

## Legal Position on The Concept of Civil Relations with Respect to Out of Wedding Children

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### Abstract

Analyzing the position or legal status of illegitimate children from a Civil Law perspective and analyzing whether or not illegitimate children have the right to inherit from their biological father. Theoretically, the results of this research can be useful and contribute ideas to society in understanding what is meant by the relationship with the legal position of illegitimate children in the concept of civil law. Practically, it can provide input for legal practitioners so that it can be used as a basis for thinking in terms of the legal position of illegitimate children in the concept of civil law. The first research result obtained is to know the position of illegitimate children in a civil law perspective which is divided into 2 (two), namely children who are born out of wedlock, but can be recognized in an authentic way and children who are born out of wedlock but cannot be recognized. The second research result is that illegitimate children who have received recognition from their biological father have the right to inherit from their biological father based on Constitutional Court Decision Number 46/PUU-VIII/2010 which decides that Article 43 Paragraph (1) of the Marriage Law which must then be read with "children born out of wedlock only have a civil relationship with their mother and their mother's family and with a man as their father who can be proven based on science and technology and/or other evidence according to law to have a blood relationship, including a civil relationship with their father's family". However, the distribution measurement still refers to the Civil Code.

**Keywords:** Legal Position, Civil Affairs, Illegitimate Children

**INTRODUCTION**

Everyone who feels ready to get married will get married, although each person's level of readiness in choosing to get married is different. Getting married is a good thing that is recommended for everyone from any religion. When carrying out a marriage, sometimes it doesn't work as it should, divorce is one of the choices that must be made. The occurrence of a divorce results in changes in several matters regarding legal actions, for example, in marriage, when carrying out legal actions, you must obtain the consent of the married partner, when a divorce occurs of course there will be changes regarding this matter, then several documents will also experience changes.

Divorce can result in quite lengthy legal actions, but it doesn't just stop at these two things, in certain cases a man in one marriage can result in the emergence of a subsequent marital relationship. However, before a man enters into a polygamous marriage or is still tied to a first marriage relationship, the law in Indonesia, namely Law No. 1 of 1974, regulates this matter, especially in Article 3 paragraph (2) and Article 4 of the Marriage Law and in Article 5 of the Marriage Law. It also provides requirements for carrying out a subsequent marriage, namely that you need to obtain approval from your previous wife, be able to provide certainty to your wives, and act fairly towards all of them. Most wives do not want to share their husbands, so it is very difficult to get this agreement, so most men enter into marriages secretly or fake their marriages so that they can remarry, especially in ancient times, many marriages are now considered invalid in the eyes of the law. whether this is due to an invalid or unregistered marriage, this gives rise to many problems where the mother is the one who takes care of the child resulting from the marriage and the child often does not receive recognition from the father.

The understanding of the concept of a legitimate child in the legal formulation contained in Law No. 1974 and KHI can be due to being "born or born" in a legal marriage or because it is a "consequence" of a legal marriage. So according to KHI, a legitimate child can be born or be born in a legal marriage but can also be born or be born as a result of a legal marriage. Children born "in" a legal marriage have two possibilities, namely: (1) after the marriage takes place, the new wife becomes pregnant, and then gives birth to the child; and (2) before the marriage took place, the wife was pregnant first, after the marriage, the wife gave birth to a child (Usman, 2019). children born from extramarital relationships are often referred to as illegitimate children or also illegitimate children as explained in Article 272 of the Civil Code, the meaning of illegitimate children is divided into two, namely in a narrow and broad sense. Illegitimate children in the broad sense include adulterous children, incestuous children and other illegitimate children, while illegitimate children in the narrow sense do not include adulterous children and incestuous children, illegitimate children in this narrow sense can be recognized. Meanwhile, in Islam, illegitimate children are called children of adultery.

Provisions of article 43 paragraph (1) of the Law. No. 1 of 1974 on Marriage states "Children born outside of marriage only have a relationship with their mother and their mother's family." Before the Constitutional Court decision No.46/PUU-VIII/2010 regulated that illegitimate children only had a civil relationship only with their mother or their mother's family and if we see that the child also did not receive love from his father or support from father of the child and this is contrary to the 1945 Constitution of the Republic of Indonesia as long as it is interpreted as eliminating relations with a man who can be proven based on science and technology and other legal evidence that turns out to have a blood relationship as the father. The contents of MK decision No. 46/PUU-VIII/2010 read Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage. (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019) which states, "Children born out of wedlock only have a civil relationship with their mother

and their mother's family", contrary to the 1945 Constitution of the Republic of Indonesia as long as it is interpreted as eliminating civil relations with a man who can be proven based on science and technology and/or other evidence according to law turns out to have a blood relationship as his father (Court, 2010).

The decision of the Constitutional Court No. 46/PUU-VIII/2010 changed the rule from children only having a civil relationship to their mother and their mother's family, to children born out of wedlock having a civil relationship with their mother and their mother's family as well as with men. - the man as the 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, this was decided by the Constitutional Court on the grounds that the main legal issue regarding children born out of wedlock is regarding the legal meaning of the phrase "born outside of marriage". To obtain answers from a broader perspective, it is necessary to answer related problems, namely the issue of the legitimacy of the child. Naturally, it is impossible for a woman to become pregnant without sexual intercourse (coitus) or through other means based on technological developments that cause fertilization.

Based on the view from a legal perspective, the law stipulates that a child born from a pregnancy due to sexual relations outside of marriage only has a relationship with the woman as the mother, if the law exempts men from having sexual relations that cause pregnancy and the birth of a child. This is from his responsibility as a father and at the same time whether the law negates the child's rights towards the man as his father. Based on existing technological and medical developments, it is possible to prove that a child is the child of a certain man. The legal consequence of the legal event of birth due to pregnancy, which is preceded by sexual relations between a woman and a man, is a legal relationship in which there are reciprocal rights and obligations, the legal subjects of which include the child, mother and father.

Based on the description above, the relationship between a child and a man as father is not solely due to a marriage bond, but can also be based on proof of the existence of a blood relationship between the child and the man so that the father is not free from responsibility for the child. However, in the Constitutional Court's decision, the Constitutional Court forgot that in civil relations the meaning and concept of civil legal relations as intended in the decision is still not explained, this will certainly create an ambiguity in future practice, where in civil law it already provides sufficient explanation regarding the relationship. children's civil rights as parents and towards children legally in Indonesia in any case and regarding the child's rights, which have also been explained, the rights of children include love, a decent life, inheritance and guarantees for their future. All of this in the Constitutional Court's decision also recognizes matters regarding children's rights, for illegitimate children, will the child's rights also apply as with family law regulations regarding the civil legal relationship of the biological father?

Not to mention the issue of inheritance, which if we look at Indonesia, there are quite a lot of legal sources available, so this sometimes creates conflicts in practice regarding inheritance law. Because in the concept of Islamic law we see that illegitimate children do not have the right to inherit, in terms of inheritance this is certainly contrary to western civil law where illegitimate children still have a share in the inheritance rights in the inheritance and the rights of the child in any way. because in this case there are also children's rights, namely in terms of providing support and providing security until the child can grow up.

Inheritance problems will also arise due to such conditions, however, there is a conflict between the Civil Code and Law Number 1 of 1974 concerning Marriage (Marriage Law) regarding the inheritance rights of illegitimate children. The Marriage Law only recognizes children born in or as a result of a valid marriage as legitimate children. Then, Article 43 paragraph (1) states that children born out of wedlock only have a civil relationship with their mother and their mother's family. So according to the Marriage Law, illegitimate children are

not entitled to inheritance from their true father based on blood relationship.

In this way, there are no longer conflicting rules between the Civil Code and the Marriage Law and it has recognized the position of illegitimate children towards their father in terms of inheritance in particular and in other civil legal relations in general as long as the child's paternity can be proven based on science and technology and/or other evidence according to the law is blood relations, including civil relations with the father's family. Based on the explanation above, we will discuss the legal status of illegitimate children from the perspective of regional law and regarding the inheritance rights of children born to illegitimate children regarding the inheritance of their biological father.

## **RESEARCH METHODS**

The research method used in this research is normative juridical research, by reviewing regulations applicable legislation, using Law No. 1 Marriage of 1974, Law No. 23 of 2002, Civil Code. The approaches used in this research are a statutory approach, a case approach and a conceptual approach.

