



Legal Analysis of Legal Protection for Children Born Outside of Marriage According to the Civil Code, Law No. 1 of 1974 concerning Marriage, and Law No. 35 of 2014 concerning Child Protection

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Info Articles

Article History

Received: 2025-09-03
Revised: 2025-09-16
Published: 2025-09-30

Keywords:

Legal protection; Children born out of wedlock; Civil law; Inheritance rights; Children's rights.

Abstract

Legal protection for illegitimate children in Indonesia is a crucial issue that remains a frequent focus in family law studies. Children born outside of marriage, often referred to as illegitimate children, often face significant legal challenges related to their legal status, inheritance rights, and protection of their well-being. This study aims to analyze the legal protection of illegitimate children from a civil law perspective in Indonesia. Illegitimate children often face discrimination and injustice, both in terms of legal status, inheritance rights, and other protections that every child should receive. This study uses a normative juridical approach by examining various applicable laws and regulations, such as the Civil Code (KUHPerdata), Law No. 1 of 1974 concerning Marriage, and Law No. 35 of 2014 concerning Child Protection, as amended. The analysis found that although civil law provides protection for illegitimate children, there are loopholes that allow for injustice to these children, particularly in terms of recognizing child status, inheritance rights, and regulating relationships with biological parents. This study suggests the need for legal reform to provide better protection and ensure that the rights of children born out of wedlock can be accommodated more fairly in accordance with the principles of human rights protection and child welfare.

I. INTRODUCTION

The issue of legal protection for illegitimate children in Indonesia has become an increasingly important issue and has received attention in family law studies. In recent years, the number of illegitimate children has increased, leading to a number of complex legal issues. Children born outside of marriage often face injustice regarding their legal status, inheritance rights, and welfare protection. Although Indonesia has various legal regulations aimed at protecting children's rights, including illegitimate children, there remains a gap between existing legal norms and their implementation in practice.

Protection for illegitimate children is crucial, both from a legal and human rights perspective. Every child, regardless of their birth status, deserves equal legal protection and the rights they deserve. However, in reality, children born out of wedlock often face discrimination, both in recognition of their status as legitimate children and in inheritance rights and their relationship with their biological parents.

Within the framework of Indonesian civil law, the Civil Code (KUHPerdata) regulates several aspects related to the status of illegitimate

children, although there is still a legal gap that does not fully regulate the rights of illegitimate children, especially regarding the recognition of relationships with biological parents and inheritance rights. In addition, although Law No. 1 of 1974 concerning Marriage regulates the status of illegitimate children, Indonesian law does not yet guarantee fair protection for these children. Law No. 23 of 2002 concerning Child Protection, although it has undergone several amendments, provides a legal basis for protection for children, but its implementation for illegitimate children is still limited.

This study aims to examine legal protection for illegitimate children from a civil law perspective in Indonesia. Using a normative juridical approach, this study will analyze various applicable regulations and examine the extent to which existing legal provisions can provide fair protection for illegitimate children. The primary focus of this study is to identify legal loopholes that can lead to injustices against illegitimate children, particularly regarding the recognition of their status, inheritance rights, and relationship with their biological parents.

It is hoped that this research will provide

solutions and recommendations regarding the importance of legal reform to provide better protection for illegitimate children. The primary goal is to ensure that these children's rights are fulfilled fairly, in accordance with the principles of human rights and child welfare. Given increasingly dynamic social developments, a state commitment to guaranteeing legal protection for all children, including those born out of wedlock, is crucial.

II. RESEARCH METHODS

This research prioritizes a normative legal approach, namely by examining applicable laws and regulations, including statutes, government regulations, and other related rules. This research will specifically examine the Civil Code (KUHPperdata), Law No. 1 of 1974 concerning Marriage, and Law No. 23 of 2002 concerning Child Protection, as amended, to understand how these rules regulate the status and rights of illegitimate children. This research is descriptive and analytical, in which the researcher will describe the legal situation of illegitimate children based on applicable norms. Next, the researcher will analyze existing legal gaps to assess the extent to which civil law can provide adequate protection for these children. In addition, this study will also discuss the negative impact of legal ambiguity on the welfare of illegitimate children. The collected data will be analyzed using an interpretive approach to understand and interpret the meaning of existing legal provisions. This analysis will evaluate the consistency of existing regulations and their effectiveness in providing appropriate protection for illegitimate children. This research will also examine the extent to which existing laws comply with the principles of human rights and child protection. Using this method, it is hoped that this research will contribute to the development of better legal policies to protect the rights of illegitimate children in Indonesia.

