

Juridical Analysis Towards the Position of Children Born Out of Wedlock Based on Case Decision Number 1/Pdt.P/2018/Pa.Jb And 0269/Pdt.P/2018/Pa.Sda Reviewed from the Decision of The Constitutional Court Number 46/Puu-Viii/2010

Ahmad Redi^{1,*} Laurent Chandra¹

¹ Faculty of Law, Universitas Tarumanagara, Jakarta, Indonesia

*Corresponding author. Email: ahmadr@fh.untar.ac.id

ABSTRACT

Legal protection towards children born out of wedlock is something that needs to be the attention of the family, the State and the community. The State is obliged to provide legal protection towards children born out of wedlock even though the marital status of the parents is still disputed. The unrecognition of children born out of wedlock has a negative impact on the child himself/herself, namely the child cannot obtain biological rights with his/her father hence he/she does not get his/her civil rights from the father and his/her father's family. However, with the decision of the Constitutional Court Number 46/PUU-VIII/2010, the Legal Consequences of children born out of wedlock not only have biological relationships with their mothers but also with their biological fathers and regulate the rights protection towards children born out of wedlock therefore the rights of children born out of wedlock become equal to children born legally. The research method used in this study is Normative Juridical with the consideration that the starting point of research analysis on Laws and regulations in Indonesia. This study aims to learn and understand how legal protection works for children born out of wedlock. The conclusion is that with the decision of the Constitutional Court Number 46/PUU-VIII/2010, the biological relationship between children born out of wedlock with their Father can be proven through technology or DNA tests. The State has sufficiently provided Protection for children that has been stipulated in some provisions of the legislation, but the main role of the family is necessarily needed, especially parents in order to be willing to accept and legalize the child hence the child can obtain the rights that he should receive.

Keywords: marriage, children born out of wedlock, child protection, child rights

1. INTRODUCTION

According to Soedharjo Soimin, "Marriage is a covenant held by two people, in this case the agreement between a man and a woman with a material purpose, namely forming a happy and eternal family (household) must be based on the One True God, as the first principle in Pancasila". [1] The implementation of marriage in Indonesia has a variety of forms, from Marriage through the Office of Religious Affairs (KUA), elopement, until the most frequent marriage in the community, is siri marriage. Marriages are carried out in accordance with the provisions of religion/customs and are not registered at the office of marriage registration (KUA for those who are Muslims, Civil Registry Office for non-Muslims). The word siri originated from the Arabic sirra, israr which means secret. Marriage that is performed hidden or secret according to the meaning of the word is a siri marriage. [2] Marriage is based on the existence of birth

and inner relationships. In a marriage, the relationship is based on the rules of religion and beliefs of each individual, which then recorded according to the provisions of the applicable legislation and in line with Article 2 paragraph (1) of Law Number 1 of 1974 about Marriage, that, "Marriage is valid if carried out in accordance with the rules of religion and beliefs of each individuals and every Marriage recorded in accordance with the rules of Law imposed." Hence, even though a marriage has been valid according to the rules of religion but cannot be certainly valid according to Marriage Law. Because the registration is not done in state, if a child is born in a marriage that is not recorded in state then the child can be categorized as children born out of wedlock. There are two types of child status in family law, namely Legal Child and Children Born Out of Wedlock. [3] The legal child is stipulated in Article 42 of Law Number 1 of 1974 i.e. The legal child is a child born from a valid marriage or due to a valid marriage. [4]

On the contrary, children born out of wedlock are stipulated in Law Number 1 of 1974 Article 43 paragraph (1) that, "children born outside marriage only have a civil relationship with the mother and the mother's family." In registration and administration of the population, birth registration is the most important thing. However, it is still rarely noticed by the public because of the lack of public understanding of how important birth certificates are for children. In principle it does not matter if there is a comparison in the stage of making a valid birth certificate of a legal child or a children born out of wedlock, because the child can administer his birth certificate by including some necessary requirement needed in the civil registry office. [5] The distinction of the group of children, namely Legal Children and Children Born Out of Wedlock resulting in a difference in civil relations between the Legal Children and Children Born Out of Wedlock, is required to be recognized by his father or mother in order to have a legal bond. Contained in Article 280 of the Civil Code, on the contrary in Law Number 1 of 1974 children born out of wedlock only obtains a civil relationship with his mother's family. [3] It is impossible for the child not to have a father, in the interests of the Law concerned with all the consequences in the field of citizenship, guardianship, inheritance, and others, so with the recognition and ratification of the child it can issue a new civil relationship. [6]

