



The Position of Children Outside of Marriage on the Right to Living Expenses and Child Inheritance Rights Based on Civil Law in Indonesia

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ABSTRACT

Not only does it cause legal phenomena, the presence of children outside of marriage often causes potential conflicts or problems in the community related to the right to living expenses and inheritance rights obtained by children. The number of legal events related to the legal position of children outside of marriage on the right to living expenses and children's inheritance rights requires legal clarity so that children obtain legal protection for themselves. This problem is studied using normative legal methods where the results show that based on the Civil Code children outside of marriage are children born from sexual relations between men and women outside of legal marriage. There are differences in the legal status of children outside of marriage (sumbang children and the results of adultery) with legal children. The rights of children out of wedlock after getting recognition from their biological father are the right to living expenses, the use of the name of their biological father, nasab, inheritance rights, and recognition from the community. Recognition of children outside of marriage is carried out by their biological father by including evidence that shows the relationship between the child and his biological father such as witnesses, technology, DNA tests.

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1. INTRODUCTION

Marriage is an important moment in human life as a way of maintaining human survival. In the order of society, marriage is not only related to the parties who hold the wedding but also the community as an effort to form the smallest organization of a country called the family. Through marriage, there is a contract (agreement) that makes sexual relations between men and women in a legal bond as husband and wife ([Yasyfa, et al, 2024](#)). But in reality, until now there are still many sexual relations between women and men that occur outside the bonds of marriage, which has an impact on the emergence of marriage dispensation due to pregnancy outside marriage in Indonesian society. In data released by Komnas Perempuan on CNN Indonesia in 2023, child marriage dispensation has increased 7 times since 2016 with a total of 59,709 dispensation requests in 2021 ([Iriyanto & Gusnita, 2024](#)). This alarming statistic reflects a broader social shift in sexual behavior and raises serious questions regarding the legal, ethical, and social implications of such phenomena.

The increase in the number of pregnancies outside of marriage (nonmarital) in recent years is influenced by various factors such as promiscuity, infidelity / adultery and rape cases that occur. The Surakarta Religious Court states that there are six factors that cause children to be born outside of marriage based on the following events:

- (i) If a woman commits adultery and becomes pregnant.
- (ii) A li'an oath that occurs within the bond of marriage.
- (iii) If the wife has sexual relations with another man while the marriage is still ongoing.
- (iv) If a woman has sex outside of marriage, becomes pregnant and is married to the man who impregnated her.
- (v) If a woman becomes pregnant due to non-martial sexual intercourse and marries a man who did not impregnate her
- (vi) Children born from a marriage that is fasid or void

Legal ambiguity regarding the status of extra-marital children is not only a matter of personal identity and social stigma but also a source of legal exclusion. Under Indonesia's Civil Code (Kitab Undang-Undang Hukum Perdata / KUHPerdata), the rights of children born outside of marriage are historically limited. Article 280 states that a child born outside of marriage has a legal relationship only with the mother and not with the biological father unless the child is legally acknowledged ([Listyowati, et al, 2023](#)). Furthermore, inheritance rights are also constrained unless legitimation or acknowledgment through marriage or court process occurs. This contrasts with more progressive interpretations in recent Constitutional Court decisions, such as Putusan MK No. 46/PUU-VIII/2010 ([Hutasoit, et al, 2024](#)), which extended limited rights to children born out of wedlock in certain circumstances though practical implementation remains uneven and often contested.

The phenomenon of pregnancy outside of marriage will certainly give birth to a legal phenomenon, namely related to the legal status of children born related to the right to living expenses and inheritance rights obtained by children born outside of marriage based on applicable law in Indonesia ([Salam, 2023](#)). Not only does it cause legal phenomena, the presence of children outside of marriage often causes potential conflicts or problems in society related to the right to living expenses and inheritance rights obtained by children. In enforcing the position of children outside of marriage on the right to living expenses and inheritance rights, Islamic law, civil law, and customary law are used with different rules. By paying attention to the background of the problem, the researcher is interested in conducting further studies on the position of children outside of marriage on the right to living expenses and inheritance rights based on applicable civil law in Indonesia.

