



Application for the Registration of Out-of-Wedlock Child Recognition Without Parental Marriage

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ABSTRACT

Recognition of an unmarried child is a legal act that establishes a civil relationship between the biological father and the child, with significant legal consequences. Courts frequently receive applications from fathers seeking to recognize an unmarried child as legitimate, both in situations where the parents have been married and where no marriage has occurred. This study aims to analyze the regulation and recording of the recognition of extra-marital children born without marriage between their parents, referencing the Civil Code, Population Administration Law, and Constitutional Court Decision Number 46/PUU-VIII/2010. The research specifically examines the judges' legal considerations in the Malang District Court Determination Number: 551/PDT.P/2022/PN.Mlg. The study employs a doctrinal research approach, utilizing data obtained from literature studies to conduct an analytical review. The findings reveal that the judge's legal considerations and determination in granting the application were not in accordance with the applicable laws and regulations. This highlights the need for greater adherence to legal principles and consistency in judicial decision-making. The implications of this research underscore the importance of comprehensive legal frameworks and judicial prudence in addressing cases of child recognition, contributing to more equitable legal practices and the protection of the rights of all parties involved.

Keywords: Extra-marital Children, Child Recognition, and Recording.

INTRODUCTION

Marriage is a physical and mental bond between a man and a woman as husband and wife, which aims to form a happy and eternal family based on God Almighty (Hanifah, 2019). The marital bond that occurs between husband and wife can give birth to offspring or children which causes the legal position of the child (Edwards & Roff, 2016). According to Article 2 of Law Number 16 of 2019 concerning Amendments to Law Number 1974, a marriage is said to be valid if it is carried out according to the laws of each religion or belief (Waluyo, 2020). Marriages that occur legally also give birth to legitimate children. According to the Marriage Law, a legitimate child is a child born in or born as a result of the legal marriage of the two parents.

So it can be said that legitimate children do not only include those born in the legal marriage of both parents, but can also be referred to those born as a result of the legal marriage of the parents, that is, the parents have entered into a legal marriage but later divorced. Before the divorce, it is known that the mother was pregnant, so the child born later is still considered a legitimate child. There is no limit on how long a child should be born after a marriage by law so as long as there is no denial from the father, then he is still called a legitimate child (NURHAYATI & PURWANTO, 2017).

However, not all children born as offspring are legitimate children. In some circumstances, a child may be born without being preceded by a legal marriage. Children born outside of a legal marriage, or born to a woman who does not have a husband, are referred to as extra-marital children (Collin & Talbot, 2023). Children outside of marriage or children outside of marriage are also known as natural children or *natuurlijk kind*. The Marriage Law does not provide an understanding of what is meant by extra-marital children, so that if interpreted a contrario, extra-marital children are children born outside of legal marriage as illegitimate children.

He was born to a woman who did not have a marriage bond with the man who caused the woman to become pregnant, so the child does not have a perfect position in the eyes of the law like a legal child (Maulidina & Damayanti, 2023). Extra-marital children can be recognized or not recognized by the father or by the mother. Extra-marital children are classified as:

- a. Extra-marital children in the narrow sense are extra-marital children in the broad sense except for adultery and discordant children;
- b. Extra-marital children in a broad sense are all children born without the parents being married.

Recognition made by parents to extra-marital children only applies to extra-marital children in a narrow sense, namely except for adultery and discordant children. This is regulated in Article 283 of the Civil Code, namely that recognition may not be made to adulterous children or discordant children (Dewi et al., 2021). The phenomenon of the birth of extra-marital children in Indonesia is certainly not uncommon. According to the National Population and Family Planning Agency or BKKBN, there are findings that there are 50,000 (fifty thousand) children married early and the majority are due to pregnancy outside of marriage (Wahil, 2023). Another thing was also presented by the Ministry of Women's Empowerment and Child Protection, 84% (eighty-four percent) of early marriage cases that occurred, such as in Yogyakarta and in Central Java, were due to pregnancy outside of marriage (PR, 2023). The birth of a child outside of marriage will certainly raise new issues such as the family relationship between the child and his biological father, his legal position in society, and the civil rights he has as a child.

