

Inheritance for Children Born Outside of Marriage

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Article Info	Abstract
Corresponding Author: nadasimbayan@gmail.com History: Submitted: 09-01-2023 Revised: 12-10-2025 Accepted: 18-07-2026 Keyword: Civil Law; Extramarital Children; Inheritance Rights; Legal Recognition; Marriage Law.  Copyright ©2026 by Alfa Nadia Paparang. All writings published in this journal are personal views of the authors and do not represent the views of the <i>Estudiante Law Journal</i>.	Children born outside a valid marriage occupy an uncertain position in Indonesian inheritance law. This article examines how the inheritance of such children is determined under the Indonesian Civil Code (<i>Burgerlijk Wetboek</i>) and under Law Number 16 of 2019 amending Law Number 1 of 1974 on Marriage, read together with Constitutional Court Decision Number 46/PUU-VIII/2010. The study applies normative legal research using statutory and case approaches, and the legal materials are analysed through legal hermeneutics. It finds that, under the Civil Code, a child born outside marriage has no legal relationship with either parent unless recognition is given; once recognised, the child may inherit from the recognising parent, although the share is smaller than that of a legitimate child and varies according to the class of heirs who survive. Under the Marriage Law, by contrast, an unrecognised child born outside marriage automatically holds a civil relationship with the mother and the mother's family, so that recognition by the mother is no longer required. A civil relationship with the father arises only where paternity is proved by science and technology or by other evidence recognised by law.

How to cite (Chicago Style):

Alfa Nadia Paparang, "Inheritance for Children Born Outside of Marriage," *Estudiante Law Journal* 8, no. 1 (2026): 66-78. <http://dx.doi.org/10.33756/eslaj.v8i1.18233>

1. Introduction

The constitution is the highest agreement of the founders of the state. Although it was tested when the 1945 Constitution was replaced by the Constitution of the Republic of the United States of Indonesia in 1949, recognition of the territories under the auspices of the Indonesian State was maintained.¹ The 1945 Constitution of the Republic of Indonesia, as a product of the People's Consultative Assembly, does not arise from nothing; it is the actualisation of political will. As a consequence of constitutional democracy, the constitution must contain fundamental aspects, including arrangements regarding the guarantee of the human rights of its citizens.² The state is firmly obliged to strive to fulfill the rights of every citizen.³

The absolute requirement of state sovereignty is the existence of a society that complies with the constitution and its government.⁴ In the context of national and state life, the existence of children is very important as the next generation who are prepared to receive the baton of leadership in the future. To get a quality generation, every child has the right to survival, growth, and development, and the right to protection from violence and discrimination. This includes the right to life of every person, which carries freedom but is limited by the prevailing regulations.⁵ Quoting Lisnawaty Badu, the right to life must also be protected by the state, particularly a state based on law.⁶ In daily life, efforts to make ends meet are often accompanied by crimes and offences committed by particular persons that threaten members of society; in legal science these are known as criminal acts.⁷ Protection is necessary because of the effort to integrate various needs in the association so that there is no clash between needs and one can enjoy all the rights granted by law.⁸

Given the development of social relations in Indonesia, an increasing number of people consider that sex outside of legal marriage is not a big problem, so there are often births of children outside the legal marriage bond. Children born outside the bonds of legal marriage are often called out-of-wedlock children. In everyday life, children outside of marriage are often referred to as illegitimate children, namely children who are not clear who the father is. Children born outside of legal marriage only have a biological

¹ Novendri M. Nggilu, "Juridical Review of Criminal Sanctions Arrangements in Gorontalo Provincial Regulations," *Lambung Mangkurat Law Journal* 5, no. 2 (2020): 109-121, 110.

² Fence M. Wantu Novendri M. Nggilu, "Menapaki Jalan Konstitusional Menuju Zaken Cabinet : Ikhtiar Mewujudkan," *Jurnal Hukum* 15, no. 1 (2020): 126-140, 127.

³ Julius Mandjo, "The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations," *Jambura Law Review* 3, no. 02 (2021): 365-77, 375.

⁴ Mellisa Towadi and Nur Mohamad Kasim, "An Indication of China ' s Policy towards Uighurs and Its Implications by International Law Aspects," *Jambura Law Review* 3, no. 01 (2021): 55-71, 69.