2. LITERATURE REVIEW

2.1. Child Protection

Constitutionally, Law No. 35/2014 on Child Protection explains that every child has the right to live, grow and develop and has the right to obtain protection from violence and discrimination as legally stipulated in the 1945 Constitution ([Abraham, 2023](#)). Article 14 of Law No. 35/2014 states that children have the right to receive living expenses and other rights from both parents. In the section 4 of the Law on the obligations and responsibilities of parents and families, article twenty-six states that parents have obligations and responsibilities in the care, maintenance, education, and protection of children and to develop children by taking into account the abilities, talents, and interests of children. This legal regulation on protecting children makes it clear that children have the right to receive living expenses from their parents.

2.2. Marriage

Constitutionally, based on Law Number 1 of 1974 Article 1, marriage is a physical and mental bond between one man and one woman as husband and wife with the aim of creating a happy family (household) based on religious values ([Jahwa, et al, 2024](#)). Based on this article, there are two formulations that can be interpreted as the meaning and purpose of marriage. Meanwhile, based on article two in the Compilation of Islamic Law, it is explained that marriage is a very strong agreement or *mitssaqan ghalidzan* in obeying Allah's commands and doing so is included as an act of worship.

As a form of legal action, marriage has legal consequences related to the validity of the legal action. One of the consequences that arise from marriage is the presence of roles accompanied by the roles and responsibilities of husbands, wives, and children in family ties. The rules regarding this valid marriage have been written in article two of Law Number 1 of 1974 concerning marriage which emphasizes that whether or not a marriage is valid must be reviewed based on the legal rules imposed by the religion and beliefs of each person with the provisions of the applicable law ([Sundari & Hayati, 2024](#)).

2.3. Inheritance Law

The term inheritance is explained as a person who has the right to inherit property that comes from parents who have passed away first Big Indonesian Dictionary (KBBI) ([Munir, et al, 2025](#)). According to ([Said & Tantu, 2024](#)), it is explained that the word inheritance is a translation from Arabic with the origin of the word ورث-يرث-ورثا . For example, اباه ورث which means inheriting (his father's) property. Inheritance in the implementation of Islamic law is a law that is the source of rules regarding the transfer of property owned by a person during his lifetime and the consequences that arise for his heirs. The law regarding the transfer of property rights in question is in the form of material wealth owned by the person who has passed away to the heirs. The use of the word inheritance is also used in the word *fara'id*, which means a certain portion that is divided based on Islamic law to all parties who have the right to obtain it and whose parts have been determined ([Kawakib, 2024](#)).

Based on Article 171 of the Compilation of Islamic Law on inheritance, the following terms are often found in inheritance law ([Hasbiyallah & Dimyati, 2024](#)):

- (i) Inheritance law is a law that contains regulations regarding the transfer of property rights over the inheritance (*tirkah*) of the heir, stipulating the provisions of the parties who have rights as heirs and the distribution of the amount in accordance with applicable law.
- (ii) Heirs are people who, when they die or have been determined by a decision of the Islamic Court to have died, have heirs and are inherited.

- (iii) Heirs are people who are bound in a family relationship, have blood or marriage relations with the heir, embrace Islam and are not hindered by law to become heirs.
- (iv) The inheritance is explained as the material wealth of the testator that has been determined as belonging to the heirs.
- (v) Inheritance property is explained as the property owned by the person left an inheritance in the form of property that can be distributed to the heirs after being used in meeting the needs of the testator until death, for the needs of the testator during the funeral process (*tajhiz*), debt financing and gifts to relatives.

With this explanation, in this study inheritance law is used to analyze the position of children outside of marriage as heirs in the distribution of inheritance owned by the father and mother.

3. METHODS

This research was conducted using a descriptive normative legal research method with a normative juridical approach through literacy studies. In this research, data sources are obtained through literacy studies of various provisions relating to the position of children outside of marriage for the right to living expenses and inheritance rights such as registers and case files of children outside of marriage after the formalization of Constitutional Court Decision Number 46 / PUU-VIII / 2010, Law Number 1 of 1974 concerning Marriage, Presidential Instruction R.I. Number 1 of 1991 concerning the Compilation of Islamic Law, and other government regulations relevant to the study being conducted.

