THE POSITION AND LEGAL STATUS OF CHILDREN OUT OF MARRIAGE ARE REVIEWED BASED ON LEGAL PROVISIONS IN INDONESIA

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Abstract
The civil rights of children outside of marriage have an impact on the child, because they do not receive legal protection, such as the care and welfare of the child, including the child's right to inherit. The position of an illegitimate child will be a burden for the mother and the mother's family, and the child's legal status is also not covered by the law, such as determining the child's legitimacy, such as the status of the child's birth certificate. Therefore, the author wrote this to identify the legal status of illegitimate children. This writing is prescriptive normative legal research, to answer legal issues raised with arguments, theories or new concepts as prescriptions in solving the problems faced. "Children born out of wedlock only have a civil relationship with their mother and her mother's family." Article 280 KHUPer "With the recognition of a child out of wedlock, a civil relationship is created between the child and his father or mother." Article 100 KHI "Children born out of wedlock only have a family relationship with their mother and their mother's family." Article 49 paragraph (2) Law number 24 of 2013, amendment to Law Number 23 of 2006 concerning Population Administration "Recognition of children only applies to children whose parents have entered into a valid marriage according to religious law, but not yet legal according to State law." Based on the writing, the recognition of an illegitimate child (biological product) as a recognized child means that it will give rise to alimony rights, birthright rights and inheritance rights for the child from his biological father. An illegitimate child only has a lineage relationship, maintenance rights and obligations as well as inheritance rights and relationships with his mother and his mother's family, not with his natural (genetic) father/father or natural (genetic) father/father.

I. Introduction

Marriage is a very important event in a person's life. In a marriage, each partner desires the presence of children. His presence will strengthen the relationship between the husband and wife concerned. In principle, marriage is a contract, to justify the relationship and limit the rights and obligations, mutual assistance between a man and a woman, both of whom are not muhrim. When viewed from a legal perspective, it is clear that marriage is a sacred and noble contract between a man and a woman, being the cause of their legal status as husband and wife and the permissibility of sexual relations (Karim & Bima, 2020) .

The marriage bond is a basic element in forming a harmonious and loving family, so in implementing this marriage, legal norms are needed that regulate it. The application of legal norms in the implementation of marriage is especially necessary in order to regulate the rights, obligations and responsibilities of each family member, in order to form a happy and prosperous household.

Based on the provisions of Article 1 of Law Number 1 of 1974 concerning Marriage, the definition of marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God. Regarding the validity of marriage, it is contained in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, namely that a marriage is valid if it is carried out according to the laws of each respective religion and belief. This means that if a marriage has met the requirements and the marriage vows or marriage vows have been carried out (for Muslims) or the priest/pastor has carried out a blessing or other ritual, then the marriage is considered valid according to religion and community beliefs. However, this kind of marriage is not considered valid by the State if it has not been registered with an authorized official. This is in accordance with the provisions of Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage regarding marriage registration, namely that each marriage is recorded according to the applicable laws and regulations (Hanifah, 2019) .

A marriage will give rise to legal aspects, including rights and obligations for the bride and groom, rights and obligations in marital assets, family legal relations, the position of children, guardianship law and many other aspects that will arise from the continuation of a marriage (Febriansyah, 2015) .

The implementation of clear regulations means that in reality marriages often occur in society that do not comply with the procedures stipulated in Law Number 1 of 1974 concerning Marriage. This society believes that it is enough to carry out a marriage in accordance with religious law and the marriage is considered valid (this kind of marriage is usually known as a siri marriage or a private marriage). The basis for the formation of a family is marriage. From the definition of marriage above, it is clear that marriage is a sacred institution and

has legal force. Marriage will provide clarity on the status and position of the child being born. Children born from a marriage are legitimate children who have a civil relationship with their father and mother.

The explanation of Law Number 1 of 1974 concerning Marriage states that the purpose of marriage is to form a happy and eternal family (household). This means that a marriage is not entered into temporarily or for a certain planned period of time, but for life or in perpetuity, and cannot be terminated just like that. Therefore, marriages that are only held temporarily, such as contract marriages, are not permitted. Dissolution of a marriage by divorce can only be permitted in very forced circumstances (Hidayati, 2022) .

The existence of children in the family is something very meaningful. Children have different meanings for everyone. Children are a link to descendants, an investment in the future, and children are a hope to depend on in old age. It is considered capital to improve one's rank in life so one can control one's parents' social status.

There are many things that can cause a child's lineage to be unclear. The problem that arises in society is free sex which often occurs in young people's relationships in this era of globalization. Starting from the custom of dating which has led to promiscuity and resulted in pregnancy out of wedlock. Many unregistered marriages are carried out because the perpetrator avoids the sin of adultery. Religiously, siri marriage is legal, because it fulfills the pillars of marriage. However, in Indonesian law, marriages that are not registered with the KUA and Civil Registry for non-Muslims are not recognized. This actually also has an effect on the development of children who are born in the future.

Children in the general sense receive attention not only in the field of science (*the body of knowledge*), but can be studied from a centralistic (life-oriented) perspective. Religion, law and sociology make children's understanding more rational and current in the social environment. Children are placed in child protection advocacy and law. Children become objects and subjects that become a process of legitimation, generalization in the systematics of the positive legal system that regulates children (Fitriani, 2016) . When a person is born, that is when his legal status begins and ends when he dies. Meanwhile, the events from birth to death of a person will have legal consequences, not only for oneself but also for other interested people. A child can be said to be legally related to his father if he is born from a valid marriage. On the other hand, children born outside a legal marriage cannot be called legitimate children, they are usually called children of adultery or children outside a legal marriage (Martinelli, 2016; Muhajir & Musolin, 2022) . Essential factors that are of concern in the national legal system and need to be substantially structured are the status of the child or the existence of the child, and the positive legal system that regulates children.

An illegitimate child arises because the child is born to a woman, the birth of the child is known and desired by one or both of the parents, but one or both of the parents are still tied to another marriage. And also children born from

marriages that are not registered at the Civil Registry Office and/or Religious Affairs Office. The birth of a child without being preceded by a marriage bond will give the child the status of being born out of wedlock (Bowontari, 2019) .
Considering the development of society in Indonesia today, there is increasingly an opinion that sexual relations outside of legal marriage is not an extraordinary problem, so that children are often born outside of legal marriage. Children born outside of a legal marriage are called illegitimate children. In everyday life, illegitimate children are often referred to as illegitimate children, namely children whose father is uncertain. This means that the child who is born only has a biological and legal status and relationship with his biological mother, and does not have a legal relationship with a father. This is caused by it being unclear who is the father of the illegitimate child (Pratama, 2019) .
The civil rights of children outside of marriage have a large and widespread influence on the child, because they do not receive legal protection, such as the care and welfare of the child, including the child's right to inherit. The status of an illegitimate child will be a burden for the mother and the mother's family, and the child's legal status is also not covered by law such as determining the child's legitimacy, such as the status of the child's birth certificate. In fact, in the birth of a child out of wedlock the child is not guilty at all but rather the act of the relationship between the parents which causes his birth to this earth.
The problem of the legal status of children out of wedlock can be resolved legally through the Constitutional Court Decision Number 46/PUU-VIII/2010, dated 13 February 2012, that children born out of wedlock have a civil relationship with their mother and her mother's family as well as with men as his father, who can be proven based on science and technology and/or other evidence according to law, has blood relations, including civil relations, with his father's family (Tololiu, 2017) .
The Constitutional Court's decision is seen as a legal landmark , but on the other hand it is seen as a form of legalization of adultery. For religious leaders who are generally classified as conservative, the Constitutional Court's decision was "surprising" and even "too progressive". However, for other parties, this decision is a historic decision that carries broad and complex legal implications for a number of conventional laws and regulations and conservative thinking (Bachrain, 2016) . The Constitutional Court's decision refers to many human rights provisions and principles which at their core include the principle of justice, the principle of non-discrimination, and the principle of equality/equality.
Regarding invalid marriages, it is still unclear regarding the position of the children born. This will of course give rise to problems regarding the legal position and rights of children resulting from this invalid marriage. According to the daily merdeka.com news on December 26 2012, in a census conducted by the Non-Governmental Organization (NGO) Empowering Women Headed of Families (Pekka), 25 percent of people in Indonesia had unregistered marriages