## **DISCUSSION**

### **Legal Status of Illegitimate Children**

According to Law Number 23 of 2002 concerning Child Protection, a child is defined as someone who is not yet 18 (eighteen) years old, including children who are still in the womb. This law does not limit the meaning of legitimate children or illegitimate children. In the eyes of this law, all children have the same position and are entitled and obliged to be protected. Article 28 Paragraph 2 of the 1945 Constitution also contains guarantees for children's rights.

State administrators are obliged to make this a strong and highest legal basis in child protection legal institutions. There is no discrimination against children, whether legitimate or illegitimate or illegitimate children. Illegitimate children and legitimate children should not have any distinction or discrimination. Both are included in the category of children who are entitled to protection from the state. However, in reality, until now there is no positive law in Indonesia that is able to provide legal certainty regarding the fulfillment of the rights of illegitimate children. The state has not paid attention to fulfilling the rights of illegitimate children. Even though Indonesia is a country based on Pancasila, namely a country that believes in one Almighty God and has just and civilized humanity. Apart from that, the Child Protection Law is implemented on the basis of Pancasila based on the 1945 Constitution of the Republic of Indonesia and the basic principles of the Convention on the Rights of the Child, including:

1. Non-discrimination;
2. The best interests of the child;
3. The right to life, survival and development; And
4. Respect for children's opinions.

The Convention on the Rights of the Child (KHA) or better known as UN-CRC (United Nation Convention on the Rights of the Child) is a human rights agreement that guarantees children's rights in the fields of civil, political, economic, social, health and culture approved in 1989 by the United Nations. Indonesia then ratified this CRC in 1990. As a manifestation of the government's commitment to ratifying the Convention on the Rights of the Child, the Indonesian Government ratified Law Number 23 of 2002 concerning Child Protection on October 22 2002 which, in its entirety, is the main subject matter of this law. contains the provisions and principles of the Convention on the Rights of the Child, which were later revised in 2014 in Law Number 35 of 2014.

This convention has 54 articles that establish the basic rights of children, including the rights to health, education, protection from violence and exploitation, the right to speak, as well as the right to life, survival and optimal development. The Convention on the Rights of the

Child certainly protects every child throughout the world, without any discrimination. Children protected by this convention include children from all backgrounds, including children with disabilities, children from minority groups, children living under difficult economic conditions, and children living in areas of conflict or natural disasters. So all children in the world are protected by this Convention regardless of their background.

The Convention on the Rights of the Child is very important for children because it guarantees their basic rights and protects them from various forms of exploitation and violence. The Convention also recognizes the importance of children's participation in decisions that affect their lives. Through these conventions, children have a voice that is recognized and considered in decisions that affect their lives.

Children's rights are human rights of children that have international standards, there are 4 basic children's rights that must be fulfilled, namely:

1. The Right to Survival is the right to preserve and maintain life and the right to obtain the highest standard of health and the best possible care
2. Protection Rights, namely protection from discrimination, exploitation, violence and neglect;
3. The right to growth and development is the right to obtain education and the right to achieve a standard of living that is adequate for physical, mental, spiritual, moral and social development
4. The right to participate is the right to express opinions in all matters that affect children.

So that the State and Government of the Republic of Indonesia have an obligation and responsibility to respect and guarantee the human rights of every child without distinction of ethnicity, religion, race, class, gender, ethnicity, culture and language, the child's legal status, the child's birth order, and physical condition and /or mental.

This revision of the Marriage Law only regulates the age limit at which a marriage is permitted for a person. However, it does not specify in more detail the status of children born in an illegitimate marriage or illegitimate children. In fact, in 2010 or 9 years before the revision of the Marriage Law, there was already a legal issue regarding the status of illegitimate children which resulted in a decision from the Constitutional Court Number 46/PUU-VIII/2010.

The only thing that regulates the civil rights of illegitimate children is the Civil Code or Civil Code or *Burgerlijk Wetboek* or BW which is currently still in effect in Indonesia which was born and formed inseparable from the influence of European nations, especially the Dutch, as well as religion and customs. which was adhered to by local people in Colonial Indonesia.

A child who is born will not be able to live alone without the protection and love of his parents. The law has also regulated the obligations of parents to care for their children, whether in marriage or if there has been a divorce.

According to the Civil Code, it does not specify the definition of children. However, children are concretely equated with someone who is not yet an adult. Article 330 of the Civil Code explains that immature people are those who have not reached the age of 21 years and have not previously been married. So what is meant by Child is anyone who is not yet 21 years old and is not married. However, if a child marries before the age of 21 and then divorces or is left by her husband before the age of 21, then she is still considered an adult and no longer a child.

Article 272 of the Civil Code states that an illegitimate child is a child born to a mother who is seeded by a man who is not in a legal marriage. When referring to Article 2 of Law Number 1 of 1974 concerning Marriage, what is meant by a valid marriage is if it is carried out according to the laws of each respective religion and belief, then each marriage is recorded according to the applicable laws and regulations. The content of the article emphasizes that the validity of marriage lies in the law according to each religion and the marriage must be registered for the protection of civil law that arises afterwards.

Children born outside of marriage are different from children born without a marriage bond. This implies that illegitimate children are children born from marriages that are not registered but are valid according to their religion or beliefs. Meanwhile, children born to women who do not have a valid marriage bond according to their religion or beliefs are called children of adultery.

The status of children in the Civil Code classifies 3 (three) groups of child status, namely:

1. A legitimate child, namely a child born in a marriage (Article 250 of the Civil Code) (Sudarsono, 1994).

The legality of children born before the one hundred and eightieth day (6 months) of marriage can be denied by the husband as intended in Article 251 of the Civil Code. Illegitimate children, except those resulting from adultery or incest, can be legalized by subsequent marriages of their father and mother.

2. Children born out of wedlock, but can be recognized.

In order to have a legal relationship with their parents, illegitimate children must be recognized. Recognition of an illegitimate child is personal in nature, which means that civil relations only exist between the recognized illegitimate child and the parents who acknowledge him. Meanwhile, there is no relationship with the relatives who admit it. According to the Civil Code, recognition can be done by (Asri, 1998):

- a) Authentic (Article 281 Civil Code);
- b) Strictly speaking and cannot be concluded (Satrio, 1988).

As a result of this recognition, legal relations arise, including granting marriage permits, reciprocal obligations in providing a living, guardianship, the right to use a name, inheritance, and so on.

3. Children are born outside of marriage, but cannot be recognized by either their father or mother. Children in this sense are divided into 2 (two) groups, namely:

- a) Adultery's children are children born from a relationship between a woman and a man who are not legally married.
- b) Discordant children are children born from a relationship between a man and a woman who are prohibited from marrying because they are blood related (Satrio, 1988).

According to etymology, adultery is an act of unlawful sexual intercourse, whereas according to terminology it is defined as the act of a man having sexual relations with a woman, which according to human instincts, this act is considered normal. Meanwhile, based on Article 285 of the Criminal Code, what is meant by the act of adultery is a married man or woman who commits overspel even though it is known that Article 27 BW applies to him.

The elements of adultery include:

1. There is sexual intercourse.
2. What is done between a man and a woman.
3. They are not tied to each other in a marriage relationship.

Article 272 of the Civil Code explains that every child born out of wedlock (single men and women) can be recognized and legalized, except for adulterous or incestuous children.

It can be concluded that sexual relations outside marriage between single men and women are not considered zina. According to the Civil Code, what is meant by adultery is sexual relations carried out outside of marriage by those of whom one of them is married or married.

Meanwhile, discordant children are children resulting from relationships within the family (incest), for example the relationship between a father and his daughter. The term discordant child is also stated in Article 867 of the Civil Code. This prohibited marriage is stated in Article 8 of the Marriage Law Number 1 of 1974, namely:

1. Blood related in a straight downward or upward lineage;

2. Blood relations in a lateral lineage, namely between brothers, between one and one's parents' siblings, and between one and one's grandmother's siblings;
3. Family relations, namely parents-in-law, step-daughter-in-law, and stepmother/stepfather;
4. Relatives related to foster care, namely parents, foster children, foster siblings, and foster aunts/uncles;
5. Relative to the wife or as an aunt or niece of the wife, in the case of a husband having more than one wife;
6. Having a relationship where marriage is prohibited by religion or other applicable regulations.

