

THE JUSTICE FOR ILLEGITIMATE CHILDREN OF INDONESIAN WOMEN WORKERS THROUGH CONSTITUTIONAL COURT DECISION NO. 46/PUU- VIII/2010

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Abstract

The position of children out of marriage in everyday life by some people is seen as low, on the other hand in terms of welfare and civil rights still get limitations. This research focuses on the implementation of Constitutional Court Decision No. 46/ PUU-VIII /2010 on illegitimate children of Indonesian Women Workers. The research confirmed that the addition of Article 43 paragraph (1) made by the Constitutional Court through Decision No. 46/PUU-VIII/2010 is not only limited to the right to protection but has a very broad meaning that also includes illegitimate children born to Indonesian Women Workers. In accordance with the principle of equality before the law, the law must provide fair protection and legal certainty. The findings of this study revealed that illegitimate children of migrant workers can obtain constitutional rights as Indonesian citizens adhering to the principles of the rule of law. Therefore, the Constitutional Court's decision does not only affect children's inheritance rights, but also has implications for guaranteeing and protecting illegitimate children born to migrant workers, such as the right to earn a living, guardianship rights, and the right to get child support from a biological father.

Keywords: Children; Illegitimate Children; Migrant Workers

1. INTRODUCTION

Child protection at the community level starts from primary and secondary prevention services to tertiary services. Primary prevention services aim to strengthen the community's overall capacity to care for children and ensure child safety. These services include activities that change attitudes and behaviors, strengthen parenting skills, and make communities aware of the unintended consequences of child abuse. Secondary prevention or early intervention services focus on families and children at risk by changing circumstances before violent behavior has a real adverse impact on children, for example through family counseling and mediation and economic empowerment. Tertiary intervention

addresses situations where children are already in crisis due to violence, abuse, exploitation, neglect or other harmful acts.¹

Child protection law that applies as positive law in Indonesia is only limited to regulating child protection at a conventional level, such as the rights and obligations of children, childcare, parental care (maintenance) by children, child recognition, child attestation, and others which are generally found in several legal systems both according to the Western Civil Law system (hereinafter referred to as the Civil Code), the Customary Law system, the Islamic Law system, as well as in various laws and regulations, for example Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage (hereinafter referred to as Law No. 1 of 1974 concerning Marriage), Law No. 23 Year 2006 on Population Administration, and others.

In the Convention on the Rights of the Child, a child is any person who has not reached the age of 18 years.² Indonesia ratified the convention on August 25, 1990 through Presidential Decree No. 36/1990 and it entered into force in Indonesia on October 5, 1990.³ According to the Civil Code, children can be divided into 2 (two) positions, namely legal children (*wettige kinderen*) and illegitimate children/children outside of marriage (*onwettige kinderen*). Article 42 of the Marriage Law regulates the definition of legal children, but the definition of illegitimate children is not found in the law, only Article 43 regulates the consequences of illegitimate children only having a civil relationship with their mother and their mother's family. There are relatively many laws that provide regulations on children in Indonesia, including the 1945 Constitution of the Fourth Amendment, Marriage Law PP No. 21 of 1994, Law No. 35 of 2014 concerning Child Protection, Law No. 4 of 1979 concerning Child Welfare. The implementation of child protection must be sustainable and directed to ensure the growth and development of children both physically, mentally, spiritually and socially. The implementation of child protection aims to realize the best life for children who are expected to be the successors of the nation in the future and have a spirit of nationalism based on noble morals and values.

Legal arrangements that guarantee legal protection for legitimate children born from or in a legal marriage are not so problematic, but what if the child is born from a marriage that is not recognized by the state or a child born outside a legal marriage. The issue of illegitimate children has always been a problem in society, both regarding community

¹ Sri Siswati, Yulia Hartati, Nizwardi Jalinus, "Tantangan Analisis Kebijakan Pencegahan Kekerasan Seksual Terhadap Anak Dengan Mengembangkan Media Teknologi Informasi", *International Journal of Natural Sciences and Engineering*. 2, No. 2, (2018), 59-64. <https://doi.org/10.23887/ijnse.v2i2.17151>

² Yan Mangandar Putra, L. Sabardi, L. Parman, "Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana Persetubuhan Dalam Sistem Peradilan Pidana Anak (Kajian Atas Putusan Pengadilan Negeri Selong Nomor 04/Pid. Sus.Anak/2015/Pn.Sel)", *Jurnal IUS Kajian Hukum dan Keadilan*, 4 No. 2 (2018) 293-306, <https://jurnalius.ac.id/ojs/index.php/jurnallUS/article/view/561>