The child resulting from an illegitimate relationship between a man and a woman is also said to be a children born out of wedlock, which the child should not be wrong, innocent and does not need to bear due to the treatment of his parents. It was his parents who had to take responsibility and accept the punishment. [7] According to Satijipto Raharjo, Legal Protection is to give protection to Human Rights (HAM) harmed by others and to provide protection to everyone hence they can enjoy all the rights granted by the Law. [8] The state, society, family, especially parents have obligations and are responsible in terms of fulfilling the rights of children. However, not all children get protection for their human rights because in reality there are still many children with no fulfillment of rights by their parents and do not even get serious treatment from the government. Children outside marriage also have different rights than children in general, namely Legal Children.

The cases that the author found in the community environment are First, Case Number 1/Pdt.P/2018/PA.JB is located in West Jakarta, that there is one couple who held a siri marriage and from the result of the marriage was born 3 (three) children. At the time, the couple had not officially registered their marriage with the Office of Religious Affairs or civil records. Second, Case Number 0269/Pdt.P/2018/PA.Sda is located in Sidoarjo, that this couple also conducted a religious marriage (Siri marriage or commonly referred to as marriage under the hands) with the guardian of the religious figure (Cleric) but, the marriage is not officially recorded before the Registrar of Marriage. From the marriage has been born 2 (two) children, but one of the children has not been able to obtain a legal identity because it was born before the registration of marriage and also its status is said to be an children born out of wedlock. Juridically, the children of the couple are children born out of wedlock. Based on the

decision of the Constitutional Court Number 46/PUU-VIII/2010 Constitutional Judge Maria Farida Indrati said that, Marriage that is not based on Law Number 1 of 1974 also has the potential to harm children born from such marriages.

Potential losses for the child, especially the unrecognized relationship of the child with the biological father (biological father), which of course resulted in the inability of the biological father's obligation to finance the needs of the child's life and other civil rights. Therefore, the Author agrees with the opinion that it is unfair if children born outside the marriage only have a relationship with the mother, in accordance with the decision of the Constitutional Court Number 46/PUU-VIII/2010 The children born out of wedlock is not only has a civil relationship with his mother but also has a civil relationship with his biological father as evidenced by DNA tests stating that there is a biological relationship between the children born out of wedlock and his father. This study flashes the Juridical Analysis of Illegal Children Born Out of Wedlock In The Case Number 1/PDT.P/2018/PA.JB and 0269/PDT.P/2018/PA.SDA Based From the Decision of the Constitutional Court Number 46/PUU-VIII/2010. With the problem identification in this research namely How to Protect The Law Against Children Outside Marriage Unauthorized based on Number 1/PDT.P/2018/PA.JB and 0269/PDT.P/2018/PA.SDA based on Constitutional Court Decision Number 46/PUU-VIII/2010?

2. METHOD

The methodology used in this study is normative juridical method which is a scientific research procedure in order to obtain a truth on the basis of legal scientific logic in terms of Normative. The approaches used in this study are the approaches to the laws and regulations (statute approach) which means an approach that examines all laws and regulations related to legal issues handled. [9] The conceptual approach shifts from several views and doctrines that grow in the science of law. The type and source of data used in research is the form of data obtained through various literature materials and documentation called secondary data. Secondary data is data that supports information or assists in the completeness of primary data obtained through libraries as well as collections of private libraries conducted by means of library or literature studies that include primary legal materials, secondary legal materials and tertiary legal materials. In terms of collecting legal materials, from primary legal materials and secondary legal materials collected according to the subject matter by carrying out literature studies, namely researchers put together several legal materials through various types of legislation, journals, articles, books, papers, research results of legal experts and browse the internet in accordance with all matters related to the subject matter to be studied. Descriptive research is intended to submit data as relevant as possible about each person, current situation or other events. The purpose of this method is to explain a description of the problem based on normative juridical approach. Determining each Article, paragraph

