



# Analysis of the Recognition and Validation of Children Born Out of Wedlock and the Legal Consequences According to Civil Law and Rights Provisions

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## Abstract

In this case, the law fully plays a role in enforcing proper matters, and the concept of legal marriage is an absolute necessity within the concept of marriage. While the status of a child can be considered capable and present as a balancing force, in terms of legal considerations, the existence of an illegitimate child is completely incapable of being recognized. The type of research taken is based on the focus of all results from newspapers, magazines, and articles, not only in writing, analyzing, and processing data from several data sources. This type of qualitative research has an understanding of the meaning and concept of the atmosphere of the research phenomenon developing in society. Qualitative research aims to pay attention to the meaning and concept of a phenomenon. In general, if the status of an illegitimate child is legally recognized, it is if the orphanage or social services as one of the institutions that really protects abandoned children. Because the purpose of applying the actual legal function and in the concept of legitimate and illegitimate children must be distinguished from inheritance, criminal rights, and civil rights.

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## I. INTRODUCTION

The recognition and validation of illegitimate children is a complex and sensitive legal issue that frequently comes under scrutiny in civil law practice in Indonesia. This issue encompasses various aspects, ranging from children's rights, custody, inheritance rights, to the legal status of illegitimate children in society. The handling of illegitimate children in the civil law system is not only related to normative provisions, but also involves social and moral aspects that develop within society. In Indonesia, the recognition of illegitimate children is a legal action taken by parents to acknowledge the status of a child born outside of a legal marriage. This recognition carries various legal consequences involving the child's rights, including custody, support, and inheritance rights.

Legitimate children born out of wedlock are usually obtained through marriage between the parents or through other legal processes. This legitimization changes the child's legal status, granting them equal rights to children born in a legitimate marriage. Legitimate children born out

of wedlock have significant impacts on the child's legal status, including inheritance rights, changes in civil status, and the accompanying social implications.

The position of illegitimate children in civil law is inferior (worse/lower) compared to legitimate children. For example, legitimate children are in principle under the authority of their parents (Article 299 of the Civil Code), while illegitimate children are under guardianship (Article 306 of the Civil Code). The share rights of legitimate children in their parents' inheritance are greater than illegitimate children (Article 863 of the Civil Code.)(Manalu, 2021)

Marriage is a sacred bond between two human beings who become one and agree to have children. Marriage is a means of procreating children and maintaining human existence.

According to Article 1 number 1 of Law No. 1 of 1974 concerning marriage, marriage is a sacred bond of promise in which a woman and a man enter into a loving relationship based on eternal life together.

Article 1: Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God.

Every child has dignity and worth that should be upheld and protected. Every child born must receive their rights without the child asking for them. These rights are basic rights that are inherently inherent in human beings, are universal and eternal. Therefore, they must be protected, respected, maintained, and must not be ignored, reduced, or taken away by anyone. This can be seen in the 1945 Constitution of the Republic of Indonesia in Chapter X concerning Human Rights, in the provisions of Article 28 A which states: "Everyone has the right to live and to defend his life and existence." (Sujana, 2015)

Because marriage takes place in Indonesia, its civil registration and the acquisition of legitimate child rights through marriage require a procedural process that aligns with Indonesian customs and religion. Furthermore, if a person fails to register legally, the legal administration will likely be hampered.

So for children outside of legal marriage, almost all of them will find it very difficult to obtain a birth certificate, ID card, or family card for their child because the marriage administration is not recorded, because it is not recognized by the state in civil registration in administrative administration.

must go through a stage of continuity in the aspect of In the regulations in force in Indonesia, the position of children born outside of marriage is regulated in several regulations, including the Civil Code, Compilation of Islamic Law, Constitutional Court Decisions and the Marriage Law.

In relation to the Constitutional Court decision Number 46/PUU-VIII/2010, this is about the relationship between children outside of marriage and their biological fathers, if they have to find the appropriateness and influential role, it is necessary to prove the scientific knowledge regarding how the marriage must be carried out properly and wisely in the marriage procession.

In the civil law book, children outside of marriage are not legitimate children. This recognition can be seen in cases like this for the inclusion of Article 280 of the Civil Code. Article 271 of the Civil Code can make illegitimate children legally if their mother and father enter into a marriage.

