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INHERITANCE RIGHTS OF CHILDREN BORN OUT OF WEDLOCK: COMPARATIVE INDONESIA AND MALAYSIA CHILD PROTECTION RADBRUCH ANALYSIS

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Abstract

Constitutional Court Decision No. 46/PUU-VIII/2010 marked a paradigm shift in Indonesian family law by recognizing the legal relationship between children born out of wedlock and their biological fathers, particularly in relation to inheritance rights previously constrained by the absence of marriage registration. This study aimed to analyze the legal implications of the decision through Law No. 35 of 2014 on Child Protection and Gustav Radbruch's legal values of justice, utility, and legal certainty. The study employed doctrinal and philosophical approaches to evaluate whether the decision fulfills substantive justice and the principle of the best interests of the child. The findings indicate that the decision aligns with Radbruch's three legal values by advancing child protection and reducing discriminatory treatment against children born out of wedlock. However, a significant gap remains between normative recognition and practical enforcement due to the absence of clear technical regulations and unequal access to DNA testing mechanisms. In comparison, Malaysia applies a more conservative Islamic legal framework, in which children born out of wedlock are legally recognized only in relation to the mother and are excluded from inheritance rights from the biological father under *faraid* principles, although limited protection may be provided through *hibah*, *wasiat*, or state

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welfare institutions. The study concludes that Constitutional Court Decision No. 46/PUU-VIII/2010 provides an important foundation for strengthening substantive justice and child protection in Indonesia, but its effectiveness depends on clearer regulatory implementation. These findings contribute to the discourse on comparative family law, child protection, and legal philosophy, while offering practical implications for policymakers to strengthen legal certainty and ensure equal protection for all children without discrimination.

Keywords: Inheritance Rights; Children Born Out of Wedlock; Constitutional Court Decision No. 46/PUU-VIII/2010; Gustav Radbruch; Child Protection

INTRODUCTION

Marriage is a highly recommended sunnah practice in Islam as well as a sacred covenant *(mithaqan ghalizha)* in the name of Allah SWT.(Syafi'i et al., 2023, p. 116) Theologically, as indicated in Surah An-Nisa verse 21 with meaning: "How can you take her back, when you have already consummated the marriage with one another, and they (your wives) have made a solemn covenant (marriage bond) with you?"(Kementerian Agama Republik Indonesia, 2019, p. 83). Marriage is established as a legitimate means of uniting men and women in a physical and spiritual bond. In line with this principle, Article 1 of Law No. 1 of 1974 on Marriage defines marriage not merely as a formal bond, but as a means to form a happy and lasting family based on belief in the One and Only God. Through a lawful marriage, offspring are born who bring a clear lineage and legal status within the family.(Kamal Mukhtar, 1993, p. 3)

A child is a trust and a gift from Allah SWT, born in a state of fitrah, and thus possesses dignity, honor, and rights that must be upheld. Constitutionally, Article 28B (2) of the 1945 Constitution guarantees every child's right to survival, growth and development, as well as protection from violence and discrimination.(Lestari, n.d., p. 184) However, in legal practice in Indonesia, the status of children is often dichotomously divided into legitimate and illegitimate (out-of-wedlock) children.(Muhammad Amin Suma, 2008, p. 78) Based on Article 42 of the Marriage Law and Article 99 of the Compilation of Islamic Law, legitimate children are those born from a valid marriage, while children born outside such a union often lose their basic rights. Children born out of wedlock in Indonesia are in a vulnerable position; data from the Central Statistics Agency (BPS) and updated social security data show a consistently high number of recorded out-of-wedlock births facing the threat of material

neglect.(Nurrahim Hasan Al Banna, Naufal Nafis Ardana, Muhammad Fakhri Kurniawan, dan Ramadhan Dwi Prasetyo, 2025, p. 6)

These children often face significant challenges, ranging from social discrimination and difficulties in accessing civil identity to the loss of financial support from their biological fathers due to outdated legal doctrines that recognize only civil relationships with the mother and the mother's family.(Khoirunnisa, 2026, p. 38) The most critical impact of this severance of civil ties is the loss of the child's right to post-mortem justice through the distribution of inherited assets. In principle, a child should not bear the moral burden or "sin" of their parents' biological actions.(Kusumo & Supriyanta, 2025, p. 395) This ambiguity regarding inheritance status not only limits a child's access to fair economic justice but also contradicts the spirit of Law No. 35 of 2014 on Child Protection, which mandates that the state and parents ensure a child's right to life, development, and protection from economic neglect.(Amir Syarifuddin, 2016, p. 56)

It is precisely these issues regarding economic rights and protection for children born out of wedlock that prompted the Constitutional Court to conduct a substantive review of Article 43(1) of the Marriage Law through Decision No. 46/PUU-VIII/2010. This groundbreaking decision affirms that a child born out of wedlock retains a civil relationship with their biological father as long as this can be proven through science and technology. In terms of child protection, this decision affirms that a child's property rights to the assets of their biological father are legally protected.(Eunike Loist Hutasoit, n.d., p. 4) When examined philosophically, this ruling triggers an intriguing paradigm shift when analyzed using Gustav Radbruch's Triad of Legal Values.(Adji Samekto, 2025, p. 5) This Constitutional Court decision re-examines the balance between the values of justice (*Gerechtigkeit*), utility (*Zweckmäßigkeit*), and legal certainty (*Rechtssicherheit*), which has long been skewed due to national law that has been overly inclined toward formal-administrative certainty (administrative certainty).(Nurazizah et al., 2025, p. 2159)

In addition to examining the Indonesian legal framework, this study incorporates a comparative perspective with Malaysia to provide a broader understanding of how Islamic-based legal systems regulate the inheritance rights of children born out of wedlock. Both Indonesia and Malaysia share a common foundation in Islamic jurisprudence (fiqh), yet they demonstrate different approaches in integrating classical Islamic principles with contemporary statutory reforms. Indonesia, particularly after the Constitutional Court

Decision No. 46/PUU-VIII/2010, has shown a progressive shift toward recognizing a civil legal relationship between children born out of wedlock and their biological fathers under certain evidentiary conditions. Meanwhile, Malaysia maintains a stricter application of Islamic family law principles, especially in defining lineage (nasab), which significantly affects inheritance eligibility. This comparison is essential to highlight the divergence between legal reform and doctrinal consistency within two Muslim-majority jurisdictions.