and view of legal experts containing legal rules governing the problem of children born out of wedlock hence it can be answered the problems of this research and the data processing which means data that is united in various groups and then analyzed and regulated in information or explanations that are descriptive analysis. Descriptive analytical is the prevailing laws and regulations and is associated with various legal theories and all related to children born out of wedlock based on the decision of Case Number 1/PDT.P/2018/PA.JB and 0269/PDT.P/2018/PA.SDA reviewed from Constitutional Court Decision Number 46/PUU-VIII/2010. [10]

3. DISCUSSION

3.1. Overview of Marriage

R. Subekti's opinion on "Marriage is a legal relationship between a man and a woman for a long time" [11], in contrast to Scholten's definition namely "Marriage is a legal relationship of a man and a woman in eternal coexistence which the state acknowledges." [12] Marriage for a person who is not yet 21 years old must obtain permission from a parent or guardian which is a condition of the provisions of marriage. Indeed, this is worthy to be reviewed in terms of the responsibility of care carried out painstakingly by parents for the child. Until the freedom that is available to the child in ensuring the choice of the prospective husband/wife is not expected to eliminate the function of the parents, this is very appropriate if the freedom of the child is combined with the permission of the parent or guardian. [13]

Acts in conducting marriage religiously but there are things that hinder which makes the registration of the government is not done is the definition of marriage that is not registered. Before Law Number 1 of 1974 was born in Indonesia, there were several kinds of Marriage Laws as the main rules in carrying out a marriage, including customary laws applied to indigenous Indonesians as well as Islamic fiqh law for Muslims. [2] Marriage Registration has benefits and functions that are as authentic evidence if a problem occurs in marriage such as an example in determining the position of the child born in marriage between the couple and in case of divorce marriage certificate that is used as evidence and a tool in resolving it. [13] The implementation of marriage in Indonesia has a variety of forms, ranging from Marriage through the Office of Religious Affairs (KUA), elopement, to the most common marriage in the community, is Siri Marriage. Marriages are carried out in accordance with the provisions of religion/customs and are not recorded at the Office of Marriage Registration Employees (KUA for those who are Muslims, Civil Registry Office for non-Muslims). The word *sirri* originated from the Arabic *sirra*, *israr* which means secret. Marriage that is performed in secret or secret according to the meaning of the word is a *siri* mating. [2] Marriage is based on the existence of birth and inner relationships. In a marriage the relationship is based on the rules of religion and beliefs of each individual, then recorded according to the provisions of the applicable legislation and in

line with Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, that, "Marriage is valid if carried out in accordance with the rules of religion and beliefs of each and every Marriage recorded in accordance with the rules of the Law imposed."

3.2. Overview of Children

Etymologically the understanding of the child according to the Great Dictionary of The Indonesian Language is as a young human or minors. [14] Based on the provisions of Article 1 Number 1 of Law 23 of 2002 Child Protection it is said that "A child is a person who is not yet 18 (eighteen) years old, including the child contained in the womb." Explanation in Article 330 of the Civil Code, minors are not yet 21 years old and do not first marry. If a child has already married before the age of 21 years after it separated or was left to die by her husband when not even the age of 21 years, she is still considered as an adult person instead of children. [15] The so-called child according to Article 1 point 2 of Law Number 4 of 1979 concerning Child Welfare is "a person who has not reached the age of 21 (twenty-one) years and has never married." [16] Children are inseparable from the continuance of human and a Nation and a Country. Who can be responsible in the continuity of the Nation and the Country, each child needs the widest opportunities to develop and grow to the maximum both physical, mental, or social. Therefore, it is necessary to protect efforts to realize the welfare of the child by guaranteeing the fulfillment of his rights without discriminatory treatment. [17]

