

Legal Protection of the Position of Children Outside of Marriage from the Perspective of Indonesian Positive Law

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Abstract. Extra-marital children are those conceived from marriages considered null and void. Child discrimination, particularly regarding the civil rights of children born outside of marriage, was addressed in Constitutional Court Decision No. 46/PUU-VII/2010. This decision amended Article 43 Paragraph (1) of Law No.16 of 2019, related to Law No.1 of 1974 concerning Marriage. The amendment establishes that children born out of wedlock have legal ties to both their mother's and father's relatives, verifiable through scientific and technological means. This study aims to ascertain the legal status and protections afforded to illegitimate children under Indonesian law using a normative juridical approach, relying on library resources or secondary data. The Convention on the Rights of the Child mandates protection and assurance of children's rights, including their right to live, grow, develop, and receive a high-quality education. Institutions, rules, and regulations ensure the safeguarding and well-being of children. The Indonesian Civil Code, specifically Article 863, governs the inheritance rights of illegitimate children. Recognized illegitimate offspring have the right to inherit alongside all other heirs, though the specific amount they receive depends on their degree of kinship within the legal heirs' group.

Keywords: Legal Protection, Extra Marital Children, Law

1 Introduction

Indonesia is a nation that adheres to the principle of legal governance, as explicitly stated in Article 1, Paragraph 3 of the 1945 Constitution. This ensures that is everything. actions and conduct within the country are governed by the law, with the aim of achieving justice and overall well-being. It is important to note that the legal system serves as a means of implementing and applying the law.[1] The state provides protection and legal certainty for the community in building families or pairs, namely in the form of providing administrative records in order to bring order and public services before the government or population.

Marriage is a significant issue in Indonesia, and it is governed according to religious, cultural, and legal norms. According to Law No.16 of 2019, which modifies Law No.1 of 1974 on Marriage, marriage is defined as a union between a male and a female, both physically and emotionally, with the aim of developing a joyful and everlasting family, rooted in the belief in a higher power.[2] The validity of a marriage, as determined by the Marriage Law, is contingent upon meeting the criteria

outlined in Article 2, paragraphs (1) and (2). Specifically, a marriage is considered valid if it adheres to the religious or belief-based laws and regulations, and if it is officially documented in line with relevant laws and regulations. Although a marriage may be deemed lawful in accordance with their individual religious beliefs, it does not automatically imply that the marriage is legally recognized according to the marriage legislation. This is due to the marriage not being officially recorded in accordance with the relevant laws and regulations. If a kid is born inside a marriage that is not officially documented, it might be seen as an adulterous child.[3]

Care, love, and a place for their development. In addition, children are part of the family, and the family provides opportunities for children to learn behaviors that are important for adequate development in life together. Ideally, a child born in the world will automatically get a man as his father and a woman as his mother, both biologically, and legally (juridical), because by having complete parents and supporting perfection for a child in undergoing his growth period. Children are a divine gift and responsibility bestowed upon us by the Supreme Being, and it is our duty to protect and nurture them, since they possess intrinsic worth and entitlements as individuals that must be respected. Based on Law No 1 of 1974 regarding Marriage, kids are classified into two categories: legitimate children and illegitimate children. The act of being born is a significant occurrence, and it is crucial that every newly born individual be promptly registered with the civil registry office, regardless of whether the kid is born to unmarried parents. This registration is vital for the child's future well-being.

An illegitimate kid is a child that is born due to the parents' activities that violate legal regulations. This includes a child born before a legal marriage, a child born after a lengthy divorce from the mother's husband, a child born without the parents entering to get into a legally recognised marriage, an offspring conceived by an act of infidelity with another person, or a child whose father is unknown. The reality is that in everyday life, there are children who are unwanted by their parents due to a relationship that is not based on feelings of love, or an act of coercion by a man to a woman which results in the woman having to become pregnant, conceive and give birth. Child protection encompasses a range of measures aimed at safeguarding children and upholding their rights, enabling them to thrive, progress, and actively engage in society while being treated with respect and shielded from harm and prejudice.

According to Article 42 of Law No.16 of 2019, which pertains to amendments made to Law No.1 of 1974 on Marriage, a legitimate child is defined as a kid who is born within the context of a lawful marriage. Illegitimate children are governed by Article 43 paragraph (1) of Law No.16 of 2019, which amends Law No.1 of 1974 on Marriage. According to this law, illegitimate children have just a legal connection with their mother and her family. Consequently, the kid lacks any legal affiliation with his father, both in terms of financial support and education, as well as inheritance rights. If the kid is within the jurisdiction of civil law, the father has the ability to acknowledge the child with the mother's permission.

