

The Position of Inheritance Rights of Children Out of Wedlock According to the Perspective of Civil Law

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Abstract. *The purpose of research from this journal is to determine the position of children out of wedlock in the inheritance law that applies in Indonesia. The problem regarding inheritance law is about what and how the obligations and rights regarding a person's wealth when he dies are to be given to the recipient. Thus, one aspect of inheritance is the existence of heirs who have the right to obtain certain assets from death. To decide who will get the wealth from death (the beneficiaries) is usually decided by certain legal rules of society or cultural laws applied by certain ethnic groups. The research method used is normative legal research method. Children out of wedlock that can be recognized are based on Article 272 B.W, namely: those born to a mother but who are not conceived by a man who is in a legal marriage bond with the child's mother, and are not classified as a group of adulterous children and illegitimate children.*

Keywords: Children; Inheritance; Rights; Wedlock.

1. Introduction

The marriage relationship in the legal interpretation in Indonesia does not only involve religious law, but has civil ties. That is, the marriage relationship has 2 views that must be observed; as worship whose application must be in accordance with religious requirements (material), as well as civil ties as a result must be similar to valid legal regulations in order to obtain validity (formal). The law on marriage also says that marriage is a physical and spiritual bond between a man and a woman as husband and wife, then what about a companion who does not bind himself to the marriage bond and gives birth to a child from that bond. Children obtained from bonds without wedlock can be said to be children out of wedlock.

It is called Children out of wedlock because according to customary law it does not only understand biological children. In the life of some groups of citizens in Indonesia, marriages in Indonesia are only carried out according to religious law

and no registration is carried out at the rightful institution, as a result the couple does not have a marriage certificate as original proof that the marriage carried out is legal in the eyes of law.¹

In the Law of the Republic of Indonesia No. 1 of 1974 concerning Marriage there is a regulation which in essence says that children born out of wedlock have civil ties with their biological mother and the biological mother's family, as well as the man who is referred to as the father. This arrangement is definitely contrary to what has been regulated in the Indonesian Constitution, the 1945 Constitution of the Republic of Indonesia.

The law also stipulates that with the legal ties that an illegitimate child has with his biological mother and his biological mother's family, an illegitimate child also only has the right to inherit his mother's assets. Included are all forms of payment that must be paid out of wedlock, which can only be handed over to the mother, because the child out of wedlock will continue to be the responsibility of the mother until he can be considered and categorized as an adult.²

With the entry into force of Act No. 1 of 1974, so that some of the other laws and regulations governing matters of marriage conditions are no longer considered applicable because it is no longer legal to revoke them or replace them with the latest laws. This matter has a very big impact on the inheritance rights of illegitimate children, if consistently guided by the provisions of Act No. 1 of 1974 (before material testing), so it was determined that this matter would break the civil bond between the foreign child and his biological father. Meanwhile, if referring to the Constitution (Article 28D Part (1) of the 1945 Constitution of the Republic of Indonesia) which stipulates that meetings before the law of every citizen of the country have been confirmed, for that it is fair that the role of children out of wedlock in matters of inheritance is equated with legitimate children.

The law also stipulates that with legal ties the outer child mixes with his biological mother and his biological mother's family, the outside child also has the right to inherit only his mother's assets. Included are all forms of payment that must be paid for outside marriage, which can only be handed over to the mother, because

¹Yuni Hastuti Tatarhati and Akhmad Khisni, 'Inheritance Child Out of Wedlock in The Compilation Of Islamic Law (KHI) Perspective And Civil Law (Burgerlijk Wetboek)', 6.1 (2019), 41–48.

