



Recognition And Legitimation Of Ill-Wed Children According To Khi And The Civil Code And Law No. 1 Of 1974

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Info Articles	Abstract
Article History Received : 2025-04-7 Revised: 2025-05-8 Published: 2025-05-30 Keywords: <i>recognition of illegitimate children; child legitimation; KHI; Civil Code</i>	This paper discusses the recognition and legitimation of illegitimate children according to the Compilation of Islamic Law (KHI), the Civil Code (KUHPerduta), and Law No. 1 of 1974 concerning Marriage. According to the KHI, illegitimate children can be recognized by their biological father through acknowledgment, but with limitations on inheritance rights. The Civil Code provides broader regulations, where illegitimate children recognized by their father through formal recognition or a court decision are entitled to certain rights, including inheritance rights. Meanwhile, Law No. 1 of 1974 emphasizes the importance of protecting children in legal marriages, although specific regulations regarding illegitimate children are more limited. This study aims to identify differences and similarities in the regulations regarding the recognition and legitimation of illegitimate children, as well as their impact on the rights of these children in the context of Indonesian law.

I. INTRODUCTION

The issue of recognizing and legitimizing illegitimate children is a complex and sensitive family law issue in the Indonesian legal system. The status of children born outside of wedlock not only impacts social and psychological aspects but also directly impacts the child's legal status, including inheritance rights, civil relations with their parents, and legal protection from the state.(Taufiq et al., 2025). In the context of Indonesia's pluralistic society, regulations regarding illegitimate children are regulated by various legal systems that apply in parallel, namely Islamic law (Compilation of Islamic Law/KHI), civil law (KUHPerduta), and national law (Law Number 1 of 1974 concerning Marriage).

Under Islamic law, as stipulated in the Compilation of Islamic Law (KHI), children born out of wedlock can only be recognized by their biological father through certain procedures, but this recognition does not automatically confer inheritance rights. The inheritance rights of illegitimate children from an Islamic legal perspective are still debated, and in many cases,

the child inherits only from the mother unless there is a mandatory will or other provisions governing this. This provision indicates the limitations of the civil rights of illegitimate children even though they have been legally recognized.(Mukharrom, 2023).

In contrast, in a civil law system derived from the Civil Code, illegitimate children have a greater opportunity to be legally recognized and obtain certain civil rights. The Civil Code provides space for the recognition of illegitimate children through legal processes, including voluntary recognition by the father or a court order. In this system, such recognition can open the child's access to inheritance rights and recognition as an heir, with certain limitations as stipulated by law.(Mulyani, 2021).

Meanwhile, Law Number 1 of 1974 concerning Marriage does not explicitly regulate the mechanism for recognizing children born outside of marriage, but emphasizes that legitimate children are children born from a legal marriage.(Al-Ghifarry et al., 2021). Nevertheless, the articles in this law open up the possibility of

legal interpretations that lead to the protection of the rights of illegitimate children, especially after the development of Constitutional Court jurisprudence, such as Constitutional Court Decision No. 46/PUU-VIII/2010, which expands the meaning of civil relations between illegitimate children and their biological fathers, provided there is valid biological evidence.

These three legal frameworks, while sharing common ground in child protection efforts, often lead to inconsistencies in their implementation. Judicial practice demonstrates that many illegitimate children face administrative and legal barriers in gaining recognition of their status and accessing civil and economic rights. This situation is exacerbated by a lack of public understanding of applicable legal procedures and a lack of harmonization between these legal systems.

Therefore, this study aims to examine the comparative provisions of the Compilation of Islamic Law, the Civil Code, and Law No. 1 of 1974 concerning the recognition and legitimation of illegitimate children, and to analyze their legal implications for the status and rights of children. This study will also evaluate the implementation of the law in practice and the challenges faced in realizing substantive justice for children born out of wedlock. It is hoped that this study can provide theoretical and practical contributions to strengthening the legal protection system for children in Indonesia, as well as encouraging legal reforms that are more responsive to the principles of justice, non-discrimination, and the protection of children's rights.

II. RESEARCH METHODS

This research uses a normative approach, focusing on the study of laws and regulations, legal literature, and jurisprudence related to the recognition and legitimization of illegitimate children according to the Compilation of Islamic Law (KHI), the Civil Code (KUHP_{perdata}), and Law No. 1 of 1974 concerning Marriage. This normative approach aims to analyze applicable legal provisions and explore the legal concepts contained within these regulations.(Jonaedi Efendi et al., 2018). In this study, the type of data used is secondary data which includes statutory

documents, legal literature, and scientific journals relevant to the topic of recognition and legitimation of children born out of wedlock. These data sources were obtained from law books, journal articles, and related regulations, such as the Compilation of Islamic Law (KHI), the Civil Code, and Law No. 1 of 1974. The data collection technique was carried out through literature study, namely by reading, reviewing, and analyzing various relevant legal sources.