Apart from that, the Civil Code in Article 31 also prohibits marriage as follows:

1. Between brother-in-law and sister-in-law, legal or invalid, except if the husband or wife who caused the marriage has died or if, on the basis of the husband's or wife's absence, permission has been given by the Judge to the surviving husband or wife to carry out the marriage. other;
2. Between parents' uncles and/or uncles and nieces, as well as between parents' aunts or aunts and nephews, legitimate or illegitimate. If there are important reasons, the president, by granting dispensation, has the power to eliminate the prohibitions contained in this Article.

Based on the provisions of the Civil Code, adulterous children and incestuous children cannot be recognized by their biological parents, so that legally (juridically) a child born from adultery will not have a father or mother and will not have any civil rights except as determined in Article 867 Paragraph (2) of the Civil Code is limited to the right to receive a living wage as necessary based on the capabilities of the biological parents after taking into account the number and condition of the legal heirs according to the law (Witanto, 2012).

A child of adultery can have the same position as a child resulting from a legal marriage, as long as the biological father admits that the child is the result of a relationship with the mother and can be proven by evidence that according to the law he is related by blood to the biological father or if the father and mother subsequently marry. legal so that the child of adultery can be given recognition. If the father and mother do not get married, each of them can still recognize their illegitimate children. This recognition according to Article 281 of the Civil Code is carried out through an authentic deed. So each interested party has the right to demand that the acknowledgment be recorded in the child's birth certificate.

Acknowledgment can also be made through a deed made by civil registration and recorded in the birth register according to the day the confession was made. This must also be recorded in the child's birth certificate. A child's confession can only be accepted and approved by the mother who is carrying him. An illegitimate child actually has no real differences in law in Indonesia. Legitimate children and illegitimate children are children who have the right to receive protection from the state through regulations and provisions relating to children. Law Number 4 of 1979 concerning Child Welfare.

The issue of child protection is also emphasized by the presence of Law Number 23 of 2003 concerning Child Protection which states that child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with their dignity and worth. humanity, and receive protection from violence and discrimination as stated in Article 1 Paragraph 2 of the Child Protection Law and in Article 14 of the Child Protection Law which states that every child has the right to be raised by his own parents, unless there is a valid reason and/or legal regulations indicating that that separation is in the best interests of the child and is the final consideration. Children are also components in society who are very vulnerable to committing deviant acts. Especially if the

child is in an unhealthy environment that does not support his growth. So, criminal acts can also be committed by children.

Even though all the positive provisions that apply to children are the same, in reality there are several things that differentiate them, namely those related to the status and position of children which have consequences in their civil relations, especially those related to inheritance because according to civil law, illegitimate children are only legally and familially bound. with the mother or woman who gave birth to him. In the inheritance system, according to Article 832 of the Civil Code, it is stated that those entitled to become heirs are blood relatives, whether legal according to law or outside of marriage. It can be understood from this that in order for illegitimate children to obtain their inheritance rights, they need to obtain recognition from their parents.

The event of child recognition is a legal act in which a person accepts that his position is as the biological father or mother of the child he acknowledges. So with this recognition, the child's civil rights are recognized as stated in Article 280 of the Civil Code.

There are many impacts that occur on illegitimate children who do not receive recognition from their father because the child will be considered an illegitimate child in the eyes of the law and only has a civil relationship with his mother. The detrimental legal consequences for illegitimate children are:

1. Unrecognized illegitimate children have no legal relationship with their biological father;
2. Administratively, the child's certificate will only include the name of the mother so that it can have an impact on the child's condition socially and psychologically;
3. Uncertainty of the child's status and the child's position in the eyes of the law;
4. Children do not have the right to living expenses and education, as well as maintenance and inheritance from their father.

From the description above, it can be concluded that illegitimate children only have a civil legal relationship with their parents after the parents recognize the child and we can see this after the Constitutional Court Decision Number 46/PUU-VIII/2010.

On June 14 2010, Aisyah Mochtar submitted a request for Judicial Review to the Registrar of the Constitutional Court. Aisyah proposed reviewing this law due to her divorce from her husband, Moerdiono, who is a former Minister of State Secretary. When he married Aisyah Mochtar, Moerdiono was still legally married to another woman in the eyes of the state and religion. However, Moerdiono's marriage to Aisyah Mochtar on December 20 1993 in Jakarta was not registered at the KUA at that time because of Law Number 1 of 1974 which adheres to the principle of monogamy. Aisyah Mochtar's marriage to Moerdiono was religiously legal and from the two of them a son was born, Muhammad Iqbal Ramadhan, who after Aisyah Mochtar and Moerdiono divorced, this child was not recognized and denied by Moerdiono.

Muhammad Iqbal Ramadhan's status is unclear. Aisyah Mochtar had difficulty registering her child in the civil registry to obtain a birth certificate, because there was no biological father's name. The consequences of an unofficial marriage according to the Marriage Law (Irfan). Apart from that, the status of a child before the law becomes unclear and legal, which is a discriminatory act against children. Even though Aisyah Mochtar and Moerdiono's marriage was legal in accordance with marriage principles and religious norms, it was deemed invalid by the Marriage Law. Something that is in accordance with religious norms is actually considered to violate the law.

Constitutional Court Decision Number 46/PUU-VIII/2010 is the final decision of the request for review of the provisions of Article 2 Paragraph (2) and Article 43 Paragraph (1) of Law Number 1 of 1974 concerning Marriage submitted by Hj. Aisyah Mochtar alias Machica bint H. Mochtar Ibrahim which resulted in losses for the Petitioner, especially in relation to



marital status and the legal status of children resulting from the Petitioner's marriage. According to the Petitioner, the provisions of Article 2 Paragraph (2) and Article 43 Paragraph (1) of the Marriage Law have created discriminatory treatment and are contrary to the provisions of Article 28B Paragraph (1) and Paragraph (2) as well as Article 28D Paragraph (1) of the 1945 Constitution.

In this decision, the panel of judges had considerations in deciding the request for review of the provisions of Article 2 Paragraph (2) and Article 43 Paragraph (1) of Law Number 1 of 1974 concerning Marriage, namely that the main legal issue regarding the registration of marriage according to statutory regulations is regarding the meaning of the law. (legal meaning) marriage registration.

Based on the explanation of the Marriage Law above, marriage registration is not a factor that determines the validity of a marriage and registration is an administrative obligation that is required based on statutory regulations. The factors that determine whether a marriage is valid are the conditions determined by the religion of each prospective bride and groom. The obligation to register marriages by the state through statutory regulations is an administrative obligation. According to the Court, the importance of the administrative obligation in the form of marriage registration, can be seen from two perspectives.

First, from the state's perspective, the recording is required in the context of the state's function of providing guarantees for the protection, promotion, enforcement and fulfillment of the human rights concerned which are the responsibility of the state and must be carried out in accordance with the principles of a democratic rule of law which are regulated and outlined in statutory regulations. -invitation. If the recording in question is considered a limitation, according to the Court, such recording does not conflict with constitutional provisions because the limitation is determined by law and is carried out with the sole intention of ensuring recognition and respect for the rights and freedoms of other people, and to fulfill fair demands in accordance with moral considerations, religious values, security and public order in a democratic society.

Second, administrative registration carried out by the state is intended so that marriage, as an important legal act in the life of the person concerned, which has implications for very broad legal consequences, can later be proven with perfect evidence with an authentic deed, so that protection and services by the state related to the rights arising from a marriage in question can be carried out effectively and efficiently. This means that by having authentic proof of marriage, the rights that arise as a result of marriage can be protected and served well, because there is no need for a proof process that takes more time, money, energy and thought, such as proving the origin of the child in Article 55 of the Marriage Law stipulates that if the origin of the child cannot be proven by an authentic certificate then this matter will be determined by a competent court decision. Such proof is certainly no more effective and efficient when compared to having an authentic deed as proof.

Apart from that, regarding the main legal issue regarding children born out of wedlock, the Court is of the opinion that to obtain an answer from a broader perspective, it is necessary to first answer the issue of whether the child is legitimate or not. According to the Court, naturally, it is impossible for a woman to become pregnant without a meeting between ovum and spermatozoa either through sexual intercourse (coitus) or through other means based on technological developments that cause fertilization. Therefore, it is inappropriate and unfair when the law stipulates that a child born from a pregnancy due to sexual relations outside of marriage only has a relationship with the woman as the mother. It is also inappropriate and unfair if the law exempts men from engaging in sexual relations. causing the pregnancy and birth of the child out of his responsibility as a father and at the same time the law negates the child's rights towards the man as his father. Moreover, based on existing technological developments, it is possible to prove that a child is the child of a certain man.

