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The Responsibility of Biological Fathers Towards Children Born Outside of Marriage: The Dialectic of Constitutional Court Decision Number 46/PUU-VIII/2010 and the Fatwa of the Indonesian Ulama Council

Jusrihamulyono A.HM[1], Aria Roby Putra[2]

[1] Universitas Muhammadiyah Malang, Indonesia.
[2] Universitas Brawijaya, Indonesia.

*Correspondence author: jusrihamulyono@gmail.com

Highlights:

- Analyzing the Responsibilities of Biological Fathers in Constitutional Court Decision Number 46/PUU-VIII/2010
- Limits of Responsibility of Biological Fathers according to MUI Fatwa Number 11 of 2012
- The Dialectic Between the Constitutional Court's Decision and the MUI Fatwa: Meeting Points and Tension Points
- Practical Implications: Support, Wills, and Child Protection

Abstract: Constitutional Court Decision Number 46/PUU-VIII/2010 changed the constitutional interpretation of Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, so that children born outside of marriage no longer only have a civil relationship with their mother and their mother's family, but also with the man as their biological father as long as it can be proven through science and technology or other legally valid evidence. This decision caused a reaction from the ulama which was then responded to through the Fatwa of the Indonesian Ulema Council Number 11 of 2012 concerning the Status of Children Resulting from Adultery and Their Treatment, which limits the implications of the Constitutional Court Decision so that it is not interpreted as determining the relationship of lineage and mutual inheritance rights between children born outside of marriage and their biological father. This article aims to analyze the dialectic between the two legal products in determining the form and limits of the biological father's responsibility towards children born outside of marriage. This research uses a normative legal research method with a statutory approach, a conceptual approach,

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and a comparative approach between positive law and Islamic law. The results of the study indicate that the two norms are not completely contradictory: The Constitutional Court's decision places the biological father's responsibility within the general civil relationship framework, including the obligation of maintenance and support, while the MUI Fatwa maintains the principle of lineage in Islamic law that only flows from a valid marriage, while still imposing moral and material responsibility on the man who caused the child's birth through the instrument of a mandatory will. The meeting point between the two lies in protecting the child's best interests, while the point of tension lies in the status of lineage, marital guardianship, and the right of mutual inheritance.

Keywords: Responsibility; Biological Father; Illegible Child; Constitutional Court; Indonesian Ulama Council.

1. Introduction

Marriage is a legal event that gives rise to various legal consequences, one of which is the legal status of children born from the marriage. The problem becomes complex when a child is born without being preceded by a legal marriage bond, either religiously or state. Prior to 2012, Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage stated that children born outside of marriage only had a civil relationship with their mother and their mother's family. This provision implied that there were no legal obligations whatsoever for the man who caused the child's birth, including the obligation to provide maintenance or recognition of his status as a father (Nurjanah et al., 2025; Wildan et al., 2026).

This provision was then tested materially at the Constitutional Court. Through Decision Number 46/PUU-VIII/2010 which was read on February 17, 2012, the Constitutional Court changed the constitutional interpretation of Article 43 paragraph (1), by stating that a child born outside of marriage has a civil relationship not only with the mother and the mother's family, but also with a man as the 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 the father's family (Farahi & Ramadhita, 2016).

One of the Court's primary considerations was that children born out of wedlock should not bear the legal consequences of their parents' actions, thus obligating the state to provide equal protection and legal certainty for every child. This ruling essentially opens up legal responsibility for biological fathers, including in fulfilling the child's civil rights, even if the parents' marriage is invalid or not administratively registered (Setyawan & Sholikin, 2024).

