



Constitutional Protection of Children Born Out of Wedlock: Analysis of Constitutional Court Decision No. 46/PUU-VIII/2010

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Abstract

The legal status of children born out of wedlock in Indonesia has been associated with limitations on civil relations with their biological fathers, raising concerns regarding equality, non-discrimination, and protection of children's rights. Studies have examined Constitutional Court Decision No. 46/PUU-VIII/2010 as recognition of civil relations between children born out of wedlock and their biological fathers, while the constitutional construction and boundaries of such protection remain insufficiently examined. This study aims to analyze the constitutional construction of protection for children born out of wedlock, the legal implications of Constitutional Court Decision No. 46/PUU-VIII/2010 for Article 43(1) of the Marriage Law, and implications for equality before the law and non-discrimination. This normative study uses statutory, conceptual, and case analysis. Findings demonstrate that constitutional protection is constructed through recognition of children's rights, equality before the law, and prohibition of discrimination based on birth status. The Constitutional Court's decision altered the meaning of Article 43(1) by recognizing a civil relationship between a child born out of wedlock and a biological father whose blood relationship can be established through scientific evidence and other recognized means. Such recognition does not place children born out of wedlock in an identical legal position to children born within marriage in family law, but establishes a legal basis for civil rights and legal consequences arising from biological lineage. This study contributes a precise constitutional legal framework distinguishing protection of children's rights from the legal consequences of parental marital status, thereby strengthening substantive equality and non-discrimination in Indonesian family law

Keywords: Constitutional Protection, Children Born Out of Wedlock, Constitutional Court, Constitutional Court Decision, Children's Rights

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INTRODUCTION

Children born out of wedlock are entitled to dignity, equality, and legal protection as part of the constitutional guarantee of children's rights. Article 27(1) of the 1945



Constitution of the Republic of Indonesia guarantees equality before the law, while Article 28B(2) recognizes every child's right to survival, growth, development, and protection from violence and discrimination. Article 28D(1) further guarantees equal treatment before the law and legal certainty. These provisions establish a constitutional basis for protecting children regardless of the circumstances of their birth. Nevertheless, children born out of wedlock may still encounter legal and social disadvantages concerning civil relations, inheritance, identity recognition, and social acceptance (Zaini & Wagianto, 2025). The issue therefore extends beyond the private legal relationship between a child and the child's biological father; it concerns the extent to which the state must ensure that children do not experience unequal legal protection because of their birth status.

The legal problem became particularly significant under Article 43(1) of Law Number 1 of 1974 concerning Marriage, which originally provided that a child born outside marriage has a civil relationship only with the mother and the mother's family. The provision generated legal concerns regarding the recognition of the child's relationship with the biological father and the resulting protection of the child's civil rights (Solikin, Nur, dan Saidah, 2021). Constitutional Court Decision No. 46/PUU-VIII/2010 subsequently altered the legal meaning of Article 43(1) by recognizing that a child born outside marriage may also have a civil relationship with a man who can be proven, through scientific evidence and other legally recognized evidence, to have a blood relationship with the child as the biological father. The decision therefore represents more than a change in the formulation of a private-law relationship. It raises a constitutional question concerning how the rights of children born out of wedlock should be protected when the legal consequences of their parents' marital status may affect their position before the law (Ifham et al., 2025).

The development of this issue has generated substantial scholarly attention. One body of research focuses on the civil relationship of children born out of wedlock and the recognition of biological fathers. Hidayat, for example, examines the implications of Constitutional Court Decision No. 46/PUU-VIII/2010 for the civil relationship between children born out of wedlock and their biological fathers. This line of research is important in explaining the consequences of the Constitutional Court's decision for the child's private-law position, but its principal concern remains the reconstruction of the civil relationship rather than the constitutional obligation underlying that reconstruction (Hidayat, 2018). A second body of research examines lineage and the legal status of children in relation to religiously valid but unregistered marriages and children born outside marriage. Hamzani distinguishes different categories of children and considers the implications of the Constitutional Court's decision for lineage. This research provides an important foundation for understanding the relationship between marriage status, lineage, and the legal position of children, but does not comprehensively examine the state's constitutional responsibility to prevent discrimination based on birth status (Hamzani, 2015). A third body of research addresses the position and implementation of the Constitutional Court's decision. Putri examines the legal position of children born out of wedlock under the Marriage Law, changes in their civil relationship with biological fathers following the decision, and obstacles in judicial practice, including distinctions between children born from unregistered marriages and children born outside marriage. This research demonstrates that the decision

does not eliminate all legal difficulties in practice, particularly concerning the determination of the child's legal relationship with the biological father (Putri, 2022).

