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Protection of the Rights of Extramarital Children in Civil Relations between Children and Biological Fathers According to the Indonesian Legal System

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Abstract: Children born out of wedlock often face legal obstacles in obtaining recognition and protection of their rights, especially in civil relations with their biological fathers. The Indonesian legal system, especially after the Constitutional Court decision Number 46/PUU-VIII/2010, has opened up space for children born out of wedlock to have their civil relations with their biological fathers recognized, as long as it can be proven scientifically and technologically, such as through DNA testing. However, the implementation of this recognition still faces challenges, both in terms of applicable legal norms and the practice of judicial institutions. This study aims to analyze the extent to which legal protection of the rights of children born out of wedlock can be enforced in their civil relations with their biological fathers, as well as to examine the effectiveness of applicable norms in realizing justice and legal certainty for children in this position.

Keywords : Children Born Out of Wedlock, Civil Rights, Biological Father, Legal Protection

INTRODUCTION

Children born out of wedlock still face quite complex social and legal realities in Indonesia (Taufiq, 2025). In many cases, they grow up in social situations that do not fully accept their presence, as if their existence is a consequence that must be limited in their rights (Marwa, 2023). The social stigma against children born out of wedlock not only comes from the surrounding community but is internalized in the legal system that has long sharply separated legitimate children from children born out of wedlock (Munasto, 2022). Within this framework, it is crucial to see that children are not the perpetrators of the situations they face but rather victims of their parents' relationships that are not legally recognized (Rahman, 2024).

This situation becomes even more complicated when it comes to children's civil rights towards their biological fathers. Not a few children who are biologically related to their fathers do not have legal access to recognition, support, inheritance, or simply complete identity records (Wuwungan, 2024). In the previous legal system, recognition of children born out of wedlock depended heavily on the will of the father, not on the existence of biological facts. It

makes the child's position vulnerable because legal protection is almost nil if the biological father chooses not to acknowledge it (Baihaki, 2023).

The Constitutional Court Decision Number 46/PUU-VIII/2010 was an important turning point in protecting illegitimate children in Indonesia (Hutasoit, 2024). This decision opened the door for children born out of wedlock to have a civil relationship with their biological father, as long as it can be proven scientifically, such as through a DNA test (Rahajaan, 2021). This is a significant legal development because it introduces the principle of substantive justice into the family law system in Indonesia while challenging the dominance of marriage formality as the only door to civil relations (Lia Noviana, 2021).

To understand further, it is necessary to look at how illegitimate children are categorized in the Indonesian legal system. The Civil Code still distinguishes between legitimate children, illegitimate children, and children resulting from adultery (Dunggio, 2021). Legitimate children are children born in or as a legitimate marriage (Maghfira, 2016). Meanwhile, illegitimate children are children born outside of marriage but can be recognized by their parents (Hasibuan, 2023). Meanwhile, children resulting from adultery often do not get a place in the legal system, even just recognition (Tarihoran, 2023). This shows how sharp the dividing line is based on the status of the parent's relationship, not on the basic rights of children as human beings.

On the other hand, Law No. 1 of 1974 on Marriage originally also narrowed the definition of civil relations for illegitimate children to only the mother and her family. However, this change in meaning was forced to move after the Constitutional Court ruling stated that illegitimate children also have rights to their biological fathers if scientifically proven (Baharuddin, 2019). This is a big step to bring the law closer to justice and to equalize the status of children who have so far been categorized.

Children's rights are not only regulated in the context of family law. In a broader framework, children's rights are guaranteed in the Child Protection Law, namely Law No. 23 of 2002 and its amendments in Law No. 35 of 2014 and Law No. 17 of 2016 (Fitrotun, 2022). This law emphasizes that every child has the right to care, education, identity, and protection from violence and discrimination in any form. These rights are universal, regardless of the child's background, including their birth status (Afandy, 2023).

Furthermore, the Convention on the Rights of the Child (CRC) which has been ratified by Indonesia through Presidential Decree No. 36 of 1990, also emphasizes the importance of recognizing children's rights from birth (Fadila, 2022). The convention states that every child has the right to a name, citizenship, and family relationships. In the spirit of the CRC, the status of a child should not be used as a reason to exclude them from basic rights. It is an international principle that should provide direction for national legal reform (Satriyo, 2024).