The Constitutional Court's decision sparked widespread controversy, particularly among Islamic scholars who feared that the decision would be misinterpreted as a recognition of the familial relationship between children born out of wedlock and their biological fathers, which in Islamic law has far broader consequences than just civil relationships, namely concerning familial relationships, inheritance rights, and the position of guardian in marriage. Responding to these concerns, the Indonesian Ulema Council, through the 3rd Indonesian Fatwa Commission Ulama Conference in 2012, issued Fatwa Number 11 of 2012 concerning the Status of Children Resulting from Adultery and Their Treatment. This fatwa essentially affirms that children resulting from adultery do not have familial relationships, marital guardianship rights, and inheritance rights with the man who caused their birth, but still imposes moral

and material responsibilities on the man, including through the provision of a certain amount of property as a form of accountability or through the mandatory will mechanism (Parnomo & Hidayati, 2023).

The presence of two legal products born from different authorities and paradigms: the Constitutional Court Decision as a final and binding positive law, and the MUI Fatwa as a form of collective ijtihad of ulama that does not have formal binding legal force but has strong religious authority in society, giving rise to its own dialectic in the practice of family law in Indonesia. Previous research shows that the implementation of these two instruments in the religious court environment has not been uniform; some judges adopt the Constitutional Court Decision to provide protection for children's civil rights through scientific evidence including DNA testing, while others place more emphasis on the MUI Fatwa to maintain the purity of lineage by strengthening the goal (hifz al-nasl). This condition underlies the importance of an in-depth study of the dialectic between these two norms, especially from the perspective of the form and limits of the biological father's responsibility (Laela et al., 2026).

Studies on the status and responsibilities of biological fathers towards illegitimate children following Constitutional Court Decision No. 46/PUU-VIII/2010 have become the subject of numerous legal researches in Indonesia, from both positive law and Islamic law perspectives, as well as comparative studies between the two. Broadly speaking, previous studies can be divided into three major groups: those that affirm the expansion of civil rights for illegitimate children following the Constitutional Court Decision, those that examine the limits of Islamic law on such expansion, and those that explicitly examine the dialectic between the two norms (Hutasoit et al., 2024; Salam, 2023).

The first group is represented by a number of studies that highlight how the Constitutional Court Decision Number 46/PUU-VIII/2010 expands the civil rights of illegitimate children. The Constitutional Court of the Republic of Indonesia (2010) itself, through its ruling, declared Article 43 paragraph (1) of the Marriage Law to be conditionally unconstitutional as long as it is not interpreted to mean that illegitimate children also have a civil relationship with their biological father that can be proven through science and technology, such as DNA testing, which has implications for the recognition of lineage status, maintenance, and inheritance rights from a civil perspective. This finding is reinforced by (Suyanto, 2015) and (Ningrum, 2015) who show that proving blood relations can elevate the status of illegitimate children to legitimate children if legalized, thereby obtaining inheritance rights equivalent to legitimate children depending on the other existing heir groups. In line with this, (Wicaksana & Kambela, 2023) emphasized that the decision provides equal rights to illegitimate children with legitimate children, including the right to include the father's name on the birth certificate, maintenance, guardianship, and inheritance rights, although they also noted that there is a discrepancy with Islamic law which only recognizes the relationship with the mother.

The Constitutional Court's decision provides a legal basis for illegitimate children to obtain inheritance rights from the paternal line as long as the blood relationship can be legally proven. This opinion aims to highlight that the decision also helps eliminate the stigma of "children without a father" while guaranteeing inheritance rights from biological fathers (Judiasih et al., 2024).

The second group consists of research that places the expansion within the framework of maqashid sharia, specifically the principles of hifzhu al-nafs (preservation of the soul) and hifzhu nasl (preservation of offspring) (Hayat, 2020). (Ridwansyah, 2015) found that the right to support illegitimate children after the Constitutional Court Decision is in line with the concept of hifzhu al-nafs to protect the soul and basic rights of children, as long as its implementation continues to follow the evidentiary

procedures established by the Constitutional Court. (Parnomo & Hidayati, 2023) expanded this analysis by reviewing the status of illegitimate children after the Constitutional Court Decision and the MUI Fatwa Number 11 of 2012 through the five principles of maqashid sharia al-khamsah, namely: religion, soul, mind, offspring, and property, which concluded that both norms, although differently constructed, are both directed at providing legal protection for children.

