only provides space for the recognition of extramarital-children, but the issue of inheritance is returned to the inheritance law in force in Indonesia. Because of their weak position, extramarital-children must be given protection to ensure the fulfillment of children's rights through the provision of mandatory wills from fathers who do not recognize them.

Keywords: Extramarital Children; Inheritance Rights; Legal Protection

A. Introduction

Using technology through DNA testing was initially seen as expensive and rare. Technology has increased in recent decades. The implementation of DNA tests is used in

various studies in the field of science, such as health science, forensic science, and legal science, in assisting the law enforcement process in solving cases that require DNA testing.¹ DNA samples are generally used in the field of health sciences for the development of genetic-related diseases, which are then used by criminal law studies to solve cases that require DNA samples in finding suspects. This knowledge then penetrates the study of family law to obtain answers to a person's identity towards his family.²

DNA testing to determine a father-child bond is controversial in Islamic law, but it is allowed to help protect women and children. Testing through the mechanism of biological paternal DNA testing of extramarital children is the most famous achievement in forensic technology to solve problems related to physical relationships between them.³ DNA testing is a new evidence tool that aims to help solve legal problems by utilizing technological sophistication that continues to develop.⁴ Its implementation is even recognized and included in one of the regulations related to the determination of adultery as contained in the *Qanun Jinayat*, where DNA test evidence becomes evidence instead of four witnesses in Court.⁵

The Constitutional Court Decision No.46/PUU-VIII/2010 is the result of a judicial review submitted by a woman named Aisyah Mochtar, well-known as Machicha Mochtar, over the enforceability of Article 2 Paragraph 1 and Article 43 Paragraph 1 of Law Number 16 of 2019 jo Law Number 1 of 1974 concerning Marriage against Article 28B Paragraph 1 of the 1945 Constitution fourth amendment. The result of the judgment as above states that a child born out of wedlock can have a legal relationship with his father and father's family other than his mother and his mother's family if proven to be able to show the existence of such ties using

¹ C Guest, "DNA and Law Enforcement: How the Use of Open Source DNA Databases Violates Privacy Rights," *American University Law Review* 68, no. 3 (2019): 1015, <https://doi.org/https://digitalcommons.wcl.american.edu/aulr/vol68/iss3/5>.

² Catherine Agnes Theunissen, "The Effects of DNA Test Results on Biological and Family Identities," *Genealogy* 6, no. 1 (2022): 7, <https://doi.org/10.3390/genealogy6010017>.

³ Haneef S, "DNA Test of Paternity in Islamic Law Implications for Illegitimate Children Born Less than Minimum Gestation Period in Malaysia," *Hamdard Islamicus* 39, no. 2 (2016): 7–35, <https://doi.org/10.57144/hi.v39i2.100>.

⁴ Yahaya Ibrahim Abikan, "Examining the Admissibility or Otherwise of Evidence Generated from Closed-Circuit Television (CCTV) and Deoxyribonucleic Acid (DNA) Test as Means of Proof of Zina Under Islamic Law," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (2023): 85, <https://doi.org/10.24090/mnh.v17i1.8172>.

⁵ Era Fadli, Mursyid Djawas, and Syarifah Rahmatillah, "Tes DNA Sebagai Alat Bukti Pengganti Empat Orang Saksi (Analisis Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayah)," *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah* 3, no. 1 (2018): 2, <https://doi.org/10.22373/petita.v3i1.28>.

the help of science and technology and other evidence that according to law is allowed, one of which is DNA testing as a science development that can provide more accurate results.⁶

The recognition of extramarital children through the DNA test mechanism, according to Constitutional Court Decision No.46/PUU-VIII/2010, has a significant effect, and even the decision has changed the national family law order.⁷ Every child born from a relationship without a legal marriage bond can have the opportunity to be recognized by their biological father. Recognized extramarital children will also have their rights legally before the law. Although the Constitutional Court Decision No.46/PUU-VIII/2010 has provided a way to recognize extramarital children through DNA testing, many parties have not done the Verdict as they should. In reality, court rulings that have ordered men suspected of being biological fathers to conduct DNA tests to test the correctness of the relationship status between the two have often been absent from the execution of the verdict.

The panel of judges in deciding the dispute over extramarital children after the Constitutional Court Decision No.46/PUU-VIII/2010 not only postulated the verdict after DNA testing as in the case of Rezky Aditya and Wenny Aryani. Problems arise when a child designated as a legitimate child by the court is not recognized by his biological father. Is a child who has obtained legal status before the law entitled to civil rights such as inheritance rights to birth fathers who do not recognize it? What protection is given to extramarital children authorized by the court to obtain civil rights in the form of inheritance rights after the death of their biological father? This is then a fascinating discussion to be studied further.

Inheritance is one of a child's rights over the property left by his parents. Inheritance rights are born due to a nasal relationship whose provisions are regulated in inheritance law. Indonesia still needs to have a national inheritance law.⁸ Inheritance arrangements in Indonesia are still pluralistic in civil, Islamic, and customary inheritance laws.⁹ According to the Civil

⁶ Yann Joly, et al., "DNA Testing for Family Reunification in Canada: Pointsto Consider," *Journal of International Migration & Integration* 18 (2017): 392, <https://doi.org/10.1007/s12134-016-0496-7>.

⁷ Azka Aulia Abdillah, Siti Hamidah, and Endang Sri Kawuryan, "Prosedur Ideal Pengakuan Bagi Anak Luar Hasil Perkawinan Siri Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 6, no. 1 (2021): 3, <https://doi.org/10.17977/um019v6i1p1-10>.

⁸ Bambang Daru Nugroho, Hazar Kusmayanti, and Dede Mulyanto, "The Division of Inheritance of Adopted Children in the Indigenous People of Kampung Naga Associated With Islamic Law," *Jurnal Bina Mulia Hukum* 7, no. 1 (2022): 103, <https://doi.org/10.23920/jbmh.v7i1.985>.

⁹ Sonny Dewi Judiasih and Efa Laela Fakhriah, "Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia," *Padjadjaran Jurnal Ilmu Hukum* 5, no. 2 (2018): 316. <https://doi.org/10.22304/pjih.v5n2.a6>

Inheritance Law, an out-of-wedlock child can have rights to the inheritance of his biological father after recognition by the father. In contrast to Islamic law, which states that an extramarital child does not have a civil relationship with his father, there is no relationship between nasab, inheritance, and marriage guardian.¹⁰ This is also the same as the inheritance provision in customary law as stipulated by Islamic law.

