

INHERITANCE RIGHTS OF CHILDREN UNDER WEDDING ACCORDING TO THE CIVIL CODE AND ITS IMPLICATIONS IN JUDICIAL PRACTICE

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Abstract

This study discusses the inheritance rights of children born out of wedlock according to civil law and its implications in judicial practice. Under the Civil Code, children born out of wedlock only have a civil legal relationship with their mother and her family, while their inheritance rights to their biological father are very limited and can only be obtained if there is a valid acknowledgment. The distribution of inheritance for children born out of wedlock is also regulated differently from legitimate children, with a smaller proportion depending on the class of heirs inheriting simultaneously. However, Constitutional Court Decision No. 46/PUU-VIII/2010 expands the legal understanding by stating that children born out of wedlock may have a civil relationship with their biological father as long as it can be proven through science and technology or other evidence deemed valid under the law. This decision provides a legal basis for children born out of wedlock to access civil rights, including inheritance rights, in a more fair and equitable manner. This study shows that although there has been progress in recognizing the rights of children born out of wedlock, there are still normative and practical obstacles in its implementation, especially at the community and legal institution levels. Therefore, regulatory updates, legal awareness campaigns, and strengthening of evidence mechanisms and legal protection are needed to ensure that the principles of justice and non-discrimination toward children born out of wedlock are effectively realized within Indonesia's legal system.

Keywords: Children born out of wedlock, inheritance rights, civil law

INTRODUCTION

An illegitimate child is a child who is born outside of a legal marriage and is only related by blood to his mother, therefore the child does not have any rights from his biological father, rights such as property or objects in any form from his father, such as the right to his living expenses, educational expenses, marital guardianship rights for his daughter, as well as the right to inheritance when his father dies, because legally he is not related by blood to his biological father (Judiasih & Nugroho, 2024).

The difference between legitimate children and illegitimate children (children born out of wedlock) is a legal consequence related to both parents. This does not apply to civil rights, as these can still be obtained if the mother obtains a birth certificate from the appropriate office or institution, even if the child is born out of wedlock. Due to the unclear status of illegitimate children, marriage before the law can weaken the relationship with the father, potentially leading to the father denying his paternity (Asman, 2020).

Civil law is a set of provisions governing the rights and obligations between individuals in society. The term civil law in Indonesia originally comes from the Dutch term *Burgerlik Recht*, which is derived from the *Burgerlijk Wetboek* (Amelia Fathia, 2020). In general, civil law is defined as all regulations governing the rights and obligations of individuals in social relations. Civil law is also called private law because it regulates individual interests (Amelia Fathia, 2020).

Civil inheritance law regulates inheritance rights for illegitimate children differently and in accordance with civil law principles. Because this can provide a better understanding of the distribution of inheritance rights for illegitimate children, further research is needed.

Inheritance rights are a crucial pillar of civil law systems in many countries, including Indonesia. They regulate the transfer of material rights and obligations from a deceased person to their heirs. Inheritance law aims to provide legal certainty regarding the ownership of assets after death, prevent disputes within the surviving family, and protect the interests of those entitled to inherit. A sound legal system governing inheritance reflects the values of justice, propriety, and protection of property rights.

Along with social developments and changing norms, the phenomenon of children born out of wedlock has become increasingly visible. Various social, economic, and cultural factors can contribute to the birth of children outside of legal wedlock. The presence of these children raises questions and challenges in various aspects of life, including family law and inheritance law.

In the context of Indonesian inheritance law, particularly as it is still heavily influenced by the Civil Code (KUHPerdata), the status and inheritance rights of illegitimate children are a complex legal issue that often creates uncertainty. The Civil Code provides different provisions for children born within a legal marriage and children born outside of marriage, particularly regarding the recognition and inheritance rights of the father. This difference raises various questions regarding the legal status of illegitimate children, the requirements for obtaining inheritance rights, and how inheritance assets are distributed if there are children with different birth statuses.

