

## ABSTRAK

Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, merupakan hukum positif yang mengatur tata laksana perkawinan di Indonesia khususnya bagi warga negara yang beragama Islam. UUP bagian dari politik hukum nasional, untuk memberi ruang tertib hukum dan kepastian hukum dalam setiap peristiwa perkawinan, sisi lain UUP memberi jaminan serta melindungi kaum wanita dari ketidak pastian pelaksanaan perkawinan yang berlaku di masyarakat. Perkawinan yang sah adalah perkawinan yang dilakukan menurut hukum masing-masing dari kepercayaannya itu serta setiap pernikahan harus dicatat menurut peraturan perundangan yang berlaku, sebagai mana disebut dalam Pasal 2 ayat (1) dan (2).

Keberadaan UUP masih membawa pemikiran dan problem dalam pelaksanaannya, khususnya persepsi tentang sahnya perkawinan yang dihubungkan dengan keharusan untuk dilakukan pencatatan oleh petugas pencatat nikah. Fakta lain UUP, mengandung represi dari akibat yang tidak dilakukan pencatatan pada setiap perkawinan tersebut, yang mana UUP dalam Pasal 43 ayat (1) menegaskan anak yang dilahirkan diluar perkawinan hanya mempunyai hubungan perdata dengan ibu dan keluarga ibunya. UUP Pasal 2 ayat (2) dan Pasal 43 ayat (1) menimbulkan persepsi dan potensi merugikan hak kemanusiaan anak yang lahir diluar perkawinan, hak kemanusiaan tersebut berupa hak keperdataan dan hak hukum administrasi kependudukan.

Keberadaan UUP khususnya Pasal tersebut, telah menimbulkan upaya Judicial Review dengan putusan perkara Nomor: 46/PUU-VIII/2010 Tanggal 27 Februari 2012, Mahkamah Konstitusi mengabulkan uji materi terhadap Pasal 43 ayat (1) yang dalam putusan tersebut mengalami perubahan, dengan memberi ruang hak keperdataan anak melekat pada ibu dan keluarga ibunya, serta ayah biologisnya serta keluarga ayahnya. Implementasi hukum Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Tanggal 27 Februari 2012 terhadap kedudukan anak luar kawin dalam hak keperdataan tersebut bersifat sempit dan sederhana, hak keperdataan tersebut terbatas menyangkut nafkah anak, hak pendidikan, kesehatan, serta hak sosial lainnya, tetapi tidak menyangkut masalah hak keperdataan yang bersifat fiqih seperti nasab dan hak waris mewaris.

Kata Kunci : Pututsan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010, Kedudukan Hukum, Anak Lahir Diluar Perkawinan.

## ABSTRACT

Law No. 1 of 1974 concerning Marriage, is a positive law governing marital management in Indonesia, especially for citizens who are Muslim. UUP is part of national law politics, to provide legal order and legal certainty in every marriage event, on the other hand the UUP guarantees and protects women from the uncertainty of the implementation of marriage in the community. Legitimate marriage is a marriage conducted according to the law of each of his beliefs and every marriage must be recorded according to the applicable laws and regulations, as stated in Article 2 paragraph (1) and (2).

The existence of the Law Unit still carries thoughts and problems in its implementation, especially the perception of the validity of marriage which is associated with the necessity to be recorded by the marriage registrar. Another fact of the UUP, contains repression from the consequences of not being recorded in each of the marriages, in which UUP in Article 43 paragraph (1) confirms that children born outside of marriage only have a civil relationship with their mother and family. UUP Article 2 paragraph (2) and Article 43 paragraph (1) give rise to perceptions and potential detrimental to the humanitarian rights of children born outside marriage, such human rights in the form of civil rights and legal rights for population administration.

The existence of the UUP, especially the Article, has resulted in an attempt to Judicial Review with a decision of case No. 46 / PUU-VIII / 2010 On February 27, 2012, the Constitutional Court granted a judicial review of Article 43 paragraph (1) which changed, giving room children's civil rights are attached to the mother and family of his mother, as well as his biological father and his father's family. Law Implementation After the Constitutional Court Decision Number 46 / PUU-VIII / 2010 On February 27, 2012, the position of an extramarital child in civil rights is narrow and simple, the civil rights are limited to the child's livelihood, education, health and other social rights, but it does not concern the issue of civil rights that are fiqh like nasab and inheritance rights inheritance.

Keywords: Constitutional Court Decision Number 46 / PUU-VIII / 2010, Legal Position, Children Born Out of Marriage.