³ I Ketut Sudantra, I Gusti Ngurah Dharma Laksana, "Di Balik Prevalensi Perkawinan Usia Anak Yang Menggelisahkan: Hukum Negara Versus Hukum Adat", *Jurnal Ius Kajian Hukum Dan Keadilan* 7 No. 1 (2019), 58-71, <https://jurnalius.ac.id/ojs/index.php/jurnallUS/article/view/594>

relations and regarding their rights and obligations.⁴ The position of children outside of marriage in everyday life is very difficult, on the one hand because of their status by some people they are seen as low and despicable, on the other hand, in terms of welfare and civil rights they are still limited.

According to the law, humans from birth become supporters of rights and obligations without exception⁵. Likewise with children out of marriage, they are also supporters of rights and obligations like other members of society.⁶ Therefore, children out of marriage are also entitled to legal protection, including in the field of civil rights, as can be that all citizens are equal before the law. As it is known that legal subjects are humans and legal entities, children are part of legal subjects. No child should experience discrimination in terms of human rights. This is in accordance with the provisions of Article 27 paragraph (1) of the Fourth Amendment of the 1945 Constitution (hereinafter referred to as the 1945 Constitution) which states that as the next generation of development and future leaders of the nation, but in reality there are still many children who have not enjoyed their rights. Legal protection of children's rights through legislation can be realized if the legal material is in accordance with the spirit, values, principles, and legal principles regarding children.⁷

The problem that the researcher will analyze is about illegitimate children born to Indonesian Women Workers who work abroad and children obtained outside of a legal marriage according to the state. Every policy issued by the government has drawn protests from many women activists, academics and observers of TKW. The existing policies do not provide clarity and follow-up, while the fate of TKW is increasingly tragic and seems to be ignored. In fact, Indonesian workers (hereinafter referred to as TKI) abroad are dominated by female workers (TKW) who are one of the driving forces of development in Indonesia. They have contributed greatly to development in Indonesia, such as being the second largest contributor to the country's foreign exchange after oil and gas. The average foreign exchange earnings of migrant workers are 6 to 7 billion US dollars per year.⁸

One of the most worrying problems of these migrant workers is the increasing number of migrant workers returning to Indonesia with unmarried children. For migrant workers, having a child or getting pregnant out of marriage while working abroad is a disgrace that must be hidden. Therefore, they try to cover it up so that

⁴ Hamiyuddin, "Kedudukan Anak Di Luar Nikah Di Indonesia", *Musawa* 10 No.1 (2018), 159-190, <https://doi.org/10.24239/msw.v10i1.391>

⁵ Dede Kania, "Hak Asasi Perempuan dalam Peraturan Perundang-Undangan di Indonesia", *Jurnal Konstitusi* 12 No. 4 (2015), DOI: <https://doi.org/10.31078/jk1243>

⁶ Riduan Syahrani, *Seluk-Beluk dan Asas-Asas Hukum Perdata*, (Bandung: Alumni, 2013), 41

⁷ Haniah Ilhami, Destri Budi Nugraheni, Tata Wijayanta, "Child Protection Post the new Marriage law :how indonesian religious Court interpreting the urgency in Child-age Marriage", *Jurnal Ius Kajian hukum dan Keadilan*, 11, No. 1 (2023), 76-95, DOI: <http://dx.doi.org/10.29303/ius.v11i1.1054>

⁸ Badan Perlindungan Pekerja Migran Indonesia, Studi Kompleksitas Dinamika Permasalahan TKI Penata Laksana Rumah Tangga, Executive Summary 2021

relatives back home do not know about it.⁹ Take Anni (42 years old), a migrant worker working in Hong Kong who was pregnant by a man from Hong Kong but did not want to take responsibility for Anni's pregnancy. Anni eventually returned to Indonesia with the baby in her womb without any clear certainty about her child's future. Apart from Anni, there are still many migrant workers working abroad who become pregnant out of marriage. If they are lucky, they will be assisted by the Indonesian Embassy, but there are also those who get pregnant and give birth in the country where they work.¹⁰

In connection with the fulfillment of the rights of illegitimate children, as is known on Friday, February 17, 2012, the Constitutional Court again made a historic decision by stating that illegitimate children also have a civil relationship with their biological father through Constitutional Court Decision Number 46/Puu-VIII/2010, which in the provisions of Article 43 paragraph (1) of the Marriage Law stipulates that children born outside of marriage only have a civil relationship with their mother and their mother's family¹¹. Then whether the Constitutional Court Decision Number 46/Puu-VIII/2010 (hereinafter referred to as MK Decision Number 46/Puu-VIII/2010) can provide legal protection to illegitimate children born to Indonesian female workers with foreign nationals.