From the classical jurisprudence perspective, al-Zuhaili emphasized the view of the majority of scholars that children resulting from adultery are only related to their mother even though there is recognition from the man concerned (Tarihoran et al., 2023), as an effort by sadd al-dzari'ah to maintain the purity of lineage, a view that is one of the main references for the Fatwa of the Indonesian Ulema Council Number 11 of 2012 concerning the Position of Children Resulting from Adultery and Their Treatment, which expressly stipulates that children resulting from adultery do not have a relationship of lineage, marriage guardian, inheritance, and maintenance with their biological father, but can still impose the obligation of living expenses and mandatory wills on the man as a form of ta'zir to protect the child's rights (Izudin, 2023).

The third group directly dialectically compares the Constitutional Court Decision and the MUI Fatwa, finding that the Constitutional Court Decision opens up space for recognizing a child's civil relationship with their biological father through DNA testing which has implications for the rights of lineage, maintenance, and potential inheritance rights, but this creates legal dualism with the MUI Fatwa which limits lineage, inheritance, and guardianship only to the mother even though both are claimed to have the same goal, namely to provide protection without discrimination to children (Judiasih et al., 2024; Zubaidah, 2023).

Based on the mapping of previous research, it can be identified that most studies tend to stop at one of two poles: affirming the expansion of civil rights of illegitimate children after the Constitutional Court Decision, or affirming the limits of lineage according to Islamic law as regulated by the MUI Fatwa. Research that specifically focuses on the form and limits of biological fathers' responsibilities by clearly separating "civil/material responsibilities" and "lineage status according to sharia" as two different categories that can run side by side is still relatively limited. This void is what this study attempts to fill, by positioning the dialectic between the Constitutional Court Decision Number 46/PUU-VIII/2010 and the MUI Fatwa Number 11 of 2012 not as absolute contradictions, but as two legal constructions that complement each other in formulating the responsibilities of biological fathers that are just for children.

Based on the description, the formulation of the problem raised in this study is: (1) What is the form of responsibility of a biological father towards children outside of marriage according to the Constitutional Court Decision Number 46/PUU-VIII/2010? (2) What are the limits of responsibility of a biological father towards children outside of marriage according to the Fatwa of the Indonesian Ulema Council Number 11 of 2012? (3) What is the dialectic between the Constitutional Court Decision and the MUI Fatwa in determining the form and limits of responsibility of a biological father towards children outside of marriage.

2. Methods

This study uses a normative legal research method (normative juridical) that examines law as written norms or law in books (Ibrahim, 2006; Marzuki, 2021). The approaches used include a statute approach to Law Number 1 of 1974 concerning Marriage and its amendments, Constitutional Court Decision

Number 46/PUU-VIII/2010, and MUI Fatwa Number 11 of 2012; a conceptual approach to examine the concepts of civil liability and lineage in Islamic law; and a comparative approach to compare the construction of biological paternal responsibility in positive law and Islamic law (Soekanto, Soerjono, 2011). The legal materials used consist of primary legal materials in the form of laws and regulations, court decisions, and fatwas, as well as secondary legal materials in the form of books, scientific journals, and relevant previous research results, collected through library research. The analysis was carried out qualitatively using descriptive-analytical and prescriptive techniques.

3. Results

1). Responsibility of Biological Father in Constitutional Court Decision Number 46/PUU-VIII/2010

Constitutional Court Decision Number 46/PUU-VIII/2010 arose from a request for material review of Article 2 paragraph (2) and Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage. Prior to this decision, children born outside of a legal marriage were only recognized as having a legal relationship with their mother and their mother's family, so that the man who caused the child's birth was completely free from any legal responsibility. The Constitutional Court considered that this provision did not provide fair protection and legal certainty for children, because children could not be held responsible for their parents' marital status.