The Constitutional Court (MK) Decision Number 46/PUU-VIII/2010 has become an important milestone in family law and the protection of children's rights in Indonesia, especially those related to children born out of wedlock. This decision has a major impact on the interpretation of Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage and has real implications in judicial practice, including in the aspect of inheritance rights for children born out of wedlock. Prior to the Constitutional Court decision, Article 43 paragraph (1) of the Marriage Law stated "Children born out of wedlock only have a civil relationship with their mother and their mother's family." This article limits the legal relationship of

children born out of wedlock to only their biological mother, so there are no inheritance rights, maintenance rights, or obligations from the biological father (Lengkong, et al., 2022).

The amendment through Constitutional Court Decision No. 46/PUU-VIII/2010 states that “Children born out of wedlock have a civil relationship with their mother and also with their father as long as it can be proven scientifically and/or other evidence according to the law that they have a blood relationship, including a civil relationship (Nugroho, et al., 2022).”

Research into the legal analysis of the inheritance status of illegitimate children under Civil Law is relevant and urgent for several reasons. First, the number of children born out of wedlock in society cannot be ignored, so legal protection of their rights, including inheritance rights, has become a social justice issue. Second, the provisions in the Civil Code that regulate this issue are outdated legal products that may not fully align with the development of modern legal values and the principle of non-discrimination against children. Third, a thorough understanding of the legal implications of inheritance for illegitimate children is important to prevent future inheritance disputes and provide legal certainty for all parties involved. The Constitutional Court Decision No. 46/PUU-VIII/2010 brought significant changes to the legal status of illegitimate children and provided the basis that children's rights, including inheritance rights, must be recognized if blood relations can be proven. In judicial practice, this strengthens the position of children in civil disputes, particularly regarding inheritance and parental responsibility. What is the legal status and inheritance rights of children born out of wedlock as referred to in Civil Law? How is inheritance distributed to children born out of wedlock in accordance with the principles of justice?

RESEARCH METHODS

In this legal research, the author uses a normative legal research method, namely research conducted by examining secondary legal materials, such as laws and regulations, legal literature, doctrines, and relevant court decisions (Subagyo, 2004). The approach used in this research includes a statute approach, namely by examining the provisions in the Civil Code, as well as other related regulations. In addition, this research also uses a conceptual approach to understand the definitions and legal concepts regarding children born out of wedlock, child recognition, and inheritance rights in the context of civil law. Research data was obtained through library research, namely by collecting and reviewing primary legal materials (laws and court decisions), secondary legal materials (books, journals, scientific articles), and tertiary legal materials (legal dictionaries and legal encyclopedias) related to the research topic.

RESULT AND DISCUSSION

A. Legal Status and Inheritance Rights for Children Born Out of Wedlock as Referred to in Civil Law

Inheritance rights are rights owned by a child arising from the law between a child and his parents. Regarding the regulations regulated in Book II of the Civil Code, especially the regulations on inheritance rights. Regulations on inheritance rights have been clearly regulated in the Civil Code regarding inheritance of marriages that are carried out legally, in addition, it also explains the inheritance rights of children born outside of marriage, but there are exceptions therein. Civil ties that do not exist with their biological father become legal consequences for children born from parents outside of marriage or marriage, the child only has a civil relationship with his mother, as in the Marriage Law in Article 43 paragraph 1 which basically regulates that the civil bond of children born outside of marriage is only with his mother. Based on Article 272 of the Civil Code, it is explained that children referred to as illegitimate children are outside the group of incestuous children and children of adultery, but rather children who do not exist because the man who is currently in a marital bond with the

legal mother who gave birth to the child (Hartanto, 2018). A legitimate child recognized as a child born out of wedlock is a person who has the right to receive inheritance from the testator as regulated in Article 280 in conjunction with Article 863 of the Civil Code.

