

## Nafkah anak luar kawin menurut konsep Hifzhu Al-Nafs: kajian putusan Mahkamah Konstitusi nomor 46/PUU-VIII/2010

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### Abstrak

Article 43 paragraph (1) of Law Number 1 year 1974 on Marriage only sets on private relations of a child born out-of-wedlock with his mother: child born out of wedlock cannot obtain full rights, as the biological father is not responsible for fulfilling the rights of the child. This analysis reviews the Constitutional Court Decision Number 46/PUU-VIII/2010 with three main focuses of discussion: 1) how the judges of the Constitutional court made legal considerations responding to the alimony/child support of child born out of wedlock; 2) how the conformity of the concept of 'hifzhu al-nafs' to the redirected responsibility of the father's family after a DNA test result; and 3) whether there is a similarity of concept of 'hifzhu al-nafs' in Shari'ah maqashid to the provisions of Article 43 paragraph (1) regarding to the issue of alimony for the child born out of wedlock after judicial review. The analysis is through in normative juridical research, which is more a qualitative research, using library research methods. From the analysis, it is learned that after the juridical review of Article 43 paragraph (1), there is renewal stating that a child born out-of-wedlock is entitled to obtain a living support from the parents, if legally or by science and technology proven. In harmony, the decision of the Constitutional Court itself is fully supported the concept hifzhu al-nafs, in the purpose maintaining the soul of the child from the downturn. Where the adjustment to the concept hifzhu al-nafs is made, the decision could be implemented in Indonesia by adhering to the procedures set by the Constitutional Court.