

Illegitimate Children's Place in Marriage Law

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Abstract

Children born outside of marriage provide a dilemma in day-to-day living, yet there are also others who view this as the standard. Even though they are hated and denigrated, they nevertheless have little civil and welfare rights since they are illegitimate children, meaning they have no legal connection to their father. Furthermore, because he has no nasab link or legal tie with his mother, who gave birth to him, the boy is not eligible to receive money or inheritance from his father. Unmarried children therefore have a lot of rights and responsibilities with their parents. This research aims to investigate the legal protection of children born outside of marriage in the aftermath of the Constitutional Court's Decision No.46/PUU-VIII/2010. It does this by learning about their legal status under Islamic law, Law No. 1 of 1974, and the Civil Code. Adopting a normative legal perspective, the research is carried out deductively by looking at the articles of law that govern the problem to be studied. Then, this study looks at how one law relates to another and how it is applied in practice. The study's findings demonstrated that illegitimate children only had cordial relationships with their mother and relatives. As a consequence, children born outside of marriage are considered illegitimate under the Civil Code but may be recognized, but they are considered illegitimate under Law No. 1 of 1974 and KHI. This is in line with the Constitutional Court's ruling No. 46/PUU-VIII/2010 on the recognition of such children.

Keywords : Child Status, Marriage, Inheritance, Legal Rules

I. INTRODUCTION

As a result of uncontrolled associations, children are now often born without marital ties. This shows that laws, religious norms, and customs no longer have significant value. Over time, the term "natural child" has been used for two definitions: "natural child" in a broad sense includes all unmarried and unmarried children; "Natural child" in a narrow sense includes only children born to incest and overspel (Prasetyo et al., 2023). This natural kid only has a civil relationship with his parents if they freely or involuntarily acknowledge him, in accordance with Civil Code Article 280. Unless the mother or father who gave birth to him acknowledges (Ilham et al., 2022).

According to civil law, a kid who is regarded as the product of his parents' marriage is called a legal child. In this case, it has been stipulated that the husband has the right to refuse the legality of the child for a maximum of 300 days after the day of marriage. Except, if the husband was there when the birth certificate was created and signed, or whether he was aware of his wife's pregnancy prior to their marriage. In this case, it is considered that the husband has accepted and recognized the child born as his own child.

In everyday life, children out of wedlock face different challenges. Some people see their status as inferior and contemptuous, while others argue that their status enhances their well-being and gives them limited rights. Due to their position as unmarried children, children also lack a legal link with their father and may not even have a national relationship (Ratuloli et al., 2024).

Legitimate children are those born within or as a result of a recognized marriage, according to Article 42 of Law Number 1 of 1974 Governing Marriage (Gamatri et al., 2023). Children born and those born during marriage are regarded as legal children under Article 250 of the Civil Code. Civil rights are due to a kid born into a lawful marital relationship, who has the same status as a biological child, as well as the right to use his father's name after his name to indicate his ancestry and origin (Rizal et al., 2023).

According to the basis of conventional legal thinking that gives rights and obligations to mothers and their families, paragraph (1) of Article 43. In this case, the child is given a clearer civil status, as long as the mother and her family are involved (under the Civil Code, only the mother or father must acknowledge it). This provision applies to all Indonesian citizens, both native and descendant (Muhamad Arul Pramudi Utama, 2024). Thus, under marital law, an illegitimate child has a clear and unique status.

After Number 46/PUU-VIII/2010 was decided by the Constitutional Court in 2012, (Arfi Hilmiati & Kartika Yusrina, 2024). The Marriage Law's Article 43, Paragraph 1 states that a kid born outside of marriage may only have civil contact with his mother and his family to provide the mother some peace. If the intention is to terminate a civil connection with a person that may be demonstrated by legal proof, such as blood relations with his father, it does not have binding legal effect (Fajar, 2023). In addition, the birth certificate does not include

the father's name and the Constitutional Court's ruling protects civil rights that the state has not acknowledged, which will surely mean that his children will not have inheritance rights that can harm them.