Academic and legal practitioners have widely carried out research in the field of family law, especially those discussing the inheritance of extramarital children as well as study by Nguyen Thi Bao Anh and Nguyen Phuc Gia Nguyen in their article entitled “Analyzing Child Born Out of Wedlock (Illegitimate Child) in The Law on Marriage and Family.”¹¹ The results showed that every child born under the provisions of Clause 2, Article 68 of the Marriage and Family Act 2014, regardless of their parent's marital status, has the same rights and obligations as children born with marital status. This research differs from the regulations in Indonesia, where extramarital children do not have rights like legal children, so it is necessary first to have a legitimate child that his biological father must recognize through court assistance.

Further research was by Era Fadli et al., entitled "DNA Test as Evidence to Substitute Four Witnesses (Analysis of Aceh Qanun number 6 of 2014 concerning Jinayah Law)".¹² The results of this study show that DNA testing is an additional and supporting evidence tool to prove the legitimacy of extramarital children due to legal extramarital pregnancy. However, other evidence in the form of DNA tests cannot be used as primary evidence or substitute evidence for four witnesses contained in Aceh Qanun Number 6 of 2014 concerning Jinayah Law.

The research method used in this study is normative juridical, namely legal research conducted by examining library materials derived from secondary data, namely data obtained indirectly from primary, secondary, and tertiary legal materials.¹³ This research is descriptive-

¹⁰ Muhammad Habibi and Miftakhul Marwa, “Problematika Hak Anak Luar Kawin : Tinjauan Kitab Undang-Undang,” *Media of Law and Sharia* 4, no. 3 (2023): 239, <https://doi.org/10.18196/mls.v4i3.36>.

¹¹ Nguyen Thi, et al., “Analyzing ‘Child Born Out Of Wedlock’ (‘Illegitimate Child’) In The Law On Marriage And Family,” *Journal of Population Therapeutics and Clinical Pharmacology* 30, no. 9 (2023): 95, <https://doi.org/10.47750/jptcp.2023.30.09.011>.

¹² Fadli, Djawas, and Rahmatillah, “Tes DNA Sebagai Alat Bukti Pengganti Empat Orang Saksi (Analisis Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayah).” *PETITA: Jurnal Kajian Ilmu Hukum dan Syariah* 3, no. 1 (2018): 2, <https://doi.org/10.22373/petita.v3i1.28>

¹³ Nugroho, Kusmayanti, and Mulyanto, “The Division of Inheritance of Adopted Children in the Indigenous People of Kampung Naga Associated With Islamic Law,” *Jurnal Bina Mulia Hukum* 7, no.1 (2022): 103, <https://doi.org/20.23920/jbmh.v7i1.985>.

analytical, which means that problem-solving is carried out by describing the provisions of applicable laws and regulations associated with legal theories and faced with the object of research based on facts seen in practice. Data collection techniques use literature studies and interviews conducted at research locations, including libraries, Religious Court Offices, and the Constitutional Court.

B. Discussion

B.1. Cases of Extramarital Children in Indonesia Who Are Not Recognized by Biological Fathers

Constitutional Court Decision Number 46/PUU-VIII/2010 states that an extramarital child can have the opportunity to be recognized as a legal child if proven to have a civil relationship with his biological father as long as it can be proven through a DNA test mechanism. Proving the biological relationship of extramarital children using DNA testing becomes a legal breakthrough by the Judge to protect the rights of children who are not fulfilled by their parents, especially if the parents of the extramarital child who do not recognize their existence because of their existence through means that are not justified by religious law and state law.

Proving the biological relationship of an extramarital child with his father using a DNA test mechanism does not only occur in Indonesia. Some Islamic and secular countries have used DNA testing to help prove the legitimacy of a child's biological relationship to his father. Some countries do not use DNA testing to test paternal lineage. Morocco, in 2017 through the Family Court of First Instance in Tangier, ruled on recognizing a father's family relationship with his biological daughter through DNA testing and ordered the father to pay child support.¹⁴ The case began with a lawsuit by the child's mother, who wanted to prove the paternal line (*buna*) and the fate of her daughter, who was born out of wedlock.

A panel of judges of the Family Court of First Instance in Tangier allowed him to conduct a DNA test as evidence in a family law case, which had never happened in a judicial process before. The DNA test was approved to illustrate the synergy of rules in domestic law, Islamic law, and the Constitution towards advances in medical science, law, and international

¹⁴ Zaynab El Bernoussi, "DNA Testing and Paternity Lawsuits in Morocco: The Tangier's Court Case," *Yearbook of Islamic and Middle Eastern Law Online*, (2022), <https://doi.org/10.1163/22112987-12340019>.

conventions. However, this decision was revoked by the Court of Appeal and overturned the use of international conventions in lower courts.

Lebanon is one of the countries that also recognizes and uses DNA Paternity testing. Genetic testing is regulated in Law Number 625, drafted by the Lebanese National Consultative Committee of Ethics (LNCCE), and approved by the Ministry of Health, the Council of State, and the Council of Ministers.¹⁵ Although the application of DNA testing is recognized by the state, testing cannot be carried out on all aspects, one of which is the submission of lineage through paternal DNA. Unlike some other countries, Lebanon provides convenience by conducting paternity tests without involving doctors and approval from interested parties (father, son, and so on). This has an impact on various issues involving ethics in terms of the privacy of the person. Things are even more difficult when Lebanon does not yet have a law governing DNA theft that allows anyone to access another person's genetic material without that person's knowledge and permission. The list of other countries can be seen from the table below.