⁵ "Pasal 28B Ayat (2) Undang-Undang Dasar Republik Indonesia".

⁶ Badu Lisnawaty, "Euthanasia Dan Hak Asasi Manusia," *Jurnal Legalitas* 5, no. 1 (n.d.): 1-11. 1.

⁷ Dian Ekawaty Ismail and Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes," *Jambura Law Review* 3, no. 1 (2021): 57-76, 58.

⁸ Jufryanto Puluhulawa, Mellisa Towadi, and Vifi Swarianata, "Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site" *Jurnal Reformasi Hukum* 24, no. 2 (2020): 189-208, 197.

relationship and a civil relationship with their biological mother. In law, such children are known as extramarital children. According to Paul Scholten's term, the term "child outside marriage" covers, apart from the child of an incestuous union and the child of adultery, the child who has only an inheritance relationship with one parent, and it is this last category that is referred to here as a child born outside marriage.⁹

The out-of-wedlock child is a term that refers to Article 43 paragraph (1) of the Marriage Law, which states:

"A child born outside of marriage only has a civil relationship with his mother and his mother's family"

Thus, an out-of-wedlock child is a child born to a woman who is not in a legal marital bond with the man who has impregnated her. The meaning of outside marriage in the word out-of-wedlock child itself is a relationship between a man and a woman who can give birth to offspring where they are not in a legal marriage bond based on article 2 of Law No.1 of 1974.¹⁰

Law is a political product: the character and content of any legal product are largely determined or coloured by the balance of power or the political configuration that produced it. Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, contains an arrangement which essentially provides that a child born outside of marriage has a civil relationship with his biological mother as well as his biological mother's family, as well as a man called his father. This arrangement is certainly contrary to what has been regulated in the Indonesian Constitution, the 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945). The law also stipulates that with the legal relationship that an out-of-wedlock child has with his biological mother as well as his biological mother's family, the out-of-wedlock child also only gets the right to bequeath his mother's property. All expenses that must be incurred for a child born outside marriage can therefore be provided only through the mother, because such a child remains the mother's responsibility until the child may be categorised as an adult.¹¹ Every other person, including the government, must heed it, by making laws based on natural rights themselves.¹² As Fenty Puluwulawa has stated in his writings also that the Government through the law has provided a starting point for the judiciary, which is done for the sake of justice under the Almighty Godhead.¹³ Quoting Suwitno Yutye Imran,

⁹ R. Youdhea S. Kumoro, "Hak Dan Kedudukan Anak Luar Nikah Dalam Pewarisan Menurut Hukum Perdata," *Jurnal Lex Crimen* VI, no. 2 (2017): 12-19, 13.

¹⁰ Umar Haris Sanjaya, *Hukum Perkawinan Islam*. (Yogyakarta: Gama Media, 2017), 170.

¹¹ Margareta Sevilla et al, "Dilema Hak Mewaris Anak Luar Kawin Dalam Persepektif Hukum Perdata," *Jurnal Hukum Magnum Opus* 4, no. 2 (2021): 159-69, 161.

¹² Dolot Alhasni, "Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right" Determination of The Legal Protection of Right-Holders To," *Jambura Law Review* 2, no. 01 (2020): 65-82, 67.

¹³ Sutrisno, Puluwulawa Fenty, and Lusiana Margaereth Tijow, "Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi," *Gorontalo Law Review* 3, no. 2 (2020): 168-187, 184.

justice serves as a guideline to distinguish between just and unjust acts the elements of the aspect of justice can be contained in the substance.¹⁴

The Indonesian Civil Code (Burgerlijk Wetboek) distinguishes between a legal child and an illegitimate child or an out-of-wedlock child. A legal child is a child born in or as a result of a legal marriage, an illegitimate child or an out-of-wedlock child is a child born outside of a valid marriage between his or her parents.¹⁵

An out-of-wedlock child can obtain a civil relationship with the father, namely by giving recognition to an out-of-wedlock child. Article 280 and Article 281 of the Civil Code confirm that with the recognition of a child outside of marriage, a civil relationship arises between the child and the father or mother. Recognition of children outside of marriage can be done with an authentic certificate if it has not been held on the birth certificate or at the time of the execution of the marriage.¹⁶

According to Article 863 of the Civil Code says, "if the deceased leaves legal offspring according to the law or a husband or wife, then the children outside the marriage inherit one-third and the share they were originally receiving if they were legitimate children according to; they inherit half and estate, if the deceased leave no descendants, husbands or wives, but leave inbred families in the upward line, or their brothers and sisters or descendants, and three-quarters if only the blood family is still alive in a further degree".