Through its ruling, the Constitutional Court stated that a child born out of wedlock has a civil relationship with his mother and his mother's family, as well as with a man as his father who can be proven based on science and technology and/or other evidence according to law, is actually related by blood as his father (Agatha, 2021). This construction places the responsibility of the biological father within the framework of a civil relationship, not a lineage relationship in the sense of fiqh. The implication is, as long as the blood relationship can be proven, for example through a DNA test or other valid evidence from the biological father, he can be held responsible for civil responsibilities, including obligations to care for, support, and fulfill the child's living needs, even though this status does not automatically give rise to inheritance rights in the sense of inheritance law applicable to legitimate children (Judiasih et al., 2024). From a private law theory perspective, this construction aligns with the principle of civil liability arising not solely from marital status, but from blood relations and biological facts that give rise to legal consequences (Agatha, 2021). The Constitutional Court's decision thus broadens the basis for a father's civil liability, from being purely based on marital status (marital presumption) to also considering biological facts (genetic reality), a shift that some consider progressive in protecting the child's best interests, but others consider potentially interpreted beyond its original intent, namely as if it also legitimizes bloodline and inheritance relationships.

2). Limits of the Biological Father's Responsibility according to MUI Fatwa Number 11 of 2012

The Indonesian Ulema Council Fatwa Number 11 of 2012 concerning the Status of Children Resulting from Adultery and Their Treatment was born as a religious response to concerns that the Constitutional Court Decision Number 46/PUU-VIII/2010 would be misinterpreted as establishing a lineage relationship between an illegitimate child and his biological father. In the perspective of classical fiqh, a child's lineage to his father can only be established through a legal marriage (al-firasy) or through a relationship that resembles it (wathi syubhat), so that a mere biological relationship without a legal

marriage bond does not in itself create lineage (Satria & Hanapi, 2024). This principle is closely related to one of the main objectives of sharia (maqashid asy-syari'ah), namely hifz al-nasl or the preservation of lineage (Parnomo & Hidayati, 2023). Based on this principle, the MUI Fatwa emphasizes that children resulting from adultery only have a lineage relationship, inheritance rights, and guardianship relationship in marriage with their mother and their mother's family, as stipulated in Article 43 paragraph (1) of the Marriage Law before its interpretation was changed by the Constitutional Court. For the man who gave birth to the child, the MUI Fatwa does not determine the lineage relationship or inheritance rights, but still opens up space for moral and material responsibility, including the obligation to give part of his assets to the child through the mandatory will mechanism, as a form of substantive justice without having to change the lineage status (Agatha, 2021; Dhofir & Jannah, 2024).

With this construction, the MUI Fatwa does not actually reject the idea of biological paternal responsibility itself, but rather rejects that responsibility be interpreted within the framework of lineage and inheritance as it applies to legitimate children (Ilhami, 2018). This fatwa implicitly distinguishes between "responsibility due to blood relations" (which can be accepted as a form of justice and child protection) and "lineage in the Islamic sense" (which only arises from a legal marriage). This distinction is key to understanding that the MUI Fatwa is not merely a form of rejection of the Constitutional Court Decision, but rather an effort to limit the scope of its interpretation so that it does not go beyond the corridors of Islamic law.

3). The Dialectic Between the Constitutional Court Decision and the MUI Fatwa: Meeting Points and Tension Points

A study of these two legal instruments shows that the relationship between the Constitutional Court Decision and the MUI Fatwa is not entirely contradictory, but rather is more accurately understood as a dialectic between two legal paradigms with different normative bases, but with largely consistent outcomes. The common ground between the two can be identified in at least three ways. First, both norms are based on the principle that children should not bear legal consequences or "sins" for their parents' marital status or actions. Second, both norms open up material liability for men who cause the birth of a child outside of marriage, albeit through different legal instruments: the Constitutional Court Decision through general civil relations, while the MUI Fatwa through the mandatory will mechanism. Third, both place proof of biological relationship, including through science and technology, as a crucial element in determining such responsibility (Agatha, 2021; Laela et al., 2026).

