

INHERITANCE RIGHTS FOR CHILDREN BORN IN UNREGISTERED MARRIAGES IN INDONESIA

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ABSTRACT

Under certain circumstances and reasons, marriages held in Indonesia are not registered and because of that are categorized as illegitimate marriages. This causes children born in unregistered marriages to be illegitimate children because they are born out of wedlock. Under Article 43 of Law No. 1 of 1974 concerning Marriage, children born out of wedlock only have civil relations with the mother and the mother's family. This eliminates the child's right to inherit his biological father's property. The purpose of this study was to analyze the status of children born out of unregistered marriages associated with the right to inherit the property of both parents in terms of positive laws in force in Indonesia. The method used is normative juridical by analyzing written legal documents such as constitutions, laws, regulations, court decisions, and other legal literature and using a qualitative approach. Under the decision of the Constitutional Court No. 46/PUU-VIII/2010 as a reconstruction of Article 43 of Law No. 1 of 1974, children born out of wedlock have civil relations with the father and father's family as long as it can be proven that the child has blood relations with his biological father. This implies that the child has the same inheritance rights as a legitimate child. Following the decision of the Constitutional Court No. 46/PUU-VIII/2010 as a reconstruction of Article 43 of Law No. 1 of 1974, children born out of wedlock have civil relations with the father and father's family as long as it can be proven that the child has blood relations with his biological father. This implies that the child has the same inheritance rights as a legitimate child.

INTRODUCTION

In Indonesia, there are several situations where marriages are not registered or do not have official records. An unregistered marriage occurs when a couple is married according to custom or religion without going through the official registration process with the state. Such marriages are usually not legally recognized and do not have the same legal protection as legally valid marriages because they are registered.

There are several reasons why marriages are not registered, among others due to cultural (customary) or religious considerations, cost or economy, non-fulfillment of administrative requirements, and the couple's desire to keep the marriage a secret. However, unregistered marriages have several legal consequences, including the status of the child born in the marriage along with the child's right to inherit the assets of both parents.

According to Article 2 of Law No. 1 of 1974 concerning Marriage, a marriage is valid if it is carried out according to the laws of each religion and belief, and each marriage is recorded according to the applicable laws and regulations. This has the consequence that marriages that are not registered are not recognized by the state and the state considers that marriages have never taken place. The problem that arises is what is the status of children born in unregistered marriages and what are the rights to inherit these children considering that mistakes were made by their parents. The purpose of this research is to analyze the status of children born out of unregistered marriages associated with the right to inherit the property of both parents in terms of positive laws in force in Indonesia.

METHOD

The method used in this research is normative juridical. Normative juridical research is a type of legal research that aims to understand, analyze, and interpret the law based on legal texts and relevant legal principles. This research involves analyzing written legal documents such as constitutions, laws, regulations, court decisions, and other legal literature. Normative juridical research is carried out using an analytical and critical approach to interpreting and applying the law. This research was conducted using a literature study, and document analysis using a qualitative approach.

DISCUSSION

According to Article 1 of Law No. 1 of 1974, marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family or household based on belief in One Almighty God. From this understanding, it can be seen that in a marriage there must be an outward bond, namely a bond that can be seen like a husband and wife relationship, while an inner relationship can be seen from the existence of affection or mutual love. With this inner and outer bond, marriage will produce children as descendants of husband and wife.

There are two conditions for a marriage to be considered valid, namely according to Article 2 of Law No. 1 of 1974. First, it is carried out according to the laws of each religion and belief. Second, it is recorded according to the applicable laws and regulations. However, for certain reasons, marriages that are carried out are intentionally not registered. These reasons include cultural

(customary) or religious considerations, cost or economy, non-fulfillment of administrative requirements, and the couple's desire to keep their marriage a secret.

In some circles of society, marriage is considered valid if it is done according to custom or religion so that it does not feel the need to be registered. Although there are groups of people who require their members to register marriages, in general, there are more people who consider registration to be unimportant and considered valid because it has been done according to custom or religion. Economic conditions that cause no fees can be the cause of marriages not being recorded, so it is enough to do it in a simple religious or customary way that does not require costs, or the costs are given voluntarily.

Non-fulfillment of administrative requirements can be the cause of marriage not being registered. There are at least two reasons for the non-fulfillment of administrative requirements. First, the couple or one of the partners is not old enough and does not get permission from the Court to enter into a marriage. According to Article 7 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, the minimum age for marriage is 19 years. If the couple or one of the partners is less than 19 years old, then the new marriage can take place after obtaining permission from the Court's dispensation. The court can permit if there is a very urgent reason that the marriage must take place, for example, the prospective bride is pregnant before the marriage. Non-fulfillment of administrative requirements can also be a reason why marriages are kept secret so they are not recorded, for example in the polygamy of the groom. One of the administrative requirements for practicing polygamy is obtaining permission from the wife or wives unless the wife is incapable of agreeing or is under guardianship. In addition, there is a guarantee that the husband will be able to support his wife and children.

