



Civil rights of children resulting from extramarital marriage guaranteed by law number 1 of 1974

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ABSTRACT

Until death separates the two, the happiness that will be achieved is not for a moment but forever. The goal of marriage must be thought out and understood before it is conducted in order to create a future family that is peaceful, content, and long-lasting. Married couples should consider their spiritual aspect, which is to increase their faith and piety, so that their marriage has a strong foundation in addition to purpose. The faith and piety of this couple are expected to prevent divorce. The state, society, and parents all have a responsibility to protect children's human rights. The rights of such children are protected without discrimination. The Marriage Law does, however, differentiate children's rights according to their parents' marital status. Prior to the Constitutional Court's ruling in Number 46/PUU-VIII/2010, children born outside of marriage had only good relations with their mother and her family. Children in a lawful marriage have a cordial connection with both their parents. This mandates that unmarried children have a cordial contact with their father. However, this ruling nevertheless has benefits and drawbacks, necessitating more study on the civic rights of unmarried children. Analytical descriptive specifications and a normative research design are employed in this study. The data used is secondary data and is analyzed quantitatively. The result is that if the marriage is not recorded, then there is no evidence in the country. As a result, legally speaking, lawful children are not those born out of wedlock or from several marriages. The legal marriages of their parents are not recognized by the law, hence children of unregistered weddings are not entitled to the same privileges as offspring of officially recognized marriages.

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1. Introduction

A person's legal status usually starts the minute they are born and ends when they pass away. Accordingly, it is crucial for an individual to have and acquire recognition in order to make it simple to gain assurance regarding these occurrences. A legal occurrence, birth needs to be

acknowledged and approved. Regulations must thus be issued by the government, particularly those pertaining to birth. The authorized agency at the scene of the birth must be notified of every birth (Ishardhi, 2021). The wife will thus go through a difficult psychological process, namely pregnancy and delivery, which calls for sacrifice, because marriage is a legal link to create a happy and flourishing household and family where both husband and wife have the mandate and obligation.

The term "illegitimate child" refers to a child born to a woman who is not legally married to the guy who conceived the child; the kid's legal status differs from that of a typical, legitimate child. The Marriage Law has traditionally accommodated a variety of social, political, religious, and cultural concerns, therefore the regulations protecting the civil rights of unmarried children were not created overnight. Religious law is the source of the majority of the legal content. Children cannot be automatically awarded civic rights unless men and women are religiously linked to a legally recognized marital knot (Munasto & Senjaya, 2022). Marriage's legality, however, is not just based on religious standards; it also has to pass the recording process established by the state in accordance with the relevant legislation. Ratification is obviously highly significant if you consider the effects of the ratification.

Regardless of whether a child was born out of wedlock, legalization requires written and authentic proof of the child's birth since a person's birth certificate, which is provided by an agency qualified to issue the deed, is the only way to prove their identity and have perfect legal force. Each kid should be given every chance to grow and develop normally on all levels physically, spiritually, and socially because, in the future, they will all be ready to handle their duties. The younger generation of a country's inheritors are its children. A country will get stronger. Rich and thriving if its youth are nurtured, mentored, and safeguarded by their rights.

The legislation also seeks to guarantee that a kid born into a mother's womb is genuine and does not, in terms of sociology, become a social gossip by calling them illegitimate, adulterous, etc., which can have an impact on the child's psyche (D. Siregar, Hia, & Hulu, 2011). The court received his rejection and used it to make a decision regarding the kid. Furthermore, The Marriage Law's Article 42 also regulates this, and it states: Children born during or as a result of a legitimate marriage are recognized by law. According to Article 43, paragraph (1) of the Marriage Law, a kid born outside of marriage has only a civil tie with his mother and her family.

The acceptance of extramarital encounters is not supported by the Marriage Law. Article 287 of the Civil Code expressly regulates this, which prohibits looking into the child's father, whereas Article 288 permits looking into the child's mother (Riza Kusuma Pramastya Dewi, Suryadi, 2010). Off-marriage children have difficulties in their daily life. While some people despise and degrade them for their status, their civil rights and welfare are nevertheless limitations. Individuals have been advocates of rights and responsibilities since birth, as have other members of the community.

