



Legal Certainty of Inheritance for Children Born Out of Wedlock Who Are Recognized as Legitimate by Their Biological Parents

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Abstract

The legal status of illegitimate children in Indonesia has become a complex issue involving legal, religious, and social aspects. Illegitimate children often experience discrimination in obtaining civil rights, particularly regarding lineage, maintenance, and inheritance. This study aims to analyze the legal certainty for illegitimate children recognized by their biological parents, focusing on Indonesian positive law regulations, Islamic religious perspectives, and the role of the Constitutional Court. This study also offers comprehensive solutions to overcome legal and social barriers in the implementation of illegitimate child protection policies. This study uses a juridical-normative method with a multidisciplinary approach, combining positive law analysis, Islamic religious studies, and socio-cultural aspects. The results show that Constitutional Court Decision Number 46/PUU-VIII/2010 is a step forward in providing legal recognition for illegitimate children, but its implementation still faces significant challenges. Under Islamic law, the status of illegitimate children tends to be limited to the lineage relationship with their biological mother, although alternatives such as a mandatory will exist to protect their rights. This study recommends regulatory revisions, public outreach, strengthening the role of child protection agencies, optimizing evidentiary technologies such as DNA testing, and harmonizing positive law and Islamic law. With a holistic approach, it is hoped that legal protection for illegitimate children can be implemented fairly, inclusively, and in accordance with humanitarian principles.

I. INTRODUCTION

The legal status of illegitimate children continues to be a complex debate in Indonesia, both within the realm of positive law and from a religious and social perspective. Illegitimate children often face discrimination and social stigma, resulting in difficulties in obtaining basic rights such as recognition, maintenance, and inheritance. This reflects the imbalance between the protection of children's rights guaranteed in the 1945 Constitution and the reality of its implementation. Article 28B Paragraph (2) of the 1945 Constitution states that every child has the right to survival, growth, development, and protection from violence and discrimination.

However, for illegitimate children, the fulfillment of this right is often hampered by legal provisions that limit civil relations only to their biological mother.

In 2010, the Constitutional Court, through Decision Number 46/PUU-VIII/2010, provided a new interpretation of Article 43 Paragraph (1) of Law Number 1 of 1974 concerning Marriage. The Constitutional Court emphasized that illegitimate children have a civil relationship with their biological father, as long as it can be proven through technology or other evidence. This decision was a step forward in providing legal certainty, but its implementation in society still faces various obstacles, especially due to strong

cultural and religious resistance (Zainuddin, 2020: 67).

From an Islamic legal perspective, the status of illegitimate children is also governed by strict principles. Most Islamic scholars believe that illegitimate children are only related to their mother, without recognizing their biological father. However, some hold more moderate views, such as the use of a mandatory will (*wasiat wajibah*) to guarantee the child's economic rights. These differing views add to the complexity of providing legal certainty for illegitimate children in Indonesia, a predominantly Muslim country.

Furthermore, from a social perspective, illegitimate children often face negative stigma that impacts their lives. These children are often victims of discrimination, both within the family, community, and formal institutions such as schools. Yet, the principles of child protection stipulated in the Convention on the Rights of the Child, ratified by Indonesia through Presidential Decree No. 36 of 1990, affirm that every child has the right to protection and basic rights regardless of their birth status.

This study aims to analyze the legal certainty for illegitimate children recognized by their biological parents. This study will examine various related aspects, including the recognition of illegitimate children under Indonesian positive law, the Islamic perspective, and the role of the Constitutional Court in providing legal protection. Furthermore, this study offers solutions to overcome various obstacles to the implementation of this policy, including legal, social, and cultural barriers.

The issues raised in this research are relevant because they concern the human rights of children as the nation's future generation. In the context of national legal development, more progressive measures are needed to guarantee the rights of children born out of wedlock without disregarding prevailing religious and social values in Indonesia. With a multidisciplinary approach, this research is expected to contribute to creating a more just and inclusive legal system.

