



Legal Pluralism in Determining the Status of Illegal Children: A Study of the Constitutional Constitutional Court Decision Number 46/Puu-VII/2010

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Abstract

This article examines the determination of the status of illegitimate children from the perspective of legal pluralism based on Constitutional Court Decision Number 46/PUU-VIII/2010. The decision reinterprets Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, by recognizing the civil relationship between illegitimate children with their biological father if it can be scientifically proven. This study uses a normative juridical method with a statutory and conceptual approach, complemented by a socio-legal approach. The results of the study indicate that the Constitutional Court decision represents a shift in the national legal paradigm from a formal approach to substantive protection of children's rights. However, in Islamic law, the lineage of illegitimate children remains only linked to the mother because the validity of the lineage is determined by a valid marriage contract. This difference demonstrates a form of combative legal pluralism between state law and Islamic law that interact within the framework of the Indonesian legal system.

Keyword :

Constitutional Court Decision, Illegitimate Children, Legal Pluralism

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Introduction

Marriage is one of the most important aspects of human survival. The basic principle of marriage is to legitimize the relationship between a man and a woman, bound by a marriage contract, which in society is synonymous with the term husband and wife. In a social context, marriage serves not only as a physical and spiritual bond between a man and a woman, but also as the foundation for establishing a family and legitimate offspring.

In Indonesian law, as stated in Article 1 of Law No. 1 of 1974 concerning Marriage, it is stated that " *Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the One Almighty God.*"¹ Article 2 paragraph (1) further explains that " *A marriage is considered valid if it is carried out according to the laws of each religion and belief.*"² Meanwhile, Article 2 paragraph (2) explains that " *Every marriage is recorded according to applicable laws.*"³ However, these provisions are not fully in line with current conditions, considering that many people still marry without official registration.

Unregistered marriages are still common in various regions in Indonesia, especially among communities where the validity of a marriage is determined by religious provisions. In this context, the validity of a marriage has two dimensions: religious and legal. Religiously, a marriage is considered valid if the conditions and pillars comply with those stipulated by each religion. However, legally, a marriage must comply with statutory provisions by being registered to have binding legal force. Marriage registration is a crucial element in ensuring legal certainty and protection for both husband and wife and any children born from the marriage.⁴

However, the absence of marriage registration results in the marriage not having legal force, which will impact the rights of any children born. Article 5a of the Civil Code distinguishes between legitimate children and illegitimate children (children born out of wedlock). Legitimate children are children born in or as a result of a legal marriage, while illegitimate children (children born out of wedlock) are children born outside the legal marriage of their parents.⁵

Basically, a marriage that is carried out legally according to religion but is not registered based on the provisions of Article 2 paragraph (2) No. 1 of 1974 concerning Marriage, then the status of the child born is considered as a child born outside of marriage, because it is not carried out in accordance with legal norms.⁶ The provisions regarding children born outside of marriage are regulated in Article 43 paragraph (1) of

¹Article 1 Law no. 1 of 1974 concerning Marriage.

²Article 2 paragraph (1) Law no. 1 of 1974 concerning Marriage.

³Article 2 paragraph (2) Law no. 1 of 1974 concerning Marriage.

⁴Amir Syarifuddin, *Islamic Marriage Law in Indonesia: Between Fiqh Munakahat and Marriage Law* (Jakarta: Kencana, 2011), 71.

⁵Karto Manalu, *Civil Law of Children Born Outside of Marriage* (West Sumatra: Cv. Azka Pustaka, 2021), 4.

⁶Ahmad Rofiq, *Islamic Civil Law in Indonesia*, 5th ed. (Depok: Rajawali Pers, 2021), 129.

the Marriage Law which states, " *A child born outside of marriage only has a civil relationship with his mother and his mother's family.*" This provision raises problems in protecting the rights of children born outside of marriage.

Constitutional Court Decision Number 46/PUU-VIII/2010 provides a new interpretation of Article 43 paragraph (1) of the Marriage Law. The change in views on the status of illegitimate children has changed since the issuance of the decision by the Constitutional Court. The Constitutional Court stated that children born outside of marriage can have a civil relationship with their biological father, as long as it can be proven through science and technology such as DNA testing, or other legal evidence. This decision is considered a progressive step in protecting children's basic rights to survival, growth, development, and protection from discrimination.⁷

However, the new interpretation provided by the Constitutional Court is not fully in line with the concept of lineage in Islamic law. According to Islamic law, a child born outside of legal marriage has a lineage relationship only with the mother and her mother's family. In contrast, the Constitutional Court, through its ruling, recognizes a civil relationship between an illegitimate child and their biological father. This difference indicates a normative tension between state law and Islamic law within the framework of legal pluralism.