In Islamic law, children born out of wedlock cannot have a lineage to their biological father and cannot receive inheritance rights from the father's recognition before there is a will. (Usman, 2015)

## II. RESEARCH METHODS

This research method uses a normative juridical approach, focusing on literature review to understand the issues and legal implications related to the recognition and legitimization of illegitimate children. All data is obtained from secondary sources such as relevant laws and regulations, agreements, legal documents, books, articles, and journals. This research is qualitative in nature, emphasizing understanding the meaning and concepts of legal phenomena developing in society. The approach used also includes a historical review to trace the background of the issues studied.

Data collection was conducted through a literature review and in-depth review of primary and secondary legal sources to support the research's completeness. After the data was collected, the researcher analyzed it using descriptive and sociological methods to describe social events and phenomena related to the research issue, thus providing a comprehensive picture of the legal implications under study.

## III. RESULTS AND DISCUSSION

### A. Marriage

Marriage in Indonesian is more often called nikah (marriage). The language forms the relationship between the opposite sex, meaning they can have sexual intercourse with the opposite sex. nikah also means having sexual intercourse.

According to Law Number 1 of 1974 concerning marriage, marriage is defined as a physical or spiritual relationship between two opposite-sex partners, establishing a physical and spiritual bond as husband and wife. This relationship is based on the one and only God.

Marriage in terms is also called a contract. Which is the foundation or pillar for this influence, there is a state of being in humans where men and women establish a relationship based on an eternal bond of relationship until life, death do us part.

The elements of this marriage are:

- a. A sacred relationship between two parties where a relationship between a man and a woman has a strong principle of togetherness in their position.

b. Forming a family that is sakinah mawaddah and warahmah.

### B. Children as legal subjects

In civil law, a child is defined as someone under the age of 21 and not yet an adult. This is because individuals under 21 are still considered children. The legal categories for children differ, and the components of other legal fields differ significantly in their respective arrangements regarding children.

In this child's case, their existence and status are very clear. The acquisition of each of these achievements is entirely valid as a legal right, and if properly considered and implemented, they must be balanced.

In the era of globalization, teaching children in their respective fields requires a strong and definite foundation because in the current conditions regarding these steps, the composition of compromise in efforts to solve a problem is greatly reduced.

The technological era, driven by the development of social media and the internet, has had a truly extraordinary impact. Therefore, this must be proven in both relevant and appropriate fields. Children's technological skills must be well-developed and capable of providing a suitable system for learning materials at home and at school (Mui, 2012).

The role of this effort to place the child's position into a normal legal subject is that a person who is referred to as a legal subject has several factors that are taken into consideration for children in the face of the law.

#### 1. Internal elements in the child:

- The subject of a child as a person who is classified as having human rights related to the provisions of laws and regulations. The provisions in question are placed on children in the category of people who are not yet adults, people who are under guardianship, people who are unable to carry out legal acts.
- Equality of rights and obligations (recht gelijkstelling en kind plicht) means children have the same rights and obligations as others. Therefore, there are no restrictions on children's rights and obligations in legal proceedings.

The law, as a system, regulates all efforts to secure these rights for children, ensuring they are properly protected. Therefore, the child's legal

status and guarantees, as applicable, are appropriately addressed, ensuring legal continuity.

#### 2. External elements in the child

- The legal provisions in this equation can provide formal legality to children because for an incapacitated person, a legal event stipulated in the applicable legal regulations will be considered. Therefore, from this perspective, legal capacity must be in place and present as a goal for its development, where this condition can take into account appropriate steps for the legal continuity of children.
- The privileges granted by the government must be in accordance with the 1945 Constitution and legislation. The classification of children has a very broad scope and various meanings and interpretations.

In approaching these children, all processes must be based on religious, legal, social, and other relevant aspects. This includes the substantial role, function, and meaning of each stage of the process, which ultimately leads to the implementation of children's rights.

### C. Legal Status of Children Born Out of Wedlock Based on the Civil Code

Regarding the legal status of children born out of wedlock, their existence and civil administration have no power whatsoever. Because they are not biological children, it is clear that aspects and concepts of understanding the role of legal status cannot be fully recognized.

In terms of existence and civil law, children born out of wedlock are considered illegal children and do not receive recognition from the state because the child's parents did not undergo an official marriage process for their legalization and recognition.

This recognition can only come from the biological father or a descendant of the child who is willing to acknowledge the child as his biological father in a civil legal process between the mother and father.

