



Inheritance of illegitimate children who are recognized as legitimate and which are not recognized as legitimate

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Article History Received : 2025-08-1 Revised: 2025-08-19 Published: 2025-09-20 Keywords: <i>Children born out of wedlock; Inheritance</i>	Through marriage, it is hoped that offspring, namely children, will be born. However, children are not always born from a legal marriage; many phenomena occur in society where children are born outside of marriage. This study examines the position of children outside of marriage in inheritance according to the Civil Code. The research method used is normative juridical, namely reviewing laws and regulations and literature studies. The results of the discussion in this study are that illegitimate children who are recognized according to the Law can inherit from their parents who acknowledge them and also from their parents' blood relatives, however, in terms of inheriting from their parents' blood relatives, the possibility for these illegitimate children is very small. The Constitutional Court Decision Number 46/PUU-VIII/2010, which is also part of legal reform, so that the child also has a legal relationship with his biological father if it can be proven based on scientific knowledge, technology and/or other evidence according to law. Recognition of an illegitimate child is very important for a father to do in order to create a civil relationship between the child and his father, while for the mother, according to Article 282 paragraph 2 of the Civil Code, which states that even a daughter who is not yet an adult is allowed to acknowledge her illegitimate child.

I. INTRODUCTION

Marriage is one of the important events in human life which is not only sacred in value, but also has broad legal consequences, both for the husband and wife and for other parties who have an interest, especially children.(Muttaqin 2020)Children born of a legally valid marriage generally do not present any problems in their civil relations with their parents. Their status is clear, and civil rights such as custody, upbringing, and inheritance can be exercised without hindrance. However, matters become more complex when a child is born outside of a legally valid marriage.(Nurhayati 2019).

Children born out of wedlock face various social and legal risks, particularly those related to civil status, parental recognition, and inheritance rights. In the societal context, the status of "illegible child" often carries a stigma that impacts

the child's psychological well-being and legal standing. However, Indonesian civil law clearly regulates the rights of illegitimate children, particularly regarding inheritance, as stipulated in the Civil Code (KUHPerdata).(Nurhayati 2019).

According to Article 272 of the Civil Code, an illegitimate child who can be recognized is a child born to a mother, but not conceived by a man legally married to the mother, and is not included in the category of adulterous or illegitimate children. Recognition of an illegitimate child can be done through three means: first, through the parents' marriage certificate, which includes a clause recognizing children born before marriage; second, through the child's birth certificate; and third, through a special authentic deed. This recognition is important because, as emphasized in Article 280 of the Civil Code, the civil relationship between the child and the father or

mother only arises through this recognition.(Kumoro 2017).

The inheritance rights of recognized illegitimate children also have their own provisions. Based on Article 863 of the Civil Code, if the testator leaves behind legitimate descendants or a spouse, the recognized illegitimate child's inheritance share is only one-third of the share received by legitimate children. This means that although recognition provides a legal relationship with the parents, the inheritance status of illegitimate children remains different from that of legitimate children. Conversely, unrecognized illegitimate children have a much weaker legal standing, with virtually no inheritance rights to their biological father.

Herein lies a crucial issue that requires further study: the differences in the legal status of legitimate and illegitimate children born out of wedlock in relation to inheritance rights in Indonesia. This distinction not only has legal implications but also has social dimensions, as it concerns children's basic rights to protection and legal certainty.

This research is relevant given the shift in legal thinking that increasingly emphasizes the protection of children's rights, including those born out of wedlock. Constitutional Court Decision No. 46/PUU-VIII/2010, for example, expanded the recognition of civil relations between children and their biological fathers as long as they can be proven by science, technology, or other evidence. However, in practice, the implementation of this ruling remains controversial, particularly regarding inheritance.

Thus, research on "Legitimate and Illegitimate Inheritance of Children Born Out of Wedlock" is crucial to provide a comprehensive understanding of the differences in inheritance rights, recognition mechanisms, and the legal protections that should be provided. This study is expected to contribute to the development of a more equitable national civil law that aligns with the principles of protecting children's rights.

II. RESEARCH METHODS

The research method used in this study is normative legal research, namely research that

focuses on the analysis of legal norms written in laws and court decisions, as well as relevant legal principles. Normative legal research is conducted by relying on secondary data as the main source, which includes primary legal materials, secondary legal materials, and tertiary legal materials.(Sonata 2014).

Primary legal materials consist of laws and regulations directly related to the issues studied, such as the Civil Code (BW), particularly provisions regarding the recognition of illegitimate children and inheritance rights, as well as Constitutional Court Decision Number 46/PUU-VIII/2010, which is an important milestone in the recognition of civil relations between illegitimate children and their biological fathers. Secondary legal materials are obtained from literature in the form of books, scientific journals, previous research results, and opinions of legal experts who provide in-depth interpretations and analyses of applicable legal provisions. Meanwhile, tertiary legal materials such as legal dictionaries and encyclopedias are used as a complement to strengthen the understanding of the legal terminology and concepts used.