Countries	DNA Phenotype Is Legally Regulated	Legal Norms Prohibit DNA Phenotyping	DNA phenotype allowed for practical purposes	Word
German	Yes, through the revision of the Code of Criminal Procedure (StPO) in November 2019	Not	Yes, just to avoid danger	The new law does not allow ancestry analysis nor is it for criminal investment
Austria	Not	Not	Yes	DNA has been allowed since 2018 when the Security Police Law was revised in accordance with the European Union's General Data Protection Regulation
Swiss	Ongoing	Ongoing	Not	Proposed revision of law allowing DNA analysis

¹⁵ M Azoury et al., "Perception of the General Public towards the Ethical and Legal Issues Surrounding DNA Paternity Testing in Lebanon," *Ethnicity, Medicine, and Public Health* 17 (2021), <https://doi.org/https://doi.org/10.1016/j.jemep.2021.100640>.

				including for offspring
Netherland	Yes	Not	Yes	Allowed since the revision of the law in 2003 after obtaining the decision of the lower house of parliament and a royal decree

Table 1. Legal Situation Regarding Forensic DNA Phenotyping in Germany, Austria, Switzerland and other EU Member States (Sources: www.visage-h2020.eu)

Based on the Table 1 data, some countries allow DNA testing only for specific purposes. However, several countries allow DNA testing to prove biological links with all restrictions, such as the Netherlands, Switzerland, and Austria.

The trial process of determining the status and position of extramarital children that occurs in Indonesia does not center on the implementation of DNA tests. The case involving Rezky Aditya and Wenny Ariyani is a clear example where the panel of judges determined a child born from an extramarital relationship as a legitimate child without going through DNA testing. The judge only ordered DNA testing after the recognition of the daughter of the two extramarital relations as a legitimate child. The judge's rationale focuses more on other evidence available throughout the trial process.

Please note that an extramarital child is a child born from an unregistered marriage.¹⁶ Article 2 paragraphs (1) and (2) of Law No. 16 of 2019 jo Law No. 1 of 1974 concerning marriage states that marriage is valid if it is carried out based on the provisions of religious law and applicable state law. Islamic law states that marriage is valid if it has fulfilled the conditions and pillars of marriage. The legal requirements for marriage are the presence of a prospective groom, marriage guardian, witnesses, and the presence of *ijab* and *qabul*.¹⁷ If one of them is not fulfilled, then the marriage will not be valid under Islamic law.

¹⁶ D.Y. Witanto, *Hukum Keluarga Hak dan Kedudukan Anak Luar Kawin Pasca Keluarnya Putusan MK Tentang Uji Materiil UU Perkawinan* (Jakarta: Prestasi Pustakaraya, 2012), 147-148.

¹⁷ Khairani Amalia Tambunan, Sriono Sriono, and Risdalina Siregar, "Legal Respect for Children from Sirri's Marriage in the Perspective of Islamic Marriage Law and Regulations Indonesian Law in the District Labuhanbatu," *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences* 4, no. 2 (2021): 2044, <https://doi.org/10.33258/birci.v4i2.1892>.

The validity of marriage, in addition to fulfilling the requirements of religious law, also needs to be followed by conditions according to state law, where the marriage must be registered before an official who has the authority to do so. If, in practice, there is a marriage that only meets the provisions of religious law, then the position of marriage is not strong before the law. This is because the state must know the legality of marriage as a form of protection and guarantee the implementation of the rights and obligations imposed on each party involved in the sacred relationship.

The practice of marriage in Indonesia often ignores the legal provisions stipulated in the law. This situation is exacerbated by the image of promiscuity that is dragged down by liberal patterns and lifestyles that are contrary to Eastern culture. The rise of pregnancy out-of-wedlock cases, the increasing number of early marriages, and adultery are examples of problems that continue to occur. Some of the above issues are often used as reasons for submitting applications for marriage dispensation to the Religious Court in Indonesia. Many applications for marriage dispensation are made for several reasons, including pregnancy outside marital status and unregistered marriages. The data are as follows:

Cases	2016	2017	2018	2019	2020	2021	2022	2023
The rest of last year	497	512	534	416	1076	442	301	1258
Incoming Matters	11955	13114	14011	24851	64223	62918	52094	24032
Total	12452	13626	14545	25267	65299	63360	52395	25290
Revoked	452	533	641	1059	1476	1611	1345	621
Disconnected	11487	12559	13488	23133	63381	61448	50747	21762
Remnant				10		0	0	19

Table 2. Data on Religious Court Marriage Dispensation Application for 2016 - August 2023 (Source: Kinsatker.badilag.net.)

Based on the Table 2, it can be said that throughout 2016-2023, it was recorded that the application for marriage dispensation cases to the Religious Court had ups and downs, but still showed a fairly high index number. This shows that there needs to be more public attention to implementing legal rules and promiscuity due to a lack of supervision from the surrounding environment. Among these, cases of pregnancy out of wedlock and the practice of serial

marriage are the two most common cases each year. Salah satu kasus yang nyata yaitu Rezky Aditya dan Wenny Ariani dengan kronologi sebagai berikut:

The dispute over extramarital children involving Rezky Aditya and Wenny Ariani began with a lawsuit filed by Wenny Ariani to the Tangerang District Court through a lawsuit letter dated June 25, 2021, which was received and registered at the Registrar of the Tangerang District Court on June 30, 2021, in Register Number 746/Pdt.G/2021/PN.Tng. The lawsuit filed by Wenny Ariani as Plaintiff to Rezky Aditya as Defendant is based on the proposition of the liability mechanism in civil terms which states that whoever commits an act that causes harm to others, can be sued civilly as contained in Article 1365 of the Civil Code. This case began with a love affair between the Plaintiff and the Defendant, which resulted in the birth of a daughter named Naira Kaemita Tarekat.

The birth of Naira Kaemita Tarekat in the relationship status of the plaintiff and the defendant who are not bound by marriage harms the Plaintiff and the Plaintiff's child before the law and society. Naira Kaemita Tarekat is an out-of-wedlock child who does not have any rights to her father even though her birth certificate only contains her mother's name. Meanwhile, the Defendant did not intend to marry and acknowledge the existence of the child which resulted in the Defendant's lawsuit to the competent court. The argument of the lawsuit filed by the Plaintiff states that the Defendant's actions are following the formulation of Unlawful Acts (*Onrechmatige daad*) in Article 1365 of the Civil Code where a person due to his actions causes harm to others.