The existence of differences in the position of children born as legitimate children and children outside marriage causes differences in the civil relationship between the child and his father and mother. According to the Civil Code, the civil relationship between children born outside of marriage does not just happen. The civil relationship between them is born after recognition by the parents who recognize the child (R Subekti, 2021). So when the parents

recognize the child, the legal relationship between them is born. So it can be seen that the importance of the civil relationship born due to parental recognition is because it has an impact on the legal position of the child.

Recognition of children by parents can be a form of protection for the child. Children born outside of marriage certainly never asked to be born in such circumstances, so both children born inside and outside of marriage must still be given equal protection, to be able to grow and develop and receive the same treatment.

So that child recognition to provide clarity on their status and position both in the eyes of the law and in society is a right that must be accepted by children outside of marriage in terms of protecting their interests.

One of the reasons that shows the importance of recognizing children by their parents is regarding the rights and obligations between them. The birth of a child certainly gives birth to the rights and obligations of the parents towards the child (Isradjuningtias, 2015). According to the Marriage Law, parents are obliged to maintain and educate children properly until they marry or are able to stand on their own, whether they are still together or are no longer bound by marriage. Not only the rights and obligations of parents towards children, children also have rights and obligations towards their parents such as respect and obedience to parents, as well as maintaining parents according to their abilities.

The position of extra-marital children is regulated in the Marriage Law. According to Article 43 of the Marriage Law, children born outside the marriage of their parents only have a civil relationship with the mother and her family (Kumoro, 2017). So to give birth to a civil relationship with his father, it must be continued with the recognition of the child. So it can be said that child recognition is an important thing, because it gives the effect of a clear position and status to the child and his civil relationship with the parents who gave birth to him, especially to his biological father. Regulations regarding child recognition in Indonesia can be found in the Civil Code (hereinafter referred to as the Civil Code), Population Administration Law Number 24 of 2013 (hereinafter referred to as the Population Administration Law), Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration (hereinafter referred to as PERPRES Number 96 of 2018), and Constitutional Court Decision Number 46/PUU-VIII/2010.

Child recognition regulated in the Civil Code states that recognition can be carried out by the father of the child, provided that there is consent from the child's mother. In addition, according to Constitutional Court Decision Number 46/PUU-VIII/2010, recognition of extra-marital children to establish a civil relationship with their biological father is carried out if it can be proven by science or technology (Ramadhita & Farahi, 2016). According to the Population Administration Law, registered child recognition is carried out by parents who have entered into a valid marriage according to religious law and is further regulated in PERPRES Number 96 of 2018 regarding its registration (Maulana, 2022).

However, in reality, there are cases where the recognition of extra-marital children born to couples who have never performed a marriage, both religiously and state lawful, and the recognition is granted by the Judge in Court, namely as happened in the Determination of the Malang District Court Number 551/PDT.P/2022/PN.Mlg. In this decision, the Applicant filed a petition which basically wanted to recognize the biological child of his previous relationship with a woman so that there would be a civil relationship between them. The applicant had provided a statement of acknowledgment of the child and it had been approved by the mother of the child. However, there had never been a marriage between the applicant and the child's mother. The judge at the Malang Court also granted the petition.

Based on the above background, the purpose of this research is to analyze the regulation and recording of the recognition of extra-marital children born without marriage between their parents, referencing the Civil Code, Population Administration Law, and Constitutional Court Decision Number 46/PUU-VIII/2010. So that the benefit of this research is to analyze how the regulations governing the recognition of extra-marital children and the recording process, especially in the case of children born without marriage between their parents. This research provides theoretical benefits in the form of contributions to the civil law literature related to the rights and obligations of unmarried children, as well as practical benefits in the form of guidance for stakeholders, including judges, notaries, and families, in understanding the mechanisms and legal implications of the recognition of unmarried children.