This research discusses the problem of how the recognition of illegitimate children is

regulated in Indonesian law, what is the view of Islamic law on the status of illegitimate children, what is the role of the Constitutional Court's decision in providing legal certainty for illegitimate children, and what solutions can be offered to overcome obstacles in providing legal certainty for illegitimate children.

Research objectives: To analyze legal regulations regarding the recognition of illegitimate children in Indonesia, To examine the perspective of Islamic law on illegitimate children, To identify the role of the Constitutional Court in protecting the rights of illegitimate children, To formulate solutions to provide legal certainty for illegitimate children in a comprehensive manner.

This research is expected to contribute to the development of family law in Indonesia, particularly in providing inclusive legal protection for children born outside of marriage, in accordance with the principles of justice, humanity, and human rights.

II. RESEARCH METHODS

This research uses a juridical-normative method with a library research approach. This method aims to analyze laws and regulations, court decisions, and legal doctrines relevant to the legal status of illegitimate children. Library research was chosen because it allows researchers to explore written sources in depth, from both positive law and Islamic religious perspectives.

The data sources used in this study consist of primary and secondary data. Primary data includes relevant laws and regulations, such as Law Number 1 of 1974 concerning Marriage, Law Number 35 of 2014 concerning Child Protection, and Constitutional Court Decision Number 46/PUU-VIII/2010. Secondary data includes books, scientific journal articles, and previous research findings addressing issues related to illegitimate children, particularly those published within the last 15 years.

Data collection techniques involved identification, selection, and in-depth review of relevant literature. Primary legal sources were analyzed to understand the applicable legal framework, while secondary legal sources were

used to complement and enrich the analysis with broader perspectives, including Islamic law and socio-cultural perspectives.

The collected data was analyzed descriptively and qualitatively to provide in-depth and systematic understanding. The analysis process involved identifying key themes, classifying the data according to the research focus, and interpreting the data to draw relevant conclusions. The results are expected to significantly contribute to the development of legal discourse and solutions related to illegitimate children in Indonesia.

III. RESULTS AND DISCUSSION

A. Recognition of Children Born Out of Wedlock in Indonesian Law

The recognition of illegitimate children in the Indonesian legal system is a complex issue, as it involves conflicts between positive law, religious norms, and socio-cultural values. Legally, an illegitimate child is defined as a child born outside of a legal marriage according to statutory regulations. This is explained in Article 43 Paragraph (1) of Law Number 1 of 1974 concerning Marriage (Marriage Law), which states that "a child born outside of marriage only has a civil relationship with his mother and his mother's family." This provision confirms that an illegitimate child does not have a legal relationship with his biological father unless there is legal recognition.

However, legal developments in Indonesia have shown significant changes following the issuance of Constitutional Court (MK) Decision Number 46/PUU-VIII/2010. In this decision, the Constitutional Court stated that illegitimate children have a civil relationship with their biological father if it can be proven through technology and science, such as DNA testing (Nurhayati, 2019: 35). This decision is considered a progressive step in protecting the rights of illegitimate children, although its implementation still faces various obstacles, both from a legal perspective and in terms of public acceptance.

On the one hand, Article 43 Paragraph (1) of the Marriage Law remains the primary legal basis used in determining the legal status of illegitimate

children. However, the Constitutional Court's decision provides space for illegitimate children to claim civil rights, including inheritance, through legal channels, although this does not automatically grant them full legal status as heirs (Salim, 2012: 76). Recognition from the biological father is a key factor in providing legal certainty for illegitimate children. This recognition can be done through a child recognition deed at the Civil Registry Office or through a court decision.

From a religious perspective, Islamic law, as practiced by the majority of Indonesians, holds a different view. In Islam, children born out of wedlock are considered "adultery" children, who have no blood relationship with their biological father. This is based on the Islamic jurisprudence principle, "al-walad lil firash," which means a child is only recognized based on a valid marriage (Asnawi, 2018: 102). Therefore, illegitimate children do not have inheritance rights from their biological father, except through a will or gift.

