



Recognition and Legalization of Illegitimate Children, and the Legal Consequences, According to the Civil Code and Law no. 1 of 1974

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Info Articles	Abstract
Article History Received: 2024-12-05 Revised: 2024-12-11 Published: 2024-12-30 Keywords: <i>Legal Authority, Unmarried Children, Birth Certificate.</i>	In the dynamics of national life, Indonesia, a State of Law, views the supremacy of law as a shared ideal. In this situation, everyone has the right to marry and maintain a legal marriage to have children. Children born out of wedlock are recognized as such because not all children are the result of divorced parents. This study seeks to examine the Civil Code regulations regarding unmarried children, customary law, and the validity of birth certificates of unmarried children. A conceptual approach and normative legal research methodology are used in this study. The primary, secondary, and tertiary legal sources used are then subjected to methodical analysis. The research findings indicate that customary laws, both written and unwritten, are used to regulate illegitimate children because they serve as guidelines for traditional villages in managing their governance. Notarial deeds, birth certificates, certificates issued by civil registration officers, or even the marriage certificate itself may state that the child was born out of wedlock. Because they serve as proof of state recognition of the child's citizenship and civil status, a birth certificate is very important for the child.

I. INTRODUCTION

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia clearly states that Indonesia is a legitimate state, with applicable laws being the basis for daily activities to ensure that laws are properly implemented in society. Laws, which are social norms, must be followed by everyone to ensure a safe, peaceful, and orderly society. Humans, as legal subjects, have the right to reproduce through marriage (Fuady, 2014), which is the goal of having children. The public views husbands and wives as having a higher status when they have children as a result of their marriage. Children serve as the basis for offspring and as proof of marriage. A legitimate marriage is defined as a marriage that complies with state and religious regulations and is registered at the Office of Religious Affairs (KUA) to create a family and continue the lineage. In order to be used as valid and authentic written evidence, marriage registration is an administrative requirement that seeks to ensure clarity and serve as proof that the marriage has been consummated for the parties involved, the families of the bride and groom, third parties, and the community (Sujana, 2011). This also stops other illegal activities. According to Article 28D paragraph (1) of the 1945 Constitution of the

Republic of Indonesia, which states that everyone has the right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law, children have certain rights because they are a mandate and gift from God Almighty. According to Article 2 (point d) of Law Number 23 of 2006 concerning Population Administration, children born out of wedlock also show legal certainty regarding ownership of documents (Heri et al., 2020).

Providing children with basic civil rights through birth registration is one such initiative. Article 5 of Law Number 23 of 2002 concerning Child Protection, which affirms that every child has the right to a name as a means of personal identification and citizenship status, highlights the importance of birth certificates. However, not all children are born from legally recognized unions. In many societies, it is common for children to be born out of wedlock, leading to varying child statuses. In this case, the child does not have a civil relationship with their biological father and his family, but the mother and her mother's family do. This also applies to birth certificates issued for children born out of wedlock, where the father's name is omitted and only the mother's name is printed (Youdhea & Kumoro, 2017; Elita et al., 2019). A mother with

the initials A gave birth to a child from an extramarital affair, but her lover, who is said to be the father, refused to accept responsibility. This is an example of a case that occurred in Badung Regency.

There are slight variations in the procedures for obtaining birth certificates for children born out of wedlock or from a previous marriage, according to previous research related to this study. The requirements and procedures for civil and population registration are outlined in Article 52 Paragraph (1) of Presidential Decree Number 25 of 2008 (Rahmawati et al., 2021). The process for issuing a birth certificate is essentially the same as for a general birth certificate; however, despite the fact that the child has undergone recognition or legalization, a birth certificate only contains the mother's name and omits the father's name (Sari & Adillah, 2020). Law Number 35 of 2014 concerning Child Protection states that all children, whether born legitimately or not, have the right to obtain a birth certificate to serve as identification, according to Rosalina (2020). Indonesian citizens must meet the requirements outlined in Article 33 of Presidential Decree Number 96 of 2018 concerning Requirements and Procedures for Population and Civil Registration to register their child's birth. Based on this fact, this study aims to examine the legal force of birth certificates for unmarried children and the regulations governing unmarried children based on the Civil Code and customary law.

