

## LEGAL PROTECTION OF CHILDREN OUT OF MARRIAGE REGARDING THE ACQUISITION OF INHERITANCE RIGHTS BASED ON CUSTOM MARRIAGE ACCORDING TO INDONESIAN LEGAL PERSPECTIVE

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### Abstract

Marriages are carried out in accordance with applicable customary provisions and the religion adopted is legal according to the Indonesian law. The research method that was used was a qualitative research method. However, this customary and religious marriage without registering it in the Civil Registration is still legal under the law, but it will have an impact on the legal consequences of the child being born. These children will be born with the status of illegitimate child for law administration. This will cause problems in the distribution of inheritance to these children. These children still have the opportunity to inherit the property of their parents, if they are recognized by their father and mother. At the same time, they can inherit their mother's property directly in accordance with the law without any acknowledgment at all, because the name listed on their Birth Certificate is a valid proof of heir. Even though they were born as illegitimate children, they are the heirs who are prioritized as the First Class of Heirs. Therefore, legal protection for illegitimate children is needed for their right to receive their parents' inheritance. The result inheritance law protection for children out of wedlock is regulated carefully in the Civil Code, which then the status of children out of wedlock becomes stronger with the existence of Article 43 UUP. The status of this illegitimate child becomes the same as the heir to the first class.

**Keywords:** The Illegitimate Child, Inheritance, Heir

## INTRODUCTION

Due to the fact that Indonesia is an archipelagic nation that runs from Sabang to Merauke and that it has a large number of islands, it is home to a diverse collection of ethnic groups, cultural practices, and social norms. One of the customary law procedures that is still very binding on Indonesian society is the process of carrying out marriages. This is because customary law is still very much implemented in various regions of Indonesia to regulate the lives of Indonesian people. In the life of this diverse Indonesian society, customary law is still very much implemented.

Traditional marriages are given higher priority by the people of Indonesia when it comes to the process of carrying out marriages. This is due to the fact that traditional marriages are more vibrant, as members of the family, relatives, friends, neighbors, and surrounding community will all participate in the celebration of the marriage. As stated in one of the Pancasila precepts that serve as the Foundation of the Republic of Indonesia, namely the First Precepts, Indonesia is also a nation that adheres to the belief that there is one and only one God.

It is clear from the foundations of this state that the people of Indonesia, in addition to placing a high value on the traditional rituals associated with marriage, also put a high value on marrying within the confines of the religious tradition to which they belong when making marital decisions. Because Indonesia is a state with its own independent legal system, it is only natural for Indonesia to have written laws that have been established by the Indonesian government. Marriages that take place in Indonesia must also be carried out in accordance with the rules that have been defined in the State. This is so that the marriage processes that have been authorized by custom and religion may also be carried out legally. Republic of Indonesia, namely registering marriages that have been legal according to custom and religion in the Civil Registry, so that marriages are carried out in accordance with the procedure's method of custom and religion that become legitimate in a lawful manner. This is done so that marriages can be carried out in accordance with the procedure's method of custom and religion that become legitimate in a lawful manner.

Marriages that are based on customary law and law religion are legitimate in the family and public, so that this marriage will not raise commotion which appears from the family or the local public. However, the public in Indonesia, which is plural, does not attach much importance to recording marriages because marriages that are based on customary law and law religion are legitimate in the family and public.

This is Marriage is governed by both customary law and religious law, both of which have their own legitimate effects on the child that is born. due to the fact that a child who is born through a marriage that is governed by customary law and religious law will be given the status of a child who is not married (child no legitimate).

No own problem or influential to the life of the child in socializing, because many Indonesian public understand about this thing and have never once thought about it, but the status of child outside marry this will impact to distribution legacy, because child outside marry in distribution legacy can not be protected by law because no registered legitimate in law as expert inheritance which, if which is accepted only as the status of child outside marry or child is no legitimate, no own problem or influential to the life of the child in socializing. if which is accepted only as the status

Children who do not have a legitimate connection with their father have only their own civil connection with their mother. This can be demonstrated by making the child's self identity no legitimate the form deed birth, which records that the child is not legitimate the with only include Mother's name just in dead birth, whereas his father's name is not listed inside.