However, existing studies generally focus on describing this difference, without deeply analyzing how this tension can be reconciled conceptually and normatively, particularly in relation to the protection of children's constitutional rights. Therefore, this study aims to fill this gap by examining the dynamics of legal pluralism and examining the extent to which the Constitutional Court's ruling can be understood as a form of legal reconstruction in determining the status of illegitimate children.

Based on the above background, the author is interested in studying the following problems:

1. What are the judge's considerations regarding the determination of the status of children born out of wedlock based on Constitutional Court Decision Number 46/PUU-VIII/2010?
2. How does legal pluralism relate to the determination of the status of illegitimate children based on Constitutional Court Decision Number 46/PUU-VIII/2010?

Research Methodology

The study of legal pluralism in determining the lineage of illegitimate children: a study of the Constitutional Court Decision Number 46/PUU-VIII/2010 is a type of library research *that* uses normative and conceptual legal approaches. The normative legal approach is used to examine written legal norms contained in laws and Constitutional Court decisions. Meanwhile, the conceptual approach is used to examine the concept of

⁷ Constitutional Court of the Republic of Indonesia, *Decision Number 46/PUU-VIII/2010 concerning the Judicial Review of Law Number 1 of 1974 concerning Marriage*. (Jakarta, 2010).

legal pluralism, especially the interaction between Islamic law and the state legal system.⁸ It also uses a *socio-legal approach* as a complement to see how the Constitutional Court decision has implications for the social life of society.⁹ This approach is used by examining how the decision interacts with social norms and legal practices that develop in society. This approach focuses on identifying gaps between state law and social realities related to the civil relationship between illegitimate children and their biological fathers.

The data sources used to complement this paper include primary and secondary sources. The primary data sources consist of Constitutional Court Decision No. 46/PUU-VIII/2010 and other relevant laws and regulations. Secondary sources include books, journals, previous research results, and other literature relevant to the topic of this article.

Data analysis was conducted qualitatively through content analysis of legal norms and judicial considerations in Constitutional Court decisions. Furthermore, a comparative analysis was conducted to compare the differences between state law and Islamic law regarding the status of illegitimate children.

Results and Discussion

1. Judge's Considerations Regarding the Determination of the Status of Children Born Out of Wedlock Based on Constitutional Court Decision Number 46/PUU-VIII/2010

The Constitutional Court is a judicial institution tasked with handling constitutional matters. Through this authority, the Constitutional Court has the authority to examine, adjudicate, and decide certain cases based on constitutional considerations. The ¹⁰Constitutional Court's presence is a manifestation of the provisions of the 1945 Constitution, which, as one of the principles of the rule of law, guarantees the implementation of an independent judiciary free from interference by any party in order to uphold law and justice.¹¹

On June 14, 2010, Hj. Aisyah Mochtar alias Machica and her son, Muhammad Iqbal Ramadhan, represented by their lawyer, filed a judicial review of Article 2 paragraph (2) and Article 43 paragraph (1) concerning Marriage against the 1945 Constitution. The application was registered on Wednesday, June 23, 2010 with Number 46/PUU-VIII/2010. The applicant argued that the provision had caused injustice to children born outside of legal marriage, because it ignored the child's right to be legally recognized by his biological father.

Prior to the Constitutional Court's ruling, the country's legal system strictly distinguished between legitimate and illegitimate children. An illegitimate child had a civil relationship only with the mother and her maternal family. This norm emphasized

⁸Nanda Dwi Rizkia and Hardi Fardiansyah, *Legal Research Methods (Normative and Empirical)* (Bandung: Widina Media Utama, 2023), 120.

⁹Soerjono Soekanto, *Principles of Legal Sociology* (Jakarta: Raja Grafindo Persada, 2019), 15–16.

¹⁰Josef Mario Monteiro, *Getting to Know the Constitutional Court* (Yogyakarta: Indonesian Publishers Association, 2025), 42.

¹¹Muhammad Iqbal Bangun and Zarkasi, "Analysis of Constitutional Court Decision NO.46/PUU-VIII/2010 concerning the Status of Children Born Outside of Legal Wedlock" 4, no. 1 (2021): 117.

that the legal validity of a marriage under state law was only recognized if it was registered, allowing the biological paternity of any child born of that marriage. In this regard, state law prior to the ruling focused on administrative legality as the primary requirement for the validity of a marital relationship.