RESEARCH METHOD

Research is a scientific activity, namely the activity of analyzing and constructing methodologically, systematically, and consistently. Legal research is a scientific activity carried out based on certain methods, systematics, and thoughts, with the aim of studying one or several legal symptoms through analysis, also with an in-depth examination of existing legal facts and solving existing problems. The research method that will be used in writing this research is a form of legal research with a doctrinal approach. Doctrinal research is research that focuses on rules, principles, norms, as well as interpretive guidelines and values, which begins by identifying a legal source that is studied, then interpreted, and analyzed. In this case, it will identify legal sources such as the Civil Code, Constitutional Court Decision Number 46/PUU-VIII/2010, PERPRES Number 96/2018 and the Population Administration Law which regulates interfaith marriages.

The type of data that will be used in this research is secondary data, namely data that is generally used in research conducted doctrinally. Secondary data according to Soerjono Soekanto are primary legal materials such as laws and jurisprudence, secondary legal materials such as research results, works, and tertiary legal materials such as dictionaries and encyclopedias. To obtain secondary data, a literature study will be carried out by reading, quoting and using laws related to the research to be carried out.

RESULTS AND DISCUSSION

Regulations Regarding Recognition of Extra Marital Children in Indonesia Based on Indonesian Legislation

Children born outside of marriage or also called *natuurlijk kind* can be recognized or not recognized by both the father and the mother. When an extra-marital child is born, he basically does not have a civil relationship with his parents. Thus, there must be a legal action that must be carried out by the parents of the child to create a civil relationship between them. Improving the status of extra-marital children can be done in various ways, namely through child recognition and child attestation (Marwa, 2023).

The effort that can be made is recognition, which is a way to recognize. So a legal act where the father or mother who recognizes the child is his child can create a civil relationship between them. The civil relationship of a child born out of wedlock with the father and his father's family can be born in two ways, namely recognition by the biological father or ratification by the biological father of the child. So it can be concluded that child recognition can give birth to a civil relationship with the extra-marital child.

Initially, the regulation regarding the recognition of extra-marital children was regulated in the Civil Code, where the recognition of an extra-marital child creates a civil relationship between the extra-marital child and the father or mother. Therefore, if a child born outside of marriage is recognized by his father, then he has a civil relationship with his father and vice versa. However, over time, there was a renewal of this arrangement, namely in the Marriage Law, it was stated that an unmarried child only had a civil relationship with his mother and mother. Directly, he has a civil relationship with his mother without the need to be preceded by recognition.

The position of extra-marital children in the Civil Code is regulated in Book One on Persons. According to Article 280 of the Civil Code, an unmarried child does not have a civil relationship with the father or mother and this civil relationship only arises after recognition (Putri et al., n.d.). Recognition by the father of the unmarried child can only be carried out if the mother agrees. So that if a confession is made by the father of an unmarried child and the mother refuses, the confession cannot be accepted.

Recognition of children outside of marriage can be done in two ways, namely:

- a. Voluntary recognition can be done by one or both parents, where the father is at least 19 years old and is not represented by another party or person. The mother of the out-of-wedlock child must also give consent for the recognition to take place.
- b. Forced confession is a confession that occurs through a judge's decision from the court because of the charges filed.

Voluntary recognition of an unmarried child can be done through the child's birth certificate, the marriage certificate of both parents, an authentic deed, or a deed made by the civil registry. Apart from voluntarily, recognition can also be done by force, namely by filing a lawsuit against one of the parents in order to finally get recognition from the father or mother.²⁸

Although it can be done by force, namely through a lawsuit, in terms of investigating who the father of the child is, it is prohibited, unless the investigation aims to find out about who the mother of the child is.