These studies collectively demonstrate that the literature has addressed important dimensions of the problem, particularly civil relations, lineage, recognition of children, and implementation of Constitutional Court Decision No. 46/PUU-VIII/2010. However, their findings leave an important question insufficiently developed: how should the post-decision reconstruction of the child's civil relationship with the biological father be understood as part of the state's constitutional obligation to guarantee equality and protection from discrimination? The unresolved issue is therefore not merely whether the Constitutional Court expanded the child's civil relationship, but how that expansion should be positioned within the constitutional framework of children's rights. This question also requires clarification of the legal boundary established by the decision, particularly because recognition of a biological relationship does not necessarily mean that every legal consequence of a marital relationship automatically applies to children born out of wedlock. The requirement that biological relations be established through scientific evidence and/or other legally recognized evidence further raises a question concerning the relationship between evidentiary requirements and the effective protection of children's constitutional rights.

This research conceptualizes constitutional protection as a legal framework comprising three interconnected dimensions: the recognition of children's fundamental rights in the Constitution, the state's obligation to ensure equal legal protection without discrimination, and constitutional adjudication as a mechanism for correcting statutory provisions that are inconsistent with those guarantees. Within this framework, Constitutional Court Decision No. 46/PUU-VIII/2010 is examined not only as a decision affecting civil relations, but also as a constitutional mechanism that reshapes the legal position of children born out of wedlock. The analysis therefore distinguishes the protection of the child's rights from the legal consequences arising from the marital status of the parents. This distinction is important because the child should not bear adverse legal consequences merely because the parents' marriage does not satisfy the legal requirements for establishing a marital relationship.

The research gap identified above establishes the original contribution of this article. Rather than examining the decision solely from the perspective of civil relations, lineage, or family law, this study reconstructs the constitutional protection of children born out of wedlock by connecting the post-decision civil relationship with three elements: the constitutional obligation of the state, the principle of non-discrimination, and the evidentiary boundary for establishing a biological relationship with the father. This framework provides a more precise account of the legal significance of Constitutional Court Decision No. 46/PUU-VIII/2010. It demonstrates that the decision should be understood not simply as expanding the child's civil relationship, but as establishing a constitutional basis for preventing birth status from becoming a ground for unequal protection, while maintaining legal requirements for establishing biological relations.

Based on this problematisation, the central research question of this study is: how does Indonesian constitutional law construct protection for children born out of wedlock

following Constitutional Court Decision No. 46/PUU-VIII/2010? This central question is elaborated into three questions: first, how is constitutional protection for children born out of wedlock constructed within the Indonesian legal system? Second, what are the legal implications of Constitutional Court Decision No. 46/PUU-VIII/2010 for the civil relationship between children born out of wedlock and their biological fathers? Third, how do equality before the law, non-discrimination, and the state's constitutional obligation shape the protection of these children, particularly concerning the requirement to establish a biological relationship? The study aims to answer these questions by examining the relevant constitutional and statutory provisions, the Constitutional Court's reasoning, and the principles underlying the protection of children's rights.

METHOD

This research employs normative legal research, also referred to as doctrinal legal research, which examines law as a body of norms, principles, doctrines, and rules within the legal system. This type of research is appropriate because the study examines the constitutional protection of the rights of children born out of wedlock through statutory provisions, legal principles, legal doctrines, and constitutional adjudication (Amirudin, dan Asikin, 2019). The research focuses on the construction and application of legal norms governing the protection of children born out of wedlock within the Indonesian constitutional and legal system, particularly following Constitutional Court Decision Number 46/PUU-VIII/2010.

Three approaches are employed. First, the statutory approach is used to examine the normative relationship among the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Law Number 35 of 2014 concerning Child Protection, Law Number 39 of 1999 concerning Human Rights, and other relevant legal instruments, including the Convention on the Rights of the Child as ratified by Presidential Decree Number 36 of 1990. This approach is used to identify the consistency, scope, and development of legal norms concerning the rights of children born out of wedlock. Second, the conceptual approach is used to clarify and construct the concepts underlying constitutional protection, the rule of law, equality before the law, non-discrimination, legal protection, and the best interests of the child. Third, the case approach is used primarily to examine Constitutional Court Decision Number 46/PUU-VIII/2010, particularly the object of constitutional review, the legal issues considered by the Court, the ratio decidendi, constitutional reasoning, the operative part of the judgment, and its normative consequences for Article 43 paragraph (1) of the Marriage Law. The three approaches are used complementarily to connect the applicable legal norms, relevant legal concepts, and constitutional adjudication in answering the research questions.