Children resulting from relationships outside of marriage in the narrow sense who are legally heirs include children born outside of marriage, this is because the Civil Code regulates the grouping of children born outside of marriage into 3 (three) groups, namely: 1) Natural children (children born outside of marriage), namely a child who exists because of a mother but also exists because of a man who does not have legal marital status with another person, children of adultery and illegitimate children are not included. 2) Children resulting from adultery, namely a child who exists because of an illicit relationship between a couple who are not bound by husband and wife, but among them there are people who have a legal relationship by marriage with another person, while 3) Illegible children, namely a human being born as a result of a relationship that is prohibited or not permitted by law to enter into marriage because of close blood relations.

Based on the Civil Code, it is explained that children born not due to marriage have a civil relationship only with their mother, so this is included in the inheritance rights of children born outside of marriage. Regarding the distribution of inheritance related to children born outside of marriage can be seen in Article 863 of the Civil Code. Children born outside of marriage only receive 1/3 (one third) of the share of legitimate children who are included in class 1 inheritance if they inherit together. Children born outside of marriage generally have the same rights as legitimate children, namely the right of hereditatis petitio, the right of saissine and the right to request a division of inheritance. The explanation of the meaning of these three rights is as follows:

- a) The right of saissine means that a deceased person is replaced by a living person (Boyuh et al., 2021). Another definition of this right is that a deceased heir will be replaced by an heir who will assume all of the rights and obligations of the deceased. These rights and obligations will be transferred automatically without the heir requiring any specific action.
- b) The right of hereditary petitio means that all those entitled to inherit have the right to fight for their inheritance rights by suing. In this case, suing resembles the right to own an object, with the purpose of suing being to take possession of an inherited object by taking control of the object.
- c) The right to demand division of an inheritance is the right to receive a share of the inheritance. This division of the inheritance can be demanded at any time, so that if an heir demands division of the inheritance or its separation before a panel of judges, the other heirs cannot refuse the demand.

The equality of rights only goes as far as that equality, but the rest of the share between children born through marriage and not (legitimate and illegitimate) is not the same, the equality of rights is only limited to the recognition of the legal relationship between children and parents so that families who acknowledge them are not included. The share of children born outside of marriage in inheritance rights is divided into 4 (four), namely the share of children born outside of marriage if they inherit together with class I heirs, the share of children born outside of marriage if they inherit together with class II and III heirs, the share of children born outside of marriage if they inherit together with class IV heirs, and the share of children born outside of marriage if they are the only heir. The division is as follows (Kumoro, 2017):

1. Share of children born outside of marriage if they jointly inherit with group I heirs

In this section it is explained that if the testator has passed away and has descendants recognized by law, then those recognized as children born out of wedlock only inherit 1/3 (one third) of the total portion received if they were legitimate children.

The descendants of the testator, namely legal children and the surviving husband/wife, are group I. The calculation of inheritance distribution here is that children born out of wedlock receive 1/3 of the portion they should have received if they were legitimate children.

2. Share of children born out of wedlock if jointly inherited by class II and III heirs

This section explains that if the heir has no legitimate successors at all, but the heir has family, namely sisters and brothers and bloodlines as well as children born out of wedlock who are recognized, then the portion of the children born out of wedlock can only be half of the total assets of the heir.

3. Share of children born out of wedlock if they jointly inherit with class IV heirs

This section explains that if the testator does not have a legitimate successor that he left behind as well as a blood family but there are more distant relatives who are included in group IV, then the portion of the illegitimate child is to inherit 3/4 (three-quarters) of the testator's inheritance. Group IV heirs referred to here include uncles or aunts from the mother's or father's side and cousins.

4. Share of children born outside of marriage if they are the sole heir

This section explains that if groups I, II, III, and IV of heirs are not left by the testator but only have children born out of wedlock as the sole heirs, then the inheritance of the testator that is legally received by the children born out of wedlock is in full.

