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CASE ANALYSIS OF CONSTITUTIONAL COURT DECISION NO. 46/PUU-VIII/2010 FROM A JURIDICAL PERSPECTIVE (LOGICAL, CRITICAL, AND RADICAL)

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Abstrack: Legal reasoning is an intellectual process of discovering, interpreting, and applying the law appropriately in resolving legal issues. This study aims to analyze the objectives of legal reasoning through three forms of juridical thinking, namely logical, critical, and radical, by examining its application in Constitutional Court Decision Number 46/PUU-VIII/2010. The type of research used is normative legal research with a statute approach and case approach. The results show that the Constitutional Court used logical legal thinking to ensure consistency between Article 43 paragraph (1) of the Marriage Law and the 1945 Constitution, thereby guaranteeing legal certainty. Critical legal thinking was applied by prioritizing the principle of the best interests of the child to avoid discrimination against children born out of wedlock. Meanwhile, radical legal thinking is manifested through changes in the interpretation of norms that fundamentally change the paradigm of family law in Indonesia, so that children born out of wedlock have a civil relationship with their biological fathers as long as it can be legally proven. The integration of these three forms of legal thinking proves that legal reasoning not only upholds written norms but also adapts the law to the values of justice, benefit, and the development of modern society.

Keywords: Legal Reasoning, Juridical Thinking, Family Law, Children Born Out of Wedlock.

1. Introduction

Legal reasoning is the ability to think systematically, logically, and analytically in understanding, interpreting, and applying the law to a particular problem.¹ This reasoning is not limited to the textual application of norms, but also includes the ability to adapt legal norms to social dynamics, developments in the values of justice, and the protection of human

¹ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana, 2017).

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rights.² In practice, legal reasoning is an important tool for ensuring that decisions are not only formally valid, but also substantively beneficial and just.³

One of the main aspects of legal reasoning is juridical thinking, which can be classified into three forms: logical, critical, and radical. Legal logical thinking emphasizes consistency in the application of law in accordance with the hierarchy of norms, thereby preventing contradictions between regulations.⁴ Critical legal thinking examines the compatibility of legal norms with substantive principles of justice and human values, particularly in the context of social change.⁵ Meanwhile, radical legal thinking is necessary to carry out fundamental reforms in the legal system when existing norms are no longer relevant to the needs of society.⁶

The application of these three forms of legal reasoning can be found in Constitutional Court Decision Number 46/PUU-VIII/2010, which examined Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage.⁷ In this ruling, the Constitutional Court reinterpreted the provision limiting the civil relationship of children born out of wedlock to only their mothers. This ruling recognizes civil relations with the biological father as long as they can be legally proven, reflecting the application of logical thinking (adjustment of norms to the 1945 Constitution), critical thinking (protection of children's rights and elimination of discrimination), and radical thinking (a paradigm shift in family law in Indonesia).⁸

Based on this, this study will comprehensively discuss the objectives of legal reasoning with a focus on logical, critical, and radical juridical thinking approaches, as well as analyze its relevance through a case study of Constitutional Court Decision No. 46/PUU-VIII/2010.

2. Method

This study uses normative legal research methods that focus on the study of positive legal norms, legal principles, and court decisions as the main sources of analysis.⁹ This

² Satjipto Rahardjo, *Ilmu Hukum*, cet. 6 (Bandung: Citra Aditya Bakti, 2006).

³ Bernard L. Tanya, Yoan N. Simanjuntak, and Markus Y. Hage, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang Dan Generasi* (Yogyakarta: Genta Publishing, 2013).

⁴ Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar* (Yogyakarta: Liberty, 2009).

⁵ Satjipto Rahardjo, *Hukum Progresif: Hukum Yang Membebaskan* (Jakarta: Kompas, 2009).

⁶ Rahardjo.

⁷ *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*, 2010.

⁸ *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*.

⁹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2014).

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method was chosen because the issues examined relate to legal reasoning and its application in court decisions, thus requiring an in-depth review of statutory provisions and legal theory. The approach used includes a statute approach, which examines Law No. 1 of 1974 on Marriage, the 1945 Constitution of the Republic of Indonesia, and other relevant regulations.¹⁰ Case approach, by analyzing Constitutional Court Decision Number 46/PUU-VIII/2010 to examine the application of logical, critical, and radical legal thinking.¹¹ As well as a conceptual approach, which involves studying legal reasoning theories and legal thinking from legal experts as a basis for analysis.¹²

The legal materials used consist of primary legal materials, including legislation, court decisions, and official state documents. As well as secondary legal materials, in the form of literature, books, scientific articles, and opinions of legal experts relevant to the research discussion. Legal materials are collected through library research, while data analysis uses descriptive-analytical methods to describe, examine, and analyze the legal phenomena that are the object of the research. This method is expected to produce conclusions that are argumentative, systematic, and scientifically accountable.