The legal materials consist of primary, secondary, and tertiary legal materials. Primary legal materials are selected based on their direct relevance to the constitutional status and legal protection of children born out of wedlock. They comprise the 1945 Constitution of the Republic of Indonesia; Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019; Law Number 35 of 2014 concerning Child Protection; Law Number 39 of 1999 concerning Human Rights; the Convention on the Rights of the

Child as ratified by Presidential Decree Number 36 of 1990; and Constitutional Court Decision Number 46/PUU-VIII/2010 as the principal judicial authority examined in this research. Secondary legal materials include scholarly books, peer-reviewed journal articles, previous research, and legal doctrines that are directly relevant to constitutional protection, children's rights, equality, non-discrimination, and the legal status of children born out of wedlock. The selection of secondary materials is based on their relevance to the research questions, their contribution to the development of the legal arguments, and, particularly for journal literature, their scholarly and contemporary relevance. Tertiary legal materials, including legal dictionaries and legal encyclopedias, are used to clarify legal terminology and concepts where necessary.

The legal materials are collected through library research by identifying, selecting, reading, and classifying authoritative legal sources relevant to the research questions. The collected materials are then organized according to the issues examined, namely the constitutional basis of children's rights, the legal position of children born out of wedlock, and the implications of Constitutional Court Decision Number 46/PUU-VIII/2010. Particular attention is given to the primary legal materials and scholarly literature that directly address Article 43 paragraph (1) of the Marriage Law and its constitutional interpretation by the Constitutional Court.

The analysis is conducted through legal reasoning using grammatical, systematic, and teleological interpretation in an integrated manner. Grammatical interpretation is used to determine the meaning of relevant legal provisions according to their textual formulation. Systematic interpretation is used to establish the relationship between provisions within the hierarchy and structure of the Indonesian legal system, particularly the relationship between constitutional rights, marriage law, child protection law, and human rights law. Teleological interpretation is used to identify the constitutional and legal purposes underlying the protection of children, particularly the purposes of equality, non-discrimination, legal protection, and the fulfillment of children's rights. These interpretive methods are not applied separately, but sequentially and complementarily: the textual meaning of the relevant provisions is first identified, subsequently examined in relation to other legal norms, and then assessed in light of the purposes and principles underlying the protection of children's rights.

Constitutional Court Decision Number 46/PUU-VIII/2010 is analyzed doctrinally by examining the legal provisions challenged, the constitutional provisions invoked, the Court's ratio decidendi, constitutional reasoning, and the operative part of the judgment. The analysis further examines the normative consequences of the decision for Article 43 paragraph (1) of the Marriage Law, particularly concerning the legal relationship between a child born out of wedlock and his or her biological father. Accordingly, the case approach is directed not merely at describing the contents of the judgment, but at identifying the legal reasoning through which the Constitutional Court constructed the constitutional meaning of the challenged provision.

The analysis is supported by a limited set of analytical concepts, principally the rule of law, legal protection, and human rights. The rule-of-law theory is used to examine the state's obligation to guarantee equality before the law and to prevent discriminatory

treatment. Legal protection theory is used to assess the state's legal responsibility to recognize and protect the rights of children as legal subjects. Human rights theory is used to analyze children's rights as rights inherent to every child and protected through constitutional and statutory guarantees. These theories are complemented by the principles of equality before the law, non-discrimination, and the best interests of the child, which function as normative criteria for assessing whether the relevant legal norms and the Constitutional Court's reasoning provide adequate protection for children born out of wedlock.

The final conclusions are drawn deductively through legal reasoning, beginning with general constitutional norms, statutory provisions, legal doctrines, and relevant legal principles, and proceeding to the specific legal issues concerning the constitutional protection of children born out of wedlock. This analytical sequence enables the research to formulate a legal construction of the protection of the rights of children born out of wedlock based on the prevailing Indonesian legal system and the normative consequences of Constitutional Court Decision Number 46/PUU-VIII/2010.

RESULTS AND DISCUSSION

The Construction of Constitutional Protection for Children Born Out of Wedlock in the Indonesian Legal System

Protection of children born out of wedlock is part of the state's constitutional obligation to guarantee the rights of every child without discrimination. From the perspective of a state based on the rule of law, the state not only functions as a maker and enforcer of legal norms but must also ensure that the exercise of state power remains consistent with the protection of fundamental rights and equality before the law (Tarigan 2024). This principle is reflected in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which establishes Indonesia as a state based on law. Article 27 paragraph (1), Article 28B paragraph (2), and Article 28D paragraph (1) further provide constitutional guarantees concerning equality before the law, children's rights, and fair legal certainty. These provisions form the constitutional basis for assessing whether legal distinctions concerning children born out of wedlock are compatible with the principle of equal protection.