The Indonesian Constitution itself, through Article 28B paragraph (2) of the 1945 Constitution, recognizes that every child has the right to survival, growth, and development and has protection rights from violence and discrimination (Padang, 2023). It is the highest recognition from the state that all children, without exception, have rights that must be respected, maintained, and protected. It means that every legal norm that limits children's rights based on their birth status should be criticized and updated by these constitutional principles.

In a theoretical framework, the legal protection approach put forward by Satjipto Rahardjo emphasizes that the law should not simply be a rigid and textual tool of power, but must be able to answer human needs contextually and ethically (Hazmi, 2024). Legal protection must side with the weak and vulnerable, including illegitimate children who do not have bargaining power in determining their legal status. Good law is not a law that is only doctrinally consistent, but one that can provide real justice in life.

The concept of distributive justice is also important in viewing family relations and the status of children. Distributive justice talks about how resources, responsibilities, and

recognition are distributed fairly in society. In the context of illegitimate children, distributive justice means that the state and law must ensure that children's rights are not neglected just because their parents are not married. It is a form of state responsibility towards its most vulnerable citizens.

Through theoretical approaches and existing legal norms, it can be seen that the Indonesian legal system is moving towards a more humane and just direction for illegitimate children. However, this paradigm shift still requires a complete understanding, strengthening of institutions, and public awareness so that these children feel the protection promised by law. The law must be present not as a judge for the mistakes of parents, but as a protector of the child's future.

METHOD

The research method used in this study is the normative legal method, namely an approach that relies on the analysis of applicable legal norms, both in the form of laws and regulations and relevant court decisions. Normative legal research aims to understand and examine in depth how positive Indonesian law regulates civil relations between illegitimate children and their biological fathers, and to what extent these norms provide adequate protection for children's rights. In this context, the major sources analyzed include the Civil Code (KUHPerdota), Law Number 1 of 1974 concerning Marriage, Law Number 23 of 2002 concerning Child Protection and its amendments, and the Constitutional Court Decision Number 46/PUU-VIII/2010 which is a significant milestone in changing the legal perspective on the status of illegitimate children. In addition, this study also examines international legal instruments such as the Convention on the Rights of the Child which has been ratified by Indonesia, as well as the 1945 Constitution as the highest source of law. Analysis was conducted on legal literature and the views of legal experts, especially in the theory of legal protection and justice. The research does not involve field studies or interviews but rather focuses on a systematic, logical, and critical literature review and legal interpretation to answer the legal problems raised and provide normative recommendations based on the principles of justice and protection of children's human rights.

RESULT AND DISCUSSION

Legal Regulations on Civil Relations between Children Born Outside of Marriage and Biological Fathers

Before the Constitutional Court Decision Number 46/PUU-VIII/2010, positive law in Indonesia limited the civil relations of illegitimate children very narrowly. Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage states that "a child born out of wedlock only has a civil relationship with his/her mother and his/her mother's family." This provision explicitly closes the possibility of a legal relationship between an illegitimate child and his/her biological father, even if there is factually strong evidence of a blood relationship. In practice, this norm reflects a conservative legal paradigm, where recognition of a child depends on the marital status of the parents and not on the biological truth or interests of the child as a legal subject.

The restrictions contained in the Marriage Law are reinforced in the provisions of the Civil Code, especially Articles 280 to 284. Article 280 of the Civil Code states that an illegitimate child obtains legal status if legally recognized by his/her parents. The recognition is declarative and not automatic based on biological relations. The following articles in the Civil Code explain that recognition can only be done voluntarily by the parents concerned, and if such recognition does not occur, then the child loses the civil rights that should be attached based on blood relations. This condition is very detrimental to children because the existence of their rights is very dependent on the will of adults.

Constitutional Court Decision Number 46/PUU-VIII/2010 brought about a major change in understanding the civil relationship of illegitimate children with their biological fathers. In its decision, the Court stated that the phrase "only has a civil relationship with his mother and his mother's family" in Article 43 paragraph (1) of the Marriage Law is contrary to the 1945 Constitution and does not have legally binding force conditionally. The Constitutional Court interpreted that illegitimate children also have a civil relationship with their biological fathers, as long as it can be proven based on science and technology and legally valid evidence. With this decision, the law no longer requires recognition as the sole requirement for the existence of a civil relationship but rather opens up space for proof based on biological facts.