II. RESEARCH METHODS

This research aims to discover new legal rules, legal principles, and legal expert opinions (doctrines). Normative legal research uses a conceptual approach to study legal issues by analyzing literature based on primary, secondary, and tertiary legal materials. Scientific views and concepts, particularly in the legal field, serve as the basis for arguments aimed at resolving current legal problems. Statutes, regulations, and official letters containing legal provisions are examples of primary legal materials used. Legal documents or materials that explain primary legal materials, such as books, papers, journals, and previous research findings, are known as secondary legal materials. Legal publications that offer guidance and clarification for primary and secondary legal materials, such as dictionaries and encyclopedias, are referred to as tertiary legal materials. Recording and documentation techniques are used to collect legal materials, which are then subjected to methodical analysis.

III. RESULTS AND DISCUSSION

A. Civil Code (Law No. 1 of 1974) and Customary Law-Based Regulations Concerning Children Born Before Marriage

According to Article 280 of the Civil Code, which states that when recognized, a civil relationship is formed between the child and his biological father or mother, the regulations in accordance with the Civil Code and Customary Law in the inheritance law of the Civil Code allow the child to have a civil relationship with his parents if both biological parents recognize the child (Prodjohamidjojo & Safioedin, 1982). However, according to Article 283 of the Civil Code, a child born as a result of adultery or blood stain will not be considered illegitimate. Premarital sexual relations between a man and a woman that do not result in marriage and where one or both are already married to another person are known as adultery.

Article 272 of the Civil Code, however, states that a child is legally recognized as the legitimate child of both parents if both parents acknowledge the child and are married. Both biological parents are willing to make that recognition. Both biological parents are willing to make that recognition. According to the provisions of Article 43 paragraph (1) of the Marriage Law Number 1 of 1974 after the Constitutional Court (MK) Decision No. 46/VIII/2010, DNA testing as a scientific method can be used as evidence in civil relations between fathers if the father does not voluntarily acknowledge the child. This will allow legal proof of blood relationship with a man as the father.

In contrast, *awig-awig*, or customary norms, refer to the regulation of illegitimate children in accordance with customary law. All Balinese traditional villages follow these written and unwritten customs. It is known in Customary Law that there are marriages with the symbol of the *keris*, known in Balinese customary terms as *Nganten Keris* (marriage with a *keris*). While the Civil Code and Marriage Law legalize child marriages outside of marriage through recognition, validation, and proof through DNA testing to determine the blood relationship between the father and the illegitimate child. When a king married a commoner in an ancient kingdom, a marriage using the *keris* symbol was first performed.

A keris wedding is a symbol of the king's presence in the bride's household, maintaining the king's prestige in the eyes of the people and preventing the birth of children without clear status (children of illegitimate parents or illegitimate children). In addition to recognizing and accepting the bride and the child conceived by the indigenous community as an obligation of the Purusa family, a keris wedding serves as a form of accountability for the bride's pregnancy. Under the direction of a Sulinggih (religious priest), the keris is used as a substitute for the groom (purusa) who attends the wedding ceremony. This wedding is carried out to resolve the Purusa family's confusion regarding the bride's pregnancy.

A child born or raised in wedlock will be deemed to have a husband as his or her father, according to Article 250 of the Civil Code. According to Article 272, if the mother and father have legally acknowledged the child, either before marriage or through acknowledgment in a marriage certificate, then the marriage entered into by the parents after the child's birth will be recognized, except for those born through adultery. According to Article 280, a person can establish a good relationship with his or her parents by acknowledging. The child's birth certificate, the parents' marriage certificate, or an authentic deed made specifically for the child are the three methods recognized by the Civil Code for acknowledging a child born out of wedlock.

1. Civil Code Recognition of the Rights and Status of Unmarried Children Regarding Inheritance
 - a. Heirs Group I: Children Born Out of Wedlock: Those recognized as having the right to one-third of the inheritance if the heir dies, leaving behind a surviving spouse and/or legitimate children. Receive a portion based on calculations and are counted as legitimate children in the distribution of the inheritance.
 - b. Distribution for Children Born Out of Wedlock with Heirs of Groups II and III: Illegitimate descendants will receive half of the inheritance when they inherit together with heirs of groups II or III if the heir does not leave a surviving husband or wife and there are no legitimate descendants.
 - c. Children from Wedlock with Heirs of Class IV: If unmarried children inherit with heirs of a higher class, such as uncles, aunts, or

cousins, they will receive a larger portion. Three-quarters of the inheritance in this case goes to the heir.