Normatively, the legal position of children born out of wedlock was governed by Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, which provided that "Children born outside of marriage only have a civil relationship with their mother and their mother's family." Read grammatically, the provision established a closed formulation of the child's civil relationship by expressly referring only to the mother and the mother's family. The legal problem was therefore not simply the absence of recognition of the child, but the exclusion of a civil relationship with the biological father as a legal consequence of the child's birth outside marriage. This formulation created a tension between the legal consequences attached to marital status and the child's independent position as a holder of constitutional rights (Putra, 2020).

However, through a systematic interpretation linking Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage with Article 28B paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the limitation contained

in the provision can no longer be understood in isolation from the constitutional guarantees of children's rights and equality before the law. If the provision is interpreted as absolutely excluding any civil relationship with the biological father, the legal consequences of the parents' marital status may be transferred to the child, even though the circumstances of birth are beyond the child's control. The constitutional issue therefore concerns whether such exclusion can be justified when it affects the child's independent rights. This provides the basis for reassessing Article 43 paragraph (1) through the principles of equality, non-discrimination, and protection of children's rights (Nurhayati, 2019).

Protection for children born out of wedlock is also strengthened through Article 4 of Law Number 23 of 2002 concerning Child Protection, which states that "Every child has the right to live, grow, develop, and participate fairly in accordance with human dignity and honor, and to receive protection from violence and discrimination". In addition, Article 52 paragraph (2) of Law Number 39 of 1999 concerning Human Rights emphasizes that "Children's rights are human rights and for their benefit, children's rights are recognized and protected by law even from the time they are in the womb".

These provisions demonstrate that the legal system recognizes children as independent legal subjects and holders of rights rather than merely as objects of parental or family relations. The constitutional problem surrounding children born out of wedlock consequently lies in the relationship between the child's independent rights and the legal consequences traditionally attached to the marital status of the parents. The state's responsibility is therefore not exhausted by formally recognizing children's rights; it also requires the legal system to prevent the application of family-law rules from producing unjustified restrictions on those rights. This distinction is important in constructing constitutional protection because the protection of the child does not necessarily require the elimination of every legal distinction concerning marriage, but requires that such distinctions not unjustifiably prejudice the child's rights (Mahfud et al., 2025).

In its legal considerations, the Constitutional Court Decision Number 46/PUU-VIII/2010 stated: "Therefore, it is inappropriate and unfair when the law stipulates that a child born from a pregnancy due to sexual relations outside of marriage only has a relationship with the woman as its mother." In addition, the Constitutional Court also emphasized: "...regardless of the procedural/administrative issues of marriage, a child born must receive legal protection. If not, then the one who is harmed is the child born outside of marriage, even though the child is not guilty because his birth was outside of his will" (*Constitutional Court Decision Number 46/PUU-VIII/2010*, 2010).

These legal considerations constitute the turning point in the constitutional construction of protection for children born out of wedlock. Through a teleological interpretation of Article 28D paragraph (1), Article 28B paragraph (2), and Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the Court placed the protection of the child's constitutional rights and human dignity above an interpretation that would make the parents' marital status an absolute determinant of the child's civil position. The reasoning of the Court is therefore directed not at abolishing the legal significance of marriage, but at preventing the child from bearing an unjustified civil disadvantage solely because of the circumstances of birth. The decision consequently provides the constitutional

basis for reconstructing Article 43 paragraph (1) so that the provision is consistent with equality, non-discrimination, and substantive protection of children's rights (Said, 2018).

The state has an obligation to provide protection for every legal subject through the establishment of just legal norms, effective law enforcement, and guaranteeing legal certainty. Legal protection for illegitimate children is not only interpreted as formal recognition of the child's legal status, but also includes protection of the civil rights inherent in the child as a citizen (Ramadhani & Nuramalia, 2025). Following the Constitutional Court's decision, however, the scope of such protection must be understood precisely. Constitutional protection does not automatically make the legal status of a child born out of wedlock identical in every respect to that of a child born within a valid marriage. Rather, it requires the removal of unjustified exclusion and permits the establishment of a civil relationship with the biological father where the required biological relationship can be proven in accordance with law.

Furthermore, children, as human beings, have basic rights from birth that must be respected, protected, and fulfilled by the state. Children's rights, as part of human rights, entail the right to equal treatment and legal protection without discrimination on any basis, including birth status (Bagus et al., 2021). Protection of children born out of wedlock in this context is therefore directed toward ensuring that the legal consequences of parental marital status are not imposed upon the child without sufficient constitutional justification. The distinction between the child's constitutional rights and the specific civil consequences arising from parentage is essential: recognition of constitutional equality does not itself determine questions of inheritance, maintenance, or other family-law consequences, each of which remains subject to its own legal basis and mechanism (Marilang, 2016).