III. RESULTS AND DISCUSSION

A. Recognition and Legalization of Illegitimate Children from the Perspective of KHI, Civil Code, and Law no. 1 of 1974

The recognition and validation of children born out of wedlock is a very complex family law issue in Indonesia, especially due to the plurality of legal systems that regulate it.(Rahman & Abidin, 2024)Each legal system has a different approach to understanding and protecting children born outside of wedlock. In this context, three primary legal sources serve as references: the Compilation of Islamic Law (KHI), the Civil Code (KUHP_{perdata}), and Law No. 1 of 1974 concerning Marriage. These three provide different legal bases, which in turn give rise to differences in the implementation of the law, the protection of children's rights, and the recognition of the legal status of illegitimate children.(Malik, 2010).

The Compilation of Islamic Law, which serves as a guideline for family law for Muslims in Indonesia, stipulates that an illegitimate child is a child born outside of a legitimate marriage according to Islamic law. Article 99 of the Compilation of Islamic Law states that an illegitimate child is only related by blood to the mother and her mother's family. The biological father may acknowledge the illegitimate child through official recognition before a Marriage Registrar, but this recognition does not automatically confer inheritance rights unless a court decision states otherwise. This reflects the cautious approach of Islamic law in determining the validity of the civil relationship between a father and an illegitimate child, as the primary emphasis is on the validity of the marriage according to Islamic law.(Somae, 2021).

Meanwhile, the Civil Code has a more open approach to the recognition of illegitimate children. Article 280 of the Civil Code states that an illegitimate child who is recognized by his father, either through an official statement before an authorized official or through a court decision, can obtain certain legal rights. These include inheritance rights, the right to maintenance, and the right to the father's family name. The Civil Code also provides more detailed provisions regarding the procedures for recognizing illegitimate children, as well as legal protection for such children, so that their legal status is recognized by the state. This provides a strong foundation for illegitimate children to obtain rights that are close to those of legitimate children, as long as the recognition is carried out in accordance with applicable legal procedures.(Tanjung & Tanjung, 2022).

In Law No. 1 of 1974 concerning Marriage, the recognition of illegitimate children is not explicitly regulated, but child protection remains a concern. Article 43 states that children born out of wedlock only have a civil relationship with their mother and their mother's family. However, following Constitutional Court Decision No. 46/PUU-VIII/2010, this provision was expanded so that illegitimate children who can be proven to have a biological relationship with their father also have a civil relationship with their biological father. This decision was an important milestone in the legal protection of illegitimate children because it expanded the child's right to receive recognition and protection from their father, even if the parents were not legally married.(Nurhadi, 2018).

Despite significant legal developments, such as through the jurisprudence of the Constitutional Court, fundamental differences remain between the three legal systems in their views on illegitimate children. The Compilation of Islamic Law (KHI) emphasizes the religious aspects and legality of marriage, the Civil Code focuses on the civil protection of children through formal recognition, and the Marriage Law attempts to balance the two through the principle of child protection. As a result, in legal practice, confusion and inconsistencies often arise in the application

of these legal provisions, which ultimately can be detrimental to illegitimate children in obtaining their full rights.(Kori & Amran, nd).

Studying the recognition of illegitimate children is not only important from a legal perspective, but also from a social and moral perspective. In society, illegitimate children often experience stigma, discrimination, and administrative difficulties in obtaining birth certificates, education, or inheritance rights. Therefore, more comprehensive legal reform and harmonization are needed to integrate the principles of substantive justice and holistic child protection. States must ensure that every child, regardless of their parents' marital status, has equal rights before the law and receives fair protection from the justice system.

B. Constitutional Court Decision Number 46/PUU-VIII/2010

Constitutional Court (MK) Number 46/PUU-VIII/2010 is an important milestone in the development of family law in Indonesia, particularly regarding the recognition of illegitimate children. In this decision, the Constitutional Court stated that Article 43 paragraph (1) of the Marriage Law is contrary to the 1945 Constitution and does not have conditional binding legal force as long as it is interpreted to mean that illegitimate children only have a civil relationship with their mother and their mother's family. The Constitutional Court then interpreted that illegitimate children also have a civil relationship with their biological father if it can be proven scientifically (DNA test) and/or other evidence according to the law.(Al-Ghifarry et al., 2021).

This decision is based on the consideration that every child, without discrimination, has the right to equal legal protection. The Constitutional Court emphasized that a child's status should not be the basis for discriminatory and unfair treatment. This emphasis is in line with the principles of the Indonesian Constitution, particularly Article 28B paragraph (2) of the 1945 Constitution, which states that every child has the right to survival, growth, and development, and the right to protection from violence and discrimination.