This issue of civil connection is also resolved in Chapter 43 paragraph 1 of the Constitution on Marriage, which states that "Children born outside of marriage only have a civil connection with their mother and their mother's family." [C]hildren born outside of marriage only have a civil connection with their mother and their mother's family. With the help of the rule of provision Law-Marriage Chapter 43 paragraph 1, this makes it so that a kid who marries outside the family but whose new spouse does not confess it will still have some kind of own civil relationship with her mother and the rest of her mother's family.

"With confession which conducted to a child outside marry, arise a civil connection between the child and father or her mother," it says on Chapter 280 of the Book of Constitution Law Civil, which states that: "With confession which conducted to a child outside marry, arise a civil connection between the child and father or her mother." With exists rule from Constitution Number 1 year 1974 concerning Marriage, so a Mother no need again do confession to child no legitimate the as which arranged on.

In the meanwhile, equality before the law is one of the most fundamental concepts that should underpin the legal system of any nation (equality before the law). The conclusion that may be drawn from this concept is that every individual resident of the nation has the same status in the eyes of the law, with no exceptions to this rule. This idea can be found in the Constitution Base 1945, Chapter 27, paragraph 1, which states that "All resident nations together in position in law and governance that with nothing there is except".

So also, in in Constitution Number 23-year 2002 about Protection Child Chapter 1 paragraph 2 state that: "Protection child is all activity for ensure and protect child in a manner optimal corresponding with dignity and dignity humanity, as well as get protection from violence **discrimination**".

Principle's protection child also there is on Chapter 2 paragraph 1 point a Constitution Number 23-year 2002 about Protection Child, that is **nondiscrimination**.

All shape Constitution protection inhabitant country, specifically protection child formed by Government is a concern Government in protect rights child, will but until discharge Constitution Protection Child until now, well-being and fulfillment right child still far from which expected (Saraswati, 2015).

Reality on show that happening discrimination as well as no exists protection law for child outside marry which caused by marriage people old, they which no recorded in Notes Civil. Thing this happen because exists rule which apply based on on provision Chapter 2 paragraph 1 Constitution Marriage which in in implementation raises difficulty and discrimination special to woman and children. Besides that, discrimination status child this also contrary with values humanity, diversity religion and culture which very diverse which there is in Indonesia (Ibid).

With exists rules which arrange about status law child outside marry the, so that for get base law which Certain on right child outside marry the, so needed laws positive which apply in Indonesia, as wrong one source law in distribution right and position child outside marry, ie Book Constitution Law Civil, Constitution Marriage, as well as Decision Court Constitution No. 46/ PUU-VIII/ 2010 which own decision law which good in right position in a manner law a father to his son if could proven based on knowledge knowledge and technology and/ or tool proof other which according to law have connection blood including connection civil with family his father.

## RESEARCH METHODS

The research method that was used was a qualitative research method, which is a descriptive analytic method that aims to describe the status of legitimate children according to what is stated in the Civil Code, Law Number 1 of 1974, and Constitutional Court Decision Number 46 of 2010, then analyzed comprehensively and carefully analysis of the various components involved in answering this research problem. This research method was chosen because it aims to describe the status of legitimate children according to what is stated in the Civil Code, Law Number 1 of 1974, and Constitutional Court Decision. While the approach method used in this study is:

1. Normative juridical, also known as a legal approach that refers to the provisions of positive laws and regulations in Indonesia, in particular laws and regulations concerning civil inheritance law that are regulated in the Civil Code, the Marriage Law, and the Constitutional Court Decision Number 46 of 2010.
2. Sociological, which refers to the study of topics that are relevant to the progression of social life, namely the influence that the act of getting married has on the position that children have in society.
3. Philosophical, which refers to an approach that relates legal issues whose study focuses on a set of ideal values that become a reference in every formation, regulation, and implementation of legal rules related to the status of children caused by the marriage process of their parents.

Specifically, this type of approach relates legal issues that focus on a set of ideal values that become a reference in every formation, regulation, and implementation of legal rules.

This research will also compare the Empirical Method with the Judicial Method, which is obtained through the literature, by reviewing, studying, and processing literature, legislation, or writings related to the problems to be studied in comparison to the problems that frequently occur in Public Administration. Specifically, the Judicial Method will be compared to the Literature Study, which is obtained through the literature.