Marriages that are not registered do not provide certainty and protection for the status of husband, wife, or children (Prodjohamidjojo, 2002). Couples who are not legally married do not have the same legal protection as couples who are legally married. This condition makes them more vulnerable to legal problems and difficulties in obtaining the rights they should have, such as insurance and health rights, inheritance rights, and maintenance rights.

The formation of a family from marriage will give birth to children. The legal bond between a child and his biological parents only occurs if the child is born in a marriage that is carried out legally. Marriage is legal if it is registered after it is done according to the religion and beliefs of the bride and groom. For children born to couples who do not have legal marriage records, the legal relationship between children and parents is not automatically formed. This can lead to several legal and practical consequences, especially in terms of the rights and obligations of children in the family. Without a valid legal bond between the biological parents and the child, the child will have difficulty obtaining the right to inherit and other rights such as the right to love, care and care from parents, and the right to receive adequate education and teaching.

According to the KPAI (2013), unregistered marriages have several legal constructions. First, marriage is not registered but children are desired. This marriage has characteristics and conditions such as the child being recognized by his lineage, having financial support for his needs, and being recognized in the status/social association of his parents, but his whereabouts are still hidden (for example in the case of a polygamous marriage, but do not have a permit for polygamy).

Second, marriages are not registered and children are unwanted. This marriage has characteristics and conditions such as the child is not recognized using the father's bloodline, does not receive financial support (although some do receive financial support), neglected, is not recognized in the social relations of their parents, and the wife is sometimes divorced.

Third, marriages are not registered due to difficulties in accessing registration with the characteristics and circumstances of the child being recognized by his family, financed, and recognized in the social relations of his parents, but not recorded due to high costs or difficulty accessing marriage registration.

Fourth, marriages are not registered because of the smuggling of the "contract marriage" law with the characteristics and circumstances in the form of controversies in the recognition of lineage, after the marriage contract ends the child is not financed and is not recognized in the social relations of his parents (almost similar to a non-marital child).

Fifth, marriages are not registered because the bride and groom have not met the age requirements, among others, by providing payment in money or other forms

Article 42 of Law No. 1 of 1974 states that "A legitimate child is a child born in or as a result of a legal marriage" and Article 43(1) of the same law states that "a child born outside of marriage only has civil relations with his mother and his mother's family. This rule complies with Article 100 of the Compilation of Islamic Law. This provision indicates that an unregistered marriage causes harm to the child because he does not have a legal relationship with his biological father. Marriages that are not registered can cause the husband or biological father to easily deny or not acknowledge his biological wife or child.

The Civil Law Code divides the status of children into two types, namely legitimate children and illegitimate children. Legitimate children are children who grow or are born during the marriage of their mother's father. An illegitimate child is a child born outside of marriage consisting of natural children, incestuous children, and children of adultery. A natural child is a child born out of wedlock as a result of a relationship between a man and a woman, both of whom are not bound by marital ties. An incestuous child is a child born out of wedlock as a result of a relationship between a man and a woman who, according to the law, are prohibited from marrying. A child of adultery is a child born out of wedlock as a result of a relationship between a man and a woman where one or both of them are bound by marital ties (Prawirohamidjojo & Pohan, 1991).

Legal marriage creates legal consequences for the position of the husband, wife, and the status or position of the child. Thus, the child has the status or position as a legitimate child with rights according to law, including the right to inherit the assets of both parents. On the other hand, an illegal (unregistered) marriage does not have legal consequences for the husband, wife, and children born. Children born from illegitimate marriages cannot claim the inheritance of their parents.

In Western Civil Law, the right to inherit illegitimate children or children outside of marriage is recognized as being able to inherit the assets of their parents with several conditions and limitations. In general, illegitimate children have the right to inherit property from their biological parents, but this right is limited compared to legitimate children. This right is limited to a lesser amount than that of a legitimate child. In addition, the right to inherit an illegitimate child may also depend on whether the child is recognized or legally recognized by his biological parents.

Laws in several countries allow a child to be recognized as the legitimate child of both parents even though the marriage of the parents is not registered, provided that the couple can prove that they have lived together as husband and wife. However, the procedures and requirements for legally recognizing a child may vary from country to country.

In some states in the United States, an illegitimate child is still not recognized as an heir if the biological parents die without making a will or making a bequest to the child. In contrast, several European countries, such as France, Italy, and Spain, recognize the inheritance rights of illegitimate children legally recognized by their biological parents, although these rights are limited compared to legitimate children. The European Court of Human Rights even stated that neglecting a child's right to inherit is illegal as child discrimination (ECHR, 2017).

