

JURIDICAL ANALYSIS OF THE STATUS OF INHERITANCE OF CHILDREN OUTSIDE OF MARRIAGE ACCORDING TO CIVIL LAW

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Abstract

This preparation is the result of a written audit to answer the question: (1) What is the status and position of inheritance rights for children present only from one parent as referred to by Civil Law? (2) How is the distribution of inheritance to children outside of marriage as referred to in civil law? The research method used is a kind of juridical normalization research, particularly legal examination, so it centers on positive legal inventaris, legitimate standards and teachings, legal discovery, systematic law, synchronization rate, legal correlation, and legal history. The author also uses case approach techniques, these strategies are used to consider legal standards or decisions completed in lawful practice. Data sources are obtained from: (1) primary materials; and (2) secondary materials. Judging from the arrangement of this theory, it can be obtained the following results: (1) based on Law No. 16 of 2019 article 43 paragraph 1, a child without the presence of a father who is not considered consequently has social equality from his mother and his mother's family; (2) Based on article 280 of the Criminal Code there are 2 different ways for the recognition of a child without the presence of a father, namely intentional confession and coercive confession; (3) In article 863 of the Criminal Code tends to explain that children with one parent only who is present with the heirs of group I get 1/3 of the legal child, if with group II or III the heir gets 1/2 inheritance, if with bunch group IV get 3/4 inheritance, and with heirs who do not leave a valid heir, The outer child of marriage acquires all the inheritance.

Keywords: : juridical analysis, inheritance rights, children outside marriage, civil law

INTRODUCTION

An illegitimate child is a child born outside of a legal marriage and only has a biological relationship with his mother, therefore the child does not have any rights from his biological father, rights such as property or material in any form of his father, such as the right to the cost of his life, the cost of his education, the right of guardianship of marriage for the daughter, as well as inheritance rights when his father died, because legally he had no blood relation to his biological father (Kahar, 2019; M. Yusuf, 2020).

The difference between a legal child and an illegitimate child (child outside of marriage) is a legal consequence associated with the parents. Not in his civil rights, because it can still be obtained if the mother gets a birth certificate from an authorized office or institution, even though the child was born outside of marriage. Because of the unclear status of the child outside the

marriage before the law, it can cause the relationship with his father is not strong, so it could be that the father denies that he is the father of the child(Asman, 2020; Isnaini, 2013; Mulyadi, 2016).

Civil law is a provision that regulates the rights and obligations between individuals in society. The term civil law in Indonesia was originally from the Dutch "Burgerlik Recht" which is sourced on Burgerlijk Wetboek(Hanna Wijaya et al., 2021; Hendrikse et al., 2020; Veling, 2021). In general, the definition of civil law is all regulations governing the rights and obligations of individuals in public relations. Civil law is also called private law because it regulates the interests of individuals(Agustine, 2017; Zia et al., 2020).

In civil inheritance law has been regulated regarding inheritance rights for children outside of marriage differently and in accordance with the principles in civil law. Because it can give an idea of the division the right of inheritance of children outside of marriage, it is necessary to conduct further research on this matter..

METHOD

The method in this research is the juridical normative research method. Normative research methods are to review the law. And the main study is the law that is used as rules or norms that apply in society and become a reference for everyone(Christiani, 2016; Kischel, 2020; Mustikarini, 2020). The method of approach in this study is the case approach . The case approach is used to study the application of legal norms or rules carried out in the practice of law. Especially cases that have been severed as can be seen in jurisprudence on cases that are the focus of research.

The collection of materials or data starts from the collection of secondary materials related to the problem to be studied. Then the collection of primary materials related to secondary materials. And the collection of other additional materials as a support so that the research can get maximum results

RESULTS AND DISCUSSION

According to civil law children outside of marriage are known as *natuurlijke kind* (nature children). The child outside the marriage can be recognized by the father and mother(Drs Ali Uraidi, 2017; Handini, 2019; Setiawan, 2012). According to the system embraced in the Civil Code, with the existence of offspring outside of marriage only, there has been no family relationship between the child and his parents. Only after the recognition, a family relationship is issued with all its consequences (the right to bequeath) between the child and the parent who recognizes it, according to Subekti. So the child outside the marriage is a recognized child or the legal term *natuulijke kind*(Isnaini, 2013; Pangaribuan, 2019; Setiawan, 2012; Susanti, 2013).

Article 272 of the Civil Code which reads as follows: except for children who are cleaned in adultery, or in discord, each child made outside of marriage, then the marriage of the father and mother will be valid, if both parents before marriage have admitted it according to the provisions of the law, or if the recognition is done in the marriage deed itself(Uraidi, 2017).

