



## Marriage Legal Aspects On The Status Of Out Of Marriage Children In Birth Certificates And Child Protection

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### ABSTRACT

Children are buds, potentials, and the younger generation as the successor to the ideals of the nation's struggle that has a strategic role. Children have special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future. Children are the living messages we send to a time we will not see (children are the living messages we send for a time we don't see), that's how John W Whitehead in Lenny N. Rosalin describes the importance of children as the next generation as well as the greatest asset for the future. Every newly born child must be registered immediately in the form of a Birth Certificate as the child's identity even though the child's status is out of wedlock without losing the rights of the child. This study uses a normative juridical method that is descriptive in nature, which is a systematic and comprehensive description of the object under study. The legal materials used are secondary data consisting of primary, secondary and tertiary legal materials. This research is a library research (library research). To obtain the data presented in this study, the authors used the legal materials obtained were analyzed qualitatively normatively and explained deductively. So that in the end get the expected results, to then draw a conclusion as the final result of this research. The conclusion of this thesis is that the Constitutional Court Decision No. 46/PUU-VIII/2010 which states that Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, namely: "Children born outside of marriage only have a civil relationship with the mother and her mother's family, contrary to the Constitution of the Republic of Indonesia Number 1 of 1945 if it is interpreted as eliminating civil relations with men which can be proven based on science and technology or other evidence according to the law, it is proven that they have blood relations with their fathers. When doing a relationship, it should be considered in the long term, which ultimately does not harm other people, both juridically and non-juridically.

### ABSTRAK

Anak -anak adalah tunas, potensi, dan generasi muda sebagai penerus cita -cita perjuangan bangsa yang memiliki peran strategis. Anak -anak memiliki karakteristik dan karakteristik khusus yang memastikan kesinambungan keberadaan bangsa dan negara di masa depan. Anak -anak adalah pesan hidup yang kami kirim ke suatu waktu yang tidak akan kami lihat (anak -anak adalah pesan hidup yang kami kirim untuk waktu yang tidak kami lihat), begitulah John W Whitehead di Lenny N. Rosalin menggambarkan pentingnya anak -anak sebagai hari berikutnya generasi serta aset terbesar untuk masa depan. Setiap anak yang baru lahir harus segera didaftarkan dalam bentuk akta kelahiran sebagai identitas anak meskipun status anak berada di luar nikah tanpa kehilangan hak anak. Studi ini menggunakan metode yuridis normatif yang bersifat deskriptif, yang merupakan deskripsi sistematis dan komprehensif dari objek yang diteliti. Bahan hukum yang digunakan adalah data sekunder yang terdiri dari materi hukum primer, sekunder dan tersier. Penelitian ini adalah penelitian perpustakaan (penelitian perpustakaan). Untuk mendapatkan data yang disajikan dalam penelitian ini, penulis menggunakan materi hukum yang diperoleh dianalisis secara kualitatif secara normatif dan dijelaskan secara deduktif. Sehingga pada akhirnya mendapatkan hasil yang diharapkan, untuk kemudian menarik kesimpulan sebagai hasil akhir dari penelitian ini. Kesimpulan dari tesis ini adalah bahwa keputusan Mahkamah Konstitusi No. 46/puu-viii/2010 yang menyatakan bahwa pasal 43 paragraf (1) hukum nomor 1 tahun 1974 tentang pernikahan, yaitu: "Anak-anak yang lahir di luar pernikahan hanya memiliki sipil sipil Hubungan dengan ibu dan keluarga ibunya, bertentangan dengan konstitusi Republik Indonesia Nomor 1 tahun 1945 jika ditafsirkan sebagai menghilangkan hubungan sipil

dengan pria yang dapat dibuktikan berdasarkan sains dan teknologi atau bukti lain menurut hukum, itu terbukti bahwa mereka memiliki hubungan darah dengan ayah mereka. Ketika melakukan hubungan, itu harus dipertimbangkan dalam jangka panjang, yang pada akhirnya tidak membahayakan orang lain, baik secara yuridis maupun non-yuridis..

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## I. INTRODUCTION

Marriage is a sacred and noble thing for human life, especially for Muslims in Indonesian who want their marriage to be legal according to religious law and legal according to state law. The marriage is expected to form a prosperous family, because in the family it can create a generation that is physically and mentally healthy.