The constitutional protection of children born out of wedlock within the Indonesian legal system is therefore constructed through the interaction of constitutional guarantees, statutory child-protection and human-rights norms, and the reinterpretation of Article 43 paragraph (1) through Constitutional Court Decision Number 46/PUU-VIII/2010. The reconstruction does not abolish the legal significance of marriage or equate all legal consequences of children born inside and outside marriage. Instead, it establishes that birth outside marriage cannot, by itself, constitute an absolute ground for excluding a child from a legally established civil relationship with the biological father. The resulting constitutional construction is consequently based on two complementary requirements: protection against unjustified discrimination based on birth status and legal certainty through the proof of biological parentage according to law. This construction places the protection of the child's independent rights at the center while preserving the legal requirements governing marriage, parentage, and the specific civil consequences that may follow.

Legal Implications of Constitutional Court Decision Number 46/PUU-VIII/2010 on Strengthening the Rights of Children Born Outside of Wedlock

Constitutional Court Decision Number 46/PUU-VIII/2010 constitutes a constitutional review of Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage. The Constitutional Court declared the provision conditionally unconstitutional insofar as it was interpreted to exclude a civil relationship between a child born outside

marriage and a man who can be proven, based on science and technology and/or other evidence recognized by law, to have a blood relationship with the child as his father. The ratio decidendi of the decision is therefore not to eliminate the legal significance of marriage, but to prevent the circumstances of the child's birth from becoming an absolute basis for excluding a legally established relationship between the child and the biological father (*Constitutional Court Decision Number 46/PUU-VIII/2010*, 2010).

In its legal considerations, the Constitutional Court stated: "It is inappropriate and unfair if the law exempts a man who has sexual relations that result in pregnancy and the birth of a child from his responsibilities as a father and at the same time the law eliminates the child's rights to the man as his father" (*Constitutional Court Decision Number 46/PUU-VIII/2010*, 2010). In addition, the Court emphasized the importance of fair legal protection and certainty for children whose paternity is unclear or disputed. These considerations show that the Court placed responsibility for the consequences of biological parentage within the constitutional framework of child protection. The reasoning is significant because it shifts the legal focus from the formal status of the parents' marriage alone toward the protection of the child's rights when a biological relationship with the father can be legally established.

These considerations demonstrate that the Constitutional Court did not simply replace the formal legality of marriage with biological lineage. Rather, the Court established a constitutional basis for recognizing the legal consequences of biological parentage while retaining a requirement of proof. This distinction is important because a biological relationship and a civil relationship are related but not identical legal concepts. The existence of a biological relationship must first be established through legally recognized evidence before the civil consequences contemplated by the decision can arise. Thus, the decision strengthens the position of children born outside marriage by removing an absolute exclusion, but it does not create an automatic civil relationship with every alleged biological father (Suryani & Nirwani, 2025).

In this decision, the Court used a systematic interpretation by relating Article 43 paragraph (1) of the Marriage Law to Article 28B paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The Court also adopted a teleological reasoning that placed the protection of children's constitutional rights and substantive justice at the center of its assessment. Through this reasoning, Article 43 paragraph (1) can no longer be understood as establishing an absolute limitation of the child's civil relationship to the mother and her family. However, the revised construction remains conditional: the relationship with the biological father depends upon proof of a blood relationship through science and technology and/or other evidence according to law. The decision therefore changes the meaning of the provision while maintaining legal procedures for establishing parentage.

From the perspective of a state based on the rule of law, the decision reflects the constitutional requirement that legal rules affecting children's fundamental rights must provide equality, legal certainty, and effective protection. Children born outside marriage are recognized as legal subjects whose rights cannot be reduced solely because of their parents' marital status (Rohmawati, and Siddik, 2022). Nevertheless, the rule-of-law dimension of the decision also requires clarity concerning the procedures and legal

consequences of establishing the relationship with the biological father. Constitutional protection is therefore not fulfilled merely by recognizing a right in principle, but also by ensuring that the legal system provides a predictable mechanism for proving parentage and obtaining the civil consequences that follow from such proof.