3. Analysis or Discussion

A. ANALYSIS OF LEGAL REASONING, JUDICIAL THINKING (LOGICAL, CRITICAL, AND RADICAL)

Legal reasoning is a thought process used to interpret, apply, and develop legal norms in order to resolve legal issues. This process is not merely mechanical, but also requires analytical skills, logic, and value judgments. In the context of the rule of law (*rechtstaat*), legal reasoning is an important instrument in ensuring legal certainty, justice, and utility for society. The main objective of legal reasoning is to find the right legal answer or solution, based on the provisions of legislation, doctrine, jurisprudence, and applicable legal principles.¹³ Thus, legal reasoning serves to connect the facts of a case with the relevant legal norms through a systematic and accountable framework of thinking.¹⁴

¹⁰ Marzuki.

¹¹ *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*.

¹² Rahardjo, *Ilmu Hukum*.

¹³ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: PT. RajaGrafindo Persada, 2010).

¹⁴ Mertokusumo, *Penemuan Hukum: Sebuah Pengantar*.

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In addition, legal reasoning is not only oriented towards the application of the text of the law, but also takes into account the social, political, and moral context. This is in line with Satjipto Rahardjo's view, which emphasizes that law should be seen as a means to achieve broader social goals, not merely as a set of rigid rules.¹⁵ Therefore, legal reasoning requires legal thinking skills that encompass logical, critical, and radical aspects.

In general, the objectives of legal reasoning can be summarized as follows. First, to discover legal truth through the process of proper legal interpretation and construction. This means that legal practitioners or academics must be able to identify the norms relevant to the legal events that occur, so that the decisions made can be justified normatively. Second, to ensure both formal and substantive justice. Formal justice means the consistent application of the law according to procedure, while substantive justice refers to the fulfillment of the sense of justice that exists within society.¹⁶ Third, to establish the legal legitimacy of legal decisions or opinions. This legitimacy is important so that the public accepts the results of legal reasoning and trusts the integrity of legal institutions. Fourth, to maintain the coherence of the legal system, so that there are no contradictions between norms.¹⁷ Fifth, to accommodate changes and developments in society, which in certain circumstances require radical thinking in order to reform the law.¹⁸

1. LEGAL THINKING

Legal thinking is a process of thinking based on valid legal sources, such as legislation, jurisprudence, doctrine, and recognized legal customs. Legal thinking is characterized by objectivity, systematicity, and normativity. Objective means not taking sides in a case, but rather basing one's reasoning on the applicable law. Systematic means that the reasoning is structured in a logical and interrelated manner between the major premise (legal norm) and the minor premise (legal fact). Normative means using legal principles as the main reference in the reasoning process.¹⁹

In practice, legal thinking can be carried out using three main approaches: logical, critical, and radical. These approaches complement each other and are used according to the context of the legal issues at hand.

¹⁵ Rahardjo, *Ilmu Hukum*.

¹⁶ Gustav Radbruch, *Legal Philosophy* (Oxford: Oxford University Press, 2006).

¹⁷ Hans Kelsen, *General Theory of Law and State* (Cambridge: Harvard University Press, 1961).

¹⁸ Riana Susmayanti, "Konsep Tanggung Jawab Sosial Dalam Peraturan Perundang-Undangan Di Indonesia," *ARENA HUKUM* 7, no. 3 (2014): 363–87, <https://doi.org/10.21776/ub.arenahukum.2014.00703.4>.

¹⁹ Tanya, Simanjuntak, and Hage, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang Dan Generasi*.

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2. LOGICAL LEGAL THINKING

Legal logical thinking relies on the principles of formal logic to connect legal norms with legal facts. In this method, legal syllogism becomes the main instrument. A legal syllogism consists of a major premise in the form of a legal rule, a minor premise in the form of a legal fact or event, and a conclusion that is the application of the rule to that fact.²⁰ For example, if Article 362 of the Criminal Code states that theft is punishable by a maximum imprisonment of five years, and it is proven that someone took another person's property with the intention of unlawfully possessing it, then the conclusion is that he or she can be punished in accordance with that article.

The strength of logical thinking in law lies in its ability to maintain consistency and legal certainty. However, the weakness of this approach is the potential to ignore aspects of substantive justice if the legal norms used are no longer relevant to current social conditions.²¹ Therefore, logical thinking should be combined with a critical and radical approach in certain cases.

