

# Legal Certainty Of The Rights Of Children Born Out Of Wedlock To Their Biological Fathers

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## Abstract.

*Children are both a divine gift and a solemn duty bestowed by the Supreme Being. Law Number 1 of 1974, which has been amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning marriage, distinguishes between two categories of child status. Article 2 pertains to legitimate children, while Article 43 addresses children born out of wedlock. Illegitimate children are commonly used to refer to children born outside of marriage in a broader context. They are born due to an extramarital relationship between a woman and a man. The relationship between the two is biological, without legal recognition, such as a marriage officially registered by the state. Facing issues surrounding the existence of illegitimate children, According to Article 43 of Law Number 1 of 1974, which has been amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning marriage, it is stated that individuals do not possess a formal legal bond with their biological father. The impact is that they do not receive financial security, education, or inheritance rights. In addition, society tends to assess children born out of marriage negatively, considering them different from legitimate children. If the child is legally recognized as illegitimate, then the family relationship is civilly terminated; for the child, they are only bound to his mother. This situation causes discrimination against the legal entitlements of children born out of wedlock. This article explores legal clarity on the rights of children born from extramarital partnerships. The author uses a normative methodological approach in this research, utilizing secondary data and data collection strategies such as document studies, theoretical ideas, and existing principles. Data analysis in this research involves deductive analysis using a statutory approach and conceptual framework.*

**Keywords:** *Biological Father, Illegitimate Children and Rights.*

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## I. INTRODUCTION

As social creatures, humans are created in pairs of men and women to complement and protect each other and build a household. Assuming they meet specific requirements, a man and a woman have the ability to cohabitate inside the institution of marriage. If we look closely, marriage is a physically and mentally binding agreement based on faith (Prodjodikoro, 1981). According to Law Number 1 of 1974, which has been amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning marriage (which the author hereafter calls the Marriage Law), In Article 1, we learn that marriage is a sacred union between a man and a woman who, as husband and wife, pledge their hearts to one another and to God almighty in the hopes of creating a blessed and everlasting home. Based on the tenets of the Islamic faith, which are regulated in marriage, as defined in Article 2 of the Compilation of Islamic Law, is a "firm contract" in accordance with Islamic law or *Mitssaqan ghalidzan* to obey Allah's commands and carrying them out is worship. Moreover, creating a *sakinah, mawaddah, and rahmah* household life is the objective of marriage, according to Article 3 of the Compilation of Islamic Law. Article 4 of Law No. 1 of 1974 about marriage states that a marriage is legitimate provided it is performed in accordance with Islamic law under Article 2 Number 1.

In reality, there are several cases where a man and woman carry out actions that should be carried out by couples legally bound by marriage. This situation can have legal consequences, especially when a child is born. The legal consequences of a birth resulting from an extramarital relationship the partnership between a man and a woman is a legally binding one, with each partner having certain rights and responsibilities, which includes the kid, the parents, and the law as subjects. Although a legal marriage is the most common basis for a paternal tie between a man and his offspring, proof of a biological link between the two can also establish paternity (Pancasilawati, 2014). Observing the issues surrounding the existence of illegitimate children, all of the illegitimate offspring have been proven to be innocent. have a civil legal bond with their father. As a result, they do not receive financial security, education, or inheritance rights. Besides that,

offspring resulting from matrimony are often viewed negatively by society and are considered different from legitimate children. Assume that the child is officially acknowledged as a child born out of wedlock. Under those circumstances, the paternal bond between the father and the child is severed, so the father only has an attachment to the mother.

The civil registry can issue the birth certificate of the infant lacks the father's name, containing only the names of the mother and the registered child. Regarding a familial bond between an unmarried father, mother, and their child, the child must be recognized as legitimate by the father according to the law. Thus, civil relations for illegitimate children will not arise automatically with their birth but will occur because of official recognition and approval from their father and mother or their biological mother. The child's legal position is very significant, both in the context of social life and in terms of the distribution of inheritance if both parents die (Sujana, 2015). From the description of the background above, the author is interested in discussing legal certainty concerning the legal entitlements of children born outside of wedlock, specifically with regards to these offspring have the same legal protection as legitimate children and there is no discrimination against children.

