

## THE LAW OF UNRECORDED BIRTH BASED ON CONSTITUTION NUMBER 16 OF 2019

**Esti Royani, Maria Perida**

Faculty of Law at The University of 17 Agustus 1945 Samarinda, Indonesia  
esti.untagsmd.hukum@gmail.com, maria.perida15@gmail.com

Received 30 September 2022 • Revised 28 October 2022 • Accepted 28 November 2022

### Abstract

Marriage is based and the outer bond between a man and woman as husband and wife to form a happy and eternal family based on the one godhead, carried out according to their respective Religion must be recorded according to the applicable laws and regulations. Research Methods, namely: 1. Type of Research is Normative Juridical research. 2. Through stages 3. Legal Material Resources, the author uses the technique of collecting library research, which is 4. Legal collection and processing materials using the primary law legal document collection techniques, as well as the implementing regulations of the Civil Code, Law No.23 of 2002 Law No. 23 of 2006, Law No. 16 of 2019, Presidential Decree No. 12 of 1983. b. Legal Materials The principal of the law is an approach to the problem, is the primary and Secondary Legal Materials Secondary data, sourced from a. Material in 2002. Law No. 23 of 2006, Law No. 16 of 2019, Presidential Decree No. 12 Of 1983, b. Secondary Legal Materials books, internet access writings of legal experts, primary and secondary.c. Tertiary Law, namely explaining primary law and secondary. 5. Legal Materials Analysis is that the data obtained is processed systematically, analyzed qualitatively, legal and analogical interpretations of the facts obtained by the study of provisions of the marriage. MK Decision Number:46/ PUU-VIII/2010 namely Children born proven based on science and technology and/or other evidence according to the Law has blood relations including the relationship of civil blood to his father's family.

**Keywords:** Unrecorded Birth, Presidential Decree, Legal Materials

## INTRODUCTION

Marriage is a physical and mental bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the Supreme Lordship, which must be carried out by their respective religions and must also be recorded according to statutory regulations. - applicable legislation.

In the legal regulations in Indonesia, marriage is regulated in Law No. 16 of 2019 concerning Marriage, Government Regulation No.9 of 1975 concerning the implementation of Law No.16 of 2019 concerning Marriage, Regulation of the Minister of Religion Number 11 of 2007, Law No. 23 of 2006 concerning Population Administration, Presidential Regulation No. 1 of 1991 concerning the Compilation of Islamic Law (KHI), as well as other regulations relating to marriage both with Indonesian Law and International Law.

The principle of marriage in Indonesia adheres to the principle of monogamy. Article 3 paragraph (1) of Law No. 16 of 2019 concerning Marriage. that is, a husband is only allowed to marry one wife, so he cannot have more than one wife. However, the principle of monogamy is opened with an exception or not absolute in Article 3 paragraph (2) of Law No. 16 of 2019 concerning Marriage. This means that in very special cases, polygamy is allowed as long as it meets the requirements stipulated in Article 4 paragraph (2) of Law No. 16 of 2019 concerning Marriage.

In article 2 paragraph (1) of Law Number 16 of 2019 oncerning Marriage, it is stated that "Marriage is legal if it is carried out according to the law of each religion and belief". Then in paragraph (2), it states that: "Every marriage is recorded according to the law in the presence of a marriage registrar employee". Therefore, for a marriage to be legal according to state law, every marriage must be recorded. All human,s are born equal in law (equality before the law).

According to Law No. 23 of 2002 concerning Child Protection Article 1 paragraph (2) what is meant by child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate, optimally following human dignity, and receive protection from violence and discrimination.

According to the Civil Code, the meaning of children outside of marriage is divided into two, namely as follows:

1. A child outside of marriage in a broad sense is a child outside of marriage because of adultery and discord. Both based on the provisions of the law there is a prohibition against marrying each other.