In the opinion of R.A. Kosnan, the child is a human being at a young age in his soul and his life journey because it is easily affected by the surrounding conditions. [18] Therefore the child needs to be properly supervised. However, as a very weak social being, ironically children are often placed in a very detrimental position, have no right to speak, and often become victims of violence and violations of their rights. [19] "A legitimate child is a child born as a result of a valid marriage. This interpretation gives the understanding that the Legal Children is a child who is born in a valid marriage. Similarly, if the child is born in a valid marriage but conception is performed outside of marriage or the child is seeded in a valid marriage but born outside of marriage." [20] A children born out of wedlock is a child born to a woman who does not have a valid marital relationship and has been seeded a child in her womb, the Child does not have a perfect status in the eyes of the Law as the Legal Child is valid in general. [21] A children born out of wedlock cannot be recognized as Legal Child if a bond between an unmarried or incestuous woman and a man, while a children born out of wedlock cannot be recognized as Legal Child if a man and woman in the bond, one of which already has a valid marital bond.

3.3. Overview of Legal Protection

According to Satijipto Raharjo, Legal Protection is to give protection to Human Rights harmed by others and provide protection to everyone hence they can enjoy all the rights granted by the Law. [8] According to the Great Dictionary of the Indonesian Language, Legal Protection is a place for shelter and protective deeds. The 1945 Constitution of Article 1 paragraph (3) states that Indonesia is a Country of Law. It means that Indonesia is a Country that is based on the Law. By itself Legal Protection becomes a fundamental element and becomes a consequence in the state of Law.

The state must guarantee the legal rights of its citizens. Legal protection is the recognition of the dignity of its citizens as human beings. Legal Protection is distinguished into two kinds, Preventive Legal Protection and Repressive Legal Protection.

In preventive legal protection, legal subjects are given the opportunity to raise objections or give opinions before a government ruling gets a definitive form. [12] The goal is to prevent disputes. Efforts in preventive protection means that for government actions based on freedom of action because with preventive protection the government is encouraged to have a cautious nature at the time the decision is taken, while the Repressive Legal Protection the goal is for the dispute to be resolved. Handling in resolving the dispute is carried out by the judiciary that has absolute and relative authority.

According to The Child Protection Act Number 23 of 2002 in accordance with the amended by Law Number 35 of 2014 on Child Protection in Article 1 Number 2 that "Child Protection is all activities to guarantee its rights in order to live, grow, develop and participate, optimally in accordance with the dignity and dignity of humanity, and get protection from violence and discrimination."

According to Ahmad Kamil and Fauzan, Child Protection is the responsibility of parents, families, communities, governments and countries that describe an activity carried out continuously for the protection of children's rights. [22] The State should not consider it different from one person to another. In order to fulfill Human Rights, in fact everyone is the same subject in the eyes of the Law. This matter is in accordance with Article 28 D Number 1 of the Constitution of the Republic of Indonesia of 1945 which reads, "everyone is entitled to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law."

Etymologically, protection is referred to as a shelter, an act of protection. In Law Number 23 of 2002 as amended by law Number 35 of 2014 on Child Protection in Article 1 point Number 2, is determined that "Child Protection is all activities to ensure its right to live, grow, develop and participate, properly in accordance with the dignity of humanity, and obtain protection from violence and discrimination."

3.4. Analysis of Legal Protection of The Position of Children Born Out of Wedlock Based on The Decision of Case

Number 1/PDT.P/2018/PA.JB and 0269/PDT.P/2018/PA.SDA Reviewed From Constitutional Court Decision Number 46/PUU-VIII/2010

If a child is born outside of marriage then the child is an illegitimate child. As a result the child does not have a civil relationship with his father, but only has a civil relationship with his mother. The status of the child's position upfront the law also becomes unclear and also the Civil Rights of the child become lost.

In its development in Indonesia, there are several Laws created by the State that apply to Protect the Rights of children, especially children born out of wedlock who are not recognized as legitimate. The State guarantees the Legal Rights of its citizens by providing Legal Protection that is the right for every citizen.