Seeing the many cases of out-of-wedlock children that are currently developing in society, the situation of out-of-wedlock children under Marriage Law No. 1 of 1974, has to be thoroughly examined. Therefore, learning about the legal status of children who are not married in line with Law No. 1 of 1974's Civil Code, and the legal Compilation are the goals and anticipated advantages of this study.

II. METHOD

Utilizing a legislative approach, the position of unmarried children with respect to Law No. 1 of 1974 governing marriage will be investigated in this study, which is a form of normative juridical research. This study uses a conceptual, comparative, and legal approach. This study uses a descriptive and analytical technique to describe the relevant laws and rules pertaining to the research issue that make reference to legal theories and positive law implementation procedures. The status of children born outside of marriage will be explained in this research using the Marriage Law Number 1 of 1974. The data in this study were analyzed using a qualitative-analysis approach, which is accomplished by comprehending and acknowledging the data that has been obtained and compiled systematically, then drawing conclusions.

III.RESULT AND DISCUSSION

Marriage Law No. 1 of 1974: The Status of Unmarried Children

Law Number 1 of 1974 Governing Marriage, Article 42, states that children born in or as a result of a recognized marriage are considered legal children. Article 43 of Law No. 1 of 1974 declares children born outside of marriage to be invalid. The mother has the legal right to inherit whatever that comes between the mother and child as well as between the mother's and kid's family, and she is also legally responsible for the child's care and education, an illegitimate child's sole legal ties are with his mother and her family, according to Law Number 1 of 1974 (Kevin Christofer & Jeany Anita Kermite, 2024). However, a kid's birth inevitably results in the youngster being the mother's child. Without a mother, a kid cannot be born. The youngster did not have a cordial connection with the man who sowed him, but he did have a cordial relationship with his mother and relatives (Meuraksa, 2024). From what was mentioned above, it is undeniable that without a mother, the womb can only be owned by a woman, hence childbirth is impossible. However, there cannot be children if a guy does not assist in the process of fertilization that occurs in a woman's womb. The boy and his father ought to have been on good terms as a result.

If studied further, children appear to have less legal protection and recognition under Law No. 1 of 1974 on Marriage. For example, an illegitimate married child is given illegitimate child status, which gives him different rights than a legal child, he only maintains cordial ties with his mother and relatives; his biological father is "protected" by law (Muaziz, 2022). This can have a negative effect on their optimal growth and development. During his or her growth, every child needs sustenance, affection, and education, both physical and spiritual, from his or her father and mother in order to grow into individuals capable of bearing future responsibilities for themselves, their families, and their country.

A child born within a lawful marriage is regarded as a legitimate child, according to Article 42 of the Marriage Law. Legal descendants are children born as a result of or during a valid marriage (Andri Wahyudi, 2022). Judging from the material elements in the above provisions, a legitimate child is : (Kristianto Jansen Hengkengbala, 2024)

1. Legal marriage is also required for the parents of the child born during and as a result of the marriage.
2. The parents must be legally bound by a marriage, and the kid must be born into a lawful marriage.
3. Thus, a legitimate child must clearly know that his father and mother have been officially bound in a legal marriage, so that the parent's marital relationship is a measure of whether the child is considered valid according to Indonesian marriage law (Intan Amelia Putri , Zaiyad Zubaidi, 2023).

In addition to legal children as mentioned above, the opposite also applies. Out-of-wedlock children are offspring that are not based on a valid marriage. Illegitimate offspring are also referred to as illegitimate children. As a result, it affects the area of inheritance (Siregar et al., 2023). The only relationship a child born without a marriage link has with his mother and his family is one of civility. Paragraph 1 of Article 43 of the Marriage Law states that "Only his mother and her relatives have a cordial connection with an unmarried child."

It is not until the mother acknowledges her kid that the legal link between mother and child is established. This recognition must be made in a certain way, according to the Civil Code's Article 281: "If neither the child's birth certificate nor the marriage certificate mentions it, any original deed may be used to recognize an out-of-wedlock child (Sanusi et al., 2022). This can also be acknowledged by a deed executed by a civil registry official and included in the birth register on the day of reckoning. This recognition must be included in the birth certificate.

