

Perlindungan hukum terhadap kedudukan anak luar kawin dalam putusan badan peradilan sebelum dan setelah putusan mahkamah konstitusi nomor: 46/PUU-VIII/2010 = Legal protection for position of the children born out of wedlock in any decision of judicature pre and post constitution court decision number 46/PUU-VIII/2010 / Ni Kadek Susantiani

Ni Kadek Susantiani, author

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Abstrak

ABSTRAK

Kedudukan anak luar kawin tidak diatur lebih lanjut dalam Undang-Undang Perkawinan, sehingga di dalam praktik peradilan menimbulkan adanya perbedaan pendapat. Penelitian ini mengkaji perlindungan hukum dalam putusan badan peradilan terhadap kedudukan anak luar kawin, sehingga diketahui sejauhmana keadilan yang diperoleh anak luar kawin selama ini. Penelitian ini menggunakan metode yuridis normatif yang diuraikan secara deskriptif analitis. Hasil penelitian ini menyimpulkan perlindungan hukum terhadap anak luar kawin dalam putusan badan peradilan bersifat terbatas pada biaya hidup, selanjutnya keberadaan Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 mengubah hubungan keperdataan anak luar kawin tidak hanya terhadap ibunya tetapi juga terhadap ayah biologis dan keluarga ayahnya. Putusan ini kemudian dijadikan dasar Pengadilan Negeri Jakarta Selatan mengabulkan permohonan hak asuh dari ayah biologis dari hubungan tanpa perkawinan.

ABSTRACT

Position of children born out of wedlock had been judged in Laws on Marriage lately, nevertheless in judicial practice it had resulted in any controversy. This research studies legal protection in any decision of judicature hence it will be known the extent to which the justice obtained by children born out of wedlock to the present. This research uses normative juridical method as described analytically. This research had drawn conclusion that legal protection in any decision of judicature to the present is restricted to life cost, subsequently the decision of Constitution Court Number: 46/PUU-VIII/2010 had amended the civil relationship of children born out of wedlock solely, it is not only for mother but also against biological father and his family. Hence, this decision had become award bases of South Jakarta District Court to allow custody right application as biological father from their unmarried relationship.