III. RESULTS AND DISCUSSION

A. Legal Protection for Children Born Outside of Marriage According to the Civil Code

Legal protection for children born out of wedlock in Indonesia is regulated by the Civil Code (KUHPperdata), although their legal status differs from that of children born within legal marriage. Several provisions in the KUHPperdata govern the rights and status of

illegitimate children. The following explains these provisions:

1. **Legal Status of Children Born Out of Wedlock**
Children born out of wedlock have a different legal status than children born within a legitimate marriage. According to several articles in the Civil Code, an illegitimate child is only considered legitimate if the father acknowledges it. Article 280 of the Civil Code: This article stipulates that an illegitimate child will only be considered legitimate if acknowledged by the father, and this acknowledgement must be done officially, such as through a child recognition deed before an authorized official. Article 284 of the Civil Code: A child acknowledged by the father can obtain the same rights as a legitimate child, including inheritance rights. However, if the child is not acknowledged, then he does not have inheritance rights from his biological father.
2. **Father's Recognition of an Illegitimate Child**
According to Article 285 of the Civil Code, a father can formally acknowledge his illegitimate child by making an acknowledgment before an authorized official or agency (for example, through a deed of acknowledgment at the civil registry office). This acknowledgment has a significant impact on the child's rights, including inheritance rights. If such acknowledgment is made, an illegitimate child will have the same rights as a legitimate child in terms of inheritance. Conversely, without paternal acknowledgment, an illegitimate child will only have rights from the mother and cannot claim inheritance rights from the father.
3. **Rights of Children Born Out of Wedlock**
Although illegitimate children do not have the same status as legitimate children, they still have the right to protection, including the right to basic needs such as education, health care, and welfare from their parents, especially their mothers. In this regard, the law continues to provide protection for children, regardless of their birth status. Illegitimate children also have the right to be recognized as individuals entitled to a decent life. This protection is regulated not only by the Civil Code but also by the Child Protection Law, which ensures that all children, regardless of birth status, receive protection and the fulfillment of their basic rights.
4. **Protection in the Context of Family Law**

In addition to the provisions of the Civil Code, legal protection for illegitimate children is also guaranteed by Law Number 35 of 2014 concerning Child Protection. This law provides children with the right to protection, regardless of whether they are born in a legal marriage or not, such as the right to protection from violence, exploitation, and discrimination.

5. Inheritance Rights of Children Born Out of Wedlock

Inheritance rights for illegitimate children are granted only if the child is acknowledged by the father. Without paternal acknowledgement, an illegitimate child does not have the right to inherit from the father, although he or she retains inheritance rights from the mother. In general, the Civil Code provides more limited legal protection for illegitimate children compared to children born within a legitimate marriage. However, despite their different status, illegitimate children still have the right to recognition and protection, especially from the mother. Furthermore, if the biological father acknowledges the child, the illegitimate child can obtain equal rights to legitimate children, including inheritance rights. In addition to the provisions of the Civil Code, protection for illegitimate children is also regulated by the Child Protection Law, which guarantees the basic rights of children, regardless of their birth status.

B. Legal Protection for Children Born Outside of Marriage According to Law No. 1 of 1974 concerning Marriage

Legal protection for illegitimate children under Law No. 1 of 1974 concerning Marriage is very limited, as this law regulates legal marriages and children born within legal wedlock. However, over time, there have been changes and interpretations of the law involving protection for illegitimate children.