- d. If He Becomes the Sole Heir, the Share of the Child Born: The recognized one will receive the entire property if the heir leaves only and there are no heirs from groups I to IV.

Although legally considered as such, if their parents acknowledge them, they are still entitled to a portion of the inheritance. Children of adultery or incest have no civil contact with their biological father because their parents are not permitted to acknowledge them, but children of unmarried couples are entitled to food or support from their parents.

It is important to note that through Constitutional Court Decision Number 46/PUU VIII/2010, Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage which stipulates that illegitimate children only have a civil relationship with their mother and their mother's family, has been declared to be in conflict with the 1945 Constitution. The decision changed the article to an illegitimate child who can be proven to have a blood relationship with his father, also has a civil relationship with his father and his father's family, provided that it can be proven through science and technology or other valid evidence. Therefore, those who are recognized will have more rights to inherit from both parents.

2. Absolute Share of Inheritance for Unmarried Children (Permitted)

Having discussed this, it can be said that one way in which the inheritance differs and is not legitimate is in the amount of inheritance each can receive from their parents. Some parents receive the same amount of their parents' wealth, while others receive only a smaller portion. Other heirs who share the inheritance affect how much they receive. Therefore, it is necessary to determine which group of heirs is with the child or who inherits with him to determine how much portion they receive. A child will receive three-quarters (3/4) of the inheritance if the heir does not leave a husband or wife or descendants, but rather blood relatives in the upper line, such as siblings and sisters or their descendants. Stated differently, the following conclusions can be drawn regarding the share of the unwed child:

- a. 1/3 if they are legitimate children, they will receive one third of the inheritance if they inherit jointly with first class heirs.
- b. Half of the inheritance, if the second and third heirs inherited together.
- c. If they inherit group IV together, they will receive 3/4 of the inheritance.
- d. If it is a single individual, the entire portion is his own right because the portion he obtains is part of the group.

According to the number of illegitimate heirs, the portion will be divided in half if there are two illegitimate descendants, equally among themselves if there are three, and so on. The Civil Code states that the heir must receive his share first, and then the remainder of the inheritance is distributed to the legitimate heirs in accordance with applicable laws and regulations.

3. Those who inherit assets left behind by illegitimate children

What happens if you end up becoming an heir is explained above. In addition, the topic of inheritance arrangements for unmarried children who have died will be discussed. Their inheritance will be distributed equally with other inheritances if the death leaves a husband or wife or the longest surviving descendant. This indicates that legitimate descendants and surviving spouses are the ones entitled to inherit the child. However, parents who have accepted the inheritance have the right to receive the inheritance if they do not leave a husband or wife or children. If both parents acknowledge the inheritance, they will divide the property equally (Article 870 of the Civil Code). The mother will receive all inheritance from her acknowledged illegitimate child if only the mother acknowledges it, or the father will receive all inheritance if only the father acknowledges it. In the case of heirs or descendants, Article 863 of the Civil Code will regulate the inheritance.

According to Article 871 of the Civil Code, if both parents have died before the death of the deceased without leaving a husband, wife, or children, any property left by the parents will be returned to the father, heir, or legitimate descendant of the mother. This also applies to the heir's right to recover goods sold for unpaid money.

Article 849 of the Civil Code, which states that the origin of the goods is irrelevant, is excluded from this clause in Article 871. Consequently, Article 871 of the Civil Code

cannot be applied more broadly. Property received as a gift or acquired through the sale of a product and paid for with the proceeds of the sale is not a legitimate inheritance from the parents. Contrary to the rule previously mentioned in Article 871 paragraph 1 of the Civil Code, in this case, "siblings" refers to the parents of the heir. The closest relatives of the father or mother who have acknowledged the child, excluding the state, will inherit the inheritance if he or she dies without leaving any children, husband or wife, father, mother, or legitimate brother or sister. Property will be protected by both parents if they have acknowledged the child.