Studies on the inheritance rights of children born out of wedlock following this Constitutional Court decision have indeed sparked the attention of legal scholars; however, the majority of the literature remains trapped within domestic normative dichotomies and has yet to fully integrate philosophical frameworks or comprehensive child protection. Previous research by J. Andy Hartanto, 2018(Hartanto, n.d.) in his book Inheritance Rights of Children Born Out of Wedlock Following the Constitutional Court Ruling made an important contribution to comprehensively mapping the changes in the legal status of children born out of wedlock following the Constitutional Court ruling from a civil law perspective, however, that study was more descriptive-normative in nature and did not analyze the Constitutional Court's decision through the theoretical framework of the purpose of law or child protection instruments from a philosophical perspective. Furthermore, Judiasih, 2024(Judiasih, S. D., Lestari, P. W., & Nugroho, B. D. (, 2024), in their study published in ACTA DIURNAL: Journal of Notarial Law, examine the inheritance rights of children born out of wedlock who are not recognized as legitimate children by their biological fathers following the Constitutional Court's decision, however, the focus of that study is limited to notarial aspects and formal recognition, without addressing a legal-philosophical evaluation of the Constitutional Court's decision using legal theory.

Meanwhile, Angelin, M. S. R, at all. 2024(Angelin, M. S. R., Putri, F. D., & Sanduan, A. P., 2021) in the Magnum Opus Law Journal discuss the dilemma of inheritance rights for children born out of wedlock from a civil law perspective; however, their analysis remains confined to the conflict of norms between the Civil Code and the Marriage Law without integrating the dimension of child rights protection under Law No. 35 of 2014. Finally, Radindi, N. A , 2023(Radindi, N. A., 2023) in the Ius Publicum Law Journal examines the granting of a mandatory bequest for children born out of wedlock in Islamic law, offering an interesting perspective from the standpoint of Islamic law but failing to address a comparative analysis between the mechanism of the mandatory bequest and child protection standards in national positive law or Radbruch's philosophical framework.

Based on the mapping of previous research outlinaed above, there is a significant and unaddressed research gap in the existing literature. First, no study has specifically analyzed Constitutional Court Decision No. 46/PUU-VIII/2010 using Gustav Radbruch's triad of legal values justice, utility, and legal certainty as an integrated philosophical analytical framework. Second, no study has simultaneously brought together two analytical perspectives Radbruch's philosophical perspective and the child protection perspective under Law No. 35 of 2014 in evaluating the implications of the Constitutional Court's decision on the inheritance rights of children born out of wedlock. Third, previous studies generally stop at the descriptive-normative level without providing a critical evaluation of the gap between the normative recognition and the actual implementation of the inheritance rights of children born out of wedlock in practice. This research aims to fill this gap by offering a more comprehensive, multi-layered, and theoretically fresh analysis to make a tangible contribution to the development of family law and inheritance law in Indonesia.

METHODS

This study employs a normative legal research (or doctrinal research) approach, which views law as a system of norms examined systematically and analytically through secondary sources. This approach was chosen because the primary focus of the study is court decisions, legislation, and legal norms of a textual-doctrinal nature, rather than empirical field data.(Peter Mahmud Marzuki, 2010, p. 132) This study employs three approaches simultaneously. First, the statutory approach, which systematically examines the provisions of Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law, Law No. 35 of 2014 on Child Protection, and the Civil Code in relation to the inheritance rights of children born out of wedlock. Second, the case approach, which focuses on Constitutional Court Decision No. 46/PUU-VIII/2010 as the primary object of analysis, by thoroughly examining the ratio decidendi and the judges' legal reasoning. Third, a conceptual approach is used to analyze the Constitutional Court's decision through the framework of Gustav Radbruch's triad of legal values and the principles of child rights protection based on Law No. 35 of 2014.

The legal materials used in this study consist of three tiers. Primary legal materials include Constitutional Court Decision No. 46/PUU-VIII/2010, the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 1974 on Marriage, Law No. 35 of 2014 on Child Protection, the Compilation of Islamic Law, and the Civil Code. Secondary legal materials

include accredited legal journals, textbooks on family law and inheritance law, as well as relevant previous research findings. Tertiary legal materials include legal dictionaries and legal encyclopedias used to clarify terminology. All of these legal materials were analyzed using qualitative-prescriptive analysis techniques, namely by describing, interpreting, and evaluating applicable legal norms to subsequently provide a critical assessment based on the theoretical framework used.(Muhaimin, 2020, p. 88)

RESULTS

Inheritance Rights of Children Born Out of Wedlock in Constitutional Court Decision No. 46/PUU-VIII/2010

Decision of the Constitutional Court No. 46/PUU-VIII/2010 is the result of a judicial review of Article 43(1) of Law No. 1 of 1974 on Marriage, which states that a child born out of wedlock has only a civil relationship with his or her mother and the mother's family. The petition was filed by Machicha Mochtar and her son, Iqbal Ramadhan, who was born from a marriage-siri with Moerdiono on December 20, 1993. Although the marriage was later validated by the Tangerang District Religious Court in 2008, Iqbal's status remained that of a child born out of wedlock because his parents' marriage had not been officially registered at the time of his birth.(Lenny Nadriana and Elti Yunani, 2023, p. 33) It is this situation that prompted the petitioners to file a judicial review, as Article 43(1) is deemed to conflict with Article 28B(1) and (2) as well as Article 28D(1) of the 1945 Constitution of the Republic of Indonesia.(RK Ningsih and Hadi Tuasikal, 2025, p. 7)

Article 43(1) of Law No. 1 of 1974 on Marriage explicitly states that "a child born out of wedlock has civil relations only with his or her mother and the mother's family."(*Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.*, n.d.) The wording of this article unequivocally severs the legal relationship between a child born out of wedlock and his biological father, so that all of the child's civil rights including maintenance, guardianship, and inheritance rights an only be claimed through the mother's line.(Chikita Murti Wiliyandari, Rachmi Sulistyarini, & R. Imam Rahmat Sjafi'i., n.d., p. 861) Meanwhile, Article 28B(1) of the 1945 Constitution of the Republic of Indonesia guarantees every person's right to form a family and continue their lineage through a valid marriage, while Article 28B(2) explicitly states that "every child has the right to survival, growth, and development, as well as the right to protection from violence and discrimination." Furthermore, Article 28D

paragraph (1) guarantees the right of every person to recognition, security, protection, and fair legal certainty, as well as equal treatment before the law.