The implications of this ruling are far-reaching. First, illegitimate children who can be scientifically proven to be the biological children of a particular man have the right to demand legal recognition and protection from their biological father. This includes civil rights such as maintenance, inheritance, and the right to a family name. Second, this ruling shifts the legal paradigm from viewing children solely in terms of the legality of their parents' marriage to viewing children as individuals with fundamental rights that must be guaranteed by the state.

However, in its implementation, this ruling poses several challenges. One of the biggest challenges is proving the biological relationship between the child and the father. The use of DNA testing as scientific evidence often presents cost constraints and limited access, especially for low-income communities. Furthermore, not all men proven to be the biological father are willing to acknowledge and assume legal responsibility for their children.

Furthermore, sociocultural aspects also pose obstacles. The stigma against children born out of wedlock remains strong in society, which ultimately hinders the process of legal recognition and effective protection of children's rights. Therefore, while this Constitutional Court ruling represents progress, cultural and educational approaches are still needed to change public perceptions and ensure fair implementation.

C. Legal Implications of Constitutional Court Decision Number 46/PUU-VIII/2010

The legal implications of Constitutional Court Decision Number 46/PUU-VIII/2010 are very significant for the family law system in Indonesia. First, there has been a change in the interpretation of the legal norm in Article 43 paragraph (1) of the Marriage Law, which must now be interpreted inclusively, meaning that illegitimate children can also have a legal relationship with their biological father. This broadens the scope of legal protection for children and affirms the principle of non-discrimination in the protection of children's rights.(Joni & Tanamas, 1999).

Second, this ruling provides a legal basis for illegitimate children to file a lawsuit seeking

paternity recognition. Previously, paternity recognition could only be done voluntarily through a child recognition deed at the civil registry office. However, with this Constitutional Court ruling, if the recognition is not voluntary, the child or their mother can file a lawsuit demanding such recognition.

Third, recognizing illegitimate children impacts the child's civil rights, particularly regarding inheritance. With the recognition of a civil relationship with the biological father, illegitimate children are entitled to receive inheritance rights just like legitimate children, as long as they can be legally proven. This represents a significant shift in civil inheritance law, which previously only granted inheritance rights to legitimate children.(Zainuddin et al., 2020).

Fourth, administrative adjustments have been made to civil registration practices. The Population and Civil Registration Service (Dukcapil) is required to record the father's name on the birth certificate of an illegitimate child if a court order confirms the biological relationship. This guarantees the child's right to identity as a fundamental civil right.

However, at the implementation level, more detailed technical regulations are needed to govern the procedures for proving, recognizing, and registering illegitimate children. Currently, implementing regulations do not fully address the complexities of illegitimate child cases requiring legal recognition. Furthermore, law enforcement officers and civil servants need to be provided with adequate training and understanding to implement these provisions consistently and sensitively to the best interests of children.

The legal implications of this ruling also touch on social and cultural aspects. The state must be involved in providing legal education to the public so that they no longer look down on illegitimate children and their mothers. Progressive and equitable policies are needed to ensure that children's rights are fully met, without discrimination or structural barriers.

Thus, Constitutional Court Decision No. 46/PUU-VIII/2010 not only corrects discriminatory legal norms, but also demonstrates the state's commitment to respecting, protecting,

and fulfilling children's rights as guaranteed by the constitution and human rights instruments. This represents a step forward toward a more humane legal system that is responsive to the social dynamics of modern society.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

The recognition and validation of illegitimate children is a legal issue that affects the child's legal status and the rights they can obtain, both in terms of inheritance, maintenance, and legal protection. In the context of Indonesian law, there are differences in the provisions regarding the recognition of illegitimate children between the Compilation of Islamic Law (KHI), the Civil Code (KUHPerduta), and Law No. 1 of 1974 concerning Marriage. Although these three legal sources aim to protect children's rights, there are fundamental differences in the regulations and procedures for recognition and the legal consequences of recognizing illegitimate children.

Thus, despite differences in the legal provisions regarding the recognition of illegitimate children, the primary objective of all three regulations is to provide legal protection for children and ensure that their rights, particularly regarding inheritance, maintenance, and protection, are not neglected. Therefore, it is important to continuously evaluate and improve existing legal provisions to provide maximum protection for illegitimate children in Indonesia.

B. Suggestion

Synchronization between national legal systems, including Islamic law, Western civil law, and generally accepted positive law, is needed to create uniformity in the regulation of the recognition and legitimization of illegitimate children. This harmonization is crucial to prevent inequalities in the protection of children's rights.

Furthermore, legal reforms are needed that explicitly accommodate social developments and the need for more comprehensive child protection, without becoming bogged down in moral stigma regarding a child's birth status. Law enforcement officials, including judges, must also be provided

with adequate guidance and training to interpret legal provisions progressively and fairly.

The government and legislative bodies need to encourage the development of regulations that are responsive to social realities, while strengthening the population administration system to ensure the legal recognition of children born out of wedlock without discrimination. With these steps, Indonesia's legal system can be more just, humane, and in the best interests of children.

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