In an ideal marriage, the presence of a child is a dream for every parent, but sometimes the reality is not always the case, many facts show that parents are willing to throw away and even kill their own children to cover up the disgrace to their family. The birth of a child will embarrass the family because the child is the result of an extramarital relationship that is not justified by religious teachings and ethics prevailing in society in general. Children are a gift and deposit from God Almighty, children should get the best. Children have the right to special protection, opportunities and facilities that enable them to develop in a healthy and natural manner. Special protection for children has been carried out, for example through the Convention on the Rights of the Child (CRC). The CRC was adopted on November 20, 1989 which was later ratified through Presidential Decree No. 36/1990. In Presidential Decree No. 26 of 1990 states in its preamble, "The family, as the core of society and the natural environment for the growth and benefit of family members, especially children, must receive protection and assistance in order to function and be responsible in society."

The Convention on the Rights of the Child (CRC) states that "as indicated by the Declaration on the Rights of the Child, because children are not yet physically and mentally mature, they need legal protection which includes, before and after birth", and further states in Part I of Article 3 that "The State must provide for children the protection and affection as mentioned earlier, taking into account the rights and obligations of their parents, guardians or other individuals who are legally responsible for the child, who will then make administrative decisions and necessary law."

Regarding birth registration, Article 7 of the convention is important, among others, states: A child must be registered as soon as possible after birth and has the right to have a name from birth, the right to have citizenship and as far as possible, the right to know and be loved by his parents. States should implement these rights in accordance with their laws and obligations in the relevant international instruments, in particular if children are to become stateless. Children in the general sense get attention not only in the field of knowledge (the body of knowledge), but can be studied from a centralized point of view of life. Religion, law, and sociology make children's understanding more rational and actual in their social environment. Children are placed in advocacy and child protection law. Children become objects and subjects that become a process of legitimacy, generalizations in the systematics of the positive legal system that regulates children.

The essential factors that are of concern in the national legal system and need to be substantially structured are as follows: The status of the child or the existence of the child. Positive legal system that regulates children. However, even though there are many cases in Indonesia, when a child is born, the status of the father and mother is not yet legal or not legally in the marriage bond, both under religious law and state law. This can be called a child out of wedlock.

Even the Constitutional Court through its decision Number 46/PUU-VII/2010 stated that Article 43 paragraph (1) of Law Number 1 of 1975 concerning Marriage which states that a child born outside of marriage only has a civil relationship with his mother and his mother's family while it is against the law. the 1945 Constitution and has no binding legal force as long as it is interpreted to eliminate civil relations with men which can be proven based on science and technology and/or other evidence according to law which is proven to have blood relations as the father, so that the paragraph must be read, "A child born out of wedlock has a civil relationship with his mother and his mother's family as well as with a man as his father, which can be proven based on science and technology and/or other evidence according to law to have blood relations, including civil relations with his father's family based on the consent from his mother or have married a man as his father".

Based on the above background, the writer can formulate the problem as follows: What are the factors that cause there are still many children with status as children outside of marriage, what are the consequences that arise from the status of children outside marriage?, and how is protection for children in status. Is the Status of Out-of-Marriage Children Linked to Positive Laws in Indonesia?.

## II. RESEARCH METHOD

### **Research Approach**

The approach method used is a normative legal research approach. Normative or doctrinal legal research methods are usually qualitative (not in the form of numbers). This research is based on secondary data which, among others, consist of:

- a. Data of a public nature (eg decisions on official data of government agencies, archives, publications of the Supreme Court, such as jurisprudence, circulars/SEMA, etc.);
- b. Data based on binding strength (eg primary legal materials: basic norms-Preamble of the Constitution, articles of the Constitution, statutory regulations, customary law, treaties, etc., secondary legal materials: draft laws, scientific works of law scholars, results of research results, tertiary legal materials: dictionaries, encyclopedias, etc.)

### **Research Specification**

This research is devoted to using the type of normative juridical research. Normative juridical is legal research on positive legal norms, principles, principles, and legal doctrines. Normative juridical research refers to the legal norms contained in the legislation and court decisions and there are also norms that exist in society.