## **II. METHODS**

The type of study that this is falls under is normative juridical research seeks to examine in depth the rights of illegitimate children towards their biological father. The method applied is qualitative because this research produces descriptive data relating to the civil rights of illegitimate children and will be linked to applicable regulations. The legal material that is the basis for this research consists of primary legal material, such as Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage and Constitutional Court Decision Number 46/PUU-VIII/2010 concerning the Status of Illegitimate Children as well as secondary legal materials, such as books, theses, journals and documents discussing the principles of justice, including the Constitutional Court decision Number 46/PUU-VIII/2010 concerning the Status of Illegitimate Children which will be analyzed in this research.

## **III. RESULT AND DISCUSSION**

Legislation specifically addresses the civil rights of children born outside of wedlock in two sources: in Article 870 the Civil Code (which applies to non-Muslims) and in Article 100 the Compilation of Islamic Law (which pertains to Muslims). In the context of a legally recognized relationship with their parents and their families the rights of this child are inherent in every child. A kid has certain rights, such as the right to know one's own family history the right to parental care and instruction, the right to have an advocate in any legal matter, whether in or out of court the right to have some say over one's own property, and the right to a portion of one's parents' estate. Illegitimate children are also often given a negative stigma, which can have an impact on their psychological development. This situation is contrary to the principles of justice and human rights.

The ruling of the constitutional court grants the wishes of children who were not born legally to their parents certainty and legal protection and provides an answer to the subjective feelings of injustice they have experienced. It is due to the need in order for the legislation to ensure equitable legal safeguard and clarity concerning the condition of illegitimate children, as well as providing the rights they should have, including granting legal safeguards for children born out of wedlock (Nazar, 2022). Illegitimate children, whom their parents recognize, have the same status as legitimate children. Therefore, illegitimate minors possess the entitlement to inherit from their parents and have the ability to assert their rights to obtain a portion of the bequest. However, differences between legitimate children and recognized illegitimate children, primarily related to the position of parental power. Recognized illegitimate children are under the guardian's authority, while legitimate children are under the direct control of their parents. Therefore, in terms of inheritance distribution, the amount or amount of inheritance cannot be considered the same between the two (Kumoro, 2017).

More far-reaching legal ramifications stemming from the child's relationship with the acknowledged parents include:

- a. There is guardianship from the parents who acknowledge it (Article 306 in conjunction with 353 of the Civil Code).
- b. A recognized illegitimate child has the right to use the name of the recognizing parent (Article 5a of the Civil Code).
- c. There is an obligation for alimony or support from the parents who acknowledge the illegitimate children which they acknowledge, and this obligation is reciprocal (Article 328 of the Civil Code).
- d. Recognition does not apply retroactively.
- e. The requirement for illegitimate children to ask for marriage permission from the parents who recognize them (Article 39 and Article 47 of the Civil Code);
- f. The right to inherit children outside of marriage recognized by the father and/or mother who recognizes it and vice versa (Article 909 in conjunction with 870 of the Civil Code) (Subekti, 2005).

Suppose an illegitimate child receives recognition from its biological parents. In that case, the impact is not limited to the child's inheritance rights towards the father or mother. However, it can also give rise to an illegitimate child does not have inheritance rights from their father or mother towards the child, especially if the child dies before the father or mother, their mother; for example, after receiving recognition, the child dies without leaving a husband/wife or legal descendants. The inheritance will belong to the parent who has formally recognized the child. If both the kid's father and mother have formally recognized the child, then the distribution of inheritance will be divided in an equal manner. Consequently, when biological parents acknowledge their illegitimate children, it leads to that the child's biological father and the youngster are bound legally. Offspring of married couples are subject to the legal premise that the child can become an heir, provided the father and mother officially recognize him or her. This principle is rooted in the BW system, which states that only those with legal ties to the heir have inheritance rights by the law. Therefore, a binding contract between a married couple and any children they have parents will only be formed if there is legal official recognition (Salim, 2006). If an illegitimate child is not recognized by his father, he cannot claim his right to inheritance. Following Article 281 of the Civil Code, this recognition is the key to establishing a legal relationship between the recognized child and the father who provides the recognition.