Recognition of the child cannot be done secretly, but is solely done in the face of civil registration with a note in the child's birth certificate, or in the marriage certificate of the parent, or in the letter of self-registration from the civil registry employee, even allowed also in the notary deed (Muis, 2021; Mulyadi, 2016).

It is not appropriate and unjust when the law stipulates that a child born from a pregnancy due to sexual intercourse outside of marriage only has a relationship with the woman as its mother. It is not appropriate and unjust to allow a man who has sexual intercourse that causes pregnancy and the birth of the child from his responsibilities as a father, and at the same time the law negates the rights of the man as his father. Moreover, when based on the development of existing technology it can be proven that a child is a child of a certain boy.

Article 43 paragraph (1) of Law 1/1974 which states, "Children born outside of marriage only have a civil relationship with their mother and mother's family" is contrary to the 1945 Constitution conditionally (conditionally unconstitutional) which is unconstitutional as long as the paragraph is interpreted to eliminate civil relations with men who can be evidenced by science and technology and/or other means of evidence according to the law having a blood relation as his father (Isnaini, 2013; Nur Puat, 2013; Rachman, 2021).

The third part of Chapter XI of the Civil Code regulates the ways of inheritance of relics if among the heirs there are children outside marriage and if the heir is an outer child of marriage. Heirs who place outside children as heirs are called active inheritance rights, while if the children outside the marriage domiciled as heirs are called the passive inheritance rights of the children outside the marriage (Amelia Fathia, 2021).

In the provisions of Burgerlijk wetboek children outside of marriage can obtain an inheritance, provided that the child is not a child resulting from overspel and incest (inbreeding or discordant), pay attention to the provisions in article 867 of the Civil Code (Duparc, 1910). In addition, the child outside mating must be recognized in order to obtain an inheritance. Recognition of children outside of marriage can be done using court determinations registered in the civil records office and affixed on the back of the birth certificate of the child outside the marriage, so that the child outside the marriage has legality in obtaining an inheritance.

The condition of the child outside the marriage to obtain an inheritance according to the provisions in the Civil Code that is, the child outside the marriage will have a civil relationship with parents if he is recognized, as mentioned in Article 280 of the Civil Code. This civil relationship includes, among others, the right to earn a living, living expenses, and bequeathing (Muis, 2021; Mulyadi, 2016; Susanti, 2013).

The provisions regarding the right of passive inheritance in Article 870 of the Civil Code state that the inheritance of a deceased child who leaves no offspring, husband or wife is for the father or mother who has recognized it, or for both of them" half if both have admitted it.

CONCLUSION

Any child born outside of a legal marriage bond is an out-of-wedry child. Based on the Civil Code, the child outside the marriage is considered not to have any legal relationship with his parents if there is no recognition from the father or mother. However, on the one hand with the enactment of the Marriage Law, namely Law No.16 of 2019 (Article 43 paragraph 1), the child outside the marriage that is not recognized automatically has a civil relationship with his mother and mother's family.

Children outside marriage that can be recognized under Article 272 of the Civil Code, namely: "A recognizable extramarital child is a child born to a mother but who is not confirmed by a man who is in a valid marital bond with the child's mother" and does not belong to the group of adulterous children and neither the child. The condition of the child outside the marriage to obtain an inheritance is by the existence of a civil relationship with his parents and recognition from his parents in accordance with the provisions of Article 280 of the Civil Code.