It is wrong to discriminate in the name of human rights. This clearly complies with Article 27 paragraph (1) of the Republic of Indonesia's 1945 Constitution, which declares: Under the law, every citizen is in the same situation. Many children still do not have the rights they need, despite the fact that it is acknowledged that children are legal subjects and that they are also the generation of successors for the future growth and leadership of the Nation Government regulations regulate the status of children born outside of marriage, as mentioned in Law Number 16 of 2019 respecting Marriage, Article 34, paragraph (2); however, this regulation has

not yet been implemented. This indicates that there are now insufficient legal resources available to address the issue of unmarried children (Khusnah, 2020).

The rights and status of children born outside of marriage are outlined in Article 43, Paragraph 1 of the Marriage Law, might be interpreted in a variety of ways because, in reality, being born outside of marriage is referred to as being born out of wedlock. It is a birth that is completely devoid of the marriage process, as mentioned in Article 2 Paragraph (1) of the Marriage Law, it is part of the definition of an invalid marriage in religious law, such as a child born of adultery, alternatively, it relates to the marriage ceremony that isn't recorded in line with Article 2 Paragraph (2). Each of the three scenarios mentioned above poses distinct legal issues because, therefore, if the term is to be used in a situation where there has never been a marriage, unwed children should not be categorized as such if they were born during or as a consequence of a lawful marriage (Ritama, Sudiatmaka, & Setianto, 2022).

Presidential Decree No. 12 of 1983, which addressed the Organization and Enhancement of the Growth of the Civil Registration Implementation, was enacted. An illegitimate child's birth, for example, must be recorded with the Civil Registration office in order to receive a birth certificate. Given that the law will provide full protection with this birth certificate, the certificate's owner has been fully identified by the law based on his personal information, including his name, birthdate, parents' names, and other details pertaining to his identification. A more thorough analysis of the civil rights guaranteed by Marriage Law No. 1 of 1974 to unmarried children is required in light of the numerous issues pertaining to unmarried children that are now emerging in society. As a result, the researcher wants to learn more about the civic rights that Law Number 1 of 1974 guarantees to unmarried children.

2. Method

This kind of study uses a legal perspective and is normative in nature. The civil rights of unmarried children will be examined in this research using Federal Law No. 1 of 1974, which governs marriage, as the foundation. Descriptive analytical research specifications outline relevant laws and regulations linked to legal theories and constructive legal implementation strategies that address the issues in this study. The civil rights of unmarried children in connection with Law No. 1 of 1974 will be covered in this study. This study employed a qualitative data analysis approach, which entails analyzing marriage, comprehending and recognizing the information gathered and organized methodically, and then drawing conclusions.

3. Analysis and Results

3.1 Illegitimate Children's Civil Rights and Marriage Law No. 1 of 1974

Notwithstanding the lengthy, intense, and exhausting argument, the achievement of unifying the marriage legislation represents a significant historical turning point. The need to create draft legislation materials that were consistent with their individual legal goals was the main focus of the argument, which extended beyond the legislative and into the undercurrent. The Indonesian government should ultimately be appreciative of the country's marriage law, which is applicable to all of its residents nationwide.

In light of this, it is evident that the state of Indonesia has taken the proper legal step in addressing the fundamental requirements for achieving justice, utility, establishing a single marriage legislation as a legislative instrument to provide legal stability in the area of marriage.

January 2, 1974, The Republic of Indonesia Number 1 of 1974 Statute Book now contains the authorized Marriage Law. The Indonesian Christian Marriage Ordinance (Huwelijks Ordonantie Christen Indonesier S. 1933 No. 74) and the Civil Code (Burgerlijk Wetboek), and other laws hence, (Regeling op de Gemengde Huwelijken S. 1898 No. 158) The Mixed Marriage Regulation, and other marriage-related laws are deemed unconstitutional to the extent that they fall under the jurisdiction of the Marriage Law (Setiawan, 2022).

