

## Legal Review of the Recognition of Outsidered Children Based on the Book of Civil Law

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### Abstract

*Legal review due to the recognition of out-of-wedlock children based on the Civil Code, where it is known that a child is a gift from God Almighty and if the child is born outside the marriage between a boy and a girl without acknowledgment by the parents, the child is not will have a legal relationship with his parents. This research is motivated by the importance of recognizing children born outside of marriage. The purpose of this study was to determine the legal consequences of an out-of-wedlock child if they received recognition from their parents, and to determine the impact on the outside child if they did not receive recognition. The research method used is normative legal research through literature study and using an analytical approach. Based on the results of the research, it is understood that children outside of marriage are children born outside of legal marriages, so with the recognition made by the parents, there will be a civil relationship between the child and the father and mother (Article 280 of the Civil Code).*

### Keywords

legal consequences;  
recognition; children  
outside of marriage



## I. Introduction

Children as the nature of God Almighty need to get the best possible care. This is because children are the young people of the nation who will carry on the aspirations of the nation, namely to create a just and prosperous society. Every child can or is able to assume his responsibilities in the future, so it is necessary to have the widest possible opportunity to grow and develop normally both physically, spiritually and socially.

Children are a community group that determines the future of the nation. The strategic position occupied by children makes them an important community group, this is because children are the younger generation who will take control of the life of the community, nation and state in the future. The age of young and innocent children will make it easier for parents to shape children's attitudes and behavior in accordance with what their parents want (Hendra, 2019).

Relationships outside of marriage are relations between men and women as husband and wife are not based on marital ties. This means that the relationship occurs without any marital ties, there are no conditions that must be met, such as in carrying out marriage or clear rights and obligations between them. Many people say that such a relationship is a "free relationship", which can occur anytime and anywhere, because it depends on the person.<sup>1</sup>

<sup>1</sup> Gatot Supramono. 1998. *Segi-Segi Hukum Hubungan Luar Nikah*. Jakarta: Djambatan, halaman 72-75.

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Article 250 of the Civil Code reads: "every child born or raised during marriage, acquires the husband as his father". This means that a legitimate child is a child who is born during the marriage and the husband is the father of the child who was born or who is made into a marriage.<sup>2</sup>

Article 272 of the Civil Code, which reads as follows: "Except for children who are seeded in adultery or in donations, each child is produced outside of marriage, with the marriage of the father and mother will become legal children, if both parents that before the marriage has acknowledged according to the provisions of the law, or if the recognition is made in the marriage certificate itself".

According to the provisions of the Article, those who may be admitted are out-of-wedlock children, except for children resulting from adultery (overspel) or the result of incest (Article 283 of the Civil Code). Apart from that, donated children may only be recognized in the marriage certificate of the father and mother, if the marriage has received a dispensation from the Minister of Justice.<sup>3</sup>

Children born outside of marriage are called "natuurlijk kind". He can be recognized or not recognized by his father or mother. According to the system adopted by the Civil Code, with the existence of offspring outside of marriage alone, there is no family relationship between the child and the parents. Only with "confession" (erkenning) was born a kinship with the result (especially the right to inheritance) between the child and the parents who recognized it. And it needs to be explained that the law does not allow the recognition of children born from "overspel" adultery or from the relationship between parents who are prohibited from marrying one another.<sup>4</sup>

Confession made by a father according to Article 284 of the Civil Code must be with the mother's consent as long as the mother is alive. This is a guarantee that it is really the father who breeds his children. If the mother has died, then the father's confession has only consequences for himself. So if the mother does not or has not confessed and the mother has died, then the father's confession does not include a confession by the mother.

Based on the written background, the main problems in this study are: (1) How is the legal arrangement for the recognition of children outside of marriage based on the Civil Code? (2) What is the law due to the recognition of illegitimate children based on the Civil Code?

## II. Research Methods

This research is descriptive analytical in which the researcher will describe the legal problems resulting from the recognition of children outside of marriage based on the Civil Code. The approach used is an empirical juridical approach, which is an approach that looks from a juridical perspective (applicable regulations or norms) supported by an empirical juridical approach (law enforcement practices that occur in the field).

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<sup>2</sup> Soetjo Prawirohamidjojo. 1974. *Hukum Orang dan Keluarga*. Bandung: Alumni, halaman 138-139.

