

Rights and Legal Position of Children out of Wedding in Civil Law

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Abstract

Legal status of illegitimate children according to the Civil Code (KUH Perdata), especially regarding their civil status and inheritance rights. In the Indonesian civil law system, illegitimate children only have a legal relationship with their biological parents if they have been legally recognized as regulated in Article 280 of the Civil Code. Illegitimate children are divided into three categories: adulterous children, incestuous children, and illegitimate children who can be recognized. Recognition of illegitimate children is constitutive, namely creating a new legal status that grants inheritance rights and other civil rights to the parents who recognize them. However, adulterous children and incestuous children cannot be recognized and do not have inheritance rights, except for the right to adequate living expenses. Although recognized illegitimate children have inheritance rights, their position is still different from legitimate children, both in terms of inheritance portion and family relationship. This discussion emphasizes the importance of recognition as a condition for the formation of a legal relationship between illegitimate children and parents, as well as its impact on inheritance rights based on the provisions of the Civil Code.

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1. INTRODUCTION

A child has a very important role in a household life, because the purpose of marriage is not only to build a happy and prosperous household but also to unite the family and continue the lineage, so it is not surprising that many newlywed couples are so eager for the presence of a child in their household life, because in addition to the child being the seed of the successor to the lineage for their parents, it will also prove the perfection of the bond of love and affection between them.

In general, parents hope that in the future a child will be able to realize their hopes and dreams that have not been achieved, while on the other hand the child will also be the heir to the property and wealth left by their parents later if they die. In line with that, Soetojo Prawirohamidjojo stated that the main purpose of a marriage is to have children, fulfill the lineage, manage the household based on love and affection, the sincerity to seek halal sustenance and increase responsibility. There are so many meanings to a marriage in decorating the journey of human life, because marriage is a path that must be taken with sincere intentions solely for the purpose of creating a happy and prosperous household life based on religion and beliefs.

In an ideal marriage, the presence of a child is a dream for every parent, but the reality is not always so many facts show that parents are willing to throw away or even kill their own children to cover up the shame of their family. The birth of the child will bring shame

to the family because the child is the result of an extramarital relationship that is not permitted by religious teachings and ethics that apply in society in general.

Birth is a legal event that gives rise to many legal consequences. From the birth event, there will be inheritance relationships, family relationships, guardianship relationships, and other relationships related to the birth of a new legal subject into the world with all its status and position in the eyes of the law. In inheritance law, the birth of a child is an event of the presence of an heir who will occupy the highest rank in inheritance, while according to family law the birth of a child will be the beginning of the emergence of alimony rights and obligations of parents to their children, while guardianship law will arise when the child's parents are unable to bear responsibility for their child.

The law has guaranteed the rights of a child since he/she is still in the womb. If the child is born dead, then those rights are considered to have never existed, this shows that the law has viewed the baby in the womb as a legal subject who has civil rights. A child born as a result of a biological relationship between a man and a woman will have a status and position in the eyes of the law based on the marriage of his/her parents. A legitimate marriage will give birth to a child who has a legitimate status and position in the eyes of the law, while a child born from an illegitimate relationship without a legitimate marriage, then the child will have the status of an illegitimate child when he/she is born into the world.

Related to non-juridical legal protection, child care is the responsibility of the biological parents. Legal protection for children born out of wedlock is also regulated in the Compilation of Islamic Law and Law No. 35 of 2014 concerning Child Protection. Regardless of whether the child is born from a legal marriage or not, Law No. 35 of 2014, Article 26 states that parents (father or mother) have equal and the same rights as parents to care for, maintain and care for and protect the rights of children, most importantly, the ability of parents to care for and maintain children.

After the issuance of the Constitutional Court's decision, it also changed Article 43 of Law No. 1 of 1974, which basically children born out of wedlock not only have a civil relationship with their biological mother but also have a civil relationship with their biological father as long as the mother or child born out of wedlock can prove their biological father. After the issuance of the Decision of the Constitutional Court of the Republic of Indonesia No. 46/PUU-VII/2010, the legal relationship for children born out of wedlock with their biological mother and father is increasingly clear. This can be seen from the Constitutional Court's decision which states that the civil relationship of children born out of wedlock not only has a civil relationship with their mother but also has a civil relationship with their biological father.