This study uses a normative juridical and analytical descriptive approach by solving the problem under study, namely the implementation of the Constitutional Court Decision Number 46/PUU-VIII/2010 concerning the illegitimate child of migrant workers linked to applicable regulations, judges' jurisprudence, legal theories. So that it will produce a novelty of legal protection for migrant workers' illegitimate children.¹²

2. ANALYSIS AND DISCUSSION

2.1 Legal Protection of Indonesian Women Workers

An Indonesian Worker is any Indonesian citizen who is eligible to work abroad in a working relationship for a certain period of time by receiving wages. (Article 1 point 1 of Law Number 38 of 2004 concerning Placement and Protection of Indonesian Workers Abroad). Indonesian Workers, hereinafter referred to as TKI (2), is every Indonesian citizen who is eligible to work abroad in employment for a certain period of time by receiving wages. (Article 1 point 1 of Law Number 39 of 2004 concerning Placement and Protection of Indonesian Workers Abroad).

⁹ Hazar Kusmayanti, Agus Mulya Karsona, "Perlindungan Hukum terhadap Anak Diluar Perkawinan bagi Tenaga Kerja Wanita di Kabupaten Cianjur", AJUDIKASI: Jurnal Ilmu Hukum, 4 No. 1, (2020). 39-54, <https://doi.org/10.30656/ajudikasi.v4i1.2162>

¹⁰ Benny Chia Lung Lu, Zachary Tsung Hsien Lee, TKW di Hongkong: Kehamilan jadi alasan menetap di Hongkong, <https://www.bbc.com/indonesia/majalah-49093185>

¹¹ Arinie Sherlita Cholís, The Legal Standing & Inheritance Right for Out-of-Wedlock Child in Terms of Civil Inheritance Law, *Audito Comparative Law Journal*, Vol. 1, Issue 2, 2020, hlm. 71-77, <https://doi.org/10.22219/audito.v1i2.13759>.

¹² Muhammad Siddiq, *Penentuan Metode dan Pendekatan Penelitian Hukum*, (Banda Aceh: Lembaga Kajian Konstitusi Indonesia, 2022), 73.

Article 27 paragraph (2) of the 1945 Constitution states that every citizen has the right to work and a livelihood worthy of humanity. Employment opportunities in the country are in fact very limited, while the number of the labor force is increasing, this has led to increased unemployment. Employment opportunities abroad are still open with the level of wages offered is quite adequate, this fact makes Indonesian workers try to find work abroad.

Furthermore, Article 28 I paragraph (1) of the 1945 Constitution states that the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive laws are human rights that cannot be reduced under any circumstances. The provision of Article 28 paragraph (1) of the 1945 Constitution means that equal opportunity and treatment is the right of every citizen in all fields of life, whether economic, social, cultural, political and labor.¹³

Labor in Indonesia, as one of the drivers of economic life and is a resource that is abundant in Indonesia and the low or lack of employment opportunities provided. Economic conditions that are less attractive in their own country and income that is large enough and appears more attractive in the destination country trigger international labor mobility. Increased income in developing countries to cross national borders, globalized information and ease of transportation also play a role in increasing international labor mobility. The protection of labor placement abroad is closely related to the management and arrangements made by various parties involved in sending Indonesian workers abroad. To regulate the placement of labor abroad. Indonesia has established a mechanism through three phases of placement responsibility, namely the phase before placement abroad, during placement abroad and after placement abroad.

Labor in Indonesia as one of the drivers of economic life and resources is a major problem in the number of unemployment in Indonesia and the low or lack of jobs provided. Less attractive economic conditions in one's own country and sizable and seemingly more attractive incomes in destination countries have triggered international labor mobility. Increased income in developing countries to cross national borders, globalized information and ease of transportation also play a role in increasing international labor mobility. The protection of labor placement abroad is closely related to the management and arrangements made by various parties involved in sending Indonesian workers abroad. To regulate the placement of labor abroad. Indonesia has established a mechanism through three phases of placement responsibility, namely the phase before placement abroad, during placement abroad and after placement abroad.