An act is against the law if its behavior violates the laws in writing and acts of propriety in the association of people's habitual life based on the *principle of legal maxim* which means that no one can benefit from the unlawful acts committed and neither can he bear losses due to unlawful acts caused by others. In addition, Plaintiff also filed a separate application to place a security confiscation (*Conservatoir Beslag*) on Defendant's property in the form of a residence in the South Tangerang Area and a unit of a black Range Rover brand car Nopol B 606 GLE.

The judicial process that was carried out from the entry of the lawsuit to the evidence then resulted in Decision Number 746/Pdt.G/2021/PN.Tng which rejected the Plaintiff's claim entirely. The basis for the judge's consideration was that the relationship between Plaintiff and Defendant began with a business relationship and thereafter there was no evidence of a romantic relationship that resulted in the birth of Plaintiff's child. Furthermore, the Plaintiff at

that time was still married to another person so DNA testing was also impossible. Although his lawsuit was rejected by the Court of First Instance, the Plaintiff filed an appeal to the Banten District Court. Based on Decision Number 109/PDT/2022/PT. BTN, the judge of the High Court does not agree with the Tangerang District Court Decision based on consideration of the status quo of the Comparator who is in a weak position to be able to prove by the provisions of Article 163 HIR or Article 1865 of the Civil Code so that evidence should be charged to the Appellant to prove his refutation under the *principle of negative non-sunt probanda*.

The judgment on appeal also declared Naira Kaemita Tarekat as the biological daughter of the Defendant despite the lack of proof through DNA testing. As a result, the Appellate took a Cassation legal remedy to the Supreme Court on July 27, 2022 as stated in the Deed of Cassation Application Number 746/Pdt.G/2021/PN. TNG requesting the annulment of the Court of Appeal's decision. However, the court judge considered that the *judex facti* decision in this case did not contradict the norms and applicable law so the Petitioner's Cassation application was rejected.

The Cassation Petitioner responded that the Supreme Court's decision had injured the sense of justice and the irregularities of the legal process. The reason was conveyed through the Cassation applicant's personal YouTube channel because the Supreme Court judge confirmed the applicant as the biological father of the respondent's child without any DNA test.

B. 2. Inheritance of Extramarital Children to Biological Fathers After the Constitutional Court Decision No. 46/PUU-VIII/2010

Article 2, paragraph (1) of the Marriage Law states that marriage is valid if carried out according to the laws of their respective religions and beliefs. The meaning of Article 2 paragraph (1) above, when studied using systematic interpretation, means that a marriage is declared valid if it has fulfilled the requirements and harmony of marriage according to each religion and belief of the bride and groom.¹⁸ The provisions in Article 2 paragraph (1) are absolute conditions that each party must fulfill because this requirement determines whether a person is legally married.

¹⁸ Bambang Daru Nugroho, *Hukum Perdata Indonesia Integrasi Hukum Eropa Konstitental ke Dalam Sistem Hukum Adat Dan Nasional* (Bandung: Refika Aditama, 2020), 45.

The provisions of Article 2 paragraph (2) of the Marriage Law state that every marriage must also be registered with the authorized institution in front of the authorized officer. In line with Article 5 paragraph (1) of the Compilation of Islamic Law, every marriage must be registered to ensure marriage order for the Islamic community.¹⁹ Marriage registration is carried out to provide legal legality for the parties involved in marriage and carry out the mandate of Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Administration and Population.²⁰

The implementation of marriage that has fulfilled the pillars and legal requirements of marriage in religious law is valid in Shari'a. Still, the position of marriage has yet to be recognized by the state and is even considered not to have occurred.²¹ Article 45 of Government Regulation Number 9 of 1975 concerning the Implementation Regulations of the Marriage Law that the non-recording of marriage will only result in the imposition of fines and invalid marriages.²² If the marriage gives birth to a child, then the child is categorized as an extramarital child.²³

Article 100 of the Compilation of Islamic Law expressly grants the position of an extramarital child to the mother and the mother's family only²⁴ as also stipulated in Article 43 paragraph (1) of the Marriage Law.²⁵ .Y. Witanto in his book entitled Family Law and the Position of Extramarital Children After the Issue of the Constitutional Court Decision on the

¹⁹ Dinda Ediningsih Dwi Utami and Yahya Taufik, "Akibat Hukum Nikah Siri Terhadap Hak Anak dan Isteri Ditinjau Dari Kompilasi Hukum Islam," *Zaaken: Journal of Civil and Business Law* 3, no. 2 (2022): 240, <https://doi.org/10.22437/zaaken.v3i2.14767>.

²⁰ Bernadeta Resti Nurhayati, "Harmonisasi Norma Hukum Bagi Perlindungan Hak Keperdataan Anak Luar Kawin Dalam Sistem Hukum Indonesia," *Ganesha Law Review* 1, no. 1 (2019): 57, <https://doi.org/10.23887/blr.v1i1.19>

²¹ Ni Luh Putu Ayu Lestari, Ni Luh Made Mahendrawati, and I Ketut Sukadana, "Perlindungan Hukum Terhadap Hak Waris Anak Yang Lahir Dari Perkawinan Tidak Dicatatkan," *Jurnal Preferensi Hukum* 2, no. 1 (2021): 54, <https://doi.org/10.22225/jph.2.1.3050.51-55>.

²² Shania Dwi Hidayati, Sonny Dewi Judiasih, and Fatmi Utarie, "Perlindungan Hukum Terhadap Hak Anak yang Lahir Dalam Perkawinan Siri Berdasarkan Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 dan Hukum Islam," *Jurnal Poros Hukum Padjajaran* 4, no. 1 (2022): 41, <https://doi.org/https://doi.org/10.23920/jphp.v4i1.961>.

²³ Ahmad Nurozi et al., "Establish Family Card Towards Unregistered Marriage Couple (Implications of Law No. 1 Of 1974 And Compilation of Islamic Law)," *KnE Social Sciences* 2022, no. 1 (2022): 224–25, <https://doi.org/10.18502/kss.v7i10.11360>.

²⁴ Annisa Abdullah, Kasuwi Saiban, and Kadek Indrayanti, "Status of Children Out of Marriage: A Review of the Law Regarding Marriage and Civil Law," *East African Scholars Journal of Education, Humanities and Literature* 6, no. 02 (2023): 63, <https://doi.org/10.36349/easjehl.2023.v06i02.005>.