The conflict between Article 43(1) of the Marriage Law and these three constitutional provisions is fundamental and cannot be ignored. According (Rini, 2023, p. 100) First, Article 43(1) clearly creates discrimination against children based on their birth status, which is entirely beyond the child's own control, thereby contradicting the guarantee of non-discrimination in Article 28B(2) of the 1945 Constitution of the Republic of Indonesia. Second, by severing the child's legal relationship with their biological father, this provision directly threatens the child's right to survival and proper growth and development, as the burden of care and meeting the child's material needs is placed entirely on the mother without any legal obligation on the part of the biological father. Third, Article 43(1) conflicts with Article 28D(1) because it creates unfair legal uncertainty, whereby children born out of wedlock are treated differently under the law compared to legitimate children, even though biologically both share the same bloodline with their respective parents. Ultimately, the law protects the biological father from his responsibilities rather than protecting the child, who is the most vulnerable and innocent party in this matter.(Amir Syarifuddin, 2016, p. 98)

The Constitutional Court granted part of the petitioner's request. Regarding Article 2, paragraph (2), on the registration of marriages, the Court ruled that the provision does not conflict with the Constitution. However, regarding Article 43(1), the Court declared the provision unconstitutional and ruled that it must be interpreted as follows: "A child born out of wedlock has a civil relationship with his or her mother and the mother's family, as well as with the man identified as the father whose paternity can be established through science and technology and/or other evidence admissible under the law including a civil relationship with the father's family."

The Constitutional Court's reasoning is based on the principle that every child is born through a biological process involving a man and a woman. It is therefore unfair for the law to place responsibility solely on the mother, while the biological father is free from all obligations.(Angelin, M. S. R., Putri, F. D., & Sanduan, A. P., 2021, p. 23) A child born out of wedlock is not at fault for the actions of their parents; thus, the state is obligated to provide equal protection.(Rambe & Rosnidar Sembiring, 2025, p. 6)

The direct implication of this ruling on inheritance rights is that children born out of wedlock can now inherit from their biological fathers, provided that the biological

relationship can be proven through science and technology, such as DNA testing. (Manoppo & Soeikromo, n.d., p. 12)Prior to this ruling, children born out of wedlock could only inherit through their mothers. Following the ruling, children born out of wedlock have legal standing (persona in judicio) and are entitled to all civil rights from their biological father, including child support, guardianship, and inheritance rights.(Lenny Nadriana and Elti Yunani, 2023, p. 3)

This ruling has received support from the National Commission on Human Rights (Komnas HAM) and the National Commission on the Protection of Women and Children (Komnas Perlindungan Perempuan dan Anak), which recognize the importance of legal protection for children. On the other hand, the Indonesian Ulema Council (MUI), through MUI Fatwa No. 11 of 2012, asserts that children born out of wedlock have no legal ties including lineage, inheritance, financial support, or marriage guardianship to their biological fathers. As a solution, the MUI proposes the instrument of a mandatory bequest as a substitute for inheritance rights, with a maximum amount of one-third of the estate, so that the child's economic rights are still fulfilled without undermining the legal framework of lineage in Islam.(Agatha, n.d., pp. 81–82)

Prior to the issuance of Constitutional Court Decision No. 46/PUU-VIII/2010, inheritance mechanisms for children born out of wedlock in Indonesia were highly restrictive and inflexible. Under Article 43(1) of the Marriage Law and Article 100 of the Compilation of Islamic Law (KHI), a child born out of wedlock has, by definition, only civil relations and mutual inheritance rights with the mother and her family. (Mohammad Ainul Hakim dan Fathor Rozy, 2024, p. 5) Under this system, the biological father is considered a stranger in the eyes of the law, so the child cannot claim any obligation for child support or inheritance rights. Meanwhile, under the Civil Code (BW), a child born out of wedlock has a chance to inherit only if there is a "Voluntary Acknowledgment" by the father that is officially recorded. Without such administrative proof, the door to inheritance is firmly shut, which often leads to economic neglect of children from unregistered marriages or other extramarital relationships.(Abdul Gani Abdullah, 1994, p. 22)

Following the issuance of Constitutional Court Decision No. 46/PUU-VIII/2010, there has been a fundamental shift in the legal paradigm from formal-administrative truth toward material-biological truth. Through scientific and technological evidence mechanisms such as DNA testing, the civil relationship between a child born out of wedlock and his or

her biological father is now recognized by the state.(Widhy Andrian Pratama dkk, n.d., p. 4) Under the implementation of the Civil Code (BW), a child born out of wedlock who has been biologically proven or acknowledged now has the legal standing as an heir with a proportional share based on Article 863 of the Civil Code. If they inherit alongside heirs in Class I (spouse and legitimate children), they are entitled to one-third (1/3) of the share they would have received had they been a legitimate child. If competing with Class II and III heirs, their share increases to one-half (1/2), and if only with distant relatives in Class IV, they are entitled to three-quarters (4/3) of the share. Furthermore, pursuant to Article 865 of the Civil Code, if there are no other legitimate heirs, the child is entitled to inherit the entire estate of their biological father.(Mohammad Ainul Hakim dan Fathor Rozy, 2024, p. 21)

On the other hand, the implementation in Islamic Law through the Compilation of Islamic Law (KHI) offers a middle ground through the instrument of the wasiat wajibah to align the Constitutional Court's decision with the principles of lineage.(Ahmad Tirmidzi, Zaenul Mahmudi, and Moh. Toriquddin, 2025, p. 287) Theologically, the lineage of a child born out of wedlock in Islam remains unconnected to his biological father in order to preserve the sanctity of the institution of marriage, so that he does not become an heir under the faraid. However, judges can now impose a ta'zi penalty.

Malaysia Strict Preservation of Nasab under Islamic Family Law

In Malaysia the legal framework governing inheritance rights of children born out of wedlock is primarily grounded in Islamic Family Law as administered through state-level Syariah legislation, such as the Islamic Family Law (Federal Territories) Act 1984. Within this framework, a child born outside a valid marriage is legally classified as *"anak tak sah taraf"*, meaning an illegitimate child. This classification has significant legal consequences, particularly in relation to lineage (nasab), which is strictly limited to the mother and her maternal family.