4. RESULTS AND DISCUSSION

The presence of children through birth is something that is awaited by couples who have married. This makes the position of children something that needs to be considered by parents, families and society. The birth of a child in society requires legal guarantees and protection to emphasize the position of children so that children do not receive arbitrary treatment from adults even by their own parents and family. Legally, the rules regarding the position of children in the eyes of the law have been regulated in the law since the child is still in the mother's womb. In the explanation of Law Number 1 of 1974 concerning Marriage in Article 44, it is stated that "A husband may deny the legitimacy of a child born by his wife, if he can provide evidence showing that his wife committed adultery and the child is the result of adultery" (Afif, et al, 2025). The explanation in the next paragraph confirms that as a legal entity in Indonesia, the court can provide legal certainty through decisions issued in relation to the legal position of legitimate children in the eyes of the law in accordance with the petition filed by the parties who have an interest. In a legal perspective, the term legitimate child is used to explain the position of children born from a legal marriage, while children outside marriage are children born outside the bonds of a legal marriage both in the eyes of the law and religion.

Children outside of marriage are children who do not have any form of relationship with their parents, either the mother or the father who caused their birth into the world (Sa'diah, 2024). Regarding the birth of children outside of marriage based on the rules in Article 283 of the Civil Code, there are two classifications of children outside of marriage, namely those that are not recognized and those that can be recognized (Sari, et, al, 2024). Children born outside of marriage who cannot be recognized are then divided into adulterous children and discordant children.

Article 283 of the Civil Code explains that discordant children and children resulting from adultery cannot obtain recognition and can only obtain it if the condition of the parents who

actually cannot marry but obtain dispensation from the President to marry and official recognition recorded on the marriage certificate ([Kaka & Kusumawati, 2024](#)). In granting dispensation by the President, it is explained that it can be done if the father or mother of a child outside of marriage before entering into a legal marriage is proven to have neglected to recognize the child, so in civil rules there is still the possibility of the child having a legal position in law. This must be in accordance with the rules in Article 274 of the Civil Code which explains that if the father or mother of a child outside of marriage before or when the marriage is legally carried out makes a negligence towards the recognition of their child outside of marriage, it can be corrected through a recommendation letter that has been authorized by the President after listening to input from the Supreme Court (MA).

In the application of the law to children outside of marriage, the principle of obtaining living expenses and inheritance can be done if the child is legally recognized by the father or mother ([Santi, et al, 2025](#)). In the perspective of civil law, the distribution of inheritance can only be done to people who have a legal relationship with the testator in accordance with applicable laws. This is in accordance with the written rules in Article 280 of the Civil Code which explains that civil relations between children outside of marriage arise if there is legal recognition by the mother or father ([Rosyada, et al, 2024](#)). If there is no legal recognition by the mother or father, then the child cannot obtain the right to living expenses or the right to inherit.

Furthermore, Article 283 of the Civil Code explains in more detail that not all children born outside of marriage can obtain recognition from their father or mother. The birth of children caused by adultery and *sumbang* cannot be legally recognized because it is contrary to the values of decency in society. Children born as a result of adultery are described as children born from a relationship between a man and a woman, while one or both of them are already in a marital relationship with another person.

Meanwhile, a child born through *sumbang* is explained as a child whose birth occurs from the sexual relationship between a man and a woman who are both subject to a marriage ban because they have a very close family relationship. In the explanation of Article 867 of the Civil Code, it is further explained that with regard to the right to living expenses and inheritance rights, children born as a result of adultery and *sumbang* cannot claim inheritance rights from the person who has responsibility for their birth arising from sexual relations outside of marriage ([Santi, et al, 2025](#)). There is a legal difference if the child outside of marriage is recognized by the father or mother, then legally the child can also be recognized by the state.

In general, recognition of children outside of marriage can be given to children when the child is born. However, based on Article 273 of the Civil Code, it is possible for children to get recognition since they are in the womb or before they are born ([Murtadho, 2025](#)). In the recognition that has been explained, it is not an absolute cause of the emergence of inheritance rights to the property owned by the father or mother. Recognition of children outside of marriage does not automatically give rise to inheritance rights to property owned by parents who have recognized their civil status. The right to inherit can arise if the recognition is made when the father or mother who makes the recognition is still bound in a legal marriage and in the legal marriage there is a living husband or wife. Through legal recognition made by the mother or father or one of the two, the legal relationship between the child outside the marriage with the father and mother or one of them will arise. In the Civil Code there are two qualifications of child recognition outside of marriage ([Anggraini, et, al, 2025](#)) , namely:

- (i) Voluntary confession. Voluntary recognition is an action taken to recognize that a person has a blood relationship with the child so as to prove that the person is the father or

mother of a child whose birth occurred outside of marriage. The act of recognizing a child out of wedlock must be in accordance with the applicable law in Indonesia by the mother of the child out of wedlock even though it is still underage as explained in Article 282 paragraph (2) of the Civil Code or the father who must be 19 years old and approved by the surviving mother.