<sup>3</sup> *Ibid.*, halaman 145.

<sup>4</sup> Subekti. 2001. *Pokok-Pokok Hukum Perdata*. Jakarta: PT Intermedia, halaman 50.

### III. Results and Discussion

#### 3.1. Legal Regulations for the Recognition of Unmarried Children

According to the Civil Code, children born outside of legal marriages do not have a civil relationship with their mother and father, unless the mother who gave birth to them recognizes the child as her child also by confessing the illegitimate child by the father, then a civil relationship arises between the father and the child and even then only applies to children of nature (*natuurlijk kind*).<sup>5</sup>

The Civil Code adheres to the principle that only those who have a legal relationship with the heir are entitled to inherit. The legal relationship is limited, in the sense that the legal relationship only exists between the illegitimate child and the mother who admits it (Article 872 of the Civil Code). What's more that must be considered regarding this recognition, is the stipulation 284 which stipulates that it can only occur if it is approved by the mother giving birth to one another as long as the mother is still alive. And those who are allowed to confess are, of course, first of all, the man who claims to be the one who seeded the child provided he has reached the age of at least 19 years. And the mother who confesses by law (Article 283 of the Civil Code) does not have her age limit determined.<sup>6</sup>

Out-of-wedlock children can obtain a civil relationship with their father, namely by giving recognition to children outside of marriage. Article 280 - Article 281 of the Civil Code affirms that with recognition of a child outside of marriage, a civil relationship is born between the child and the father or mother. Recognition of unmarried children can be done with an authentic certificate, if it has not been made in the birth certificate or at the time of the marriage. Such recognition can also be made by means of a certificate drawn up by a Civil Registry Officer, and registered in the birth register according to the day of signing. This acknowledgment must be stated on the margin of the birth certificate, if the certificate exists. If the recognition of the child is made by means of another authentic certificate, each person concerned has the right to ask that it be included on the margins of his birth certificate. However, failure to record a recognition on the margins of the birth certificate may not be used to argue against the position the recognized child has obtained<sup>7</sup>

Confession made by a father according to Article 284 of the Civil Code must be with the mother's consent as long as the mother is alive. This is a guarantee that it is really the father who breeds his child. If the mother has died, then the father's confession has only consequences for himself. So if the mother does not or has not confessed and the mother has died, then the father's confession does not include a confession by the mother. Article 278 of the Criminal Code states that anyone who recognizes a child as his child according to the regulations of the Civil Code, even though he knows that he is not the father of the child, is threatened for confessing a fake child with a maximum imprisonment of three years.

The law does not stipulate when an out-of-wedlock child can be recognized, so it can be considered that the child can be recognized as a child at any age, without any restrictions. In connection with the provisions of Article 2 of the Civil Code, it states that a child who is still in the womb of a woman is deemed to have been born, if the child's interest demands it. It can be concluded that even children who are still in the womb can

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<sup>5</sup> Ali Afandi. *Op.Cit.*, halaman 42-43.

<sup>6</sup> M.U. Sembiring. *Op.Cit.*, halaman 16.

<sup>7</sup>“Pengkakuan Anak Zina dalam Kitab Undang-Undang Hukum Perdata”, through <http://henipurwadi.blogspot.com/2012/10/status-anak-zina-dalam-undang-undang.html>, Accessed on 12 June 2014.

also be recognized. Also the recognition of a child who has died and is not prohibited by law, therefore it must be deemed permissible. Such recognition is not without importance, when the child who has died leaves offspring.<sup>8</sup>

As a result of the ratification, Article 277 of the Civil Code states that the ratification carried out both with the marriage of the father and mother as well as with a letter of ratification according to Article 274 of the Civil Code, results in the child being subject to the provisions of the Law which the same as if the child was born in marriage. So, such children are still children born outside of the marriage of their parents, recognition cannot change that fact, but the law considers these children as if they were born in the marriage of both parents.

The role of the notary here is in making the act. Where the notary records the desire of a man in a State document to recognize the boy outside of marriage with a woman, and the notary can also provide legal explanations regarding the process of recognizing children outside of marriage. So that the parties get the information as clearly as possible. Because a notary is an official appointed to ratify an agreement (Article 15 of the Law on Notary Position).