Under Malaysian Islamic law, the biological father does not have a recognized legal relationship with the child born out of wedlock. As a result, the child is not entitled to inherit from the biological father under the rules of faraid (Islamic inheritance distribution). This position is based on classical interpretations of Islamic jurisprudence, which emphasize that inheritance rights are strictly tied to legitimate lineage established through valid marriage. Consequently, the principle of nasab becomes the determining factor in inheritance

eligibility, and its absence fully excludes the paternal line from inheritance obligations and rights.(Hududillah et al., 2025, p. 190)

Despite this strict exclusion, Malaysian law does provide alternative mechanisms to ensure the welfare of the child. The biological father may still provide financial support through voluntary means such as *hibah* (inter vivos gift) or *wasiat* (Islamic will), which is limited to one-third of the estate unless consent from other heirs is obtained. In certain circumstances, the *Baitulmal* (Islamic treasury institution) may also provide assistance to support the child's welfare. These mechanisms, however, are discretionary and do not establish a legal inheritance right equivalent to legitimate offspring.(Hjh Nor binti Haji Puteh and Cecep Soleh Kurniawan, 2025, p. 11)

Overall, Malaysia maintains a conservative and doctrinally consistent approach that prioritizes the preservation of nasab integrity within Islamic law. While this ensures adherence to classical jurisprudential principles, it also results in a strict legal separation between biological paternity and inheritance rights in cases of children born out of wedlock.

Table 1. Comparative Table: Indonesia vs Malaysia

Aspect	Indonesia	Malaysia
Legal Foundation	Islamic law + Civil law + Constitutional Court Decision No. 46/PUU-VIII/2010	Islamic Family Law Act + Syariah Court system
Status of Child Born Out of Wedlock	Recognized legally with mother; possible civil relation with biological father if proven	Only recognized legally with mother (anak tak sah taraf)
Relationship with Biological Father	Conditional recognition (DNA/biological proof required)	No legal nasab relationship established
Inheritance Rights from Father	Possible indirect inheritance rights after proof of biological relationship	No inheritance rights under faraid
Alternative Protection	Maintenance obligations and civil rights recognition	Hibah, wasiat (max 1/3), and Baitulmal assistance

DISCUSSION

Analysis of Constitutional Court Decision No. 46/PUU-VIII/2010 from the Perspective of the Child Protection Act

Constitutional Court Decision No. 46/PUU-VIII/2010 has a strong legal correlation with the mandate to protect the property rights of children under Law No. 35 of 2014 Amending Law No. 23 of 2002 on Child Protection. The primary focus of this decision—which extends the civil relationship of a child born out of wedlock to their biological father through scientific evidence represents a concrete step in implementing Article 1(2) of the Child Protection Law.(Ahmad Tirmidzi, Zaenul Mahmudi, and Moh. Toriquddin, 2025, p.

288) This provision states that child protection encompasses all activities aimed at ensuring and safeguarding children and their rights so they may live, grow, and develop to their fullest potential. In the context of inheritance law, this right to grow and develop is inseparable from the certainty of the child's economic rights, including the right to receive support for their livelihood and a share of the estate from their biological father to ensure the child's future.(Siti Fitrotun, 2022, p. 86)

When considered in light of the principle of non-discrimination set forth in Article 2 of Law No. 35 of 2014, this Constitutional Court ruling serves as a guarantee that children shall not be denied their civil rights solely due to an administratively flawed legal status at birth.(Rini, 2023, p. 104) Prior to this ruling, the denial of inheritance rights to children born out of wedlock through their biological father's lineage fueled systemic economic discrimination, in which children bore financial consequences due to their parents' actions.(Muthmainah, 2024, p. 28) Article 7(1) of the Child Protection Law explicitly states that every child has the right to know their parents and to be raised and cared for by their own parents.(Irzak Yuliardy Nugroho, Irzak, and Achmad Safiudin, 2021, p. 12) In a post-mortem context, this right to know one's parents is reinforced by the Constitutional Court's ruling as the right to demand biological proof (DNA testing) as the legal basis for claiming inheritance rights or a mandatory bequest from the estate of their biological father.(Mahkamah Konstitusi Republik Indonesia, 2010, p. 36)

The significance of this analysis becomes even clearer when we examine Article 9(1) of Law No. 35 of 2014, which states that every child has the right to protection from abuse and neglect. Neglect under child protection law does not only occur while the biological father is still alive through failure to provide child support, but also occurs as ongoing historical neglect after the father's death if the father's extended family cuts off the child's access to his estate.(Fahrul Rozi, 2025, p. 276) Until now, the absence of a parental marriage certificate has often been used as a tool by other legal heirs to engage in a form of "legal wash-of-hands" to gain control over the entire estate.(Zahroul Firdausi Alfaiza, Muhammad Kurniawan Budi Wibowo, and B Baehaqi., 2024, p. 25) Therefore, the Constitutional Court's ruling serves as a bulwark of civil sanctions preventing such post-death economic exploitation and neglect. Biological relationships proven scientifically compel the legal system to recognize the economic standing of children born out of wedlock in relation to their father's estate.(Indri Cahya Cholifah Yudhia Ismail, and Kristina Sulatri, 2025, p. 629)

This material responsibility is reinforced by Article 26(1) of Law No. 35 of 2014, which requires parents to care for, support, educate, and protect their children.(*Undang-Undang Perlindungan Anak Undang-Undang RI Nomor 35 Tahun 2014*, 2015, pp. 11–12) These obligations of support and protection do not cease by operation of law upon the father's death, but rather transform into the child's right to a share of the estate left behind.(Dzaky, 2022, p. 487) Moreover, within the framework of criminal law protecting children, Article 76A strictly prohibits actions that leave a child in a state of abandonment. If abandonment during the child's lifetime is already punishable by criminal sanctions, then by analogy under civil law, disregarding the property rights (inheritance/will) of a child proven to have a blood relationship also constitutes a serious violation of the child's right to life.(Bulian & Sumailan, n.d., pp. 122–12) With the recognition of biological relationships through science and technology in the Constitutional Court's ruling, the biological connection between a child and a father now carries legally binding consequences regarding the distribution of assets, ensuring that the property rights of children born out of wedlock remain protected from the greed of other heirs.(Usman, 2016a, p. 176)

An interpretation of Constitutional Court Decision No. 46/PUU-VIII/2010 through the lens of the Child Protection Law consistently places "the best interests of the child" as the primary foundation for resolving inheritance disputes. This expansion of civil relations is not intended to undermine the legal framework of lineage in the strict sense of Islamic jurisprudence, but rather serves as a formal legal guarantee from the state to ensure that the economic rights of children born out of wedlock to receive material justice from the assets of their biological father remain fulfilled and protected by law.