The only rule the government has put into effect in response to the Marriage Law of January 2, 1974, is Government rule Number 9 of 1975 for the Implementation of Law Number 1 of 1974 regarding Marriage, which has been in force for nearly 35 years. This regulation only governs the following topics: marriage registration, marriage procedures, marriage certificates, divorce procedures, annulment of marriage, waiting time, having more than one wife, and criminal provisions. Stated differently, the government regulation governing the status of unmarried children has not yet been implemented.

A legal void governing the civil rights of unmarried children has not been created by the lack of a government regulation that implements the requirements of Article 43 (1) of the Marriage Law as mandated by paragraph (2). The legality of all laws and regulations whose content has been controlled, including those governing the same in the Burgerlijke Wetboek/Civil Code, is governed by transitory provisions included in Article 66 of the Marriage Law (Gamatri, Mahendrawati, & Arjaya, 2023).

According to Article 42 of Law No. 1 of 1974, which regulates marriage, a child born during or as a consequence of a legally recognized marriage is regarded as legitimate. Children born outside of marriage are deemed illegitimate, according to Article 43 of Law No. 1 of 1974. Law No. 1 of 1974 states that a kid born outside of marriage is only legally connected to his mother or her family and is legally under the mother's care and care. A mother is necessary for the birth of a kid. The boy enjoys a cordial connection with his mother and her family, but his contact with the guy who conceived him is nonexistent (Manuputty, Tommy, & Sendow, 2021).

The grouping of children who have not obtained the appropriate legal recognition and protection may have been facilitated by Law No. 1 of 1974 concerning Marriage, as evidenced by the existence of an illegitimate child, who has different privileges than a legal kid and is considered an illegitimate child. While his biological father is legally "discharged" from his parenting duties, the child only interacts politely with his mother and her relatives. Negative effects on ideal growth and development may result from this (Muaziz, 2022). As a kid grows and develops into a person capable of taking on future obligations for himself, his family, and his country, he undoubtedly needs his parents' support, love, and education both material and spiritual both physically and spiritually.

The legal children mentioned above are also included, and vice versa. Illegitimate children are those born outside of a marriage that is recognized by the law, and this has an impact on the inheritance domain because their only relationships with their mother and her family are cordial ones. A child born out of marriage has only a civil relationship with his mother and her family, according to Article 43, paragraph (1) of the Marriage Law (Putri, Efendi, Razak, & ..., 2024). The Civil Code makes a distinction between children born legally and those born illegitimately or out of wedlock, which is the reason. Article 42 of Law Number 1 of 1974 states that a child born into or as a consequence of a registered marriage is considered legitimate.

Article 250 of the Civil Code states that a kid born or raised during a marriage also makes the spouse his father. This suggests that a child born or raised in a marriage is the child of her mother's married spouse, even if the child was conceived by a different parent. The issue of

children's status outside of a legally recognized marriage has generated debate. According to Indonesian law, both in terms of status and civil rights. However, The Civil Code's Article 252 declares that, "A father cannot deny his legitimate child unless he can demonstrate that, either because of separation or coincidence, he has been unable to have physical sex with his wife since the third and eightieth day prior to the child's birth.

Article 253 also states that unless the kid's birth is kept a secret from him, the spouse cannot reject the legitimacy of his child on the grounds of adultery; in such case, he must provide proof that he is not the child (R. Subekti, 2006). Additionally, a spouse cannot reject the child's legitimacy based on the allegation of infidelity, with the exception of childbirth. was kept under wraps. Furthermore, this issue needs to be supported by flawless proof. A confession made in front of a judge, either directly or through a third party with specific authority for it, is perfect evidence against the individual who made it, according to Article 1925 of the Civil Code.

The Marriage Law's Article 44 declares, in accordance with the Civil Code previously indicated, that (Muthia, Handayani, & Salle, 2022): a) In the event that a husband can demonstrate that his wife has cheated on him and that the kid is the product of that adultery, he could question whether his wife's child is legitimate; b) A ruling about the child's validity is rendered by the court upon request from the interested party.

It is required of both parents to provide for their children's primary and secondary requirements as both parents are responsible for their upbringing. Parents must be able to serve as positive role models or examples for their children, and both parents are required to teach them in a limited sense (Daming & Barokah, 2022). Formal education must be provided by both parents in line with the government's suggestion, which is obligatory schooling for nine years, if removed broadly. It follows logically that in order for their children to graduate, both parents must also provide for all of their necessities during their school years.