The foundation of child protection is categorized into three main aspects: philosophical, ethical, and juridical. The first aspect is the Philosophical base, which signifies that Pancasila serves as the foundation for actions in many domains of family life, community, state, country, and as the fundamental principle for implementing child protection. The second aspect is the Ethical base, which entails ensuring that child protection measures are aligned with the ethical principles of the

respective profession. This is crucial in order to avoid any misconduct or abuse of authority, influence, and power during the execution of child protection. The third aspect is the Juridical foundation, which means that the execution of child protection must be grounded in the 1945 Constitution of the Republic of Indonesia, as well as other relevant laws and regulations. The use of this legal foundation must be comprehensive, meaning that it involves the integrated application of laws pertaining to several interconnected areas of law.

People who are not legally married and only have a connection with their mother have children who are not their own. Because of this, the child has no legal rights from their actual father because religious and national laws don't recognise any blood ties between them. Illegitimate children don't get the material rights that a child should get from his father, like maintenance rights, nafkah rights, marriage guardianship rights for girls, and the right to inherit each other in the event of death.[4]

Children outside of marriage have no fault because they are born against their will as a result of sexual relations between women and men that are prohibited. So it is not appropriate if the child's status as an unmarried child results in their civil rights not being fulfilled. There is a shift in the prioritization of rights that must be prioritized, the focus should be on the rights and welfare of the kid, rather than only on the rights of both parents. The status of extra-marital children in the Civil Law system, including in a number of positive legal provisions, is considered to provide less legal protection. Extra-marital children are offspring produced from partnerships that are not legally bound by marriage to a legal marriage is not valid. infrequently victims, such were instances of infant abandonmen, baby neglect, and so on. Whereas any child and whatever his status has the right to life and continue his life. And the civil rights of children outside marriage also lack legal protection, such as the maintenance and welfare of children, including the right of children to inherit.[5]

The primary concern in family law regarding the parentage of a illegitimate children revolves around the legal connection among the offspring and their genetic male parent. In contrast, the legal maternal connection is typically not a matter of contention as it naturally exists without requiring any legal intervention, except as outlined in the Civil Code which upholds the principle of unconditional acknowledgment, where a biological mother will not automatically become a mother who has a civil relationship with her child without an act of recognition.

The existence of illegitimate children will be a cause of worry for both the mother and the society, as it will give rise to several issues, among others, about the family and society regarding how the child's rights are positioned. As is known, children outside of marriage in society are always ostracized, but it is an interesting study if it turns out that there are flaws in the law against children outside of marriage that can actually be ruled out, where in fact the deviation in question occurs based on traditional beliefs and the thickness of myths that exist and are believed by the community. Children possess the entitlement to receive protection, as specified in Article 1 Point 12 of Law No. 35 of 2014, which amends Law No. 23 of 2002 on Child Protection. Children's rights are an integral component of human rights that must be ensured, safeguarded, and realized by parents, families, communities, governments, and the state. Article 3 of child protection is to ensure the fulfilment of children's rights, enabling them to live, thrive, progress, and engage fully in accordance with the principles of human dignity. Additionally, its objective is to provide safeguard against acts of

violence and instances of prejudice. The ultimate objective is to cultivate a generation of Indonesian youngsters who possess exceptional qualities, exhibit nobility, and achieve prosperity.[6]

Children's rights are articulated by the Indonesian government through Presidential Decree No. 36 of 1990, which lays out the fundamental tenets of children's rights, including respect for children's involvement, nondiscrimination, the child's best interests, and survival and development. In order to enable the implementation of children's rights in Indonesia, the government issued Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection, which includes legislation based on these principles as well.[7] Outlines the basic principles of children's rights, which include valuing children's participation, non-discrimination, prioritizing the child's well-being, and ensuring their survival and growth. To facilitate the enforcement of children's rights in Indonesia, the government enacted Law No. 35 of 2014, which amends Law No. 23 of 2002 on Child Protection. This law incorporates concepts related to children's rights?