Recognition of out-of-wedlock children can be done with a Notary deed because one of the Notary's powers is to make an authentic deed. The authority of the Notary in making the deed is as stated in Article 1 of Law Number 2 of 2014 concerning the Position of Notary Public, which reads: "Notary is a public official who has the authority to make authentic deeds and has other powers as referred to in this Law or based on other Laws".<sup>9</sup>

The position of a Notary in society has a functional position that can provide advice. So before carrying out the deed making process, interested parties can ask for clear legal explanations or advice regarding the deeds they have drawn up. Everything he writes and determines is true, and the Notary is the only strong document-making official in a process. As a person who is trusted, there are many secrets and family relationships that are disclosed and disclosed to the Notary Public and many of those relationships really need to be known by the Notary in order to be able to make the best possible settlement. This is intended so that the Notary can manage material relations between them as well as possible. it is necessary, because the material relations between the members of the family cannot be separated from the blood relations among them. For example, in the making of wills, deed of marriage agreement, deed of recognition of children outside of marriage and others.

### **3.2. Legal Consequences of Recognition of Unmarried Children**

Based on the Civil Code, even with the presence of offspring outside of marriage, there has not been a family relationship between the child and the parents who breed it. Only after there was confession (*erkenning*), a kinship relationship with all the consequences between the child and the parents who acknowledged it was published.

Article 272 of the Civil Code, which reads as follows: "Except for children who are seeded in adultery or in donations, each child is produced outside of marriage, with the marriage of the father and mother will become legal children, if both parents that before the marriage has acknowledged according to the provisions of the law, or if the recognition is made in the marriage certificate itself ". This means, to donated children and children for adultery, the law does not give them the right to inherit, but the law gives them the right to demand the provision of a living as needed to *boedel* (Article 867 paragraph (2)) Civil Code) the amount is not certain, depending on the size of the ability of the father or mother

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<sup>8</sup> Soetojo Prawirohamidjojo. 2002. *Op.Cit.*, halaman 107.

<sup>9</sup> *Ibid.*,

and the circumstances of the legal heirs, and the right is not an inheritance right. The status of the legal heirs, whether they are capable or poor, also determines the amount of alimony rights of adulterous or donated children (after their natural father or mother has passed away). But if at the time of the life of the natural mother or father, these children have enjoyed a guarantee of sustenance from him, then these children do not have the right to sue again on the inheritance of their natural father and mother.<sup>10</sup>

As a result of the recognition of the out-of-wedlock child, it can be said that the parent will have a civil relationship between the child and the father or mother who acknowledges it (Article 280 of the Civil Code). In other words, this recognition gives rise to a recognized out-of-wedlock status, among others as the right to use a name, must obtain a marriage permit, reciprocal obligations in providing maintenance, guardianship, inheritance.<sup>11</sup> Therefore, a family relationship is created between the child and his parents. Regarding this, it is necessary to pay attention to the following points:

1. This family relationship is of lower quality than the family relationship of the legal child, because the family relationship is only limited to the father / mother who acknowledges it. The child who is admitted has no family ties to the blood family of the father or mother.
2. The child's right to inherit the inheritance of their parents is also very limited and is always smaller than the legal child.<sup>12</sup>

The legal effect on the father who acknowledges, namely, the recognition of the father against the child creates civil relations between the child and the father who acknowledges it (Article 280 of the Civil Code). A further consequence of the father's confession is that the natural child has the right to use the father's surname. Thus the child is entitled to alimony from his father. Meanwhile, the legal consequences for the father's relatives, for example with his grandmother or sideline, are almost non-existent. So the child does not have the right to receive alimentation from the grandmother, and vice versa.<sup>13</sup>

Out of wedlock children admit, that the recognition of the father or mother is ongoing, so parents admit to being mayors first. If the confession is made at the same time, the father must be the guardian (for example Article 353 paragraph (2) of the Civil Code). If the submissive father and mother will be appointed guardians, first among those who died before being fired or placed, the first parent (father or mother), the rest is accepted, automatically becomes guardians, unless defeated, fired or remarried. If the father or mother is not present, the District Court will be appointed as guardian (for example Article 353 paragraph (3) of the Criminal Code).<sup>14</sup>