The following are four ways that can be done in voluntary recognition in accordance with Article 281 of the Civil Code:

- a) Birth certificate of the child. Based on the explanation of Article 281 of the Civil Code, the recognition of a child outside of marriage can be done by the father or mother before a civil registry employee.
 - b) The act of recognizing a child outside of marriage can be done as long as the father and mother are still bound in a legal marriage through legal proof with a marriage certificate in accordance with Article 281 paragraph (1) of the Civil Code jo. Article 272 of the Civil Code. In this case, children outside of marriage can have a position as legitimate children and not as children outside of marriage.
 - c) Authentic deed. Based on Article 282 paragraph 1 of the Civil Code, children outside of marriage can obtain voluntary recognition through an authentic deed such as a Notary deed,
 - d) Deed issued by a civil registry employee. Based on Article 281 paragraph 1 of the Civil Code, children outside of marriage can obtain the recognition needed in the administrative needs of the birth registration of civil records based on the time record issued by the civil registry employee.
- (ii) Forced recognition, is recognition carried out by force due to the issuance of legal provisions by judges because there are children born outside of marriage. In general, recognition of children born out of wedlock is carried out at the will of parents born out of wedlock, but in some cases there are exceptions where children can file a lawsuit before the court and force their parents to recognize themselves. Based on the rules in Article 288 of the Civil Code, the filing of the lawsuit can be made against the mother to investigate the clarity of who is the mother of the child outside of marriage who filed the lawsuit. However, to file a lawsuit for recognition of a child outside of marriage by his father based on Article 287 paragraph (1) and (2), if the father makes a confession because he is forced and not his own will then the child cannot file a lawsuit.

In the explanation of Article 187 paragraph 2 of the Civil Code, it is stated that the claim for recognition of a child outside of marriage against a person must fulfill several conditions. If the father of the child out of wedlock is proven in accordance with the predetermined conditions and gets a lawsuit from the party who has an interest, the court can issue a court decree which becomes evidence of the recognition of the child out of wedlock. The following are the conditions for recognizing a child out of wedlock ([Silalahi, et al, 2024](#)) :

- (i) The age of the father who will recognize the child outside of marriage must be 19 years old, if the father of the child outside of marriage is not 19 years old then the recognition effort cannot be made (Article 282 paragraph (1) of the Civil Code).
- (ii) The act of recognizing a child outside of marriage caused by coercion, deception or inducement is null and void (Article 282 paragraph (1) of the Civil Code).

There is no age limit for mothers who will recognize children outside of their marriage (Article 282 paragraph (2) of the Civil Code). Along with the development of community life, there are changes in the rules regarding the legal position of children outside of marriage. This happened when the Constitutional Court (MK) decided Decision Number 46/PUU-VIII/2010

which had an impact on changing the rules regarding the position of children outside of marriage. This decision was issued after Aisyah Mochtar asked the Constitutional Court to review Law No. 1/1974 on marriage ([Hilmiati & Yusrina, 2024](#)). One of her submissions related to Article 43 paragraph one of the Marriage Law which led to discrimination and inequality of treatment before the law. Article 43 paragraph one is considered incompatible with the provisions of Article 28B paragraphs (one and two) and Article 28D paragraph one of the 1945 Constitution.

The Constitutional Court through its decisions granted several petitions that had been filed by the petitioners. One of the decisions made by the Constitutional Court is the amendment of Article 43 paragraph 1 of Law No. 1 of 1974 concerning marriage which states that children born out of wedlock only have a civil relationship with the mother and her family. This article is considered to have no legal force that can bind and eliminate civil relations with the father of a child outside of marriage who can use science and technology to prove the blood relationship that a man has as his father, so that the paragraph has been changed to state that children whose births occur outside of marriage have a civil relationship with their mothers and their mothers' families and with men as their fathers who use science and technology in accordance with applicable laws to prove blood relations, including civil relations with their father's family.