Whether the recognition is given voluntarily or by coercion does not make a significant difference in the context of inheritance in general. Therefore, a legal relationship between children born out of marriage and their parents is only formed when both parents receive legal recognition. Based on Constitutional Court Decision No. 46/PUU-VIII/2010, there is a legal obligation for a father to be responsible for the survival of illegitimate children, including his right to receive support and inheritance. The status and rights of children born outside of marriage are safeguarded by this ruling of the Constitutional Court. To ensure that children are safe from violence and discrimination and can live, grow, and develop to their full potential in an environment that respects their inherent dignity is the overarching goal of child protection initiatives. The goal of child protection is to ensure that all children are able to live, grow, develop, and participate in society with the respect and dignity that is inherent to them as human beings. In addition to fostering a prosperous, honorable, and excellent generation of Indonesian children, it seeks to shield them from prejudice and violence (Muljono, 1998). Along with the publication of Constitutional Court Decision Number 46/PUU-VIII/2010, the inheritance rights of illegitimate children receive more apparent legal protection. As part of civil rights, inheritance rights are now guaranteed by law, confirming the principle of equality before the law for every individual, including children born out of marriage, who are recognized as legal subjects whom the state must protect.

Prior to this decision, the legal position of illegitimate children in the context of national law had experienced a decline after the enactment of Law Number 1 of 1974 concerning Marriage. However, with the Constitutional Court Decision Number 46/PUU-VIII/2010, legal regulations and the legal status of illegitimate children have now been better regulated, creating an adequate legal basis. It can be considered a guarantee that the Constitution protects the rights and position of illegitimate children (Loho, 2017). Civil rights, including maintenance, inheritance, and guardianship, are now extended to illegitimate children by

their biological fathers, according to the constitutional court's ruling. For the sake of fairness and equity, and the responsibility to provide a decent living for children does not only lie with the mother but is also the father's obligation. Prior to The Constitutional Court Decision Number 46/PUU-VIII/2010 established that children born out of wedlock can have a legal relationship with their biological father, which can be proven through scientific and technological evidence or other legal means.

This relationship includes the right to inherit from their father's family experience various forms of discrimination because Article 43 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage makes them not entitled to civil rights, including living, education, maintenance, guardianship in marriage (if a daughter), and inheritance rights if the biological father has died. According to the author, the issuance of the Constitutional Court decision has created normative legal certainty. It means that when a legal regulation is made and promulgated with certainty, this leads to regular and detailed regulations. It is evident in the sense of not giving rise to doubt or multiple interpretations and logical in the sense of being a system of norms that synergizes with other norms so there are no clashes or conflicts between norms. Norm conflicts that arise due to uncertainty in legislative regulations can take the form of norm contestation, norm reduction, or norm distortion. The rights and position of a child born outside a recognized marriage can only claim inheritance if he or she has a legal relationship with the heir; this legal relationship is formed through recognition. Regarding the recognition of illegitimate children, the law stipulates that this significantly impacts inheritance law.

Article 285 of the Civil Code states: "The acknowledgment by either spouse throughout the marriage of the well being of children born to someone other than the husband or wife before the marriage will not cause any harm to the spouse or to the children produced from their own marriage". Children born outside of marriage can be recognized voluntarily or by force. Article 280 of the Civil Code allows for voluntary recognition of an illegitimate child, which can be interpreted as an action originating from the desire of the child's father and/or mother to acknowledge the father-mother relationship. Meanwhile, forced recognition refers to efforts to file a lawsuit against one of the parents in court to have the child born out of marriage recognized as a child by the father or mother (Sembiring, 2016). Article 1 Number 12 of Law Number 17 of 2016 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which has been partially revoked by Law Number 1 of 2023 concerning the Criminal Code, reveals that children's rights are an essential part of human rights which must be guaranteed, protected and fulfilled by parents, family, society, government, and the state. In the context of their relationship with their parents, children's legal rights can be described as follows:

#### 1. Livelihood Rights

Article 321 of the Civil Code states, "Every child is obliged to provide support to his parents and their blood relatives in the upper line if they are poor." Furthermore, Article 323 of the Civil Code explains that "Obligations arising from the provisions in the two previous articles are reciprocal."

#### 2. Guardianship Rights

As is known, the Civil Code also states the meaning of guardianship, namely Article 330 Paragraph 3 states:

"Those who are not yet adults and are not under parental authority, are under guardianship on the basis and in the manner as regulated in parts three, four, five and six of this chapter."