3. CRITICAL LEGAL THINKING

Critical legal thinking goes beyond the mechanical application of legal rules by examining, evaluating, and questioning existing legal norms. This approach focuses on the pursuit of substantive justice, social relevance, and protection of vulnerable groups.²² In this context, a judge or legal scholar does not only ask "what is the applicable law?", but also "is this law fair?", "does this norm comply with human rights principles?", or "is this norm relevant to the development of society?".

Critical thinking requires the courage to see weaknesses in the legal system and offer solutions for improvement. For example, legal norms governing certain crimes may be applied discriminatorily against minority groups. With a critical approach, analysis does not stop at the text of the norm, but also assesses the impact of its implementation.²³

4. RADICAL LEGAL THINKING

Radical legal thinking is a mindset that demands fundamental changes to existing legal structures and principles. This approach is used when the prevailing legal system is

²⁰ Achmad Ali, *Menguak Teori Hukum Dan Teori Peradilan* (Jakarta: Kencana, 2012).

²¹ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia* (Surabaya: Bina Ilmu, 1987).

²² Ronald Dworkin, *Law's Empire* (Cambridge: Belknap Press, 1968).

²³ Duncan Kennedy, "Legal Education and the Reproduction of Hierarchy: A Polemic Against the System," *Michigan Law Review* 82, no. 4 (1984): 961–65, <https://repository.law.umich.edu/mlr/vol82/iss4/39/>.

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deemed incapable of addressing social issues fairly and effectively.²⁴ Radical thinking often arises in situations of legal crisis, political revolution, or social paradigm shifts.

An example of radical thinking in Indonesia is the legal reforms that followed the collapse of the New Order. Fundamental changes were made to the 1945 Constitution, including broader recognition of human rights and the establishment of the Constitutional Court as the guardian of the constitution.²⁵ This approach is also evident in the advocacy of environmental movements that demand the inclusion of environmental rights and the rights of future generations in the constitution.²⁶

B. CASE ANALYSIS OF CONSTITUTIONAL COURT DECISION NO. 46/PUU-VIII/2010 FROM A LOGICAL, CRITICAL, AND RADICAL LEGAL PERSPECTIVE

Constitutional Court Decision Number 46/PUU-VIII/2010 is one of the important milestones in the development of family law in Indonesia. This case was filed by a child born out of wedlock, challenging the constitutionality of Article 43(1) of Law No. 1 of 1974 on Marriage, which states: "A child born out of wedlock shall only have civil relations with his/her mother and his/her mother's family."²⁷

The petitioner argues that this provision is discriminatory because it ignores the blood relationship with his biological father, thereby contradicting Article 28B paragraph (2) of the 1945 Constitution, which states: "Every child has the right to survival, growth, and development, as well as the right to protection from violence and discrimination."²⁸

The Constitutional Court then granted the petition, stating that the phrase in Article 43 paragraph (1) of the Marriage Law must be interpreted to mean that children born out of wedlock also have a civil relationship with the man who is their biological father as long as this can be proven scientifically and/or by other means of evidence according to the law.²⁹

1. DECISION OF THE CONSTITUTIONAL COURT NO. 46/PUU-VIII/2010

²⁴ Roberto Unger, *The Critical Legal Studies Movement* (London: Verso, 1986).

²⁵ Ariel Heryanto, "The Development of Development," *Indonesia* 46, 1988, 1–24, <https://arielheryanto.com/2016/03/04/the-development-of-development/>.

²⁶ Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2011).

²⁷ *Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*, 1974.

²⁸ *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, 1945.

²⁹ Djumikasih, "Implikasi Yuridis Putusan MK Nomor 46/PUU-VIII/ 2010 Terhadap Akta Kelahiran Anak Luar Kawin," *ARENA HUKUM* 6, no. 2 (2013): 152–289, <https://doi.org/10.21776/ub.arenahukum.2013.00602.4>.

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The following is the verdict of Constitutional Court Decision No. 46/PUU-VIII/2010, which adjudicates and declares that:³⁰

- a. Granting the Petitioners' request in part.
- b. Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to State Gazette of the Republic of Indonesia Number 3019) which states, "A child born out of wedlock shall only have civil relations with his/her mother and his/her mother's family", is contrary to the 1945 Constitution of the Republic of Indonesia insofar as it is interpreted to eliminate civil relations with a man who can be proven, based on science and technology and/or other evidence according to the law, to be the child's biological father.
- c. Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to State Gazette of the Republic of Indonesia Number 3019) which states, "A child born out of wedlock shall only have a civil relationship with his/her mother and her family", does not have binding legal force insofar as it is interpreted to eliminate civil relations with a man who can be proven based on science and technology and/or other evidence according to law to have a blood relationship as the father, so that the paragraph must be read as follows: "A child born out of wedlock has a civil relationship with his mother and his mother's family as well as with the man 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 his father's family."
- d. Rejecting the Petitioners' request for anything else and beyond that.
- e. Ordering this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.