This is as long as the illegitimate child and the mother of the illegitimate child can prove their biological father with a DNA test. The Indonesian Ulema Council's fatwa, which previously opposed the recognition of children from adultery (children out of wedlock) and only having a relationship with their mother, also supports the Constitutional Court's decision to require the child's living needs to be met and property to be given after death through a will.

A biological father can no longer refuse to provide for the needs of his child from an extramarital relationship. The Constitutional Court's decision further emphasizes legal certainty and legal protection in the relationship between an illegitimate child and a biological father in terms of being responsible for supporting and providing a living for the illegitimate child. The burden of caring for and providing a living for an illegitimate child is not only borne by one family (the mother of the illegitimate child) but must also be borne together with the family of the biological father of the illegitimate child. Based on the

above, the author is interested in raising the title: Rights and Legal Position of Children Out of Wedlock from a Civil Law Perspective.

2. METHODS

In discussing a problem, there needs to be a study. A scientific work must be compiled based on a scientific writing method. In writing this thesis, the method used is a normative study, which is carried out by examining in depth the laws and regulations, namely the provisions in the Civil Code specifically regulating inheritance law, including those regulating the position of children outside of marriage.

3. RESULTS AND DISCUSSION

3.1. The position of children born out of wedlock according to the Civil Code

The Civil Code adopts the principle that an illegitimate child only has a civil relationship with his or her father or mother after receiving recognition, this can be found from the meaning contained in Article 280 of the Civil Code. It does feel a bit strange because there is a possibility that a child legally does not have a father or mother when the father or mother does not or neglects to acknowledge their illegitimate child. The child does have a biological father and mother but legally they do not have any rights and obligations towards their child. In the Netherlands itself, with the changes in legislation, another principle is now adopted, where with the birth of a child by law a legal relationship arises between the mother and her child, a legal relationship with the father only exists if the father gives recognition.

Recognition of an illegitimate child is a form of legal act that creates a new legal status (*constitutief*) because with the recognition, the status and rights of the child appear before civil law. The child who previously had no rights to his biological father or mother now has inheritance rights and other civil rights. The position of children in the Civil Code is divided into two, namely legitimate children and illegitimate children. Article 250 of the Civil Code states that: "Every child who is born or raised during a marriage has the husband as his father. From this article, it can be concluded that a legitimate child according to the Civil Code is a child who is born or raised in a marriage and has the husband as his father and the opposite understanding from the formulation of the article above is categorized as an illegitimate child.

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The two categories of child legitimacy in Article 250 of the Civil Code can be described as follows:

1. Children born during a marriage.

A child can be said to be born in a marriage if the date of the marriage of the parents is older (before) the date of the child's birth, but not later than the date of divorce if the parents divorce, either by divorce or by death. In this case, the law does not see when the child's seed was grown in the mother's womb, as long as the child's

birth was in a marriage bond, then the child becomes a legitimate child unless the child's legitimacy is questioned by the husband as regulated in Article 251 of the Civil Code.

2. Children who are raised throughout the marriage.

A child gets the status of a legitimate child if the child's seed is raised by his parents during the marriage bond, if later a divorce occurs, either divorce by life or divorce by death and the child is born, then he does not lose his position as a legitimate child.

The Civil Code divides illegitimate children into 3 groups, namely adulterous children, incestuous children and illegitimate children who can be recognized. A child gets the status of an adulterous child if he is born from a relationship between a man and a woman where one or both of them have a marriage bond with the other, this is as per the terminology of adultery in the provisions of Article 284 of the Criminal Code which reads: "Threatened with a maximum imprisonment of nine months, a married man who commits *mukah* (*overspel*) even though he knows that Article 27 of the Civil Code applies to him, a married woman who commits *mukah* (*overspel*) even though she knows that Article 27 of the Civil Code applies to her". An illegitimate child is born from a relationship between a man and a woman who are prohibited from entering into marriage as stipulated in Article 30 of the Civil Code because they have blood relations upward or downward either because of a legitimate or illegitimate birth or because of a marriage in the lateral line between brothers or sisters, whether legitimate or illegitimate. Illegitimate children who are not included in the category of children of adultery and illegitimate children are illegitimate children who may be legalized or acknowledged by both parents.

3.2. Inheritance Rights Of Illegal Children In The Civil Code

According to the Western legal concept, illegitimate children can have a civil relationship with their parents if their biological parents acknowledge it. Article 272 and Article 280 of the Civil Code state that:

Illegitimate children, except those born from adultery or blood immorality, are legalized by a subsequent marriage of their father and mother if before the marriage they have legally acknowledged the child or if the acknowledgement occurs in their own marriage certificate.