In its development, marriage law in Indonesia has reached unification with the enactment of Law Number 1 of 1974 concerning Marriage (Waluyo, 2020). Article 43 of the Marriage Law, which regulates the civil relationship of illegitimate children only with their mothers, was the background for the birth of the Constitutional Court Decision Number 46/PUU-VIII/2010 (Deviyanti et al., 2018). Basically, every child has the same rights for survival, growth and development and has the right to protection from discrimination and violence against them. So if an extra-marital child only has a civil relationship with his mother, it shows that there are unequal rights received by the child. Whereas basically none of the children asked to be born outside of a legal marriage, so their right to get the same position should be given and protected by the state. In addition, Article 28D of the 1945 Constitution also states that everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law so that the position of children outside of marriage must be protected, as well as treated the same as children who are born legally.

Not only that, it is impossible for a child's birth to occur without a meeting between the sperm cell owned by a man and an egg or ovum owned by a woman and it is unfair to the child if the law regulates that children born outside of marriage only have a civil relationship with their mother. Whereas of course there is a role or contribution from the child's biological father that causes the pregnancy to occur, so that the civil relationship between the child and his biological father should exist and be the right of the child.

Constitutional Court Decision Number 46/PUU-VIII/2010 was born as an amendment to Article 43 of the Marriage Law so that it reads:

"A child born out of wedlock has a civil relationship with his mother and his mother's family and with the man as his father who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with his father's family."

Through this decision, children born not from or in a legal marriage can have a civil relationship with their father and his family if it can be proven based on science and technology or other evidence. One of the efforts in terms of giving birth to an illegitimate child's civil relationship with his parents is through recognition. With the Constitutional Court Decision Number 46, an illegitimate child can obtain recognition from his biological father to establish a civil relationship between them as long as it is proven through science and technology or other evidence that is valid according to law. With the birth of this decision, it can also be a legal effort made by the mother of the child to obtain recognition from the child's biological father through science and technology, one of which is a DNA test. DNA tests are used to determine whether there is the same blood type between the child and his father and can be used in terms of

evidence such as children of unknown origin, switched children, or children whose fathers are not recognized.

Of course, every citizen has the same rights in law, one of which is in terms of obtaining population documents as official documents issued by institutions, namely the Implementing Agency. One of the purposes of the Population Administration Law is of course to protect and provide recognition of personal status and legal status from the state to every citizen. Every citizen is obliged to report important events to the authorized officer as a series of administrative activities. Population administration activities are an activity to organize and order the issuance of population documents and data, which is carried out through occupation registration, civil registration, population administration information management and utilization of results used for public services and development. According to Article 1 Point 16 of the Population Administration Law, population administration activities are carried out by civil registration officials, namely recording an important event experienced by a person.

Child recognition is one of the important events that, according to the Population Administration Law, is included in important events that are recorded as civil records by the officer authorized to do so. According to the Population Administration Law, child recognition is recognition by the father of his child born outside of marriage where the marriage is valid according to religious law (Nurhayati, 2019). Not only that, the recognition must also be approved by the mother of the child born outside of marriage. So it can be said that child recognition can occur if there has been a marriage of the parents that has been valid according to religious law, and the mother of the child agrees to the recognition.

According to Article 49 of the Population Administration Law, parents who recognize the child must report the recognition to the Implementing Agency, no later than 30 (thirty) days from the date of the child recognition letter and approved by the child's mother. Recognition of a child born out of wedlock is only valid if the parents of the child are married and the marriage is valid according to religious law but not yet valid according to state law. Therefore, Article 49 of the Population Administration Law explicitly states that recognition only applies to those who have married religiously but not yet by state law, and outside of that, the provisions of child recognition do not apply. When child recognition has been carried out, the civil registration officer records this important event in the recognition deed register and then issues a quotation of the child's recognition deed.

Continuing the provisions on child recognition in the Population Administration Law, Presidential Regulation No. 96/2018 regulates, among others, the recording of important events of residents in Indonesia, whether they are Indonesian citizens or foreigners. One of the services in civil registration is child recognition. According to Article 49 of PERPRES Number 96/2018, if child recognition is to be recorded, it must fulfill the following requirements:

- a. A statement of acknowledgment given by the child's biological father and approved by the child's biological mother. If the mother is a foreign national, a court order is used.