Two forms of inheritance right may be identified in relation to extramarital children: active and passive inheritance rights. Although an out-of-wedlock child has inheritance rights over his parents, his inheritance rights are very inferior in nature to the right of inheritance of legitimate children because he does not have his right of inheritance, in the sense that, against the parents' estate, he cannot inherit alone as long as his parents still have a family that belongs to the four classes of legal heirs.¹⁷ In addition, the portion or share he receives is smaller than the portion he would receive if he were a legitimate child. Although born outside of a valid marriage, the recognized out-of-wedlock child is the descendant of the heir. In Article 42 of Law No. 16 of 2019, the amendment to Law No. 1 of 1974 concerning Marriage defines a legal child, namely a child born in or as a result of a valid marriage. Meanwhile, Article 250 of the Civil Code specifies that each child born or grown up throughout the marriage acquires the husband as the father. Based on both of the above provisions, the validity of a marriage largely determines the legal position of the children.¹⁸

For notary practitioners who are authorized to make an inheritance certificate, this is a bit troublesome, because to make an inheritance statement is required to receive authentic

¹⁴ Suwitno Yutye Imran, "The Urgency of Regulation of the Ultra Qui Judicat Principle in Criminal Judgments," *Jambura Law Review* 3, no. 2 (2021): 395-410, 398.

¹⁵ Karto Manalu, *Hukum Keberdataan Anak Di Luar Kawin*. (Sumatera Barat: CV. Azka Pustaka, 2021), 4.

¹⁶ Hamiyuddin, "Kedudukan Anak Di Luar Nikah Di Indonesia," *Jurnal Musawa* 10, no. 1 (2018): 159-190, 175.

¹⁷ Marshall Christian Watulingas. "Hak Dan Kedudukan Hukum Anak Di Luar Nikah Dari Perspektif Hukum Perdata". *Jurnal Lex Privatum*. 7 No. 3 (2019):29-35, 34.

¹⁸ *Ibid.*.

evidence in the form of a birth certificate stating that the child is a legal child from the marriage of both parents. There is a concern that in the practice of the community, suddenly there will be various cases in connection with the demands of unmarried children who are not/have never been recognized by the heir, who demand a share of the inheritance.¹⁹

2. Method

The research method used in this paper is normative research using a statutory research approach and a case approach, and the analysis technique used to process legal material is legal hermeneutics. Legal hermeneutics is also known as a way of embodying the material of the law itself as a form of effort to obtain clarity from something that is in the future.

3. Division of Inheritance for Children Born Outside of Marriage

The Civil Code system is only for those who have a legal relationship with the heir who has the right of inheritance. The legal relationship between an out-of-wedlock child and his parents was born out of recognition. With the recognition of children outside of marriage, the rights of children outside of marriage will be the same as those of legal children, and their rights are no longer children outside of marriage. Extramarital children therefore have the right to inherit their parents' property.²⁰ According to Klaassen, Eggens, and Polak, the right of an out-of-wedlock child to the inheritance of a parent who recognizes it is essentially the same as a legal child. They (children outside of a recognized marriage) are heirs who have *saisine* rights, *hereditatis petitio* rights, and the right to demand the settlement of inheritance. But when viewed further, it turns out that the similarities only end there because the rest of their share is different between one child and one child.²¹

Inheritance is a heritage estate and a will. Inheritance law consists of the rules governing the transfer of property rights of a deceased person to his heirs. The inheritance is given to the heirs when the person dies. The inheritance can be movable property or immovable property.²²

As children born outside of legal marriage, there are several problems for children outside of marriage, because they do not get the same rights and position as legal children, especially in matters of inheritance. This status gives rise to both positive and negative legal consequences. An out-of-wedlock child will get these rights if they meet several conditions, one of which is that the child must be legally recognized by his parents. In the Civil Code, the status of an out-of-wedlock child can be recognized by the father as long

¹⁹ *Ibid.*

²⁰ Maya S. Karundeng Alsam Polontalo, "Kedudukan Hukum Bagi Anak Diluar Perkawinan Yang Sah Dalam Proses Pembagian Harta Warisan Menurut Kitab Undang-Undang Hukum Perdata," *Jurnal Lex Privatum* IX, no. 6 (2021): 161-168, 163.