In this case, the petition to test the constitutionality is considered, which essentially considers that Law No. 1 of 1974 Article 2 paragraph (2) which states, "*Every marriage is registered according to the applicable laws and regulations*" and Article 43 paragraph (1) which states that, "*A child born outside of marriage only has a civil relationship with his mother and his mother*", is contrary to the 1945 Constitution Article 28B paragraph (1) which states, "*Everyone has the right to form a family and continue the lineage through a legal marriage*" and paragraph (2) which states, "*Every child has the right to survival, growth and development and has the right to protection from violence and discrimination*", as well as Article 28D paragraph (1) which states, "*Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law*".

Considering that the main point of the applicant's request is to test the constitutionality of Article 2 paragraph (2) and Article 43 paragraph (1) of Marriage Law No. 1 of 1974, as mentioned in the previous paragraph. The problem concerns the registration of marriages according to statutory regulations, which in the general explanation number 4 letter b of Law 1/1974 concerning the principles or principles of marriage states,

"...that a marriage is valid if it is conducted according to the laws of each religion and belief; and in addition, each marriage must be registered according to the applicable laws and regulations. The registration of each marriage is the same as the registration of important events in a person's life, for example, birth, death, which are stated in certificates, a deed which is also included in the registration list."

Based on the explanation of Marriage Law No. 1 of 1974 above, it can be seen that:

- (i) Marriage registration is not a determinant of whether a marriage is valid or not; and
- (ii) Such registration is an administrative obligation regulated by statutory regulations. Thus, the factor that determines the validity of a marriage is the fulfillment of the conditions stipulated by the religion of each prospective bride and groom. Being required to register a marriage by the state through statutory regulations is an administrative obligation. As in Islamic law, marriage registration is not included in the pillars or requirements for a valid marriage, but rather part of the administrative arrangements alone.¹²

The Constitutional Court emphasized that the administrative obligation of registering marriages plays a crucial role, which can be viewed from two perspectives. *First*, from the state's perspective, registration is necessary to fulfill its function of guaranteeing the protection, advancement, enforcement, and fulfillment of human rights. *Second*, administratively, registration is carried out by the state to ensure that marriage, as a legal act, plays a vital role in life. This registration serves as an authentic deed, thus protecting the rights arising from the marriage and giving it legal force.

¹²Latifah Munawaroh and Ahmad Munif, *Registration of Siri Marriages in State Administrative Law (Juridical Study and Maqasid Shari'ah)* (Purbalingga: Eureka Media Aksara, 2023), 81.

The problem regarding the rights of children born outside of marriage is regarding the legal meaning of " *born outside of marriage*". This is related to the legitimacy of the child being born. Naturally, it is impossible for a woman to become pregnant without a meeting between *ovum* and *spermatozoa* either through sexual intercourse (*coitus*) or through other means based on technological developments that cause fertilization.¹³ Therefore, the law stipulates that a child is born from a pregnancy due to sexual relations outside of marriage. In this case, it would be unfair if the law exempted men who had sexual relations which resulted in pregnancy and the birth of the child from being irresponsible.

Thus, the relationship between a child and a father is not based on a marital bond, but can be proven through their biological relationship. Therefore, regardless of the procedural or administrative issues surrounding the parents' marriage, every child born has the right to legal protection. If this is not met, the party most disadvantaged is the child born out of wedlock, even if the child is fundamentally innocent because their birth was against their will.

Children born out of wedlock often face unfair treatment and social *stigma* in society. The law should guarantee fair protection and legal certainty regarding the status of children and their inherent rights, including those born of marriages whose legitimacy is still being debated. This is crucial to ensure that every child receives equal recognition and treatment before the law without discrimination based on their birth origin.

Based on the description above, the Constitutional Court not only reinterprets norms but also provides a new legal basis (*constitutive*). A *constitutive* decision is a decision that abolishes a legal situation or creates a new one. This decision is *declaratory in nature. constitutief*, which means confirming that Article 43 paragraph (1) of Law No. 1 of 1974 is in conflict with the 1945 Constitution, which then places more emphasis on the substance of justice and protection of children's rights rather than merely administrative compliance.