and traditional marriages in 2012. This means that this marriage not registered in the country. This census was carried out in 111 villages from 17 provinces. There are several provinces where the number of unregistered marriages is above 50 percent. In NTT it is 78 percent, Banten 65 percent, and NTB 54 percent. Meanwhile, research results from the Research and Development and Training Agency of the Ministry of Religion in nine districts in Indonesia show that many people carry out unregistered marriages and underage marriages because of the public stigma of spinster status. Of the nine districts, they include East Java, West Java, NTB, South Kalimantan and Yogyakarta. Their daughters were immediately married off as minors who then could not be registered by the state because they did not meet the requirements. In fact, the impacts of unregistered marriage and underage marriage are numerous. As legally, in this case, the legal status of children born from this marriage is certainly questionable.

Based on the many cases of invalid marriages in Indonesia resulting in illegitimate children, the author is interested and wants to conduct research on this issue in depth, especially on how the legal status of illegitimate children is regulated in Indonesia and the legal consequences for the status of illegitimate children according to the law in Indonesia. Indonesia

LITERATURE REVIEW

According to the provisions of Article 1 of Law Number 1 of 1974 concerning Marriage, Marriage is a spiritual and physical bond between a man and a woman to become husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God. A bond of birth is a formal relationship that can be seen because it is formed according to law, a relationship which binds both parties and other parties in society. Inner ties are informal relationships formed with genuine mutual will, which bind only both parties. (Abdulkadir Muhammad, 2000:74). Based on Law Number 1 of 1974 concerning Marriage, there are 2 (two) types of marriage conditions, namely material conditions, namely conditions that are inherent in each party, also called subjective conditions, and formal conditions, namely regarding the procedures or procedures for carrying out a marriage. according to religious law and law, it is also called objective requirements (Abdulkadir Muhammad, 2000: 76).

The definition of a child according to Sugiri's opinion is that as long as the process of growth and development is still going on in their body, the child is still a child and will only become an adult when the development and growth process is complete, so the age limit for children is the same as when they started to become adults, namely 18 (eight twelve) years for women and 21 (twenty) years for men (Maidi Gultom, 2010:32) Law Number 1 of 1974 concerning Marriage explains that a child is a man under 19 years and a woman under 16 years, this provision is explained Based on Article 7 paragraph (1), a

man is permitted to marry (considered to be an adult and fit to marry) after reaching the age of 19 (nineteen) years and a woman who has reached the age of 16 (sixteen) years.

The rights of children that need to be protected in accordance with Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection are:

1. The right to live, grow, develop and participate fairly in accordance with human dignity, as well as protection from violence and discrimination
2. The right to a name as personal identity and citizenship status
3. The right to worship according to one's religion, think and express oneself according to one's level of intelligence and age, within the realm of parental guidance
4. The right to know one's parents, to be raised and cared for by one's own parents
5. In the event that for some reason the parents cannot guarantee the child's growth and development, or the child is neglected, the child is cared for or appointed as a foster child or adopted child by someone in accordance with the provisions of the applicable laws and regulations.
6. The right to obtain health services and social security in accordance with physical, mental, spiritual and social needs
7. The right to obtain education and teaching in the context of personal development and the level of intelligence in accordance with his talents
8. The right to obtain special education for children with disabilities and the right to special education for children who have advantages
9. Every child has the right to express and have his opinion heard, receive, seek and provide information according to his level of intelligence and age for the sake of his development in accordance with the values of decency and propriety.
10. The right to rest and use free time, socialize with children of the same age, play, have recreation and be creative in accordance with their interests, talents and level of intelligence for the sake of self-development.
11. The right to obtain rehabilitation, social assistance and maintenance of social welfare levels for children with disabilities.
12. Children also have the right to receive identity or recognition from the moment they are born, which is stated in the form of a birth certificate.

Meanwhile, children's obligations according to Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, are:

1. Respect parents, guardians and teachers.
2. Loves family, community and friends.
3. Love the homeland, nation and country.
4. Carry out worship according to the teachings of your religion.
5. Implement noble ethics and morals.

Regarding the legal status or position of a child, there are differences based on whether he was born in or as a result of a valid marriage or not. The law differentiates between legitimate and illegitimate descendants. Legitimate offspring is based on a valid marriage. Illegitimate offspring are offspring that are not based on a valid marriage. According to J. Satrio (2006), "we must be careful with the use of the term illegitimate child because it is not the same as a child born out of wedlock. "Children born after their parents' marriage is dissolved, so outside of marriage, within the limits determined by law are legitimate children."

Children in terms of their origins are known as legitimate children, illegitimate children and adopted children. A legitimate child is a child born to parents who are bound by a legal marriage (Article 42 of Law Number 1 of 1974 concerning Marriage). Article 99 of the Compilation of Islamic Law states that a legitimate child is a child born in or as a result of a valid marriage and the result of a legal husband and wife's conception outside the womb and born to the wife. So if a child is born to parents who are not in a valid marriage, they are considered an illegitimate child. This is in accordance with what was stated by Soetojo Prawirohamidjojo that a child is born to a married woman, so he is a legitimate child. (Soetojo Prawirohamidjojo, 2001: 104) .

2. Research Method

Types of research

This type of research in legal research is normative or doctrinal legal research. Terry Hutchinson as quoted by Peter Mahmud Marzuki defines doctrinal legal research as follows (Peter Mahmud Marzuki, 2005: 32): doctrinal research : research which provides a systematic exposition of the rules governing a particular legal category, analysis of the relationship between rules, explain areas of difficulty and, perhaps, predicts future development Doctrinal research is research that provides a systematic exposition of the rules governing a particular legal category, analyzes the relationships between the rules, explains areas of difficulty and, tries to predict future developments.

Nature of Research

The nature of research in this case is prescriptive and applied. Legal science has the characteristics of being a prescriptive and applied science. The nature of prescriptive research, namely studying the objectives of law, values of justice, validity of legal rules, legal concepts and legal norms (Peter Mahmud Marzuki, 2006: 22). This research is prescriptive because it is intended to answer legal issues raised with arguments, theories or new concepts as prescriptions in solving the problems faced (Peter Mahmud Marzuki, 2005: 35).