²⁵ Indira Hastuti, Edy Sanjaya, and Budi Prasetyo, "Interfaith Marriage And Its Legal Consequences For Children Born According To Islamic Law," *International Journal of Educational Research & Social Sciences* 3, no. 1 (2022): 516, <https://doi.org/10.51601/ijersc.v3i1.303>.

Material Test of the Marriage Law states that the subject matter in Article 43 paragraph (1) is that the law negates the civil relationship of children with their biological fathers. The constitution itself requires that every child born whether legally or not must receive protection and legal status.

This arrangement then shifted after the issuance of Constitutional Court Decision No. 46/PUU-VIII/2010 concerning the position of extramarital children who can have a position like legal children against their fathers as long as there is proven biological and civil relations between the two. The additional norm by the constitutional court is based on the fact that a child is born pure without sin. A child cannot choose which parent to give birth to nor can he choose to be born from a parent's marriage. Therefore, a child must be protected from human rights and other rights.²⁶

Lutfi Widagdo, an expert assistant to the Constitutional Court, said that the Constitutional Court's decision was aimed at all extramarital children other than discordant children.²⁷ The presence of the Constitutional Court decision does not speak in the context of legalizing adultery activities in society, but the importance of issuing Constitutional Court decision No. 46/PUU-VIII/2010 is to obtain identity²⁸ and protect the rights of the child as a victim of the actions of the parents that resulted in his birth, because the crimes and sins of parents cannot be passed on to the child. This is in harmony with the Word of Allah SWT in QS. Al-An'am verse 164 which means: "And no one makes sin but his righteousness returns to himself; and a sinner will not bear the sins of others. Then it is to your Lord that you return, and he will tell you what you dispute."

Children in their position as human beings have constitutional rights contained in Human Rights (HAM) as a basic right inherent in human beings that reflects their dignity, which must obtain legal guarantees, and can only be effective if these rights can be protected by law. The rights of children in their regulation are set forth in the Convention on the Rights of the Child contained in the *Convention on the Rights of the Child* ratified by the United Nations in 1989, containing human rights treaties that guarantee children's rights in the civil,

²⁶ Setiawan P and Haryadi W, "The Child Custody Status from Unregistered Marriage: An Islamic Law on The Basis of Constitutional Court Decision," *YURIS (Journal of Court and Justice)* 1, no. 3 (2022): 1-9, <https://journal.jfpublisher.com/index.php/cjc>.

²⁷ Interview with Lutfi Widagdo, Expert assistant to the Constitutional Court, July 31, 2023.

²⁸ Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dan Perempuan* (Bandung: Refika Aditama, 2012), 102.

political, economic, social, health, and cultural fields. This arrangement was then adopted by Indonesia in 1990 into Law Number 23 of 2002 concerning Child Protection which was later revised into Law Number 35 of 2014 (Child Protection Law).

The provisions of Article 4 to Article 18 of the Child Protection Law regulate the protection of children, including the right to live, grow, develop, protection from all forms of violence and discrimination, the right to worship according to their religion, the right to participate reasonably in accordance with human dignity and dignity, the right to obtain self-identity, the right to know their parents, be raised and cared for by their own parents, the right to education and teaching, the right to be cared for by his own parents, the right to humane treatment, and the right to legal assistance.²⁹ In a legal perspective, children's rights have a universal aspect to the interests of children. The right of the child illustrates that the basic purpose of human life is to build people who uphold religious teachings, including legal aspects in one's environment.³⁰

An extramarital child in Constitutional Court Decision No. 46/PUU-VIII/2010 can become a legitimate child if proven through science and technology as the child of his father. Proof through the use of this technology is usually done by conducting a DNA test to find out whether there is a similarity in the child's blood type with his father and father's family or not.³¹ If examined, the legal logic of this ruling has consequences for the sexual relationship of an extramarital child with his biological father. There are rights and obligations between extramarital children and their biological fathers, both in the form of bread, guardianship, inheritance, and so on.³² However, DNA testing for children born out of legal wedlock has the

²⁹ Ahmad Muqaffi, Rusdiyah Rusdiyah, and Diana Rahmi, "Menilik Problematika Dispensasi Nikah Dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi UU Perkawinan," *Journal of Islamic and Law Studies* 5, no. 3 (2022): 370, <https://doi.org/10.18592/jils.v5i3.5914>.

³⁰ Bening Permata Damarsari, Widhi Handoko, and Anggita Doramia Lumbanraja, "Penerapan Nilai-Nilai Hukum Progresif Terhadap Pandangan Hakim Pada Hak Anak Hasil Poligami Tanpa Izin," *Notarius* 14, no. 1 (2021): 201, <https://doi.org/10.14710/nts.v14i1.38862>.

³¹ Achmad Irwan Hamzani, "Nasab Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010," *Jurnal Konstitusi* 12, no. 1 (2015): 66, <https://doi.org/10.31078/jk1214>.

³² Agung Sahbana Nasution, Sutrisna Sutrisna, and Syarifah Gustiawati, "Kewenangan Ayah Biologis Menjadi Wali Nikah Bagi Anak Hasil Zina Menurut Pandangan Imam Syafi'i Dan Putusan Mahkamah Konstitusi (MK) NO. 16/PUU-VIII/2010," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 4, no. 2 (2021): 134, <https://doi.org/10.47467/as.v4i2.819>.

disadvantage that DNA testing can only measure a child's biological rights to his biological father.³³

The proof of extramarital children as legal children is also not given a limit on extramarital children in what categories can be applied to carry out constitutional court decisions. As a result, the problem of extramarital children continues to face various challenges. The inheritance rights of extramarital children after the issuance of Constitutional Court Decision No. 46/PUU-VIII/2010 are guaranteed by law. Extramarital children who have been recognized and legalized by their biological father are also entitled to receive inheritance according to the Civil Code.³⁴ Inheritance is the process of passing the property from the heir to the heir.³⁵ Inheritance can be given when an heir dies and has heirs.