REFERENCES

- Agustine, D. (2017). Pembaharuan Sistem Hukum Acara Perdata. *RechtsVinding*.
- Amelia Fathia, R. (2021). Tinjauan Yuridis Terhadap Perilaku Kumpul Kebo (Samen Leven) Menurut RUU KUHP. *Equivalent: Jurnal Ilmiah Sosial Teknologi*. <https://doi.org/10.46799/jequi.v3i2.46>
- Asman, A. (2020). HAMIL DI LUAR NIKAH DAN STATUS NASAB ANAKNYA. *Shar-E: Jurnal Kajian Ekonomi Hukum Syariah*. <https://doi.org/10.37567/shar-e.v6i1.9>
- Christiani, T. A. (2016). Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object. *Procedia - Social and Behavioral Sciences*. <https://doi.org/10.1016/j.sbspro.2016.05.006>
- Drs Ali Uraidy, M. H. (2017). HAK WARIS ANAK LUAR KAWIN MENURUT KITAB UNDANG-UNDANG HUKUM PERDATA. *Jurnal Ilmiah FENOMENA*.
- Duparc, J. (1910). Burgerlijk Wetboek. In *Verzameling van Nederlandsch-Indische Rechtspraak en Rechtsliteratuur 1898-1907*. https://doi.org/10.1007/978-94-015-3530-4_1
- Handini, W. P. (2019). Hak Konstitusional Anak Di Luar Perkawinan Berdasarkan Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010. *Legislasi Indonesia*.
- Hanna Wijaya, Yohanes Firmansyah, Yana Sylvana, & Michelle Angelika S. (2021). History Of Burgerlijk Wetboek In Indonesia. *Jurnal Indonesia Sosial Sains*. <https://doi.org/10.36418/jiss.v2i4.252>
- Hendrikse, R., Interfurth, J., Werners, F.-J., & van Zelst, B. (2020). Kroniek Burgerlijk Procesrecht 2019. *Advocatenblad*. <https://doi.org/10.5553/ab/0165-13312020100002030>
- Isnaini, E. (2013). KEDUDUKAN HUKUM BAGI ANAK YANG LAHIR KARENA KAWIN HAMIL (MARRIED BY ACCIDENT) DI TINJAU DARI HUKUM ISLAM DAN HUKUM PERDATA. *Jurnal Independent*. <https://doi.org/10.30736/ji.v1i2.8>
- Kahar, A. (2019). Tinjauan Hukum Hak Waris Anak Diluar Nikah Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan. *Jurnal Hukum Volkgeist*. <https://doi.org/10.35326/volkgeist.v1i2.98>

- Kischel, U. (2020). How normative is comparative law? *Casopis pro Pravni Vedu a Praxi*. <https://doi.org/10.5817/CPVP2020-2-1>
- M. Yusuf, M. Y. (2020). DAMPAK NIKAH SIRI TERHADAP PERILAKU KELUARGA. *At-Taujih : Bimbingan Dan Konseling Islam*. <https://doi.org/10.22373/taujih.v2i2.6530>
- Muis, L. S. (2021). EKSISTENSI HAK ANAK HASIL PERKAWINAN SIRI DALAM PERPEKTIF HUKUM. *Widya Pranata Hukum : Jurnal Kajian Dan Penelitian Hukum*. <https://doi.org/10.37631/widyapranata.v2i2.242>
- Mulyadi, M. (2016). Kedudukan Hukum Anak Luar Kawin Yang Diakui. *Cakrawala: Jurnal Studi Islam*. <https://doi.org/10.31603/cakrawala.v1i1.103>
- Mustikarini, I. D. (2020). Bangunan Ilmu Politik Hukum diantara Ilmu-ilmu Sosial dan Ilmu Hukum. *YUSTISIA MERDEKA : Jurnal Ilmiah Hukum*. <https://doi.org/10.33319/yume.v6i2.59>
- Nur Puat. (2013). Status Hukum Anak Diluar Nikah. *Al Hikmah*.
- PANGARIBUAN, M. I. (2019). TINJAUAN YURIDIS STATUS HUKUM ANAK HASIL PERKAWINAN SIRI DAN AKIBAT HUKUMNYA (MENURUT HUKUM ISLAM DAN HUKUM POSITIF INDONESIA) | PANGARIBUAN | JURNAL CIVIL LAW USU. *Jurnal Civil Law*.
- Rachman, M. (2021). POLITIK HUKUM PERUNDANG-UNDANGAN TERHADAP ANAK LUAR NIKAH. *Qaumiyyah: Jurnal Hukum Tata Negara*. <https://doi.org/10.24239/qaumiyyah.v1i2.9>
- Setiawan, W. (2012). HAK WARIS ANAK LUAR KAWIN YANG LAHIR DARI PERKAWINAN CAMPURAN MENURUT KUH PERDATA DAN UU NO.1 TAHUN 1974 TENTANG PERKAWINAN. *Jurnal Hukum & Pembangunan*. <https://doi.org/10.21143/jhp.vol42.no2.281>
- Susanti, A. D. (2013). Tinjauan Yuridis Mengenai Kedudukan Dan Pembinaan Anak Luar Kawin Dilihat Dari Segi Hukum Perdata. *Jurnal Ilmu Hukum Legal Opinion*.
- Veling, T. (2021). Kroniek burgerlijk procesrecht 2010-2020. *Caribisch Juristenblad*. <https://doi.org/10.5553/cjb/221132662020009004017>
- Zia, H., Agusta, M., & Afriyanti, D. (2020). PENGETAHUAN HUKUM TENTANG HUKUM ACARA PERDATA. *RIO LAW JURNAL*. <https://doi.org/10.36355/.v1i2.404>