¹³ Nurjannah S, "The Principles Of Anti-Discrimination And Protection Of Maternal Rights Of Female Laborers Viewed From The Perspective Of Gender Equality", *Jurnal IUS Kajian Hukum dan Keadilan* 1 No. 1 (2013), 32-42, <https://doi.org/10.12345/ius.v1i1.224>

The author takes data from the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia, in January 2016 alone there have been gradual repatriation of migrant workers from Saudi, Jordan, Kuwait and Qatar. There were 392 migrant workers consisting of 184 people from Jeddah and 208 people from Jordan, the number of migrant workers repatriated from Jeddah and Ammaan amounted to 340 people consisting of 339 women and 1 man including 36 babies and 14 children. They arrived at Soekarno Hatta Airport, Jakarta. They were repatriated due to overstaying, incomplete documents, or expired passports and visas.¹⁴

Regulations regarding the placement of Indonesian workers abroad are regulated in Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad. Soepomo in Muslan states that legal protection of labor can be divided into 3 (three) types, namely:

1. Economic protection, namely labor protection in the form of sufficient income, including if the labor cannot work against its will.
2. Social protection, namely labor protection in the form of occupational health insurance, freedom of association and protection of the right to organize.
3. Technical protection, namely labor protection in the form of work security and safety.¹⁵

Legal protection for migrant workers working abroad is to ensure the welfare of themselves and their families, as well as to eliminate aspects of trafficking in persons including slavery and forced labor, victims of arbitrary acts of violence, crimes against human dignity, and other treatment that violates human rights. This legal protection applies to migrant workers working abroad in general (documented and undocumented).

2.2. Implementation of Constitutional Court Decision No. 46 / PUU-VII / 2010 for Unmarried Children of TKW

Children as offspring (afstamming) are also understood in the context of blood relations between parents and their children.¹⁶ With marriage, it will produce offspring, which is the origin of the child so that there is a blood relationship between the parents and the child. According to Law No. 36 of 2014, a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. The UN General Assembly on November 20, 1990 in New York held the Convention on the Rights of the Child (CRC), which resulted in the formulation of Article 1 of the Convention on the Rights of the Childs Assembly which states that; Child is every person under the age of 18 years, unless under the law applicable to the child maturity has been obtained earlier. According to the Civil Code, children or offspring are divided into 2 (two) positions,

¹⁴<https://www.kemenpppa.go.id/index.php/page/read/30/373/tenaga-kerja-indonesia-tni-dari-timur-tengah-dip-ulkan/vbqbm-menu-51.html>, accessed on Mey 20, 2023.

¹⁵ Ashabul Kahf, "Perlindungan Hukum Terhadap Tenaga Kerja", *Jurisprudentie*, 3 No. 2, (2016), 59-72, <https://doi.org/10.24252/jurisprudentie.v3i2.2665>.

¹⁶ Zaeni Ayhadie, *Hukum Keluarga (Menurut Hukum Positif di Indonesia)*, (Depok : Rajawali Pers, 2020), 65.

namely legitimate children (*wettige kinderen*) and illegitimate children / children outside of marriage (*onwettige kinderen*).

Article 2 paragraph (1) of the Marriage Law states that a valid marriage is a marriage conducted according to the laws of each religion and belief. Furthermore, it is explained in Article 42 of the Marriage Law which states that a legitimate child is a child born in or as a result of a legal marriage. So that the position of children in the Marriage Law applies the principle that legitimate offspring are based on a legal marriage. Then he continued by giving the position of legitimate children according to positive law or state law.

According to the term Paul Scholten, what is meant by unmarriage children is unmarriage children outside of discordant children and adulterous children who have a legal relationship with the heir and are hereinafter referred to as unmarriage children only¹⁷. Some terms in a broad sense that are often used are Unmarriage children or illegitimate children or natural children (*onwettige, onechte, natuurlijke kinderen*) are children born to parents who are not bound in a marriage.¹⁸ Unlike the case with a marriage that is carried out underhand, namely without a marriage registration, the position of the child is indeed a legitimate child, only under religious law, while under positive law it is not as a legitimate child or not recognized as a legitimate child, but as an unmarriage child who only has a civil relationship with the mother and her mother's family. This is stated in Article 43 of the Marriage Law. Based on the above description, the definition of a child can be expanded into legitimate children, illegitimate children, foster children, and adopted children. A legitimate child is a child born in a legal marriage between a woman and a man. Legal children are usually supported by material data, for example, having a birth certificate as an identity of the origin of the two parents.