²¹ *Ibid.*

²² Fernanda Nur Latifah, "Pembagian Harta Warisan Kepada Anak Di Luar Nikah Menurut Hukum Islam Dan Hukum Perdata," *Jurnal Kajian Hukum* 6, no. 2 (2021): 46-55, 49.

as the child is not the result of adultery and is categorized as a discordant child. Article 272 of the Civil Code provides that the children who may be recognised are children born to a mother but who are not married by a man who is in a legal marital bond with the child's mother and does not belong to the group of adulterous children and discordant children.²³

Recognition made by the father who wishes to recognize the child can only be accepted if approved by the mother who conceived him, as explained in Article 284 of the Civil Code which reads A recognition of an extramarital child during the life of the mother, if the mother belongs to the Indonesian class or the group equated with it, will not be accepted if the mother does not approve of it. If such a child is recognized after the mother dies the recognition produces effects only in relation to the father.²⁴

A recognized out-of-wedlock child is truly an heir who has *saisine* rights, *hereditatis petitio* rights, and the right to demand the resolution of inheritance. However, if you examine it further, it turns out that the similarities are only there because, in terms of the rest, their parts are not the same as one another. They (out-of-wedlock children) are not under guardianship power, so their rights and share in the inheritance are not equally large. Although extramarital children have inheritance rights over their parents, their inheritance rights are very *inferior* in nature to the inheritance rights of legitimate children because:²⁵

1. He has no right of inheritance, in the sense that, against the parents' estate, he cannot inherit alone as long as his parents still have a blood family within the limit of the degree that can bequeath which is six degrees. He always piggybacked on one of the four classes of legal heirs. The out-of-wedlock child only has inheritance rights if the parents do not have a family that belongs to the four legal heirs.
2. The portion or share he receives is smaller than the portion he would receive if he were a legitimate child.

Article 43 of Law No. 1 of 1974 concerning Marriage (Marriage Law) states that children born outside a valid marriage only have a civil relationship with their mother and their mother's family. Therefore, an out-of-wedlock child is entitled to an inheritance from the mother without the need for recognition. However, since there was a Constitutional Court Decision No. 46/PUU-VIII/2010, Article 43 of the Marriage Law has been changed, namely that initially 'an out-of-wedlock child only has a civil relationship with his mother and his mother's family', to contain "an out-of-wedlock child not only has a civil relationship with his mother and his mother's family but also has a civil relationship with his father and/or father's family as long as it can be proven based on science and

²³ J.Andy Hartanto, *Hukum Waris, Kedudukan Dan Hak Waris Anak Luar Kawin Menurut "Burgerlijk Wetboek" Pasca Putusan Mahkamah Konstitusi*. (Surabaya: Laksbang Pressindo, 2015), 29.

²⁴ Ruslan Abdul Gani, "Status Anak Luar Nikah Dalam Hukum Waris (Studi Komperatif Antara Kitab Undang - Undang Hukum Perdata Dengan Kompilasi Hukum Islam)," *Jurnal Al Risalah* 11, no. 1 (2011): 84-109, 94.

²⁵ M.U Sembiring, "Beberapa Bab Penting Dalam Hukum Waris Menurut Kitab Undang-Undang Hukum Perdata" (Univerisitas Sumatera Utara, 1989), 46.

technology and or evidence otherwise according to the law that the man is the father of the out-of-wedlock child". The technology referred to from the content of the ruling is to use of a DNA test. If the father and mother do not enter into their respective marriages, they can still recognize the extramarital child.²⁶ The development of digitalization of information and communication technology in the form of social media exposes the public to a new reality, namely a world visible on the screens of devices but synchronized with real life.²⁷

This recognition according to article 281 of the Civil Code is carried out in the form of an authentic deed. Recognition made by the father who wishes to recognize the child can only be accepted if it is approved by the mother who conceived it, as explained in Article 284 of the Civil Code which reads:²⁸

"A recognition of an extramarital child during the life of the mother, if the mother belongs to the Indonesian class or the group equated with it, will not be accepted if the mother does not approve of it. If such a child is recognized after the mother dies the recognition produces effects only in relation to the father."