Research Approach

There are several approaches to legal research. With this approach, the author can obtain information from various aspects regarding the issue being researched. The various approaches in legal research are as follows (Peter Mahmud Marzuki, 2005: 93):

1. Legislative Approach (*statute approach*);
2. Case Approach (*case approach*);
3. Historical Approach (*historical approach*);
4. Comparative Approach (*comparative approach*); And
5. Conceptual Approach (*conceptual approach*).

Based on the problem formulation and research objectives, the approach method used is the statutory approach, namely the statutory approach is carried out by examining all laws and regulations related to the legal issue being handled). The legislative approach in normative legal research has both practical and academic uses. In this case, the approach method in this research is used to analyze the legal position of illegitimate children

Types of Legal Material Sources

This research is normative legal research. The source of this research is obtained from secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials.

1. Primary Legal Materials

a. Code of Civil law;
b. Law Number 1 of 1974 concerning Marriage;
c. Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage;
d. Presidential Instruction (Inpres) dated 10 June 1991 Number 1 of 1991 concerning Dissemination of the Compilation of Islamic Law (KHI);
e. Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection;
f. Constitutional Court Decision Number 46/PUU-VIII/2010;
g. Compilation of Islamic Law;
h. Law Number 24 of 2013, Amendment to Law Number 23 of 2006 concerning Population Administration;
i. Customary law.

2. Secondary Legal Materials

a. Literature related to marriage;
b. Journals and articles about marriage.
c. Dictionary;
d. Encyclopedia.

Legal Data Collection Techniques

This research uses a library study method of collecting legal materials. Literature study is the study of sources used in research, such as documents

used to search for data about things or variables in the form of notes, transcripts, books, magazines and other things that support research. In another sense, it is often called library research , with the main library being statutory regulations.

Legal Material Analysis Techniques

The legal material analysis technique used is deductive analysis of legal material using the Syllogism method. This means that the analysis of legal materials prioritizes logical thinking so that it will find the causes and effects that will occur. According to Philipus M. Hadjon as quoted by Peter Mahmud Marzuki, the deduction method is like the syllogism taught by Aristotle, the use of the deduction method stems from the submission of a major premise (general statement). Then a minor premise (special in nature) is proposed. From these two premises a conclusion is then drawn (Peter Mahmud Marzuki, 2005: 47). After all the legal materials have been collected, they will be processed and analyzed by connecting theory with research results, then analyzed using the restrictive interpretation method, namely an interpretation method that provides clear boundaries in the meaning of a phrase contained in an article or in the explanation of a law. and related legal materials. Primary, secondary and tertiary legal materials are analyzed using theoretical instruments to discuss and answer problems, which are then expected to obtain clarity on problems regarding the position and legal status of children born out of wedlock according to legal provisions in Indonesia

3. Results and Discussion

Regulation of the Legal Status of Children Born from Illegal Marriages in Indonesia

Marriage is the behavior of creatures created by God Almighty so that life in the natural world can reproduce. Marriage is a culture that follows the development of human culture in social life. In simple societies the marriage culture is simple, narrow and closed, in advanced (modern) societies the marriage culture is advanced, broad and open. With the issuance of Law Number 1 of 1974 concerning Marriage, the diversity of marriage laws that have been the guide and apply to various groups of citizens in society and various regions can be ended. However, it turns out that the provisions of the previous marriage law are still declared valid, as long as they have not been regulated by the Marriage Law themselves, and this does not conflict with the law (Rachmadi Usman in (Juliana, 2013) .

1. Regulation of the Legal Status of Illegitimate Children in Indonesia according to Law Number 1 of 1974 concerning Marriage

A valid marriage according to national marriage law is a marriage that is carried out according to the rules and regulations of religious law that are recognized by the government. The validity of a marriage is different from the conditions for a

marriage, because the conditions for the validity of a marriage are the methods or procedures that must be followed so that the marriage is valid according to law which can result in the public knowing that a marriage ceremony has taken place. Meanwhile, the conditions for marriage as stated in Articles 6 to Article 11 of Law Number 1 of 1974 concerning Marriage are conditions for carrying out a marriage to further ensure the achievement of the goals of marriage.

Regarding the provisions for the validity of a marriage, it is regulated in Law Number 1 of 1974 concerning marriage, namely in article 2 paragraph (1) which reads as follows "marriage is valid, if it is carried out according to the laws of each religion and belief". The explanation of Article 42 of Law Number 1 of 1974 concerning marriage states that a legitimate child is a child born in or as a result of a valid marriage.

The Marriage Law states that children born out of wedlock only have a civil relationship with their mother and their mother's family. This means that the child has no legal relationship with his father, either regarding the costs of his life and education or inheritance. For those who are subject to civil law, with the mother's consent, a father can make a Child Recognition. Child Recognition is an acknowledgment made by the father of a child born outside a legally valid marriage.

Basically, child recognition can be done by either the mother or father, but because based on Article 43 of Law Number 1 of 1974 concerning Marriage which essentially states that children born outside of marriage do not have a civil relationship with their father, then to obtain a civil relationship Newly, a father can perform Child Confession. Although there are provisions that allow a man or father to confess a child, this confession can only be done with the mother's consent.

A legitimate child is a child who is born when both parents are bound in a legal marriage. Legitimate children, the same as biological children, have a special and strong position towards their parents when compared to illegitimate children or illegitimate children. Article 42 of Law Number 1 of 1974 concerning Marriage which provides an understanding of legitimate children which reads as follows:

"A legitimate child is a child born in or as a result of a valid marriage."

This provision explains that legitimate children are:

a. Children born in and during marriage
b. The birth must be from a valid marriage relationship
c. Thus, the father and mother are legally bound in a legal marriage.

The issue of legitimate children is regulated in Law Number 1 of 1974 concerning Marriage in Article 42, Article 43 and Article 44. Article 42. Provisions regarding the origins of children are regulated in Article 55 of Law Number 1 of 1974 concerning Marriage. It is stated in this provision that the origin of a child can only

be proven by an authentic birth certificate issued by the authorized agency. If the birth certificate does not exist, the court can issue a determination of the child's origins after a thorough examination is carried out based on evidence that meets the requirements. And based on the court provisions mentioned above, the birth registrar in the court's jurisdiction issues the child's birth certificate. An illegitimate child is a child who is born outside of marriage and only has a civil relationship with his mother.

2. Regulation of the Legal Status of Illegitimate Children in Indonesia according to the Civil Code

Article 284 of the Civil Code states that a recognition of an illegitimate child, during the life of the mother, will not be accepted if the mother does not agree. A number of legal provisions in positive law in Indonesia determine and regulate the legal position of children based on the legal marital status of their parents. If the marriage is carried out and recognized as valid, then the children born from the marriage are also legitimate children. Children in general (both legitimate children and illegitimate children according to law have civil rights attached to them, because they are children (people). In the Civil Code it is determined in Article 1 that, enjoying civil rights does not depend on State rights. Based on Article 1 of the Civil Code, civil rights are different from state rights, although basically state rights also regulate civil rights.

