

# Implementation of Constitutional Court Decision No. 46/PUU-VIII/2010 in the Examination of the Eligibility of Marriage Guardians for Children Born Out of Wedlock

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This research is motivated by the legal changes following the Constitutional Court Decision No. 46/PUU-VIII/2010, which opened the opportunity for recognizing civil relations between illegitimate children and their biological fathers. However, its implementation in the practice of examining the suitability of marriage guardians at the KUA (Religious Affairs Office) still faces several obstacles. The purpose of this research is to analyze how the decision is implemented at the KUA of Gorontalo City and to identify the obstacles that arise in administrative practice. The research uses an empirical legal approach through interviews with the head of the KUA and analysis of marriage examination documents, and is supplemented by a normative study of the Compilation of Islamic Law and the Constitutional Court Decision. The research findings indicate that the Office of Religious Affairs (KUA) still tends to rely on administrative documents as the basis for determining guardianship, and when evidence is deemed inadequate, appointing a guardian by a judge is the safest option. The Constitutional Court's ruling has not been fully implemented due to the lack of technical guidelines, limited staff capacity, and the influence of social factors and stigma. These findings underscore the need for harmonization of norms, clear technical guidelines, and strengthening institutional capacity to ensure more effective implementation of the rights of illegitimate children.

**Keywords** : Marriage Guardian, illegitimate child, Compilation of Islamic Law, Office of Religious Affairs

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## 1. Introduction

Marriage is a sacred bond that cannot be taken lightly, this is because its main goal is to form a harmonious and prosperous family in this world and in the hereafter.(Herawati et al., 2021)To be considered valid, a marriage must meet the basic requirements and conditions established by religious law and statutory regulations. If any of these requirements or conditions are not met, the marriage is considered invalid or null and void.(Limonu, 2024).

The marriage guardian is an important element in the validity of a marriage contract. Guardianship is generally established on the basis of lineages arising from a valid marriage. So the position of illegitimate children regarding guardianship rights is still faced with strong normative limitations(Hasanah, 2024). The Compilation of Islamic Law (KHI) regulates the order of guardians and the mechanism for delegation of guardianship (judicial guardian) if the guardian of the lineage does not meet the requirements or is not present(Kamaruddin et al., 2023)However, since the issuance of Constitutional Court Decision No. 46/PUU-VIII/2010, the legal status of children born out of wedlock has undergone a fundamental change. Namely, an illegitimate child can be recognized as the biological child of the father if there is valid scientific or legal evidence. This opens up the possibility that the biological father can become the marriage guardian of the illegitimate child.(Rajagukguk et al., 2025; Salma et al., 2023).

Significant changes in jurisprudence occurred after the Constitutional Court issued Decision Number 46/PUU-VIII/2010 which recognized the existence of a civil relationship between a child born out of wedlock and his biological father, thus bringing implications for family rights including the regulation of guardianship, hadhanah, and inheritance. (Zahira, 2025) This shift in legal position requires a re-arrangement of the norms in the Compilation of Islamic Law, which has been the reference for the practice of registering and examining marriages at the Office of Religious Affairs. (Daharis et al., 2025; Muslimin et al., 2024) At the administrative level, the Office of Religious Affairs (KUA) is the institution that translates these legal provisions into the practice of examining the suitability of marriage guardians and verifying the status of prospective brides and grooms. However, field practice shows variations in interpretation and implementation that have the potential to cause disharmony with the KHI and the Constitutional Court's decision. (Rizqiyah & Ansori, 2024) As a result, there is legal uncertainty for children born out of wedlock and for the parties involved in the process of determining a marriage guardian, which has implications for access to civil rights and child protection. (Hasibuan, 2023) This condition encourages the need for empirical and normative studies that map the points of contact and gaps between the provisions of the KHI and the administrative practices of the KUA following the Constitutional Court's decision.

The urgency of this research lies in the disharmony between the KHI and the Constitutional Court Decision No. 46/PUU-VIII/2010 in the examination of the suitability of marriage guardians at the KUA which has a direct impact on legal certainty, child protection, and the effectiveness of state administration in marriage affairs. This research is expected to produce normative and technical recommendations that can minimize disparities in practice in the field and strengthen access for children born out of wedlock to their rights. The purpose of this research is to analyze the conformity and inconsistency of KHI norms with the Constitutional Court Decision No. 46/PUU-VIII/2010 regarding the determination of guardians and proof of lineage and to formulate policy recommendations and operational guidelines for the KUA so that the implementation of the examination of the suitability of marriage guardians becomes harmonious, accountable, and oriented towards the best interests of the child.

