

## OVERVIEW OF THE VALIDATION OF OUT OF WEDDED CHILDREN AS LEGITIMATE CHILDREN (STUDY OF DECISION NUMBER 175/PDT.P/2021/PN ARM)

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### Abstract

*This research contains a description of the ratification of extra-marital children as legal children. Recognition and ratification of extra-marital children often experience differences in their determination. The research method used by the author in writing this journal is normative legal research method, this legal research examines document studies using various secondary data, such as laws and regulations, court decisions, legal theories and opinions of scientists. Based on the results of the research, the Marriage Law does not regulate the recognition and validation of children, the Civil Code regulates recognition and validation while the Constitutional Court only focuses on the biological relationship between the child and the father. In the Determination of the Airmadidi District Court Number 175/Pdt.P/2021/PN Arm, the judge only looks at positive law without considering other aspects in the ratification of extra-marital children. This research is expected to contribute to the development of science, the author's achievement from this research is to produce scientific works in the form of theses, research journals, and as reference material for other writers in the future.*

**Keywords:** Extra-marital Child, Ratification, Validity

### INTRODUCTION

Humans are social creatures, humans are unable to live alone because humans need a helper for their lives even since humans were born. Humans also have a sense of attraction to the opposite sex to form a family. Everyone has the right to form a family and continue their descendants through a legal marriage. Marriage is an inner bond between a man and a woman who are legally bound both by religion and by applicable law.<sup>1</sup>

In accordance with applicable law, a marriage requires a regulation that regulates the conditions, implementation, and termination of the marriage. The regulations governing marriage in Indonesia are regulated in Law Number 1 of 1974 concerning marriage, which was amended by Law Number 16 of 2019 concerning Marriage, hereinafter referred to as the Marriage Law.<sup>2</sup>

The legal consequences of a marriage exist if the marriage is carried out based on applicable law, namely as stated in the Marriage Law. In social life, marriage is a form of interaction that not only involves both parties involved but is also a form of uniting two

<sup>1</sup>M. Yahya Harahap, 1975. National Marriage Law, Medan, CV. Zahir Trading Co, p. 11

<sup>2</sup>Pakpahan, Elvira Fitriyani, OK Isnainul, and Irfan Musliansyah. "LEGAL REVIEW OF MARRIAGE AGREEMENTS MADE POST MARRIAGE AFTER THE APPROVAL OF THE MK DECISION NO. 69/PUU/XIII-2015 (Analysis of Determination Number 80/Pdt. P/2020/PN. Ptk)." IBLAM LAW REVIEW 3.3 (2023): 232-246

different families. In Indonesia there are regulations governing marriage, namely: positive law, customary law, and Islamic law.<sup>3</sup>

The purpose of marriage is to form a happy and eternal family based on the Almighty God. One of the purposes of forming a family is to have offspring who are the successors of a family. Where children are a gift or gift from God Almighty that is priceless, therefore children are a gift from God that must be guarded, educated, and raised as provisions to become human resources in the future. In general, a child is someone who is born because of sexual intercourse between a man and a woman either in a legal marriage bond or not bound by a marriage bond. A person who is born to a woman even though she does not have a marriage bond is still said to be a child.<sup>4</sup>

## **METHOD**

The legal research method applied to legal writing is a normative legal research method. The research method uses a case approach which aims to find the legal basis, understanding and rules related to the use of market survey results to show that the brand is not used.

### **Data source**

Normative legal research as mentioned above is research that analyzes problems in research through an approach to legal principles and refers to legal norms contained in existing laws and regulations in Indonesia and uses types of data from library materials which are usually called secondary data, journals, or other library materials.

### **How to Collect Data**

The data used in conducting normative legal research is obtained through literature studies. Literature studies are conducted to obtain several legal data from primary and secondary legal sources. The secondary data used in this research is divided into:

1. Primary legal materials, which include:
  - a. Decision Number NUMBER 175/PDT.P/2021/PN ARM
  - b. Law Number 1 of 1974 concerning Marriage.
  - c. Law Number 23 of 2002 concerning Child Protection
  - d. Law Number 39 of 1999 concerning Human Rights
2. Secondary legal materials
  - a. Journal on the protection of children outside marriage
  - b. Research results.