After the issuance of Constitutional Court Decision No. 46/PUU-VIII/2010, the Indonesian Ulema Council responded by issuing Fatwa Number 11 of 2012 concerning the Status of Children Resulting from Zina and Their Treatment on March 10, 2012. The fatwa states that the Indonesian Ulema Council says the government has the authority to impose *ta'zir* punishment on an adulterer, resulting in the birth of a child.³⁶ The punishment of *ta'zir* ordered the man to provide for the child and give away property after he died through a will.³⁷

The religion of Islam stipulates that children occupy the first line of inheritance in receiving inheritance from their parents. Regarding extramarital children, illegitimate children only have a civil law relationship with the mother and the mother's family and no legal relationship with the father and the father's family. Since extramarital children, male or female, are not recognized as related by blood to their father, the child does not inherit his father's property nor from a relative of his father as his father did not inherit it because there is no inheritance between the two, namely blood relations.³⁸

³³ Umar M and Hafidzi A, "Examination by Deoxyribonucleic Acid (DNA) Test of Children Privileges as Legitimate Evidence in Indonesia Marriage Law," *Revista Aacrgentina de Clinica Psicologica* 3, no. 8 (2020), <https://doi.org/DOI: 10.24205/03276716.2020.757>.

³⁴ J. Satrio, *Hukum Waris* (Bandung: Citra Aditya Bakti, 1998), 71.

³⁵ Sonny Dewi Judiasih, *Harta Benda Perkawinan* (Bandung: Refika Aditama, 2019): 4.

³⁶ Neng Djubaedah, "Child Marriage and Zina in Indonesian Legislation in Islamic Law," *Jurnal Hukum & Pembangunan* 49, no. 1 (2019): 213, <https://doi.org/10.21143/jhp.vol49.no1.1917>.

³⁷ Edi Hudiata, "Juridic Consideration of The Judgment's Decision Concerning the Post-Born of Children Born Out of Marriage After Decision of The Constitutional Court Number 46 / PUU-VIII/ 2010," *International Journal of Nusantara Islam* 9, no. 1 (2021): 125, <https://doi.org/10.15575/ijni.v9i1.12118>.

³⁸ Tri Khartika Nurry Wiranty, Emmi Rahmiwita Nasution, and Irda Pratiwi, "Kedudukan Anak Yang Lahir Di Luar Pernikahan Di Tinjau Dari Kompilasi Hukum Islam," *DE LEGA LATA: Jurnal Ilmu Hukum* 5, no. 2 (2020): 211, <https://doi.org/10.30596/dll.v5i2.3576>.

The determination of the inheritance of extramarital children can be seen in its implementation in the Malaysian state as another reference material. According to the Enactment of the Islamic Family Law (Negeri Selangor) 2003 and the Enactment of the Islamic Family Law (Federal Territories) 1984, child adultery is a term used for children who do not have a legal relationship or blood relationship. The Muzakarah of the National Council Fatwa Authority Committee on Malaysian Islamic Affairs, at its 57th meeting convened on 10 June 2003, discussed the child of adultery. Illegitimate children are not allowed to be given to the man who caused their birth or to anyone who claims to be the father of the child, and they are not entitled to heirlooms, not to be mahram, and not to be guardians.³⁹

The 1957 Birth and Death Registration Act Section 13A paragraph (2) states that an illegitimate child may put his mother's name as a surname provided that the person claiming to be the children's father follows section 13. The provisions of the 1957 Birth and Death Registration Act Section 13A as above contradict the fatwa issued by the National Fatwa Council of Malaysia whereby an out-of-wedlock child cannot be proclaimed to the man who caused his birth or to whom he claims to be his father. An out-of-wedlock child was named "Abdullah" instead of his father's.

On 3 September 2015, there was an application for the Kuala Lumpur High Court to change the surname "Abdullah" to the name of one of the plaintiffs in the birth register. On 4 August 2016, the High Court had rejected the petitioner's application. The disgruntled plaintiffs appealed to the Court of Appeal on 3 September 2017 and confirmed the plaintiffs' appeal to exchange the surname "Abdullah" for the plaintiff's name. The basis for the judge's consideration referred to the Civil Law, namely the Registration and Birth Act 1957, where an out-of-wedlock child may have his father's name placed if the mother voluntarily provided information.

However, this provision is still debated because two court umbrellas terminate the relationship between extramarital children for different reasons and legal bases.

Based on the provisions above, it is clear that the implementation of Constitutional Court Decision No. 46/PUU-VIII/2010 is complicated to apply in determining the civil relationship

³⁹ Muhammad Yahya, Bin Hakim, Luqman, "Pertimbangan Hakim Dalam Penetapan Nasab Anak Zina (Studi Terhadap Putusan Mahkamah Rayuan Putrajaya Kasus No. w-01(a)-365-09/2016)," (Thesis, Universitas Islam Negeri Ar-Raniry Darussalam Banda Aceh, Banda Aceh, 2019), 57-59.

of extramarital children with their fathers, especially in inheritance. Indonesia's pluralistic inheritance law makes it difficult to carry out the legacy of children born out of wedlock. When referring to the provisions of civil inheritance law, an extramarital child recognized as a legal child by his father is entitled to civil rights, including inheritance. However, this provision does not apply to Islamic inheritance law.

Islam is a very harsh religion because the provisions of human life come directly from God Almighty through the Qur'an and indisputable hadiths. However, Islam is also a religion that is very open to changes by aligning its rules with the development of human life as long as it does not overstep and replace the law of Allah, such as the inheritance of an extramarital child where the extramarital child is not an heir in Islamic law because his birth does not meet the requirements of the Shari'a. However, Islam opposes all actions that discriminate and judge others, so after the Constitutional Court Decision No. 46/PUU-VIII/2010, the Indonesian Ulema Council (MUI) issued a statement answering the applicability of the court's decision from a religious perspective.

Fatwa of the Indonesian Ulema Council No. 11 of 2012 concerning the Position of Children Resulting from Adultery and the Treatment underlines that the Constitutional Court's decision is issued based on the best interests of children who must be protected so that the Fatwa MUI states that extramarital children recognized through the DNA test mechanism are only entitled to rights in the form of bread, maintenance rights, education, affection and others except inheritance rights. However, to ensure the implementation of the life of extramarital children legally in the future, extramarital children who are not entitled to the inheritance of their biological father can be given a gift in the form of a mandatory will provided that there is no more than 1/3 share.