2. Children outside of marriage in the narrow sense are children born outside of a legal marriage.

If we look at the civil law listed in the Civil Code, there are 3 levels of legal status for children outside of marriage:

- 1) Children outside of the child's marriage have not been recognized by their parents.
- 2) Children outside of marriage that has been recognized by one or both parents.
- 3) The child outside the marriage becomes a legal child as a result of both parents getting legally married.

Regarding the status of children born out of marriage or "Naturalijk kind" whether or not their parents acknowledge them according to the Civil Code is that with the provision outside marriage, there is no family relationship between the child and their parents. The relationship is only legalized with "Ratification" as a complement to the recognition which is carried out through a letter of determination. So that the child outside of marriage is legal according to the law.

Recognition events, child validation cannot be done secretly but must be done in front of the Registration Officer, by recording it in the birth certificate, or in the marriage certificate of the parents (which results in ratification) or in a separate deed from the civil registration employee. The regulation of children outside of marriage through authentic evidence can be done by:

1. In the child's birth certificate at the time the marriage takes place.
2. In the marriage certificate of the father or mother, if later it continues with the marriage.
3. In the certificate of recognition or ratification of the child.

Seeing the background of the problem that attracts the author to study unregistered legal cases of marriage that are currently developing in society, for that, the authors are interested in further researching children outside of marriage being recognized children in the thesis entitled "Legal Effects on the Birth of Children from Unregistered Marriages Based on Law Number 16 the Year 2019 Concerning Marriage Article 2 paragraph 2".

## RESEARCH METHOD

Marriage is a very important event in human life. The principles of marriage are formed by the natural elements of human life itself which include biological needs and functions, giving birth to offspring, the need for affection and brotherhood, nurturing these children to become perfect members of society (volwaardig). Marriage itself has an important meaning in human life because in it there are elements of the rights and obligations of each party.

### 1. Definition of Marriage

For religious adherents, marriage is sacred which contains religious teachings for its adherents. A man and woman who were formerly free individuals without legal ties, after marriage become physically and mentally bound as husband and wife. The bonds that exist between them are physical, spiritual, spiritual, and human ties.

### 2. Conditions for Marriage

Furthermore, the procedures for conducting a marriage in Indonesia according to the Marriage Law in Indonesia are as follows:

- Marriage is concluded between a man and a woman.
- Marriage is legal if it is carried out according to the law of each religion and belief (Article 2 paragraph (1) of Law No. 16 of 2019 concerning Marriage).
- Marriages must be registered according to the applicable regulations of Article 2 paragraph (2) of Law No.1 of 1974 concerning Marriage. and in its related arrangements in the Regulation of the Minister of Religion Number 11 of 2007 concerning Registration of Marriages, and Law No. 23 of 2006 concerning Population Administration
- Marriage must be based on the agreement of the two prospective brides. Article 6 of Law No.16 of 2019 concerning Marriage
- To marry a person who has not reached the age of 21 (twenty-one) years must obtain permission from both parents.
- Marriage is only permitted if the male has reached the age of 19 (nineteen) years and the woman has reached the age of 19 (sixteen) years (Article 7 of Law No.16 of 2019 concerning Marriage)
- For women who are married for the second time

The law requires a waiting period of at least 90 days after the marriage is broken through a divorce, and 130 days after the marriage is broken due to the death of her husband (articles 10 and 11 of Law No.1 of 1974 concerning Marriage).

## RESULT AND DISCUSSION

This marriage bond has legal consequences for each husband and wife in the form of rights and obligations. The pairing of a man and a woman who forms a household or family in a marriage bond is a human instinct as a social being to carry out their life. Family society is the smallest social unit formed based on a marriage bond, the elements of which consist of a husband, wife, and children.

Out of wedlock children are children born out of wedlock. As for the legal relationship, the child outside of wedlock is only tied to the mother, this is seen in the birth certificate of the child outside of wedlock which only includes the name of the mother.