2 Methodology

This article employs the normative juridical research approach, also known as the normative legal research technique refers to a systematic approach used to analyse and evaluate legal norms and principles.. The normative juridical research approach involves doing legal study in a library by reviewing solely library resources or secondary data.[8] The purpose of this study was to acquire information pertaining to the subject area, including ideas, conceptions, legal principles, and legal rules. This methodology is sometimes referred to as the literary approach, which involves analyzing books, legislation, regulations, and other relevant materials pertaining to the research topic. The legal material collection technique applied is a legal material search technique in accordance with the research material. Furthermore, this legal material is recorded, quoted, classified or grouped, documented, summarized, and reviewed according to research needs using a qualitative approach. Farida defines a qualitative approach as an approach in conduct research on the topic. features evaluation methods that generate descriptive data refers to information that is expressed via written or spoken words provided by humans, as well as observations of their behaviors. After all legal materials are collected, the next step is to explain the contents of the legal materials sentence by sentence, and describe them with a systematic method of processing legal materials.

3 Results and Discussion

The Government regulates children's rights under Law No. 4 of 1979, which specifically addresses child welfare., namely "a system of life and livelihood for children that can ensure their growth and development properly, both spiritually, physically and socially". Article 2 paragraph (3) also explains that "children are entitled to care and protection, both during the womb and after birth". Meanwhile, Article 3 paragraph (2) of Law No. 39/1999 on Human Rights states that "every person is entitled to recognition, guarantees, protection and equal legal treatment in the eyes of the law". Children's rights are stipulated in Article 52, specifically in paragraphs (1) and (2), which state that

"every child is entitled to protection from parents, family, community, and the State." Rights of children, which ones are considered to be human rights, are acknowledged and safeguarded by legislation, including protection starting from the prenatal stage, for the well-being of children. In accordance with Law No. 39 of 1999 on Human Rights, children have the right to certain rights. These include the entitlement to a designation and legal recognition of nationality, the right to be informed about their genetic progenitors, and the right to be nurtured and nurtured by their biological parents.

Child protection may be categorized into two distinct sorts, namely:

1. Juridical protection includes protection in the fields of public law and private law. This juridical child protection concerns all legal rules that have a direct impact on a child, in the sense of all legal rules governing children's lives. Concerning the subject of safeguarding children within the domain of family law and inheritance law under the scope of civil law. The domain of family law and inheritance law within civil law is intricately connected to the boundaries of children's legal capacity. The age threshold for children assumes significance due to the absence of consistency in both written and unwritten legal provisions in Indonesia regarding the age of majority. According to Article 330 of the Civil Code (Burgerlijk Wetboek), individuals who are adolescents are those who are under the age of twenty-one and have not been married before. Minors are subject to parental control and parents have a responsibility to safeguard the rights that minors should possess.
2. Non-juridical protection includes protection in the segment of society concerned with social issues, and the sector dedicated to healthcare, and education sector.

The purpose of regulating human rights in a state governed by the rule of law is to provide legal safeguards for its citizens. According to Article 28 of the 1945 Constitution of the Republic of Indonesia, each individual has the entitlement to form a family and reproduce via a legally recognized marriage. Nevertheless, empirical evidence demonstrates that childbirth outside of wedlock often leads to familial complications, since the kid is the result of a connection that occurred outside the bounds of marriage. This is particularly problematic as religious doctrines condemn such behavior within the context of societal and governmental norms.[9]

As per the provisions of the Civil Code, there include three distinct legal classifications for illegitimate children, specifically:

1. Children out of wedlock do not receive recognition from their parents;
2. Children out of wedlock, who receive recognition from their parents;
3. Children out of wedlock are legitimate, because the parents have a legal marriage.

Kumoro's study examines the treatment of illegitimate children in terms of inheritance rights and social status as recognized by the Civil Code. The selection of a marital partner who is designated as an heir is made as per the stipulations of the Civil Code. Various nations and international agencies have implemented different measures and reforms to enhance the legal protection of illegitimate children. These efforts aim to safeguard the rights of such children and eradicate any discriminatory practices in the inheritance laws. Several initiatives have been undertaken:[10]