The birth of several policies to protect the rights of extramarital children, especially against the replacement of inheritance rights that cannot be given to them, but does not provide meaning for the guaranteed rights of extramarital children. In the case of a biological father who does not acknowledge the existence of the extramarital child despite a determination by the Court, it will be an obstacle to the granting of the rights of the child as desired given that the granting of such rights is carried out by the father concerned. In addition, national law has not accommodated all forms of regulation involving extramarital children, and courts that cannot intervene through execution after the decision on the status and position of extramarital

children further complicate the preservation of this right. As in the case of Rezky Aditya where the Cassation Verdict has been read, the side of Rezky Aditya does not fulfill the things that have been stated in the dictum of the Judge's Decision to date. As a result, the child that Wenny Aryani had fought to be recognized through the court did not change at all and remained an extramarital child because a new deed containing his father's name could not be made.

C. Conclusion

The Constitutional Court Decision No. 46/PUU-VIII/2010 significantly changed Indonesia's family law. The Constitutional Judge stated that the decision of the results of the *judicial review of the* provisions of Article 2 paragraph (2) and Article 43 paragraph (1) of the Marriage Law aims to provide legal certainty for children born out of wedlock to their biological fathers and their civil rights. Children's civil rights include maintenance, education, bread, affection, and inheritance. For extramarital children, inheritance rights cannot be considered considering the absence of an extramarital child relationship and his biological father due to the birth process that does not meet the terms and conditions of existing law. The Constitutional Court's decision provides a legally strong position for extramarital children while not justifying the granting of inheritance contrary to applicable law. Islamic law expressly forbids the granting of legacy to extramarital children, especially adulterous children. However, Islam also does not prevent a person from living and developing his life and does not condone the practice of discrimination currently experienced by extramarital children so that, based on the best interests of children, they are given a gift in the form of a mandatory will of 1/3 part as contained in MUI Fatwa No. 11 of 2012 based on protecting children's human rights.

REFERENCES

Laws and Regulations

The 1945 Constitution of the Republic of Indonesia.

Law Number 1 Year 1974 concerning Marriage

Law Number 16 Year 2019 concerning Amendments to Law Number 1 Year 1974 concerning Marriage

Fatwa of the Indonesian Ulema Council Number 11 Year 2012

Books

- Gultom, Maidin. *Perlindungan Hukum Terhadap Anak dan Perempuan*. Bandung: Refika Aditama, 2012.
- Judiasih, Sonny Dewi. *Harta Benda Perkawinan*. Bandung: Refika Aditama, 2019.
- Nugroho, Bambang Daru. *Hukum Perdata Indonesia Integrasi Hukum Eropa Kontinental ke Dalam Sistem Hukum Adat dan Nasional*. Bandung: Refika Aditama, 2020.
- Satrio, J. *Hukum Waris*. Bandung: Citra Aditya Bakti, 1998.
- Witanto, D.Y. *Hukum Keluarga Hak dan Kedudukan Anak Luar Kawin Pasca Keluarnya Putusan MK Tentang Uji Materiil UU Perkawinan*. Jakarta: Prestasi Pustakaraya, 2012.

Journal Articles

- Abdillah, Azka Aulia, Siti Hamidah, and Endang Sri Kawuryan. "Prosedur Ideal Pengakuan Bagi Anak Luar Hasil Perkawinan Siri Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010." *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 6, no. 1 (2021): 1-10. <https://doi.org/10.17977/um019v6i1p1-10>.
- Abdullah, Annisa, Kasuwi Saiban, and Kadek Indrayanti. "Status of Children Out of Marriage: A Review of the Law Regarding Marriage and Civil Law." *East African Scholars Journal of Education, Humanities and Literature* 6, no. 02 (2023): 60-64. <https://doi.org/10.36349/easjehl.2023.v06i02.005>.
- Abikan, Yahaya Ibrahim. "Examining the Admissibility or Otherwise of Evidence Generated from Closed-Circuit Television (CCTV) and Deoxyribonucleic Acid (DNA) Test as Means of Proof of Zina Under Islamic Law." *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (2023): 83-96. <https://doi.org/10.24090/mnh.v17i1.8172>.
- Azoury, M, F. A. Mrad, I Mansour, J. N. Ibrahim, Z.A. Erjeily, and G. Schmit. "Perception of the General Public towards the Ethical and Legal Issues Surrounding DNA Paternity Testing in Lebanon." *Ethics, Medicine, and Public Health* 17, (2021). <https://doi.org/https://doi.org/10.1016/j.jemep.2021.100640>
- Bernoussi, Zaynab El. "DNA Testing and Paternity Lawsuits in Morocco: The Tangier's Court Case." *Yearbook of Islamic and Middle Eastern Law Online*, (2022): 28-35. <https://doi.org/10.1163/22112987-12340019>.
- Damarsari, Bening Permata, Widhi Handoko, and Anggita Doramia Lumbanraja. "Penerapan Nilai-Nilai Hukum Progresif Terhadap Pandangan Hakim pada Hak Anak Hasil Poligami Tanpa Izin." *Notarius* 14, no. 1 (2021): 194-205. <https://doi.org/10.14710/nts.v14i1.38862>.
- Dewi Judiasih, Sonny, and Efa Laela Fakhriah. "Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia." *Padjadjaran Jurnal Ilmu Hukum* 5, no. 2 (2018): 315-330. <https://doi.org/10.22304/pjih.v5n2.a6>
- Djubaedah, Neng. "Child Marriage and Zina in Indonesian Legislation in Islamic Law." *Jurnal Hukum & Pembangunan* 49, no. 1 (2019): 202-223. <https://doi.org/10.21143/jhp.vol49.no1.1917>.
- Fadli, Era, Mursyid Djawas, and Syarifah Rahmatillah. "Tes DNA Sebagai Alat Bukti Pengganti Empat Orang Saksi (Analisis Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayah)." *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah* 3, no. 1 (2018): 1-9. <https://doi.org/10.22373/petita.v3i1.28>
- Guest, C. "DNA and Law Enforcement: How the Use of Open Source DNA Databases Violates