The state is obliged to ensure that every child receives equal recognition, protection, and guarantees of rights as a legal subject, regardless of their status or background of birth. This obligation is not only reflected in normative recognition through legislation, but must also be realized through legal mechanisms that provide certainty and effective protection. In this regard, equality before the law provides a measure for assessing whether the legal consequences attached to birth outside marriage impose an unjustified disadvantage on the child (Setyawan, R., Sholikin, N, 2024) . The significance of Decision Number 46/PUU-VIII/2010 therefore lies in its rejection of an absolute exclusion, while leaving the determination of parentage to legally recognized evidentiary mechanisms.

Every legal regulation must ensure that children are not treated differently solely because of their parents' marital status. However, the decision does not mean that all legal distinctions concerning children born outside marriage are automatically removed. The legal consequences of marriage, parentage, and inheritance may remain governed by specific rules and evidentiary requirements. The relevant constitutional question is whether a particular restriction is legally justified and whether it imposes consequences on the child that are disproportionate to the legitimate purpose of the regulation. Therefore, the formation and implementation of legal norms must prioritize the best interests of the child while maintaining legal certainty concerning parentage and civil status. This reflects respect for human rights, which requires that children not bear unjustified legal disadvantages arising solely from circumstances beyond their control (Rachmanto, 2021) .

Child protection places the interests and welfare of children as a primary consideration in lawmaking and law enforcement. Every policy, norm, and application of law must therefore consider the concrete consequences for children as legal subjects with inherent rights from birth (Sormunen, 2020). In relation to Decision Number 46/PUU-VIII/2010, the best-interests principle requires attention to the practical legal consequences of establishing a relationship with the biological father, including questions of identity, parentage, care, and other civil consequences recognized by applicable law. The principle does not, however, provide an independent basis for automatically granting every possible civil right; each consequence must be determined according to its respective legal basis and mechanism. This distinction is necessary to avoid extending the holding of the Constitutional Court beyond what was actually decided.

The legal implications of this ruling are therefore more precisely understood as a change in the legal position of children born outside marriage in relation to the establishment of a civil relationship with their biological father. The decision removes the absolute legal barrier contained in the former interpretation of Article 43 paragraph (1), subject to proof of biological lineage according to law. Its consequences may provide a legal basis for claims concerning recognition, identity, parental responsibility, and other civil rights insofar as those consequences are supported by the applicable legal provisions. The decision should not, however, be interpreted as automatically determining all issues concerning maintenance,

care, inheritance, or other family-law consequences, because each issue is subject to its own legal rules and mechanisms. The constitutional significance of the decision consequently lies in establishing a framework in which the child's civil rights can be determined through legally proven parentage rather than being excluded solely on the basis of birth status.

The Principles of the Rule of Law and Human Rights as the Basis for Protecting the Rights of Children Born Outside of Marriage in Indonesia

The principle of the rule of law places law as the basis for state action and requires the state to recognize, respect, and protect human rights. In the context of children born outside of marriage, this principle is reflected in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which affirms that Indonesia is a state based on the rule of law. One of the essential requirements of the rule of law is the protection of fundamental rights through equality before the law, legal certainty, and effective legal remedies. Therefore, the protection of children born outside of marriage cannot be assessed solely from the existence of protective regulations, but also from whether the legal system prevents birth status from becoming an unjustified basis for restricting the child's constitutional rights (Marzuki, 2024).

Through a systematic interpretation of Article 28B paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution, Article 4 of the Child Protection Law, and Article 2 of the Convention on the Rights of the Child which has been ratified through Presidential Decree Number 36 of 1990, it can be understood that the state is obliged to guarantee children's rights without discrimination based on the status of their birth or their parents. These provisions establish a normative connection between equality, non-discrimination, and the protection of children's dignity and rights. The protection of children therefore extends beyond physical protection to include identity, legal status, and civil rights. However, the existence of a legal distinction does not automatically constitute discrimination. The constitutionality of a distinction must be assessed by considering its legal basis, legitimate purpose, its relationship to the rights affected, and whether its consequences impose an unjustified disadvantage on the child. Therefore, the relevant issue is whether the legal consequences attached to birth outside of marriage are compatible with the principle of equal protection of children's rights (Hutasoit et al., 2024)

The state has a responsibility to protect children's rights through the establishment of legal norms, law enforcement, and the provision of legal certainty based on justice. Such responsibility operates through both preventive measures, by establishing laws and regulations that guarantee children's rights, and repressive measures, through legal remedies when those rights are violated (Suryamizon, 2017). In this context, children born outside of marriage must be recognized as legal subjects and holders of constitutional rights. State responsibility therefore requires not only the formulation of protective norms, but also the availability of effective judicial and administrative mechanisms through which those rights can be realized.