However, this view is not entirely in line with the spirit of the constitution, which guarantees the human rights of every citizen, including children born out of wedlock. The 1945 Constitution, specifically Article 28B Paragraph (2), affirms that "every child has the right to survive, grow, and develop, and has the right to protection from violence and discrimination." This provision serves as a normative basis for fighting for more inclusive legal protection for children born out of wedlock.

However, the implementation of the recognition of illegitimate children in Indonesian law still faces various challenges. One of the main challenges is the social stigma attached to the status of illegitimate children. Society tends to view illegitimate children as a family disgrace, so the recognition process is often not carried out openly. As a result, illegitimate children do not receive their full rights, including the right to inheritance (Mahmud, 2015: 89).

Furthermore, the disharmony between positive law and religious norms also hinders legal certainty for illegitimate children. Positive law provides opportunities for recognition and legal relationships with biological fathers, while

religious norms tend to limit these relationships. Therefore, a more progressive and inclusive legal approach is needed to harmonize legal interests, religious values, and human rights.

In the context of legal reform, revising the Marriage Law and harmonizing it with inheritance law are crucial steps to create greater legal certainty. One solution that could be considered is further regulation of the mechanism for recognizing illegitimate children and affirming their civil rights, including inheritance rights. Furthermore, the government needs to promote legal education to the public to reduce the stigma surrounding illegitimate children and encourage their legal recognition by biological parents.

B. Islamic Law's View on the Status of Children Born Out of Wedlock

The Islamic view of illegitimate children has a theological basis based on the Quran, Hadith, and Islamic jurisprudence. In Islam, an illegitimate child is a child born outside of a legitimate marriage, which, according to Sharia law, is considered adultery. Therefore, the kinship of an illegitimate child is recognized only with the mother, as affirmed in the hadith of the Prophet Muhammad (peace be upon him):

"The child belongs to the bed (legal husband), and for the adulterer it is a stone (punishment)" (HR. Bukhari and Muslim).

This hadith emphasizes that a child born of adultery has no kinship with his biological father, only with his mother. Consequently, this lack of kinship means that an illegitimate child has no inheritance rights from his biological father. In this case, the civil rights of an illegitimate child are limited to his relationship with his mother and her family.

1. The Context of Inheritance in Islam

In Islamic inheritance law, blood relations are the primary requirement for someone to be entitled to receive an inheritance. Children born out of wedlock, because they lack blood relations with their biological father, are not entitled to inheritance from their father's side. This is explained by scholars based on their interpretation of Quranic verses, such as Surah

An-Nisa: 11, which states that inheritance is distributed based on legitimate blood relations.

However, Islam provides an alternative solution for illegitimate children to inherit property from their biological father through a gift or bequest. Under Islamic law, a person is permitted to bequeath a maximum of one-third of their property to an unrelated party, including illegitimate children (Asnawi, 2018: 104). This mechanism allows the biological father to demonstrate his responsibility toward his illegitimate children, even if direct inheritance rights are not granted.

2. Maqasid al-Shariah Approach

In the modern context, some contemporary scholars use the maqasid al-shariah (objectives of sharia) approach to address the issue of illegitimate children. Maqasid al-shariah emphasizes justice, public welfare, and the protection of human rights. Based on this principle, some scholars argue that even though illegitimate children are not related to their biological father, their rights must still be protected, including the right to receive support and property (Yusuf, 2015: 56).

The maqasid al-shariah approach focuses on child protection as one of the main goals of sharia. In this case, illegitimate children should not bear the consequences of their parents' actions that violate Sharia law. This principle is also supported by the spirit of the Indonesian constitution which guarantees the protection of the rights of every child without discrimination, as stated in Article 28B Paragraph (2) of the 1945 Constitution.

