

The Urgency of a Maintenance Statement Deed Made Before a Notary for Children Born Out of Wedlock as a Form of Ta'zir Against the Biological Father Based on Notarial Practice in Indonesia

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Abstract: The position of illegitimate children has quite big consequences, especially for illegitimate children who are not recognized. Recognition in the form of a petition through the District Court is very necessary because it is a type of legal protection. These efforts affect the process of determining heirs and obtaining support, especially from the biological father. In order to obtain legal certainty, a deed of income statement must be made before a notary as evidence in the future. This research uses a normative juridical method, namely using literature study data collection techniques through analysis of the main issues and sources of relevant legal products.

Keywords: : Children, Maintenance, Notary, Recognition

1. Introduction

Humans are part of the legal subject as bearers of rights and obligations. These rights and obligations can be found in the field of family law, namely the context of marriage. Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on belief in the Almighty God. This definition is confirmed in Article 1 of Law No. 1 of 1974 concerning Marriage. From the marriage bond, rights and obligations will arise between husband and wife as well as legal relations between parents and children, as well as the existence of marital assets within the scope of the family.

Rights and obligations in the family include providing support/alimentation which can be done between husband and wife, as well as as parents towards their children. Juridically, there are several status positions for children, including legitimate children, illegitimate children, adopted or adopted children, foster children and abandoned children. Parents' obligations to provide support are generally towards legitimate children and illegitimate children because they are blood related, but both have different positions from a legal perspective. A legitimate child is a child born from a valid marriage according to law and religion based on the confirmation of Article 42 in conjunction with Article 2 Paragraph (1) of the Marriage Law, while an illegitimate child is a child born not based on a valid marriage, such as a discordant child, children of adultery, and children resulting from underhanded marriages.

According to the law, the status of illegitimate children is at a lower level than legitimate children. Based on Article 299 of the Civil Code, in principle, legitimate children are under the control of their parents, while illegitimate children are under guardianship, which in this case has been explained by Article 306 of the Civil Code. The next difference is found in the division of inheritance, where illegitimate children can inherit from their parents only through a will and acknowledgment. The legal facts explain that an illegitimate child only has a civil relationship with his mother and his mother's family as this is confirmation of Article 43 Paragraph (1) of the Marriage Law, but based on Constitutional Court decision no. 46/PUU-VIII/2010, relating to biological fathers, it can be proven using science and technology, so that if proven, the child has a legal relationship with his father and his father's family.

In principle, recognition from biological parents is very important for illegitimate children because it is a legal protection. Constitutional Court Decision No. 46/PUU-VIII/2010 is here to ensure that biological fathers take full responsibility and carry out their obligations. One of these obligations is to provide maintenance/alimentation until the age and/or are said to be adults according to the law. In fact, there are various legal incidents regarding illegitimate children who are not recognized and are not provided with support by their biological father, requiring recognition and validation of the petition before the court.

There is a concrete case from the Court Decision page Number 546/Pdt.G/2024/PA.Krw, namely that there was a father (Defendant) who did not recognize and did not want to be responsible for an illegitimate child resulting from an unregistered marriage with his ex-wife. The main reason for not wanting to acknowledge and provide for him was because he thought that the illegitimate child was not related to the defendant but was another man. During the lawsuit process, the judge determined that the illegitimate child was his biological child because the birth certificate had been registered and included the names of both parents, namely the plaintiff and the defendant.

Prior to this decision, the judge gave the defendant the opportunity to carry out a deoxyribonucleic acid (DNA) test in order to fulfill the confirmation of Constitutional Court decision no. 46/PUU-VIII/2010, but this order was not carried out by the defendant. This makes the decision inkrah, so that the defendant must provide support to his biological child in the amount of 2,000,000.00 (two million rupiah) every month until they reach adulthood. This judge's decision is a form of punishment or ta'zir for the defendant to carry out obligations according to the orders of Article 45 of the Marriage Law.

This article will address two main issues, including: What are the legal protection measures for illegitimate children who are not recognized by their biological father in order to obtain equal rights? And what is the legal power of a statement of maintenance to achieve probationis causa for illegitimate children?