- a. Types and Sources of Data In this study, the authors use secondary data sources obtained by library research in order to obtain a theoretical basis in the form of opinions or writings of experts or other parties in the form of formal provisions and data through official texts.
- b. Data Collection Techniques Data collection techniques are carried out by means of library research, namely research carried out by examining library materials including books, documents, articles, and other literature or what is called secondary data. This secondary data is then divided into 3 (three) legal materials, namely
  - a) Primary Legal Material which is the main legal material used as a reference consisting of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection; Law Number 24 of 2013 concerning Amendments to Number 23 of 2006 concerning Population Administration; Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage;

- b) Secondary Legal Materials that provide an explanation of primary legal materials are in the form of literature, consisting of: Dissertation, Thesis, Magazine or scientific article that discusses the birth certificate of a child out of wedlock; Official websites or websites from the government, especially [www.kemendagri.go.id](http://www.kemendagri.go.id) the official website of local and national NGOs, etc.
- c) Tertiary legal materials are legal materials that provide instructions or explanations for primary and secondary legal materials. In this case it consists of: Legal Dictionary; Indonesian Dictionary
- c. Data Analysis Techniques The data analysis carried out in this study is qualitative descriptive, namely the data obtained from the research are presented descriptively and analyzed qualitatively with the following steps:
  - a) Research Data Classified According To The Problems In The Research.
  - b) The results of the data classification are then systematized.
  - c) The Data That Has Been Systematized Then Analyzed To Be Used As A Basis In Drawing Conclusions

### III. RESULT AND DISCUSSION

#### **Factors That Cause There Are Still Many Children whose Status is Children Out of Wedlock**

##### a. Marriages That Are Not Registered In State Law

The existence of unregistered marriages is an obstacle and carries a risk for the recognition of children's rights in family law, which has an impact on civil relations, (formal) lineage, inheritance rights, maintenance and living costs. Even the love and responsibility of parents to grow and develop children simultaneously have an impact on the fulfillment of children's rights as human rights and as subjects of citizens, such as the right to identity (birth certificate, kinship relations, citizenship).

Children who have the right to know the origin of their parents, are raised and cared for by their own parents based on Article 7 Paragraph (1) of Law Number 16 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Children born from unregistered marriages are thus not registered in the recording system, and therefore do not have formal documents issued by the Government. This is a juridical obstacle in fulfilling the right to identity, namely the right to a birth certificate. Instead of children from unregistered marriages, the fulfillment of identity rights, namely birth certificates for children from legal marriages, is still inadequate or tends to fail to be implemented. In Indonesia there are 2 agencies that are tasked with registering marriages and divorces (and reconciliation). The agencies or institutions in question are:

- a) District Office of Religious Affairs for Marriage, Divorce, and Rujukan for Muslims.
- b) Civil Registry Office (Burgerlijk Stand) for marriages for non-Muslims.

Thus, even though marriage registration is only regulated by one paragraph in the Marriage Law, in fact the problem of recording is very dominant. This will be seen clearly regarding the marriage ordinance itself, all of which are related to recording. It is no exaggeration if there are some legal experts who place it as an administrative requirement that also determines whether a marriage is legal according to national law.

##### b. Siri Marriage (Underhand Marriage)

Marriage or underhanded marriage or unregistered marriage is only legal according to religious law, but legally marriage is considered to never exist and as a result the wife, children, and the family of the other wife cannot legally claim their rights to the husband. The Indonesian legal system does not recognize the term "marriage under the hand" or "marriage siri" yet to be regulated in a statutory regulation. But sociologically, the term "marriage under the hand" or "marriage siri" is given to marriages that do not meet the provisions of the Marriage Law.

Underhand marriage is legal if it is carried out in accordance with Islamic law, as long as there is no "sirri" motive (the marriage is kept secret from the crowd). This kind of marriage is contrary to Islamic teachings and can invite slander, and can bring harm or serious risks to the perpetrator,

especially the woman and her family. The term underhanded marriage emerged in Indonesian society after the birth of the Marriage Law. The intended marriage under the hand is; "Marriages that are carried out are only based on the law of each religion and belief but are not registered according to the applicable laws and regulations".

This is based on Article 2 paragraph (1) of the Marriage Law, a marriage is legal if it is carried out according to the laws of each religion and belief. This means that if a marriage has fulfilled the requirements and the pillars of marriage or the consent has been carried out (for Muslims) or the priest/pastor has performed a blessing or other ritual (for non-Muslims), then the marriage is declared valid according to religion and belief. Concerned.

c. Children Born Without Marriage

In the Marriage Law, a child born out of wedlock only has a civil relationship with his mother and his mother's family, but may not mention about not being able to investigate who the child's father is? And the Marriage Law does not justify the acknowledgment of children out of wedlock, but article 287 of the Civil Code states that there is a prohibition on investigating who the child's father is, but an investigation just to determine who the child's mother is is allowed.