Analysis of Constitutional Court Decision No. 46/PUU-VIII/2010 from the Perspective of Gustav Radbruch's Triad of Legal Values

Gustav Radbruch, a German legal philosopher, introduced three fundamental values of the purpose of law known as the triad of legal values: justice (*Gerechtigkeit*), utility (*Zweckmäßigkeit*), and legal certainty (*Rechtssicherheit*).(Adji Samekto, 2025, p. 67) Ideally, these three values go hand in hand, but in practice they are often in a constant state of tension (*Spannungsverhältnis*) due to their differing natures: justice is abstract, utility is sociological, while legal certainty is dogmatic-juridical. Radbruch asserts that positive law that deliberately negates the value of justice to an intolerable degree will lose its essential nature, as per the

adage lex iniustissima non est lex (a law that is extremely unjust is not a law).(Chaniago, 2026, p. 55) Through its review of Article 43(1) of Law No. 1 of 1974 on Marriage, the Constitutional Court essentially made a major correction to national family law, which had previously been overly inclined toward formal certainty at the expense of the property rights of children born out of wedlock.(Anisyaniawati, A., Fauzan naufal kusuma, Haifa zanati, & Hemmalika alyanti Chandra, 2025, p. 9) It is through the lens of this triad of legal values that the paradigm shift regarding the inheritance rights of children born out of wedlock following the Constitutional Court's decision must be critically analyzed.

In situations where these three values conflict with one another, Radbruch provides a hierarchical guideline known as Radbruch's Formula. He asserts that legal certainty must take precedence over justice under normal circumstances; however, if the conflict between positive law and justice has reached an intolerable level (unerträgliches Maß), then positive law must yield to justice.(Margono, 2019, p. 122) It is this formula that was implicitly used by the Constitutional Court when it struck down Article 43(1) of the Marriage Law the Court determined that the injustice caused by that provision regarding the property rights of children born out of wedlock had exceeded the threshold of tolerance for justice that the Constitution could justify, so the formal certainty of that provision must be sacrificed to restore a more fundamental value of justice.

1. The Value of Justice (Gerechtigkeit)

Radbruch places justice as the top priority in the hierarchy of legal values becausee, without justice, a rule is not worthy of being called law. In the context of inheritance rights for children born out of wedlock, Article 43(1) of the Marriage Law, prior to its review by the Constitutional Court, reflected a clear structural injustice within the realm of property law.(Kanifah & Santoso, 2024, p. 31) The law absolutely exempts the biological father and his extended family from inheritance responsibilities solely due to the absence of a legally registered marital bond. Consequently, the child is forced to bear the post-mortem economic burden of losing rights to the paternal estate an outcome entirely beyond the child's control.(M. Saifuddin, 2025, p. 22) This long-standing provision is a perfect example of a "grossly unfair" law because it punishes the innocent party by unilaterally severing their economic civil rights.(Chikita Murti Wiliyandari, Rachmi Sulistyarini, & R. Imam Rahmat Sjafi'i., n.d., p. 856)

Constitutional Court Decision No. 46/PUU-VIII/2010 serves as a constitutional correction that restores the value of substantive justice to Indonesia's inheritance law. By declaring that children born out of wedlock have a civil relationship with their biological father as long as this can be proven through science and technology, the Constitutional Court ensures that children no longer bear the "sin of their parents" in the form of the deprivation of inheritance rights.(Usman, 2016b, p. 176) This orientation toward substantive justice affirms that the right to wealth and material security following the death of the biological father is grounded in the true nature of the blood relationship, not merely the procedural validity of the parents' marriage.(Rachmadhiva and Setyorini 2025, 353) The Constitutional Court firmly rejects using the administrative legality of marriage as a justification for denying a child's economic rights to the biological father's estate, thereby placing justice as a fundamental moral value above rigid legal texts.(Rachmadhiva & Setyorini, 2025b, p. 354)

Furthermore, the justice restored by this Constitutional Court ruling can be analyzed in two dimensions simultaneously. First, commutative justice that every legal relationship must be based on a proportional balance of rights and obligations.(Margono, 2019, p. 133) A biological father who has demonstrably contributed to the child's birth cannot be justified in being entirely free from material obligations following his death, as this creates a fundamental imbalance between the right to enjoy one's offspring and the obligation to bear the legal consequences thereof. Second, distributive justice that a person's estate should be distributed to those who are factually related by blood, not merely to those registered administratively. The Constitutional Court's ruling accommodates both principles simultaneously, making it a decision that is not only reactive to past injustices but also proactive in establishing a more equitable inheritance framework.

2. Utility Value (Zweckmäßigkeit)

The principle of utility dictates that the law must provide tangible benefits for the proportional fulfillment of society's needs, particularly in protecting vulnerable parties.(Oksidelfa Yanto, 2020, p. 37) Prior to the Constitutional Court's ruling, legal provisions that completely barred children born out of wedlock from inheriting through their father's line had created massive economic dysfunction. The lack of access to the estate of the biological father meant that children born out of wedlock often grew up in conditions of material neglect, while the mother's family had to bear the financial burden alone.(Nurazizah et al., 2025, p. 2153) This situation demonstrates that the old positive law failed to provide

sociological utility as an instrument for protecting the well-being of citizens.(Nugraha, n.d., p. 20)

Following the Constitutional Court's ruling, the legal benefits in the economic sphere have materialized in a tangible and multi-layered manner.(Nahak, 2023, p. 111663) First, children born out of wedlock gain practical benefits in the form of legal recognition to access inheritance rights proportionally under the Civil Code (BW), or through the instrument of a mandatory will allowing up to one-third of the estate within the framework of Islamic law. The availability of material security from the biological father's estate provides concrete financial certainty for the child's future and development.(Siti Savina, Yuli Adha Hamzah, Jasmaniar Jasmaniar, 2025, p. 133) Second, sociologically, this ruling provides the benefit of upholding distributive justice, whereby the wealth left by the biological father is fairly distributed to ensure the livelihood of his descendants.(Agatha, 2021, 81) Thus, the law functions responsively to address the material protection needs of children born out of wedlock in social reality, making it an instrument that not only maintains order but also delivers tangible economic benefits.(Afdhali & Syahuri, 2023, p. 558)