Based on the distribution of inheritance, it can be concluded that the closer the status of the child born out of wedlock to the legal heir, the smaller the joint inheritance portion received by the child born out of wedlock will be. However, conversely, the further the relationship between the testator and the legal heir, the greater the joint inheritance portion received by the child born out of wedlock. The relationship between the testator and the child born out of wedlock tends to be close to the heir when compared to groups II, III, and IV if the child born out of wedlock is legally recognized. Although groups II, III, and IV are legally considered to have the right to inherit, according to Indonesian regulations, children born out of wedlock who have been recognized receive a more dominant inheritance than others because the parents have considered them due to the parent-child relationship. According to Indonesian regulations, children born out of wedlock are not recognized. Although rights have been obtained by the child, it does not mean anything in terms of inheritance distribution. The civil relationship of children born out of wedlock only with the exception of the child born out of wedlock is recognized. Another exception is regarding illegitimate children born from adultery or illegitimate children, it is impossible for there to be a legal relationship between the illegitimate child and his biological father, because according to the law the parents of the child are not allowed to give recognition.

Article 43 Paragraph (1) of Law Number 1 concerning Marriage which states, "A child born outside of marriage only has a civil relationship with his mother and his mother's family", does not have binding legal force as long as it is interpreted as eliminating the civil relationship with a man who can be proven based on science and technology and/or other evidence according to law to have a blood relationship as his father, so that the paragraph must be read as follows: "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 civil relations with his father's family" (Tarmizi, 2021).

B. Distribution of Inheritance to Children Born Outside of Marriage in Accordance with the Principles of Justice

Children born out of wedlock cannot be blamed, but the fault lies with their parents, who are responsible before God for their condemned actions. The child's status is no different

from that of a legitimate child, especially in terms of piety toward God. Likewise, in matters of inheritance, illegitimate children should also be given a share, even if it is not as large as that of a legitimate biological child.

In the Civil Code, regarding children born outside of marriage or illegitimate children, there is an institution for child recognition and legitimation. The institution for child recognition is regulated in Article 280 of the Civil Code, which states that with the recognition of an illegitimate child, a civil legal relationship arises between the child and his or her father or mother.

An illegitimate child can only inherit if they have a legal relationship with the testator. This legal relationship arises through recognition. According to Article 285 of the Civil Code, it is explained: recognition made during the marriage by a husband or wife for the happiness of an illegitimate child, who before marriage was conceived by him or her with another person from his or her wife, will not be detrimental to either the wife or husband or the child born from their marriage.

The distribution of inheritance of illegitimate children according to the Civil Code is as follows: 1) An illegitimate child inherits with heirs of Class I, their share: 1/3 of their share if they were legitimate children. 2) An illegitimate child inherits with heirs of Class II and III, their share: 1/2 of the inheritance. 3) An illegitimate child inherits with heirs of Class IV, their share: 3/4 of the inheritance. Children born outside of marriage. If there is a woman who gives birth to an illegitimate child in customary law, a forced marriage will be carried out.

The position of an illegitimate child in relation to the inheritance of his biological father in the patrilineal and matrilineal descent systems basically only has a civil relationship with his mother, while in the parental system the position of an illegitimate child is the same as a legitimate child and has the right to inheritance from his biological father, but the distribution of the inheritance is based on the principle of justice with the basis of compassion and willingness. Constitutional Court Decision Number 46/PUU-VIII/2010 makes an illegitimate child a party who has legal standing (*persona in judicio*) in inheritance cases in court and has the right to obtain inheritance from his biological father with the requirement to be able to prove the existence of blood relations based on science and technology and/or other evidence according to law.

Children born out of wedlock after the Constitutional Court Decision Number 46/PUU-VIII/2010 has the meaning that every child born in this world with both parents who are not married or whose marriage is not or has not been registered at the KUA has the same civil rights in the eyes of the law towards both parents, especially towards the father. The Constitutional Court Decision Number 46/PUU-VIII/2010 actually provides protection for the fate of children who are abandoned by their father because their marital status with the mother is unclear. With the Constitutional Court Decision Number 46/PUU-VIII/2010, children have rights to their parents so it can be interpreted that a father may not abandon a child even if it is born out of wedlock.