According to Article 873 paragraph 2 of the Civil Code, both parties who inherit the inheritance will divide it equally in this case, with half going to the mother's side and half to the father's side, the closest blood relatives. Standard rules governing inheritance are followed in this division. For example, when A, who has been accepted as a native, dies, the heirs of the mother's closest blood relatives, D and E, and the closest blood relatives on the father's side, B and C, are left. In this case, A is recognized as them by the mother and father. How much of each of these heirs' shares is the question. The inheritance is divided equally between both parties according to the provisions of Article 873 paragraph 2 of the Civil Code. In this case, the father receives 1/2 of the share, which is then divided into 1/4 for each of the heirs B and C. Conversely, the mother's share is divided by half, or a quarter for each of her children, D and E. In this case, "closest family" refers to the close relatives of the mother and father who are aware of the matter. Closest family is defined by law as the heirs of the parents at the time of death. Moreover, in this case, it is also true that closer family members take precedence over more distant blood relations.

B. Birth Certificate of Unmarried Children to Have Legal Force

Children of unregistered or serial marriages often struggle with their identity. A child's legal status may vary depending on the jurisdiction in which they were born and currently reside. Children of serial marriages may lack formal legal identity in some jurisdictions. As a result, children lose access to formal records such as government-issued birth certificates. Children may struggle to access essential services such

as healthcare, education, and other legal rights without these identity documents (Masitoh, 2019). Often referred to as "illegible children," the identity of children born of unregistered marriages is a complex issue with significant social, legal, and emotional consequences. Their legal rights, including inheritance, citizenship, health insurance, and financial support, are affected because the child is typically not recognized as the legitimate child of both biological parents. However, there are laws that protect the rights of unmarried children.

Some countries have processes for identifying children born of multiple marriages, such as child recognition, laws identifying biological fathers, or inheritance laws. Undocumented children may experience prejudice or social stigma on an emotional and social level. Furthermore, they may feel ambiguous about their family and origins or experience complex identities.

In certain situations, parents or children may attempt to resolve this issue by seeking official recognition, modification of marriage records, or a court order establishing paternity. Some countries have also modified their laws to provide greater protection for unmarried children; for example, they have made it easier to acknowledge children or granted similar rights.

Legal professionals or organizations with expertise in family law and child safety should be consulted, as each country has different laws governing the identification of children born from unregistered marriages (Al Amruzi, 2021). While unregistered marriages can sometimes result in psychological difficulties for children, marriages aim to produce legitimate offspring, making children an important part of the family. Children born from multiple marriages are often stigmatized in society, and additional issues arise regarding the child's legal status and relationship with their biological father. The rights of children born from these marriages are not met because some parties, especially men, often deny the existence of the unregistered marriage.

Articles 42 and 43 of Law No. 1 of 1974 list two categories of child status regulated by the Marriage Law: illegitimate and legitimate offspring. According to Article 42, a child born in a legal marriage is considered legitimate. A birth certificate, which is official proof of a

child's parentage, can be used to demonstrate that the child is legitimate. In the absence of a birth certificate, the court can make a decision after reviewing relevant information. According to Article 43, the only civil relationship is with the mother and her family, and with the father who can be identified as the biological father using scientific or technological evidence.

Children born out of wedlock have a civil relationship with their mother and her family, as well as with their father, in accordance with Constitutional Court Decision No. 46/PUU-VIII/2010, which can be supported by legal evidence. Consequently, the status of children born out of wedlock has changed, and children's rights are now more fairly recognized. Legal dualism in marriage registration, where marriages are recognized by religion but not officially registered by the state, sometimes causes problems in population administration. Because the legal system does not fully recognize their rights, women and children from unregistered marriages can suffer harm as a result.

According to the legal force of birth certificates, a child's birth certificate only contains the mother's name for it to be recognized and legalized, which is the same legal position as a legitimate child. When a child born of adultery is legally recognized by the father, it is known as a child. Both the mother and the father are equally capable of obtaining this recognition. However, support and recognition are not the same thing. If the marriage between the parents is valid, a child born of an adultery can be considered legitimate, but this recognition alone does not make the child legitimate. The parents' marriage certificate can then be used to officially recognize the child (Afandi, 1997). The certificate prepared by the Population and Civil Registration Office employee and then included in the child's birth certificate can serve as documentation of this recognition.