The problem formulation of this research is focused on: How to implement Constitutional Court Decision No. 46/PUU-VIII/2010 in the Process of Examination of the Eligibility of Marriage Guardians for Children Born Out of Wedlock at the Gorontalo City Religious Affairs Office (KUA)? Anything Obstacles of the KUA in Implementing MK Decision No. 46/PUU-VIII/2010?

## 2. Research Methods

This research uses an empirical legal method, namely a legal research method that not only examines written norms, but also how the law is implemented in social reality in society or legal institutions. (Sukmawan & Damayanti, 2025).

The data sources in this study consist of two sources: primary data and secondary data. Primary data were obtained through direct interviews with the parties involved, such as KUA officers who serve as marriage registrars, verifiers, or marriage registrars. Secondary data examined the gaps in legal norms between the KHI and Constitutional Court Decision No. 46/PUU-VIII/2010.

The data analysis technique in this study uses qualitative data analysis through data reduction, thematic classification, descriptive data presentation, and conclusion drawing. Interview data is sorted based on its relevance to the research focus, then interpreted to identify patterns of practice, obstacles, and implications of the implementation of Constitutional Court Decision No. 46/PUU-VIII/2010 regarding the determination of marriage guardians for illegitimate children. This analysis process follows the stages of qualitative

analysis in empirical legal research as proposed by several recent studies.(Limonu, 2024; Sukmawan & Damayanti, 2025; Zahira, 2025).

### 3. Results And Discussion

#### Findings

In real practice, the Compilation of Islamic Law has been the main reference for the KUA in examining marriage guardians. The Compilation of Islamic Law formulates the guardian-native hierarchy and the conditions for valid guardianship in marriage. In the study of fiqh adopted by most KUA practices, children born out of wedlock are not always automatically connected by birth to the biological father for guardianship purposes, so there is a normative tendency to reject recognition of the father's guardianship if only based on a biological relationship that is not recognized by marriage.(Noviarni, 2023)The difference in approach between the KHI, which is more based on the fiqh tradition and its editorial provisions, and the Constitutional Court Decision, which opens up civil evidence based on modern evidence and positive law, is a fundamental point of tension.(Akhmad et al., 2023).

Constitutional Court Decision No. 46/PUU-VIII/2010 affirmed that children born out of wedlock can have a civil relationship with their biological father if the relationship can be proven according to applicable evidentiary provisions. This decision expands the legal access space for illegitimate children to civil rights such as the inclusion of the father's name, inheritance rights, and the possibility of the father's authority as guardian in cases where proven.(Akhmad et al., 2023)This decision is truly transformational because it changes the normative boundaries previously understood from the Marriage Law and the tradition of interpreting the KHI regarding lineage.(Zahira, 2025)Legally, this ruling provides a constitutional basis for the recognition of civil relationships. Administratively, it requires a verification mechanism that allows evidence of civil relationships to be accepted and processed. Socioculturally, it forces officials and the public to confront stigma and the private family sphere that impact the availability of evidence.(Pulungan et al., 2025; Rizki & Sipahutar, 2025).

From 2022 to 2023, 26 couples were found to have married using a judge as a guardian in nine (9) KUA offices in Gorontalo City. This was because the bride's status was recorded as "mother's child" on her birth certificate at the Civil Registry Office. Based on these findings, researchers conducted interviews with the nine heads of KUA offices in Gorontalo City. The results of the interviews with the nine heads of KUA offices in Gorontalo City can be summarized as follows:(Limonu, 2024):

1. The Office of Religious Affairs (KUA) in Gorontalo City tends to appoint a legal guardian in cases of illegitimate children. This practical decision relies heavily on the verification and analysis of documents submitted by the prospective bride and groom.
2. An exception is made if the submitted documents indicate the bride's birth occurred more than six months after the marriage. This was explained by the head of the Office of Religious Affairs (KUA) in Gorontalo City, as it can be seen from classical Islamic law (the Shafi'i, Maliki, Hanafi, and Hanbali schools of thought), which stipulates that a child is considered related to the father if he or she is born at least six months after the legal marriage contract.
3. KUA officials do not use the Constitutional Court's decision directly as a basis for guardianship. The Constitutional Court's decision is only considered relevant if there is an appointment or court decision that judicially links the biological father to the child. This finding is supported by analysis of interviews with the head of the KUA and the marriage examination documents reviewed.