According to the Civil Code, the definition of children outside of marriage is divided into two types, namely as follows:

1. A child outside of marriage in a broad sense is a child outside of marriage because of adultery and disbursement.
2. Children outside of marriage in the narrow sense are children born outside of a legal marriage.

Children born from the result of a relationship between a boy and a girl, both of whom are not bound by marriage with another person and there is no prohibition against marrying each other, such children can be legally recognized by the father (Article 280 of the Civil Code).

Based on the formulation of the problem in this paper, the writer will describe the research results that are relevant to the problem and its discussion regarding :

### **A. How is the status of a child born before marriage registration recorded as civil**

The birth of a child outside of wedlock is not only the result of an extramarital relationship. In certain circumstances, a woman can also give birth to a child out of wedlock, if the marriage is carried out customarily and is not registered in following of the prevailing laws and regulations. According to the provisions of Article 80 of the Civil Code, prior to the bafflement of the Marriage Law, it is stated that the marriage must take place in the presence of an official at the Population and Civil Registration Office. In Article 81 of the Civil Code, it is stated that religious marriage must be carried out after the marriage before an official at the Population and Civil Registration Office. Marriages that are carried out irreligiously are not carried out in the presence of an official at the Population and Civil

Registration Office, then the legal consequences of the enactment of Article 80 in conjunction with Article 81 of the Civil Code above, namely between husband and wife between mother and father and children, have a civil relationship. The civil relationship in question is the inheritance relationship between husband and wife/mother and father with children and their families. The population as of last amended by Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration. it is said that the Indonesian State based on Pancasila and the 1945 Constitution is essentially obliged to provide protection and recognition for determining personal status and legislate every birth must be reported to the agency that manages population administration to as regulated in Article 27 of Law No. 23 of 2006 concerning Population Administration:

- (1) Every birth must be reported by residents to the local Implementing Agency no later than 60 (sixty) days from the time of birth.
  - (2) Based on the report as referred to in paragraph (1), the Civil Registration Officer shall record it on the Birth Certificate Register and issue a Birth Certificate Quote.
- If the births are reported after the deadline of 60 days. To answer, we refer to Article 32 paragraph (1) of Law no. 23 of 2006 Population Administration.

“As referred to in Article 27 paragraph (1) of Law no. 23 of 2006 concerning Population Administration. which exceeds the time limit of 60 (sixty) days from the date of birth, the recording shall be carried out after obtaining a decision by the Head of the Local Implementing Agency.”

If you wish to apply for resident registration, the conditions to be fulfilled are Article 52 paragraph (1) Presidential Regulation of the Republic of Indonesia Number 25 of 2008 concerning Requirements and Procedures for Population Registration and Civil Registration:

- a. Birth certificate from a doctor/midwife/birth attendant;
- b. name and identity of birth witnesses;
- c. Family Certificate;
- d. Parents' KTP; and
- e. Marriage Certificate

According to Article 2 of the Marriage Law, a new marriage can be said to be a legal marriage if it is carried out according to the law of each religion and is recorded according to statutory regulations.

Examined in depth by Law Number 23 of 2006 concerning Population Administration, various factors prevent children from obtaining identity rights on birth certificates, namely:

Government Regulation No. 9 of 1975 concerning the Implementation of Law no. 16 of 2019 concerning Marriage and the Decree of the Constitutional Court (MK) No. 46 / PUU-VIII / 2010:

it is not appropriate and unfair when the law stipulates that children born because of sexual relations outside of marriage only have a relationship with their mother in the Civil Code.

The result of the recognition of the child outside of marriage is the emergence of a civil relationship between the child and the father or mother who acknowledges it. With the emergence of this civil relationship, the status of an out-of-wedlock child will change to a recognized child, whose position is much better than that of an outside child who is not recognized. status) as a legitimate child. Article 272 of the Civil Code states that children outside of marriage will become legitimate children if:

- a. His parents are married,
- b. Before they get married, they have recognized their child, or this recognition is done in the marriage certificate.