1. Ensure equal rights for children born to unmarried parents. These measures include recognizing the right of out-of-wedlock children to inherit their parents' property equally with legitimate children, without discrimination;
2. Automatic Recognition: Some jurisdictions have automatically recognized out-of-wedlock children as heirs, without requiring any acknowledgement or special action from their parents. This aims to avoid legal and bureaucratic obstacles that can make it difficult for out-of-wedlock children to obtain their inheritance rights;
3. Use of DNA Tests: In situations where both parents of an out-of-wedlock child do not acknowledge kinship, DNA testing has become an effective tool to prove this family relationship. DNA tests can be used as valid evidence in legal proceedings to determine a child's inheritance rights;
4. Awareness and Education Campaigns: To combat stigma and discrimination against children out of wedlock, awareness and education campaigns have been conducted. The campaign aims to inform the community about children's rights and promote awareness of the need for equal legal protection for illegitimate children;
5. International Conventions: International institutions such as the United Nations (UN) have contributed to initiatives aiming at safeguarding illegitimate children through the adoption of international conventions and declarations. One of these is the Convention on the Rights of the Child which affirms the right of children to have their identity, origin and heritage recognized and protected.
6. Mediation and Dispute Resolution: To avoid disputes and disagreements over inheritance rights, alternative dispute resolution such as mediation has been used as a way to reach a fair agreement and ease tensions between families.

3.1 The Position of Children Outside of Marriage in the Perspective of Positive Law in Indonesia

Lack of information often leads many people to assume that illegitimate children are legitimate, which in turn creates the impression that marriage is an easy thing to do. As a result, many people go through the process of forming a household without considering the legal aspects that apply in their country. Unfortunately, this often leads to domestic conflicts that lead to legal issues, especially to the detriment of women. If a marriage is not legally registered, many marital rights, such as maintenance rights, child custody rights, inheritance rights, guardianship rights for daughters during marriage, and so on, cannot be resolved through legal proceedings. This creates additional problems in the situation. These issues only negatively affect the married woman, while the man has no formal responsibility. In the event of a rejection of the marriage by the men, they will not face any legal sanctions, as there is no authentic evidence of the marriage. This situation can open the door for violence against women who are wives in the household.

The law shall provide equitable safeguarding and legal guarantee for the position and entitlements of every child, including persons born outside the confines of a lawful marriage, in accordance with prevailing legislation and regulations.[11] As stated by J. Satrio that according to the doctrine and provisions in the Civil Code, extramarital young children may be split into extramarital children in a broad sense and a narrow sense:

- a. Out-of-wedlock children in the broadest sense, which includes:
 1. Adulterous Children Adulterous children are children born out of extramarital relations, Extramarital affair refers to a interpersonal connection between a male and a female. when at least one of them is spouse of someone else.
 2. Donor Children Donor children are children born out of a heterosexual connection between a male and a female between whom there is a statutory prohibition on marriage.
- b. Out-of-wedlock child in the narrow sense
- c. Out-of-wedlock children, in a strict sense, refer to children who are born from a connection between a male and female who are not married to anyone else and are not prohibited from marrying each other. These children may be officially acknowledged by their father. Put simply, out-of-wedlock children, in this specific context, refer to illegitimate children the result of adultery.

According to certain literary sources, a kid is a individual who is younger than 18 years old, which comprises those who are currently in utero. This definition is stated in Article 1, paragraph 1 of Law No 35 of 2014, which pertains to amendments made to Law No 23 of 2002 concerning Child Protection. Furthermore, a legitimate child is one who is born within the confines of a legally recognized marriage, as stated in Article 42 of Law No 1 of 1974, which deals with the subject of marriage. According to J Satrio, the meaning of article 272 of the Civil Code, as explained in his book Law of Inheritance, is that if an illegitimate kid is born out of wedlock., specifically when the child's mother is not the individual is in a marital relationship with their biological father, who is concurrently spouse of someone else, the child is not considered illegitimate or discordant. Therefore, the status of illegitimate children is regarded as illegitimate.[12]

The Civil Code (hereinafter referred to as the Civil Code) refers to children extramarital *Naturlijk Kind* (children of nature). In fact, these extra-marital children exist and it cannot be denied that they have become a separate "homework" for legal thinkers in our country to always pay attention to, considering that as the author said earlier that our country is stretching to try to improve the morals of its nation's children, by focusing more on the issue of children.