The legal consequence of the legal event of birth due to pregnancy, which is preceded by sexual relations between a woman and a man, is a legal relationship in which there are reciprocal rights and obligations, the legal subjects of which include the child, mother and father. Based on the explanation above, the relationship between a child and a man as the father is not solely due to a marriage bond, but can also be based on proof of the existence of a blood relationship between the child and the man as the father. Thus, regardless of the procedure/administration of the marriage, children born must receive legal protection. If this is not the case, then the person who is harmed is the child who was born out of wedlock, even though the child is innocent because he was born against his will. Children who are born without a clear father's status often receive unfair treatment and stigma in society. The law must provide fair legal protection and certainty regarding the status of a child who is born and the rights he or she has, including for children who are born even though the validity of the marriage is still in dispute.

So with these considerations in mind, the Court stated that Article 43 paragraph (1) of the Marriage Law which states, "Children born outside of marriage only have a civil relationship with their mother and their mother's family" must be read, "Children born outside of marriage have a civil relationship with his mother and his mother's family as well as a man as his father who can be proven based on science and technology and/or other evidence according to law to have blood relations, including civil relations with his father's family.

However, in the decision-making process by the Panel of Judges of the Supreme Court, one of the Constitutional Justices, namely Maria Farida Indrati, had a different reason, namely that the existence of Article 2 paragraph (2) of the Marriage Law creates ambiguity in the meaning of Article 2 paragraph (1) of the Marriage Law because it is recorded. What is meant by Article 2 paragraph (2) of the a quo Law is that it is not clear whether it is merely an administrative recording which has no effect on the validity or not of marriages which have been solemnized according to their respective religions or beliefs, or whether the registration has an effect on whether or not the marriages which have been entered into are valid. done. The existence of religious norms and legal norms in the same legislation has the potential to weaken each other and even conflict. In this case, the potential for mutual cancellation occurs between Article 2 paragraph (1) and Article 2 paragraph (2) of the Marriage Law. Article 2 paragraph (1) which basically guarantees that marriage is valid if it is carried out according to the laws of each religion and belief, turns out to be obstructed and on the contrary is also hindered by the implementation of Article 2 paragraph (2) which basically regulates that marriage will be valid and have force legal if it has been recorded by an authorized agency or a marriage registrar's employee. If Article 2 paragraph (2) of the Marriage Law is interpreted as administrative registration which does not affect the validity or invalidity of a marriage, then this does not conflict with the 1945 Constitution because there are no additions to the marriage requirements. Accordingly, the word "marriage" in Article 43 paragraph (1) of the a quo Law will also be interpreted as an Islamically valid marriage or marriage according to the five pillars of marriage. However, based on a sociological review of the institution of marriage in society, the validity of marriage according to certain religions and beliefs cannot directly guarantee the fulfillment of the civil rights of wives, husbands, and/or children born from such marriages due to the implementation of religious and customary norms. in society it is left completely to individual consciousness and community consciousness without being protected by official authority (the state) which has coercive power.

Apart from that, according to Constitutional Justice Maria Farida Indrati, marriage registration is needed as state protection for the parties in a marriage, and also to avoid the tendency of inconsistencies in the perfect/complete application of religious teachings and beliefs in marriages that are held according to that religion and belief. In other words, marriage registration is necessary to avoid the application of religious laws and beliefs in marriage in a

piecemeal manner to legitimize a marriage, while post-marital home life is not in accordance with the purpose of the marriage in question. The existence of abandonment of wives and children, domestic violence, the phenomenon of contract marriages, the phenomenon of mistresses (other dream women), and so on, is evidence of the lack of consistency in implementing the goals of marriage as a whole. The essence of recording, apart from the sake of orderly administration, is to protect women and children. The requirements for marriage registration can be placed in at least two main contexts, namely preventing and protecting women and children from marriages that are carried out irresponsibly. Registration as an effort to protect women and children from marital abuse can be carried out by setting conditions so that marriage plans that have the potential to cause harm can be avoided and rejected.

The state regulates (legislates) the terms of marriage as an effort to positivize the norms of religious teachings or beliefs in marriage law. The conditions for marriage formulated by the state, the fulfillment of which is a condition for registering a marriage as well as a condition for issuing a Marriage Certificate, can be found in Law Number 1 of 1974 concerning Marriage and other statutory regulations related to marriage and population administration.

The potential losses resulting from marriages that are not based on the Marriage Law for women (wives) are very diverse, but actually the most important thing is whether these losses can be recovered or not. This is the crucial point in the Marriage Law, especially the regulations regarding marriage registration. In the context of the marriage legal system, protection by the state (Government) for parties in a marriage, especially women as wives, can only be carried out if the marriage is carried out consciously in accordance with the Marriage Law, one of the conditions of which is that the marriage is registered in accordance with the regulations. current regulation. A further consequence is that for marriages carried out without being registered, the state cannot provide protection regarding marital status, marital property, inheritance and other rights arising from a marriage, because to prove the existence of the woman's (wife's) rights must be proven first. Previously there was a marriage between a woman (wife) and her husband.

Marriages that are not based on the Marriage Law also have the potential to harm children born from the marriage. The main potential loss for children is the non-recognition of the child's relationship with his biological father, which of course results in his biological father's obligations not being claimed to pay for the child's living needs and other civil rights. Apart from that, in a society that still tries to maintain the wisdom of traditional values, the definition of family always refers to the meaning of the inner family or elementary family, namely a family consisting of father, mother and children (children). The existence of a child in a family that does not have complete spiritual family elements or does not have recognition from its biological father will give it a negative stigma, for example, as an illegitimate child. This stigma is a potential loss for children, especially social-psychological losses, which can actually be prevented by continuing to acknowledge the child's relationship with his biological father. From the perspective of statutory regulations, differential treatment of children due to certain causes that are not at all caused by the actions of the child concerned, can be categorized as a discriminatory action.

This potential loss is emphasized by the provisions of Article 43 paragraph (1) of the Marriage Law which states, "Children born outside of marriage only have a civil relationship with their mother and her mother's family." The existence of this article closes the possibility for children to have a civil relationship with their biological father. This is the risk of marriages that are not registered or marriages that are not carried out according to the Marriage Law, but it is not appropriate if children have to share in the losses caused by the actions (marriage) of their parents. If it is considered as a sanction, neither state law nor religious law (in this case the Islamic religion) recognizes the concept of children having to bear the sanctions resulting from actions committed by their parents, or what is known as "hereditary sin".

In other words, the potential loss resulting from a marriage that is carried out not in accordance with the Marriage Law is a risk for the man and woman who enter into the marriage, but not a risk that must be borne by the children born in the marriage. Thus, according to Panel Judge Maria Farida Indrati, fulfilling the rights of children born from a marriage, regardless of whether the marriage is valid or not according to state law, remains the obligation of both biological parents.

Based on the explanation above, the relationship between a child and a man as the father is not merely a marriage bond, but can also be based on proof of the existence of a blood relationship between the child and the man as the father. Thus, regardless of the procedure/administration of the marriage, children born must receive legal protection. If this is not the case, then the person who is harmed is the child who is born outside of marriage, even though the child is not guilty because he was born against his will.

Children who are born without a clear father's status often receive unfair treatment and stigma in society. The law must provide protection and fair legal certainty regarding the status of a child who is born and the rights that exist to him, to children who are born even though the validity of the marriage is disputed.

From the explanation above, it can be concluded that the Constitutional Court makes decisions based on several considerations based on the following factors:

1. Sociological.

So that children born outside of marriage can be treated fairly and there is no negative stigma among society. The law is obliged to provide protection and legal certainty that is as fair as possible regarding the status of a child.

2. Advances in Science and Technology

In order to obtain clarity regarding the relationship between the child's status and the biological father based on science and technology and/or other evidence according to the law, he has a blood relationship, including a civil relationship with his father's family

3. Men's Responsibilities

That the birth of a child is the result of sexual relations between a woman and a man, so it would be unfair to only impose civil rights on the mother who gave birth to him.

4. Legal Protection of Children

As mandated in the Child Protection Law, the aim of child protection is to ensure that children's rights are fulfilled so that they can live, grow and develop.

Constitutional Court Decision Number 46/PUU-VIII/2010 seems to be a breath of fresh air for justice seekers regarding the status of illegitimate children who previously only had a civil relationship with their biological mother and the biological mother's family. Based on this, in 2022, a mother named Wenny Ariani sought justice for her daughter, Naira Kaemita Sasmita alias Kekey, who she admitted was the biological child of a famous actor, namely Rezky Aditya, who at the time the lawsuit was filed was also the husband of actress Citra Kirana.