Thus, children who are recognized by their parents before they get married, if their parents later marry, as well as outside children who are recognized in the marriage certificate, then by law they will become legal children.

## **B. Whether a child born before the Parent's Marriage Registration is registered as Civil can be designated as the Parent's Heir**

In analyzing legal issues for unregistered marriages, it cannot be denied that it is a legal act that is committed and occurs in society. Children born carry children's rights (rights of the child) which in principle should not be treated differently or discriminated against. Children from marital relations, however (are registered, or not (non-marital child), but the child remains authentic as a legal subject who has equal child rights (equality on the rights of the child).

The relationship between a child and a man as the father is not solely due to the marriage bond. This is following the Constitutional Court Decision Number 46 / PUU-VIII / 2010. According to the Constitutional Court, it would be inappropriate and unfair if the law stipulates that a child born from pregnancy because of sexual relations outside of marriage only has a relationship with the woman as the mother.

### Constitutional Court

No. 46 / PUU-VIII / 2010 decided Article 43 paragraph (1) of Law No. 16 of 2019 concerning Marriage. which states, "Children born out of wedlock have a civil relationship with their mother and their mother's family as well as with men as their father which can be proven based on science and technology and / or other evidence by law to have blood relations, including civil relations with family. his father ". That is the responsibility and obligation of the State to fulfill, protect, promote, and enforce human rights which are realized for every child.

Children's rights are "gifts" or authentic authorization given to every child (every child), and for all rights including their privacy rights - which are formalized in the document of the child rights instrument.

Recognition and legalization of children occur in cases that will be the object of the author's research, namely Case 1 Outsiders are Married in NUMBER: 258 / PDT.P / 2011 / PN.TNG dated 24 May 2011 who try and examine civil cases of the petition at the level The first filed by the KIE FOEK applicant and IRENE LAURENTIUS submitted an application dated May 13, 2011, which is registered at the Tangerang District Court Registrar. Whereas the applicant residing in the jurisdiction of Tangerang, Banten, has conducted a Buddhist wedding ceremony.

While in the Buddhist marriage mentioned above, until now the marriage has never been legalized/registered at the competent Civil Registry Office, so at that time it did not have a marriage certificate. Whereas during this religious marriage, the applicant has been blessed with 1 (one) child whose status is out of wedlock, named CATHY OLIVIA, the daughter's first child, born in Tangerang, September 5, 2008. Then the applicant registers his marriage at the Tangerang Civil Registry Office. , Banten, on March 12, 2010, as quoted from the Marriage Certificate Number: 474.2 / 152-DKCS / TA.2010 issued by the Tangerang Regency Civil Registry and Family Planning Office, since then the applicants for KIE FOEK and IRENE LAURENTIUS have become husbands. legal wife according to State law.

Based on the foregoing, the applicant intends to validate and acknowledge the child, CATHY OLIVIA, to be the recognized and legalized child of the marriage of KIE FOEK and IRENE LAURENTIUS for the sake of the child's future. For the validity of the legalization and recognition of the child mentioned above, first, there is a permit in the form of a ruling from the Tangerang District Court according to the domicile of the applicant and the child.

The 2nd case of married foreign children is in the case as DETERMINED NUMBER: 684 /.PDT.P / 2011 / PN / TNG who examined and determined the petition case of the Petitioner named XION SIAHAAN and BANGUN LORENTA SAMOSIR The applicant is husband and wife who were married on the 15th December 2009 in Toba Samosir, legally registered at the Department of Population and Civil Registry Kab. Toba Samosir, as quoted from the Marriage Certificate Number: 1212 CPK11122009917. On December 15, 2009, the Petitioner had legally registered the marriage at the District Population and Civil Registry Office. Toba Samosir, thus the Petitioner according to the law is a legal husband and wife partner, however, in the registration of the marriage, the Petitioner's child named NOEL OTNIEL SIAHAAN was not legalized as the Petitioner's husband and wife's child. Whereas the Petitioner intends to acknowledge and legalize the Petitioner's child mentioned above and for the prior need there must be a Decision from the Tangerang District Court, That the birth certificate is very necessary for the benefit of the child himself in the future, so for this purpose, they need a decision permit from the Tangerang District Court considering both of them are domiciled in Tangerang.