With the acknowledgement of an illegitimate child, a civil relationship is born between the child and their father or mother.

For illegitimate children who fall into the category as stated in Article 283 of the Civil Code, namely children born due to adultery and blood stain (*discordant*), then the provisions on the right to receive inheritance do not apply to them, this is a follow-up to the provisions of Article 272 of the Civil Code, that children of adultery and illegitimate children cannot be recognized except for children in the group stated in Article 273 of the Civil Code. Children of adultery and illegitimate children will only receive the right to a living wage as needed which is measured based on the ability of the father or mother and their legal heirs according to the law.

In western inheritance law, children of adultery and illegitimate children have no legal standing at all, because the law has closed any opportunity for them to obtain rights that are more than just getting a living wage.

Recognition of a child by biological parents not only results in the emergence of inheritance rights for the child towards the father or mother, but can also give rise to inheritance rights for the father or mother towards the child if the child dies earlier than the father and mother. For example, after a confession occurs, the child dies and leaves behind assets and he does not leave behind a husband/wife and legal descendants, then the inheritance will fall into the hands of the father or mother who has acknowledged it, and if the child's father and mother both have acknowledged it, then the inheritance will be half of each. We can find this in the provisions of Article 870 of the Civil Code which reads as follows:

The inheritance of an illegitimate child who dies without leaving descendants and the husband or wife falls into the hands of his father or mother who has given recognition to him or both of them, half each if he has been recognized by both.

Meanwhile, in the case of an illegitimate child who dies without leaving any legitimate descendants or husband/wife, and both parents who acknowledge him have also died first, then the items which he has obtained from the assets inherited from his parents, if they are still in the form of inherited assets, fall back into the hands of the legal descendants of his father or mother. This also applies to the rights of the deceased to claim something back if the something has been sold and the purchase price is still outstanding.

Because in principle, legal relations only occur between illegitimate children and parents (father/mother) who have acknowledged them, in the sense that this relationship does not include other family members, either from the father's side or from the mother's side who acknowledge it, so apart from them, there is no civil relationship with the child. For other family members, the child is another person, therefore they do not have inheritance rights to the blood family inheritance of the father/mother who claims it, that is roughly the meaning we can conclude from the provisions of Article 872 of the Civil Code.

Legitimate children and acknowledged illegitimate children both have the same rights to their parents' inheritance, they also have the same right to *saissane*, *heredetatis petitis* rights and the right to demand division of inheritance, but in reality they have differences, among others: illegitimate children, although acknowledged, are not under the authority of their parents but only under guardianship, their inheritance rights are different from the rights held by legitimate children and they do not have any legal relationship other than with the parents who acknowledge them.

Because the act of recognition has connected the civil relationship between the illegitimate child and his biological parents, then from that moment on the inheritance law applies to him, meaning that illegitimate children who have been recognized by their biological parents will have the right to inherit, this is as regulated in Article 863 and Article 865 of the Civil Code as follows:

If the deceased leaves legitimate descendants according to law or husband and wife, then the illegitimate children inherit one third of the portion they should receive, if they are legitimate children according to law they inherit half of the inheritance if the deceased does not leave descendants of a husband or wife, but leaves blood relatives in the upper ranks or brothers and sisters or their descendants and three quarters if only blood relatives are still alive in a further degree.

If the deceased does not leave legitimate heirs according to law, then the illegitimate children inherit the entire inheritance.

4. KESIMPULAN

The position of an illegitimate child in the Civil Code (KUH Perdata) is highly dependent on the recognition of their biological parents. Without such recognition, an illegitimate child does not have a civil legal relationship with their father or mother. The Civil Code divides illegitimate children into three categories, namely adulterous children, incestuous children, and illegitimate children who can be recognized. Only illegitimate children who are not adulterous or incestuous can be recognized and obtain civil rights, including inheritance rights. A recognized child receives limited inheritance rights only from the parent who recognizes them and does not have a legal relationship with the extended family of that party. Although they have the right to inherit, the position of an acknowledged illegitimate child remains different from that of a legitimate child, both in terms of inheritance rights, legal status, and parental authority. Recognition of an illegitimate child is an important key in determining civil rights, especially in inheritance, as regulated in Articles 280, 863, 865, and 870 of the Civil Code.

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