So Article 43 paragraph (1) Marriage Law no. 1 of 1974 which states;

" *A child born outside of marriage only has a civil relationship with his mother and his mother's family* " does not have binding legal force as long as it is interpreted as eliminating the civil relationship with a man who can be proven based on science and technology and/or other evidence who according to the law is proven to have a blood relationship as his father, so that the verse **must be read** , " *A child born outside of marriage has a civil relationship with his mother and his mother's family and with a man as his father who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with his father's family* ";

It can be concluded that the basis for the considerations of the constitutional panel of judges in the issue of the status of children born outside of marriage is:

1. Something that is considered inappropriate and unfair is if the law stipulates that a child born out of wedlock only has a relationship with his mother and releases

¹³Constitutional Court of the Republic of Indonesia, *Decision Number 46/PUU-VIII/2010 concerning the Judicial Review of Law Number 1 of 1974 concerning Marriage*. (Jakarta, 2010).

the responsibility of the man who has sexual intercourse with his mother, while at the same time it seems to negate the child's rights to the man as his father.

2. Children, mothers and fathers are subjects of a legal act who have reciprocal rights and obligations that arise due to a legal event preceded by intimate relations.
3. Both legitimate and illegitimate children must have legal protection to ensure their rights are fulfilled. Children should not have to bear the consequences of their parents' actions.

The Constitutional Court has stated that the civil relationship between a child and a father can be proven through scientific evidence such as DNA testing, as well as other legally valid evidence. With scientific methods like DNA testing, the Court establishes a more objective standard of proof in determining the paternity relationship. This not only strengthens legal certainty but also ensures that the protection of children's rights is based on verifiable evidence.

Based on these considerations, it shows a shift in the legal paradigm that not only shows the validity of formal status, but emphasizes the protection of children's rights as the main priority.¹⁴ The Constitutional Court is of the opinion that the status of a child should not be the basis for limiting his or her civil rights, because every child has the same position before the law (*equality before the law*). This principle is in line with the constitutional guarantee in Article 28B paragraph (2) of the 1945 Constitution that "*Every child has the right to survival, growth and development and to protection from violence and discrimination.*"

On the other hand, the ruling has formal legal implications and impacts the social structure of society. Sociologically, the recognition of the civil relationship between illegitimate children and biological fathers indicates a shift in social values within society, leading to more inclusive children's rights. However, social reality shows that *the stigma* against illegitimate children remains strong, especially in communities that adhere to religious norms. This indicates a gap between state legal values and prevailing social norms, necessitating adjustments to achieve substantive justice for children.

2. Legal Pluralism Regarding the Determination of the Status of Children Born Out of Wedlock Based on Constitutional Court Decision Number 46/PUU-VIII/2010

The validity of a marriage under Indonesian positive law is based on two factors: recognition by religious law and official registration in accordance with statutory provisions. These provisions are contained in Article 2 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage. This means that registration is an administrative element that determines legal recognition by the state. Therefore, if registration is not carried out, the marriage has no legal force, and any children born will be classified as illegitimate.

Meanwhile, under Islamic law, the validity of a marriage does not depend on registration, but rather on the fulfillment of the pillars and requirements of marriage.

¹⁴ Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law* (Yogyakarta: Genta Publishing, 2009), 98.

¹⁵Children born of such a marriage are related to their father, whereas children born out of wedlock are related only to their mother. This difference in principle creates problems when a marriage is religiously valid but not recognized by the state because it is not registered, thus impacting the status of any children born of that marriage.

Article 99 of the Compilation of Islamic Law stipulates that legitimate children are: (a) children born from a valid marriage. (b) children resulting from legal fertilization of husband and wife outside the womb and born to the wife. ¹⁶Article 100 explains further that " *Children born out of wedlock only have a lineage relationship with their mother and their mother's family*". ¹⁷This is in accordance with the provisions of Article 186 of the Compilation of Islamic Law which states that " *Children born outside of marriage only have a mutual inheritance relationship with their mother and their mother's family*".¹⁸

As previously explained, if a marriage is not officially registered, the marriage does not receive recognition from the state, so that children born from such a marriage are considered to have no legal status. In Islamic law, the determination of lineage or the legal status of a child can only be determined through a legal marriage. This provision is reinforced by the opinion of the four major schools of thought (Madzhab Hanafi, Maliki, Shafi'i and Hambali) which have agreed that children born out of wedlock do not have lineage through the male side. In other words, even if the man who committed adultery with the child's mother acknowledges himself as the biological father, this acknowledgement does not create a legal lineage relationship.