Nevertheless, it must be acknowledged that the legal certainty established following the Constitutional Court's ruling still contains loopholes that require serious attention. While DNA testing as a means of proof does provide an objective scientific standard, in practice access to this technology is not evenly distributed across all segments of Indonesian society, particularly among economically disadvantaged groups in remote areas. Furthermore, to date, there are no implementing regulations that specifically govern the procedures, costs, and authorized institutions for conducting biological testing in the context of inheritance disputes involving children born out of wedlock.(Agatha, 2021, 77) The absence of these technical regulations risks leading to inconsistent judicial rulings across various courts, which in turn creates a new form of legal uncertainty despite the fact that children's rights have already been constitutionally recognized. From Radbruch's perspective, this situation indicates that the paradigm shift initiated by the Constitutional Court has been completed only at the normative-constitutional level, but still requires further strengthening at the operational level so that the promised legal certainty can truly be felt equally by all children born out of wedlock without exception.(Afdhali and Syahuri 2023, 558)

3. Legal Certainty (Rechtssicherheit)

Legal certainty serves to maintain order, clarity, and predictability in its application.(Achmad Ali, 2023, p. 235) Paradoxically, prior to its revision by the Constitutional Court, Article 43(1) of the Marriage Law provided discriminatory legal certainty: a formal-administrative certainty that children born out of wedlock would definitely not receive any share of their biological father's estate. The Constitutional Court's ruling subsequently shifted the basis of this legal certainty from a rigid, positivistic certainty toward a material-biological certainty. The mechanism of proof through DNA testing and other scientific evidence provides a new standard that is highly clear, objective, and measurable for judges in determining the validity of a child's inheritance claim against their biological father.(Lisasih & Wahyudi, n.d., p. 240)

The legal certainty established by the Constitutional Court is not a certainty that creates anarchy or undermines other legitimate family structures.(Suhartoyo, 2025, p. 78) The Court does not rule that children born out of wedlock automatically become absolute heirs without limitation rather, it continues to require rigorous scientific proof as a prerequisite for establishing civil legal relationships.(Irzak Yuliardy Nugroho, Irzak, and Achmad Safiudin, 2021, p. 12) This requirement for scientific proof serves as a crucial anchor of legal certainty to ensure that the expansion of inheritance rights does not give rise to new uncertainties or arbitrary property disputes within society. From Radbruch's perspective, legal certainty is not abolished but rather redirected (Anisyaniawati, A., Fauzan naufal kusuma, Haifa zanati, & Hemmalika alyanti Chandra, 2025, p. 8) from blind adherence to outdated texts toward a certainty that allows room for the factual truth of blood relations. This certainty is positioned as a means to achieve equitable distribution of assets, thereby validating Constitutional Court Decision No. 46/PUU-VIII/2010 as a harmonious, substantively fair, and practically beneficial product of jurisprudence.

Based on an analysis of the three values in Radbruch's legal triad above, it can be concluded that Constitutional Court Decision No. 46/PUU-VIII/2010 represents a progressive effort to harmonize justice, utility, and legal certainty within a single jurisprudential ruling. This decision demonstrates that Radbruch's three values need not always be in permanent tension; rather, they can be reconciled if constitutional judges are willing to undertake bold yet measured interpretive innovations. In this regard, the Constitutional Court successfully positioned justice as the starting point, utility as the goal, and legal certainty as the method a formulation that is philosophically coherent and practically implementable. This decision is thus not merely a product of national law, but a

jurisprudential precedent that reflects the maturity of Indonesian constitutionalism in responding to the structural injustice that has long shackled the property rights of children born out of wedlock.

CONCLUSION

Based on the analysis outlined above, this study has reached several conclusions, which can be summarized as follows: Constitutional Court Decision No. 46/PUU-VIII/2010 represents a jurisprudential breakthrough that fundamentally shifts the legal paradigm regarding the inheritance rights of children born out of wedlock in Indonesia, from a formal-administrative truth based on a marriage certificate toward a material-biological truth that can be proven through science and technology. This shift opens the door to civil relationships between children born out of wedlock and their biological fathers, including inheritance rights, which were previously strictly barred by Article 43(1) of Law No. 1 of 1974 on Marriage.

The comparative analysis between Indonesia and Malaysia demonstrates two distinct approaches in addressing the inheritance rights of children born out of wedlock within Islamic legal frameworks. Indonesia reflects a more progressive and adaptive legal model by incorporating constitutional principles that allow limited recognition of biological paternal relationships, thereby opening pathways for inheritance rights under specific evidentiary conditions. In contrast, Malaysia maintains a more conservative stance grounded in classical Islamic jurisprudence, where lineage (nasab) remains the primary determinant of inheritance eligibility, effectively excluding biological fathers from legal responsibility toward children born outside marriage. Nevertheless, Malaysia compensates through alternative mechanisms such as hibah and wasiat. Ultimately, both systems aim to balance Islamic legal tradition with contemporary social realities, but they differ significantly in the extent to which they prioritize legal reform versus doctrinal preservation.

From the perspective of Law No. 35 of 2014 on Child Protection, the Constitutional Court's ruling aligns with the mandate of comprehensive protection of children's rights. The recognition of the civil relationship between a child born out of wedlock and his or her biological father is a tangible manifestation of the principle of the best interests of the child and the principle of non-discrimination, whereby the state ensures that no child loses the

right to a livelihood and to their parents' estate simply because of a birth status that was not of their own choosing.

From the perspective of Gustav Radbruch's triad of legal values, Constitutional Court Decision No. 46/PUU-VIII/2010 has, from a normative standpoint, successfully harmonized all three fundamental legal values simultaneously. From the perspective of justice, this decision eliminates the structural injustice that has long burdened children with the legal consequences of their parents' actions. From the perspective of utility, this decision has a tangible sociological impact in the form of material protection for children born out of wedlock through access to the inheritance of their biological father. From the perspective of legal certainty, the mechanism of scientific proof through DNA testing establishes a new objective and measurable standard to replace the discriminatory formal-administrative certainty.

However, the legal certainty established still has weaknesses at the implementation level due to the lack of technical regulations governing biological proof procedures in a uniform and affordable manner. Based on the above conclusions, this study recommends that the government immediately issue implementing regulations that specifically govern the mechanisms, procedures, costs, and authorized institutions in the biological proof process related to inheritance disputes involving children born out of wedlock. Without adequate technical regulations, the legal recognition secured through the Constitutional Court's ruling will be difficult for the groups of children most in need of such legal protection to experience in practice; thus, the gap between what ought to be and what actually is in the protection of inheritance rights for children born out of wedlock in Indonesia will continue to widen.