<sup>3</sup>Tommy Leonard (2018). "LEGAL PROTECTION FOR BUYERS OF MULTIPLE CERTIFIED LAND BY MEANS OF GOOD FAITH WITH LEGAL CERTAINTY", *assets,jurnal.unprimdn*. Volume 5 Number 2 p. 10.

<sup>4</sup>Andy Hartanto, 2015. *Inheritance Law*, (Surabaya: Laksbang Justisia), p. 1

## RESULTS AND DISCUSSION

### Status of Children Born Out of Wedlock in Indonesian Positive Law

When a child is born, he or she acquires a legal status related to the marriage of the parents, as regulated in the Marriage Law which differentiates the status of children into legitimate children and illegitimate children. According to Article 42 of the Marriage Law, a legitimate child is one born in a legitimate marriage, while Article 43 paragraph (1) classifies an illegitimate child as one born outside of marriage and only has a civil relationship with his or her mother and his or her mother's family.<sup>5</sup> Lecturer of the Faculty of Law, University of Indonesia, Neng Djubaedah, explained further about illegitimate children, mentioning two main definitions. First, a child who is conceived and born outside of a legitimate marriage. Second, a child conceived outside of marriage, but born after the parents are married. For adherents of Islam, illegitimate children are not recognized as legitimate children, but must still be protected. Although there is no blood relationship between the biological father and the child, the biological father is still responsible for fulfilling the child's needs until adulthood. In the Decision of the Constitutional Court of the Republic of Indonesia on Marriage Number 46/PUU-VIII/2010 it is regulated that "A child born outside of marriage has a civil relationship with his mother and his mother's family and with a man as his father who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with his father's family." Recognition of an illegitimate child can occur through the marriage of the parents or with a "Letter of Validation," changing the child's status to recognized, which is more advantageous than an unrecognized illegitimate child. Article 43 paragraph (2) of the Marriage Law explains that the position of an illegitimate child will be further regulated in a Government Regulation, however, a Government Regulation that regulates and discusses the position of an illegitimate child has not yet existed until now. Of course, this raises problems and legal uncertainty regarding the position of the illegitimate child itself. This happens because the regulation regarding illegitimate children is only regulated in one article. The Marriage Law does not further regulate institutions to help illegitimate children defend their rights, so that a legal relationship occurs.<sup>6</sup>

The purpose of marriage as stated in Article 1 of Law No. 1 of 1974 concerning Marriage, is described in the second sentence which states, "with the intention of forming a happy and eternal family (household) based on God Almighty." This summary of the purpose of marriage implies that through marriage, it is hoped that happiness can be achieved in all aspects, both materially and spiritually. The happiness that is sought is not temporary happiness, but eternal happiness, lasting until death separates the couple. According to Islamic law, the purpose of marriage is to fulfill basic human needs related to the relationship between men and women, with the aim of realizing a happy family based on love and

<sup>5</sup>Ady Thea, Rights and Legal Status of Children Born Outside of Marriage, Contemporary Marriage Law, <https://www.Hukumonline.com/berita/a/hak-dan-status-Hukum-anak-Luar-perkawinan-It5b1fb50fceb97/?page=1>, accessed on March 6 2-24

<sup>6</sup> Adawiyah, Rodiatun, et al. "LEGAL ANALYSIS OF PROOFING BASIC TRUTH ON LAND TENURE." Darma Agung Journal 31.3 (2023): 103-111

affection, and to have legitimate offspring according to the provisions of Islamic law. Understanding the purpose of marriage is important before its implementation, in order to create a harmonious, happy, and eternal family.<sup>7</sup>

In the context of marriage, the requirements of marriage are interpreted as elements that must be present in marriage, although not part of the essence of marriage itself. If one of the requirements of marriage is not met, it can affect the validity of the marriage, depending on the pillars of the marriage in question. Law No. 1 of 1974 concerning Marriage regulates the requirements of marriage in Article 6.<sup>8</sup>

Children are a very important element as the heir to the generation in a family and are also the hope for the progress of the nation. Parents have the main responsibility in caring for and providing good education, as well as giving affection to children. However, often this responsibility is forgotten by parents for various reasons.<sup>9</sup>

One of the factors that can help the positive development of children is the existence of legal certainty regarding the status of children, both legitimate children and children outside of marriage. The clarity of the child's status will provide protection for the child's legal rights, including in terms of the continuity of education and the child's life in the future.<sup>10</sup>