The Civil Code which regulates the legal relationship between the mother and the child outside of marriage, there are special regulations, which are listed in Articles 862 s.d. 873 Civil Code. Due to the Civil Code, there is a possibility that a child does not only have a father, but also does not have a mother in the sense that between the child and the woman who gave birth to him, there is no legal relationship at all regarding the provision of income, inheritance, and so on. Between a child and a new mother and a legal relationship, if the mother recognizes the child as her child, where the recognition is carried out with a certain system, namely according to Article 281 of the Civil Code in the child's birth certificate in the marriage certificate of the father and mother in front of employees Civil

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<sup>10</sup> J Satrio. 1992. *Hukum Waris*. Bandung: Alumni, halaman 174.

<sup>11</sup> Soetojo Prawirohamidjojo. 1982. *Op.Cit.*, halaman 161.

<sup>12</sup> M U Sembiring. *Op.Cit.*, halaman 16-17.

<sup>13</sup> *Ibid.*, halaman 108.

<sup>14</sup> *Ibid.*,

Registry, or with a separate authentic certificate (akte notary) or so 1/2 and not 1/4 of the part of the legal child.<sup>15</sup> With the existence of Article 289 of the Civil Code which does not allow the child to investigate his father or mother, it is very unlikely that such a child will get a living for living expenses from the father or mother.<sup>16</sup>

The blood family of children outside of wedlock is admittedly very limited, which only includes children and their offspring. Apart from that he does not have a blood family or in other words he does not have a legal heir. Therefore, the legal heirs only consist of children and offspring as well as his wife / husband.<sup>17</sup>

If a child outside of marriage leaves a child and offspring as well as a wife / husband, the inheritance is inherited by the natural family (natuurlijk bloedverwant) by following the following sequence:<sup>18</sup>

- 1) The inheritance is inherited by the father or mother who acknowledges it or by both parents for ½ part if both parents acknowledge it.
- 2) If the parents who admit it have passed away first, all assets that have been received by him as inheritance from his father or mother, as long as they are still in natura, must be handed over to the legal descendants of the deceased father or mother.

According to the concept of inheritance according to western civil law (western inheritance), what is meant by "children outside of marriage" who are entitled to inheritance from the heir are out-of-wedlock children who are legally recognized by the heir. Pursuant to Article 916 of the Civil Code, the *legitieme portie* part of an out-of-wedlock child that has been recognized is the half that should have been received by the out-of-wedlock child according to law.<sup>19</sup> *Legitimate portie* is a certain part of the inheritance that must be received by an heir from the inheritance that cannot be contested.

#### IV. Conclusion

- a. The principle of regulating out-of-wedlock children in kinship with the father and mother has a very big influence from the principle of monogamous marriage adopted by the Civil Code, as regulated in Article 27 of the Civil Code which reads: "At the same time, a person a man can only be bound by marriage with one woman only and a woman only one man ". Therefore, in order for an out-of-marriage child to get his rights, it requires recognition. Article 280 of the Civil Code, which reads: "With the recognition of an out-of-wedlock child there will be a civil relationship between the child and the father and mother" so that western civil law adheres to the principle that civil relations do not occur automatically either to the father or the mother.
- b. The legal consequence of this recognition of out-of-wedlock children can be stated that the parents will have a civil relationship between the child and the father or mother who confesses it (Article 280 of the Civil Code). In other words, this recognition gives rise to a recognized out-of-wedlock status, among others, the right to use a name (Article 5a of the Civil Code), must obtain a marriage permit (Article 39 of the Civil Code), reciprocal obligation in providing a living (Article 328 of the Civil Code). , guardianship (Article 353 Civil Code), inheritance (862 Civil Code) and so on.

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<sup>15</sup> Oemarsalim. 2000. *Dasar-Dasar Hukum Waris di Indonesia*. Jakarta:Rineka Cipta., halaman 69.

<sup>16</sup> *Ibid.*,

<sup>17</sup> M.U. Sembiring. *Op.Cit.*, halaman 58.

<sup>18</sup> *Ibid.*,

<sup>19</sup> "Legitiemeportie anak luar kawin" through <http://irmadevita.com/2012/legitieme-portie-hak-mutlak-ahli-waris-menurut-hukum-waris-barat/>, Accessed on 21 August 2014.

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