In cases where the recognition is made by another authentic deed, every interested person is entitled to request that the recognition be reflected on the child's birth certificate. However, how can a failure to record the

confession be blamed on the child who is admitted to argue about the position he obtained (Manuputty et al., 2021).

Therefore, the Civil Law distinguishes between a legal child and an illegitimate child, or an unmarried child. Article 42 of Law No. 1 of 1974, declares: "Children born from a valid marriage are considered legal children" (Fitriyah et al., 2023). In contrast, this article does not mention a deadline for determining a child's legal status. Legally married children have certain privileges, such as the ability to inherit. The Civil Code's Article 250 further declares that, "The spouse of a married couple names their children after the father". A kid born or brought up in a marriage contract, even if it comes from someone else's seed, is considered a child of his or her husband-mother partner. The status of children who do not have a formal and recorded marriage is very controversial. Both in terms of their status and civil rights in the eyes of Indonesian law (Hasibuan, 2023).

Article 252 of the Civil Code states, "A father cannot deny his legal child, only if he can prove from the three hundred and eighty-day days before the birth of the child, that he has been in a state of impossibility of physical relations with his wife, either in separate circumstances or in coincidental circumstances." (Daarul et al., 2025). The husband should not deny the child as his child by pointing to his physical nature. For three hundred and one hundred and eighty days, or four hundred and eighty days or one hundred (1.5) years before the birth of a child, a husband must be able to prove that he is not allowed to have sexual intercourse.

According to Article 253, "In the event that the kid's birth is concealed from him, a spouse cannot reject the legitimacy of his child on the grounds of adultery; otherwise, he must be proven false. Furthermore, a husband cannot reject the legitimacy of a kid on the grounds of adultery unless the child's birth is kept a secret. In addition, this problem must also be proven in perfect evidence. In accordance with Civil Code Article 1925, "A confession given before a Judge, is perfect evidence against the person who gave it, either by himself or through the intermediary of a person who is given special power for it."

Article 44 of the Marriage Law states the following in relation to the Civil Code: (Muthia et al., 2022)

1. If a spouse can demonstrate that his partner has cheated on him and that the kid is the consequence of the adultery, he may contest the legitimacy of the child born to his partner.
2. When the interested party requests it, the court renders a ruling about the child's validity.

Article 45 of the Marriage Law declares that with relation to the rights and responsibilities of children as a result of determining their legal status: (Andri, 2021)

1. All parents are responsible for giving their children the best attention and teaching.
2. Paragraph (1) of this article states that the obligation of parents remains until the child gets married or becomes self-sufficient. This duty endures even after the dissolution of both parents' marriages.

Although they have rights, a child must also respect and follow his parents' orders as long as it is not considered a violation of the law. A child is also obliged to take care of both parents according to his financial ability, because it is a form of reciprocity or gratitude of a child to them. In line with the Marriage Law's Article 46, it reads: (Zahira, 2025)

1. Children should be devoted to their parents and follow their good wishes.
2. If the child is an adult, he must care for his parents and family according to his ability, with a straight line up if they need help.

According to the Marriage Law, in theory, parental authority over children has no bearing on the child's position. The Marriage Law's Article 47 says the following: (Minarti, 2023)

1. Parents have jurisdiction over children under the age of eighteen (18) or who have not married, provided that they are not stripped of their positions of authority.
2. The child's parents represent them in all court proceedings, both inside and outside the courtroom.

According to the Marriage Law of the Civil Code, Article 49 explains the revocation of parental power over children. The article reads as follows: (Hartanto et al., 2021)

1. An adult sibling, the relatives of the child in a straight line, the other parent, or an authorized official may request that one or both parents be temporarily removed from their parental responsibility over one or more children, with a decision made by the Court in the following matters;
 - a. He's does not fulfill her responsibilities to her child adequately;
 - b. He's not acting appropriately.
2. Even when parents lose their authority, they are still responsible for paying for their children's education.