1. The Position of Children Born Outside of Marriage According to Law No. 1 of 1974

Law No. 1 of 1974 concerning Marriage does not explicitly regulate the status of children born out of wedlock, but there are several provisions that can be applied. Article 43 paragraph (1) of the Law states that children born from a legal marriage also have a legal status, namely as children recognized by their parents. This article does not directly

address children born out of wedlock, so children born outside of an official marriage (a marriage that is not legally valid) do not receive the same rights. However, in its development, Article 43 paragraph (2) provides some room for recognition of children born out of wedlock, although there are limitations. This article states that children born outside of a legal marriage can have their citizenship status and rights recognized only if recognized by their biological father with a deed of recognition from the parents or through the courts. (Asep Sutedi, 2019).

2. Legal Protection for Children Born Outside of Marriage After Law No. 1 of 1974

After Law No. 1 of 1974, there have been significant developments in the protection of illegitimate children, particularly through legal changes and Constitutional Court decisions. Law No. 23 of 2002 concerning Child Protection, which was revised to Law No. 35 of 2014 concerning Child Protection, provides broader protection, emphasizing the importance of children's rights regardless of the marital status of their parents. In this context, illegitimate children also have the right to legal protection, the right to education, health, and other basic rights, in accordance with the principle of non-discrimination contained in the Convention on the Rights of the Child ratified by Indonesia. In addition, in Constitutional Court Decision No. 46/PUU-VIII/2010, the Constitutional Court interpreted that illegitimate children have the right to receive equal recognition as children born in legal marriage, provided there is recognition from their biological father (Mardani, 2015).

3. The Importance of Recognizing and Regulating the Status of Children Born Out of Wedlock

However, illegitimate children still face legal challenges, particularly regarding recognition of their status and inheritance rights. Legal status for illegitimate children can be obtained through recognition by their parents (the biological father) or through a court decision (Salim, 2017).

C. Legal Protection for Unwed Children According to Law no. 35 of 2014 concerning Child Protection

Child protection according to Law Number 35 of 2014 Article 1 paragraph (2) is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate

optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination. The obligations and responsibilities of parents and families, in Article 26 paragraph (1) parents are obliged and responsible for: a. Caring for, maintaining, educating, and protecting children. b. Growing and developing children according to their abilities, talents, and interests c. Preventing marriage at a young age. Providing character education and instilling moral values in children. Legal protection for children can be interpreted as an effort to protect the law against various freedoms and human rights of children as well as various interests related to the welfare of children and the safety of a child's life (Ginting, 2019).

Children, regardless of their birth status, have the right to legal protection recognized by the state. In this context, children born out of wedlock still have their rights guaranteed under Law No. 35 of 2014 concerning Child Protection. Article 1 paragraph 2 of the law states that a child is anyone under the age of 18, including those born outside of legal marriage. Therefore, children born out of wedlock have the same rights as children born in legal marriage, such as the right to life, the right to identity, and the right to optimal development (Rosyid, 2017).

The Child Protection Law also stipulates in Article 4 that child protection is a shared responsibility between the state, government, society, family, and parents. Each party is obliged to ensure the fulfillment of children's rights, including those born out of wedlock. One important basic right is the right to obtain legal identity, such as a birth certificate, which is an essential requirement for accessing various basic services such as education and health. This is crucial to ensure that children born out of wedlock do not experience discrimination and can enjoy their rights as citizens (Indriani, 2018). Furthermore, children born out of wedlock are also protected from various forms of violence, both physical and psychological. The Child Protection Law emphasizes that children, including those born out of wedlock, must be protected from exploitation and neglect, both within the family, society, and educational institutions. The primary goal is to create a safe environment and support their healthy and proper development (Sulistiyarningsih 2020). Although illegitimate children have the same rights as children born in legal marriage in terms of social protection and access to basic rights, the legal status of these

children may differ, particularly regarding inheritance issues and recognition of parental obligations.

Based on Article 43 of Law No. 1 of 1974 concerning Marriage, children born out of wedlock are only entitled to inherit property from their mother and their mother's family, unless acknowledged by the father. However, in terms of protecting other basic rights, the Child Protection Law still guarantees that illegitimate children may not be treated discriminatory (Wijaya, 2016). There are five factors as parameters or indicators of legal effectiveness when viewed from Soerjono Soekanto's perspective, namely; the regulatory factor itself, law enforcement factors, means or facilities factors, community factors, and cultural factors (Soekanto, 2007). Children's Rights in Article 54 of Law No. 35 of 2014 concerning child protection Children have the same human rights, inherent and inseparable from all human members.