The existence of proof of a birth certificate supplemented by the parents' marriage certificate proves that the child is a legitimate child. Birth Certificate The right to identity is the first right that must be obtained by children as stipulated in Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection Article 27 paragraph (1) states that the identity of each child must be given from the time of his birth and the identity is included in the birth certificate¹⁹. The position of children born outside marriage according to Marriage Law Article 43 paragraph (1) is that children born outside marriage only have a civil relationship with their mother and their mother's family. The husband can deny the validity of the child born by his wife if the husband can prove that his wife has

¹⁷ Novika Triwati, Muhammad Reza Ginting, Rumelda Silalahi, "Kedudukan Anak Di Luar Perkawinan Dalam Pewarisan Menurut KUHPerdata", *Jurnalrectum*, 4 No. 1, (2022), 157 – 173., <http://dx.doi.org/10.46930/jurnalrectum.v4i1.1455>

¹⁸ Michella Gabriel Halim, Robert N. Warong, Grace Y. Bawole, "Perlindungan Hukum Terhadap Hak Keperdataan Anak Yang Lahir Di Luar Perkawinan Pasca Putusan Mahkamah Konstitusi No. 46/Puu-VIII/2010", *Lex Privatum* 9 No. 12, (2021), 27-36.

¹⁹ Hasnah Aziz, "Perlindungan Hukum bagi Anak dalam Memperoleh Akta Kelahiran Berdasarkan Prinsip-Prinsip Perlindungan Anak", *Lex Jurnalica* 15 No.1, (2018), 56-66.

committed adultery and the court will give a decision on the validity of the child. In a legal marriage, if there is a father's denial of a child born to his wife who is proven to have committed adultery, then civilly it will result or will place the child's position as an unmarried child.²⁰

On February 2012, the Constitutional Court decided on a judicial review of the Marriage Law. The existence of a judicial review that has been conducted by the Constitutional Court is a sign that there is unrest and discomfort with the formulation of arrangements related to the position of unmarried children contained in the Marriage Law, especially those listed in Article 2 paragraph (2) and in Article 43 paragraph (1). In accordance with the Decision of the Constitutional Court Number 46/PUU-VIII/2010 which has decided that Article 43 paragraph (1) of the Marriage Law which reads "children born outside marriage only have a civil relationship with their mother and their mother's family", does not have binding legal force insofar as it is interpreted to eliminate civil relationships with men who can prove that he has a blood relationship as his father based on science and technology and / or other evidence that is valid according to law. After the decision, the paragraph should read, "children born out of wedlock only have a civil relationship with their mother and mother's family and with the man as their 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".

So with the decision of the Constitutional Court, there has been another form of protection for extra-marital children. This is to determine an unmarried child in order to obtain the status of his biological father is by means of a Deoxyribose Nucleic Acid test (hereinafter referred to as DNA) or genetic test where the results of the examination will show suitability and can be proven before the law.²¹ So that based on the decision issued by the Constitutional Court, a child born outside of marriage can later have a civil relationship with the man who is the father as long as it can be proven based on science and technology and / or other evidence that the child really has a blood relationship with the man. Since the issuance of the Constitutional Court's decision, children born out of wedlock and their mothers can fight for their rights as children to the man who is their biological father. If it is proven based on science and technology and/or other evidence that the child really has a blood relationship with the man, not only with his mother and his mother's family, then the child will have a civil relationship with the father and his father's family.²²

²⁰ Faris Achmad Ibrahim, Hufron dan Sri Setyadji, "Penyangkalan Anak Dalam Perspektif Hukum Di Indonesia (Studi Kasus Penetapan Pengadilan Agama Surabaya Nomor 0792/Pdt.G/2014/PA.Sby)", *Jurnal Yustitia* 21 No. 1, (2020), 65-84 . <http://dx.doi.org/10.53712/yustitia.v21i1.816>.

²¹ Sanny Budi Kusuma, "Proses Pembuktian Seorang Anak Luar Kawin Terhadap Ayah Biologisnya Melalui Tes DNA", *Kertha Semaya: Journal Ilmu Hukum*, 01 No.10 (2013), 1-5

²² Ni Wayan Sri Eka Lestari, Ketut Sudiartama, Si Ngurah Ardhyana, "Tinjauan Yuridis Terkait Pengakuan Dan Pengesahan Anak Luar Kawin Menurut Hukum Positif (Studi Putusan Nomor 45/Pdt.P/2021/PN Bli)", *e-Journal*

Then how is the implementation of Constitutional Court Decision No. 46/PUU-VIII/2010 when applied to extra-marital children born to TKW, the author takes the principle of equality before the law. In the Amendment to the 1945 Constitution, the theory of equality before the law is included in Article 27 paragraph (1) which states that: All citizens shall be equal before the law and government and shall uphold the law and government with no exceptions.