The civil relationship referred to in the legal context covers various important aspects of a child's life. One of them is inheritance rights. Before the Constitutional Court Decision, illegitimate children could only inherit from their mothers. However, after the decision, if the biological relationship can be legally proven, illegitimate children have the right to receive an inheritance from their biological father, both according to the Civil Code and according to the progressive interpretation in the Compilation of Islamic Law. In the context of Islamic law, although the inheritance of children of adultery is still a matter of debate, the justice approach is often used by judges to grant civil rights such as maintenance and protection, although not always in the form of full inheritance rights.

On the other hand, in the Western civil law system (Civil Code), proof of blood relations can open up children's access to inheritance rights, guardianship, and the right to use the family name. Another implication of the recognition of civil relations is in terms of guardianship. Children who have a civil relationship with their father automatically have the right to receive a guardian from the father if the mother cannot do her part. This is important in legal decisions, education, or the child's health. In addition, the obligation to provide maintenance is also a logical consequence of the civil relationship. Biological fathers, after being proven to be blood relatives, can no longer avoid their responsibility to fulfill their child's living needs, as stated in Article 45 paragraphs (1) and (2) of Law No. 35 of 2014 which amends Law No. 23 of 2002 concerning Child Protection.

One crucial aspect in the implementation of this Constitutional Court Decision is regarding the instrument of proof of biological relations, especially the use of DNA tests. In judicial practice, DNA tests have been accepted as one of the scientific shreds of evidence that has a high level of accuracy in proving blood relations. This test is used in various cases, from criminal to civil cases. In the context of proving civil relations, the existence of DNA tests has strengthened the position of children in suing for recognition or fulfillment of rights from their biological fathers. This test is not only a compliment but is often the main evidence in proving biological truths that were previously denied or ignored by the legal system.

The position of scientific evidence such as DNA tests has also found a place in the legal procedure system in Indonesia. In civil procedure law, there are no explicit provisions regarding DNA evidence, but Article 1866 of the Civil Code states that valid evidence includes writings, witnesses, allegations, confessions, and oaths. In modern judicial practice, DNA testing is categorized as scientific evidence that falls into the realm of suspicion based on science, and the court can use it as a basis for strong legal considerations. This is also in line with the principle of free evidence adopted in civil procedural law, where judges have the freedom to assess the strength of evidence based on their logical and fair beliefs.

Not only in the realm of national law, proving biological relationships is also in line with the principles regulated in international law. The Convention on the Rights of the Child recognizes the importance of a child's identity, including name, nationality, and family relationships. In this context, proving blood relations is not merely for the sake of adult law, but rather to guarantee the child's right to know their origins and build a complete identity. The state as a party that ratifies this convention bears the responsibility to ensure that its legal

system provides effective access and mechanisms for children to obtain clarity on their identity and family relationships.

From the overall discussion, it appears that the changes after the Constitutional Court Decision have brought a new nuance to Indonesian family law. Not only providing legal recognition but also emphasizing the importance of protecting children's rights comprehensively and humanely. By combining normative legal approaches and scientific evidence, the law demonstrates its ability to evolve following social dynamics and the need for more inclusive justice. However, implementation challenges remain, especially in the awareness of law enforcement officers and the community regarding the importance of breaking the chain of discrimination against children born out of wedlock.

Implementation and Problems in Practice

Following the Constitutional Court Decision Number 46/PUU-VIII/2010, the face of judicial practice in Indonesia in cases involving illegitimate children has begun to show more complex dynamics. The decision has indeed opened up a wider interpretation of the civil relationship between children and biological fathers, but its implementation is not always consistent at the court level. There are several court decisions that progressively recognize claims of illegitimate children based on biological evidence, such as decisions that accept DNA test results as the basis for recognizing civil relationships and granting inheritance rights or custody rights. However, on the other hand, there are still decisions that reject similar claims because there is no explicit recognition from the father, or on the pretext of maintaining family order and social norms. The situation shows that judges' bias towards the best interests of children still depends heavily on personal perspectives and the courage to apply progressive principles in judicial practice.

Judges' attitudes towards scientific evidence, such as DNA tests are not entirely uniform. Some judges consider DNA test results to be valid and sufficient evidence to state the existence of blood relations so that they can be used as a basis for determining the legal relationship between children and biological fathers. However, some others tend to place DNA testing only as a complement that still requires recognition or a voluntary statement from the biological father. This ambivalent attitude indicates that although biological evidence has been normatively recognized, there is still doubt in integrating scientific evidence into the structure of family law, which is thick with formalistic values. As a result, substantive justice for children is not always realized in practice, even after the Constitutional Court's decision is final and binding.