Article 43 regarding the legislation on marriage governs the status of illegitimate children. When examined through the lens of legal certainty, as explained by Aristotle in his book "Rhetorica," it is evident that the objective of the law is to establish justice, and the specific provisions of the law are determined by ethical considerations of what is deemed fair and unfair. The law has a solemn and honorable duty, which is to provide justice for all those who are entitled to it.[13] In accordance with the positive legislation in Indonesia, the classification of children is categorized into legitimate and illegitimate progeny. Legitimate kids are derived from a legally recognized marriage, hence any other offspring resulting from birth or a genuine marriage are considered legitimate children. Illegitimate progeny refers to children who are born outside of a formal marriage, so they are often referred to as unmarried children.[14]

The legal ramifications of Article 43 paragraph (1) of Law No 16 of 2019, which amends Law No 1 of 1974 regarding Marriage, include that the birth certificate of a illegitimate children will only list the name of the mother without mentioning the father. This is done, because the State considers

that illegitimate children are only born to a woman, in contrast to legal children who are recorded in the birth certificate as being born from a legal marriage between husband and wife. Because one of the purposes of making a birth certificate is to prove that he is the legitimate heir of a heir, thus the party who is obliged to maintain the child outside of marriage is only the mother as stated in the birth certificate of the kid. The consequence is that the man who is actually the father is not required to disclose rights to the illegitimate child. Conversely, the child cannot sue.

As per Article 43 paragraph (1) of Law No 16 of 2019, which modifies Law No 1 of 1974 on Marriage, illegitimate children are exclusively recognised as legally related to their mother and her relatives. Offspring are derived from a woman who undergoes the process of childbirth, but, establishing the paternity of the male parent as their biological father may be challenging, particularly in cases of child abuse, leading to conflicts. illegitimate children are only entitled to restricted inheritance rights, namely pertaining to the property possessed by the mother and her family.[15] In addition, the child can also only be cared for and provided for by the mother's family. These conflicts, as highlighted in the research, are actually very detrimental to both the mother and the child.

As per the provisions outlined in this Article, an illegitimate child will alone have a legal affiliation with the mother and her family. Consequently, the mother has the responsibility for the kid's care, upbringing, and education, but the child possesses the entitlement to inherit from both the mother and her family. Nevertheless, the biological father and his relatives are not legally required to provide financial support for the child, since they lack a formal connection to the child as a result of the adulterous situation. Similarly, while establishing an identity via a birth certificate, an unmarried child will identify their unmarried status and only include the mother's name. Article 280 of the Civil Code establishes that the acknowledgement of an unmarried child creates a legal bond amongst the offspring and their father or mother.[16] Merely having illegitimate children does not establish a familial bond between the kid and the biological parents. A familial bond with all its repercussions forms between the kid and the parents who realize it only after the act of recognition (erkenning).[17]

The Constitutional Court, in its Decision No 46/PUUVIII/2010 dated February 17, 2012, ruled that Article 43 Paragraph (1) of Law No 16 of 2019, which amends Law No 1 of 1974 on Marriage, is unconstitutional unless it is revised "Children born outside marriage only have a civil relationship with their mother and their mother's family and with the man as their father who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with the father's family." The Constitutional Court's judgment aims to affirm that illegitimate children are likewise entitled to legal protection. As per the Constitutional Court's assessment, the law should ensure equitable safeguarding and legal assurance for the status of a child at birth, as well as guarantee their rights. This includes extending legal protection to children born under disputed marital validity.[18]

Through this decision, it provides certainty to the existing law enforcement that any Indonesian citizen can claim their rights if there is a perceived discrepancy in social life and the family environment, so that the legal steps taken by the material test applicant are appropriate. According to the language used in Article 43 Paragraph (2) of Law No 16 of 2019, which deals with changes made to Law No 1 of 1974 concerning Marriage, it is specified that the legal position of children

described in paragraph (1) will be more precisely defined by a government regulation. Nevertheless, it is apparent that the government has not yet implemented any legislation specifically addressing the legal status of children born out of wedlock. Moreover, after scrutinising the implementing rules of Law No 16 of 2019, particularly Government Regulation No. 9 of 1975, it becomes evident that the issue of illegitimate offspring is not explicitly mentioned. The 1975 Marriage Law fails to explicitly address the legal status of children born out of wedlock, leading to a continued lack of definite restrictions concerning their situation. Article 43, paragraph (1) of the legislation only addresses civil connections and does not include explicit and thorough rules for safeguarding these children as people. As a result, it is difficult for children born out of wedlock to ensure that their rights are protected properly, as there are no clear norms that regulate their rights as individuals.