Civil rights are within the scope of Civil Law. Civil law is the law that regulates the interests of citizens of one country and citizens of another country. Rights are always paired with obligations, and constitute a legal relationship. These rights give individuals enjoyment and freedom in carrying them out, while obligations constitute restrictions and burdens (Konoras, 2013) . Rights can also be divided into non-absolute and relative rights. Salim (2021) explains that absolute rights include all public rights, namely:

a. the right to express thoughts and feelings, through the press;
b. the rights to submit a written application to the rightful/authorized person;
c. the right to freely embrace and adhere to one's religion and beliefs.

Meanwhile, some of the civil rights, namely rights that rely on Civil Law in an objective sense, for example are:

a. personality rights (*personlijkheidsrechten*), are human rights over themselves, such as human rights over their soul, body, honor, first name and family name;
b. Family rights (*familierechten*), are rights arising from family relationships. Included in family rights are marital rights, namely the power of a husband over his wife, the power of parents over their children, and the power of guardians over their children, the rights of guardians over those they care for;
c. property rights (vermogensrechten), are rights that have a monetary value;

d. Property rights (*zakelijkerechten*), are property rights that give direct power over an object. Direct power means that there is a direct relationship between the people who have the right to the object;

e. Rights to intangible goods (*rechten opimmateriele gorderen*), are rights regarding the results of human thought such as Copyright and Octroi Rights.

Family rights (*familierechten*) are an important part that will explain the legal position and status of children outside of a legal marriage, because they originate from legal protection for individuals which does not start from their legal status, whether as legitimate or illegitimate children. The law provides protection for individuals without exception. The protection provided by law is found in the conception of the provisions of legislation on people starting from the constitutional provisions based on the 1945 Constitution of the Republic of Indonesia that "all citizens have the same position under the law and government and are obliged to uphold the law and government without exception." (article 27 paragraph (1)).

Based on Article 280 of the Civil Code, an illegitimate child will have a civil relationship with his parents if they have been legally recognized. Thus, if an illegitimate child is not recognized by his parents, he will not have a civil relationship with either his biological father or mother. However, according to Law Number 1 of 1974 concerning Marriage, the position of an illegitimate child by law has a civil relationship with his mother and his mother's family, as regulated in Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage. However, in paragraph (2) it is stated that the position of illegitimate children will be further regulated in a government regulation which has not yet been promulgated by the government. Thus, based on Article 66 of Law Number 1 of 1974 concerning Marriage, the old provisions in this case the Civil Code apply.

So the legal position of illegitimate children after the enactment of Law Number 1 of 1974 concerning Marriage still requires recognition to create a civil relationship between an illegitimate child and his parents. Provisions regarding recognition of illegitimate children are regulated in the Civil Code, Article 280 states that with recognition of illegitimate children, a civil relationship arises between the child and his father or mother. The Civil Code also allows a father to acknowledge a child during or after the marriage takes place. As stipulated in Article 273, which states that a child born out of wedlock, other than due to adultery or a sin of blood, is considered a legitimate child, if the father and mother later marry, and before the marriage is held, the child is recognized by the father and mother. Other provisions regarding recognition of illegitimate children are regulated in Articles 281 to 286. Recognition of children can be stated, among other things, in a Notarial Deed or in a Birth Certificate or Deed made by a Civil Registry Officer (outside of court). Or it is also possible with the Marriage Certificate itself. Child recognition cannot be carried out without the consent of the mother concerned.

3. Regulation of the Legal Position of Illegitimate Children in Indonesia according to Islamic Law

Knowing the legal status of a child can be seen from Article 103 of the Compilation of Islamic Law which reads:

(1) The origin of a child can be proven by its birth.

(2) If a birth certificate or other evidence as mentioned in paragraph (1) is not available, the Religious Court can issue a determination regarding the origin of a child after conducting a thorough examination based on valid evidence.

(3) On the basis of the Religious Court's decision in paragraph (2), the Birth Registration agency within the jurisdiction of the Religious Court issues a birth certificate for the child concerned.

Article 99 of the Compilation of Islamic Law states that: A legitimate child is:

a. Children born in or as a result of a valid marriage.
b. The result of a legal husband and wife's fertilization outside the womb and birthed by the wife.

Children born outside of a valid marriage, as stated in article 100 of the Compilation of Islamic Law, states that "children born outside of marriage only have a lineage relationship with their mother and their mother's family. Apart from that, it also explains the status of children from a man's marriage to a woman he impregnated before marriage. As stated in Article 53 paragraph (3) of the Compilation of Islamic Law: With a marriage taking place while the woman is pregnant, there is no need for marriage after the child is born.

Likewise, Article 75 letter (b) of the Compilation of Islamic Law explains the status of children from an annulled marriage, which states "the decision to annul a marriage does not apply retroactively to children born from the marriage. Meanwhile, Article 162 of the Compilation of Islamic Law explains about one hundred *Li'an children* (as a result of the husband's denial of the fetus and/or child born to his wife). Thus, it is clear that the Compilation of Islamic Law does not systematically group the division of children into one particular chapter, as is the classification stated in Law Number 1 of 1974 concerning Marriage. The explanation of Article 42 of Law Number 1 of 1974 concerning Marriage explains that a legitimate child is a child who is born and/or as a result of a valid marriage. Included in this article category are:

a. Children born to women as a result of a legal marriage.
b. Children born to women within the framework of marriage with a minimum period of 6 (six) months between the marriage event and the birth of the baby.
c. A child born to a woman within the framework of a marriage whose term is less

than usual for pregnancy but whose birth is not denied by her husband.

Therefore, to bring closer the understanding of children outside of marriage, an approach is outlined based on the terminology stated in the book of fiqh, which is combined with the provisions governing the status of children as stated in the Articles of Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law. Hasanayn Muhammad Makluf coined the term adulterous child as a child born as a result of an illegitimate husband and wife relationship. Illegal husband and wife relations as referred to are bodily relations between two people who are not bound by marriage and fulfill the predetermined elements of harmony and marriage requirements.

Apart from that, illegal husband and wife relations can occur on the basis of consensual or due to rape, whether committed by married or unmarried people. Even though the term child of adultery is a popular term and is embedded in people's lives, the Compilation of Islamic Law does not adopt this term to be used as a special term within it. This aims to ensure that children as a result of adulterous relationships are not subjected to social punishment, public censure and so on, by attaching the grave sin (adultery) of their biological mother and natural (genetic) father to themselves, as well as to show that Islamic identity does not recognize sin. inheritance. To bring this meaning closer, Article 44 paragraph (1) of Law Number 1 of 1974 concerning Marriage is only if he can prove that his wife has committed adultery and the child was born as a result of that act of adultery.

In the Compilation of Islamic Law, the sentence which has the meaning of adulterous child as defined by Hasanayn above is a child born outside of a valid marriage as stated in Article 100 of the Compilation of Islamic Law, which states that children born outside of marriage only have a blood relationship. with his mother and his mother's family.

The meaning of this provision is that Article 186 of the Compilation of Islamic Law states that children born outside of marriage only have a mutual inheritance relationship with their mother and their mother's family.