- b. A certificate indicating the existence of a marriage from a religious leader or belief in God Almighty
- c. Excerpt from the child's birth certificate
- d. Family card of father or mother
- e. Identity cards of father and mother
- f. If the mother of the child is a foreign national, a travel document is required.

From the requirements stipulated in Article 49, it can be seen that one of the important documents in terms of recording child recognition is a marriage certificate from a religious leader or penghayat kepercayaan. It is further stipulated that child recognition of children outside marriage is carried out by requesting a stipulation to the court.

Analysis of the Determination of the District Court of Malang Number: 551/PDT.P/2022/PN.MLG

One of the cases regarding child recognition that occurred in Indonesia was in Malang District Court Determination Number 551/PDT.P/2022/PN.MLG. In this case, the Applicant was a man residing in Malang City, formerly in a relationship with a woman whose name was changed (hereinafter referred to as "the woman"). The Applicant requested the Judge to recognize a daughter (hereinafter referred to as "daughter") born on 3 April 2021. In his application, the Applicant stated that he was the biological father of the girl and she was his biological mother. Through this petition, the Applicant submits his desire to recognize the girl as his biological child. The Applicant's reason for wanting to recognize the girl as his child was to establish a civil relationship between them. The Applicant also stated that his wish to recognize the girl had been approved by the girl's mother.

The Applicant requested the Judge to declare that the child recognition made by the Applicant to the girl was valid according to law and ordered the Applicant to report to the Malang City Population and Civil Registry Office so that this child recognition could be recorded. The applicant also provided several pieces of evidence, namely:

1. Copy of ID card in the name of the Applicant;
2. Copy of birth certificate;
3. Photocopy of family card; and
4. Copy of child acknowledgment letter

The applicant presented two witnesses, one of whom was the biological mother of the child and stated that she had agreed to the applicant's confession. The second witness also stated that he agreed to the recognition of the child by the applicant. In the Determination of the District Court of Malang Number 551/PDT.P/2022/PN MLG, the Judge of the District Court of Malang decided to grant the entire petition of the Petitioner which basically stipulated the recognition of the child by the petitioner against the girl and ordered the Petitioner to report the recognition of the child to the Population and Civil Registry Office of Malang City to be recorded. In this

decision, the legal basis used for the judge's consideration in granting the petition for child recognition by the applicant was inaccurate.

In their legal considerations, the judges were first based on the provisions in the Population Administration Law. In this case, there is an error where the Explanation of Article 49 of the Population Administration Law should read that child recognition is recognition by the father of his child born out of marriage where the marriage is valid according to religious law. So that recognition is only for those whose parents have carried out a marriage that is valid according to religious law. However, in the Determination of the Malang District Court Number 551/PDT.P/2022/PN.MLG, the Judge stated that child recognition according to the Explanation of Article 49 of the Population Administration Law is the recognition of a father to his child born outside of a legal marriage with the consent of the child's biological mother, so that child recognition is carried out voluntarily and without coercion by a man who is the father of his child, in this case his biological child born outside of a legal marriage with the consent of the child's biological mother.

In the Elucidation of the Population Administration Law, child recognition should be for a father who recognizes his child born outside of marriage, but the marriage has been valid according to religious law, while the Elucidation of Article 49 of the Population Administration Law quoted by the Judge is incorrect because it omits a fairly important phrase, namely that the marriage has been valid according to religious law. In this case, what the judge did was inappropriate because he made legal considerations on the wrong regulations and the wrong quotation. Then, referring to the existing provisions in Article 49 Paragraph (2) of the Population Administration Law, it is clearly stated that child recognition only applies to children whose parents have entered into a marriage that is valid according to religious law, but not yet valid according to state law. This assertion in the Population Administration Law closes the meaning of child recognition outside of those who have carried out a marriage that is valid religiously but not yet legal in the state. In this case, there was an error from the judge in terms of citing the legal basis for his consideration, as well as the application of the rules in this decision.