This is a recognition and guarantee of the equal rights of every citizen in law and government. The theory and concept of equality before the law as embraced by Article 27 paragraph (1) of the 1945 Constitution is the basis of protection for citizens to be treated equally before the law and government. This means that all people are treated equally before the law. Equality before the law is one of the most important principles in modern law.²³ This principle of equality before the law is one of the legal protections of the rule of law (*rechtstaat*) so that there must be equal treatment for everyone before the law (*gelijkheid van ieder voor de wet*).²⁴ Article 2 paragraphs 3 and 4 of Law No. 4 of 1979 concerning Child Welfare states that “Children have the right to care and protection both during the womb and after birth. The two paragraphs above clearly state and encourage the need for child protection in order to seek the welfare of children and fair treatment of children.”²⁵

The regulation regarding the position of children outside of marriage regulated in the provisions of Article 43 of the Marriage Law so far is considered insufficient to provide legal protection and tends to be discriminatory, the status of children outside of marriage or children born outside of a legal marriage only has a civil relationship with their mother and their mother’s family without any responsibility from their biological father. The Constitutional Court’s decision also reflects the principle of equality before the law as referred to in Article 28D paragraph (1) which reads: “Everyone is entitled to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law.” Scheltema, formulated his views on the elements and principles of the rule of law in a new way which includes 5 (five) things, one of which is the principle of equality before the law, the enactment of equality (*Similia Similius* or Equality before the Law) in a state of law means that the Government may not privilege certain people or groups of people, or discriminate against certain people or groups of people. This principle implies (a) the guarantee of equality for all people before the law and

Komunikasi Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum 5 No. 2,(2022), 575-591, <https://doi.org/10.23887/jatayu.v5i2.51685>.

²³ Julita Melissa Walukow, “Perwujudan Prinsip Equality Before The Law Bagi Narapidana Di Dalam Lembaga Pemasyarakatan Di Indonesia”, *Lex et Societatis* 1, No.1, (2013), 163-172, <https://doi.org/10.35796/les.v1i1.1320>.

²⁴ Lilik Mulyadi. *Hukum Acara Pidana*. Jakarta: Citra Aditya Bakti, (2013), 20.

²⁵ Nur Afdhaliyah, Ismansyah Ismansyah, Fadhillah Sabri, “Kepastian Hukum Dalam Memberikan Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Pencabulan”, *Jurnal Ius Kajian Hukum Dan Keadilan* 6, No.3 (2018), 482-497, <https://jurnalius.ac.id/ojs/index.php/jurnalIUS/article/view/578>

government, and (b) the availability of mechanisms to demand equal treatment for all citizens.²⁶

The addition of Article 43 paragraph (1) made by the Constitutional Court through Decision Number 46/PUU-VIII/2010 is not only limited to the right to protection but has a very broad meaning as well as the meaning attached to legitimate children,²⁷ and has also fulfilled the principles of organizing child protection based on Pancasila and based on the 1945 Constitution and the basic principles of the Convention on the Rights of the Child.²⁸ Thus, the law must provide fair protection and legal certainty to the status of every child born and the rights that exist to him, including children born outside the marriage of Indonesian migrant workers in accordance with statutory regulations. With equality before the law, all extra-marital children of Indonesian migrant workers will be guaranteed access to justice, namely the right to citizenship, birth certificates, the right to education, the right to health, and other rights for all children regardless of background. Perceptions of the law are important for understanding whether the law is fair, and whether there is compliance with the law.

3. CONCLUSION

The results show that the illegitimate children of migrant workers who work abroad can obtain their constitutional rights as Indonesian citizens who adhere to the principles of the rule of law. It is based on the implementation of the Constitutional Court Decision Number 46/PUU-VIII/2010 concerning illegitimate children of Indonesian women workers, is not only limited to the right to protection but has a very broad meaning which also includes children born out of wedlock Indonesian Women Work. Because in accordance with the principle of equality before the law, the law must provide fair protection and legal certainty. So that the Constitutional Court's decision does not only concern children's inheritance rights, but also has implications for guaranteeing and protecting illegitimate children born to migrant workers such as the right to earn a living, guardianship rights and the right to a living from a biological father.