The tension between the two lies in the legal status inherent in the relationship. The Constitutional Court's ruling uses the term "civil relationship" broadly, potentially interpreted to include inheritance rights as applicable to legitimate children, while the Indonesian Ulema Council (MUI) Fatwa explicitly limits the relationship to the point that it does not give rise to lineage, rights of guardianship, or mutual inheritance rights according to Islamic inheritance law. This difference in perspective has implications for disparities in religious court practice, as found in recent research that some judges tend to follow a broad interpretation of the Constitutional Court's ruling, while others use the MUI Fatwa as the primary guideline in deciding cases regarding the civil status of illegitimate children (Laela, 2024). This disparity creates legal uncertainty for the parties, particularly the children, whose interests should be most protected.

From a private law theory perspective, this dialectic essentially reflects the classic tension between the status-based legal approach, which emphasizes that civil rights and obligations arise from the institution of legal marriage, and the fact-based legal approach, which emphasizes that these rights and obligations can arise from the mere fact of blood relationship. The Constitutional Court's decision tends toward the second approach without completely abandoning the first, while the MUI Fatwa maintains the first approach as a basis of lineage, but accommodates the second approach as a basis for moral-material responsibility through a mandatory will. The point of intersection between the two, therefore, can be formulated as follows: blood relationship does not create lineage according to Islamic law, but can still give rise to civil responsibility in the form of maintenance and fulfillment of children's basic rights.

4). Practical Implications: Support, Wills, and Child Protection

In practical terms, the dialectic between the Constitutional Court Decision and the MUI Fatwa has several implications for protecting the rights of children born outside of marriage. First, in terms of fulfilling daily living needs, the Constitutional Court Decision provides a stronger legal basis for mothers to demand financial support from biological fathers through civil law, regardless of the parents' marital status, as long as the blood relationship can be proven. Second, in terms of the distribution of assets, the mandatory will mechanism, as emphasized by the MUI Fatwa, can be a compromise that provides a portion of assets to illegitimate children without having to change the family status and without creating further implications for the inheritance rights of the biological father's legitimate children. Third, in terms of population administration, both norms emphasize the importance of scientific evidence, including DNA testing, as an instrument to ensure legal certainty for children.

However, the lack of explicit harmonization between these two norms in the form of legislation or technical guidelines for judges has resulted in inconsistent implementation in the field. Family law reform is needed, either through a revision of the Compilation of Islamic Law or through the issuance of technical guidelines by the Supreme Court, so that the principle of biological paternal responsibility can be consistently applied without sacrificing legal certainty regarding lineage and inheritance. Such measures will ensure that the protection of the child's best interests, a key point of contact between positive law and Islamic law, can be realized without creating a prolonged conflict of norms.

4. Conclusion

Based on the discussion above, it can be concluded that: first, Constitutional Court Decision Number 46/PUU-VIII/2010 places the responsibility of biological fathers towards children born outside of marriage within the framework of civil relations arising from the fact of blood relations, including the obligation of maintenance and support, without limiting itself to the marital status of the parents. Second, MUI Fatwa Number 11 of 2012 limits the implications of the Constitutional Court Decision by emphasizing that blood relations alone do not give rise to lineage, rights of marriage guardianship, and inheritance rights according to Islamic law, but still opens up space for the moral-material responsibility of biological fathers through the mechanism of mandatory wills. Third, the dialectic between the two shows a meeting point in the principle of protecting the best interests of children and recognizing the material responsibility of biological fathers, while the point of tension lies in the status of lineage, marriage guardianship, and the right to mutual inheritance, which in practice gives rise to disparities in decisions within the religious courts.

Normative harmonization is needed between the spirit of Constitutional Court Decision Number 46/PUU-VIII/2010 and the principles of Islamic law as reflected in the MUI Fatwa Number 11 of 2012, both through the renewal of family law legislation and the issuance of technical guidelines by the Supreme Court for religious court judges, in order to ensure legal certainty and consistency of decisions in cases concerning the status and responsibilities of biological fathers towards children born outside of marriage. Further research of a juridical-empirical nature is also needed to directly examine the pattern of decisions of religious court judges after the birth of these two norms.

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