The legality and recognition of the kid establishes a familial relationship between the child and the parents. According to Article 284 of the Criminal Code, the acknowledgement of a child born to unmarried parents will not be universally acknowledged if the mother is alive and does not give her consent. According to the ruling, child recognition may be granted upon the mother's request. Article 278 of the Criminal Code addresses the act of intimidating individuals who legitimize illegitimate children, but who are not biologically related to them. The Civil Code outlines the legal status of children as follows:

1. Legal child;
2. Out-of-wedlock children.

In addition, related to aspects of the civil rights of extra-marital children, especially in accessing civil documents including birth certificates based on Presidential Regulation No 37 of 2007, there are three types of birth certificates issued and all three are legally recognized. First, the certificate contains the name of the child, mother, and father. This is a baby born from an official marriage as evidenced by a marriage book issued by the KUA or the civil registry population office. Second, the birth certificate just records the names of the kid and mother. Third, if in the birth certificate, only the child's name is listed, without the mother's name and the father's name, which means that the baby is found whose father's name and mother's name are not clear.

The Civil Code permits three methods for acknowledging illegitimate children. Initially, identification is conducted by utilising the official document of marriage known as the marriage certificate unmarried child's parents. This implies the document that certifies a marriage of the kid's parents has a provision acknowledging their child who was born prior to their formal marriage. Secondly, child identification may be achieved by using the birth certificate of the kid who is not married, while the third method involves recognition via a genuine document expressly created for this reason. Article 281 of the Civil Code (Book I) governs the third method of acknowledging an unmarried child. There is no provision in other provisions of the Civil Code that permits the acknowledgment of an illegitimate child via the use of a will. The lack of explicit rules in the Civil Code governing the use of a will to acknowledge a child should not be construed as an impossibility. Unpredictable events may occur, since the successor has the entitlement to liberty. Particularly when considering the stipulations of Article 875, which succinctly states that a testament is a legal document that includes an individual's declaration of their desired posthumous arrangements and may be invalidated by the same individual.[19]

3.2 Legal protection of children born out of wedlock in positive law in Indonesia.

Based on the legal material covered within the framework of the Convention on the Rights of the Child, several contents of the Convention can be qualified, namely:[20]

1. Affirmation of children's rights;
2. State's safeguarding of minors;
3. The involvement of several stakeholders (government, community, and business sector) in guaranteeing the protection of children's rights.

The Convention on the Rights of the Child has been established 54 Articles that provide the legal framework for protecting and enforcing the rights of children. These rights are to be upheld by the state parties who have signed the Convention. The legal laws pertaining to the rights of children Legal statutes pertaining to the rights of children in the Convention may be classified into four distinct groups:

1. The right to survive refers to the rights of children outlined within the framework of the Convention on the Rights of the Child. These rights include the entitlement to protect and safeguard life (the right to life) as well as the right to access the best possible healthcare and medical care attainable
2. Protectionrights, which are children's rights under the Convention on the Rights of the Child, including the entitlement to safeguard against prejudice, assault, and neglect for refugee children who have no family;
3. Development rights, which are the Convention on the Rights of the Child outlines the entitlements of children that include many types of education (formal and non-formal) and the entitlement to attain a level of material well-being that is sufficient for the holistic growth and development of children in terms of their physical, mental, spiritual, moral, and social aspects;
4. The right to participation, which is a right of the child in the Convention on the Rights of the Child that includes the right a child's ability to articulate their opinions on all subjects affecting that child.

Dr. Philipus M Hadjon also presents the notion of legal protection for children, which specifically emphasizes legal protection within the realm of human rights. As per Barda Nawawi Arief's statement, the philosophy of child protection may be seen as an endeavor to safeguard the legal the rights and liberties of children, together with the many interests pertaining to their well-being.[21]

According to Article 28B, paragraph (1) of the 1945 Constitution, every kid has the right to the rights of continued existence, expansion, and progression, additionally, it provides safeguard against violence and prejudice. Providing evidence of a child's identity to the civil authorities, together with the identification of their father and paternal family, serves as a legal safeguard by the Government to establish and defend the legal status of children. Legally, children have the right to be safeguarded. A country's level of modernity should directly correlate with its prioritization of

establishing favorable circumstances to facilitate the maturation and development of youngsters, particularly in terms of safety. It is important to ensure that children born to unmarried parents are nonetheless safeguarded by upholding their rights.

In order to prevent undesirable outcomes in the future, it is crucial to offer a comprehensive legal protection to all children, irrespective of their status born within valid or invalid marriages. This protection should be based on their inherent worth as the future generation of the nation. By doing so, we can ensure that children, including those born outside of legal marriages through secret unions involving men who are still legally married, receive fair treatment. This protection is not only applicable to the mother and her maternal family, in addition to the biological father. As the individual responsible for fathering the child outside of marriage, he cannot evade his duty as a father to provide care for the child from conception, birth, throughout their development, until they become self-sufficient.[22]

When looking at the concept of inheritance as outlined in the Civil Code, there is one principle that states that the condition for an extra-marital child to inherit is that the extra-marital child must be legally recognized. The consequence for a man who recognizes an unmarried child, then like all fathers everywhere in Indonesia, he will apply and carry out all the provisions of Indonesian positive law related to child issues, including providing inheritance if he dies.