REFERENCE

Achmad Irwan Hamzani. "The Descendants of Children Outside of Marriage After Constitutional Court Decision No. 46/PUU-VIII/2010", *Jurnal Konstitusi* 12, no. 1 (2015): 58-74. <https://doi.org/10.31078/jk1214>

Ashabul Kahf. "Perlindungan Hukum Terhadap Tenaga Kerja". *Jurisprudentie* 3, no. 2

²⁶ Eka N.A.M. Sihombing, Kedudukan Anak Luar Nikah Pasca Putusan MK Nomor 46/PUU-VIII/2010, <https://sumut.kemerkumham.go.id/berita-kanwil/berita-utama/kedudukan-anak-luar-nikah-pasca-putusan-mk-nomor-46puu-viii2010>, accessed on May 03, 2023.

²⁷ Achmad Irwan Hamzani, "The Descendants of Children Outside of Marriage After Constitutional Court Decision No. 46/PUU-VIII/2010", *Jurnal Konstitusi*, 12, no. 1, (2015), 58-74, DOI:10.31078/jk1214.

²⁸ Muhammad Irvan Hidayana, Iman Jauhari, Azhari Yahya, "Analisis Yuridis Terhadap Aspek Perlindungan Anak Pasca Perceraian Orangtua", *Jurnal IUS Kajian Hukum dan Keadilan* 8, no. 2, (2020), 303-311, DOI: <http://dx.doi.org/10.29303/ius.v8i2.704>

- (2016): 59-72. <https://doi.org/10.24252/jurisprudentie.v3i2.2665>.
- Arinie Sherlita Cholis. "The Legal Standing & Inheritance Right for Out-of-Wedlock Child in Terms of Civil Inheritance Law". *Audito Comparative Law Journal* 1, issue 2 (2020): 71-77. <https://doi.org/10.22219/audito.v1i2.13759>.
- Dede Kania. "Hak Asasi Perempuan dalam Peraturan Perundang-Undangan di Indonesia". *Jurnal Konstitusi* 12, no. 4 (2015): 716-734. <https://doi.org/10.31078/jk1243>
- Faris Achmad Ibrahim, Hufron dan Sri Setyadji. "Penyangkalan Anak Dalam Perspektif Hukum Di Indonesia (Studi Kasus Penetapan Pengadilan Agama Surabaya Nomor 0792/Pdt.G/2014/PA.Sby)". *Jurnal Yustitia* 21, no. 1 (2020): 65-84. <http://dx.doi.org/10.53712/yustitia.v21i1.816>.
- Hamiyuddin. "Kedudukan Anak Di Luar Nikah di Indonesia". *Musawa* 10, no.1 (2018): 159-190. <https://doi.org/10.24239/msw.v10i1.391>
- Haniah Ilhami, Destri Budi Nugraheni, Tata Wijayanta. "Child Protection Post the new Marriage law: how Indonesian religious Court interpreting the urgency in Child-age Marriage". *Jurnal Ius Kajian Hukum dan Keadilan* 11, no. 1 (2023): 76-95. <http://dx.doi.org/10.29303/ius.v11i1.1054>
- Hasnah Aziz. "Perlindungan Hukum bagi Anak dalam Memperoleh Akta Kelahiran Berdasarkan Prinsip-Prinsip Perlindungan Anak". *Lex Jurnalica* 15, no.1 (2018): 56-66.
- Hazar Kusmayanti, Agus Mulya Karsona. "Perlindungan Hukum terhadap Anak Diluar Perkawinan bagi Tenaga Kerja Wanita di Kabupaten Cianjur". *AJUDIKASI: Jurnal Ilmu Hukum* 4, no. 1, (2020): 39-54. <https://doi.org/10.30656/ajudikasi.v4i1.2162>
- I Ketut Sudantra, I Gusti Ngurah Dharma Laksana. "Di Balik Prevalensi Perkawinan Usia Anak Yang Menggelisahkan: Hukum Negara Versus Hukum Adat". *Jurnal Ius Kajian Hukum dan Keadilan* 7, no. 1 (2019): 58-71. <https://jurnalius.ac.id/ojs/index.php/jurnalIUS/article/view/594>.
- Julita Melissa Walukow. "Perwujudan Prinsip Equality Before The Law Bagi Narapidana Di Dalam Lembaga Pemasyarakatan Di Indonesia". *Lex et Societatis* 1, no.1 (2013): 163-172. <https://doi.org/10.35796/les.v1i1.1320>.
- Lilik Mulyadi. *Hukum Acara Pidana*. Jakarta: Citra Aditya Bakti, 2013.
- Michella Gabriel Halim, Robert N. Warong, Grace Y. Bawole. "Perlindungan Hukum Terhadap Hak Keperdataan Anak Yang Lahir di Luar Perkawinan Pasca Putusan Mahkamah Konstitusi No. 46/Puu-VIII/2010". *Lex Privatum* 9, no. 12 (2021): 27-36.
- Muhammad Irvan Hidayana, Iman Jauhari, Azhari Yahya. "Analisis Yuridis Terhadap Aspek Perlindungan Anak Pasca Perceraian Orangtua". *Jurnal IUS Kajian Hukum dan Keadilan* 8, no. 2 (2020): 303-311. <http://dx.doi.org/10.29303/ius.v8i2.704>.
- Muhammad Siddiq. *Penentuan Metode dan Pendekatan Penelitian Hukum*. Banda Aceh: Lembaga Kajian Konstitusi Indonesia, 2022.
- Ni Wayan Sri Eka Lestari, Ketut Sudiartama, Ni Ngurah Ardhyia. "Tinjauan Yuridis