Rezky Aditya refused to admit that the child born to Wenny Ariani was the biological child of the two of them. However, on February 3 2022, the Tangerang District Court rejected the lawsuit on the grounds that in civil cases the panel is essentially passive so that the full proof is the plaintiff's right to prove all the arguments for the claim or the defendant's right to prove all the arguments for his denial. DNA testing is the plaintiff's obligation to prove the claim. Based on this decision, Wenny Ariani filed an appeal which was granted by the Banten High Court which stated that Rezky Aditya was the biological father of Naira Kaemita Sasmita as long as it was not proven otherwise. The contents of PT Banten's decision are as follows:

Judge

In exception to strengthening the Tangerang District Court decision Number 746/PDT.G/2021/PN. TNG.

In the main case, cancel decision 746/PDT.G/2021/PN. TNG and judge yourself:

1. Accept the plaintiff/appellant's lawsuit in part
2. Declare that the defendant/appellee has committed an unlawful act
3. Declare that a daughter is the biological child of the defendant/appellee as long as the defendant/appellee cannot claim otherwise.
4. Refused for the rest.

The Panel of Judges decided that this decision was based on Law of the Republic of Indonesia No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning Child Protection, namely Article 7 (1) that every child has the right to know his parents, be raised and cared for. their own parents and Article 1 paragraph 12, Children's rights are part of human rights which must be guaranteed, protected and fulfilled by parents, families, communities and the state and the government and regional governments.

Apart from that, from the evidence provided by Rezky Aditya, there is not a single piece of evidence that can refute the arguments of Wenny Ariani's lawsuit. Although based on evidence in the form of letters submitted by Wenny Ariani and statements from witnesses, no definite evidence was found that a girl named Naira Kaemita Tarekta was Rezky Aditya's child, but from all of this evidence the High Court Judge based on Article 164 HIR, Article 1886 of the Civil Code is a means of presumptive evidence.

In this case, according to the Panel of Judges at the Banten High Court, Wenny Ariani is in a weak position to prove as intended in Article 163 HIR or Article 1865 of the Civil Code which states that every person who postulates that he has a right or right to uphold his own rights or cancels something. Another person's right to point to an event is required to prove the existence of the right to know the event so that Rezky Aditya is the one who must be charged with proving his denial. Apart from that, it is in accordance with the principle of *Negativa Non Sunt Probanda* that something that is difficult to prove means that the opposing party must prove it. So the Panel of Judges at the Banten High Court was of the opinion that a girl named Naira Kaemita Tarekat was Rezky Aditya's biological child as long as he could not legally prove that the child was not his biological child.

Rezky Aditya, who did not accept the decision, then filed an appeal to the Supreme Court but the result was that the lawsuit was rejected by the Panel of Judges at the Supreme Court. However, in this case the panel of judges decided to declare that a girl was Rezky Aditya's biological child without carrying out a series of evidentiary measures based on science and technology and/or other evidence and only using presumptive evidence. Rezky Aditya must carry out the Supreme Court's decision, namely providing living expenses to his biological children and must bear the risk if he does not carry it out.

In the civil justice process, civil procedural law itself recognizes 5 types of valid evidence based on Article 164 HIR, namely:

1. Letter;
2. Witness;
3. Estimate;
4. Confession;
5. Oath

The definition of presumptive evidence is contained in Article 1915 of the Civil Code, namely that Suspicion is a conclusion drawn by law or by a judge from an event that is publicly known to an event that is not well known. There are two types of estimates, namely estimates according to law, and estimates that are not based on law as follows (Harahap, 2017):

1. Allegations According to Law

Also called legal estimates (*rechtsvermoeden*) or statutory estimates (*wettelijke vermoeden*). In writing it is often called *presumptiones juris* (presumption of law).

The form of statutory estimates is divided into two, namely:

- a. Presumption according to law that cannot be denied or irrebuttable presumption of law;
- b. Presumptions according to law that can be refuted or rebuttable presumption of law.

The meaning of statutory presumption is outlined in Article 1916 of the Civil Code, namely:

- a. Allegations based on a special provision of law relating to or relating to certain acts or certain events;
  - b. Allegations of this kind, according to Article 1916 of the Civil Code, include:
    - 1) An act which is declared void by law, because solely by its nature and form is deemed to have been carried out to smuggle a provision of the law;
    - 2) Actions where the law states that property rights or debt relief are inferred from certain circumstances;
    - 3) The power given by law to a judge's decision which has obtained permanent legal force (*res judicata*);
    - 4) The power given by law to a judge's decision which has obtained permanent legal force (*res judicata*)
2. Judge's Allegations/Allegations That Are Not Based on Law

Regulations regarding Judges' Suspects are contained in Article 1922 of the Civil Code which states that allegations that are not based on the law itself are left to the consideration and vigilance of the Judge, who in this case must not pay attention to other allegations. Such allegations may only be taken into account if the law permits proof by witnesses, as well as if an action or deed is objected to on the grounds of bad faith or fraud.

The judge's estimate is the opposite of the statutory estimate, namely the estimate that is left to the judge's consideration. In Common Law, it is called presumption of fact or provisional presumption, which is nothing other than circumstantial evidence, namely proof of a fact and event. For example, concluding whether someone is somewhere or not, based on certain circumstances or facts.

Referring to the provisions of Article 173 HIR and Article 1922 of the Civil Code, the definition of a judge's suspicion is:

- a. Allegations based on reality or facts (*fetelijke vermoeden*) or (presumptions *facti*) originating from facts proven in court as the starting point for formulating allegations;
- b. This is done by the judge because the law itself gives him the authority in the form of freedom to formulate estimates.

From the explanation above, the law leaves it up to the judge's opinion and consideration to construct presumptive evidence based on or sourced from evidence that already existed in the trial. Where or from which party the data or facts are taken by the judge is free. Yes, based on the facts presented by the plaintiff. It could also be from the facts presented by the defendant. The benchmark requirement is that the facts or data used as a source of evidence to draw suspicions have been proven in court.

Based on the above, it can be concluded that the Panel of Judges in deciding the case between Rezky Aditya and Wenny Ariani used presumptive evidence which falls into the classification of Judge's Suspicions or Suspicions That Are Not Based on Law. Namely drawing conclusions from indirect evidence provided by Wenny Ariani as well as statements from witnesses who knew about it.

Regarding this decision itself, the author is of the opinion that in order to provide justice and legal certainty regarding whether a person has the right or not, it would be more precise in its implementation that the Panel of Judges ordered a DNA test to be carried out first as a

consideration in deciding whether a man is the biological father because what is meant by father. A biologist is a man who contributes half of a child's genetic makeup. So, in determining the term biological father, information regarding a person's genetic composition is required which can only be obtained through medical results such as DNA tests or paternity tests, not just based on presumptive evidence.

Constitutional Court Decision Number 46/PUU-VIII/2010 also contains the intention that a child born out of wedlock can later have a civil legal relationship with his father as long as this can be proven based on science and technology and/or other evidence that the child is truly being related to the man by blood. In Indonesia, proof regarding whether or not there is a blood relationship between a father and an illegitimate child usually uses proof using a DNA test or paternity test.

DNA testing is a method used to find out a person's identity because DNA is a molecule inherited from biological parents to each individual. DNA testing or genetic testing is actually not only done to find out a person's lineage or identity, but can also detect certain diseases. There are various types of DNA tests and each has different purposes and benefits, namely:

1. Preimplantation Testing  
This test is carried out by couples who are planning a pregnancy through IVF or couples who are at risk of having a child with certain genetic disorders.
2. Prenatal Testing  
This test is carried out to detect mutations or genetic abnormalities in the fetus' chromosomes.
3. Carrier Testing or carrier testing  
This test is carried out to find out whether a person has certain genes or conditions that might be passed on to their children.
4. Prediction Test  
Predictive tests can be used if someone has parents or close relatives with certain hereditary diseases
5. *Maternity or Paternity*Test  
A DNA test that can be used to determine the identity of a child's parents. This test has a very high level of accuracy, reaching 99.9%
6. Forensic Test  
A series of DNA tests can also be used as an examination for forensic purposes or law enforcement processes. Some examples of DNA tests that are often carried out in forensic tests are blood tests to determine the blood of the victim or perpetrator of the crimelaw, fingerprint test, and the process of identifying victim body parts a specific crime or event, such as a fire or plane crash.