This pattern has several real consequences. First, illegitimate children, whose relationship with their

biological father could be recognized according to the Constitutional Court's ruling, still face administrative obstacles. Furthermore, the option of a legal guardian tends to be an administrative shortcut, but fails to substantively resolve the issue of lineage recognition. This demonstrates the gap between constitutional recognition and administrative reality.(Rizki & Sipahutar, 2025).

### **Implementation of Constitutional Court Decision No. 46/PUU-VIII/2010 in the Process of Examination of the Eligibility of Marriage Guardians for Children Born Out of Wedlock at the Office of Religious Affairs (KUA) of Gorontalo City.**

Formally, the Constitutional Court's ruling constitutes constitutional jurisprudence that should be part of the national legal framework. However, the transfer of legal norms from the Constitutional Court's ruling to the administrative practices of the Office of Religious Affairs (KUA) cannot be automatically implemented. Field studies and observations indicate that some KUA officers are aware of the Constitutional Court's ruling, but not all have the technical guidelines to translate it into verification procedures at the Office of Religious Affairs.(Akhmad et al., 2023)In Gorontalo City, the head of the KUA refers to the Constitutional Court's decision as a legal basis but still requires administrative evidence as a practical basis for action.(Limonu, 2024).

In the practice of examining the suitability of guardians at the Gorontalo City Office of Religious Affairs (KUA), proof of the civil relationship referred to in the Constitutional Court Decision is generally tested through administrative documents, such as a birth certificate listing the father's name or the parents' marriage certificates. The KUA tends to accept this written evidence, and if sufficient, the recognized guardian is the nasab guardian. However, if such evidence is unavailable or questionable, the KUA rarely or does not have a formal administrative mechanism to accept more substantive alternative evidence, such as DNA testing. Therefore, the KUA will refer the matter to the court to determine the guardianship judge.(Noviarni, 2023)This demonstrates a duality: the Constitutional Court's ruling legitimizes civil evidence, but the Office of Religious Affairs (KUA) requires procedural guidelines so that such evidence can be conducted administratively without always involving the courts. Without these guidelines, the Constitutional Court's ruling ends up as merely a potential right on paper.(Hilmiati & Yusrina, 2023).

### **Obstacles of the KUA in Implementing MK Decision No. 46/PUU-VIII/2010**

In implementing Constitutional Court Decision No. 46/PUU-VIII/2010 in the process of examining the suitability of marriage guardians for illegitimate children, the Office of Religious Affairs (KUA) encountered several obstacles. The following are some of the obstacles experienced by the KUA regarding the implementation of Constitutional Court Decision No. 46/PUU-VIII/2010 in the process of examining the suitability of marriage guardians for illegitimate children, based on interview results.(Limonu, 2024):

1. Lack of national technical guidelines.  
The absence of a Ministerial Regulation (PMA) or technical instructions governing the types of evidence acceptable to the KUA, how to verify it, and standard referral procedures has led to officials being conservative. Recent literature has repeatedly highlighted the need for technical guidelines to ensure the operationalization of the Constitutional Court's ruling at the KUA level.
2. Capacity and resource limitations.  
Many KUAs, particularly in the regions, lack easy access to forensic evidence, are not trained to handle sensitive requests, and lack a standardized workflow for illegitimate child cases. This forces KUAs to rely on the administratively safer option of judicial referral (by a judge or guardian).
3. Family reluctance and social stigma.  
Families involved often refuse to disclose evidence or undergo acknowledgment procedures due to

fear of social stigma; this reduces the likelihood of proving the case at the administrative level. The Gorontalo study confirmed that social stigma is a significant reason why documents are unavailable or intentionally concealed.