- Terkait Pengakuan Dan Pengesahan Anak Luar Kawin Menurut Hukum Positif (Studi Putusan Nomor 45/Pdt.P/2021/PN Bli)". *e-Journal Komunikasi Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum* 5, no. 2 (2022): 575-591. <https://doi.org/10.23887/jatayu.v5i2.51685>.
- Novika Triwati, Muhammad Reza Ginting, Rumelda Silalahi. "Kedudukan Anak di Luar Perkawinan Dalam Pewarisan Menurut KuhPerdata". *Jurnalrectum* 4, no. 1 (2022): 157-173. <http://dx.doi.org/10.46930/jurnalrectum.v4i1.1455>
- Nur Afdhaliyah, Ismansyah Ismansyah, Fadhillah Sabri. "Kepastian Hukum Dalam Memberikan Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Pencabulan". *Jurnal Ius Kajian Hukum dan Keadilan* 6, no. 3 (2018): 482-497. <https://jurnalius.ac.id/ojs/index.php/jurnalIUS/article/view/578>
- Nurjannah S. "The Principles of Anti-Discrimination And Protection Of Maternal Rights Of Female Laborers Viewed From The Perspective Of Gender Equality". *Jurnal IUS Kajian Hukum dan Keadilan* 1, no. 1 (2013): 32-42. <https://doi.org/10.12345/ius.v1i1.224>
- Riduan Syahrani. *Seluk-Beluk dan Asas-Asas Hukum Perdata*. Bandung: Alumni, 2013.
- Soerjono Soekanto dan Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Utama, 2015.
- Sri Siswati, Yulia Hartati, Nizwardi Jalinus. "Tantangan Analisis Kebijakan Pencegahan Kekerasan Seksual Terhadap Anak dengan Mengembangkan Media Teknologi Informasi". *International Journal of Natural Sciences and Engineering* 2, no. 2 (2018): 59-64. <https://doi.org/10.23887/ijnse.v2i2.17151>.
- Sanny Budi Kusuma. "Proses Pembuktian Seorang Anak Luar Kawin Terhadap Ayah Biologisnya Melalui Tes DNA". *Kertha Semaya: Journal Ilmu Hukum* 01, no.10 (2013): 1-5.
- Yan Mangandar Putra, L. Sabardi, L. Parman. "Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana Persetubuhan Dalam Sistem Peradilan Pidana Anak (Kajian Atas Putusan Pengadilan Negeri Selong Nomor 04/Pid.Sus.Anak/2015/Pn.Sel)". *Jurnal IUS Kajian Hukum dan Keadilan* 4, no. 2 (2018): 293-306. <https://jurnalius.ac.id/ojs/index.php/jurnalIUS/article/view/561>.
- Zaeni Ayhadie. *Hukum Keluarga (Menurut Hukum Positif di Indonesia)*. Depok: Rajawali Pers, 2020.
- <https://www.kemenpppa.go.id/index.php/page/read/30/373/tenaga-kerja-indonesia-tki-dari-timur-tengah-dipulangkan/vbqbm-menu-51.html>, diakses 20 Mei 2023.
- Eka N.A.M. Sihombing, Kedudukan Anak Luar Nikah Pasca Putusan MK Nomor 46/PUU-VIII/2010, <https://sumut.kemenkumham.go.id/berita-kanwil/berita-utama/kedudukan-anak-luar-nikah-pasca-putusan-mk-nomor-46puu-viii2010>, diakses 03052023.