Based on the definition and approach to the meaning of a child of adultery above, what is meant by a child of adultery in this discussion is a child whose fetus/fertilization is the result of an act of adultery, or a child born outside of marriage, as a result of an act of adultery.

According to the author, children born as a result of unregistered marriages can have a lineage relationship with their mother and father because according to Islamic law marriage is a very strong contract or *miitsaqon gholiidhon* to obey Allah's commands and carrying them out is worship. And the pillars of marriage in the KHI are as stated in article 14, namely that to carry out a marriage there must be a prospective husband, prospective wife, marriage guardian, two witnesses and

consent and *qabu.* So, if the above conditions are met, the marriage is considered valid according to Islamic law and the children born can have a cross-breed relationship. This is because in Islamic law there is no provision that a marriage must be registered at a particular institution/body. However, this is different from children resulting from adultery because they do not go through a valid marriage according to Islamic law, so according to the provisions of Islamic law, children born out of wedlock or children of adultery only have a lineage relationship with their mother and her mother's family.

4. Legal Regulation of Illegitimate Children in Indonesia according to Constitutional Court (MK) Decision Number 46/PUU-VIII/2010

Constitutional Court (MK) Decision Number. 46/PUU-VIII/2010 regarding the petition for judicial review of Law Number 1 of 1974 concerning Marriage, decided in Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage that marriages only have children born outside of marriage who are related. civil relationship with his mother and his mother's family and 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.

After the Constitutional Court's decision, illegitimate children feel entitled to their father's inheritance. In the future, there will certainly be many lawsuits filed against religious (Islamic) and state (non-Islamic) courts from illegitimate children. Responding to the Constitutional Court's decision regarding Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, HM Akil Mochtar is of the opinion that Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage regulates illegitimate children . 1974 concerning Marriage does not deny the provisions of religious law as emphasized in the general explanation number 3, so that for those who are Muslim, its implementation must not be in conflict with the principles of - If Article 43 of Law Number 1 of 1974 concerning Marriage is linked to Article 42 of the Law - From this law, the meaning can be drawn that illegitimate children are not legitimate children. Apart from that, illegitimate children only have a civil relationship with their mother and her mother's family. This concept is in line with the concept of Islamic law and customary law in general. Islam adheres to the principle that every child is born in a state of nature so there is no reason to discriminate against any child born, including even illegitimate children.

The Constitutional Court's decision, Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court Article 10 paragraph (1) letter a confirms that one of the constitutional authorities of the Constitutional Court is to adjudicate at the first and final levels whose decisions are final to test the Law against the Constitution. Even though Article 1917 Burgerlijk Wetboek juncto. Article 21 AB emphasizes that court decisions only bind the parties concerned and do not bind other judges who will decide on

similar cases, but this provision cannot be applied to decisions of the Constitutional Court because the substance of the MK decision is general in nature, namely in the form of a review of a law. against the 1945 Constitution, therefore the Constitutional Court's decision regarding illegitimate children (Decision Number 46/PUU-VIII/2010) is basically binding on all citizens.

However, because the State also guarantees the freedom of each resident to embrace their own religion and to worship according to their religion and beliefs as confirmed in Article 29 paragraph (2) of the 1945 Constitution, the Constitutional Court's decision in question must be read in its spirit as a legal umbrella for the protection of children. And does not deny the legal institution of marriage as regulated in Law Number 1 of 1974 juncto. Government Regulation Number 9 of 1975 jo. INPRES No. 1 of 1991 concerning the Compilation of Islamic Law. Therefore, protection for children outside of marriage must be carried out proportionally, namely returning to applicable laws and regulations and local customs without ignoring the relevant religious laws.

According to HM Akil Mochtar, the Constitutional Court's decision should not be read as a justification for relationships outside of marriage and does not conflict with Article 1 and Article 2 of Law Number 1 of 1974 concerning Marriage. As for those relating to inheritance, for example, civil rights cannot be realized in the form of the Islamic concept of inheritance but in other forms, for example with the concept of obligatory williat. Likewise, with regard to child support/living costs, it is not realized in child support according to the concept of Islamic law, but in other forms of obligations in the form of punishing the biological father to pay a certain amount of money/property for the child's living expenses until he reaches adulthood. Because the provisions regarding child support and inheritance are related to lineage, even though illegitimate children cannot be assigned to their biological father. This is what sparked protests against the Constitutional Court's decision Number 46/PUU-VIII/2010 because the decision suggested that there was a blood relationship between an illegitimate child and his biological father. If the decision contained an affirmation that the child's lineage was returned to the laws of their religion, it would certainly not cause controversy.

In Akil Mochtar's opinion, in reviewing Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage, the Constitutional Court is of the opinion that marriage registration is not a factor that determines the validity of a marriage. A marriage is valid if it has been carried out in accordance with the requirements determined by the religion of each prospective bride and groom; and recording is an administrative obligation that is required based on statutory regulations. In other words, the Constitutional Court is of the opinion that sirri marriage is also a valid marriage. Failure to register a marriage in state administrative records does not necessarily make the marriage invalid.

There are problems as a result of marriages not being recorded in state

administrative records. One of the consequences is the legal relationship between the father and the child born from an unrecorded marriage. The child cannot immediately include a man's name as his father on his birth certificate. In other words, in practice, children born in unregistered marriages are classified as illegitimate children. By recognizing that a marriage is in accordance with the religious teachings of each bride and groom but is not registered as a valid marriage, the children born from that marriage should be included as legitimate children. However, in reality, the child was classified as an illegitimate child.

In connection with the above conditions, the Constitutional Court in interpreting Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage is of the opinion that the law must provide fair legal protection and certainty regarding the status of a child who is born and the rights that exist for him, including children born even though the validity of the marriage is still disputed.

on the Rights of the Child which regulates that children will be registered immediately after birth and will have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his parents. Then, Article 7 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection also regulates that every child has the right to know his parents, to be raised and cared for by his own parents. The child's right to know the identity of both parents will clarify the status and relationship between the child and his parents.

The author believes that with the Constitutional Court's decision, every child born from an invalid marriage has the same opportunity as children born from a valid marriage to obtain the same rights and legal status. This is in line with what is stated in Article 28D paragraph (2) of the 1945 Constitution which states that every child has the right to survival, growth and development and the right to protection from violence and discrimination.

5. Regulation of the Legal Status of Illegitimate Children in Indonesia according to Related Laws in Indonesia 58

Article 4 of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states that every child has the right to live, grow, develop and participate appropriately in accordance with human dignity, and to receive protection. from violence and discrimination

A child (baby) who is still in the womb is considered by law to have been born (to exist) if he is born alive. This kind of legal recognition is related to the child's own legal interests, for example in relation to inheritance. The legal protection for unborn children mentioned above is increasingly gaining a place in the formulation of law in Indonesia, for example found in a number of laws and regulations,

including in Law Number 39 of 1999 regarding humans under 18 (eighteen) years of age and unmarried, including children who are still in the womb if this is in their interests (Article 1 Number 5).