The role in Article 43 of Law Number 1 of 1974, children born outside of marriage who only have civil status with their mother, then in their family, they can only be owned by their mother and in terms of determination regarding the national regulatory process that applies in Indonesian society.

The validation or recognition of a child born must be based on a kinship relationship between the child and the parents. Article 284 of the Indonesian Criminal Code stipulates that the recognition of a child born out of wedlock, throughout the life of the mother, will not be accepted by all groups. Therefore, children born out of wedlock, regardless of their status or status, receive legal protection.

Article 278 of the Criminal Code addresses criminal intimidation against anyone who legalizes an illegitimate child who is not a blood relative of the child's biological father. The existence of the entire legal process, from a legal perspective, can be understood as the role of administration in ensuring its legal validity.

The position of children in the Civil Code is as follows:

1. Legitimate child;
2. Child born out of wedlock.

In this way, the role of Article 250 of the Civil Code states "Every child born or raised during a marriage receives recognition from his father.

The availability of educational, religious, and other status-related resources is extremely limited. Therefore, efforts to improve children's well-being, including self-esteem and attitudes toward knowledge, must be adequately addressed.

The mother's living conditions will be adequate for both material and immaterial needs, ensuring the child's daily needs are met. This contrasts with children born out of wedlock. Generally, children born out of wedlock are legally recognized through an orphanage or social services agency, which is one of the institutions that provides significant support for abandoned children. The primary purpose of orphanages is to support the child's adoption needs.

This visible ethical need and role has a stage where the process of conditions and the role of influence on all efforts in the form of influence of orphanages for abandoned children are fully borne by the state. (Sitorus, 2020)

Marriage in terms of status and legal standing does not only provide status. However, the parties concerned are able to recognize the child at birth as a form of unification in the field of National Marriage Law as stated in Law Number 1 of 1974, which is stated in Article 43 paragraph (1) as follows:

"A child born outside of a legal marriage has only a civil relationship with his mother and her mother's family." Therefore, the illegitimate child

only has a visible and clear family relationship. Because the form of recognition of an illegitimate child, Article 281 of the Civil Code, in obtaining registration as an absolute matter, must be done at the civil office of the local city or regional population office.

Furthermore, regarding the civil rights of illegitimate children, particularly regarding access to civil documents, including birth certificates, Presidential Regulation No. 25 of 2008 concerning the requirements and procedures for population registration and civil registration provides more detailed guidance on the procedures and requirements for civil registration, including birth registration.

Inheritance rights in the status of a child in this case, have a very weak view of the position that can obtain rights but only in the nature of provisions originating from the writing of the inheritance letter.

In the life of society, the position of children in this case, if viewed from the perspective of inheritance steps, then in the process of transferring inheritance assets, inheritance has aspects of a visible role. In this process, it lies in the division

#### Article 866 of the Civil Code

1. If someone dies, the inheritance can only be passed on to the next generation directly from the legal wife and husband to the direct heir. Children born out of wedlock receive 1/3 percent of what is due to legal children (Article 863 of the Civil Code);
2. If the deceased does not have an inheritance for the next generation in the form of a husband or siblings so that the next (mother, father, grandmother, and so on). If in this male relative and female in the next generation, the effort is inclined towards the children who are legally if the condition of the assets after the death is not completely not given to the proceeds of 1/2 of the inheritance of assets (Article 863 of the Civil Code; (Wardana, 2017)
3. The rights of illegitimate children must be transferred first. This means that the inheritance can be distributed to the legal heirs. (Article 864 of the Civil Code);
4. If the deceased dies without legal descendants, they will receive all of the assets (Article 865 of the Civil Code);
5. If the illegitimate child dies first, then his rights can be transferred to his legal

descendants (Article 866 of the Civil Code).

According to the Civil Code, only those who are related by blood to the testator have the right to inherit, whether they are direct descendants, parents, siblings, grandparents, or descendants of siblings.