REFERENCES

Ali Abdul Gani Abdullah. (1994). *Pengantar Kompilasi Hukum Islam dalam Tata Hukum Indonesia*. Gema Insani Press.

Achmad Ali. (2023). *Menguak teori hukum dan teori peradilan termasuk interpretasi undang-undang*. Kencana.

Adji Samekto. (2025). *Memahami ajaran hukum Gustav Radbruch*. Rajawali Press.

Afdhali, D. R., & Syahuri, T. (2023). Idealitas penegakan hukum ditinjau dari perspektif teori tujuan hukum. *Collegium Studiosum Journal, 6*(2), 555–561. https://doi.org/10.56301/csj.v6i2.1078

Agatha, G. Pembuktian dan pengesahan anak luar kawin serta akibat hukumnya setelah berlaku Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 dalam pandangan hukum Islam.

Ahmad Tirmidzi, Mahmudi, Z., & Toriquddin, M. (2025). Hak waris anak luar nikah perspektif keadilan hukum Hans Kelsen dan waris Sunni: Studi PMK Nomor 46 PUU-VIII 2010. *Al-Ijtimaiyyah, 8*(2). https://doi.org/10.22373/al-ijtimaiyyah.v8i2.14641

Amir Syarifuddin. (2016). *Hukum Perkahwinan Islam di Indonesia: Antara fiqh munakahat dan Undang-Undang Perkahwinan*. Prenada Media.

Angelin, M. S. R., Putri, F. D., & Sanduan, A. P. (2021). Dilema hak mewaris anak luar kawin dalam perspektif hukum perdata. *Jurnal Hukum, 4*(2).

Anisyaniawati, A., Kusuma, F. N., Zanati, H., & Chandra, H. A. (2025). Konsep hukum dan keadilan dalam pemikiran Gustav Radbruch. *Praxis: Jurnal Filsafat Terapan, 2*(1). https://journal.forikami.com/index.php/praxis/article/view/954

Bulian, P., & Sumailan, F. Penegakan hukum tindak pidana penelantaran oleh orang tua terhadap anak di bawah umur.

Chaniago, I. P. (2026). *Pemberian nafkah iddah kepada istri nusyuz karena penyimpangan seksual sesama jenis perspektif teori tujuan hukum Gustav Radbruch: Studi Putusan Nomor 230/Pdt/2025/Ms/Bna* [Undergraduate thesis, Universitas Islam Negeri Maulana Malik Ibrahim]. http://etheses.uin-malang.ac.id/id/eprint/84095

Dzaky, M. (2022). Tanggung jawab orang tua sebagai wali dalam pengurusan harta waris anak di bawah umur berdasarkan hukum Islam. *Jurnal Hukum Lex Generalis, 3*(6), 478–489. https://doi.org/10.56370/jhlg.v3i6.276

Fahrul Rozi. (2025). Sosiologi hukum dan perubahan sosial: Studi kasus UU No. 35 Tahun 2014 tentang Perlindungan Anak sebagai respon terhadap kesadaran sosial yang meningkat akan hak anak. *Jurnal Hukum & Pembangunan, 55*(2). https://doi.org/10.21143/jhp.vol55.no.2.1751

Hartanto, D. J. A. Hak waris anak luar kawin pasca Putusan Mahkamah Konstitusi.

Hjh Nor binti Haji Puteh, & Kurniawan, C. S. (2025). Reforming Islamic family law in Southeast Asia: A comparative study of Indonesia, Malaysia, and Brunei Darussalam. *Asian Journal of Islamic Studies and Civilization, 2*(1). https://doi.org/10.62976/ajisc.v2i1.1367

Hududillah, T. H., Nikmah, S., Hamdi, F., & Bawana, T. A. (2025). Reconstructing Islamic family law in ASEAN: A normative analysis of marriage, divorce, and inheritance in plural legal systems. *Journal, 2*.

Hutasoit, E. L. Perlindungan hukum bagi anak luar nikah di Indonesia: Studi komparasi Putusan Mahkamah Konstitusi Nomor 46 PUU-VIII 2010 dan hukum Islam. *Jurisprudensi, 16*(2). https://doi.org/10.32505/jurisprudensi.v16i2.8938

Ismail, I. C. C. Y., & Sulatri, K. (2025). Analisa hukum terhadap asas kepentingan terbaik bagi anak: Studi kasus Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. *IERJ, 3*(2). https://doi.org/10.62976/ierj.v3i2.1269

Judiasih, S. D., Lestari, P. W., & Nugroho, B. D. (2024). Kedudukan waris anak luar kawin yang tidak diakui sebagai anak sah oleh ayah biologis pasca Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010. *Jurnal, 7*(2).

Kamal Mukhtar. (1993). *Asas-asas hukum Islam tentang perkawinan* (Cet. 3). Bulan Bintang.

Kanifah, A. N., & Santoso, L. (2024). Pemenuhan hak anak pasca perceraian perspektif hukum positif dan teori tujuan hukum Gustav Radbruch. *Al-Syakhsiyyah: Journal of Law & Family Studies, 6*(1). https://doi.org/10.21154/syakhsiyyah.v6i1.9128

Kementerian Agama Republik Indonesia. (2019). *Al-Qur'an dan terjemahannya edisi penyempurnaan*. Lajnah Pentashihan Mushaf Al-Qur'an.

Khoirunnisa, K. (2026). Implikasi hukum status anak luar kawin pasca Putusan MK Nomor 46 PUU/VIII/2010. *Jurnal, 1*(2).

Kusumo, B. A., & Supriyanta, S. (2025). Eksistensi perkawinan sirri setelah keluarnya Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010. *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan, 19*(1), 394. https://doi.org/10.35931/aq.v19i1.4397

Lenny Nadriana, & Yunani, E. (2023). Implementasi perlindungan hukum terhadap hilangnya hak istri dan anak akibat pernikahan siri. *JAEAP, 2*(1). https://doi.org/10.24967/jaeap.v2i01.2065

Lestari, M. Hak anak untuk mendapatkan perlindungan berdasarkan peraturan perundang-undangan.