Children's rights are a tool to protect children from violence, discrimination, and other forms of abuse. Every child in the care of a parent, guardian, or any other party responsible for their care has the right to protection from:

1. Discrimination
2. Exploitation, both economic and social
3. Neglect
4. Cruelty, violence and abuse
5. Injustice and
6. Other mistreatment.

There are 31 children's rights which are summarized from Law No. 35 of 2014 concerning Child Protection, namely:

1. The Right To:
 - 1) Play.
 - 2) Get creative.
 - 3) Participate.
 - 4) Relating to parents when separated.
 - 5) Carrying out religious activities.
 - 6) Gather.
 - 7) Unionized.
 - 8) Living with parents.
 - 9) Survival, growth and development.
2. The right to receive:
 - 10) Name and identity
 - 11) Religious teachings.
 - 12) Citizenship.
 - 13) Education.
 - 14) Information.
 - 15) The highest health standards.
 - 16) A decent standard of living.

3. The right to protection:

- 17) Personal.
- 18) From arbitrary action/arrest
- 19) From deprivation of liberty.
- 20) From cruel treatment, punishment and inhumane treatment.
- 21) From physical and non-physical torture.
- 22) From kidnapping, selling and trading or trafficking.
- 23) From sexual exploitation.
- 24) From drug exploitation/abuse.
- 25) From exploitation as child labor.
- 26) From exploitation as a minority group/remote indigenous group.
- 27) From views/circumstances which by their nature are not suitable for children to see.
- 28) Especially in critical/emergency situations.
- 29) Specifically as refugees/displaced/evicted people.
- 30) Especially if you experience legal complications.
- 31) Especially in armed conflict or social conflict (Sholeh, 2016).

The government's attention to the field of child protection is one of the goals of national development. As stated in Article 1 paragraph (2) of Law Number 35 of 2014 concerning Child Protection, which reads: "Child protection is: all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and honor, and receive protection from violence and discrimination."

Child protection is also the development of the younger generation, which is an integral part of National development, namely a just and prosperous society as well as safe and peaceful based on Pancasila and the 1945 Constitution. The concept of child protection covers a broad scope, in the sense that child protection is not only about protecting the child's body and soul, but also includes protection of all rights and interests that can guarantee normal growth and development, both spiritually, physically, and socially so that it is hoped that Indonesian children will develop into adults, who are able and willing to work to achieve and maintain the goals of National development. Article 54 paragraph 1 of Law No. 35 of 2014 concerning Child Protection states that "Children in and around

educational units are required to receive protection from acts of physical violence, psychological violence, sexual crimes, and other crimes committed by educators, educational personnel, fellow students, and/or other parties. Specifically, children's rights that must be protected in Article 54 of Law No. 35 of 2014 can be detailed in 4 points, namely:

1. The right to protection from physical violence
Physical violence is a form of violence that can cause injury or harm to children, such as hitting, abusing, slapping, punching, kicking, pinching, pushing, using various objects or electric currents, confining in a room, excessive physical movement, prohibiting urination, and others. Violence in this physical form is usually carried out by the principal, educators and education staff as a method of changing behavior or to discipline students.
2. The right to protection from psychological violence
Psychological violence is an act of torture that targets the soul, including behavior aimed at intimidation and abuse, threats or abuse of authority, isolation, and other things that result in decreased self-confidence, increased fear, loss of ability to act and helplessness. In addition, psychological violence can result in becoming a coward in the teaching and learning process, inhibiting student creativity, having no respect for teachers, decreasing motivation to learn, and not being enthusiastic about going to school. Because the impacts are related to psychological conditions, handling them will take quite a long time and requires patience from those who want to help in recovery.
3. The right to receive protection from sexual crimes
Based on Article 8 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, sexual violence is defined as any act in the form of forced sexual relations in an unnatural and/or unwanted manner, forced sexual relations with another person for commercial purposes and/or certain purposes. Some forms of sexual violence that often occur to children are; rape, sodomy, molestation, sale of children for sexual services, sexual exploitation of children for prostitution, and sexual exploitation of children through child marriage.
4. The right to protection from other crimes.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Legal protection for children born out of wedlock in Indonesia is regulated by several laws and regulations, including the Civil Code (KUHPerdata), Law No. 1 of 1974 concerning Marriage, and the Child Protection Law (Law No. 35 of 2014). Although the legal status of illegitimate children differs from that of children born within a legal marriage, they still have the right to legal protection and the fulfillment of basic rights.