Recognition of the right to inherit illegitimate children in Asia also varies. India recognizes the inheritance rights of illegitimate children as equal to those of legitimate children because the law recognizes men and women who have lived together for a long time as husband and wife (Mehta & Mehrotra, 2021). The Philippines also recognizes the inheritance rights of illegitimate children as long as it is recognized by the biological father with half of the legitimate child's share (Nicholas & Vega, n.d.). On the other hand, Malaysian law prohibits linking an illegitimate child with his biological father so that he cannot inherit his biological father's property (MONCO, 2022).

Inheritance rights in Indonesia are regulated according to Customary Law, the Civil Code, and the Compilation of Islamic Law. Customary Law regulates the inheritance rights of Indonesian citizens by looking at the kinship system. The Indonesian Civil Code specifically regulates the inheritance rights of citizens of Chinese descent, while the Compilation of Islamic Law regulates inheritance rights for Muslims.

Customary inheritance law refers to the rules that apply to indigenous peoples related to the division of a person's inheritance after death. Customary inheritance laws vary depending on the customs and habits prevailing in a particular society. Customary inheritance law is recognized in Indonesia as one of the legal inheritance law systems, in addition to Islamic inheritance law and civil inheritance law. Customary inheritance law is usually based on hereditary rules set by indigenous peoples and applied consistently by the family or customary community. Customary inheritance law bases the division of inheritance on the kinship system. The kinship system consists of the patrilineal system, the matrilineal system, and the parental system.

In the patrilineal system, inheritance is passed on to male heirs who have blood relations with the heir. In contrast, in a matrilineal system, inheritance is passed on to female heirs who have blood relations with the heir. The parental system allows inheritance to be passed on to male and female heirs who have blood relations with the heir. In general, customary inheritance law follows the provisions of Articles 42 and 43 of Law No. 1 of 1974 in terms of the legal position of children. Children born from unregistered marriages are considered illegitimate children and therefore do not have the right to inherit.

The inheritance rights of children born out of wedlock for Chinese citizens in Indonesia are regulated in the Civil Code. The inheritance system regulated in the Civil Code allows children born out of wedlock (natural children) to inherit their father's assets as long as the father acknowledges the child out of wedlock. However, the share of children out of wedlock is smaller than legitimate children. In the Civil Code, a natural child is a child born from a father and mother relationship without marriage ties so that he has a legal status as an illegitimate child. This is different from Law No. 1 of 1974 and the Compilation of Islamic Law which stipulates that a child's legal status becomes invalid if he is born from an unregistered marriage, even though a religious marriage has taken place.

In Article 5(1) of the Compilation of Islamic Law, there is an obligation that every marriage be recorded. Article 6 of the Compilation of Islamic Law stipulates that marriages that are not recorded are declared to have no legal force. This has the consequence that marriages that are not recorded become invalid according to the law so that children who are born get the legal status of illegitimate children because they are born out of wedlock. As a consequence, the child will only have civil relations with his mother and his mother's family under Article 100 of the Compilation of Islamic Law. This provision is under Article 43 of Law No. 1 of 1974. This means that a child cannot inherit the assets of his biological father because he does not legally have a civil relationship with his biological father.

In 2012, the Constitutional Court through Decision No. 46/PUU-VIII/2010 added the editorial in Article 43 of Law No. 1 of 1974 to "Children born out of wedlock have civil relations with their mothers and their mothers' families and with men as their fathers. which can be proven based on science and technology and/or other evidence according to law to have blood relations, including civil relations with the father's family".

The decision of the Constitutional Court raises debate among Muslims. On the one hand, he agrees with the decision on the condition that the term outside of marriage is a marriage that has taken place religiously but is not recorded. On the other hand, there is disagreement because this provision can be abused by couples who are not married at all in an adultery relationship (Muhammad, Luth, Budiono, & Hamidi, 2014). The Constitutional Court believes that children should not be associated with the actions of their parents and must have rights as children so that children resulting from adultery according to Article 43 of Law No. 1 of 1974 are included in the category of children born out of wedlock.

In the other assessment, the Constitutional Court has reconstructed Article 43 of Law No. 1 of 1974. This reconstruction of Article 43 stipulates that children born in and out of wedlock have the same position in inheritance (Gunarto, Husien, & Khisni, 2021). The implication of the changes due to this reconstruction is the change in the status of children having the same position as legitimate children (Setiyowati, 2021). Thus a child born out of wedlock has the right to inherit his father's property as long as it can be proven that the child has blood relations with his father. This also has consequences for children born out of marriage who are not recorded as having the same inheritance rights as legitimate children.

CONCLUSION

The right to inherit of a child born in an unregistered marriage is categorized by Indonesian law as a child out of wedlock and has the legal status of an illegitimate child and only has a civil relationship with his mother and his mother's family. The status of an illegitimate child causes the child to lose the right to inherit from his biological father. However, under the decision of the Constitutional Court No. 46/PUU-VIII/2010 as a reconstruction of Article 43 of Law No. 1 of 1974, children born out of wedlock have civil relations with the father and father's family as long as it can be proven that the child has blood relations with his biological father. This implies that the child has the same inheritance rights as a legitimate child.

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