## **RESULTS AND DISCUSSION**

### **Growing Inheritance Position in Indonesia**

Distribution of treasure legacy that is based on law and inheritance custom will held corresponding with rule ethnic group and culture which still held firm and run with good from era formerly until moment this. Distribution of treasure legacy that is based on law and inheritance custom will held corresponding with rule ethnic group and culture.

Law inheritance custom alone have rules and methods that change correspondingly with ethnic group, culture, or place each which makes law inheritance this as a system which in its application must be observed by every single person in in a the community.

Law, inheritance, and tradition in Indonesia exhibit a distinctive pluralism (variousness) that is capable of being categorised. Becomes a three (three) type system inheritance custom that is based on the kinship structure of the system, which is to say:

- a. System patrilineal, system inheritance which adhere distribution legacy based on descendants from father or father so that woman no get portion part from legacy. Law inheritance custom with system patrilineal sort of many conducted by ethnic group Batak, gayo, Nias, Lampung, NTT, and ethnic group other.
- b. System Matrilineal, system inheritance which adhere distribution legacy only taken from line descendants Mother just. System distribution legacy with system matrilineal still used in area Minangkabau, Reluctant, and Timor. Ethnic group nation in Indonesia which use system matrilineal this far more a little compared with use system patrilineal.
- c. System Bilateral (Parental), system inheritance custom which pulled through line people old, or according to line two side, that is line father and Mother, where position child man and child woman no distinguished in in inheritance which happen. System bilateral this used by Public in area Sumatra East, Sumatra South, Borneo, and a number of area other (Wigijnodipoero, 1990).

### **Based on Islamic Inheritance Law**

Expert inheritance is passed down through a number of classes in Islam. These include: line to lower, which includes the child, grandchild, and so on; line to on, which includes the father and mother, grandpa and grandmother, and so on; line to side, which includes the husband or wife who has been alive the longest, you, and so on, until party in outside lineage as stupid agreement.

In the process of distributing the riches based on the legacy law of Islam, each expert received a portion of their inheritance, which had previously determined its size. However, according to Islamic in-law inheritance, a legacy may be distributed by an heir based on the will to people other than the heir or to some institution with a provision gift will Very many one third of the treasure legacy that there is except in cases where all experts in inheritance have agreed.

On Chapter 171 paragraph an of the Compilation of the Law of Islam (KHI), an explanation of the law of inheritance can be found. This law is understood as a law that determines who is just which entitled, arranges the transfer of relics and ownership rights, and transfers transfer rights. Gains professional knowledge of inheritance and the number of parts in each.

According to Compilation Law Islam (KHI), the beginning of the magnitude component expert inheritance based on on Law Islam is fixed at Chapter 176 and continues until Chapter 185.

### **Based on Civil Inheritance Law**

Inheritance law based on Indonesian civil law provisions is only reserved for non-Muslim legal subjects. Base law in inherit treasure heir for expert inheritance according to system law positive Indonesia which poured in in Book Constitution Law Civil through two method, that is:

- a. According to provisions which apply in Constitution (ab intestato/ wetlijk erfrecht).
- b. Expert inheritance which appointed in letter will heir (testamentair erfrecht).

Base law inherit according to provision Constitution (ab intestato/ wetlijk erfrech) is provision which arrange expert inheritance in get part legacy because exists connection kinship which based on on descendants. Provision this apply to expert inheritance if heir on period his life no determine alone about who which will arrange and manage treasure his wealth, so that in arrange owner next treasure his wealth that will determined in Constitution which apply about treasure which abandoned heir the (Suparman, 1995).

Could be inferred that inheritance that takes place because of the Constitution (also known as ab intestato or wetlijk erfrecht) is inheritance that takes place because of the existence of death and does not take place because of the existence of a will.