The Marriage Law states that a child's civil rights are inextricably linked to the authority that parents have over them. According to the Marriage Law's Article 47, it says the following (Rahmawati, 2024): a) Parents have jurisdiction over children under the age of eighteen or who have never been married, provided that they are not deprived of their power; b) Parents act on behalf of their children in all court proceedings, both inside and outside of the courtroom.

The reciprocity between parents and children, as well as the duties that children have to their parents, should never be separated. Therefore, The Law No. 1 of 1974 concerning marriage states that children born outside of marriage have only a civil relationship with their mother and her mother's family.

3.2 Civil Rights of Children of Unmarried Parents After Constitutional Court Determination No. 46/PUU-VII/2010, Marriage-Related Law No. 1 of 1974

The legal consideration portion of the ruling states that coitus or other highly developed procedures that lead to fertilization must bring the ovum and spermatozoa into touch, according to a ruling by the Constitutional Court, for a woman to get pregnant naturally (Nawawi, Asnawi, Mardiantari, Muslih, & Pradikta, 2022). Therefore, the law's requirement that a child born out of wedlock have only a mother-child tie with the woman is unfair and inappropriate. If a man has intercourse, becomes pregnant, and gives birth, the law absolves him of his paternal duties while simultaneously denying the child's entitlement to the man as his father, which is likewise immoral and unfair.

Rather than relying solely on the existence of a marriage link, establishing a child's biological connection to a man as a father may serve as the foundation for the bond between the two. as

previously mentioned. Consequently, regardless of the issue of marital rites or administration, the born kid needs to be granted legal protection. Even though the legality of his marriage is still up for debate, the law must give a kid born fair legal protection and assurance regarding his status. Paragraph 1 of Article 43 of Law Number 1 of 1974, this backs up this claim by stating that an unmarried child has only polite interactions with his mother and her relatives.

The following passage illustrates how the Constitutional Court's ruling really applies more problematically to children whose parents are married but not officially registered: Accordingly, regardless of how the marriage was administered or how it was consummated, the kid must be safeguarded by the law. In terms of marriages performed only in compliance with The Marriage Law's Article 2 Paragraph 1, the terms independent of the question of marriage procedure/administration and even when the legitimacy of the marriage is still challenged are used (Pangestu & Muharman, 2023). This is possible since the Marriage Law does not adequately explain whether Article 2 paragraphs (1) and (2) must be added together or if paragraph (1) can be used alone to decide whether a marriage is genuine, leaving the legitimacy up for argument.

In contrast to a kid born to parents who have never been married, the planned out-of-wedlock child is more likely to be born to parents who were married in accordance with religious law and belief. The Court's ruling in the Amar Judgment section, however, went beyond the applicant's request and the Court's own legal considerations, stating that the definition of a child born out of marriage encompasses not only a child born from a marriage that is held in accordance with unrecorded religious law and beliefs, but also a child born to parents who have never been married. Another necessary research step is to compare the regulations with the Civil Code's provisions on the institution of child recognition and legality, as the Constitutional Court's decision pertains to the Marriage Law for legal purposes (Bawole, 2021): a) According to the Marriage Law, an unmarried child has a civil tie with his mother and her family. However, for legal reasons, there is no civil tie between an unmarried kid and his mother under the Civil Code. because it must first be recognized or ratified by the institution. This implies that the illegitimate kid is only able to be a biological child and does not have a legal link with either his mother or her family if done by the mother, b) In contrast to the Civil Code, which requires legalization through the marriage of both parents or ratification letters as specified in Articles 277 and 274, after the Constitutional Court's ruling, the Marriage Law permits an unmarried kid to enjoy a cordial contact with his father, a cordial relationship with his father's family, as well as if the child's biological kinship to the man who created him is demonstrated by science, technology, or other evidence.