#### 3. Inheritance Rights

The definition of inheritance is explained in Article 833 of the Civil Code, which states:

"The heirs, automatically by law, have ownership rights to all goods, all rights and all receivables of the deceased person."

This article refers to the process of transferring ownership rights from an individual who has died to another individual regarding all types of goods, rights, and debts owned by The deceased individual's estate is transferred to their beneficiaries. Inheritance refers to the transmission of the whole range of legal entitlements and obligations from a deceased individual to their designated beneficiaries.

Illegitimate children recognized in the Civil Code can inherit with Groups I, II, III, and IV. The groups of heirs in question can be explained as follows:

1. Category I includes husband and wife and children and their descendants (Articles 852 and 852a of the Civil Code);
2. Group II consists of parents and siblings and their descendants (Articles 854 and 855 of the Civil Code);
3. Group III consists of grandparents and so on and above (Article 858 of the Civil Code);
4. Group IV consists of a family in a more distant lateral line, including the siblings of Group III heirs and their descendants (Article 861 of the Civil Code).

The degree of blood connection of the legal heirs determines the quantity of the acknowledged inheritance portion of illegitimate children. This is made clear in the following passage from the Civil Code:

"If the heir passes away and has legitimate descendants, a spouse, or both, the acknowledged illegitimate offspring are entitled to Receive a share equal to one third of the percentage that would have been allocated been acquired by legitimate children."

#### IV. CONCLUSION

Based on Constitutional Court Decision Number 46/PUU-VIII/2010, if an illegitimate child has been recognized by his biological father through voluntary or forced recognition, the child has a civil relationship with the father and mother who acknowledged him. With a forced confession, there is also a legal obligation for the father to be accountable for the illegitimate child's well-being, having the authority to receive a living and inheritance. Recognition also establishes legal clarity about the entitlements and status of children born out of wedlock, regarding protection that ensures they are able to thrive in all aspects of life. In addition, this recognition also protects from discrimination.

#### REFERENCES

- [1] Muljono, E. L. (1998). *Kumpulan Peraturan Perundang-undangan Tentang Perlindungan Anak*. Jakarta: Harvarindo.
- [2] Prodjodikoro, W. (1981). *Hukum Perkawinan di Indonesia*. Bandung: Sumur.
- [3] Salim, O. (2006). *Dasar-Dasar Hukum Waris Di Indonesia*. Jakarta: PT Reineka Cipta.
- [4] Sembiring, R. (2016). *Hukum Keluarga: Harta-Harta Benda dalam Perkawinan*. Depok: Rajawali Press.
- [5] Subekti, W. I. (2005). *Hukum Perorangan dan Kekeluargaan Perdata*. Jakarta: Gitama Jaya .
- [6] Sujana, I. N. (2015). *Kedudukan Hukum Anak Luar perkawinan Dalam Perspektif Putusan*. Yogyakarta: Aswaja Pressindo.
- [7] Kumoro, R. Y. (2017). Hak Dan Kedudukan Anak Luar Nikah Dalam Pewarisan Menurut KUH Perdata. *Lex Crimen, Vol. 6, No. 2*, 15.
- [8] Loho, S. (2017). Hak Waris Anak Di luar perkawinan Sah Berdasarkan Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII-2010. *Lex Crimen Vol. VI No.3*, 175.
- [9] Mulyadi. (2016). kedudukan hukum anak luar perkawinan yang diakui. *Cakrawala Vol. XI, No. 1*, 92.
- [10] Nazar, T. H. (2022). Hak Keperdataan Bagi Anak di Luar perkawinan Dalam Sistem Hukum di Indonesia . *Syakhshiyah Jurnal Hukum Keluarga Islam Volume 2, No.1*, 65.
- [11] Pancasilawati, A. (2014). Perlindungan Hukum Bagi Hak-Hak Keperdataan Anak Luar perkawinan. *Journal Fenomena Volume 6 Nomor 2*, 19.
- [12] Law Number 16 Of 2019 Amendments To Law Number 1 Of 1974 Concerning Marriage.
- [13] Law Number 17 Of 2016 Concerning Amendments To Law Number 23 Of 2002 Concerning Child Protection Which Has Been Partially Repealed By Law Number 1 Of 2023 Concerning The Criminal Code
- [14] Compilation Of Islamic Law
- [15] Constitutional Court Decision Number 46/PUU-VIII/2010.