

ABSTRAK

Keberadaan Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 mengubah hubungan keperdataan anak luar kawin terhadap ayah biologisnya. Melalui putusan Nomor 46/PUU-VIII/2010, Mahkamah Konstitusi telah melakukan terobosan yang hendak menjamin pemenuhan hak-hak keperdataan bagi seorang anak luar kawin dari kedua orangtuanya. Tulisan ini akan membahas apa yang menjadi Ratio decidendi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Terhadap Hak Keperdataan Anak Yang Lahir Diluar Perkawinan, serta Implementasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Terhadap Hak Keperdataan Anak Yang Lahir Diluar Perkawinan.

Dalam penelitian ini penulis menggunakan metode penelitian yuridis normatif dimana objek yang menjadi penelitian hukum yuridis-normatif mencakup (1) penelitian terhadap asas-asas hukum, (2) penelitian terhadap sistematika hukum, (3) penelitian terhadap tingkat sinkronisasi hukum, (4) penelitian sejarah hukum, dan (5) penelitian perbandingan hukum. Penelitian ini menggunakan pendekatan undang-undang (*statute approach*), dan pendekatan historis (*historical approach*) dengan data utama menggunakan data sekunder.

Kesimpulan berdasarkan permasalahan diatas dapat diketahui bahwa ratio decidendi dari putusan mahkamah konstitusi nomor 46/PUU-VIII/2012 didasarkan pada perspektif keadilan, yaitu melindungi kedudukan anak yang lahir di luar kawin yang selama ini terabaikan dan menjadi korban, dan hendak menegaskan bahwa setiap anak berhak atas kelangsungan hidup, tumbuh dan berkembang serta berhak atas perlindungan dari kekerasan dan diskriminasi sebagaimana amanat pada Pasal 28B ayat (2) UUD NRI Tahun 1945. Implementasi dari putusan mahkamah konstitusi nomor 46/PUU-VIII/2012 belum berjalan dengan baik, karena masih banyak pertentangan diantara peraturan perundang-undangan yang terkait.

Kata kunci : *Anak Diluar Kawin, Hak Keperdataan, Implementasi, Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*

ABSTRACT

The existence of Constitutional Court Decision Number 46/PUU-VIII/2010 has changed the civil relationship of children who are born without marital with their biological father. By means of its decision number 46/PUU-VIII/2010, the Constitutional Court has made a breakthrough which intend to guarantee the fulfillment of civil rights for a illegitimate children from both of parents. This paper discusses about what to be ratio decidendi Contitutional Court Decision Nomor 46/PUU-VIII/2010 regarding civil rights of children who born without marital, also implementation of Contitutional Court Decicion Number 46/PUU-VIII/2010 regarding civil rights of illegitimate children.

In this paper author use juridical - normative research methode, where the object of legal juridical - normative research includes (1) research on legal principles, (2) research on legal systematic, (3) research on the level of legal synchronization, (4) research legal history, and (5) comparative law studies. In this paper uses statute approach, and historical approach with main data using secondary data

The conclusion based on the above problems are the racio decidendi of Contitutional Court Decision Number 46/PUU-VIII/2010 based from the perspective of the theory of justice, are saving position children who are born without marital which as long as ignorable and become victim, and to do explain that every child has entitled to every child have the right to survive, to grow and to develop and shall be entitled to protection from violence and discrimination as mandated by Article 28B pharagraph (2) Constitution of the Republic of Indonesia 1945. Implementation of Contitutional Court Decision Number 46/PUU-VIII/2012 has not good enough, because there are many contradiction between related legislation.

Keyword : *Civil Rights, Contitutional Court Decision Nomor 46/PUU-VIII/2010, Illegitimate Children, Implementation.*