From the discussion above it can be understood that there is a comparison between the KHI and the Civil Code regarding the status of extramarital children. According to the Civil Code, children born from the results of a premarital relationship between a virgin man and a woman can be categorized as an out-of-wedlock child. The child has the status of an illegitimate child of his parents. However, the Civil Code provides an opportunity for parents to recognize the child so that it becomes a child legally recognized by his parents. Meanwhile, according to the Compilation of Islamic Law, an out-of-wedlock child has the status of an illegitimate child of his parents because he is the child of the result of an adulterous relationship. Because it is explained in Article 99 of the KHI states that a legal child is a child born in a legal marriage.²⁹

3.1. Heirs in Civil Law

In the inheritance, what is noticed first is the class that receives the inheritance if there is no will. After this is determined, there are a few more things that need to be considered. In addition, in civil law, the status of children is divided into three groups, namely:³⁰

1. A legal child, that is, a child born as a result of a valid marriage. This provision is regulated in Article 42 of Law No. 16 of 2019 on the amendment of Law No. 1 of 1974 concerning Marriage which reads; a legitimate child is a child born in or as a result of a legal marriage.³¹

²⁶ "Article 43 of Law No. 16 of 2019 on the Amendment of Law No. 1 of 1974 concerning Marriage,".

²⁷ Moh. Rusdiyanto U. Puluhulawa dan Riski Husain, "Body Shaming melalui Media Sosial sebagai Digital Crime di Era Disrupsi." *Tinjauan Hukum Jambura* 3, no. 01 (2021): 112-1 23, 117.

²⁸ "Article 284 of the Civil Code,".

²⁹ "Pasal 99 Kompilasi Hukum Islam,".

³⁰ Misael and Partners, "Hak Waris Anak Luar Kawin," accessed October 13, 2022, <http://misaelandpartners.com/hak-waris-anak-luar-kawin>.

³¹ "Article 42 of Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 concerning Marriage".

2. Extramarital Children are regulated in article 43 paragraph (1) of Law No. 16 of 2019 on the amendment of Law No. 1 of 1974 concerning Marriage. A child outside of marriage is a child born outside of marriage and only has a civil relationship with his mother and his mother's family and with a man as his father which can be proven based on science and technology and/or other evidence according to law to have a blood relationship including a civil relationship with his father's family.³²
3. The adoption of a child is a legal act that transfers a child from the sphere of power of a parent, legal guardian, or another person responsible for the care, education, and rearing of the child, into the family environment of the adoptive parents.

3.2. Inheritance Rights of Extramarital Children

The out-of-wedlock child is not under the power of the parents, but under the power of guardianship, so their rights and share in the inheritance are not as great as the legal child furthermore the recognition only gives rise to a legal relationship between the child and the admitting parent, so it does not include the family that recognizes it. Based on the Civil Code and the Constitutional Court Decision, an out-of-wedlock child is entitled to an inheritance share from his father if there is recognition from his father or there is valid evidence based on science and technology that he is the biological son of the father while the out-of-wedlock child is entitled to inheritance from his mother without the need for recognition from his mother. The inheritance part here is still the inheritance part for the out-of-wedlock child because the status of the child is an out-of-wedlock child recognized by his father.³³

3.2.1. Inheritance Rights of Extramarital Children from the Father

Article 863 of the Civil Code states: "If the testator dies leaving behind a legitimate offspring and or husband and wife, then the recognized out-of-wedlock child inherits 1/3 of the share, of those who should have been, if they were legal children". This means that the father will not get an inheritance. However, if the out-of-wedlock child is recognized by the father, then the child will get a 1/3 share of the share that should be if he is a legitimate child.³⁴

3.2.2. Inheritance Rights of Extramarital Children from the Mother

Article 43 of Law No. 1 of 1974 concerning Marriage (Marriage Law) states that children born outside a valid marriage only have a civil relationship with their mother and their mother's family. Therefore, an out-of-wedlock child is entitled to an inheritance without the need for recognition from his mother.