The Law already provided protection for children, especially children born out of wedlock which can be found in Law Number 4 of 1979 on Child Welfare, Convention on The Rights of the Child, Law Number 39 of 1999 on Human Rights and Law Number 35 of 2014 Amendment to Law Number 23 of 2002 on Child Protection.

In the Case of Decision Number 1/PDT.P/2018/PA.JB, where at the time of the trial the panel of Judges found the fact, when conducting marriage, Applicant I is Muslim otherwise Applicant II is Buddhist. So it is clear that the marriage is not carried out in Islam but is done customarily and it is said that marriage is not valid according to religion and that 3 (three) children of the applicants are children born from invalid marriages or said to be children born out of wedlock.

Based on Article 4 of the Compilation of Islamic Law, marriage is valid, when carried out in accordance with Islamic Law. Based on Article 14 of the Compilation of Islamic Law, to carry out marriage needs to comply with several things, namely with the presence of Prospective Husband, Prospective Wife, Guardians of Marriage, two Witnesses and Ijab Kabul. Based on the information of Applicant I and Applicant II contained in the above case, the marriage of Applicant I to Applicant II is not held according to Islam but traditionally, so there is no guardian, no ijab kabul, no witnesses, and no dowry.

In the case of Case Number 1/Pdt.P/2018/PA.JB, according to this case the panel of Judges obtained the fact that the applicants carried out Siri Marriages with different religions. The validity of marriage is marriage that is carried out according to their respective religions and beliefs stipulated in Article 2 paragraph (1) of the Marriage Law.

Each religion cannot make marriage valid with a different religion, because all religions expect each of their people to marry one religion, therefore there is a conclusion that marriage with different religion is not valid, because it is not in accordance with the content of the Marriage Act, namely Marriage is valid when carried out in accordance with the religion and beliefs of each person, hence evasion is carried out on the Law that should apply or be referred to as an act of smuggling law. So here there is a smuggling of the law,

whether the marriage is carried out with a common belief in accordance with religion or just a formality only.

In fact, in this case Siri Marriage that occurred was only held on a formality basis and the applicants persisted to each religion. This means that from a certain religious point of view, one of them from Islam says that the marriage is an invalid marriage. Although religious marriage but through the side of Islamic Law is invalid.

When the applicants asked for the confession of the child but the Court refused it was because it proved one of the other parties has a different religion (not Muslims). However, with the problems in the marriage does not require the children of the applicants also lose their status, because when referring to the decision of the Constitutional Court Civil Rights of the child of his mother and father is recognized.

Similar cases are also found in Case Number 0269/PDT.P/2018/PA.SDA, where in this case the applicants in carrying out the marriage do not qualify for Islamic rules in Siri Marriage. In Siri Marriage there are ordinances in Islamic Law, one of which must have a guardian. The guardian here is meant to be a parent, but the parents of Applicant II are sick hence the guardian of the marriage of the applicant is a religious figure (Cleric). The guardians of marriage should be the father, brother or uncle of the man.

That here the applicants avoid slander because they are not married religiously, the applicants here only try to maintain the benefit even though they do not meet the requirements of Islamic rules in marriage. But the applicants here are more guarded hence there is no slander, then the presence of public figures (religious leaders) is a solution hence the applicants can still hold a marriage by making this religious figure as the guardian of marriage in place of his parents (father) in order to avoid the existence of slanders that circulate.

As stipulated in the Compilation of Islamic Law, Article 23 paragraph (1) says that "The guardian of the judge may act as the guardian of marriage if the guardian of lineage does not exist or cannot attend or is not known where he lives or is unseen or adlal or reluctant." In accordance with the Article, marriage series with the guardian attended judges are allowed. Article 21 paragraph (1) Compilation of Islamic Law states about anyone who can be a lineage guardian, namely as follows: "Lineage Guardian consists of four groups in the order of position, one group takes precedence and the other group according to the close relationship arrangement with the bride."

To avoid the occurrence of slander, the applicants at the same time formalize through Siri Marriage even though the condition of the guardian is not eligible. Here the applicants are only trying to maintain the benefit so as not to be libelous in society that they live together but not tied in a marriage. But it does not mean that the child of the applicant must also bear the guilt of the parents, the child should not lose their identity resulting in the position of the children also become unclear, due to the absence of the name of Applicant I as the biological father of the Children.