Every child has equal standing before the law, but equality should not be understood solely as identical treatment in all circumstances. In relation to children born outside of marriage, formal equality requires equal recognition as legal subjects, while substantive

equality requires consideration of whether a formally neutral rule produces disproportionate disadvantages for children because of circumstances beyond their control. The marital status of the parents may remain legally relevant to the regulation of marriage and parentage, but it should not, by itself, become a sufficient justification for restricting the child's independent constitutional rights. This distinction is important in determining whether a particular legal differentiation constitutes legitimate regulation or impermissible discrimination (Zubaidah et al., 2023). Therefore, constitutional protection requires the legal system to distinguish between legitimate regulation of marriage and unjustified restrictions on the rights of children born outside of marriage.

Furthermore, through a teleological interpretation of Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, Article 4 of Law Number 35 of 2014 concerning Child Protection, and Article 2 of the Convention on the Rights of the Child which has been ratified through Presidential Decree Number 36 of 1990, the protection of children born outside of marriage should be directed toward substantive justice and respect for human dignity. The principle of substantive justice requires consideration not only of the formal classification of birth status but also of the actual legal consequences imposed on the child. In this regard, the best interests of the child should function as a substantive parameter in assessing whether a legal rule or its application adequately protects the child's identity, legal status, family relationships, and civil rights (Suparman et al., 2025). Accordingly, the best-interests principle does not eliminate legitimate legal requirements concerning marriage and parentage, but requires those requirements to be applied in a manner that does not unjustifiably prejudice the rights of the child.

The right to identity is an important element of child protection because identity provides the basis for a child's recognition as a person with legal rights and a member of a family and society. Legal recognition of parentage may have significant implications for a child's personal identity, family relationships, and access to civil status and related legal rights. For children born outside of marriage, the absence of legally recognized parental relationships may create difficulties in establishing their identity and securing recognition of their family relationships. Therefore, the establishment of biological parentage should not be regarded solely as a matter of private family law, but also as an integral part of protecting the child's right to identity and ensuring equal recognition before the law (Brown, Alan, and Wade, 2023).

Every child is a legal subject with basic rights from birth that must be respected, protected, and fulfilled by the state. The recognition of the child as a holder of human rights places state responsibility not only on the legislature in formulating norms, but also on courts and administrative authorities in implementing and providing remedies for those rights. This is particularly significant for children born outside of marriage because the legal consequences of their parents' marital status may affect their identity, legal status, and civil relationships. The circumstances of birth are beyond the child's control and therefore cannot, by themselves, provide sufficient justification for reducing the child's independent rights (Suhardin, 2023). The principle of human dignity consequently requires the state to ensure that legal regulation concerning parentage and civil status remains consistent with constitutional equality and effective protection of children's rights.

Every child must receive equal legal protection without discrimination based on birth status. Birth status is a circumstance beyond the child's control and therefore should not be used as an independent basis for restricting the recognition, protection, or fulfillment of the child's rights. At the same time, the prohibition of discrimination does not mean that every legal distinction concerning children born outside of marriage is necessarily invalid. The relevant assessment concerns whether the distinction pursues a legitimate legal objective and whether the resulting limitation on the child's rights is justified and proportionate to that objective. Restrictions that merely transfer the legal consequences of the parents' marital status to the child may conflict with equality and human rights principles when they produce an unjustified disadvantage to the child (Judiasih, S. D., Lestari, P. W., Artina, dan Nugroho, 2024). Therefore, non-discrimination operates not only as a prohibition against unequal treatment but also as a standard for assessing the justification and consequences of legal distinctions affecting children born outside of marriage.

On the other hand, the best interests of the child must be treated as a primary consideration in policies, regulations, judicial decisions, and law enforcement concerning children. The principle requires decision-makers to examine the concrete effects of a legal rule on the child's rights rather than merely invoke child protection as a general objective. In the context of children born outside of marriage, this consideration is relevant to questions concerning identity, parentage, civil status, care, and legal certainty in civil relationships. The best-interests principle therefore operates as a substantive standard for determining whether the application of a legal norm provides effective protection to the child while maintaining legitimate requirements of family law. This orientation reflects substantive justice because the assessment of justice depends not only on the formal application of rules but also on their consequences for the fulfillment of children's rights (Permana & Hosnah, 2025).

Despite these constitutional and statutory guarantees, a gap remains between the normative recognition of children's rights and their implementation in judicial practice. Constitutional Court Decision Number 46/PUU-VIII/2010 provides a legal basis for establishing a civil relationship between a child born outside of marriage and the biological father where the biological relationship is proven in accordance with law. However, the existence of this constitutional basis does not necessarily produce uniform legal consequences in subsequent judicial practice. Differences in the treatment of children born outside of marriage indicate that the recognition of constitutional rights still depends on how courts determine parentage, assess evidence of biological relationships, and apply the civil consequences arising from such recognition (Noviana, L. , Santoso, L, dan Puspita, 2024). This gap demonstrates that constitutional protection cannot be measured only by the existence of legal norms or judicial recognition, but also by the consistency of their application in judicial and administrative practice.