In addition, primary data is also used as supporting data, in the form of limited interviews or field studies if necessary to obtain the views of legal practitioners, notaries, or authorized officials, so that the resulting analysis is more comprehensive. The approaches used include a statute approach to examine legal norms governing the inheritance of illegitimate children, as well as a conceptual approach (*conceptual approach*) to explore relevant legal doctrine and principles, including the principle of protecting children's rights.

Data analysis was conducted using qualitative methods through systematic interpretation of all legal materials, both primary and secondary, and then compiled descriptively and analytically. This research is expected to provide a comprehensive overview of the differences in the legal status of legitimate and illegitimate children in inheritance matters, while also offering a deeper understanding of the ideal legal protection for illegitimate children in Indonesia.

III. RESULTS AND DISCUSSION

A. Rights and Status of Children Born Out of Wedlock Recognized in Inheritance According to the Civil Code

The legal status of illegitimate children in Indonesian civil inheritance law is an interesting and complex issue, because it is related to the relationship between legal norms, social values, and the protection of children's human rights.(Obadja and Kuntag 2023). Based on the provisions of the Civil Code (KUHPerdata/BW), illegitimate children are recognized as legal subjects with limited inheritance rights, depending on the status of the recognition and approval they receive. The following discussion outlines the status of illegitimate children in the context of inheritance in a more comprehensive manner, starting from their classification, the amount of inheritance, to the consequences of recognition and approval.

1. Classification of Children Born Out of Wedlock According to the Civil Code

The Civil Code clearly distinguishes children born out of wedlock into three large groups, namely natural children (*natuurlijk kind*), children of adultery, and illegitimate children.(Sulistiani 2020).

- a. A natural child (*natuurlijk kind*) is a child born from a relationship between a man and a woman who are not legally married and have no blood relations prohibited by law. This relationship usually arises from an agreement between two parties who are both single.
- b. A child of adultery is a child born as a result of sexual relations outside of marriage, where one or both parents are still married to another party.
- c. An illegitimate child is a child born from a relationship between two people who are prohibited from marrying due to close blood ties, such as the relationship between an uncle and a nephew, or siblings.

Of these three categories, only natural children can be recognized and granted inheritance rights if the recognition is carried out in accordance with legal procedures. Children of adultery and

illegitimate children, in principle, have no legal standing in inheritance laws because their relationships are considered contrary to public order and morality.

2. Inheritance Rights of Illegitimate Children Who Are Recognized as Legal

The distribution of inheritance for illegitimate children is regulated in Article 863 of the Civil Code, which provides for different inheritance rights depending on the number of heirs involved. The closer the blood relationship between the legal heir and the testator, the smaller the portion of inheritance the illegitimate child receives.(Dalise 2019).

- a. With Heirs in Class I If the testator leaves legitimate descendants or a surviving spouse, the acknowledged illegitimate child is only entitled to one-third of the portion he or she would have received if he or she were a legitimate child. For example, the testator leaves a wife, three legitimate children, and one acknowledged illegitimate child. The portion is calculated as if the illegitimate child were legitimate, so that the total number of heirs is as if there were five. Each is entitled to $1/5$. However, the illegitimate child's share is reduced to $1/3$ of $1/5$, so that they only receive $1/15$ of the inheritance.
- b. Together with Class II and III Heirs If there are no legal descendants or surviving spouse, but there are parents, grandparents or siblings of the heir, illegitimate children are recognized as having the right to half ($1/2$) of the inheritance.
- c. Together with Heirs of Group IV If the heirs only consist of distant relatives, such as uncles, aunts or cousins, the portion of children born out of wedlock that is recognized increases to three-quarters ($3/4$) of the inheritance.
- d. As the Sole Heirs In the event that the heir does not leave heirs from groups I to IV, the acknowledged illegitimate child shall receive all the inheritance (Article 865 BW). This provision shows that legal recognition from biological parents gives a very strong position to the illegitimate child, even being

equal to the legitimate heir if there are no other descendants.

3. Implications of Recognition and Endorsement

Recognition of an illegitimate child creates a civil legal relationship between the child and the parent who acknowledges them, as stipulated in Article 280 of the Civil Code. This recognition can be carried out through three mechanisms: (Marwa 2023):

- a. Listed in the parents' marriage certificate, if the child is recognized at the same time as the subsequent marriage.
- b. Stated in the birth certificate of an illegitimate child.
- c. Made through a special authentic deed before a notary or civil registry official.