A similar formulation is also found in Article 4 of Law of the Republic of Indonesia Number 35 of 2014 concerning Law Number 23 of 2002 concerning child protection that a child is someone who is not yet 13 (eighteen) years old, including children who are still in the womb. Article 1 Number 1). Legal status of children in the womb: those who are given rights by law as described above, emphasize the child's rights rather than the child's obligations, because of his position and all limitations, because he is a child (in the womb). The child in the womb, in its situation and conditions and limitations, begins to have rights attached to it by law and at the same time becomes part of legal protection. Meanwhile, obligations are not yet attached to the child in the womb, considering that the main problem and priority is how he can live and continue his life in the future, whether as a child in the womb (sob), child, teenager, adult and so on. The problems that arise regarding the legal status and legal protection of children are more prominent and important in relation to their status as children outside of a legal marriage, because administratively and legally, there is no marriage based on a legal marriage institution which is the legal basis for the validity of the marriage. both parents.

Law Number 24 of 2013, Amendment to Law Number 23 of 2006 concerning Population Administration, regulates: recording child recognition and recording child validation. These two aspects are procedural forms of an administrative nature which depart from the importance of recording, both recording child recognition and recording child validation.

According to Law Number 24 of 2013, Amendment to Law Number 23 of 2006 concerning Population Administration, it is determined that recording child recognition (Article 49) is continuous with recording child validation (Article 50). The explanation of Article 49 paragraph (1) explains that what is meant by child recognition is a father's recognition of his child who was born outside of a legal marriage with the consent of the child's biological mother. Based on the explanation of Article 49 paragraph (1), child recognition is the recognition of an illegitimate child as a legitimate child as long as it is agreed with both parents. According to the explanation of Article 49 paragraph (2), which contains child recognition, it only applies to children whose parents have entered into a legal marriage according to religious law, but not yet legal according to state law.

In the author's opinion, with the existence of Law Number 24 of 2013, Amendment to Law Number 23 of 2006 concerning Population Administration, it can be understood that children born outside a valid marriage can obtain legal status from their father with recognition, but this is only applies to children born from marriages that are legal according to religion even though they are not yet legal according to the State, so this does not apply to children resulting from adultery.

Legal Consequences of the Status of Illegitimate Children According to Law in Indonesia

Every child born into the world has the same nature as a creature of God Almighty. Article 28 B paragraph (2) of the 1945 Constitution states that every child has the right to continued life, growth and development and the right to protection from violence and discrimination. The Constitution does not provide exceptions to the rights held by every child, including whether he or she is a legitimate child or an illegitimate child. In fact, the sentence entitled to protection from violence and discrimination actually shows that the state in principle prohibits grouping the status of a child because of their status. and the different position of children in the eyes of the law, in fact the state has discriminated against children who are its citizens (Siburian, 2015) .

Based on Article 28 B paragraph (2) and Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, there is nothing that states that these provisions only apply to legitimate children or children born from a legitimate marriage, or at least implies that children outside of marriage are not included as children protected by the above regulations (Witanto, 2012:236). Where Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that every person has the right to recognition of guaranteed protection and legal certainty as well as equal treatment before the law.

If you look at the sound of the article, there is nothing that states that this provision only applies to legitimate children or children born from a legitimate marriage, or at least it implies that children outside of an illegitimate marriage do not include children protected by the regulations in on. The Constitutional Court's decision regarding children born from an invalid marriage is that children born outside a valid marriage have a civil relationship with their mother and their mother's family and their biological father as long as it can be proven based on science and technology, for example DNA testing, which according to the law has a relationship. blood with his father, including civil relations with his biological father's family.

These civil relations include *alimony* , inheritance rights and lineage. According to the language definition, alimony is the maintenance or provision of livelihood. The meaning of alimony is the same as the meaning of hadhanah in Islamic law, so it can be interpreted as a reciprocal right and obligation between children and parents to provide maintenance and provide a decent and reasonable living according to their abilities. The rights and obligations of alimony as part of parental power over their children (Mubalus, 2019) .

Since the issuance of the Constitutional Court Decision, a child, through a court decision, has the right to receive maintenance and education costs from his biological father, just as he also has this obligation towards his legitimate child. A child has the right and opportunity to prove that the man they appoint is the father

who gave birth to him. If based on a court decision a man is declared proven to be the child's biological father, then legally the man from the moment the court decision is issued will have the obligation to provide alimony to his biological child in the form of maintenance and education costs (Mubalus, 2019) .

Recognition of a child by biological parents not only results in the emergence of inheritance rights for the child towards the father or mother, but can also give rise to inheritance rights for the father or mother towards the child if the child dies earlier than the father and mother. For example, after a confession occurs, the child dies and leaves behind assets and he does not leave a husband/wife and legal descendants, then the inheritance will fall into the hands of the father or mother who has acknowledged it, and if the child's father and mother have both acknowledged it. , then the inheritance will be half of each.

In one case in Bandung, a man and woman named Alex Gunardi and Sandra Halim had been in a relationship like husband and wife since 1978. From this relationship, two children were produced. However, the child does not have strong legal status because the parents did not have a valid marriage according to legal provisions. The couple finally had a Christian marriage in Singapore on June 6 2014, which was confirmed by Marriage Certificate Number: 069/GBI-MTH-AN/2014. Furthermore, the religious marriage was followed up with all formal legalities as proven by the Letter of Proof of Reporting Marriage Abroad Number: 474.2/05/BPP/ 2014 dated 18 July 2014 which was issued by the Head of the Bandung City Population and Civil Registration Service *in conjunction with the Certificate of Mariage from the Registry of Mariage Singapore* Number: 946725 dated 10 July 2014 jo Excerpt from the Marriage Registration Book from the Embassy of the Republic of Indonesia in Singapore Number: 0168/KONS-SPP/VII/14 dated 10 July 2014. After obtaining legal marital status, the couple submitted an application to the Court Bandung State to determine the two children resulting from the couple's relationship as legitimate children of the marriage. After being proven by the husband's confession and reinforced by accurate DNA test results, then bearing in mind the Constitutional Court Decision Number: 46/PUU-VIII/2010 dated 13 February 2012 which reviews Article 43 paragraph (1) of the Marriage Law, the Court is of the opinion that the petition The applicants had sufficient reasons for this to be granted so the Judge made Determination Number: 519/Pdt.P/2015/PN.Bdg which stated that the child was the legitimate child of the couple Alex Gunardi and Sandra Halim.

The case occurred at the East Jakarta District Court where Yuan Purnama Singal, an Indonesian citizen, had a husband and wife relationship with American citizen Michael Robert Crosetti and a child was born from this relationship. After a DNA test was carried out which stated that the child was the biological child of Michael Robert Crosetti and was confirmed by a confession which had been legalized by a Notary. After taking considerations, the East Jakarta District Court Judge

determined through Determination No.175/Pdt.P/2015/PN.JKT.TIM that the child was the illegitimate child of the couple, then the Judge also determined that the child was the biological child of Michael Robert Crosetti on the basis of recognition.

In the Cilacap case, the applicants were Siti Nurhayati and Govinda Raju, Malaysian citizens who had a legal marriage in 2010. However, before the marriage, the couple had produced an illegitimate child who was born in 2006 so the child's status was still that of a woman. . Due to the applicant's lack of knowledge at the time of the marriage, the applicant did not directly recognize and validate the applicant's illegitimate child as the applicant's legitimate child. Therefore, the applicants intend to recognize and validate the illegitimate child as the applicant's legitimate child. Then the Cilacap District Court Judge passed Determination Number: 29/ PDT. P/ 2011 / PN. The CLP stated that the illegitimate child was the legitimate child of the applicants taking into account the letter of acknowledgment from Govinda Raju as the child's father.