Children outside of marriage are generally referred to as illegitimate children. Basically, a child is born as a result of a relationship between a man and a woman, which can be divided into two aspects: legal relationship and biological relationship. Legal relationship indicates involvement in a marriage that is valid according to religion and state law, with clear rights and obligations as husband and wife. While biological relationship refers to sexual relations between a man and a woman, which results in the process of fertilization and giving birth to a child.<sup>11</sup>

### **Requirements for an application for validation of an illegitimate child according to statutory regulations**

In the Marriage Law discusses two types of children, namely legitimate children and illegitimate children. Legitimate children are children born in or as a result of a legitimate marriage, while illegitimate children are children born outside of a legitimate marriage. This arises as a result of social symptoms in society, for example cohabitation, adultery, free sex, unregistered marriage and also as a result of rape.<sup>12</sup>The ratification and recognition of

<sup>7</sup>Ghazali Al, Responding to the Nature of Marriage (Jakarta: NouraBooks, 2015), page 30.

<sup>8</sup>Heriyanti, "Legal Protection for Notaries Indicated as Committing Criminal Acts of Making Authentic Deeds". Yustisia, Volume 5, 2016, Page 26

<sup>9</sup>Adawiyah, Rodiatun. Legal Analysis of the Retrieval of Adopted Children in the Batak Toba Traditional Community (Study of Simanindo District, Samosir Regency). Diss. 2017.

<sup>10</sup>MR Martiman Prodjohamidjojo, Questions and Answers on the Marriage Law (Jakarta: Pradnya Paramita, 2004), page 33.

<sup>11</sup> Lubis, Ikhsan, . "Legal Protection for Directors Who Are Dismissed Without Going Through a General Meeting of Shareholders (Study at PT. Sumber Andalan Mandiri (Sam))." UNES Law Review 1.2 (2018): 172-183.

<sup>12</sup>Rosy Novita Khatulistiwa, 2013. Material Test of Article 43 Paragraph (1) of the Marriage Law: Implications for the Family Law System in Indonesia, (Malang: Journal of Law, Brawijaya University), p. 12

illegitimate children in the Marriage Law still has a legal vacuum, therefore the author feels the need to explain the ratification and recognition of children from various perspectives so that its implementation can be more effective.

According to the Marriage Law, Article 43 paragraph (1) of the Marriage Law states that "a child born out of wedlock only has a civil relationship with his/her mother and his/her mother's family". The Marriage Law clearly states that an illegitimate child only has a civil relationship with his/her mother and his/her mother's family. However, this is different from a biological father who does not have a civil relationship between the child and his/her biological father. The absence of civil rights with his/her biological father often makes the rights that should be obtained by a child unable to be implemented simply because of the child's status as an illegitimate child. Therefore, a child must be recognized by his/her biological father in order for civil rights to arise for a child, or in the case where the biological father marries his/her mother, the child must be validated.<sup>13</sup>

Child validation is a registration event carried out by parents towards their children to provide legal status to the child. Child recognition is a registration event for a child when receiving recognition from his biological father. Validation occurs<sup>1087</sup>the two parents of an illegitimate child enter into a marriage that is valid according to religion and applicable law. Recognition occurs<sup>1087</sup>The case of a father recognizing a child and approved by the child's biological mother without any subsequent marriage of the child's parents. The marriage law does not regulate this.<sup>1087</sup>institution for legalization of illegitimate children or<sup>1087</sup>institution for recognizing illegitimate children. The Marriage Law only regulates illegitimate children very briefly, namely only in Article 43 of the Marriage Law.

In Article 43 paragraph (2) of the Marriage Law it is explained<sup>1087</sup>The status of illegitimate children will be further regulated in a Government Regulation, however, there is still no Government Regulation that regulates and discusses the status of illegitimate children until now. Of course, this raises problems and legal uncertainty regarding the status of illegitimate children themselves. This happens because the regulation regarding illegitimate children is only regulated in one article. The Marriage Law does not regulate further about<sup>1087</sup>institutions to help illegitimate children defend their rights, so that legal relations can arise.