The Islamic school of thought believes that children born outside of a legal marriage have no ancestral relationship with their biological father. This view is reinforced in a hadith narrated by Abu Daud. The Prophet SAW said, "*That children resulting from adultery are only assigned to their mothers.*" In line with this, Imam Syafi'i said, " *Indeed, Allah SWT confirms in His Book, that children born as a result of adultery are not assigned to their father, but are assigned to their mother, they will still receive pleasure from their Lord according to their obedience, and not share in the sins of their parents* ".¹⁹

Likewise, Article 43 paragraph (1) of Law No. 1 of 1974 states that " *Children born outside of marriage only have a legal relationship with their mother and their mother's family.*" This is then considered to be contrary to the constitutional rights of children, as stated in Article 28B paragraph (1) and paragraph (2) of the 1945 Constitution and Article 28D paragraph (1). The legal norms of the Marriage Law view a valid marriage as based on whether or not the marriage is valid according to statutory regulations. In this case, the applicant entered into a marriage in accordance with religious provisions. However, the marriage that was carried out did not have written evidence, so it did not have legal force.

¹⁵Syarifuddin, *Islamic Marriage Law in Indonesia: Between Munakahat Fiqh and Marriage Law*, 50–52.

¹⁶Compilation of Islamic Law Article 99.

¹⁷Compilation of Islamic Law Article 100.

¹⁸Compilation of Islamic Law Article 186.

¹⁹Muh Yusrang, "Children Born Out of Wedlock, State Law and Islamic Law," Ministry of Religion of the Republic of Indonesia, West Sulawesi Province, 2025. (accessed on October 28, 2025)

The issuance of Constitutional Court Decision No. 46/PUU-VIII/2010, based on a constitutional review, has brought about a paradigm shift in the status of illegitimate children in the national legal system. However, this change has sparked debate because its substance does not fully align with the principle of lineage in Islamic law. In Islam, this status is referred to as lineage, which describes a very close familial relationship, namely the bond between a child and both parents, especially the male parent (father).²⁰

The civil status of a child in Islam can be determined from one of three reasons, namely:

1. The existence of a legal marriage, accompanied by the possibility of a husband and wife relationship between the two.
2. Declare the child as a biological child to establish lineage.
3. Through proof, namely by proving based on valid evidence.²¹

Meanwhile, to determine the status of a child outside of a legal marriage, there are three conditions regarding the status of a child outside of a marriage, namely:

- a. A person who is married then gives birth to a child 6 months after the wedding, even though he is known to have committed adultery. So in situations like this, the scholars agree that the child must be given to her husband.
- b. A woman who commits adultery while unmarried gives birth to a child, while the man who committed the adultery neither establishes lineage nor acknowledges the child. Therefore, the child cannot have a lineage relationship with its biological father. Scholars agree that the lineage of a child born of adultery cannot be directly attributed to the adulterous man without his acknowledgement.
- c. If a woman gives birth to a child resulting from adultery and the biological father requests a confirmation of lineage, the majority of scholars believe this request is unacceptable. Such an illegitimate child cannot be traced back to the man with whom she committed adultery, even if the man admits to the act and requests confirmation of the lineage.²²

Meanwhile, in the Civil Code (KUH Perdata), there are three types of children born outside of marriage, namely:

1. An illegitimate child whose parents are not prohibited from marrying. This means that if the parents later marry, the illegitimate child can be recognized as legitimate and entered into the marriage bond of their parents. However, if the parents are not married, the child is still recognized by the parents as an illegitimate child.
2. An illegitimate child or a child born as a result of a relationship that is prohibited from marriage because there is still a blood relationship between the two.

²⁰Muhammad Jawad Mughniyah, *Fiqh of the Five Madzhabs* (Jakarta: Lentera Publisher, 1996), 383.

²¹Abdul Manan, *Various Problems of Islamic Civil Law in Indonesia* (Jakarta: Kencana, 2008), 76.

²²Deni Purnama and Dhiauddin Tanjung, "Islam and the Protection of Children's Rights: A Jurisprudential Review of the Lineage of Children Born Outside of Marriage," *Al-Mashlahah Journal of Islamic Law and Social Institutions* 12, no. 01 (2024): 47–48, <https://doi.org/10.30868/am.v12i01.6545>.