The share of inheritance of extramarital children is regulated in Article 863 of the Civil Code. A recognized out-of-wedlock child inherits with all classes of such heirs. The

³² "Article 43 Paragraph (1) of Law No. 16 of 2019 on the Amendment of Law No. 1 of 1974 concerning Marriage".

³³ j. Klaassen, J. G.; Eggens, *Huwelijksgoederen En Erfrecht, Hendleiding Bij Studie En Practijk, Cetakan VIII.* (Tjeenk Willink: Zwolle, 1956), 35.

³⁴ "Pasal 863 KUHPerdata".

amount of share received by him depends on which class the out-of-wedlock child bequeaths, or depends on the degree of familial relationship of the legal heirs, among others, if there are Groups I, II, III, and IV.

The heir leaves the heirs of Class I i.e. the longest-living wife or husband & legal child:³⁵

"If the heir dies leaving behind a legitimate offspring and or husband and wife, then the recognized out-of-wedlock child inherits 1/3 of the share, of those who should have been, if they were legal children".

Heirs leave the heirs of Class II & III, namely parents, siblings, descendants of siblings, grandmothers, and grandfathers:³⁶

"If the deceased leaves neither posterity nor husband or wife, but leaves a blood family, in an upward line or his brothers and sisters or descendants, then the recognized children bequeath 1/2 of the inheritance."

The heirs left the heirs of Class IV i.e. distant relatives:³⁷

"Extramarital children bequeathed to the heirs of the fourth class include relatives in a further degree, then the amount of the right of the out-of-wedlock child share is 3/4 of the inheritance."

In conclusion, the division of inheritance of this extramarital child according to the Civil Code is as follows:

1. The out-of-wedlock child bequeathed to the heirs of Class I, his share: 1/3 of his share if he were a legitimate child.
2. The out-of-wedlock child bequeathed to the heirs of classes II and III, the share of which: 1/2 of the inheritance.
3. The out-of-wedlock child bequeathed to the heirs of class IV, his share: 3/4 of the inheritance.

If the Heir does not leave a valid heir according to the Law, the out-of-wedlock child inherits the entire property of the Heir (865 Civil Code). Article 186 of the Compilation of Islamic Law provides that: "A child born outside of marriage only has a mutually inherited relationship with his mother and his mother's family". This means that an extramarital child is not entitled to a share of the inheritance from his father and only gets a share of the inheritance from his mother. However, through a will an extramarital child can obtain a share of the inheritance from his biological father if his biological father does state in the will he made before his death that the extramarital child acquired part of the inheritance

³⁵ Hijawati Dan Rizayusmanda, "Hak Dan Kedudukan Anak Luar Nikah Yang Diakui Terhadap Warisan Tanah Ditinjau Dari Hukum Perdata," *Jurnal Solusi* 19, no. 1 (2021), 132.

³⁶ *Ibid*, 133.

³⁷ *Ibid*.

he left behind. However, the share of the estate of the will should not exceed 1/3 of the estate, to protect the rights of the main heirs.³⁸

The division of inherited property against extramarital children is the same as the distribution of legal children regulated in the Compilation of Islamic Law. However, the legal child of the division applies if the inheritance is to his father or mother, in contrast to the out-of-wedlock child whose division applies only to the inheritance of the mother. The existence of existing regulatory regulations provides equal rights for every citizen.³⁹ The benefits are not to become clashes in social and state life.⁴⁰

This article illustrates that Law No. 1 of 1974 concerning the marriage of an out-of-wedlock child only has a civil and familial relationship both about the cost of living, and education, including inheritance only with his mother and not with his father. However, it is appropriate for the government to be responsible for accommodating the rights of children outside of marriage. As stated in Article 65 paragraph (1) of Law No. 16 of 2019, the amendment to Law No. 1 of 1974 concerning marriage that the husband is obliged to provide life guarantees to all wives and children, so that it can be understood that an out-of-wedlock child is entitled to the same rights from the father regardless of whether the person concerned agrees or not but as long as he still has biological ties, especially as a father, He must be responsible for matters related to the cost of living, education and inheritance rights because it is his responsibility.