1. According to the Civil Code, a child born out of wedlock is only considered legitimate if officially acknowledged by the father (e.g., through a deed of recognition before an authorized official). This recognition is essential to granting the illegitimate child equal rights to legitimate children, including inheritance rights. Without recognition, an illegitimate child has only the rights of the mother and cannot inherit property from their biological father. Furthermore, an illegitimate child still has the right to basic protections, such as education and healthcare, from their parents, especially their mother.
2. Law Number 1 of 1974 concerning Marriage regulates the legal status of children born in legal marriage. Article 43 paragraph (1) of this law states that children born in legal marriage have legal status, while children born outside of marriage are not directly regulated in this law. Article 43 paragraph (2) provides space for the recognition of illegitimate children, which allows the child to obtain a certain legal status if recognized by their biological father through a deed of recognition or a court decision. However, protection for illegitimate children in this context is more limited compared to children born in legal marriage.
3. Child Protection Law No. 35 of 2014 provides broader legal protection for all children, including those born out of wedlock. This law emphasizes that all children have the right to basic rights such as education, health, and legal identity regardless of their birth status. Article 1 paragraph (2) of this law states that a child is every person under the age of 18, including children born out of wedlock. This protection includes the right to

identity (for example, a birth certificate), protection from violence, exploitation, discrimination, and inhumane treatment.

Overall, despite differences in the legal status of illegitimate children in the Civil Code and the Marriage Law, legal protection for these children remains guaranteed through the Child Protection Law. This demonstrates that the state recognizes children's rights regardless of birth status and strives to ensure equal protection for all children, both those born in legal marriage and those born out of wedlock. However, issues related to the recognition of status and inheritance rights remain legal challenges that must be addressed.

B. Suggestions

Despite the legal protections afforded to children born out of wedlock in Indonesia, challenges persist, particularly concerning the acknowledgment of legal status and inheritance rights from the biological father. To address these issues, several strategic measures are recommended:

1. **Regulatory Reform:** There is a need to update the Civil Code (Kitab Undang-Undang Hukum Perdata) and the Marriage Law (Undang-Undang Nomor 1 Tahun 1974) to reflect social developments and the legal needs of children born out of wedlock. This includes clearer provisions on paternal acknowledgment and equal civil rights, including inheritance.
2. **Public Awareness and Legal Education:** Enhancing public understanding of the rights of children born out of wedlock and the legal processes for establishing legal status is crucial. Educational programs can be delivered through various media, including seminars, workshops, and public campaigns.
3. **Improved Access to Legal Services:** Facilitating access to quality and affordable legal services for mothers of children born out of wedlock is essential. Strengthening the role of legal aid institutions and expanding services to remote areas can support this objective.
4. **Strengthening the Role of Religious Courts:** Religious courts play a strategic role in adjudicating matters related to the legal status

of children born out of wedlock. Therefore, enhancing the capacity and professionalism of judges and court staff in handling such cases fairly and transparently is necessary.

5. Inter-Institutional Collaboration: Collaboration among government agencies, non-governmental organizations, and educational institutions is vital to create a comprehensive child protection system. This cooperation can include joint policy development, implementation of child protection programs, and evaluation of the effectiveness of existing policies.

By implementing these measures, it is hoped that children born out of wedlock in Indonesia will receive equal legal protection and their civil rights, including inheritance, will be fulfilled fairly.

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