Both cases are cases that are religiously aware of the future interests of their child, so the petitioner as the parent follows the procedure set out in the Law to legalize, register, or register their marriage so that from then on they become legal husband and wife according to State law. , furthermore, they want to acknowledge and legalize their children who were previously born out of wedlock into children who are recognized and legalized by their parents' marriages.

### CONCLUSION

Legalization of out-of-wedlock children of married couples with different nationalities based on Particulars of Marriage No. 49/08 registered at the Tangerang City Population and Civil Registration Office No. 474.2 / 152-DKCS / TA.2010, in principle, it is the same as the process of legalizing an ordinary out-of-wedlock child whose parents are both Indonesian citizens. The legal protection that can be given to an out-of-wedlock child from a married couple is through recognition of the child either by the father or by both parents as regulated in Article 280-Article 281 of the Civil Code. It's just that in the Constitutional Court Decree No. 46 / PUU-VIII / 2010:

states that the illegitimate child only has a civil relationship with his mother and his mother's family and with the male as his father, which can be proven based on science and technology and / or other

evidence that is legally related, including civil relations with his father's family. Tangerang District Court in Determination No. 258/PDT.P/2011/ PN.TNG, the Panel of Judges granted the KIE FOEK (Indonesian Citizen) and IRENE LAURENTIUS (WNI) Petitioners.

## REFERENCES

### A. Books

Aji, Affandi, 2006, *Hukum Waris, Hukum Keluarga, Hukum Pembuktian*, Bina Aksara, Jakarta, hal 145

### B. Constitutional Law

Undang-Undang Perkawinan, UU No.1 Tahun 1974, LN No. 1 Tahun 1974, Pasal 2

Undang-Undang Dasar Republik Indonesia 1945

Undang-Undang No. 23 Tahun 2002 tentang Perlindungan Anak Pasal 1 ayat (2).

### C. Website

Andi.2012.www.hukumonline.com.Diakses.pada.tanggal.13.03/2012

### D. Journal

Ahmad, A., Jubaedah, S., Fajarianto, O., & Nurlia, T. (2022). Use of the National Museum as a Learning Resource for Social Science Subjects. *Journal Socio Humanities Review*, 2(2), 56-62.

Harsono, Y., & Fajarianto, O. (2021, January). Strategy for Improving the Quality of Human Resources to Improve the Performance of Small and Medium Enterprises in Kepulauan Seribu, North Jakarta. In *The 1st International Conference on Research in Social Sciences and Humanities (ICoRSH 2020)* (pp. 382-392). Atlantis Press.

Rifqi, M., Isradi, M., & Fajarianto, O. (2022). Smart Blockchain Technology in Image Processing Between Challenges, Transformation and Digital-Based Learning Solutions. *Journal of Science, Technology, and Engineering*, 2(1), 1-9.

Susilo, Y. Sri, *Journal of Finance and Banking the Role of Banking in Financing MSMEs in Yogyakarta Province*, Vol. 14 No.3, September 2010

Wijanarko, D. S., Eleanora, F. N., Efrianto, G., & Fajarianto, O. (2021). Juridical Analysis of Terrorism Criminal Sanctions in Indonesia (Case Study of Imam Santoso Criminal Acts). *LINGUISTICA ANTVERPIENSIA*, 1043-1050.

Wulandari, S., Lestari, A. D., Fajarianto, O., & Sari, P. K. (2022). OPTIMALISASI FITUR AUTOCRAT GOOGLE SHEET UNTUK MEMBUAT E-CERTIFICATE PADA SEKOLAH. *Abdimas Awang Long*, 5(2), 43-48.