This has become a consequence for a man who has an extramarital child, so it is appropriate that all fathers everywhere, including in Indonesia, must apply and carry out all provisions of Indonesia's positive law relating to the issue of the child as well as the granting of inheritance if he dies. After the issuance of the Constitutional Court Decision No. 46/PUU-VIII/2010, the portion of inheritance for out-of-wedlock children who are subject to Western Civil Law and those who are still bound by ancestral customs becomes open, especially to bequeath from the biological father's estate. But the portion is not the same as a child born from a legal marriage, because the Constitutional Court Decision only provides certainty of the relationship between the extramarital child and his biological father.

4. Conclusion

Based on the provisions of the Civil Code, an out-of-wedlock child is considered not to have any legal relationship with his parents if there is no recognition from the father or mother, thus if the out-of-wedlock child is recognized then he can bequeath the inherited property from the parents who recognize it, and of course the division of inheritance under the law. However, on the one hand, with the enactment of the Marriage Law, namely Law No. 16 of 2019, an amendment to Law No. 1 of 1974 (Article 43 paragraph 1),

³⁸ Misael and Partners, "Hak Waris Anak Luar Kawin," accessed October 13, 2022, <http://misaelandpartners.com/hak-waris-anak-luar-kawin>.

³⁹ Abdul Hamid Tome, "Dynamics of Village Head Election Arrangements." *Jambura Law Review* 3, Special Issue No. (2021): 96-116, 101.

⁴⁰ Lusiana Tijow, "Perlindungan Hak Asasi Manusia Teriiadap Hak Hidup Anak Dalam Kandungan Di Luar Pbrkawinan Yang Sah," *Jurnal Legalitas* 3, no. 2 (2003): 79-90, 80.

the unrecognized extramarital child automatically has a civil relationship with his mother and his mother's family. Thus, then the necessity of a mother to acknowledge her out-of-wedlock child as mentioned in Burgerlijk Wetboek is no longer necessary. Likewise, it has been affirmed in the Constitutional Court Decision Number 46 / PUU-VIII / 2010 which is also part of legal reform, so that the child also has a juridical relationship with his biological father if it can be proven based on technological science and/or other evidence according to law.

The government through laws and regulations should be able to accommodate all kinds of legal problems experienced by its people, especially in terms of the rights and obligations of children outside of marriage. Although the child's rights outside of marriage are not clearly regulated in the regulations, but when the child is born, then human rights are attached to him, therefore it must be protected by the regulation of marriage.

References

- Ahmad dan Nasran. "Comparison Of Judicial Review: A Critical Approach To The Model In Several Countries." *Jurnal Legalitas* 14, no. 2 (2021): 85–105.
- Alhasni, Dolot. "Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right" Determination Of The Legal Protection Of Right-Holders To." *Jambura Law Review* 2, no. 01 (2020): 65–82.
- Alsam Polontalo, Maya S. Karundeng. "Kedudukan Hukum Bagi Anak Diluar Perkawinan Yang Sah Dalam Proses Pembagian Harta Warisan Menurut Kitab Undang-Undang Hukum Perdata." *Jurnal Lex Privatum* IX, no. 6 (2021): 161–68.
- Gani, Ruslan Abdul. "Status Anak Luar Nikah Dalam Hukum Waris (Studi Komperatif Antara Kitab Undang - Undang Hukum Perdata Dengan Kompilasi Hukum Islam)." *Jurnal Al Risalah* 11, no. 1 (2011): 84–109.
- Hamiyuddin. "Kedudukan Anak Di Luar Nikah Di Indonesia." *Jurnal Musawa* 10, no. 1 (2018): 159–90.
- Hartanto, J.Andy. *Hukum Waris, Kedudukan Dan Hak Waris Anak Luar Kawin Menurut "Burgerlijk Wetboek" Pasca Putusan Mahkamah Konstitusi*. Surabaya: Laksbang Pressindo, 2015.
- Hijawati Dan Rizayusmanda. "Hak Dan Kedudukan Anak Luar Nikah Yang Diakui Terhadap Warisan Tanah Ditinjau Dari Hukum Perdata." *Jurnal Solusi* 19, no. 1 (2021).
- Imran, Suwitno Yutye. "The Urgency Of Regulation Of The Ultra Qui Judicat Principle In Criminal Judgments." *Jambura Law Review* 3, no. 2 (2021): 395–410.
- Ismail, Dian Ekawaty, And Mohamad Taufiq Zulfikar Sarson. "Criminology Analysis Of Women's As Perpetrators Of Domestic Violence Crimes." *Jambura Law Review* 3, no. 1 (2021): 57–76.
- Karto Manalu. *Hukum Keperdataan Anak Di Luarkawin*. Sumatera Barat: Cv. Azka Pustaka, 2021.