Biological father or biological father can be proven with the closest possible test, namely the DNA (Deoxyribo Nucleic Acid) test, which is a test on nucleic acid which stores all genetic information. This DNA test or paternity test has legal force that can be accounted for because it is carried out scientifically or based on science carried out by experts. This test also has legal certainty because the sample obtained through this DNA test will not change throughout a person's life. Even lifestyle or use of drugs will not change the structure of DNA. The way a DNA test works begins with taking a sample which can be obtained from blood, saliva and hair (Witanto, 2012). These three methods are the most commonly used. The procedure for carrying out a DNA test in cases of paternity examination is to use a buccal swab sample. This sample will be taken from the oral cavity walls of the father, mother and child. Usually, people taking this type of DNA test are not allowed to eat or drink 30 minutes before taking the sample. Later, the samples that have been taken will be sent to the laboratory for testing to look for specific changes in chromosomes, DNA or proteins. The next step is the isolation of DNA from the cells in the sample. This process involves breaking down cells and

separating DNA from other cellular components using special chemicals and laboratory techniques. The DNA isolated is often in small quantities, so it needs to be amplified (multiplied) for analysis. Polymerase chain reaction (PCR) is a common method used to amplify specific DNA fragments, making it possible to detect and analyze specific genes or sequences. After the DNA is amplified, the next step is sequence analysis. A DNA sequence is a sequence of nucleic acids (adenine, cytosine, guanine, thymine) that forms the genetic code. Modern DNA sequencing technologies, such as the Sanger method or beam-based sequencing (NGS), allow the identification and recording of nucleotide sequences in DNA fragments. The DNA sequencing results are then interpreted to identify genetic differences or variations in the nucleotide sequence. These genetic variations can be mutations that can be related to disease, health risk factors, or unique individual characteristics. Basically, DNA testing has a fairly high level of complexity in order to get the results. Therefore, it can take several weeks to months to get DNA test results.

The impact that occurs when a man is proven to be the biological father of an illegitimate child is that the biological father and biological mother of the illegitimate child are then required to complete the DNA test evidence with an authentic deed, namely the Child Acknowledgment Deed and Child Validation Deed, this is necessary to provide The legal bond that will proceed next is the implementation of claims for rights and obligations in a civil legal relationship, especially with the biological father.

Every legal recognition of an illegitimate child must be reported and registered with the civil registry and then a Child Validation Deed is issued and a marginal note is made on the child's birth certificate in accordance with Article 36 of the Indonesian Civil Registration Regulations (Usman, 2005).

Proving the blood relationship between an illegitimate child and his biological father brings certain consequences, namely the emergence of a civil legal relationship. The provisions in Article 280 of the Civil Code state that a legal recognition of an illegitimate child creates a civil legal relationship with the biological father who recognizes it, especially in matters of inheritance. So that the position of illegitimate children is recognized and legal.

The Constitutional Court's decision Number 46/PUU-VIII/2010 is deemed appropriate and has a sense of justice because it does not necessarily free men who have sexual relations and cause pregnancy and the birth of an external child from not running away from their responsibilities as a father and giving the position of an external child. marry in order to guarantee their rights. So, after this decision, the responsibility for the care and education of children outside of marriage will not only be borne by the mother and her mother's family but can also be borne by the father and his father's family. In this way, the function of protecting children in the family both physically, economically, socially, educationally, security and welfare can be realized.

The rights that can be given to illegitimate children following the Constitutional Court's decision are the right to receive support from their biological father, the right to education and maintenance from their biological father, the right to receive guardianship in marriage from their biological father if the child is a girl, the right to inherit from their father. biological, but this part of inheritance rights is not mentioned in this decision.

Even though the Constitutional Court's decision has raised pros and cons among legal practitioners, religious figures, academics and the general public, confusion and multiple interpretations regarding the definition of an illegitimate child have become quite a complicated issue. However, if we observe carefully, what is meant by illegitimate children in this case are children born in a marriage recognized by religion but which are not registered by the state. So the illegitimate child in question is not an adulterous child or a discordant child. Although the Constitutional Court's decision does not explicitly explain what kind of illegitimate child is meant. So there needs to be an explanation regarding this matter so that it



can satisfy many parties, especially the values of justice, certainty and benefit without anyone feeling tarnished by the Constitutional Court's decision, especially among Muslims.

Regarding the Constitutional Court Decision Number 46/PUU-VIII/2010, the author then uses the theory of legal certainty according to Gustav Radbruch as an analytical tool to provide legal certainty for the parties involved in it. In this case, according to Gustav Radbruch, legal certainty has 4 (four) meanings which, when applied in this Constitutional Court decision, are as follows:

1. The law is positive, which means positive legal certainty, namely the applicable law.  
In order to prevent abuse of other people's rights, legal rules are expressed in the form of legislation which contains obligations and limitations on every action. So, the enactment of this legislation guarantees every citizen's rights and obligations, in this case the Marriage Law. All provisions regarding whether a marriage is valid or not are regulated therein. In the Constitutional Court Decision Number 46/PUU-VIII/2010 which then has an impact on the civil rights of illegitimate children towards their biological father, the decision of the Constitutional Court judge in this case is final and binding on the parties with all legal considerations. The judge in his decision stated that a child born outside of marriage has a civil relationship with his mother and his mother's family and with a man as his father who can be proven based on science and technology and/or other evidence according to law to have a blood relationship, including a civil relationship with his father's family.
2. The law is based on facts or realities that occurred.  
Legal certainty is understood to mean that the law is based on facts, not on a formulation regarding the assessment that the judge will make. This second meaning implies that the legislation is formed based on a reality that exists in society (Rahardjo). When deciding a decision, a judge must be based on anticipating problems that might later occur and not just based on the judge's assessment of the behavior of the litigants. Constitutional Court Decision Number 46/PUU-VIII/2010 acts as a means of resolving conflicts that occur in society as an application of the principle of *Restitutio in Integrum*, which means that if there is chaos in society, it must be restored to its original (safe) condition (Santoso). The request for constitutional review which initiated the issuance of Constitutional Court decision Number 46/PUU-VIII/2010 was a form of the consequences or chaos that occurred in society, namely the discriminatory treatment of children born out of wedlock and the unclear legal status and rights of illegitimate children.
3. Facts must be clearly explained to avoid confusion.  
This third meaning is legal interpretation which is important so that statutory provisions can be understood clearly and completely. As according to Sudikno Mertokusumo in Santoso, there are no legal rules or laws that are completely complete and clear, so further interpretation is needed. This element is needed in the judge's consideration before deciding (Santoso). In the Constitutional Court Decision Number 46/PUU-VIII/2010 the judge stated that proof of a child's relationship with his father can be proven based on science and technology and/or other evidence according to the law of blood relationship. However, in his decision, the judge did not explicitly explain that scientific evidence, in this case a DNA test or paternity test, plays a role in preventing errors in subsequent decision making.
4. If positive law exists, it cannot be changed.  
The meaning of this element is as a confirmation of the previous element, following which this positive law cannot change. It is hoped that the formation of regulations can provide legal certainty for the community to guarantee their rights and obligations. The existence of Constitutional Court Decision Number 46/PUU-VIII/2010 means that the judge's

decision in this case applies to anyone, must always be obeyed even if it is felt to be unfair, the law cannot be easily changed.

According to the author, based on analysis using the theory of legal certainty in Constitutional Court Decision Number 46/PUU-VIII/2010 which states that children born outside of marriage have a civil relationship with their mother and their mother's family and with a man as their father which can be proven based on science and technology and/or other evidence which according to the law has a blood relationship, including a civil relationship with the father's family, does not fully fulfill the meaning of legal certainty, especially in the meaning of "Facts must be clearly explained to avoid mistakes". In this decision the judge did not clearly explain that the method of proof based on science and technology is by DNA testing, which is currently the only way to determine whether or not a child is related by blood to his father. This ultimately happened in the decision in the case between Wenny Ariani and Rezky Aditya, where in the decision the judge determined Rezky Aditya to be the biological father of a girl named Naira Kaemita Tarekat without going through evidence based on science and technology or previous DNA testing because the judge used a tool. the evidence is only conjecture. So it is possible that the determination of Rezky Aditya as Naira Kaemita Tarekat's biological father may be an error. Thus, legal regulations or clearer interpretations are needed regarding the application of Constitutional Court Decision Number 46/PUU-VIII/2010 in terms of methods of proof based on science and technology and/or other evidence according to the law of blood relations.