Based on this decision, children whose birth occurred outside of marriage have the right to obtain civil rights from their biological father, including the right to living expenses, birth certificates, guardianship, and inheritance rights. With the decision of the Constitutional Court Number 46/PUU-VIII/2010, there is a change in the wording of Article 43 paragraph (1) of Law Number 1 Year 1974 concerning Marriage which states that children born outside of marriage only have a civil relationship with their mother and their mother's family" to also have a civil relationship with their biological father. In this decision, the position of children outside of marriage can be the same as the position of legal children in civil relations with their biological fathers such as the use of the father's name, the right to living expenses and inheritance rights in accordance with applicable legal rules through proof using science and technology so that it has the power of proof before the law.

The decision of the Constitutional Court No. 46/PUU-VIII/2010 increasingly has legal force with the issuance of the Supreme Court Circular Letter (sema) No. 07 of 2012 which provides legal provisions that children born outside of marriage have the right to obtain living expenses and inheritance in accordance with applicable law in Indonesia. The living expenses provided by the father to the child outside of marriage are carried out according to the ability and propriety of the father to provide living expenses.

There are comprehensive considerations in the Constitutional Court Decision Number 46/PUU-VIII/2010. ([Setyawan & Sholikin, 2024](#)) The consideration in the decision issued by the Constitutional Court is the core issue of the *legal meaning of* Law Number 1 Year 1974 regarding the use of the words "born outside of marriage" to describe children born outside of marriage. In an effort to obtain a comprehensive answer and a broader perspective, it is necessary to determine the legal position of children born outside of marriage. In medical analysis, pregnancy that occurs in a woman cannot occur without fertilization between ovum and spermatozoa that occurs through sexual intercourse (*coitus*) or fertilization methods that utilize technological developments ([Rangkuti, 2024](#)). With this analysis, the law must present justice for the legal determination of children born outside of marriage who only have civil relations with their mothers.

In addition to medical analysis, legal considerations must be fair to not allow men who have sexual relations that cause a woman to become pregnant not to be responsible for the

child that results from their actions. Especially if the use of technology has proven that the child has a blood relationship with the father. The legal consequences arising from the birth of a child that occurs due to sexual intercourse between a woman and a man is a legal relationship that presents reciprocal rights and obligations with the father, mother and child as legal subjects.

By taking into account these factors, the relationship between children born outside of marriage and men as fathers does not only occur due to marriage ties, but also based on proof of blood relations between the child and his father. By taking into account these factors, children born both from a legal marriage and outside of marriage must have legal force. If this is not the case, then it is the children born outside of marriage whose position is not recognized who are harmed. With this legal clarity, children born out of wedlock will not be discriminated against in society due to their unclear legal status as children. The presence of law in the life of society should be able to protect and provide fair legal certainty for the community, including children born outside of marriage.

Thus, there are two ways that can be done to make a child outside of marriage prove that he has a blood and civil relationship with his father and his father's family through recognition by his father and legalization by his father. In the distribution of inheritance, Moechtar (2019) explains that children born outside of marriage who have received recognition have the same rights as biological children to obtain inheritance property. The amount of the share of children outside of marriage who have received recognition and inherit with legal heirs in the Civil Code is 1/3 of what is received. However, this does not apply to children born as a result of adultery or discord, so these children cannot have a civil relationship with their biological father because it is constitutionally prohibited so that the position of adultery and discordant children in the right to living expenses and inheritance rights cannot be done. However, if the parents make a recognition and obtain dispensation from the President then based on Article 273 of the Civil Code the child can obtain his position as a legitimate child of both parents.

5. CONCLUSION

- (i) Based on the Civil Code, a child outside of marriage is a child born as a result of sexual relations between a man and a woman outside of a marriage that has legal force. There are differences in the legal status of children outside of marriage (children of discord and adultery) with legal children.
- (ii) Based on the legal rules in the marriage law Article 43 paragraph (1) No.1 of 1974, the position of children whose birth occurs outside of marriage only has a civil relationship with the mother and the mother's family if they do not get recognition from their biological father, the child cannot obtain the rights of their biological father.
- (iii) The rights of children out of wedlock after getting recognition from their biological father are the right to living expenses, the use of the name of their biological father, nasab, inheritance rights, and recognition from the community. Recognition of children outside of marriage is carried out by their biological father by including evidence that shows the relationship between the child and his biological father such as witnesses, technology, DNA tests. The implications of the Constitutional Court Decision No. 46/PUU-VIII/2010 in the right to living expenses, inheritance rights, marriage guardian rights and maintenance rights (foster care) for children outside of marriage are different in real practice.

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