In view of the ruling of the Constitutional Court, Both the identification of an illegitimate kid based on the concept of compulsion to the father in the case of a moral offense and the identification of a child based on the principle of voluntariness through the father's child recognition institution, is no longer relevant since, a woman or her child has the legal right to go to court and fight for the child's right to have civil contact with his father, even if there are no moral offenses involved, as the law requires a legal protection effort to be carried out by anybody to be accountable both civilly and non-judicially since the publication of Court Decision Constitution Number 46/PUU-VII/2010. If science and technology can prove it (e.g., a DNA test), a court can decide whether a mother and her child have a civil connection and/or other legal proof that the child and the boy being sued are related by blood. One may argue that there is a forced recognition in this instance.

An illegitimate kid cannot be acknowledged if the biological mother is capable of providing for and caring for the child till maturity and the biological father wants to voluntarily recognize his

child but the biological mother objects (Apreliasari, Jaya, & Aprianto, 2023). In addition to these concerns, The Republic of Indonesia's Constitutional Court's ruling No. 46/PUU-VII/2010 primarily aims to grant legal protection to unmarried children and their biological mother in the case that the biological mother is unable to support and maintain an illegitimate kid till maturity. A biological mother can legally express her rights from her father to care for her young kid thanks to the Constitutional Court of the Republic of Indonesia's ruling No. 46/PUU-VII/2010. This is definitely an undertaking that may be made through the evidentiary method in court, in accordance with ruling No. 46/PUU-VII/2010 of the Constitutional Court of the Republic of Indonesia.

The protection of children born outside of marriage in this situation includes legal protection. The only civil interaction these children had with their mother and her family was the Constitutional Court's decision regarding unmarried children under Article 43, paragraph 1 of the Marriage Law. The Court's ruling protected civil rights that the state had not acknowledged and were not automatically listed on the birth certificate, which naturally had the consequence of denying the son inheritance rights because the father's name was missing. Therefore, it is clear that an unmarried kid may also request legalization (*wettiging*) following a Constitutional Court decision, or the party representing his interests may do so. Decision Number 46/PUU-VIII/2010 of the Constitutional Court suggests that the two parents are no longer need to be married, even if it is just to establish a civil tie between their kid and his family.

The Civil Code provides a voluntary legalization system whereby parents voluntarily and truly marry or obtain a letter of legalization. In contrast, following the ruling No. 46/PP-VIII/2010 of the Constitutional Court, the Marriage Law was created. provides a compulsory legalization method, that the lawsuit or application from a kid or interested parties based on legally admissible facts in court results in the civil connection between parents as well as children born outside of marriage. These two features of the recognition system can be used separately and as an attempt to get civil rights from both parents in the context of safeguarding unmarried children.

Indonesia's positive family law rules have undergone substantial revisions as a result of the Constitutional Court's Decision Number 46/PUU-VIII/2010 on the material test of Article 43 paragraph (1) of the Marriage Law. According to Article 43, paragraph (1), It was always thought that a child who is not married may only enjoy cordial connections with his mother and her relatives. However, it is now evident that a child who is not married may have a cordial relationship with both his father and his mother and her family. whether or not there is scientific, technological, or other legal proof that he has a blood kinship, including friendly relations with his father's relatives. Number 46/PUUVIII/2010, the Constitutional Court's decision may be regarded as a decision that integrates progressive legal principles if viewed from the perspective of safeguarding children protected by the Civil Code (Lestari et al., 2023). The reason this ruling is considered progressive is because progressive law makes the fundamental premise that (M. Siregar, 2024): a) Laws are for people, not the other way around; b) The Constitutional Court's justices have rendered progressive rulings or legal developments that satisfy the needs of every child's sense of justice, particularly for children who were not born into marriage and are governed by the Civil Code. Should their parents not uphold their civil rights, these children may petition or sue the court to have their civil rights fulfilled.