3. If one or both of them are still tied to another marriage, then they have sexual relations which results in pregnancy and giving birth to a child, then the child is called a child of zina.²³

Prior to the Constitutional Court's ruling, state law aligned with Islamic law, limiting the civil rights of illegitimate children to their mother. However, following the ruling, which included a judicial review filed by applicant Hj. Aisyah Mochtar, also known as Machica, and her son, Muhammad Iqbal Ramadhan, children born outside of a valid marriage can be recognized based on valid evidence, both scientific and/or other evidence.

Thus, the relationship between Islamic law and state law in the case of children born out of wedlock not only demonstrates a conflict but also illustrates a process of pluralistic interaction. Legal systems that coexist in society are known as legal pluralism. Legal pluralism is a concept that explains the existence of two or more legal systems coexisting within the same sphere of activity.²⁴

A comparison of the two legal systems reveals fundamental differences in how they view the legitimacy of a child's legal relationship with their biological father. Under state law, civil relations are based on the protection of children's rights and scientific evidence, while under Islamic law, kinship is determined by the validity of the marriage. This difference creates a normative clash that has become legal pluralism in Indonesia, where religious law and state law operate within different spheres of legitimacy.

Furthermore, legal pluralism is evident when examining compliance with the Constitutional Court's ruling regarding the status of illegitimate children within religious courts. In practice, the effectiveness of this ruling remains suboptimal. This is due to the strong persistence of legal pluralism in Indonesia, where customary law, social norms, and religious views still strongly influence community mindsets, particularly in rural areas. As a result, positive law has not fully become the primary reference in resolving issues regarding the status of children. Furthermore, there is still opposition from religious scholars or village leaders who adhere more to Islamic jurisprudence (fiqh) than to judicial decisions. Thus, the Constitutional Court's ruling regarding the status of illegitimate children does not always align with prevailing social norms in practice.

Furthermore, in practice, religious courts have not been effective in enforcing Constitutional Court decisions, due to the legal environment influenced by Islamic legal principles, which have traditionally been the basis for resolving cases. This can lead to inconsistencies and the prioritization of competing legal norms. Therefore, judges must strike a balance between constitutional and religious norms.

Based on the above description, legal pluralism regarding the determination of the status of illegitimate children based on the Constitutional Court Decision Number 46/PUU-VIII/2010, tends towards the type of *Combative Legal Pluralism*. The type of

²³Halmi Abdul Halim, Oyo Sunaryo Mukhlis, and Atang Abd, "Legal Thoughts on the Status of Children from Unregistered Marriages and Children Born Outside of Marriage in Relation to Civil Rights," *Familia: Jurnal Hukum* ... 2 (2023): 25,

²⁴ J Griffiths, *Understanding Legal Pluralism: a Conceptual Description*, ed. by D. Suryadin E. Riyadi Terre (Jakarta: Association for Community-Based and Ecological Legal Reform, 2007), 116.

Combative Legal Pluralism is where the state and non-state legal systems are openly in conflict or tend to negate each other.²⁵In such a situation, each legal system seeks to maintain its own authority and normative legitimacy without room for compromise.²⁶The dynamics of legal pluralism in this case show a clash between the principle of protecting children's rights and the principle of lineage in Islamic law. Therefore, the determination issued by the Constitutional Court Decision Number 46/PUU-VIII/2010 emphasizes the supremacy of state law over the norms of Islamic law.

Thus, the dynamics of legal pluralism in determining the status of illegitimate children illustrate the complexity of Indonesia's legal system, which combines various sources of legitimacy. State law seeks to achieve substantive justice through the protection of children's rights, while Islamic law affirms the principle of legitimacy as a moral principle.

Conclusion

Based on the description above, it can be concluded that the Constitutional Court Decision Number 46/PUU-VIII/2010 is a form of correction to the provisions of Article 43 paragraph (1) of the Marriage Law which is not in line with the principle of protecting children's rights. However, from an Islamic legal perspective, establishing a child's civil relationship with their biological father remains unrecognized because it contradicts the principle of lineage. This difference demonstrates a form of combative legal pluralism between state law and Islamic law in determining the status of illegitimate children in Indonesia. This issue can impact legal certainty and consistency in judicial practice. Therefore, further research is needed to identify approaches that can bridge the protection of children's rights with Islamic legal principles.

Orcid	Scopus ID
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²⁵Geoffrey Swenson, "Legal pluralism in theory and practice," *International Studies Review* 20, no. 3 (2018): 6, <https://doi.org/10.1093/ISR/VIX060>.

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