If the parents then legally marry, the acknowledged illegitimate child can be officially recognized as a legitimate child. However, if the parents do not provide recognition and there is no ratification from the Head of State, the child still has no legal relationship with his biological father and only has a civil relationship with the mother and her mother's family. Consequently, the child does not have inheritance rights to the biological father, unless there is a court decision that recognizes blood relations based on evidence, such as DNA testing, as confirmed in Constitutional Court Decision Number 46/PUU-VIII/2010. This decision is an important milestone because it opens the opportunity for illegitimate children to demand civil rights from their biological father even though they are not formally recognized.

4. Analysis of Justice and Protection of Children's Rights

Although the Civil Code provides limited inheritance rights, legal developments through Constitutional Court decisions point to stronger protection of children's rights without discrimination. Children cannot be blamed for their birth status. This principle is in line with Article 28B paragraph (2) of the 1945 Constitution, which affirms that every child has the right to survival, growth, and development, and the right to protection from violence and discrimination.

On the other hand, the differing inheritance proportions between legitimate and illegitimate children continue to raise debates about fairness. Some legal experts argue that this distinction upholds traditional moral values and protects the institution of marriage. However, a human rights perspective demands equality because birth is a circumstance beyond the child's control. (HENDRAWAN 2025).

B. Inheritance and Absolute Share Allowed to Children Illegible

1. The Position of Children Born Out of Wedlock as Heirs According to the Civil Code

The status of illegitimate children under Indonesian civil inheritance law differs from that of legitimate children. Article 865 of the Civil Code stipulates that an illegitimate child's share of the inheritance does not stand alone but depends heavily on who the child inherits from. This means that to determine the size of the inheritance received by an illegitimate child, one must first consider the class of heirs who inherit with them. (Salamintargo nd).

In general, the Civil Code stipulates that if the testator leaves behind legitimate descendants or a spouse (husband/wife), the illegitimate child only receives 1/3 (one-third) of the portion that would have been received if he/she were a legitimate child. If the testator does not leave behind descendants or a spouse, but still has blood relatives in a direct ascending line or siblings, then the illegitimate child is entitled to receive 3/4 (three-quarters) of the inheritance. Meanwhile, if the illegitimate child inherits together with heirs of class II or III, he/she is entitled to receive 1/2 (half) of the inheritance. Thus, this provision shows that civil inheritance law places illegitimate children in a recognized position but remains different from legitimate children, because their inheritance rights are not full. (Salamintargo nd).

This division also applies to group inheritance. If there is only one illegitimate child, then the entire portion designated is their right. However, if there are two or more illegitimate children, the portion due to the illegitimate child is divided equally among them. For example, if there are two illegitimate children and they are entitled to 1/3

of the inheritance, then each will only receive half of that 1/3.(Salamintargo nd).

2. Absolute Portion (Legitieme Portie) for Children Illegible

In addition to the distribution of inheritance as regulated in Article 865, the Civil Code also protects the rights of illegitimate children through the concept of absolute share (legitieme portie) regulated in Article 913. An absolute share is a portion of the inheritance that must be given to heirs in a straight line (children, grandchildren) and cannot be removed through a gift or will of the testator. This provision is intended to prevent arbitrary actions by the testator, for example, donating all assets to another party and eliminating the rights of their children.(Wongkar 2021).

In the context of absolute parts, the Civil Code recognizes two systems that influence its regulation.(Wongkar 2021):

- a. The French–German system, which designates a certain portion of the total inheritance as an absolute, inalienable part.
- b. The Roman system, which assigned a certain portion to each heir, was protected so that it could not be removed through testament.

Article 914 of the Civil Code further emphasizes:

- a. If the heir only leaves one legitimate child, then that child is entitled to $\frac{1}{2}$ (half) of the entire inheritance as an absolute share.
- b. If the testator leaves two legitimate children, then their absolute share is $\frac{2}{3}$ of the share they should each receive.
- c. If there are three or more legitimate children, each person receives $\frac{3}{4}$ of the inheritance.

This provision also applies to illegitimate children who have legitimate status, that is, heirs with absolute rights. Thus, legally recognized illegitimate children have a legal guarantee of receiving a minimum share of the inheritance, even if the testator attempts to exclude it through a gift or will.

3. Exclusions and Loss of Inheritance Rights

However, the Civil Code also regulates situations in which illegitimate children may lose

their rights. Under Article 838 of the Civil Code, a person declared onwaardig (ineligible to inherit) or who rejects an inheritance is treated as if he or she never was an heir. For example, if an illegitimate child commits an act that tarnishes the honor of or opposes the testator, he or she may be declared ineligible to receive the inheritance. The same applies to heirs who voluntarily reject an inheritance (Article 1058 of the Civil Code). In such cases, the portion of the inheritance that would otherwise be received will go to the next heir in line.(Walangadi 2021).