He admitted that there is still a misunderstanding regarding the decision, namely that children born out of wedlock do not have lineage, but have civil rights. Constitutional Court Decision Number 46/PUU-VIII/2010 does not mention the inheritance rights of illegitimate children as lineage that can be easily decided. In Constitutional Court Decision Number 46/PUU-VIII/2010 only explains the civil rights of illegitimate children without mixing in the issue of lineage. The civil rights in question, according to the previous description, consist of the right to receive living expenses, health costs, and other costs unrelated to the child's lineage to the father.

According to the compiler, an illegitimate child after the Constitutional Court Decision Number 46/PUU-VIII/2010 is the child of his father and is a child born from a legal marriage so that when viewed from the reasons for mutual inheritance, an illegitimate child

after the Constitutional Court Decision Number 46/PUU-VIII/2010 fulfills the reasons for inheriting blood ties and marital relations. If an illegitimate child does not have a relationship from both reasons for inheritance, for example an illegitimate child who committed adultery, then there will be no mutual inheritance.

Based on the Constitutional Court Decision Number 46/PUU-VIII/2010, it states that Article 43 Paragraph (1) of Law Number 1 of 1974 concerning Marriage which states "A child born outside of marriage only has a civil relationship with his mother and his mother's family" is contrary to the 1945 Constitution and has no binding legal force as long as it is interpreted as eliminating the civil relationship with a man who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship as his father, so that the article must be read, "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 the law to have a blood relationship, including a civil relationship with his father's family."

Constitutional Court Decision No. 46/PUU-VIII/2010 does not address the inheritance rights of illegitimate children, as they are easily determined by lineage. It only addresses the civil rights of illegitimate children, without addressing lineage issues. These civil rights, as previously described, include the right to receive living expenses, healthcare, and other expenses unrelated to the child's lineage to the father.

Based on this, the author is of the opinion that the Constitutional Court Decision No. 46/PUU-VIII/2010 makes an illegitimate child a party who has legal standing (*persona in judicio*) in inheritance cases in court and has the right to receive the inheritance of his biological father. An illegitimate child inherits together with the first group, which includes children or all their descendants (Article 852 of the Civil Code) and the husband or wife survives longer (Article 852 A of the Civil Code), then the portion of the illegitimate child is one third (1/3) of the assets left behind with the requirement to be able to prove the existence of blood relations based on science and technology and/or other evidence according to law.

CONCLUSIONS

The legal status and inheritance rights of children born out of wedlock from a Civil Law perspective have undergone significant developments, especially following the Constitutional Court Decision Number 46/PUU-VIII/2010. In general, in the Civil Code, illegitimate children only have a civil legal relationship with their mother, and receive a smaller share of inheritance than legitimate children, depending on the class of heirs with whom they are concurrent. However, through recognition (Article 280 of the Civil Code) and proof of blood relations based on science and technology, illegitimate children can now obtain a civil legal relationship with their biological father.

Distribution of inheritance to illegitimate children must, in principle, take into account the principles of justice, protection of children's rights, and legal certainty. An illegitimate child cannot be burdened with the legal consequences of his or her parents' actions, so that morally and constitutionally, he or she has the right to obtain legal protection for his or her civil rights. Through the recognition mechanism as stipulated in Article 280 of the Civil Code and reinforced by Constitutional Court Decision Number 46/PUU-VIII/2010, an illegitimate child obtains the status of a legal subject (*persona in judicio*) in inheritance cases.

Although the Constitutional Court's ruling does not explicitly regulate inheritance rights in the context of lineage, it does open the door to recognizing civil relationships with biological fathers, which impacts the right to claim a share of the inheritance as long as a blood relationship can be proven. Therefore, the distribution of inheritance to illegitimate children must be carried out proportionally in accordance with the provisions of the Civil

Code, while still upholding the principles of justice, legal certainty, and the protection of children's rights as guaranteed by the 1945 Constitution.

Overall, the Indonesian legal system has recognized the legal status and inheritance rights of illegitimate children, albeit with certain limitations. Legal developments through Constitutional Court decisions indicate a shift toward more progressive and equitable protection of children's rights.

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