Based on the Constitutional Court Decision above, an illegitimate child can have a civil relationship not only with his/her mother, but can also have a civil relationship with his/her biological father as long as it can be proven based on science and technology. Even though there has been a Constitutional Court decision, it is still not easy for an illegitimate child to obtain civil status or rights with his/her biological father. According to Frances Burton, in the current era there are indeed two family structures that are developing, namely a family structure based on marriage and a family structure in the form of living together without marriage ties (heterosexual cohabitation). Both of them view the importance of upholding children's rights (children's interest).

<sup>13</sup>Bernadeta Resti Nurhayati, 2019. Harmonization of Legal Norms for the Protection of Civil Rights of Extramarital Children in the Indonesian Legal System, (Ganesha Law Review, Volume I), p. 57



One of the legal considerations of the Constitutional Court is that the legal relationship between a child and his/her father is not solely based on the existence of a marriage bond that occurs. But it can also be based on proof of a blood relationship between the child and the man who is his/her biological father. The Constitutional Court does not differentiate between child recognition and child validation. The Constitutional Court only emphasizes the civil relationship between the child and his/her biological father. The Constitutional Court's decision is revolutionary compared to the provisions of the Civil Code.

The Civil Code clearly regulates: the status of illegitimate children, the position of illegitimate children, legal consequences and so on.<sup>1088</sup> institutions to provide legal protection for illegitimate children. The Civil Code recognizes child recognition and child validation institutions. The Civil Code stipulates that child recognition and validation must be carried out by a man and a woman who are married. Children who can be recognized and validated are also not children resulting from adultery. Children born outside of marriage (*natuurlijk kind*) can be recognized as children (*erkening*) by their father and mother, then followed by the child's validation (*wettinging*) when both parents carry out and register their marriage at the Civil Registry Office. The Civil Code stipulates that child recognition and validation are not for children born as a result of adultery (*overspel*) or children born to parents who are prohibited from marrying. However, the Constitutional Court Decision does not distinguish between children resulting from unregistered marriages, extramarital affairs, or living together without a marriage bond or *samen leven*.

The existence of an illegitimate child has its own legal provisions, according to J. Satrio who views civil law in positioning the position of a child born outside of a legal marriage, namely an illegitimate child does not immediately have a legal family relationship with his father or mother (his parents). An illegitimate child may have physical similarities with both biological parents but legally they do not have any rights and obligations towards the illegitimate child. It can be concluded that the position of an illegitimate child according to the Civil Code does not have any position or bond either legally or biologically, meaning that an illegitimate child lives alone in this world, it is very unfortunate considering the fact that children are God's creations and do not have rights and positions only because of the rules made by fellow human beings.<sup>14</sup>

According to the Civil Code, an illegitimate child is a child born from a father and mother between people who are not prohibited from marrying, and a child born from a father and mother who are prohibited from marrying, for reasons determined by law or if one of the fathers or mothers is still married to another person. A child born out of wedlock needs to be acknowledged by the father or mother in order for a legal relationship to arise. Because without acknowledgement there is no legal relationship. Recognition of an illegitimate child can be done by the child's parents, in the Civil Code there are two types of acknowledgement, namely, acknowledgement that is done voluntarily and acknowledgement due to coercion. Article 280 of the Civil Code states "with the acknowledgement of an illegitimate child, a

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<sup>14</sup>J. Satrio, 1992. *Inheritance Law*, (Bandung: Alumni), p. 153.

civil relationship is born between the child and the father or mother". Recognition of a child is voluntary because in the Civil Code it is not based on an agreement. The recognition of an illegitimate child due to coercion is contained in Article 287 of the Civil Code, where the occurrence of an event that coincides with the pregnancy of a woman against whom the crime was committed, then upon a lawsuit from the interested party, the person who is proven may be declared the father of the child, so the conclusion is that forced recognition is based on the judge's decision.<sup>15</sup>

### **Judge's Considerations Regarding the Requirements for Application for Legalization of an Extramarital Child in the Decision of the Airmadidi District Court Number 175/Pdt.P/2021/PN Arm**