- Privacy Rights.” *American University Law Review* 68, no. 3 (2019): 1015-1052. <https://doi.org/https://digitalcommons.wcl.american.edu/aulr/vol68/iss3/5>.
- Habibi, Muhammad, and Miftakhul Marwa. “Problematika Hak Anak Luar Kawin : Tinjauan Kitab Undang-Undang Hukum Perdata.” *Media of Law and Sharia* 4, no. 3 (2023): 239-252. <https://doi.org/10.18196/mls.v4i3.36>.
- Hamzani, Achmad Irwan. “Nasab Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi The Descendants of Children Outside of Marriage After Constitutional Court.” *Jurnal Konstitusi* 12, no. 1 (2015): 57-74. <https://doi.org/10.31078/jk1214>
- Hastuti, Indira, Edy Sanjaya, and Budi Prasetyo. “Interfaith Marriage And Its Legal Consequences For Children Born According To Islamic Law.” *International Journal of Educational Research & Social Sciences* 3, no. 1 (2022): 509-517. <https://doi.org/10.51601/ijersc.v3i1.303>.
- Hidayati, Shania Dwi, Sonny Dewi Judiasih, and Fatmi Utarie. “Perlindungan Hukum Terhadap Hak Anak yang Lahir Dalam Perkawinan Siri Berdasarkan Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 dan Hukum Islam.” *Jurnal Poros Hukum Padjajaran* 4, no. 1 (2022): 33-50. <https://doi.org/https://doi.org/10.23920/jphp.v4i1.961>.
- Hudiata, Edi. “Juridic Consideration of The Judgment’s Decision Concerning the Post-Born of Children Born Out of Marriage After Decision of The Constitutional Court Number 46 / PUU-VIII/ 2010.” *International Journal of Nusantara Islam* 9, no. 1 (2021): 124-133. <https://doi.org/10.15575/ijni.v9i1.12118>.
- Joly, Yann, Shahad Salman, Ida Ngueng Feze, Palmira Granados Moreno, Michele Stantin-Jean, Jacqueline Lacey, Micheline Labelle, et al. “DNA Testing for Family Reunification in Canada: Points to Consider.” *Journal of International Migration & Integration* 18 (2017): 391-404. <https://doi.org/10.1007/s12134-016-0496-7>.
- Lestari, Ni Luh Putu Ayu, Ni Luh Made Mahendrawati, and I Ketut Sukadana. “Perlindungan Hukum Terhadap Hak Waris Anak Yang Lahir Dari Perkawinan Tidak Dicatatkan.” *Jurnal Preferensi Hukum* 2, no. 1 (2021): 51-55. <https://doi.org/10.22225/jph.2.1.3050.51-55>.
- M, Umar, and Hafidzi A. “Examination by Deoxyribonucleic Acid (DNA) Test of Children Privileges as Legitimate Evidence in Indonesia Marriage Law.” *Revista Aacrgentina de Clinica Psicologica* 3, no. 8 (2020): 551-558. <https://doi.org/10.24205/03276716.2020.757>.
- Muqaffi, Ahmad, Rusdiyah Rusdiyah, and Diana Rahmi. “Menilik Problematika Dispensasi Nikah Dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi UU Perkawinan.” *Journal of Islamic and Law Studies* 5, no. 3 (2022): 361-377. <https://doi.org/10.18592/jils.v5i3.5914>.
- Nasution, Agung Sahbana, Sutrisna Sutrisna, and Syarifah Gustiawati. “Kewenangan Ayah Biologis Menjadi Wali Nikah Bagi Anak Hasil Zina Menurut Pandangan Imam Syafi’i Dan Putusan Mahkamah Konstitusi (MK) NO. 16/PUU-VIII/2010.” *As-Syar’i: Jurnal Bimbingan & Konseling Keluarga* 4, no. 2 (2021): 125-137. <https://doi.org/10.47467/as.v4i2.819>.
- Nugroho, Bambang Daru, Hazar Kusmayanti, and Dede Mulyanto. “The Division of Inheritance of Adopted Children in the Indigenous People of Kampung Naga Associated With Islamic Law.” *Jurnal Bina Mulia Hukum* 7, no. 1 (2022): 102-113. <https://doi.org/10.23920/jbmh.v7i1.985>.
- Nurhayati, Bernadeta Resti. “Harmonisasi Norma Hukum Bagi Perlindungan Hak Keperdataan

- Anak Luar Kawin Dalam Sistem Hukum Indonesia.” *Ganesha Law Review* 1, no. 1 (2019): 55-67. <https://doi.org/10.23887/glr.v1i1.19>
- Nurozi, Ahmad, Bella Munita Sary, Masayu Fatiyyah Nuraziimah, Nurhasanah Walijah, and Mukhsin Achmad. “Establish Family Card Towards Unregistered Marriage Couple (Implications of Law No. 1 Of 1974 And Compilation of Islamic Law).” *KnE Social Sciences* 2022, no. 1 (2022): 219–227. <https://doi.org/10.18502/kss.v7i10.11360>.
- P, Setiawan, and Haryadi W. “The Child Custody Status from Unregistered Marriage: An Islamic Law On The Basis of Constitutional Court Decision.” *YURIS (Journal of Court and Justice)* 1, no. 3 (2022): 1–9. <https://journal.jfpublisher.com/index.php/jcj/article/view/124>
- S, Haneef. “DNA Test of Paternity in Islamic Law Implications for Illegitimate Children Born Less than Minimum Gestation Period in Malaysia.” *Hamdard Islamicus* 39, no. 2 (2016): 7–35. <https://doi.org/10.57144/hi.v39i2.100>.
- Utami, Dinda Ediningsih Dwi dan Yahya Taufik, “Akibat Hukum Nikah Siri Terhadap Hak Anak dan Isteri Ditinjau Dari Kompilasi Hukum Islam,” *zaaken:Journal of Civil and Bussiness Law* 3, no. 2 (2022): 228-245, <https://doi.org/10.22437/zaaken.v3i2.14767>

Thesis or Dissertations

- Yahya, Bin Hakim, Luqman, Muhammad. “Pertimbangan Hakim Dalam Penetapan Nasab Anak Zina (Studi Terhadap Putusan Mahkamah Rayuan Putrajaya Kasus No. w-01(a)-365-09/2016).” Thesis, Universitas Islam Negeri Ar-Raniry Darussalam Banda Aceh, Banda Aceh, 2019.

Personal Communications

- Interview with Lutfi Widagdo, Expert Assistant to the Constitutional Court. July 31, 2023.