²Margareta S. et al, The Dilemma of the Right to Inherit a Child Out of Wedlock in a Civil Law Perspective, Journal of Magnum Opus Law, 4(2), 2021, p.161.

the child out of wedlock will continue to be the responsibility of the mother until he can be said to be classified as an adult.³

In my opinion, this determination is unfair to the mother and her child, because in order to have a child there must be a direct contribution from the man as the biological father. Because the father does not approve of or does not marry the woman, so that his civil ties with the father are severed, meanwhile the legal ties are very much needed by the child to be able to claim normal protection rights as is the case with other children in general. As has been regulated and explained in the Civil Code which states that the law does not give rights to a child out of wedlock at all to goods belonging to the blood relatives of both the mother and father, with dispensations for certain matters.

M. Idris Ramulyo defines inheritance law as: a set of legal rules governing who is the heir who has the right to inherit the inheritance of a person who dies and leaves an inheritance. What is the position of each heir and how/how much is each heir fair and perfect?⁴Therefore this study aims to find out how the position of children out of wedlock according to civil law.

2. Research Methods

The research method used in this research is normative juridical research conducted by means of library research on legal materials, both primary legal materials, secondary legal materials, as well as tertiary legal materials or non-legal materials. This data collection technique is also carried out by reading, viewing, or searching for legal materials through internet media or websites.

3. Results and Discussion

According to article 272 BW, if a child out of wedlock that can be recognized is a child born to a mother but who is not conceived by a man who is in a legal marriage with the child's mother and is not included in the category of adulterous children and children - the child blurted out.⁵If one observes the determination of Article 272 BW above, it appears that BW actually refers to children out of wedlock, adultery or illegitimate children. For Anisitus Amanat, a child of adultery is a child who is fertilized where both the mother and father or one of the two are bound by another marriage that is still valid. On the other hand, an incestuous child is a

³LPPi Pratiwi, DGS Mangku, and ..., 'Regulation of the Position of Children Outside of Marriage After the Constitutional Court's Decision Number 46/Puu-Viii/2010', *Jurnal Masyarakat...*, 3.1 (2020), 13–24 <<https://ejournal.undiksha.ac.id/index.php/jatayu/article/view/28831>>.

⁴M. Idris Ramulyo, *Islamic Inheritance Law: Comparative Case Study of Shafi'i Teachings (Patrilineal), Hazairin (Bilateral) and Practice in Religious Courts*, (Jakarta, Ind-Hill, 1984), p. 35.

⁵Dr.J.Andy Hartanto, *Inheritance Law, Position and Post-Decision Rights of the Constitutional Court*, Surabaya: LaksBang, 2015, p.29

child born from a bond between two parents where it is forbidden by law to marry, for example between a stepmother and a stepchild.⁶

According to R. Subekti, in BW there are three types of children:⁷

1. Legitimate child, namely every child who is born or raised during the marriage of his parents (Article 250 BW).
2. Out of wedlock child recognized by one or both parents.
3. Children out of wedlock who are not recognized by their parents

So, a child who is born or bears fruit in the marriage of his parents is a legitimate child, that way, a child who is produced during a marriage and then born after his parents' marriage is broken is a legitimate child. Likewise, children who were incubated before marriage but born in marriage are also legitimate children. That way, a child born without fulfilling that determination is an illegitimate child.

Therefore, illegitimate children whose parents are not legally married have the role of illegitimate children. With the acknowledgment of one or both of his mother and father jointly, he becomes a recognized child out of wedlock. Its role is slightly smaller than that of legitimate children but larger than that of illegitimate children who are not recognized by their mothers and fathers.

Article 250 BW, it is stated that: a child out of wedlock but born from adultery, is legalized by a marriage that follows from their father and mother, if before carrying out the marriage they have made a legal confession to the child, or if the acknowledgment takes place on own marriage certificate. And in article 280 it is explained again that children outside of marriage get civil ties with their father or mother through confession. There are 3 (three) tools that are permitted by BW as a place for recognizing illegitimate children. First, the acknowledgment is made using the marriage certificate of the out-of-wedlock child's parents. That is, in the marriage certificate of the two children's parents there is a clause regarding the recognition of their child who was born before they entered into a legal marriage. Second, recognition of the child using the birth certificate of the child out of wedlock itself, and third, recognition based on the original certificate specially made for this purpose. The three means of recognizing children out of wedlock are regulated in article 281 BW (book I). In other articles of BW there is no determination that allows the recognition of children out of wedlock using a testament. There is no clear determination in the BW regarding the use of a

⁶Mandate Anissite. Dividing Inheritance Based on the Articles of BW Pedata Law, (Jakarta: Rajawali Pers, 1984), p. 14.