If a child has been punished as a child born outside a valid marriage as mentioned above, then there are several legal consequences regarding the rights and obligations between the child, the mother who gave birth to him and his natural (genetic) father/father, namely:

1. Family Relations

Article 100 of the Compilation of Islamic Law, as has been stated, states that children born outside of marriage only have a family relationship with their mother and their mother's family. In this case, legally the child cannot be attributed to its natural father/father at all, even though in reality the natural (genetic) father/father is the man who impregnated the woman who gave birth to him. Even though at first glance it seems inhumane and unbalanced between the burden placed on the shoulders of the mother alone, without linking it to the man who is the genetic father of the child, such a provision is considered to uphold the nobility of the institution of marriage, while at the same time avoiding pollution of the institution of marriage.

2. Living

Because according to the law the child's status is only related to his mother and his mother's family, those who are obliged to provide support for the child are only his mother and his mother's family. Meanwhile, for natural (genetic) fathers, even though the child is biologically a child that originates from his sperm, in formal juridical terms as intended by Article 100 of the Compilation of Islamic Law above, he has no legal obligation to provide support for the child.

This is different from legitimate children. For legitimate children, the father is obliged to provide adequate support and living such as health care, education and so on to his children, in accordance with his income, as stipulated in Article 80 paragraph (4) of the Compilation of Islamic Law, in the event that the father and

mother are still tied by marriage. . If the child's father and mother are divorced, the father is still responsible for providing support for his children according to his abilities, as intended by Article 105 letter (c) and Article 156 letter (d) of the Compilation of Islamic Law.

Even though in social life there are also natural/genetic fathers who provide support for such children, this is basically only human, not an obligation imposed by law like a father's obligation to legitimate children. Therefore, legally the child has no right to demand support from his natural (genetic) father.

3. Inheritance Rights

As a further consequence of the lineage relationship as stated, the child only has an inheritance relationship with his mother and his mother's family, as confirmed in Article 186 of the compilation of Islamic law: children born outside of marriage only have a mutual inheritance relationship with their mother and family. his mother's side. In this way, the child legally has no legal relationship of mutual inheritance with his natural (genetic) father.

4. Guardianship Rights

If in one case the child born as a result of an act of adultery (outside of marriage) turns out to be a woman, and when she is an adult the child will marry, then her natural (genetic) father/father has no right or is not valid to be her marriage guardian, as stipulated in the marriage guardian provisions in Article 19 Compilation of Islamic Law: 1) The marriage guardian in marriage is a pillar that must be fulfilled by the prospective bride who acts to marry her off. 2) The person acting as marriage guardian is a man who meets the requirements of Islamic law, namely Muslim, aqil and puberty. 3) The same legal provisions as the legal provisions for illegitimate children, as well as the legal status of all children born outside a valid marriage as mentioned above.

An illegitimate child who is legally recognized is one of the heirs according to the law regulated in the Civil Code based on Article 280 in conjunction with Article 863 of the Civil Code. Illegitimate children who have the right to inherit are illegitimate children in the narrow sense, considering the doctrine of classifying illegitimate children into 3 (three) groups, namely illegitimate children, adulterous children, and incestuous children, in accordance with the designation given by the law makers. in Article 272 in conjunction with 283 of the Civil Code (concerning adultery and incestuous children). Illegal children who have the right to inherit are in accordance with the provisions in Article 280 of the Civil Code.

Such a division is carried out because the law itself, based on existing provisions, does provide other (individual) legal consequences for the status of children as mentioned above. Even though adulterous children and incestuous children are actually illegitimate children in the sense that they are not legitimate children, if you compare Article 280 with Article 283 of the Civil Code, it can be seen that

according to Article 280, illegitimate children and incestuous children as referred to in Article 283 are different. .

Based on the provisions of Article 283, connected with Article 273 of the Civil Code, adulterous children are different from adulterous children in their legal consequences. Regarding discordant children, the law in certain circumstances provides exceptions, in the sense that those who by dispensation are given the opportunity to marry each other (Article 30 paragraph (2) of the Civil Code) can recognize and validate their discordant children as legitimate children (Article 273 of the Civil Code) . Exceptions like this are not given to children of adultery.

The difference between children out of wedlock and children of adultery lies in the time of fertilization or sexual intercourse that gives rise to pregnancy, namely whether at that time one or both of them (meaning the man and woman who had sexual intercourse outside of marriage) were in a marital relationship with other people or not, while when the child was born is irrelevant. Children of adultery are children born from an extramarital relationship between a man and a woman where one or both of them are married to another person. Discordant children are children born from a relationship between a man and a woman, between whom, based on the provisions of the law, there is a prohibition on marrying each other (Article 31 of the Civil Code). Thus, illegitimate children in the narrow sense are children born as a result of a relationship between a man and a woman, neither of whom is married to another person and there is no prohibition against marrying each other, such children can be recognized. legally by his father (Article 280 of the Civil Code).

The relationship between mother and child occurs automatically because of birth, unless the child is "overspelig or bloedsrhenning (child of adultery). Between father and child only a civil relationship occurs because of recognition (Article 280 of the Civil Code). Article 280 of the Civil Code, which says; that with recognition which is committed against an illegitimate child, a civil relationship arises between the child and the father or mother. This means that between the illegitimate child and his "father" (biological) or "mother" in principle there is no legal relationship if the "father" and/or "mother" acknowledges that the child is his child. Thus, without acknowledgment from the father and/or mother, in principle the child is no one's child.

Looking at the principles as mentioned above, it can be concluded that the legal relationship between parents and their legitimate children is based on the blood relationship between the two. However, if we relate it to illegitimate children, the legal relationship between the illegitimate child and the father who acknowledges him is based on blood relationship through a confession. Thus, blood relationship in this case is blood relationship in the juridical sense, not in the biological sense. In reality, the position of illegitimate children in law is lower than that of legitimate children, meaning that the share of inheritance received by illegitimate children is

smaller than that of legitimate children. Apart from this, legitimate children are under the authority of parents as regulated in Article 299 of the Civil Code, while illegitimate children who have been legally recognized are under guardianship as regulated in Article 306 of the Civil Code.

To be able to become an heir, the Civil Code has established the following conditions:

1. Based on Article 832 of the Civil Code, to be an heir you must have a blood relationship, whether legal or extramarital. It is possible to become an heir through a gift through a will as regulated in Article 874 of the Civil Code.
2. Based on Article 836 of the Civil Code, heirs must already exist when the heir dies. However, this provision is distorted by Article 2 of the Civil Code which states that a child in a woman's womb is considered to have been born, if the interests of the child so require.