According to the Constitution, the laws governing inheritance may be found in Book II of the Civil Code. The relevant provisions are as follows:

1. Inheritance is only possible due to a deceased person, as stated in Chapter 830 of the Civil Code; thus begs the question: is death a natural occurrence? (reasonable).
2. The provisions of Chapter 831 of the Civil Code state that if a number of people become experts in inheritance for each other, there must be something that dooms each of them. Since it is not known who has died more frequently in the past, it is assumed that all of them will perish at the same time. As a result, in the event that you are one of the victims, you will not inherit from any of the other victims.
3. The para expert inheritance requirement is established in Chapter 836 of the Civil Code and must be met before the legacy may be opened. In conflict with Chapter 2 of the Civil Code is this chapter.
4. The person who is referred to as an expert on inheritance by the Constitution is determined by Chapter 832 of the Civil Code. Family blood that is neither authentic nor obtained from outside marriage and husband or wife that lives the longest or is referred to be an expert might be inherited ab intestato.
5. The expert inheritance with itself is determined by the first paragraph of Chapter 833 of the Civil Code. This is because the law obtains the right possessed by on all property, all right, and receivables si which dies.
6. The provisions of paragraph 2 of Chapter 833 of the Civil Code, which state that if there is a disagreement regarding who is entitled to choose a treasure legacy and who is considered an expert in inheritance, the judge in charge of the case may issue an instruction that goods that were especially formerly pulled into storage.
7. The provisions of Chapters 834 and 835 of the Civil Code are approximately appropriate for the demand portion of treasure legacies, also known as hereditary petio.

Base law inherit based on to letter will which appointed by heir, that is writing desire from si heir During allowed by Constitution. In Thing this, heir must give reason for write letter will to treasure thing which will he inherited. So, provision this deviate from provision Constitution. In in provision this, all party own chance as expert inheritance good family closest nor family far even people which no there is relation with family same very (Klaassen & Eggens, 1979).

According to rule Civil Code about inheritance, expert inheritance ab intestate or expert inheritance according to Constitution which based on to connection blood with heir could shared Becomes four class expert inheritance, that is:

- a. Expert Inheritance class I (First) is:
  - a.1. Family in line straight to lower, covers children along his descendants, without differentiate type sex, time birth from marriage first or second, where part they same big, and inherit head by head and know system replacement (Asri & Asri, 1998).
  - a.2. Husband or wife which abandoned heir which life Very long.
  - a.3. Child outside marry which acknowledged legitimate which get part legacy no same with child legitimate.
- b. Expert Inheritance class II (Second) is family in line straight to on, covers people old, brothers man and woman, as well as his descendants, if no there is husband or wife or his descendants, so legacy will fall to family blood class second.

- c. Expert Inheritance class III (Third) is family blood in line straight to on if si heir no leave descendants or husband or wife, people old, brothers or descendants' brothers, so which get turn is family blood next in in line straight to on which called class third.
- d. Expert Inheritance class IV (Fourth) is family other in line deviate which restricted until with level sixth, good from party father nor from party Mother.

Prof. Ali Afandi, SH mentioned that Book Constitution Law Civil (Burgerlijk Wetboek) stage 3 classification to children:

1. Child legitimate, that is a child which born in in something marriage;
2. Child which born in outside marriage, but acknowledged by a father and/ or a Mother. In in Thing this Among si child and people which confess that arise affinity kinship. affinity kinship this only tie people which confess child that just. So, family other from people which confess that, no bound by confession people other. Child from class this, if father and her mother marry, then Becomes child legitimate;
3. Child born in outside marriage, and no acknowledged, no by father nor by her mother. Child this according to law no have father and no have Mother. To child in outside marry which no acknowledged, because no have family so also no there is provision about law his heir (Afandi, 2000).

It is explained in Chapter 272 of the Civil Code that children who were born outside of marriage can get confessions from the people whose parents they were from. This type of child is one that was born to a mother but was not fathered by a father, and this type of child can be included in a legitimate marriage with the mother but not with other children who were born outside of marriage.

"With confession which conducted to kid outside married, arisen connection civil Among si child and father or her mother," it is highlighted in Chapter 280 of the KUH Civil Code.

Can be used here for the purpose of making a kid who has not been married legitimate in the eyes of the law and obtaining the right as a child to inherit things, which means that a child who has not been married must acquire a confession from the persons who are his parents.

Child from the outside who marries someone from the inside and inherits riches and legacy from individuals that his parents have organized under Civil Code Chapters 863, 864, 865, and 866.

According to the articles in Wikipedia, the distribution of the bequest for children who have not married is as follows:

1. Child outside marry inherit together with expert inheritance class I, part is  $\frac{1}{3}$  from part if class I the is child legitimate.
2. Child outside marry inherit together with expert inheritance class II and III, so part is  $\frac{1}{2}$  from legacy which there is.
3. Child outside marry inherit together with expert inheritance class IV, so part is  $\frac{3}{4}$  from legacy which there is.