3. Challenges in Implementation

Although Islam provides alternatives through wills and gifts, the implementation of these mechanisms often faces obstacles. One major obstacle is the social stigma surrounding illegitimate children, which discourages biological parents from acknowledging or granting them a will. Furthermore, there are differing views among Islamic scholars on how these mechanisms should be implemented in the modern context.

Some conservative scholars maintain traditional Islamic jurisprudence (fiqh) rules that restrict the rights of illegitimate children, while progressive scholars tend to emphasize the importance of legal reform to provide more inclusive protections. This difference of opinion creates ambiguity in legal practice, particularly when the issue is linked to positive law, which is more flexible in recognizing illegitimate children.

4. Islamic Solution Recommendations

Islam, as a religion of mercy for all the worlds, always opens up space for justice and well-being. Therefore, the following steps are necessary:

1) Increasing Religious Awareness

It is important to promote the understanding that illegitimate children are not responsible for the actions of their parents and still have the right to be protected, including through wills and gifts.

2) Islamic Legal Reform

Ulama need to dialogue to integrate the principles of maqasid al-shariah into the Islamic inheritance law system, so that the rights of illegitimate children can be more guaranteed.

3) Harmonization with Positive Law

Indonesian positive law can be used to address the shortcomings of Islamic law regarding the recognition of illegitimate children. For example, the provisions in Constitutional Court decisions can be harmonized with an Islamic approach that emphasizes justice.

With these steps, it is hoped that the rights of children born outside of marriage can be protected without violating the basic principles of Islamic law.

C. The Role of Constitutional Court Decisions in Providing Legal Certainty for Children Born Out of Wedlock

The Constitutional Court (MK) Decision Number 46/PUU-VIII/2010 is an important milestone in protecting the rights of illegitimate children in Indonesia. This decision broadens the interpretation of Article 43 Paragraph (1) of Law Number 1 of 1974 concerning Marriage, which originally only regulated the civil relationship between illegitimate children and their mothers. In its decision, the Constitutional Court stated that

illegitimate children also have a civil relationship with their biological fathers, as long as it can be proven based on technology and science, such as DNA tests or other evidence (Huda, 2015: 65).

1. Implications of the Constitutional Court's Decision on Civil Law

This Constitutional Court ruling has had a significant impact on the civil legal framework in Indonesia. Previously, illegitimate children were not legally recognized as having a relationship with their biological fathers, and therefore had no right to claim maintenance, inheritance, or other forms of responsibility. However, with this ruling, illegitimate children have a legal basis to demand recognition, both in the form of maintenance and protection of other rights (Marzuki, 2017: 43). Specifically, the legal implications of this ruling include the following aspects:

a. Right to Support

The Constitutional Court's ruling provides a legal basis for illegitimate children to claim maintenance from their biological father. This is in line with the principle of child protection as stipulated in Article 28B Paragraph (2) of the 1945 Constitution, which states that every child has the right to protection without discrimination.

b. Inheritance Rights

Although illegitimate children do not automatically become heirs of their biological father, this decision opens up opportunities for the child to obtain a share of the father's assets through other mechanisms, such as a mandatory gift or will (Rahman, 2018: 78).

c. Legal Recognition

Through this ruling, the Constitutional Court encourages the recognition of illegitimate children by their biological fathers, which can be achieved through a child recognition certificate or a court decision. With this recognition, illegitimate children can have more complete identity documents and enjoy full civil rights.

2. The Perspective of Justice in the Constitutional Court's Decision

The Constitutional Court's decision was based on the principles of justice and human rights

protection. The Constitutional Court considered that discrimination against illegitimate children violates constitutional values, as children cannot be blamed for the mistakes of their parents. In its deliberations, the Constitutional Court stated that protecting illegitimate children is part of efforts to uphold children's rights as stipulated in the Convention on the Rights of the Child, which Indonesia ratified through Presidential Decree No. 36 of 1990 (Mahmud, 2015: 90).