⁷R. Subekti, Civil Code, (Jakarta: Pradnya Paramita 1992), p. 53.

testament to carry out a child's confession, it should not be interpreted that this is impossible. Everything can be intertwined, because the heir has the right to independence.⁸

From the description of article 875 above, it is clear that there is no requirement for a testament, it only contains a stipulation directly related to assets. The main factor of the testament is the final will of the heir regarding what will happen after he dies. Therefore, the recognition of a child based on a testament must be recognized as valid as a child's confession. It's just that what needs to be observed is that at any time the statement of recognition of a child outside of marriage is not a decisive factor when the statement of a child outside of marriage is formed, because the testament basically just starts to be legally effective since the death of the testator. In connection with this conception, the recognition of a child out of wedlock with a testament must be considered if the new recognition takes place after the death of the heir.⁹

This acknowledgment is something quite different from the nature of validation. By admitting that a child is not a legitimate child. A child born out of wedlock only becomes a legitimate child if his parents later marry, after they both confirm the child, or if the acknowledgment is made in the marriage certificate itself. Such is the determination that was launched in article 272.¹⁰

This recognition for Article 281 BW is carried out through an authentic deed. If the acknowledgment is tried on an authentic deed, then each of the parties concerned has the power to demand the recording of the acknowledgment in the child's birth certificate. Not only through an authentic certificate, so that recognition can also be attempted through a certificate made by a civil registry employee, then this matter is recorded in the birth register on the day the confession was made. This matter must be registered in the child's birth certificate. The confession made by the father who plans to give birth to the child can only be obtained if it is approved by the mother who is pregnant with it, as is explained in Article 284 of the Civil Code which states as follows:

An acknowledgment of a child out of wedlock during the lifetime of the mother, if the mother belongs to the Indonesian group or a group that is equivalent to that, will not be accepted if the mother does not agree to it. If such a child is

⁸Aniosit Amanat, SH, CN. Dividing Inheritance Based on BW Civil Law Articles. Jakarta;PT Raja Gratindo Persada;2003.p.41

⁹Ibid. p.42

¹⁰Prof. Ali Afandi SH, Inheritance Law, Family Law, Law of Evidence According to the Civil Code, Jakarta: PT. Bina Aksara, 1984.p.146

acknowledged after the mother dies, then the acknowledgment does not have anything else, except for the father.

With the recognition of one or both mothers and fathers, the role of an illegitimate child who is very retarded because he is categorized as an illegitimate child is treated. The status of being a child is legally recognized by the mother and father and of course the acknowledgment of one or both of the mothers and fathers raises different legal consequences compared to a child out of wedlock who is truly not recognized or when compared to a legitimate child.

For Klaassen, Eggens and Polak, the right of a child out of wedlock to the inheritance of an aged person who recognizes it is in principle the same as a legitimate child. They (recognized mixed external children) are truly heirs who have saissine rights, heredetatis petition rights and the right to sue for inheritance. However, if you look closely, it turns out that the similarities don't end there, because in terms of the rest, their parts are not the same between one and the other. They (children out of wedlock) are not under the authority of their parents, but under the authority of a guardianship, as a result their rights and shares in inheritance are also not of the same size and subsequent recognition only creates a legal bond between the child and the parents who justify it,¹¹

There is a Constitutional Court Decision Number 46/PUU-VIII/2010 dated 17 February 2012 regarding the judicial review of Article 2 paragraph (2) and Article 43 paragraph (1) of Act No. 1 of 1974 in its decision, the Constitutional Court stated that article 43 paragraph (1) in this law is contrary to the constitution so that the correct sound is:

"a child born outside of marriage has a civil relationship with his mother and his mother's family as well as with a man as his father which 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".