Lisasih, N. Y., & Wahyudi, E. Kajian terhadap proses pembuktian gugatan hak anak luar kawin melalui alat bukti tes DNA dikaji dari Putusan MK Nomor 46/PUU-VIII-2010, KUHPerdata dan teori keadilan.

Mahkamah Konstitusi Republik Indonesia. (2010). *Putusan Nomor 46/PUU-VIII/2010 tentang kedudukan anak di luar kawin*. Kepaniteraan Mahkamah Konstitusi. https://www.mkri.id/public/content/persidangan/sinopsis/ikhtisar_561_1440_Ikhtisar%2046-PUU-VIII-2010_Zaka%20(4).pdf

Manoppo, B., & Soeikromo, D. Hak waris anak di luar nikah ditinjau dari Kitab Undang-Undang Hukum Perdata dan Kompilasi Hukum Islam.

Margono. (2019). *Asas keadilan, asas kemanfaatan & kepastian hukum dalam putusan hakim*. Sinar Grafika.

Marzuki, P. M. (2010). *Penelitian hukum*. Kencana.

Muhaimin. (2020). *Metode penelitian hukum* (Cetakan pertama). Unram Press.

Muhammad Ainul Hakim, & Rozy, F. (2024). Studi komparatif hak waris anak luar nikah perspektif hukum Islam dan hukum perdata. *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan, 18*(5). http://dx.doi.org/10.35931/aq.v18i5.3940

Muhammad Amin Suma. (2008). *Himpunan undang-undang perdata Islam & peraturan pelaksana lainnya di negara hukum Indonesia*. Rajawali Press.

Muthmainah. (2024). Perlindungan hukum hak keperdataan anak luar kawin. *Inkracht, 4*(1). https://inkracht.borobudur.ac.id

Nahak, A. (2023). Problematika eksekusi Putusan Pengadilan Tata Usaha Negara dalam perspektif hukum Gustav Radbruch. *Jurnal, 2*.

Ningsih, R. K., & Tuasikal, H. (2025). Critical review of police performance in upholding law enforcement and human rights in Indonesia. *JULR, 8*(1). https://doi.org/10.26623/julr.v8i1.1175

Nugraha, R. Teori hukum kemanfaatan dalam pelaksanaan tindak pidana pemberantasan narkotika.

Nurazizah, A., Ambarwati, S. D., & Yuliarsih, T. (2025). Perlindungan hak-hak anak luar nikah dalam Putusan MK No. 46/PUU-VIII/2010 ditinjau berdasarkan. *Journal for Islamic Studies, 8*(4).

Nurrahim Hasan Al Banna, Ardana, N. N., Kurniawan, M. F., & Prasetyo, R. D. (2025). Analisis ketimpangan keadilan di Indonesia: Potret buram hukum yang berpihak pada kuasa. *PJK, 5*(1), 125–134. https://doi.org/10.52738/pjk.v5i1.728

Nusron Wahid, N. (2019). *Hukum perkawinan Islam di Indonesia: Perbandingan fiqh dan hukum positif*. CV Pustaka Setia.

Oksidelfa Yanto. (2020). *Negara hukum: Kepastian, keadilan dan kemanfaatan hukum*. Pustaka Reka Cipta.

Rachmadhiva, A. S., & Setyorini, H. H. (2025). Implikasi kekeliruan substansi permohonan penetapan pengadilan terhadap kedudukan hukum anak luar kawin. *Wajah Hukum, 9*(1), 282. https://doi.org/10.33087/wjh.v9i1.1708

Radindi, N. A. (2023). Pemberian wasiat wajibah bagi anak luar kawin dalam hukum Islam. *Jurnal, 4*(2).

Rambe, S. A.-H., Sembiring, R., & Ikhsan, E. (2025). Analisis yuridis tentang status hak waris anak yang lahir diluar perkawinan sah pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 dalam perspektif hukum Islam. *Jurnal Hukum Lex Generalis, 6*(6). https://doi.org/10.56370/jhlg.v6i6.2035

Rini, D. A. Z. (2023). Status anak di luar nikah dalam perspektif hukum positif dan hukum Islam: Telaah Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. *Familia: Jurnal Hukum Keluarga, 4*(2), 91–106. https://doi.org/10.24239/familia.v4i2.87

Saifuddin, M. (2025). Stratifikasi sosial dan ketidaksetaraan akses keadilan: Analisis sosio-legal terhadap sistem peradilan Indonesia. https://doi.org/10.37950/ijd.v7i4.627

Savina, S., Hamzah, Y. A., & Jasmaniar, J. (2025). Kedudukan hak waris anak luar nikah menurut Kitab Undang-Undang Hukum Perdata Indonesia. *Legal, 1*(1). https://jurnal.fh.umi.ac.id/index.php/legal/article/view/1368

Siti Fitrotun. (2022). Perlindungan anak dalam UU Nomor 35 Tahun 2014 dalam perspektif fikih hadhanah. *IJSHI, 9*(1). https://doi.org/10.34001/ijshi.v9i1.3258

Suhartoyo. (2025). Analisis yuridis pertanggungjawaban hukum pidana korporasi menurut teori kepastian hukum Jan Michiel Otto. *Jurnal, 2*(10). https://doi.org/10.55324/jgi.v2i10.246

Syafi'i, I., Faiqoh, R., & Fronzoni, V. (2023). Meaning of mitsaqan ghalidzhan in study contemporary interpretation Quraish Shihab thoughts. *MILRev: Metro Islamic Law Review, 2*(2), 115. https://doi.org/10.32332/milrev.v2i2.7807

Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

Undang-undang perlindungan anak: Undang-Undang RI Nomor 35 Tahun 2014. (2015). Pustaka Mahardika.

Usman, R. (2016). Prinsip tanggung jawab orangtua biologis terhadap anak di luar perkawinan. *Jurnal Konstitusi, 11*(1), 168. https://doi.org/10.31078/jk1119

Widhy Andrian Pratama, dkk. (2025). Hak waris anak diluar nikah perspektif hukum Islam dan perdata. *Jendela Hukum, 12*(1), 5. https://doi.org/10.24929/jjh.v12i1.4220

Zahroul Firdausi Alfaiza, Wibowo, M. K. B., & Baehaqi, B. (2024). Perlindungan hak waris anak hasil perkawinan siri menurut Kompilasi Hukum Islam dan hukum positif Indonesia. *Hukmu, 3*(1). https://doi.org/10.54090/hukmu.312