So, if you enter the categories of those who have the right to inherit, there are four large groups, namely:

1. Group I: Husband or wife who lives too long and their offspring share the same blood line.
2. Group II: The heir's parents and siblings have appropriate conditions in the same relationship.
3. Group III: families in a straight line upwards after the father and mother of the testator can only be categorized as the same if each has a blood relationship from their descendants.
4. Group IV: uncles and aunts on the father's side and on the mother's side based on the uncle's or aunt's descent up to the sixth degree counted from the testator, for siblings of grandparents and their descendants up to the most equal degree of position in fulfilling the testator. Based on the Civil Code, the principle of inheritance is that new inheritance assets are open (can be inherited to other parties) if a death occurs (Article 830 of the Civil Code), and there is a blood relationship between the testator and the heirs, except for the husband or wife of the testator (Article 832 of the Civil Code),

In this property, the inheritance cannot be given entirely to children outside of marriage. Because in the portion of children outside of marriage if on one party in each group I. The position if the heir dies and only the husband and wife die, the property distributed is 1/3. So in this case, it can be seen that the treatment in legitimate children can only be divided in any amount. In the basic provisions (Article 863 of the Civil Code, part one). The portion of children outside of marriage if they inherit together with heirs in groups 2 and 3 based on Article 863 of the Civil Code, it is stated that if the child (Wulandari, 2018)

Children born outside of marriage are actually the same as heirs as one of their functions can be seen clearly then in the provisions of children born outside of marriage can fully get 1/2 but in the

position of the inheritance. Especially in this section outside of marriage on the other hand the process of inheriting together with heirs for class IV based on Article 863 paragraph (1) of the Civil Code states that the portion of children born outside of marriage if there are only relatives in a more distant degree is 3/4 (three quarters). So that the relatives or siblings have the same position and are not different as the steps or implementation of this applies in Article 863 of the Civil Code, namely class IV heirs.

Regarding the position of illegitimate children if they are the only heirs, when an heir does not leave heirs up to class I to class IV, then the illegitimate children are entitled to receive them.

In the same situation, if a child born out of wedlock is not legally recognized by the heir, the inheritance of all the assets will be given to the same line of descent (Article 865 BW). This right only applies if the child born out of wedlock has been determined by the father or mother, if the father or mother does not have full authority over all the assets.

This position, as a presence in the illegal marriage is confirmed by a panel of judges, in this case, inheritance can always fall to another sibling's lineage. Because in the same line from the mother or the same. Regarding the view of the conditions of inheritance disputes, confirmation and determination of the prospective assessment is carried out by means of a deed pattern and family card as the status of the parent of the child outside the marriage. If the child is born outside the marriage by providing evidence as a biological child's status must be clearly proven, namely in the case of a DNA test to obtain the results of the child's confirmation. That is, with the court institution based on the court's decision, although in this right as a risk or circumstances of legal perspective the rules remain.

In civil law, there are two inheritance rights for illegitimate children: active inheritance rights and passive inheritance rights. Active inheritance rights apply when an heir leaves both legal and illegitimate children. It can also be seen that illegitimate children have the same rights as legal children, and they are guaranteed to inherit a portion of the estate.

However, passive inheritance rights, namely if an illegitimate child inherits wealth, must be given to the person who has authority over the wealth. (Sandimula, 2020)

Based on civil law procedures, only those who have a legal relationship with the testator can

become heirs. This is regulated in Article 280 of the Civil Code, concerning the determination of illegitimate children, which creates a civil bond between the child and the parent who validates them.

If an illegitimate child is not legitimate, the child in question will not inherit any of the father's or mother's assets. However, not all offspring born out of wedlock can be declared legitimate by their father or mother.

It will be very difficult for offspring born from adultery and not through a marriage to obtain civil rights, but the view of rights and obligations for children born out of wedlock remains the same as the normal right of recognition because it is contrary to morality, this matter has been stipulated in Article 283 of the Civil Code.

#### IV. CONCLUSION AND SUGGESTIONS

##### A. Conclusion

Regarding children born outside of marriage, if the status of children outside of marriage itself is for a child if, from the parents, they want to obtain full status rights. Because of the financial conditions of the child's life in this case, they still have the same rights, but in law, they must be able to differentiate because the state fully helps and protects in raising children to be able to grow and develop well. As well as getting a proper education, and good nutrition in order to maintain the guarantee and quality of the ideals of the rights of children born outside of marriage are completely the same and there is no difference if the state recognizes the pattern of care is carried out through an orphanage.

##### B. Suggestion

The government's role in this regard must be to maintain the electability of community-based measures against child neglect outside of marriage. Therefore, if the law is enforced, it must be brought to the social services office to accommodate the illegitimate children. This

involves providing guidance and outreach to young people to improve their sexual behavior after marriage.

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