Civil rights include the entitlements that every individual has with regards to property, entitlements, and interpersonal connections, which are grounded on rational principles. The Constitutional Court's Decision No 46/PUU-VIII/2010 brought to a rise in focus on the civil legal entitlements of children born out of wedlock. This verdict would provide legal validation of the genetic relationship between children born out of wedlock and their biological father, guaranteeing clarity via the implementation of legal protocols. The Constitutional Court verdict permits the acknowledgment of legal entities that have specific responsibility for illegitimate offspring, using scientific and technological evidence throughout the legal processes.

The lack of explicit rules in the Civil Code regarding the use of testaments to acknowledge children should not be seen as an impossibility. Unpredictable events are possible, since the testator has the flexibility to make decisions. Article 875 stipulates that a testament is a legally binding document in which a person declares their intended consequences after their death, with the possibility of revocation by the individual. Based on the elucidation provided in Article 875, it is evident that the testament is not obligated to only consist of provisions immediately pertaining to the estate. The crucial component of the will is the final testamentary disposition made by the testator about the posthumous arrangements. Hence, the validity of recognising a child through a testament should be acknowledged, as the recognition of an extra-marital child is not the decisive factor in such cases. This is because the testament only holds legal effect upon the death of the testator. Regarding this idea, it is important to analyse the acknowledgment of a child born out of wedlock via a testament, especially when this acknowledgment takes place after the testator's death.

Illegitimate offspring go beyond the legal authority of their parents and instead come under the purview of guardianship. Consequently, their rights and claims to inheritance are unequal. Moreover, official acknowledgment just establishes a legally binding relationship between the child and the recognising parents, excluding the rest of the family. The legal framework in the Civil Code has established regulations for the acquisition of property rights via inheritance, granting individuals

the power to become heirs and inherit property or inheritance rights. Illegitimate children have little legal protection within the society, particularly when it comes to the process of inheriting property. Article 866 of the Civil Code regulates the issue of inheritance for children born outside of marriage:

1. If the deceased bequeaths the next generation to either a husband or a wife, then extramarital children receive 1/3 percent of what they would have received as legal children (Article 863 of the Civil Code);
2. In the event that the dead does not leave behind a successor generation or husband or wife, but leaves for the biological family, to the next generation (mother, father, grandmother, and so on), or male and female relatives or the next generation, so that the recognized children will get ½ of the wealth (inheritance). However, if there are relatives in having a more distant kinship relationship, the descendants who have been determined will get ¾ percent of the wealth (Article 863 of the Civil Code);
3. Prioritizing the transfer of rights to children born to unmarried parents is essential. Subsequently, the remaining portion is distributed to the rightful beneficiaries as specified in Article 864 of the Civil Code;
4. If the deceased has no legal descendants, they will get all the assets (Article 865 of the Civil Code);
5. If the extramarital child dies first, then his rights can be transferred to his legal descendants (Article 866 of the Civil Code).

According to the Civil Code, only those who are biologically related to the person making the will have the right to receive an inheritance. Whether by direct lineage or through the relationships of parents, siblings, grandparents, or the descendants of their siblings. Therefore, if one is included in the category, they have the entitlement to inherit, which may be classified into four main groups:

- a. Group I: Longest surviving husband or wife and their children and descendants;
- b. Group II: The testator's parents and siblings;
- c. Group III: The family ascends in a linear fashion, with the heir's father and mother at the top.;
- d. Class IV: The testator's uncles and aunts from both the paternal and maternal sides, as well as their descendants up to the sixth degree from the testator, and relatives of the testator's grandparents and grandmothers, together with their descendants up to the delicious degree from the testator, are included.