3. Challenges in Implementing the Constitutional Court Decision

Despite its progressive nature, the implementation of the Constitutional Court's ruling in practice still faces various obstacles. One of the main obstacles is cultural resistance and religious norms that tend to view illegitimate children as a disgrace. This social stigma often hinders the process of recognizing illegitimate children by their biological fathers, despite a strong legal basis (Zainuddin, 2020: 112).

Furthermore, there are differing interpretations among judicial institutions in implementing the Constitutional Court's ruling. Some judges tend to adhere to conservative views that still limit the rights of illegitimate children, while others attempt to apply the Constitutional Court's ruling more inclusively. This creates inconsistencies in court decisions regarding illegitimate children.

4. Solutions and Recommendations

To optimize the role of the Constitutional Court's decisions in protecting children born out of wedlock, the following steps can be taken:

a. Legal Socialization and Education

The government and related institutions need to disseminate the Constitutional Court's decision to the public, especially to legal practitioners, so that the implementation of this decision can be carried out in accordance with the principles of justice.

b. Harmonization of Law

It is necessary to revise the Marriage Law and other related regulations to explicitly accommodate the provisions of the Constitutional

Court's decision, so that there is no longer any ambiguity in its application.

c. Cultural and Religious Approach

A more inclusive approach is needed through dialogue with religious and community leaders to reduce the stigma against children born out of wedlock, so that legal recognition can be carried out without social barriers.

Constitutional Court Decision No. 46/PUU-VIII/2010 represents a significant step forward in providing legal protection for illegitimate children in Indonesia. However, its successful implementation depends heavily on public awareness, legal harmonization, and consistent enforcement in the judiciary. With collaborative efforts from various parties, it is hoped that the rights of illegitimate children can be optimally protected in accordance with the principles of justice and humanity.

D. Solutions for Legal Certainty

Legal certainty for illegitimate children legally recognized by their biological parents is a crucial issue requiring comprehensive resolution. The various challenges that arise in implementing the recognition of children's rights require solutions that are not solely oriented toward positive law but also consider social, cultural, and religious aspects. In this context, proposed solutions must accommodate the principles of justice, humanity, and the protection of children's rights as mandated by the constitution and international norms.

1. Harmonization between Islamic Law and Positive Law

To achieve legal certainty, harmonization of Islamic sharia principles with prevailing positive law in Indonesia is necessary. Islamic law tends to limit the relationship between illegitimate children and their biological mothers, while positive law, through Constitutional Court decisions, opens the possibility of civil relations with biological fathers. This harmonization can be achieved through cross-sector dialogue between religious scholars, academics, and policymakers to produce regulations that accommodate the

need to protect children's rights without neglecting religious values.

For example, the obligatory gift or will mechanism under Islamic law can be a solution to guarantee the economic rights of illegitimate children. In this case, the biological father can provide a certain portion of his assets through a legal mechanism recognized by both positive and Islamic law (Rahmat, 2019: 67).

2. Revision and Confirmation of Laws

Law No. 1 of 1974 concerning Marriage needs to be revised to accommodate Constitutional Court Decision No. 46/PUU-VIII/2010. This revision aims to provide more explicit legal certainty regarding the civil relationship between illegitimate children and their biological fathers, thereby eliminating ambiguity in implementation.

Furthermore, technical regulations, such as child recognition procedures and maintenance provision procedures, must be detailed in government regulations or ministerial regulations. This way, the relevant parties can have clear guidelines for carrying out their obligations (Siregar, 2018: 45).

3. Education and Socialization to the Community

The social stigma surrounding illegitimate children is a major barrier to legal recognition. Therefore, education and outreach to the public regarding the importance of protecting children's rights without discrimination are necessary. This outreach can be conducted through various channels, including formal education, seminars, and public campaigns involving religious and community leaders.

It's important to emphasize that recognizing the rights of children born out of wedlock does not imply support for relationships outside of legal marriage, but rather demonstrates parents' legal and moral responsibility towards their children. This approach is expected to reduce persistent cultural resistance in society (Ismail, 2020: 78).