According to Article 20 of the Civil Code, which reads "Every child who is born or raised during marriage, has a husband as his father." before marriage they have made a legal recognition of the child, or if the confession occurred in the marriage itself (Article 272 of the Civil Code). Children out of wedlock are recognized if the acknowledgment is made by the father or mother, so that the parent who admits it first becomes the guardian. As regulated in the Marriage Law paragraphs (1) and (2). Meanwhile, according to the Civil Code during the marriage of the father and mother, every child until they are adults remains under their control, as long as they are not released or dismissed from that power. As regulated in article 299 of the Civil Code.

In every trust, except as stipulated in articles 351 and 361 of the Civil Code, there is only one guardian. As regulated in article 331 of the Civil Code. The issue of inheritance for children out of wedlock is also regulated in Law no. 1 of 1974 and the Civil Code. Because after all, children out of wedlock also get their rights for the sake of their survival later. If the testator dies leaving legal offspring and/or husband and wife, the illegitimate children who are recognized to get 1/3 of the share of those who should have received them, if they are legitimate children. This includes group I heirs. Factors causing the occurrence of children out of wedlock in the Compilation of Islamic Law, among others, are due to:

a) Adultery Relationship

When viewed in the General Indonesian Dictionary, adultery is the act of having sexual intercourse with a woman who is not his own wife (either unmarried or married woman).

b) Artificial Insemination

Artificial insemination is a translation of artificial insemination. What is meant by artificial insemination is an artificial pregnancy carried out on a woman without going through natural means, but by means of artificial insemination insert the male sperm into the woman's uterus with the help of a doctor.

c) Li'an

According to the Compilation of Islamic Law (KHI), a husband accuses his wife of having committed adultery with another man so that he does not admit that the child born is his biological child. Li'an is a husband's oath that he will be willing to accept God's curse if the accusation of adultery leveled against his wife is not true. If the accusation is true and the wife gives birth to a child, then the child is called a li'an child.

**Consequences arising from the status of the child out of wedlock in the birth certificate**

The position of the child is regulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The problem with this child's position is mainly in relation to his father, while on the mother's side in general it can be said that it is not too difficult to find out who the mother of the child is born to. To find out the father of the child is still having difficulty. For

a child, he always has a legal relationship with his mother and with the father of the child, this is not the case.

The origin of a child can only be proven by an authentic birth certificate by an authorized official, if there is no authentic certificate then the origin of the child is determined by the Court based on evidence that meets the requirements for later making a birth certificate at the birth registration agency. For children who are born from mixed marriages, can obtain citizenship and can also lose citizenship, their citizenship will determine the applicable law, whether concerning public law or private law.

a. Children out of wedlock and legitimate children

Children out of wedlock according to the provisions of Article 99 of Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (KHI) states that legitimate children are: children born from legal marriages; the result of the actions of husband and wife outside the womb and born by the wife.

This is different from the provisions of the Civil Code (KUH Perdata), which regulates the legalization of children out of wedlock. In the provisions of Article 272 of the Civil Code states: Children out of wedlock, except those born from adultery or blood stains, are legalized by a marriage that follows from their father and mother, if prior to marriage they have made legal recognition of the child, or if the acknowledgment occurs in the marriage certificate itself. If you look back on the Civil Code, it can be seen in the provisions of Article 250 of the Civil Code, which states that: The validity of a child born before the one hundred and eighty day of marriage can be denied by the husband. However, the denial may not be done in the following cases: if before the marriage the husband had known of the pregnancy, if at the preparation of the birth certificate he is present, and this certificate is signed by him, or contains a statement from him which states that he cannot sign it, if the child is stillborn.

An illegitimate child is a child born to a woman who does not have a legal marriage bond with a man who has planted a child in her womb, the child does not have a perfect position in the eyes of the law like a legitimate child in general. In other words, an illegitimate child is a child who was not born in a legal marriage. While the notion of extramarital affairs is the relationship of a man with a woman who can give birth to offspring while their relationship is not in a legal marriage bond according to positive laws and regulations in the religion he believes in. Meanwhile, for legitimate children, it can be seen in the provisions of Article 250 as stated above, namely, every child born or raised during marriage has the husband as the father. Based on the provisions of Article 250 of the Civil Code, the legality of children who are considered to be born from a legal marriage between father and mother.

b. Legal Position of Children

The definition of a child in a legal position includes understanding. The position of the child from the view of the legal system or called the position in a special sense as a legal subject. The position of children in this sense includes grouping into subsystems from the following meanings.

a) Definition of children in the 1945 Constitution

The definition of children in the 1945 Constitution is contained in article 34 which reads: "The poor and neglected children are cared for by the state" this implies that children are legal subjects of national law that must be protected, nurtured and fostered to achieve child welfare. In other words, the child is the responsibility of the government and the community.

b) Definition of children in Civil Law

The definition of a child according to civil law is built from several civil aspects that exist in the child as a legal subject who is unable. These aspects are: Minor status (age limit) as legal subjects. Children's rights in civil law. Article 330 of the Civil Code provides the understanding that a child is a person who is not yet an adult and someone who has not reached the age limit of legal legitimacy as a legal subject or as a subject of national law as determined by civil legislation.