The right to inherit applies to an out-of-wedlock child whose father and/or mother has been determined. In the absence of a determination from the father and/or mother, the out-of-wedlock child has no authority over the property. The presence in an illegal marriage and has been confirmed by the Panel of Judges always obtains inheritance property. In the event that other beneficiaries contest, the legal entitlements of illegitimate children, known as the Civil Rights of Illegitimate children, Following the Judicial Review of Law No 16 of 2019, which pertains to the amendments made to Law No 1 of 1974 on Marriage, inheritance disputes involving children born out of wedlock may now be resolved via the use of a legally recognized annulment document issued by an authorized institution. The legal process of confirming the deed is executed by a court ruling, which

serves as evidence and justification for asserting the rights of illegitimate children to inherit property. Within civil norms, illegitimate children own two distinct inheritance rights: active inheritance rights and passive inheritance rights. Active inheritance rights are when a testator bequeaths legal offspring and offspring outside of marriage, it can also be seen Illegitimate children same rights as legal offspring, it is certain that the child will inherit part of the wealth. However, passive inheritance rights, namely when children outside of marriage inherit wealth, must be given to people who have authority over that wealth.[23]

4 Conclusions and Suggestions

4.1 Conclusion

The legal ramifications of Article 43 paragraph (1) of Law No 16 of 2019, which amends Law No 1 of 1974 on Marriage, include that the birth certificate of a illegitimate children will only list the name of the mother without mentioning the father. The legal situation of children born into unmarried households parents is regulated by the Indonesian Civil Code, specifically Article 280. According to this article, acknowledging a child born to unmarried parents creates a legal relationship among the child and their biological father or mother. In Constitutional Court Decision No 46/PUU-VIII/2010, the phrase "civil relationship" pertains to the legal bond between illegitimate children and their biological father. This connection is constituted when it is shown that the parents' marriage satisfies the conditions outlined in Article 2, paragraph (1) of legislation No 16 of 2019, but does not satisfy the criteria specified in paragraph (2) of the same legislation, which relate to marriages that have not been officially registered. Although a trial procedure is necessary, this civil partnership bestows onto the children certain entitlements and responsibilities, such as financial support, education, well-being, protection, inheritance rights, and the biological father serving as their legal guardian. The Constitutional Court Decision No 46/PUU-VIII/2010 renders Article 43 paragraph (1) of Law No 16 of 2019, which concerns modifications to Law No 1 of 1974 respecting Marriage, unlawful. This is because the interpretation of the article, which disregards the existence of civil relationships between men who can be scientifically proven or proven through further legal proof to establish a biological father-child relationship, contradicts the provisions of the 1945 Constitution. This ruling grants legal protection to illegitimate children, allowing them to claim their civil rights from their biological father and his relatives. This judgment aligns with the concepts of justice and human rights, which prioritize equality, non-discrimination, and the government's responsibility to safeguard the rights of its people. Nevertheless, this ruling remains open to many interpretations, necessitating legislation that enhances and accommodates children's civil rights born to unmarried parents by the Government.

The Convention on the Rights of the Child has implemented guidelines for safeguarding children in the context of international affairs. It requires the safeguarding and guaranteeing of children's rights to exist, thrive, progress, and get a satisfactory and superior education. In order to guarantee the safety and welfare of children, there are institutions and legal frameworks in place that can assure their efficient implementation. Article 863 of the Indonesian Civil Code regulates the legal entitlements of children born to unmarried parents.. As to the article, legitimate children

born to unmarried parents have the right to inherit along with other beneficiaries. However, the precise amount of inheritance they get is contingent upon the group or degree of kinship of the legal heirs. Illegitimate children are exempt from parental authority and instead come under the purview of guardianship. Consequently, their rights and claims to inheritance are unequal. Furthermore, legal recognition just creates a legal connection between the child and the parent who recognises them. If other beneficiaries challenge the legal rights of illegitimate offspring, referred to as the Civil Rights of offspring Born out of Wedlock, As per Constitutional Court Decision No 46 / PUU-VII / 2010, inheritance conflicts regarding illegitimate children may be addressed by providing a nullification certificate issued by an authorised institution.

4.2 Suggestions

It is of particular concern to women to be wiser in considering actions before engaging in relationships outside of marriage, because in addition to being the most disadvantaged party, it also has serious legal consequences for children in the future. In addition to their future discrimination from the environment, it will also impact on civil rights that will not be obtained.

The government is urged to create clear and firm rules related to relationships outside marriage to provide strong legal protection, especially for children and mothers, considering that relationships outside marriage are quite common in society. Therefore, there is a need for socialization efforts to the community, both from the government and religious leaders, regarding the negative impact of relationships outside of marriage. It is also necessary to socialize the Constitutional Court Decision No. 46/PUU-VII/2010 so that children obtain protection from their parents.

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