In these 2 cases, In the perspective of Islamic Law may say that the children of the applicants are illegitimate children or not recognized as legitimate children, but in the decision

of the Constitutional Court considers that the children not only have a civil relationship with the mother but the child also has a civil relationship with his biological father.

Although the Court rejected this case, but the Constitutional Court's decision was final. As is the case in the decision of the Constitutional Court of children like this is also recognized as a child who has a civil legal relationship with his mother and father. Based on the Decision of the Constitutional Court Number 46/PUU-VIII/2010, Article 43 paragraph (1) of Marriage Law Number 1 of 1974 says, Children born outside marriage only have a civil relationship with their mother and her mother's family. The absence of binding legal force as long as it means the loss of civil relations with men that can be proven by the science of technology or other evidence that is appropriate law turns out to have a blood relationship as his father, until the verse is read, children born outside marriage have civil relations with their mother and mother's family and with men as fathers that can be proven based on science and technology and/or other evidence according to the law has a blood relationship, including civil relations with the family of his father.

That in accordance with the decision of the Constitutional Court, the children of the applicants who are said to be children born out of wedlock are also entitled to have a civil relationship with Applicant I and the family of Applicant I and the child outside marriage is entitled to have a clear father and mother and is protected by Law. The child born must obtain Legal Protection of his Civil Rights from his mother's father because the child is innocent of his birth which is against his will.

When referring to the decision of the Constitutional Court, regardless of the mistakes by the Applicants as the parents of the children, that the child born does not bear the burden of sin from his parents. Children born out of wedlock retains civil rights and relationships with both parents.

In the decision of the Constitutional Court Number 46/PUU-VIII/2010 concerning the testing of Article 43 paragraph (1) Law Number 1 of 1974 gave birth to a new decision, that the position of the children born out of wedlock follows his biological father's lineage, this is explained in the ruling that the children born out of wedlock can be proven by technology science.

This verdict is based on justice, that the human being before the law has equal rights of duty. Therefore, children produced from outside marriage and legal children have an equal share in the law.

With this ruling, it can be proven through science/technology or other evidence about the existence of biological relationships of a child born from outside the legal marriage with his father, then the child has a civil relationship with the father and his father's family.

Thus ensuring that the children born out of wedlock has Civil Rights with his biological father, this will become the legal force of the child's position. It is based on the Law that the Law is obliged to provide protection and certainty of a just law for the position of a born child and his rights and to the Child born even though the abstention of marriage is still disputed. Hence the child can have a civil relationship with his father without the need for a statement from the father.

According to the Researchers, the decision of the Constitutional Court is the final ruling and must be executed. Hence it should take precedence the interest of the child by referring to the Decision Number 46/PUU-VIII/2010 concerning the testing of Article 43 paragraph (1) of Law Number 1 of 1974 which presents a new decision, that the children born out of wedlock not only has a relationship with his mother but has a relationship with his biological father as well, the status of the children born out of wedlock follow the biological father's lineage, this matter is explained in the verdict that explains that the child can be proven through science technology.

This verdict is based on justice, that the human being in the Law has the right of equal obligation, then the child resulting from outside marriage and the child legally have the same portion before the law. The provisions of the law stipulate that a valid child is a child born from a valid marriage. Among other things, the right of the child to live, grow and develop is not enough in providing legal protection, because the mother of the children born out of wedlock will face the many fulfillment of material or psychic needs of the child, but his father is not burdened with obligations and responsibilities. Therefore, the legal mind contained in Article 43 paragraph (1) of Law Number 1 of 1974 is an effort to provide Legal Protection to the rights of the child and make efforts to recover losses arising from the birth of the child outside the marriage. Along with the demands of the world who want to advance the civilization of Human Rights is also that pushed until created by the State Law and provisions that govern and provide protection of children, especially the children born out of wedlock that are not recognized valid. In its development in Indonesia, there are several Laws created by the State that apply to protect children, especially children born out of wedlock who are not recognized as legitimate. Some of these Laws has also provided protection for the children.

