

Tinjauan terhadap status keperdataan anak luar kawin analisis penetapan dan putusan di pengadilan negeri pasca putusan Mahkamah Konstitusi nomor 46 puu viii 2010 = Legal review of the civil status of the children born out of wedlock analysis of determination and decrees in district court following the constitutional court decision number 46 puu viii 2010

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Abstrak

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Anak yang dilahirkan dari perkawinan tidak sah akan menciptakan pada status anak luar kawin bagi anak bersangkutan. Konsekuensi normatif dari status anak luar kawin membawa pada tidak adanya hubungan keperdataan antara anak luar kawin dengan ayah biologisnya. Keadaan tersebut tentu menghilangkan hak-hak konstitusional anak. Putusan Mahkamah Konstitusional Nomor 46/PUU-VIII/2010, menjadi jawaban bagi anak luar kawin untuk memperoleh kembali hak tersebut. Putusan Mahkamah Konstitusi memfokuskan pada dua hal, yaitu perlindungan anak dan pertanggungjawaban ayah biologis melalui pembuktian. Putusan Mahkamah Konstitusi menjadi acuan oleh Pengadilan Negeri dalam menghadapi permasalahan anak luar kawin. Hasil penelitian menyimpulkan bahwa, oleh beberapa Pengadilan Negeri yang dibahas dalam penulisan ini terlihat ketidakkonsistenan hakim dalam memberikan pertimbangan hukum berkaitan dengan status keperdataan anak luar kawin. Sehingga, perlu adanya kejelasan tentang aturan dan prosedur yang mengatur tentang penetapan ayah biologis dari anak luar kawin tersebut dari pihak pengadilan pasca adanya Putusan Mahkamah Konstitusi tersebut.

ABSTRACT

The children who borns from illegitimate marriage will create on the status of a child born out of wedlock. The normative consequence from that matter is there is no legal relationship between a child and his biological father. This condition surely remove the constitutional rights of child. The existence of Constitutional Court of Decision Number 46/PUU-VIII/2010 become the answer for the child who born out of wedlock to reclaim their rights. The constitutional court decision focus on two things: child protection and the responsibility of the biological father through evidence. This constitutional court decision become a reference by district court in dealing with the problem of a child born out of wedlock. The result of this research concluded, by some district cout decision that analys in this reseach, that there is an incinsistencies judges decision in giving judicial consideration in concerned with the legal status of a child born out of wedlock. So, there should be a clarification on rules and procedures which regulates the biological father of the external marriage child from the court after the constitutional court decision.

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