

## Tinjauan Hukum Pewarisan Bagi Anak Luar Kawin (Studi Kasus Putusan Pengadilan Umum dan Pengadilan Agama) = Legal Overview of Inheritance for Illegitimate Child (Case Study of Decisions of General and Religious Court)

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### Abstrak

Penelitian ini bertujuan untuk mengetahui kedudukan dan hak waris yang dimiliki oleh anak luar kawin menurut hukum perdata barat dan hukum Islam yang tertuang dalam peraturan perundang-undangan yang berlaku di Indonesia, serta berdasarkan putusan-putusan pengadilan umum dan agama. Penelitian ini merupakan penelitian yuridis normatif dengan meneliti bahan pustaka atau data sekunder, yaitu peraturan perundang-undangan dan buku. Dari penelitian ini diperoleh kesimpulan bahwa anak luar kawin yang terbukti memiliki hubungan darah dengan ayah biologisnya, menurut hukum perdata barat, akan mempunyai hak yang sama seperti anak sah sebagaimana dalam Putusan MK No. 46/PUU-VIII/2010. Sedangkan menurut hukum Islam, anak luar kawin atau anak hasil zina hanya memiliki nasab dengan ibunya namun berhak untuk dicukupi kebutuhan hidupnya oleh ayah biologisnya dan berhak menerima harta warisan ayah biologisnya melalui wasiat wajibah sebagaimana ditentukan dalam Fatwa MUI No. 11 tahun 2012. Berdasarkan putusan-putusan pengadilan umum dan agama, masih terdapat perbedaan penerapan Putusan MK No. 46/PUU-VIII/2010 dan Fatwa MUI No. 11 tahun 2012 dalam pertimbangan Majelis Hakim, sehingga, praktisi hukum disarankan untuk lebih memperhatikan keberadaan kedua ketentuan ini dan pemerintah disarankan untuk membuat peraturan yang lebih rinci terkait penentuan status dan kedudukan serta hak-hak yang dimiliki anak luar kawin.

This research aims to determine the position and inheritance rights of illegitimate child by western civil and Islamic law as stipulated in the applicable laws and regulations in Indonesia, and based on the decisions of general and religious courts. This research is normative juridical by examining library materials or secondary data, namely legislation and books. From this research, it was concluded that an illegitimate child who was proven to have blood relations with his biological father, according to western civil law, would have the same rights as a legitimate child as in the Constitutional Court Decision No. 46/PUU-VIII/2010. Meanwhile, according to Islamic law, an illegitimate child only has a *nasab* with his mother but has the right to be fulfilled by his biological father and is entitled to receive the inheritance of his biological father through the *wajibah* testament as specified in MUI Fatwa No. 11 of 2012. Based on the decisions of the general and religion court, there are differences application of Constitutional Court's Decree No. 46/PUU-VIII/2010 and MUI Fatwa No. 11 of 2012 in the consideration of the Panel of Judges, therefore, legal practitioners are advised to pay more attention to the existence of these two provisions and the government is advised to create detailed regulation related to determining the status and position as well as the inheritance rights of the illegitimate child.