### **Legal Status of Illegitimate Children**

Indonesia itself has 3 types of inheritance laws that are used in dividing inheritance, namely:

#### **1. Islamic inheritance law**

In Islamic law, inheritance is divided based on the amount of each heir whose amount has been determined. However, despite this, in Islamic law, inheritance can also be divided based on a will with the provision that only a maximum of one third of the inheritance is allowed, unless all the heirs agree.

Regarding heirs in the distribution of inheritance according to Islam, based on Article 171 KHI, heirs are people who at the time of death were related by blood or marriage to the testator, were Muslim, and were not prevented by law from becoming heirs. Then, as explained in Article 172 of the KHI, the heir is deemed to be Muslim if it is known from an identity card or confession or practice or testimony, whereas (for) newborn babies or immature children, the religion is according to their father or their environment.

Islamic Inheritance Law divides heirs into two groups, namely:

- a. The male group consists of fathers, sons, brothers, uncles and grandfathers.
- b. The women group consists of mothers, daughters, sisters and grandmothers.

The amount of inheritance distribution if the father and mother die, if the husband or wife dies, and if a sibling dies based on the rules in the KHI is as follows:

- a. If the heir has daughters, the only daughter will get half the share. Then, if there are two daughters, both of them get two-thirds of the share. Then, if there is a boy, the boy's share is twice that of the girl; two to one
- b. If the heir has no children, the father gets a third share. Then, if the heir has children, the father gets one-sixth of the share.
- c. If the heir has no children or two or more siblings, the mother gets a third of the share. However, if you have children or two or more siblings, the mother gets one sixth of the share.
- d. The mother gets a third of the remaining inheritance taken by the widow (wife) or widower (husband) together with the father.

- e. If the heir has no children, the widower gets half the share. However, if the heir has children, the widower gets a quarter share.
- f. If the heir has no children, the widow gets a quarter share. However, if the heir has children, the widow gets one-eighth of the share.
- g. If the heir has no children or father as heirs, his maternal brothers and sisters receive one-sixth of the share. Then, if there are two or more siblings, each of them gets a third share
- h. If the heir does not have children or a father as his heir, but he has one biological sister (father), the sibling gets half the share. Then, if there are two or more half-sisters, each of them gets two-thirds of the share. Then, if the heir has a sister and a brother by his father, his brother's share is two and his sister's share is one; two to one.

## 2. Customary Inheritance Law

Customary inheritance law is the regulations that regulate the process of passing on and passing on tangible and intangible goods or assets, from one generation to the next. There are three things that differentiate customary inheritance law from other inheritance laws, namely (Soepomo, 2007):

- a. Inheritance assets in customary law are not units whose value is assessed, but rather units that cannot be divided according to the types and interests of the heirs;
- b. In customary law, the principle of *legitime portie* or absolute share is not known, as regulated in western and Islamic inheritance law.
- c. Customary inheritance law does not recognize the right for heirs to demand that inherited assets be distributed as soon as possible.

Customary law has the following general principles:

- a. If inheritance cannot be done downwards (from parents to children), inheritance can be done upwards or sideways (to grandmother or sibling).
- b. In customary inheritance law, a person's inheritance is not always distributed immediately. However, it can be deferred or sometimes not divided because the assets are not permanent.
- c. Customary law recognizes the principle of replacement of place or *plaatsvervulling*, which means that a child is the heir of his father, and therefore, the child's place can be replaced by the children of the deceased (the milk of the deceased).
- d. This is known as the adoption of a child, where the rights and position are the same as one's own child and is one of the solutions for continuing offspring in a family.

The kinship system in Indonesia is classified into three groups, namely patrilineal, matrilineal, and parental or bilateral. This kinship classification influences the distribution of inheritance in customary inheritance law. Patrilineal is a kinship system that draws a line from the father's side. This makes men's position more prominent than women in terms of inheritance distribution. Examples of regions that adhere to this kinship system in terms of customary inheritance law are Lampung, Nias, NTT, and others. Matrilineal is a kinship system drawn from the mother's line. This makes the position of women more prominent than the position of the father's line. Examples of regions that adhere to this kinship system in terms of customary inheritance law are Minangkabau, Enggano and Timor.

Meanwhile, parental or bilateral is a kinship system that draws bloodlines from both parties, father and mother. In this kinship system, the position of sons and daughters in terms of inheritance is the same. Examples of regions that adhere to this system are East Sumatra, South Sumatra, Riau and Kalimantan

## 3. Civil Inheritance Law

The distribution of inheritance according to civil law is:

- a. A decedent or erflater leaves wealth at death;

- b. One or several heirs or *erfgenaam* who are entitled to receive the wealth left behind;
- c. Inheritance is a form of wealth that is left behind and passed to the heirs.

The Civil Code divides inheritance into 2 (two) ways, namely according to the provisions of the law and because it is designated in the will. The first method is called inheriting according to law or "*ab intestato*" where the heirs have been regulated in law to get a share of the inheritance because of their kinship or blood relationship with the person who died, while the second method is called inheriting by "*testamentair*" or a will in which the heir is appointed or specified in the will left behind (Ramulyo, 2000).

According to Klaassen, Eggens, and Polak, the rights of illegitimate children to the inherited assets of parents who recognize them are in principle the same as legitimate children. They (recognized illegitimate children) are true heirs who have the right of inheritance, the right of hereditary petition, and the right to demand division of the inheritance (Klaassen, 1956).

Civil Code Article 852 divides the heirs into 4 (four) groups, namely:

1. Group I, namely families in a straight line downwards, includes children and their descendants as well as husbands or wives who are left behind or who live the longest.
2. Group II includes the heir's parents and siblings, both male and female, as well as their descendants.
3. Group III includes grandfathers, grandmothers, and the next ancestor upwards from the heir.
4. Group IV includes family members in the lateral line and other relatives up to the sixth degree.

This class of heirs shows the priority of heirs who take precedence based on their order. As long as group I still exists, group II cannot inherit the inheritance of the heir.

An illegitimate child who is legally recognized is one of the heirs regulated in Article 280 in conjunction with Article 863 of the Civil Code who has different rights and shares from legitimate children as regulated in the Civil Code, namely:

1. The share of illegitimate children if they inherit together with Class I heirs is one third of what they would have received if they were legitimate children (Article 863 of the Civil Code, part one). The way to calculate the share rights of illegitimate children is to assume they are legitimate children first, then calculate their rights as illegitimate children. For example, an heir leaves behind a number of assets and two legitimate children as well as a wife who has lived the longest and an illegitimate child who has been recognized (Satrio, 1990). The division is that the illegitimate children are counted first as if they were legitimate children, so that each heir's share is one quarter (1 wife, 2 legitimate children and 1 illegitimate child). However, specifically for illegitimate children, the share is one third times a quarter, so that what the illegitimate child receives is one twelfth of the inheritance (Article 863 of the Civil Code). Meanwhile, the remaining eleven-twelfth portion of the inheritance is divided among the legal heirs, namely his wife and two children.
2. The share of illegitimate children if they inherit together with Class II and Class III heirs is that illegitimate children receive half or half of the inheritance.
3. The share of illegitimate children if they inherit together with Class IV heirs, namely illegitimate children, will have a larger share, namely three-quarters.

From the existing provisions it can be said that the degree of illegitimate children is closer to the heirs compared to heirs of classes II, III and IV.

Inheritance rights regulated in the Civil Code do not regulate the inheritance rights of children outside of marriage to their biological father's assets so that regulations regarding

the rights and share of inheritance of children outside of marriage to their biological father's assets need to be further regulated with the aim of justice and legal certainty.

Based on the Constitutional Court's decision Number 46/PUU-VIII/2010, every child who is born can be assigned to his biological father as long as it can be scientifically proven that there is a blood relationship, regardless of whether there is a marital relationship between the father and mother or whether the marriage is registered or not (series). However, the Constitutional Court's decision Number 46/PUU-VIII/2010 does not necessarily provide legal certainty regarding the inheritance rights of illegitimate children to their biological father. So illegitimate children, especially those who adhere to Islamic inheritance law, can only receive the assets left by their biological father through a will. A will is a statement of a person's will regarding what to do with their assets after they die. A will is the testator's last wishes regarding his property before he dies. However, in the case of a child who is declared to be the biological child of a father, the will that can be applied is a will whose implementation does not depend on the will or wishes of the deceased, namely the *Wajibah* will. A mandatory will is a will intended for heirs or relatives who do not receive a share of the inheritance of the person who died, due to an obstacle. This will cannot exceed 1/3 of the assets owned by the testator. A mandatory will is a policy carried out by a ruler or judge as a law enforcement officer to force or make a mandatory will decision for people who have died, which is given to certain people under certain circumstances. A will is called a mandatory will because of two things, namely (Rahman, 1999):

1. The element of endeavor for the giver of the will is lost and the element of obligation appears through a law or decree without depending on the willingness of the person making the will and the consent of the recipient of the will.
2. There are similarities with the provisions for the division of inheritance in terms of men receiving (two) women's shares.