A civil legal relationship between a child and their recognizer is created when someone acknowledges them. However, neither the mother nor the father can identify every child born out of wedlock. According to Article 283 of the Civil Code, a child born as a result of adultery or incest is morally wrong and cannot be recognized. However, there is an exception under Article 273 of the Civil Code, which states that the status of an incestuous child can

be legalized if it is recognized in the marriage certificate of the parents who received presidential dispensation (Article 283 in conjunction with 273 of the Civil Code). According to the Civil Code, there are two methods for recognizing a child born out of wedlock: voluntary and forced. When someone voluntarily recognizes themselves as the parent of, or when the mother legally recognizes the child even though the child is still a minor, this is known as voluntary recognition. According to Article 282 paragraph (2) of the Civil Code, the father must be at least 19 years old and have the mother's consent as long as the mother is still alive. For children born out of wedlock, a judge may mandate mandatory recognition as opposed to voluntary recognition (Subekti & Mahdi, 2005). Support is the next step after recognition. When something is legalized, the child has a legal relationship with both the person who legalized it and the family who legalized it.

The effort to grant legal status to an unmarried child is known as legalization. Legalization can be achieved through the child's parents marrying or through a "letter of support" if both parents have acknowledged the child (Ko Tjay Sing, 1978:406). Legalization can be achieved through the marriage of the child's parents or through a letter of support after parental recognition. However, according to Article 283 of the Civil Code, unrecognized children born out of wedlock are the offspring of adultery and incest. While incestuous children can be legalized if their parents receive presidential dispensation to marry, those who commit adultery cannot be legalized. A civil relationship between the child and the person who acknowledges them is the result of recognition. The status of an illegitimate child changes to that of a recognized illegitimate child through this civil partnership, which is preferable to an unrecognized illegitimate child. The legalization process is a legal effort to grant a child legitimate status after recognition.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Based on the presentation of the results and discussion under Articles 272 and 280 of the Indonesian Civil Code, the Regulations on Children Born Outside of Marriage and Customary Law in the Inheritance Law of the

Indonesian Civil Code permit children to be bound by civil relations with both parents if both parents acknowledge them. Conversely, customary laws (*awig-awig*), which may be written or unwritten, govern the management of children born outside of marriage under customary law. Originating from the community and viewed as part of Balinese customary life, customary laws (*awig-awig*) have significant authority and serve as guides for implementing customary village administration. Acceptance and legalization give them legal force. Through the process of recognition and legalization, children born outside of marriage can change from illegitimate to legal status. The legal recognition of a child born from a relationship other than marriage by the father is known as recognition. A notarial deed, birth certificate, civil registry official's deed, or even a marriage certificate can all indicate this recognition.

According to the Civil Code, children born out of wedlock can be identified either voluntarily or under duress. Once legalized, the child has a legal relationship with both the individual who legalized them and the family who did so. Legalizing an unmarried child is an effort to grant the child legal status (*rechts middle*). Children with birth certificates from unregistered marriages will only be registered as the mother's children. According to birth certificates issued for unmarried children, unless there is scientific and technological evidence or other legal evidence demonstrating a blood relationship with the father, the child has only a civil relationship with the mother and her family and no legally binding relationship with the father. Therefore, this text should be read as meaning that a child born out of wedlock has friendly contact with the mother and her family.

Besides providing information to the government and proving a child's citizenship and identity, a birth certificate primarily serves as proof that the state recognizes a person's identity as a citizen. Even if the marriage between the parents is undocumented, it is still necessary to recognize the child's legal status and provide formal documentation of the child's birth. Children with birth certificates are granted the formal identity necessary for many aspects of life, including healthcare, education, and other privileges related to their legal status.

Additionally, birth certificates help children obtain travel documents, insurance, and inheritance rights. Obtaining a birth certificate for a child born from an unregistered marriage can also improve the child's legal status and normalize family ties.

In many jurisdictions, a child is still considered the legitimate child of their parents, even if the marriage between the parents is not documented. A birth certificate serves as proof of this status. It is crucial to contact the local official agency to learn about the requirements and processes necessary to complete the birth certificate process. As a result, the child will receive a valid birth certificate and be legally recognized as the child of an unregistered marriage. Because the SPTJM serves as a foundation or prerequisite for obtaining a birth certificate that has not been previously documented, it provides legal certainty for those obtaining certificates for children born of unregistered marriages. Furthermore, the government confirmed this through a statement from the Minister of Home Affairs, which aims to expedite the collection of data on previously unregistered birth and marriage certificates.

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