So that with the existence of the Constitutional Court Decree No. 46/PUU-VIII/2010 the child's needs regarding inheritance rights exist, and with the existence of this decree it creates a shared responsibility between the father and mother to the child, where the existing application so far has been entwined with injustice with the child so being sacrificed becomes neglected, both from the point of view of juridical, economic, to intellectual.

Some of the provisions of the legislation above which are the legal basis for the right to children still want BW's position as one of the legal bases for the allotment

¹¹JG Klaassen, J. Eggens and JMPolak, 1956, *Huwelijkgoederen end Erfrecht*, handleiding bij be Studie en Practijk, Print VIII, Tjeenk Willink Zwolle, p.178

of rights and the role of children out of wedlock. As stipulated in Article 280 BW which reads: "with the recognition of a child out of wedlock, a civil relationship is born between the child and his father or mother". This is also in line with the Constitutional Court Decision No. 46/PUUVIII/2010 regarding the status of children out of wedlock, which has a good impact in terms of the juridical position of a father towards his child if it can be proven based on science and technology and/or other evidence that according to law has blood relations including civil relations with his father's family.

The right to inherit children out of wedlock after the issuance of the Decree of the Constitutional Court No. 46/PUU-VIII/2010 is something that is protected by law. Everyone has equal rights before the law (equality before the law), including children born out of wedlock which are also legal values and must be protected by the state, including their right to inherit the assets of their biological or biological parents even though the child was born out of wedlock. In essence, there is nothing but the ration or allotment of inheritance between children born out of wedlock and children born from legal marriages when viewed from the perspective of Western Civil Law and Customary Inheritance Law for certain areas, as long as the child has a clear role and there is evidence that can be accounted for the truth is that something unexpected happens in the future.¹²

Nowadays, illegitimate children who have the power to find legacies contained in BW are basically children who have received recognition from their mothers and fathers so that automatically illegitimate children have legal ties with the parents who confirmed them. So that you can say that this matter can be categorized as an active inheritance right, which in the process of transferring inheritance must pass a line of acknowledgment by the biological father. As a result, an illegitimate child who can inherit it is an illegitimate child in the small term that has been regulated in "Article 280 BW" where an illegitimate child in this arrangement is different from adulterous and assisted children stipulated in Article 283 BW. Even though there is acknowledgment from the biological father that the illegitimate child gets a maximum of 1/3 of the total inheritance,¹³

4. Conclusion

Every child born outside of a legal marriage relationship is an illegitimate child. Based on BW's determination, illegitimate children are considered to have no legal

¹²Marriage From and others, 'Rights and Legal Position of Children Out of Marriage From a Civil Law Perspective', *Lex Privatum*, 7.3 (2019), 29–35.

¹³Gregorio C. Tandibato Tandibato, 'STATUS AND RIGHTS OF CHILDREN OUT OF MARRIAGE IN INHERITANCE BASED ON CUSTOMARY LAW PERSPECTIVE', 2019.

ties with their parents if there is no acknowledgment from the father or mother, thus if the illegitimate child is recognized, then he can inherit assets from the parents who acknowledge him, and of course the allotment of inheritance is based on the law. - invite. However, another part of the application of the Marriage Law is Law Number. 1 of 1974 (Article 43 paragraph 1), so that unrecognized illegitimate children also automatically have civil ties with their mothers and their mothers' families. Therefore, so that a mother's obligation to provide for her illegitimate child, as stated in Burgerlijk Wetboek, is no longer needed. Likewise, it has also been emphasized in the Constitutional Court Decree No. 46/PUU-VIII/2010 which is also part of legal reform, as a result the child also has a juridical bond with his biological father if it can be proven to be based on knowledge of technology and/or other evidence. for law.

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