If the heir does not leave legal heirs according to the law, then the illegitimate child will inherit all of the heir's property, this is regulated in the Civil Code Article 865.

The status of a legitimate kid is explained in Constitution Number 1, Year 1974, Chapter 42. A legitimate child is a child who was born in or as a result of a marriage that is legitimate. A marriage is considered to be genuine in the eyes of the law if it has been registered in the appropriate civil records. This ensures that the marriage will be recognized as valid by the courts. As a result of this, the will of the child's father and mother will be inscribed on the kid's birth certificate, and the child will receive the whole wealth and riches of his father and mother without having to offer any more description or continue the chain of inheritance.

Whereas a child born outside of marriage is considered legitimate in a certain manner, a child born within marriage is considered legitimate in a certain manner of custom, but not legitimate in a certain manner of law. The reason for this is that the marriage parents are not registered in the civil notes. Therefore, the birth certificate of the kid will only include the mother's name and not the father's, and the child's birth certificate will not include the father's name at all.

It is stated in the Constitution Number 1 Year 1974 concerning Marriage in Chapter 43 paragraph 1 that: "Child which was born outside of marriage only have connection civil with her mother and family her mother." This is in reference to the clause "Thing inherit treasure thing father and Mother."

Chapter 43, paragraph 1 has its own meaning, which states that a kid who marries outside the family may receive treasure from their mother if there is no confession of this fact, particularly one that was previously mentioned in Civil Code paragraph 280.

Whereas, in inherit treasure riches his father, no arrangement was made in UU Marriage, and this was also clearly explained in UU Marriage Chapter 43 paragraph 1, so that a child who did not marry this clear no could not inherit treasure riches his father in a manner that would allow him to live if his father passed away.

Machica Mochtar wed Moerdiono in Siri on December 20, 1993. As a result of this marriage in Siri, they were blessed with a son whom they named Muhammad Iqbal Ramdhan and who was born on February 5, 1996. Later, in 1998, when Iqbal was 2 years old, the couple divorced and Iqbal was raised by his mother.

Through a press conference in July of 2008, Moerdiono's extended family, the Margono, revealed that Iqbal was not Moerdiono's flesh and blood.

Machica Mochtar filed a legal review with the Constitutional Court to question the constitutionality of Law Number 1 of 1974 concerning Marriage's Article 2 paragraph 2 and Article 43 paragraph 2 in order to advocate for Iqbal's rights as a child while he was still a minor.

On February 17, 2012, the MK panel of judges agreed with Machica Mochtar and granted her request for judicial review.

Chairman Assembly Judge Mahfud MD state child which born in outside connection wedding which legitimate permanent own connection with father biological. Influence from Decision case Machica Mochtar is:

- a. Woman could demand Men which impregnate her for give living the child.
- b. Not there is again child which rejected enter to institution Education formal consequence no own description who his father.
- c. kindly official, MK already set that child which born in outside marriage which legitimate in a manner law, own connection with father biological in a manner civil.
- d. Status child the Becomes legitimate in a manner law if it can be proven scientifically and technologically.

The following was stated by MK in his decision: "child which was born in outside marriage have connection civil with her mother and family her mother as well as man as his father which could proven based on knowledge knowledge and technology and/or tool proof other according to law have connection blood, including connection civil with family his father."

Following the setting of this decision MK and the Decision MK No. 46/ VII-PUU/ 2010, the situation of kid outside of married developed. Regains its former vitality via the inheritance of the father's valuable thing biological.

## CONCLUSIONS

Indonesia has a diverse society with diverse cultures and customs, and also has a pluralism of inheritance laws, namely Customary Inheritance Law, Islamic Inheritance Law and Civil Inheritance Law. Inheritance law protection for children out of wedlock is regulated carefully in the Civil Code, which then the status of children out of wedlock becomes stronger with the existence of Article 43 UUP. With the legalization of Constitutional Court Decision No. 46/ PUU-VIII/ 2010, the status of children out of wedlock develops to be stronger than the heirs of other groups. The status of this illegitimate child becomes the same as the heir to the first class.

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