Substantively the Laws and regulations provided by the State are sufficient to ensure adequate protection for the child and coupled with the decision of the Constitutional Court which also provides strengthening and favoring the rights for children born outside of marriage illegally.

The State is also obliged to provide Legal Protection for the legal position of the children born out of wedlock, namely its relationship with its biological father which includes the rights as a child, namely by pouring the rule of law on the protection of the Civil Rights of the children born out of wedlock, as well as the right to be cared for by the parent, the right to obtain family name recognition including the right to bequeath to the children born out of wedlock.

That because the children born out of wedlock in the society is in a weak position, therefore the protection of the Law against the child is one way to protecting the buds of the Nation in the future. In a view of child protection and constitutional rights to identity, name and citizenship, the decision of the Constitutional Court proves that the child has a civil right to his biological father as a form of justice and Human Rights. The presence of the State through this ruling actually provides protection for children as not to lose the future and the rights of their biological fathers.

The State presents children like this and they are recognized as legitimate children even if it is not through legal marriage. The status of the child is recognized by the State and is not ignored by the State, the children still have biological relationships and civil relations of the mother and father. The State alone has given space to recognize and protect children born out of wedlock like this through this ruling, the State here is not neglectful and the State still provides protection to the status of children like this, because of course the consideration of the State is the future continuity of the child as not to eliminate their status.

The State also continues to strengthen that the child also has a civil relationship with his mother and father and the consequences relate to the rights that must be obtained from the father's inheritance if there is an inheritance. But in certain religions such as Islam, Extra-marriage has rights but is not referred to as inheritance but a mandatory grant. Children have rights but not called inheritance but in grants, so the obligation to give their rights not through legacy instruments but through grant instruments/grants.

The verdict opens the bright spot of the relationship between the children born out of wedlock to his/her father, the relationship between the father and the child according to the biological meaning can be strengthened by legal process, opening the possibility of the law for the father who must be responsible as a biological father and the father of the law through legal process by utilizing evidence based on science and technology or law.

4. CONCLUSION

In its development in Indonesia, there are several Laws and regulations created by the State that apply to protect children, especially children born out of wedlock who are not recognized as valid, this legislation has also provided protection or protection for children since they were in the womb. Related to the decision of the Constitutional Court Number 46/PUU-VIII/2010, children born out of wedlock not only have a relationship with the mother but also with her biological father by proven through DNA tests that can be used as a valid evidence in the case of determining the position of children born out of wedlock with her biological father.

Substantively, the legislation can be said to be sufficient and adequate in providing protection for the children and then coupled with the decision of the Constitutional Court that provides strengthening and favoring children born out of wedlock can also receive his civil rights as a legitimate Child. The government is more careful in making decisions by prioritizing the rights of the child and hence the government is more assertive in regulating the rules on the rights of children born out of wedlock that are not recognized as valid hence there is no injustice for the child. The government needs to strengthen various agencies/organizations that are partially tasked with handling legal protection for children. Hence the government can be more active in counseling about Siri Marriage because the impact is very detrimental, especially to the child who was born later and for the rights of the child.

Parents should also be willing to accept and validate their children hence the child has an equal position with the Legal Child, hence the child outside marriage does not feel discrimination and does not feel inferior in his/her environment hence in the future of the life's child can be better. In order for the future the Panel of Judges in deciding the case related to the Basic Application of The Child's Proposal to pay more attention to the rights of the Child. So the consequence is that the innocent child must lose the rights that should be accepted and become a part of it. The State alone has also provided protection for the children, which since from the womb of the child has been guaranteed the protection of his/her rights.

Where in the cases that researchers raised, the Panel of Judges did not refer to the consideration of the Decision of the Constitutional Court, when it is clear some Laws and regulations and the Decision of the Constitutional Court provides strengthening of the protection for the rights of children outside marriage. Therefore, it is expected that the Panel of Judges pay more attention in deciding the case, hence the rights of every innocent child are not harmed.

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