4. Interpretive ambiguity between KHI and MK Decision.

The discrepancy between the textual construction of the KHI and the conceptual approach in the Constitutional Court's ruling creates uncertainty in the practice of legal interpretation, particularly regarding the acceptance of non-traditional evidence within the KUA (Religious Affairs Office). In administrative practice, the KHI remains the primary reference due to its religious legitimacy and technical function as a work guideline. This situation encourages KUA officials to prioritize adherence to the KHI, both to maintain socio-religious legitimacy and to avoid potential resistance and controversy in public services.

### **Technical Recommendations to Improve the Implementation of Constitutional Court Decision No. 46/PUU-VIII/2010**

Based on the results of analysis and empirical data in Gorontalo City (Limonu, 2024), the following technical recommendations may help in the more effective implementation of the Constitutional Court's decision:

1. PMA/Special Technical Instructions.

The Ministry of Religious Affairs needs to issue operational guidelines detailing the types of evidence accepted by the Office of Religious Affairs (KUA) (certificates, written confessions, witnesses, medical documents, DNA testing if necessary), registration procedures, and referral procedures to the courts. Contemporary literature emphasizes the urgency of such guidelines.

2. Layered verification protocol.

The Office of Religious Affairs (KUA) can adopt a multi-layered verification mechanism, such as administrative document verification, alternative verification (written confessions, witnesses) with official records, and forensic/judicial referrals if issues persist. This mechanism maintains a balance between administrative certainty and rights protection.

3. Training and capacity building.

Training program for registrars and KUA officers regarding the Constitutional Court Decision, aspects of civil evidence, sensitive case management, and child protection principles.

4. Cross-agency coordination.

Establish a referral mechanism between the KUA, Population Service, Religious/District Courts, and forensic services for access to evidence and rapid handling.

5. Data protection and privacy rights.

Verification procedures must ensure confidentiality and psychosocial protection for children and families so that stigma does not exacerbate vulnerability.

If the above recommendations are implemented, the Constitutional Court's decision will likely be more visible in administrative practice, making the civil rights of illegitimate children more accessible, reducing variations in practice between districts/cities, and possibly reducing litigation in courts because the Office of Religious Affairs (KUA) is capable of handling most administrative cases. However, empirical evaluation in several locations is needed to test the effectiveness of the technical guidelines when implemented. Therefore, this research should be complemented by cross-regional comparative studies and ethical assessments regarding the use of forensic tools (DNA) to inform national policy.

## **4. Conclusion**

Based on the results and discussion, it can be concluded that the implementation of Constitutional Court Decision No. 46/PUU-VIII/2010 in the Examination of the Eligibility of Marriage Guardians for Children Born Out of Wedlock. Hardiyanto Putra Limonu et.al

Decision No. 46/PUU-VIII/2010 in the process of examining the suitability of marriage guardians for illegitimate children at the Gorontalo City Office of Religious Affairs (KUA) has not fully run as expected. In practice, the KUA still relies more on the provisions of the Compilation of Islamic Law and verification of administrative documents, so that the appointment of a guardian by a judge remains the safest option when proof of lineage is incomplete or raises doubts. The alternative evidentiary space that has actually been opened by the Constitutional Court Decision has not been implemented effectively due to the lack of clear technical guidelines, limited capacity of the apparatus, and social factors in the form of community stigma. This condition ultimately shows that although changes in norms have occurred at the constitutional level, their translation into administrative practice still requires strengthening so that the protection of the rights of illegitimate children can be implemented more certainly and consistently. As a follow-up, concrete steps are needed in the form of developing more operational technical regulations for the KUA, training for officials to understand the evidentiary procedures in accordance with the Constitutional Court Decision, and strengthening coordination with related institutions so that the process of determining guardians can be carried out more simply, clearly, and fairly. This study also recognizes limitations, because the scope of the research area is still limited to one region and is highly dependent on administrative practices that vary between KUA. Therefore, further research is important to be conducted with a broader area, a comparative approach between regions, and an in-depth study of normative and sociological aspects, so that in the future, a more mature, realistic implementation model can be formulated and applied nationally.