In addition, an illegitimate kid is only permitted to have civil contact with his mother and his family, according to Marriage Law No. 1 of 1974. This demonstrates that there is no commitment on the part of the kid to the parent and no reciprocity between the parent and child. The terms "out-of-wedlock" and "adulterous" are used to describe children born outside of marriage. Therefore, he was not blamed on his father, but only on his mother. Islamic Law and Civil Law both contain these provisions. Nevertheless, the Civil Code stipulates that once a child is recognized and legalized as a child, it is possible to see him or her as a legal kid. Mutual rights and duties consequently develop between the child and his parents. However, in Islamic law, they are still considered legitimate children, which has the following legal implications: (Botu et al., 2023)

1. A man who illegally interferes with his mother has no sexual relationship. Although the child is biologically and geneologically his own child, juridically formal, it is not necessary for the father to support the child. Therefore, kinship relations are based only on human sense rather than law.
2. Everyone does not inherit from each other. Adulterous children and men who interfere with their mothers cannot inherit each other. Because one of the reasons for inheritance is heredity. Similarly, a father cannot inherit from his son, but father and son can make a mandatory will or bequeath their property to each other humanely.
3. It cannot be a guardian for an unmarried child. If the unmarried child is a female, then if they are going to marry, therefore, she has no right to be married to a man who illegally interferes with her mother, or with another guardian based on nasab.

Out-of-wedlock Child Recognition System

The identification of an unmarried kid is only legitimate if it is done properly and firmly, it should not be finalized. The Civil Code's Article 281 declares that a birth certificate, a document issued by a Civil Registry officer, or a notary deed is authentic evidence of a child's recognition:

"It is possible to identify an out-of-wedlock kid as one born during the marriage by using each original deed". There are several ways to voluntarily admit an out-of-wedlock child, as shown here: (Jurjani, 2021)

1. Out-of-wedlock deed: issued because both parents of the child were legally married under the law of the country before birth. It doesn't mean that both parents weren't married; The marriage is simply carried out in accordance with the relevant customary law. Due to the civil dissolution of his family connections, the father is solely obligated to his mother if the kid is a legal child born outside of marriage. A child's birth certificate can be removed from the civil registry. In the deed, his father's name is not listed; The only names in the record are those of the mother and the infant.
2. Marriage Deed, a man and a woman who have an extramarital relationship and produce children out of wedlock then decide to legally marry each other, recognize the out-of-wedlock child, and marry legally. Therefore, out-of-wedlock children who have been born and have not been recognized by their father at the time of reporting the birth are recognized here. Furthermore, in the marriage certificate it is recorded that an out-of-wedlock child has been born, includes the name, birthdate, and place of the kid.
3. Authentic deed: A notary deed is what is referred to here. In order to guarantee that the correct acknowledgment is included in the relevant birth certificate's minutes, this report must be sent to the Civil Registry Office where the child's birth was registered, as well as the minutes used to do so. Thus, Article 37a of the PJN states that: "Within 24 hours, the notary must report any out-of-wedlock child committed in his presence to the heritage center in the area where he lives. They should also record whether the father's or mother's actions occurred before or after their death."
4. Confession due to urgent circumstances The Civil Code's Article 287, paragraph 2, declares that a confession provided by law cannot be forced; However, if one of the crimes mentioned in articles 288, 294, or 322 of the Criminal Code occurs and the crime occurred during the pregnancy of the woman against whom the crime was committed, then the guilty person can be declared the child's father at the interested party's request.

IV. CONCLUSION

The father is unable to identify or separate an illegitimate kid. The child and his mother only have a legal relationship and his legal relationship with his mother is the same as a legal child who has a father. Therefore, A kid born outside of marriage is regarded as illegitimate as he has no relationship to his father. The legal status of a child born outside of marriage is equivalent to that of a child recognized by both parents or by one parent in a legitimate marriage, according to civil law. If a person has a legal sexual relationship outside of marriage, they can have children of their own. Otherwise, a husband can have children without marriage and vice versa. Given that the Civil Code and Islamic law explain the distinction between the status of lawful and unwed children, there are differences in terms of the right to use the family, marriage license, the right to inherit, and parental power. So, if the distinction is based on child protection, it can cause problems for children from a juridical, sociological, and psychological perspective, since their rights will be seen differently in society than those of a legal kid. Only unmarried children can be recognized and approved for adultery. Children who have married their father and mother and receive care from a child recognition institution can have the same status or status as other legitimate children in various aspects of life.

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