- c) The definition of a child in criminal law includes Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Law Number 12 of 1995 concerning Corrections.
- d) Definition of children in Law No. 39 on Human Rights (State-Administration Law).

The position of the child is regulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The problem with this child's position is mainly in relation to his father, while on the mother's side in general it can be said that it is not too difficult to find out who the mother of the child is born to. To find out the father of the child is still having difficulty. For a child, he always has a legal relationship with his mother and with the father of the child, this is not the case.

c. Juridical legal consequences

As a result of acknowledging a child out of wedlock, namely the emergence of a civil relationship between the child and the father or mother who admits it. With the emergence of the civil relationship, the status of illegitimate children is changed to illegitimate children who have been recognized, their position is much better than those of illegitimate children who are not recognized.

For children who are included in the category of children out of wedlock, Article 43 of the Marriage Law states that children born outside of marriage only have a civil relationship with their mother and their mother's family. This article is reaffirmed in Article 44; (1) A husband can deny the validity of the child born to his wife if he can prove that his wife has committed adultery and the child is the result of that adultery; (3) The court shall give a decision regarding the legality of the child at the request of the party concerned.

d. Non-juridical legal consequences

Children out of wedlock tend not to get good social acceptance by the community and their school friends who get scorn or judgment when they are friends with children born out of wedlock are usually wild, lack love, seek more attention from their parents and can be outsiders. marriage reduces the attitude or behavior of one of the parents. Not only in the community, but in a small scope where children should feel that the family is a place to take refuge but are marginalized because the family's view of children out of wedlock is the result of the disgrace committed by their parents

**Protection of Children in Positions The status of children outside marriage is related to positive law in Indonesia**

As mandated by the Convention on the Rights of the Child (CRC) in article 2 paragraph (1). Legal protection for children here can be interpreted as any protection provided by law against the freedom and human rights of children, as well as various interests related to the welfare of children.

The purpose of the child protection system is to provide safety and welfare for children through the cooperation of all relevant elements, both the government and experts in various fields. The elements of the child protection system consist of 3 interrelated elements, namely structure, function, and capacity. The structure includes government rules or policies and implementing agencies that are mandated to run the system. The function relates to how the system works in achieving the goals that have been set, including the mechanisms, duties, and responsibilities of the institution. Meanwhile, capacity refers to the capability needed by the system to be able to carry out its functions properly, including human resources, infrastructure, and funds (costs) There are essential elements that put children's rights in the process of fostering/defense and protection determined by law. These elements are as follows:

- a. Formal and material legal regulations that are coercive.
- b. The process of protecting children's rights or rights.
- c. The existence of criminal acts and acts against the law
- d. There are children's interests that must be protected

With the difference in the status of legal children and children out of wedlock, there are several differences in issues regarding.

- a. The thing of wearing a surname.
- b. Granting a marriage permit.

- c. Right to inherit.
- d. Parental power

Judging from the protection of children, these differences create problems for children, both from the juridical aspect or non-juridical, therefore a child out of wedlock who is not recognized by his father or gets a treatment is not the same in society when compared to the rights of a child. As the author has explained above, in general, child protection can be divided into 2 meanings, namely:

a. Legal protection

Article 1 number 2 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states that "Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity, and receive protection from violence and discrimination". Article 1 number 12 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states that "Children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, society, government and state".

This law is based on four main principles of the Convention on the Rights of the Child, namely Non-Discrimination, the best for children, the right to live and develop and participate. This law also covers all aspects of children's rights and some of them are the right to identity, the right to health, the right to education and the right to protection.

The legal efforts to protect children in the criminal act of neglect are listed in Article 59 paragraph (2) jo. Article 71 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely monitoring, prevention, care, counseling, social rehabilitation and social assistance efforts. In the event of a criminal act of killing a child out of wedlock, criminal sanctions will be imposed on the provisions of Article 341 and Article 342 of the Criminal Code as referred to at the time the child is born, as well as Articles 346, 347. And 348 of the Criminal Code. Criminal Law Act as referred to when the child is still in the womb or abortion.