In addition, the judge also relied on PERPRES Number 96/2018. PERPRES Number 96/2018 as a further regulation of the Population Administration Law states clearly in Article 49 that child recognition must meet the requirements, one of which is a statement letter of recognition from the biological father that has been approved by the child's biological mother, as well as a certificate of marriage from religious leaders or penghayat kepercayaan. Furthermore, Article 51 stipulates that a court decision is required for the recording of child recognition for those born outside of marriage. Therefore, Article 51 of PERPRES Number 96/2018 has a connection with Article 49 Paragraph (2) of the Population Administration Law, namely that after the requirements for child recognition are fulfilled in the event that the parents of the child who want to be recognized have entered into a religious marriage, then the parents can apply for registration of recognition to the court.

This can be seen from the Determination of the Malang District Court Number 551/PDT.P/2022/PN.MLG which states that the Applicant used to have a relationship with a woman, so that until the time of the determination between the Applicant and the woman there was no relationship. It was also not clear what kind of relationship had previously occurred between the Applicant and the woman. In addition, the evidence submitted by the Applicant also did not submit evidence of a marriage certificate or evidence that the Applicant had ever entered into a marriage with the woman. So that the Applicant's situation in terms of applying for child recognition does not meet the provisions of what is regulated in the Population Administration Law and PERPRES Number 96/2018. In addition, witness number two submitted by the Applicant was also unclear about his position, but he gave approval for the child's recognition. Meanwhile, according to the child recognition regulations in Indonesia, the consent required is that of the child's mother, as witness number one.

Not only that, there is also Constitutional Court Decision Number 46/PUU-VIII/2010 which was born from a judicial review of the Marriage Law. With the Constitutional Court Decision No. 46, Article 43 of the Marriage Law does not only regulate that an unmarried child only has a civil relationship with his mother, but he can also have a civil relationship with his father as well as his father's family if proven by science and technology. However, in this case, there was no evidence submitted by the Applicant regarding the existence of evidence proving that the Applicant and the girl were related by blood. Therefore, based on the Marriage Law and Constitutional Court Decision Number 46/PUU-VIII/2010, there is no civil relationship between them. However, in the end, the registration of an important event, namely child recognition, certainly cannot be carried out because the Applicant's situation does not meet the provisions regulated and required in the Population Administration Law and PERPRES Number 96/2018.

In the circumstances of this decision, the Applicant's recognition of the girl could not be implemented because the Applicant had not entered into a religiously valid marriage with the woman who was the mother of the child. Therefore, the Applicant's situation is not in accordance with the provisions of the Population Administration Law in terms of important events, namely child recognition. There was also an error in the Judge's legal reasoning, namely an error in citing the provisions in Article 49 of the Population Administration Law as the basis for his consideration in granting the Applicant's request, which then had an impact on the application of the Article in the application submitted by the Applicant regarding child recognition.

CONCLUSION

Regulations regarding the recognition of extra-marital children in Indonesia remain limited and lack clarity in the Marriage Law, which only establishes a civil relationship between the child and their mother. Constitutional Court Decision Number 46/PUU-VIII/2010 expands this by allowing for the possibility of a civil relationship between an extra-marital child and their father if proven through science and technology, such as DNA testing. The Population Administration

Law further stipulates that recognition of children is limited to those born from parents who have entered into a valid religious marriage but not a state-recognized marriage, as detailed in PERPRES Number 96 of 2018. In the case of the Malang District Court Determination Number 551/PDT.P/2022/PN MLG, the court erred in granting the recognition of a child where no religiously valid marriage existed between the applicant and the child's mother, contrary to the provisions of these regulations.

This study underscores the necessity for clearer and more comprehensive regulations that safeguard the rights and legal status of extra-marital children, ensuring consistent application and interpretation of the law by both the public and law enforcement. Future research should explore legislative improvements to provide equal legal protections for all children, irrespective of their birth circumstances, and investigate the broader social and legal implications of recognizing extra-marital children to promote equity and inclusivity in family law.

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