One of the main challenges in implementing the decision is the lack of clarity in its technical implementation. Until now, there have been no implementing regulations that specifically regulate the procedure for suing illegitimate children against their biological fathers, including the procedures for submitting biological evidence and determining civil rights. This gap causes inconsistency in legal practice, where each judge has broad room for interpretation without clear technical guidance. When the legal system does not provide an operational mechanism, children's rights again depend on the luck and wisdom of each law enforcement officer. The absence of these derivative regulations also makes it difficult for related parties to carry out their functions in an accountable and transparent manner.

Beyond normative challenges, social and cultural resistance remains a major obstacle to recognizing illegitimate children. In a society that upholds moral norms and family honor, the existence of illegitimate children is still considered taboo and shameful. The stigma not only burdens the child but also becomes a hidden reason that makes many biological fathers reluctant to acknowledge their blood relationship. Even in the courtroom, this kind of social pressure can affect the objectivity of decision-making, especially if the judge himself has conservative views that are in line with the values of the local community. This situation shows

that legal challenges are often inseparable from cultural challenges. In addition to stigma, illegitimate children also face limited access to claim their legal rights. Many of them were born without sufficient legal or economic support from their mothers, making efforts to sue their biological fathers almost impossible. Legal costs, difficulties in accessing DNA testing services, and fear of legal stigma are some of the real obstacles faced by these children. In some cases, even the child's mother is reluctant to process the case because she is afraid of social consequences or pressure from the extended family. This kind of inequality in access to law is a serious problem that undermines the principle of justice for all citizens, especially for children who cannot choose how they were born.

In responding to this challenge, concrete steps are needed in comprehensive legal reform. One urgent need is for derivative regulations from the Constitutional Court Decision that technically regulate the procedures for proving biological relationships and granting civil rights for illegitimate children. This regulation must include operational standards for judges, lawyers, and other court officials in handling similar cases. In addition, the reform must also target the substance of positive law, such as the Marriage Law and the Civil Code, so that the written norms are in line with the constitutional decisions that have been issued. Without comprehensive reform, spaces for justice will continue to be hampered by legal legacies that are no longer relevant to the spirit of child protection.

In this legal reform, the role of institutions such as the Indonesian Child Protection Commission (KPAI) and the Witness and Victim Protection Agency (LPSK) needs to be optimized. Both have a strategic position to provide legal assistance, psychological protection, and legal education to children facing status conflicts. LPSK, for example, can have its mandate expanded to reach children in civil cases if they face intimidation or pressure when fighting for their rights. Meanwhile, KPAI can be a bridge of advocacy and facilitation so that cases of illegitimate children receive proper attention in the legal system. Restructuring the legal framework and strengthening child protection institutions is not an easy task, but it is a necessity in a state of law that upholds human rights. Children, regardless of their birth background, have the right to live with a recognized identity and protected rights. The law must not be subject to discriminatory morality but must stand on the principles of justice, human dignity, and the state's responsibility to protect vulnerable groups from neglect and structural violence. Progress in the legal realm must go hand in hand with social transformation so that recognition of illegitimate children is not only a victory in legal texts but also in the reality of everyday life.

CONCLUSION

The Indonesian legal system has shown significant progress in responding to social dynamics related to the rights of illegitimate children, especially after the Constitutional Court Decision Number 46/PUU-VIII/2010, which expanded the meaning of civil relations between children and biological fathers based on scientific evidence such as DNA tests. This decision is an important milestone that confirms that a child's birth status should not be the basis for discrimination in protecting their rights. However, at the implementation level, there are various obstacles, both normatively and in legal practice. The absence of derivative regulations causes ambiguity, while social resistance and conservative views of some judicial officials often become obstacles to realizing substantive justice for children in this vulnerable position. As a result, civil relations between children and biological fathers have not been fully accommodated fairly, effectively, and sustainably in the national legal system.

To bridge the gap between ideal norms and legal practice, a series of concrete steps are needed. Derivative legislation that technically regulates the procedures for filing civil claims, biological evidence, and the granting of inheritance and maintenance rights must be drafted immediately to provide operational legal certainty. In addition, increasing the capacity of law

enforcement officers through training and socialization is noteworthy so that understanding of the principles of non-discrimination and child protection can be more evenly distributed and progressive throughout the jurisdiction of Indonesia. A progressive legal approach must be integrated into every aspect of resolving illegitimate child cases so that the legal system truly reflects justice that sides with humanity, not just maintaining outdated formalities. Thus, the state can demonstrate real support for children as a whole and dignified legal subjects.

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