Protection of children in the status of birth certificates for children outside of marriage based on the field of civil law, the civil rights of children outside of marriage are specifically regulated in the Civil Code which applies to non-Muslims and in the Compilation of Islamic Law which applies to Muslims.

Children's civil rights are rights inherent in every child recognized by law in legal relations with parents and their parents' families, the right to be represented in all legal actions inside and outside the court and the right to take care of the child's property, as well as get an inheritance. As stipulated in Article 280 of the Criminal Code that through a confession made to a child out of wedlock, a civil relationship arises between the child and his father or mother. Furthermore, his position will be further increased if ratification is carried out, as stipulated in Article 277 of the KUHPer that the ratification of a child, either because of the marriage of the father or mother, or with ratification according to Article 274 of the KUHPer, results in the status of the child being out of wedlock being the same as the legal child having a relationship. civil relations with the mother and father and civil relations with the family of the mother and father. The provisions of the Civil Code in the decision of the Constitutional Court Number 46/PUU-VIII/2010 stipulates that a child born out of wedlock has a civil relationship with his mother and his mother's family as well as with a man as his father which can be proven based on science and technology and/or other evidence. according to the law have blood relations, including civil relations with his father's family.

In Article 280 of the Civil Code, against recognized illegitimate children, a civil relationship arises between the illegitimate child and his/her father or mother, including the inheritance relationship, but is only limited in nature, meaning only the relationship between the child and the mother or father who admits it, while with other members of the community. other families have no legal relationship.

b. Non-juridical protection

The social field is a field of horizontal relations between individuals to establish interaction. Where many people give negative stigma to children outside of wedlock while the child alone cannot choose who will be born in the womb, when, and in what status. In the health sector, children need to get the widest opportunity to grow and develop optimally, physically, mentally, socially, and with noble character. Thus, efforts are made to protect children's welfare by providing guarantees for the fulfillment of their rights and treatment without discrimination. which even though the child is born as an illegitimate child, the stigma of society tends to give a bad stigma to the child which results in the disruption of the child's growth and development and psychology. In the field of education, the right to receive care and education from parents is a child's right that is very important for every child for normal survival and self-development. Children by nature, physically, psychologically, socially, and economically, are very dependent and need attention from other parties, especially to their parents to accompany and maintain themselves as well as possible until adulthood.

Thus, regardless of the procedural or administrative issues of marriage, the child born must receive legal protection. If this is not the case, then the child who is born out of wedlock will be harmed, even though the child is innocent because his birth was against his will. Children who are born without a clear father status are often treated unfairly and stigmatized in the midst of society. The law must provide legal certainty and fair protection of the status of a child born even though its validity in the marriage is still disputed. So, Article 43 paragraph 1 of Law Number 16 Year 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage which states that children born out of wedlock only have a civil relationship with the mother and her mother's family must read "child born out of wedlock". outside of marriage only has a civil relationship with his mother and his mother's family as well as with a man as his father which can be proven based on science and technology and/or other evidence according to the law having blood relations, including civil relations with his father's family

#### IV. CONCLUSION

Unregistered marriages will harm the interests and threaten the fulfillment, protection and enforcement of children's rights. As a legal event, marriage is certainly directly correlated with the children who are born, both regarding family law and children's rights which are guaranteed as human rights (child's rights are human rights). The existence of unregistered marriages is an obstacle and carries a risk for the recognition of children's rights in family law, which has an impact on civil relations, lineage (formal), inheritance rights,

maintenance and living costs. The existence of children out of wedlock has its own legal consequences as well as civil law in positioning the position of children born outside of legal marriage. A child out of wedlock does not directly have a legal family relationship with his father or mother (his parents). Children out of wedlock do have biological "similarities/similarities" with their parents, but juridically they do not have any rights and obligations to a child outside of marriage according to the Civil Code, they do not have any position/bond both legally and biologically, in other words, children outside of marriage. Married life alone on this earth, it's really sad to see this reality, children who are God's creations do not have any position on this earth just because of the rules made by each other. Therefore, it is very necessary to guarantee protection for children who are with the status of children outside of marriage, good guarantee In the health sector, children need to get the widest opportunity to grow and develop optimally, physically, mentally, socially, and with noble character. In this way, efforts are made to protect realize the welfare of children by providing guarantees for the fulfillment of their rights and the existence of treatment without discrimination.

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