The Marriage Law's Article 50, paragraph (2), governs parental authority over legal children, however it does not specifically specify the interests of an unmarried kid can be pursued by their guardians (Tyas, 2023). In this regard, Abdulkadir Muhammad stated that guardianship over the child's person and property is feasible since the guardian's authority effectively

transfers the parents' authority, and that the guardian can act as the child's representative in all legal proceedings, both inside and outside of court. Since an unmarried child is not subject to parental authority, the guardian takes custody of the child's personal items and has the right to represent the child in all legal proceedings, both inside and outside of court. The Civil Code provides special protection for children born outside of marriage, stating that they are entitled to guardianship over their person and property as well as legal representation in all of their legal proceedings, both within and outside of court (L Ahmad, Karim K, & Syahril F A, 2023): a) The parents have the authority to represent an unmarried kid who is legalized, just as the parents have the authority to represent a legitimate child. The child's situation is not under guardianship; b) The admitting parent or a designated guardian is responsible for guardianship of a recognized out-of-wedlock kid; c) Instead of being under guardianship, a kid who is incest because of a married connection and whose parents are granted permission to consummate their marriage has the authority to represent him, just as the parental power over the position of the legitimate child does; d) The mother or biological father does not have guardianship of adulterous children or children who are related by blood; instead, the mother or a chosen guardian is in charge of the kid following the passage of the Marriage Law.

The Constitutional Court's Decision Number 46/PUUVIII/2010 established legal protections for all children born outside of marriage, including illegitimate, incest, and adulterous offspring. They can ask or sue their biological father in court to have their guardianship rights fulfilled on their own initiative or through the legal representation of their interests (Abrori & Wibawa, 2024). Residents who are covered by the Civil Code must have a civil connection with their parents in order to be recognized or ratified, which grants them the ability to inherit. Not every kid born outside of marriage is eligible for legal status or parental recognition.

Accordingly, the child is legally acknowledged as an unmarried child, implying that he would be subject to the same legal limitations under Article 277 of the Civil Code as a child born in marriage. Book Two, Part II, Chapter XII of the Civil Code, which deals with the Inheritance of Legitimate Blood Families and the Longest Living Husband or Wife, regulates illegitimate offspring who are legally separated from their parents and their inheritance rights. The Civil Code's Article 280 declares that recognized illegitimate children have friendly contacts with their parents, including inheritance relationships, but these relations are limited to the child's relationship with the parent who recognizes him; there is no legal relationship with other family members.

The Civil Code's Article 872, which provides that a recognized illegitimate child is not entitled to the property of both parents' blood relations unless specifically permitted by Article 873, also places restrictions on the illegitimate child. This is particularly true if the illegitimate child's biological parents are aware of it. An illegitimate kid who is subject to the Civil Code will be able to inherit from his biological parents if the father first willingly acknowledges or approves of it. In this instance, it can be voluntarily interpreted that no institution has the authority to compel the biological father to acknowledge his illegitimate child; consequently, the child is merely passive in the sense that he or she waits or expects but is powerless to take any action to secure civil rights from the individual. Since the illegitimate kid has not been acknowledged or approved by his original parents, it is still conceivable that he will not inherit anything from them. The Constitutional Court's No. 46/PUUVIII/2010 Decision is a progressive and fundamental ruling from the perspective of protecting children born out of wedlock because it can be interpreted as granting all children born out of wedlock, including illegitimate and adulterous children, the right to obtain civil rights from their parents, including their families.

4. Conclusion

According to Articles 42 and 43 of the Marriage Law, children who are not married have no legal contact with their father regarding inheritance and only have a civil legal relationship with their mother and her family. living expenses, and schooling. With the consent of the mother, a father may perform Child Recognition for those protected by civil law. Article 280 of the Civil Code states that the establishment of a civil connection between the kid and his parents is the legal result of the child's recognition. Nonetheless, a child cannot confess unless the mother gives her consent, according to Article 284 of the Civil Code. The parents must record the kid's birth in the current birth register in line with a certificate from the local Population and Civil Registration Office for future use in order to provide the child legal status.

Children of serial marriages may be subject to legal ramifications under Law No. 1 of 1974, which regulates marriage, if they are not given the right to inherit because the marriage was not documented. According to Marriage Regulation Law Number 1 of 1974, children born outside of marriage may face legal repercussions if they are not granted inheritance rights because the marriage was not registered. In the event that ratification is conducted in compliance with the Civil Code, offspring of serial marriages may be eligible to inherit. Law Number 23 of 2002 states that children born outside of marriage are not entitled to civil rights but, the state will recognize the marriage if it is accepted and made lawful, and their offspring will also be granted recognition and their rights collectively.

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