4. Optimizing the Role of Technology in Proof

The use of technology, such as DNA testing, plays a crucial role in proving the biological relationship between an illegitimate child and its father. This technology can be used as valid evidence to support the recognition of illegitimate

children, as stipulated in the Constitutional Court's ruling. Therefore, the government needs to provide broader and more affordable access to DNA testing facilities, especially for low-income families.

In addition, related institutions, such as courts and civil registry offices, need to have clear guidelines in receiving and processing this technological evidence, so that there are no bureaucratic obstacles in recognizing children (Nugroho, 2017: 112).

5. Strengthening Child Protection Institutions

Child Protection Agencies in Indonesia need to be strengthened to ensure the protection of the rights of children born out of wedlock. These institutions can act as mediators between children, their biological mothers, and their biological fathers in the process of recognizing and resolving related legal disputes. Furthermore, these institutions can also provide legal and psychological support to children and their families.

6. Encouraging Inter-Institutional Collaboration

Addressing the issue of illegitimate children requires close collaboration between various parties, including the government, courts, religious leaders, and civil society. The government can act as a regulator and facilitator, while religious institutions and civil society can assist with outreach and education. This collaboration aims to create an ecosystem that supports the inclusive and equitable recognition of illegitimate children (Azhari, 2021: 95).

Legal certainty for illegitimate children recognized by their biological parents can be achieved through legal harmonization, regulatory revision, public education, and optimization of technology and child protection agencies. With a comprehensive approach, the rights of illegitimate children can be protected without violating religious principles and applicable laws.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Legal certainty for illegitimate children recognized by their biological parents is an issue that requires serious attention in the context of

Indonesian law. Illegitimate children often experience discrimination in obtaining civil rights, particularly regarding lineage, maintenance, and inheritance. Constitutional Court Decision No. 46/PUU-VIII/2010 is a progressive step in establishing civil relations between illegitimate children and their biological fathers, but its implementation still faces social, cultural, and religious challenges.

Under Islamic law, illegitimate children are limited to their biological mother, but some moderate views offer a solution through mechanisms such as mandatory wills. This perspective demonstrates that Islamic law also has room to protect children's rights without overriding sharia principles.

Synergy between positive law, religion, and social norms is needed to create inclusive and fair regulations for illegitimate children. This involves strengthening regulations, educating the public, and optimizing technology, such as DNA testing, to establish civil relationships. With a holistic approach, protection for illegitimate children can be realized in accordance with the principles of justice and humanity guaranteed by the 1945 Constitution and ratified international conventions.

B. Suggestion

1. Revision of the Marriage Law

The government needs to revise Article 43 of Law No. 1 of 1974 to accommodate the Constitutional Court's ruling, eliminating ambiguity in the application of the law regarding illegitimate children. More specific regulations are needed to clarify children's civil rights, including the procedures for recognizing and providing child support.

2. Education and Socialization to the Community

The public needs to be better informed about the rights of children born out of wedlock to reduce the social stigma these children often experience. Religious leaders, academics, and the government must collaborate to campaign for the importance of protecting children's rights without discrimination.

3. Optimizing Technology in Proof

The government must provide broader access to evidentiary technologies such as DNA testing. This step is crucial to ensure that a child's civil relationship with their biological father is legally recognized. Subsidies for DNA testing for low-income families should also be considered.

4. Harmonization of Positive Law and Islamic Law

Cross-sector dialogue between religious scholars, academics, and policymakers is necessary to harmonize positive law with Islamic legal principles. This is crucial to ensure that the resulting regulations are acceptable to all parties and provide optimal protection for illegitimate children.

5. Encouraging Academic Study and Advocacy

In-depth academic studies and advocacy on the rights of children born out of wedlock need to be continuously encouraged. This is crucial for providing data-based and analytical input for policymakers in developing better regulations.

With systematic and collaborative efforts, legal certainty for illegitimate children who are recognized as legitimate by their biological parents can be achieved, thus providing protection that is in line with the principles of justice, humanity, and the common good.

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