In the Decision of the Airmadidi District Court Number 175/Pdt.P/2021/PN Arm, the Applicants, namely Femmy Gosal and the late Willem Tampanatu, are a married couple who were married on August 22, 2019 in North Minahasa. The applicant's husband, the late Willem Tampanatu, passed away on June 20, 2021. The Applicant is the biological mother of a boy named Maramis Marselino Tampanatu who was born on March 29, 2012, where at the time the applicant's child was born the applicant was not yet married to the applicant's husband, namely Willem Tampanatu, the applicant only got married on August 22, 2019, for the reasons above the applicant filed a request for child validation. The applicant wants the extract of his child's birth certificate which was originally written as a child of a mother to be changed to a child of a father and mother. The applicant asks the judge to grant the applicant's request to make it easier to take care of all the interests of the applicant's child. However, in this application, the judge rejected the applicant's application because the judge concluded that the applicant's child, namely Maramis Marselino Tampanatu, was a child resulting from adultery, based on the statement presented by the witness who stated that when the applicant was pregnant with Maramis Marselino Tampanatu's child, the applicant's husband, namely the biological father of Maramis Marselino Tampanatu, was still married to another woman, namely Rosalin.

In the Airmadidi District Court Decision Number 175/Pdt.P/2021/PN Arm, the Judge considered that Article 272 of the Civil Code states that children born out of wedlock, except those born from adultery or blood immorality, are legalized by a subsequent marriage of their father and mother, if before entering into marriage they have legally acknowledged the child, or if the acknowledgement occurs in their own marriage certificate. Furthermore, Article 283 states that children born due to adultery or blood immorality (incest, incest), may not be recognized without prejudice to the provisions of Article 273 concerning children of blood immorality. From the provisions above, it is known that children born out of wedlock, by men and women who are still married to other people at the time of intercourse as husband and wife (sexual intercourse) is carried out, then the child from this sexual intercourse cannot be recognized or validated by the man who is the biological father of the child. Because the

<sup>15</sup>Sandra Bowontari, 2019. Recognition and Legalization of Children Out of Wedlock and Their Legal Consequences, (Lex Privatum, Vol. VII, No. 4), p. 6

child was born from a relationship between a man and a woman that included adultery, the child falls into the category of an adulterous child and cannot be recognized or legalized. Article 43 paragraph (1) of the Marriage Law, which states that: "a child born outside of marriage only has a civil relationship with his mother or his mother's family", but the Constitutional Court through Constitutional Court Decision No. 46/PUU-VIII/2010 concerning the review of Article 43 paragraph (1) of the Marriage Law formulated the article as Children born outside of marriage only have a civil relationship with their mother and their mother's family and with a man as their father who can be proven based on science and technology and/or other evidence according to the law to have blood relations, including civil relations with their father's family.

Based on the Constitutional Court Decision above, an illegitimate child can have a civil relationship not only with his mother, but can also have a civil relationship with his biological father as long as it can be proven based on science and technology. One of the legal considerations of the Constitutional Court is that the legal relationship between a child and his father is not solely based on the existence of a marriage bond that occurs. However, it can also be based on proof of a blood relationship between the child and the man who is his biological father.

## **CLOSING**

### **Conclusion**

1. The status of illegitimate children is classified as children born outside of marriage and only have a civil relationship with their mother and their mother's family.
2. The Marriage Law does not regulate the recognition and legitimation of children, the Civil Code deals with the recognition and legitimation of children, while the Constitutional Court does not consider the status of the child whether it is legitimized or recognized, but the Constitutional Court only emphasizes the civil legal relationship between the child and his biological father.
3. In the first Determination, namely the Determination of the Airmadidi District Court Number 175/Pdt.P/2021/PN Arm, the Judge tended to only look at it from a positive legal perspective without considering other aspects.

### **Suggestion**

1. Given that the Marriage Law does not specifically regulate the recognition and validation of children, it is advisable to consider improving clear and comprehensive regulations regarding the status of children born outside of marriage. This will help avoid legal confusion and ensure clearer protection of the rights of children born outside of marriage.
2. In court decisions, it is important to consider broader aspects beyond just the positive legal perspective. Aspects such as the interests and welfare of the child, the emotional relationship between the child and his/her biological parents, and other social and psychological factors must also be taken into account in depth to ensure a fair and dignified decision for all parties involved.



3. There is a need for public awareness efforts on the importance of recognizing the rights of children born outside marriage and a better understanding of the related legal processes. In addition, strengthening comprehensive legal education for the community, especially in this case children's rights and related legal procedures, can help the community to be more active and effective in fighting for their rights in the legal realm.

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