## 5. Reference

- Akhmad, I., Wicaksana, DA, & Kambela, AD (2023). CONSTITUTIONAL COURT DECISION NUMBER 46/PUU-VIII/2010 ON ILLNESS CHILDREN: A LEGAL ANALYSIS. 44–51.
- Daharis, A., Herdatama, DMA, Jamaluddin, T., Yusuf, SDM, Pradana, SY, Solok, S., & Indah, N. (2025). The Position of Children Born Out of Wedlock from the Perspective of the Compilation of Islamic Law and Constitutional Court Decisions. 8(11), 7334–7342. <https://doi.org/10.56338/jks.v8i11.8085>
- Hasanah, IA (2024). LEGAL ANALYSIS OF RECORDING PARENTS' NAMES ON BIRTH CERTIFICATES OF ILLEGAL CHILDREN AFTER CONSTITUTIONAL COURT DECISION NUMBER 46/PUU-VIII/2010.
- Hasibuan, ZN (2023). LEGAL PROTECTION OF ILLEGAL CHILDREN RECOGNIZED FROM A CIVIL LAW PERSPECTIVE. 2(2), 421–431.
- Herawati, Ridwan, R. bin, & Asha, L. (2021). MARRIAGE GUARDIANS OF GIRL CHILDREN BORN TO WOMEN PREGNANT OUT OF WEDDING: A REVIEW OF NORMATIVE AND SOCIOLOGICAL ANALYSIS (STUDY IN SUKAKARYA DISTRICT).
- Hilmiati, A., & Yusrina, K. (2023). IMPLICATIONS OF THE CONSTITUTIONAL COURT RULING NO. 46/PUU-VIII/2010 CONCERNING MARRIAGE LAW IN INDONESIA. 1(1), 48–57.
- Kamaruddin, NF, Anisya, N., Asry, N., & Irmawati. (2023). THE URGENCY OF UNDERSTANDING GUARDIANSHIP FOR PROSPECTIVE BRIDES IN RELIGIOUS COUNSELING AT THE KUA.
- Limonu, H. P. (2024). Legal Considerations in Appointing a Marriage Guardian for a Child Born Out of Wedlock. 4(2), 97–112.
- Muslimin, Muschsin, A., Saidah, Sudirman, & Rahmawati. (2024). ISLAMIC LEGAL REVIEW OF THE DETERMINATION OF GUARDIANS IN THE PANGKAJENE RELIGIOUS COURT (DETERMINATION STUDY 2020-2023). 7.
- Noviarni, D. (2023). THE POSITION OF ILLNESS CHILDREN FROM ISLAMIC LAW. 79–92.
- Pulungan, NNSR, Nugraha, DA, Ghuffran, M., Yefrizawati, & Affila. (2025). The Urgency of Family Law: The Principle of Equality Before the Law Regarding Constitutional Court Decision No. 46/PUU-Implementation of Constitutional Court Decision No. 46/PUU-VIII/2010 in the Examination of the Eligibility of Marriage Guardians for Children Born Out of Wedlock. Hardiyanto Putra Limonu et.al

- VIII/2010 Regarding the Status of Children Born Outside of Marriage. 04(02), 140–149.
- Rajagukguk, EY br, Nababan, R., & Simamora, S. (2025). Legal Review of Legal Protection for Children Born Out of Wedlock Based on Constitutional Court Decision Number 46/PUU-VIII/2010.
- Rizki, & Sipahutar, DJ (2025). LEGAL CONSEQUENCES OF DETERMINING THE RECOGNITION OF CHILDREN OUT OF WEDDING: A STUDY OF DECISION NUMBER 12/PDT.P/2023/PN WNG. 6(6), 1–16.
- Rizqiyah, NS, & Ansori, MI (2024). THE PROCESS OF CHILD MARRIAGE OUT OF WEDDING; A CASE STUDY AT THE OFFICE OF RELIGIOUS AFFAIRS, SARANG DISTRICT 2. 4, 112–123.
- Salma, S., Rahman, A., & Zainuddin. (2023). Implications of Constitutional Court Decision Number 46/PUU-VIII/2010 on the Status of Children Born Outside of Marriage in Relation to the Compilation of Islamic Law. 4(46), 764–781.
- Sukmawan, YA, & Damayanti, D. (2025). Normative and Empirical Legal Research Methods as a Strategy for Strengthening the Perspective of Legal Studies. 4(1), 114–128.
- Zahira, VA (2025). Critical Analysis of Constitutional Court Decision No. 46 / PUU- VIII / 2010: Lineage and Civil Relations of Children Born Outside of Marriage from a Maşlahah Perspective. 2 (April).