- Klaassen, J. G.; Eggens, J. *Huwwelijksgoederen En Erfrecht, Hendleiding Bij Studie En Practijk, Cetakan VIII*. Tjeenk Willink: Zwolle, 1956.
- Latifah, Fernanda Nur. "Pembagian Harta Warisan Kepada Anak Di Luar Nikah Menurut Hukum Islam Dan Hukum Perdata." *Jurnal Kajian Hukum* 6, no. 2 (2021): 46–55.
- Mandjo, Julius. "The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations." *Jambura Law Review* 3, no. 02 (2021): 365–77.
- Marshall Christian Watulingas. "Hak Dan Kedudukan Hukum Anak Di Luar Nikah Dari Perspektif Hukum Perdata". *Jurnal Lex Privatum*. 7 No. 3 (2019):29-35.
- Nggilu, Ahmad Dan Novendri M. "Denyut Nadi Amandemen Kelima Uud 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip The Guardian Of The Constitution Of The Constitution Through The The Principle Of The Guardian Of The Constitution." *Jurnal Konstitusi* 16, no. 4 (2019): 785–808.
- Nggilu, Novendri M. "Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo." *Lambung Mangkurat Law Journal* 5, no. 2 (2020): 109–21.
- Novendri M. Nggilu, Fence M. Wantu. "Menapaki Jalan Konstitusional Menuju Zaken Cabinet : Ikhtiar Mewujudkan." *Jurnal Hukum* 15, no. 1 (2020): 126–40.
- Puluhulawa, Jufryanto, Mellisa Towadi, And Vifi Swarianata. "Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck The Legal Protection Of The Leato Underwater Site" *Jurnal Reformasi Hukum* 24, no. 2 (2020): 189–208.
- Puluhulawa, Moh. Rusdiyanto U. dan Riski Husain. "Body Shaming through Social Media as a Digital Crime in the Era of Disruption." *Jambura Law Review* 3, no. 01 (2021): 112–23.
- R. Youdhea S. Kumoro. "Hak Dan Kedudukan Anak Luar Nikah Dalam Pewarisan Menurut Kuh- Perdata." *Jurnal Lex Crimen* VI, no. 2 (2017): 12–19.
- Sembiring, M.U. "Beberapa Bab Penting Dalam Hukum Waris Menurut Kitab Undang-Undang Hukum Perdata." Universitas Sumatera Utara, 1989.
- Sevilla, Margareta, Rosa Angelin, Margareta Sevilla, Rosa Angelin, Farida Danas Putri, And Akbar Prasetyo Sanduan. "Dilema Hak Mewaris Anak Luar Kawin Dalam Persepektif Hukum Perdata." *Jurnal Hukum Magnum Opus* 4, no. 2 (2021): 159–69.
- Sutrisno, Puluhulawa Fenty, And Lusiana Margaereth Tijow. "Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi." *Gorontalo Law Review* 3, no. 2 (2020): 168–87.
- Tijow, Lusiana. "Perlindungan Hak Asasi Manusia Teriiadap Hak Hidup Anak Dalam Kandungan Di Luar Pbrkawinan Yang Sah." *Jurnal Legalitas* 3, no. 2 (2003): 79–90.
- Tome, Abdul Hamid. "Dynamics of Village Head Election Arrangements." *Jambura Law Review* 3, no. Spesial Issue (2021): 96–116.

Towadi, Mellisa, and Nur Mohamad Kasim. "An Indication of China ' s Policy towards Uighurs and Its Implications by International Law Aspects." *Jambura Law Review* 3, no. 01 (2021): 55-71.

Umar Haris Sanjaya, Dkk. *Hukum Perkawinan Islam*. Yogyakarta: Gama Media, 2017.