³⁰ *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010.*

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2. ANALYSIS WITH LOGICAL LEGAL THINKING

The logical approach in this decision is evident in the application of the principle of the hierarchy of norms (stufenbau theorie) as proposed by Hans Kelsen, whereby lower-level legislation cannot contradict higher-level norms.³¹

- a. Major Premise: Article 28B paragraph (2) of the 1945 Constitution guarantees the protection of children from discrimination.
- b. Minor Premise: Article 43 paragraph (1) of the Marriage Law limits the civil relationship of children born out of wedlock to only the mother and the mother's family.
- c. Conclusion: These restrictions are contrary to the 1945 Constitution and therefore require constitutional interpretation in line with the principle of non-discrimination. This logical method maintains the consistency of the legal system and ensures legal certainty, as described by Gustav Radbruch as one of the pillars of the purpose of law, in addition to justice and utility.³²

3. ANALYSIS WITH CRITICAL LEGAL THINKING

The court does not merely apply norms textually, but also questions their substantive fairness. This critical approach is in line with Satjipto Rahardjo's view that law should be seen as a means to achieve broader social goals, rather than merely a set of rigid rules.³³

The court ruled that limiting civil relations of children born out of wedlock to only the mother ignores biological reality and the father's responsibility towards the child. This norm has the potential to harm children socially, economically, and psychologically, thereby contradicting the principle of the best interests of the child as recognized in the Convention on the Rights of the Child.³⁴

4. ANALYSIS WITH RADICAL LEGAL THINKING

³¹ Kelsen, *General Theory of Law and State*.

³² Radbruch, *Legal Philosophy*.

³³ Rahardjo, *Ilmu Hukum*.

³⁴ United Nations, *Convention on the Rights of the Child*, 1989.

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This ruling also contains elements of radical thinking because it changes the paradigm of family law in Indonesia. Prior to this ruling, children born out of wedlock had limited legal status and were often marginalized socially and legally.

Following the ruling, civil relations between children born out of wedlock and their biological fathers are recognized as long as they can be legally proven. This step is a fundamental change that not only affects civil relations between children and fathers, but also has an impact on inheritance rights, alimony, and social recognition.³⁵ According to Roberto Unger, a radical approach to law is necessary when the old legal system is no longer adequate to guarantee justice for vulnerable groups..³⁶

An analysis of Constitutional Court Decision No. 46/PUU-VIII/2010 shows that the objectives of legal reasoning can be achieved through the integration of three approaches to legal thinking:

- a. Logical: Ensuring consistency between laws and the constitution.
- b. Critical: Ensuring that the application of the law is in line with the values of justice and human rights.
- c. Radical: Promoting fundamental legal reforms to protect vulnerable groups.

This ruling proves that comprehensive legal reasoning can produce decisions that are not only legally valid, but also fair and relevant to developments in society.³⁷

4. Conclusion

Legal reasoning is an intellectual process that aims to achieve legal decisions that are consistent, fair, and beneficial to society. In the context of legal thinking, there are three main complementary approaches, namely logical, critical, and radical. The logical approach ensures consistency between lower and higher legal norms, maintains legal certainty, and avoids conflicts between regulations. The critical approach allows for legal interpretations that take into account substantive justice, social development, and the protection of human rights. Meanwhile, the radical approach plays an important role when fundamental reforms

³⁵ Ali, *Menguak Teori Hukum Dan Teori Peradilan*.

³⁶ Unger, *The Critical Legal Studies Movement*.

³⁷ Nur Faisyah, Muchamad Ali Safa'at, and Riana Susmayanti, "Constitutional Parameters of Judicial Activism in the Indonesian Constitutional Court," *International Journal of Business, Law, and Education* 6, no. 1 (2025): 724–38, <https://doi.org/10.56442/ijble.v6i1.1073>.

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are needed in the legal system to make it more responsive to social change and protect vulnerable groups.

The application of these three approaches can be clearly seen in Constitutional Court Decision Number 46/PUU-VIII/2010. The Constitutional Court used a logical approach by adjusting Article 43 paragraph (1) of the Marriage Law to be in line with the 1945 Constitution, critical thinking by prioritizing the principle of the best interests of the child, and took radical steps by changing the paradigm of family law that previously restricted the civil relations of children born out of wedlock. Thus, the purpose of legal reasoning is not only to uphold existing norms, but also to ensure that the law can provide protection, justice, and benefits that are relevant to the needs of society. The integration of logical, critical, and radical thinking is key for judges, academics, and legal practitioners in creating an adaptive, humanistic, and just legal system.

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