However, the Al-Quran and Hadith do not allow non-Muslim children to inherit property from their Muslim father. So the mandatory will also provides a sense of justice for non-Muslim heirs. So the position of non-Muslim children in their parents' inheritance is not as heirs but as obtaining mandatory wills.

Constitutional Court Decision Number 46/PUU-VIII/2010 can be used as a basis for protecting the rights of illegitimate children regarding the fulfillment of civil relations with their biological father. However, illegitimate children can only inherit if they have a civil legal relationship with the testator. This relationship arises with prior recognition. In the Civil Code, regarding children born out of wedlock or illegitimate children, there is an institution for recognizing and validating children. However, this decision does not change the status of illegitimate children to legitimate children, even though the Constitutional Court's decision states that there is a civil relationship between illegitimate children and their biological father. The position of illegitimate children is different from legitimate children because it can have implications in terms of inheritance distribution. Meanwhile, in Indonesia itself there is no law that comprehensively regulates inheritance rights and western inheritance law is still enforced in the Civil Code.

This Constitutional Court decision means that illegitimate children have legal standing (*persona in judicio*) in inheritance cases in court and have the right to obtain the inheritance of their biological father by having to be able to prove their blood relationship based on technological knowledge and/or other legal evidence. However, the decision does not touch on inheritance rights at all and only explains the civil rights of illegitimate children, namely the right to receive living expenses, health and other costs that are not related to the child's lineage to the biological father. So that regarding matters of inheritance, we still adhere to what is regulated in the Civil Code as illegitimate children are recognized and

their distribution is not the same as legitimate children. Meanwhile, according to the Civil Code, children of adultery and infidelity do not receive a share of their inheritance.

According to the author, the Constitutional Court's decision is one of the state's efforts to provide legal protection for civil rights to illegitimate children who are basically pure and sinless children, as according to Satjipto Rahardjo in his theory, that legal protection provides protection for human rights (HAM). ) who are harmed by others and protection is given to the community so that they can enjoy all the rights granted by law, including illegitimate children. This Constitutional Court decision can also prevent disputes from occurring in the future, including handling them in judicial institutions so that a legal function can be obtained that ideally works to realize legal objectives, namely justice, benefit and legal certainty.

It is the actions of the father and mother who entered into an invalid marriage that must be held accountable but with the principle of not harming other parties, in this case their legitimate children. However, it would be good if there were other regulations specifically regarding the inheritance of illegitimate children that were regulated so that there would be legal certainty regarding the civil law of illegitimate children with their biological father.

From the explanation above, it can be concluded that illegitimate children have the right to inherit from their biological father based on the Civil Code after receiving recognition from their biological father. After the Constitutional Court Decision Number 46/PUU-VIII/2010, the Panel of Judges will be able to order the biological father to acknowledge his biological child in the manner regulated by law, namely by submitting a registration of the child's confession. Recognition of a child based on the explanation of Article 49 Paragraph (1) of the Population Administration Law is a father's recognition of his child born from a marriage that is valid according to religious law and approved by the child's biological mother. From the description of the article above, it can be concluded that a child's confession is a recording event in which a child receives recognition from his father. To obtain paternity recognition, there are conditions that must be met, namely:

1. Children born must be from a valid marriage according to religious law.
2. The child's father makes a letter of acknowledgment of the child.
3. Fathers who wish to recognize the child must obtain consent from the biological mother.

The recording process mechanism is as follows:

1. The child's confession must be reported by the parents to the competent authority no later than 30 (thirty) days from the date of the child's acknowledgment letter by the father and approved by the mother of the child concerned.
2. Based on the report to the authorized official, the child's confession will be recorded in the child confession certificate register and an extract from the child confession certificate will be issued.

However, Presidential Decree no. 96/2018 concerning Requirements and Procedures for Population Registration and Civil Registry provides space for parents who have children resulting from adultery to obtain recognition of the child by submitting a request for confirmation to the Court. This means that the letter of acknowledgment of paternity does not apply to those who have children outside of a legal marriage resulting from adultery. As stated in Article 51, namely the recording of recognition of children resident in the territory of the Unitary State of the Republic of Indonesia who are born outside a valid marriage according to religious law or belief in God Almighty, is carried out based on a court decision.

Applications for recording child recognition are submitted to the local Population and Civil Registry Service. In its services there are 2 classifications of applications for recording child recognition, namely:

1. Registration of Children's Recognition in the Territory of the Republic of Indonesia, with the following requirements:
  - a. A statement of child recognition from the father who acknowledges with the consent of the biological mother of the child concerned;
  - b. Certificate of marriage from a religious leader or believer in YME;
  - c. Excerpt from the child's birth certificate;
  - d. Photocopy of Family Card and KTP-El of the Biological Mother and Father which acknowledges the child
  - e. Photocopy of ID cards of 2 witnesses
  - f. Photocopy of travel document for biological mother who is a foreigner.

The service will issue a register of child acknowledgment certificates and excerpts from child acknowledgment certificates as well as make notes in the margins of child acknowledgments in the birth certificate register and birth certificate excerpts.
2. Recording the Recognition of Children Born Outside of Legal Marriage According to Law/Belief in Almighty God in the Territory of the Republic of Indonesia, with the following requirements:
  - a. Photocopy of Court Determination;
  - b. Birth Certificate Excerpt;
  - c. Photocopy of Family Card.

The department will make a marginal note of the child's acknowledgment on the birth certificate register and a birth certificate excerpt.

Based on the classification of child recognition registration applications from the Population and Civil Registry Service above, it can be seen that child recognition can be done with or without marriage so that there should be no significant obstacles in implementing a court decision regarding the determination of biological paternity for someone who entered into a legal marriage before religion. or his beliefs or without a valid marriage. So, according to the provisions of the Civil Code, a child who has a child recognition certificate from his biological father issued by the Population and Civil Registry Service has the right to inherit his biological father. Inheritance of illegitimate children regulated in the Civil Code, among others:

1. If the deceased leaves legitimate descendants or is a husband or wife, then illegitimate children inherit 1/3 of the share they would have received if they were legitimate children (Article 863 of the Civil Code);
2. If the deceased does not leave legal heirs according to law, then the illegitimate children inherit the entire inheritance (Article 865 of the Civil Code);
3. If one of the blood relatives dies without leaving blood relatives within the degrees permitted to inherit and without leaving a husband or wife, then the illegitimate children who are recognized have the right to claim the entire inheritance for themselves to the exclusion of the state (Article 873 of the Civil Code)

## CONCLUSION

The status of illegitimate children from a civil law perspective is divided into 2 (two) as follows:

- a) Children born outside of marriage, however, can be recognized in an authentic way (Article 281 of the Civil Code) and expressly and cannot be concluded. So that this

recognition creates legal relations, including providing maintenance, marriage permits, guardianship rights, the right to use a name, and inheritance rights.

- b) Children born out of wedlock but which cannot be recognized are adulterous children who are born from relationships between women and men who are not in a legal marriage bond and incestuous children who are born from relationships between men and women who are prohibited from marrying because there is a blood relationship.

An illegitimate child who has received recognition from his biological father has the right to inherit from his biological father based on the Constitutional Court Decision Number 46/PUU-VIII/2010 which decided that Article 43 Paragraph (1) of the Marriage Law which previously read "children born outside of marriage only have a civil relationship with their mother and their mother's family" should then be read as "children born outside of marriage only have a civil relationship with their mother and their mother's family." and with a man as his 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 his father's family."

However, the distribution measurement still refers to the Civil Code, where the share of illegitimate children is different from that of legitimate children. This is because the Constitutional Court's decision does not explicitly explain the legal consequences regarding inheritance provisions for illegitimate children who are recognized with authentic evidence in the form of DNA test results which state blood relationship with the biological father.

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