Interestingly, the Civil Code still provides protection for the descendants of illegitimate children. Article 866 states that legitimate children of an acknowledged illegitimate child can act as heirs with the right to inherit property inherited by their grandparents. This provision reinforces the principle of intergenerational justice, so that being an illegitimate child does not automatically eliminate inheritance rights for their descendants.

4. Analysis of Justice and Legal Protection

From these overall regulations, it is apparent that Indonesian civil inheritance law strives to balance the protection of illegitimate children while maintaining traditional values that differentiate the status of legitimate and illegitimate children. On the one hand, the inheritance rights of illegitimate children are explicitly recognized through Article 865 and the absolute share mechanism. However, on the other hand, the proportional limitations on their share indicate that the Civil Code still prioritizes legitimate descendants as the primary successors to family assets.

Sociologically, this regulation can be viewed as a compromise between traditional social norms emphasizing the importance of legal marriage and modern principles of justice that recognize children's rights without discrimination based on their birth status. Therefore, although the inheritance share for illegitimate children is not the same as for legitimate children, the existence of the absolute share provision demonstrates that the law still protects their fundamental interests from being arbitrarily harmed.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Every child born out of wedlock who is recognized according to the law, can inherit from the parents who acknowledge him and also from the blood relatives of his parents, however in the case of inheriting from the blood relatives of his parents, the possibility of this illegitimate child is very small. In terms of the distribution of inheritance of the illegitimate child against the inheritance of the parents who acknowledge him will appear together with the group of heirs who have the right to inherit. An illegitimate child (who is born with someone other than the wife or husband before marriage) who is recognized during the marriage, cannot harm the wife or husband, or the children born from their marriage in terms of inheriting from their parents.

B. Suggestion

It is hoped that the creation of legislation can create legal regulations regarding children, especially regarding the procedures for their recognition and validation, so that legal certainty can be created regarding the position of children born outside of marriage, and also in terms of the distribution of inheritance, changes should be made in terms of its distribution, so that there is not such a striking difference between children born outside of marriage and legitimate children.

REFERENCE LISTAN

- Dalise, Waren K. 2019. "Kedudukan Hukum Dan Hak Waris Anak Luar Kawin Menurut Hukum Perdata." *Lex Privatum* 7(2).
- HENDRAWAN, SEPTO A. L. I. 2025. "KEDUDUKAN AHLI WARIS ANAK LUAR KAWIN DALAM MEWARISI HARTA PENINGGALAN SI PEWARIS MENURUT KETENTUAN HUKUM WARIS PERDATA BARAT/(BW)."
- Kumoro, R. Youdhea S. 2017. "Hak Dan Kedudukan Anak Luar Nikah Dalam Pewarisan Menurut KUH-Perdata." *Lex Crimen* 6(2).
- Marwa, Muhammad Habibi Miftakhul. 2023. "Problematisasi Hak Anak Luar Kawin: Tinjauan Kitab Undang-Undang Hukum Perdata." *Media of Law and Sharia* 4(3):239–52.
- Muttaqin, Muhammad Ngizzul. 2020. "Resepsi Pernikahan (Antara Sakralitas Agama, Hukum, Dan Tuntutan Adat)." *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum* 14(1):13–26.
- Nurhayati, Bernadeta Resti. 2019. "Harmonisasi Norma Hukum Bagi Perlindungan Hak Keperdataan Anak Luar Kawin Dalam Sistem Hukum Indonesia." *Ganesha Law Review* 1(1):55–67.
- Obadja, Stefan, and Maikel Kuntag. 2023. "Penerapan Prinsip The Best Interest Of Child Pada Hak Waris Anak Angkat Dibawah Umur Dalam Hukum Perdata Di Indonesia." *Jurnal Tana Mana* Vol.4(No.2):hlm.81-89.
- Salamintargo, Michelle Natasha. n.d. "Kedudukan Anak Luar Kawin Sebagai Ahli Waris Pengganti (Studi Putusan Mahkamah Agung Republik Indonesia Nomor 688 PK/PDT/2016)." *Indonesian Notary* 4(2):26.
- Sonata, Depri Liber. 2014. "Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum. FIAT JUSTISIA, 8 (1), 15–35." doi: <https://jurnal.fh.unila.ac.id/index.php/fiat/article/view/283>.
- Sulistiani, Siska Lis. 2020. "Kedudukan Hukum Anak Luar Kawin Menurut Hukum Positif Dan Hukum Islam." *ADHKI: Journal Of Islamic Family Law* 2(2):171–84.
- Walangadi, Gibran Refto. 2021. "Penyebab Mendapat Dan Tidak Mendapat Warisan Menurut Hukum Waris Islam." *Lex Privatum* 9(1).
- Wongkar, Berty Willy. 2021. "Penyelesaian Hukum Penyerobotan Tanah Warisan Menurut Legitime Portie Dalam Hukum Waris Perdata." *Lex Administratum* 9(1).