The principles of the rule of law and human rights therefore provide an integrated framework for assessing the protection of children born outside of marriage in Indonesia. Equality and non-discrimination require that birth status not become an unjustified basis for restricting children's independent rights; the best-interests principle requires attention to the concrete consequences of legal rules for the child; and state responsibility requires these

principles to be translated into legislation, judicial remedies, and administrative implementation. Within this framework, Constitutional Court Decision Number 46/PUU-VIII/2010 constitutes an important constitutional development, but it does not resolve all issues concerning the implementation of parentage and civil rights. Effective protection therefore requires harmonization between the Marriage Law, the Child Protection Law, population administration regulations, and judicial practice so that the constitutional protection recognized by the Court can be implemented consistently and effectively.

CONCLUSION

This study finds that the constitutional protection of children born outside marriage in Indonesia is constructed through the principles of equality before the law, non-discrimination, and the state's obligation to guarantee children's constitutional rights. Such protection requires that birth status cannot serve as the sole basis for restricting children's fundamental rights. At the same time, constitutional protection does not eliminate the legal distinctions governing marriage, parentage, and civil status. Its substantive limit lies in ensuring that any legal distinction affecting children has a legitimate legal basis, does not discriminate solely on the basis of birth status, and remains oriented toward the fulfillment of the child's rights and best interests.

Constitutional Court Decision Number 46/PUU-VIII/2010 changes the legal construction of the civil relationship of children born outside marriage by recognizing the possibility of a civil relationship with the biological father when biological lineage can be proven in accordance with law and technology and other legally relevant evidence. The significance of the decision therefore lies not merely in expanding the child's civil relationship, but in establishing that the circumstances of birth cannot by themselves justify the exclusion of civil rights arising from a legally established biological relationship. The decision nevertheless maintains proof of biological lineage as a necessary condition, thereby placing the protection of the child's rights within the legal framework governing the establishment of parentage.

The principles of the rule of law and human rights, particularly equality before the law, non-discrimination, and the best interests of the child, provide an integrated normative basis for determining the state's obligations toward children born outside marriage. These principles require the legal system to protect children as rights-bearing subjects while ensuring that the determination of parentage and civil rights is carried out through legally accountable procedures. Thus, the constitutional protection of children born outside marriage is not limited to formal equality, but requires substantive protection against legal consequences that disproportionately restrict children's rights solely because of their birth status.

The contribution of this study lies in providing a conceptual reconstruction of constitutional protection for children born outside marriage by connecting equality, non-discrimination, and state obligations within the legal framework following Constitutional Court Decision Number 46/PUU-VIII/2010. Practically, the findings indicate the need for harmonization among the Marriage Law, the Child Protection Law, population

administration regulations, and judicial practice to ensure consistency in establishing parentage and fulfilling the civil rights of children born outside marriage.

This study is limited to normative legal analysis of legislation, legal doctrine, and judicial decisions and does not empirically examine the implementation of Constitutional Court Decision Number 46/PUU-VIII/2010. Further research may therefore examine judicial decisions, population administration practices, mechanisms for establishing parentage, and the actual exercise of civil rights by children born outside marriage to assess how the constitutional framework established by the decision is implemented in practice.

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HUT, the first author, contributed to the research concept, theoretical framework, legal material analysis, and the refinement of the substance and final editing of the manuscript. YM contributed to the collection of legal materials, literature search, legal material processing, and the preparation of the initial draft of the article.

AI USAGE STATEMENT

The author declares that the use of Artificial Intelligence (AI) tools in writing this article is limited to supporting functions, specifically to assist with language editing, grammar checking, and improving the clarity and readability of the manuscript. The use of AI was not carried out to generate the main research ideas, conduct substantive analysis, interpret legal materials, or draw scientific conclusions. All substance, argumentation, legal analysis, and academic content in this article are entirely the responsibility of the author. Therefore, the author remains fully responsible for the originality, accuracy, and academic integrity of the manuscript, and does not place AI tools as authors or contributors in this article in accordance with the ethical principles of scientific publications.

CONFLICT OF INTEREST

The author declares that in the research and writing of this article there is no conflict of interest, whether personal, professional, or institutional, that could affect the objectivity, independence, and academic integrity in the preparation of this article.

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