The provisions of Article 832 of the Civil Code clarify that the position of each heir must be based on a blood relationship, whether legal or extramarital. In this case, it is necessary to further identify the position of the heir's children as heirs. Bearing in mind that in inheritance according to the Civil Code, illegitimate children are recognized, whether legally recognized or not. The Civil Code does not further explain the clear meaning of illegitimate children. The Civil Code only provides an explanation of the meaning of a legitimate child as regulated in Article 250 of the Civil Code which states that a legitimate child is every child who is born and/or produced from a valid marriage. Based on the limitations provided by Article 250 of the Civil Code, it can be concluded that what is called an illegitimate child is any child born outside a valid marriage.

Siri marriages are indeed considered valid in Islamic terms, because there is a consent and consent and the marriage guardian and the bride and groom are old enough, but the marriage must also be valid according to state law. Without state legal registration, children born from such marriages cannot be legally proven to be the legitimate children of their father. As a result, the child only has a legal relationship with the mother who gave birth to him.

Recognition of illegitimate children can be done by:

1. Voluntary confession

Voluntary confession is an acknowledgment made by a person in a manner determined by law, that he is the father (mother) of a child who has been born out of wedlock). With recognition, a civil relationship arises between the child and the father (mother) who has acknowledged him as regulated in Article 280 of the Civil Code. Voluntary confessions can be made in the ways specified in Article 281 of the Civil Code, namely:

a. In the child's birth certificate, according to Article 281 paragraph (1) of the Civil

Code, to be able to recognize an illegitimate child, the father or mother and/or their proxy based on authentic power of attorney must appear before a civil registry officer to acknowledge the illegitimate child.

b. Recognition of illegitimate children can also be done at the time of their parents' marriage, as stated in the marriage certificate as regulated in Article 281 paragraph (2). Jo Article 272 of the Civil Code. This recognition will result in the illegitimate child becoming a legitimate child.

c. Recognition of illegitimate children can be done in an authentic deed such as a notarial deed as regulated in Article 281 paragraph (1) of the Civil Code.

d. With a deed made by a civil registration employee, which is required in the civil registration birth register according to the date as regulated in Article 281 paragraph (2) of the Civil Code. b.

2. Coerced Confession

Recognition of an illegitimate child can also occur by force, that is, it can be done by the child born out of wedlock, by filing a lawsuit against the father or mother to the District Court, so that the illegitimate child in the narrow sense is recognized as the father's or mother's child. , this provision is regulated in Articles 287 to Article 289 of the Civil Code. An illegitimate child that can be recognized is an illegitimate child in the narrow sense, namely a child born to a mother and father who are not bound by a valid marriage either between themselves or with another person (not classified as adultery or incestuous children).

. In the concept of civil law, illegitimate children can be born to parents where one or both of them are related to another marriage. This means, legally, the child was born from an adulterous relationship. Article 44 paragraph (2) of Law Number 1 of 1974 concerning Marriage gives the court the authority to decide whether or not a child born to the wife is valid based on the request of one or both parties. The Compilation of Islamic Law states that a woman who is pregnant outside of marriage can only be married to the man who impregnated her. If the man marries her, then the child born becomes a legitimate child. Article 272 of the Civil Code also states this. The father's recognition of his biological child has the consequence of a civil relationship (Article 280 of the Civil Code). The mother and/or father can ask the court to validate the child's status. The legal norm is that illegitimate children only have a civil relationship with their mother, which has consequences including birth certificates. In the word birth, usually only the name of the mother who gave birth is written. Even if the biological father tries to seize the child through court, generally the court still confirms the child's civil relationship with the mother. Article 55 paragraph (1) of Law Number 1 of 1974 concerning Marriage states that the origin of a child can only be proven by an authentic birth certificate issued by an authorized official. .

4. Conclusion

Based on the discussion described in the previous chapter, the following conclusions can be drawn:

1. Regulations based on Law Number 1 of 1974 concerning Marriage which states that children born out of wedlock only have a civil relationship with their mother and their mother's family. This means that the child has no legal relationship with his father, either regarding the costs of his life and education or inheritance. For those who are subject to civil law, with the mother's consent, a father can make a Child Recognition. Child Recognition is an acknowledgment made by the father of a child born outside a legally valid marriage. In Article 280 of the Civil Code, an illegitimate child will have a civil relationship with his parents if they have been legally recognized. Thus, if an illegitimate child is not recognized by his parents, he will not have a civil relationship with either his biological father or mother. Provisions regarding recognition of illegitimate children are regulated in the Civil Code: Article 280 states that with recognition of illegitimate children, a civil relationship arises between the child and his father or mother. In the KHI as stated in Article 14, to carry out a marriage there must be: a prospective husband, a prospective wife, a marriage guardian, two witnesses and a consent and qabul. So, if these conditions are met, the marriage is considered valid according to Islamic law and the children born can have a cross-breed relationship. This is because in Islamic law there is no provision that a marriage must be registered at a particular institution/body. Based on the Constitutional Court (MK) Decision Number. 46/PUU-VIII/2010, children born outside of a legal marriage can have a legal relationship with their father if it can be proven using the latest technology. With the existence of Law Number 24 of 2013, Amendment to Law Number 23 of 2006 concerning Population Administration, it can be understood that children born outside of a legal marriage can obtain legal status from their father with recognition, but this only applies to children born from a marriage that is legal according to religion even though it is not yet legal according to the State.
2. The consequence is that if an illegitimate child does not receive recognition from his father and cannot prove it with the latest technology such as DNA testing, the illegitimate child cannot obtain legal status with his father. However, if the father recognizes an illegitimate child (biological product) as a legitimate child, this will give rise to alimony rights, birthright rights and inheritance rights for the child from the biological father. And in this case the child is also obliged to respect and respect his biological father as his parent, including in terms of taking care of him if the father needs him in the future. Children born out of wedlock or as a result of an illegal husband and wife relationship only have a lineage relationship, rights and obligations for livelihood as well as inheritance rights and relationships only with their mother and their mother's family, not with their natural (genetic) father/father as well as their father/father. naturally (genetically), if the child happens to be a girl. If the child born outside of marriage is female and wants to get married, the marriage guardian concerned is the Guardian Judge, because it is a group that does not have a lineage guardian. Marriage in Indonesia must be carried out in accordance with the procedures of Article 2 paragraph (1) and paragraph (2) of Law Number 1 of 1974

concerning Marriage, that is a real marriage, but if the marriage is only carried out in accordance with Article 2 paragraph (1) it means marriage This is done outside the procedures of Article 2 paragraph (2). The provisions governing the presence of legitimate children are that they must be through a valid marriage in accordance with Article 28-B paragraph (1) of the 1945 Constitution, and Article 42 of Law Number 1 of 1974 concerning Marriage. , thus there is no basis for the child resulting from adultery to be punished as a legitimate child. After the Constitutional Court's decision regarding Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which includes the position of illegitimate children, it created a debate involving many groups, but the justice taken by the panel of constitutional judges in this case was based on rational justice which is the relationship between Civil relations between father and son can not only be realized through marriage relations but also through blood relations. We must respect the Constitutional Court's decision which is declarative constitutief, which means it confirms that Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage is contrary to the 1945 Constitution and then eliminates and creates a new law regarding the issue of the position of illegitimate children. Illegitimate children also have the right to legal protection, including knowing who their parents are. Article 7 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2014 concerning Law Number 23 of 2002 concerning Child Protection states explicitly that every child has the right to know their parents, be raised and cared for by their own parents.

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