2. Method

This writing uses a type of normative juridical research, namely a scientific procedure to obtain logical truths in legal science, which is carried out through analysis of laws based on dogmatic legal theory, legal philosophy and other legal sources. This normative

juridical research looks at primary, secondary and tertiary legal materials carried out by means of literature study. Research conducted based on legal materials is then presented in the form of arguments in order to provide concrete facts that are in accordance with *das dollen* and *sein*.

3. Discussion

3.1. Legal Protection Efforts for Illegitimate Children Who Are Not Recognized by Biological Fathers to Obtain Equal Rights

Children are individuals who have not yet reached adulthood or are not yet considered socially and legally independent.¹In general, children have an important position within the scope of the family because they are the generation to continue the struggle of the nation they aspire to.²The meaning of generation in family law has two groups, namely due to marriage or marriage and blood ties based on straight lines up, down and to the side.³These family relationships can be obtained from marriage bonds that are valid according to the law and their respective beliefs. It can be said to be valid apart from carrying out a marriage according to the rules of law and beliefs, based on Article 2 Paragraph (2) of the Marriage Law, it must be registered in accordance with the provisions of the applicable laws because this legal act will obtain legal force and legitimate offspring.

Legitimate offspring according to Article 99 of the Compilation of Islamic Law are children born from a valid marriage and the result of the husband and wife's actions outside the womb and born by the wife. If the marriage is not registered, the children born will have legal consequences, such as not receiving legal protection and guaranteeing their rights and obligations will not be optimal.⁴These legal consequences usually occur in illegitimate children whose background is not born from a valid marriage according to the Marriage Law. The illegitimate children referred to are illegitimate children in the narrow sense, such as discordant children and children resulting from unregistered marriages, contracts, even *muth'ah*. Siri marriage is a marriage between a man and a woman but is not registered and is only carried out according to religious teachings. Children born as a result of this marriage are still declared legitimate but only religiously.⁵

¹ Geografi, "Understanding Children: Complete Definition and Explanation According to Experts", *Geografi.id*, <https://geografi.id/jualkan/pengertian-anak/#:~:text=Child%20is%20term%20which%20is%20used%20for%20mentions%20individuals,as%20attention%20people%20adults%20in%20various%20aspects%20of%20their%20lives>, accessed on 09 July 2024, at 21.35 WIB.

² Emilda Kuspraningrum, "The Position and Protection of Illegitimate Children in a Legal Perspective in Indonesia", *Legal Minutes*, No. 3, 2006, p. 27.

³ Bambang Daru Nugroho, *Indonesian Civil Law Integration of Continental European Law into Customary and National Legal Systems*, Bandung: PT. Refika Aditama, 2017, p. 37.

⁴ Nafiatul Munawaroh, "Understanding of Legitimate Children and Illegitimate Children", *Online Law*, <https://www.hukumonline.com/klinik/a/pengertian-anak-sah-dan-anak-besar-kawin-lt5e3beae140382/>, accessed on July 11 2024, at 08.28 WIB.

⁵ Hilman Hadikusuma, *Indonesian Marriage Law According to Legislation, Customary Law, Religious Law*, Bandung: Bandar Maju, 2007, p. 127.

The legal problems that occurred with illegitimate children initially resulted from not fulfilling the provisions of Article 2 Paragraph (2) in conjunction with Article 55 Paragraph (1) of the Marriage Law, namely regarding registration. Indonesian citizens who have legal rights must also comply with applicable regulations, one of which is keeping records at the Religious Affairs Office and the Civil Registry Office to fulfill administrative requirements. This registration is one part of the type of recognition of illegitimate children so that their legal protection as Indonesian citizens can be guaranteed. This recognition is made by biological parents, especially a father, based on the mother's consent,⁶ because based on Constitutional Court Decision No. 46/PUU-VIII/2010 Juncto Article 43 Paragraph (1) of the Marriage Law, illegitimate children only have a civil relationship with their mother and their mother's family and with a man as their father which can be proven based on science and technology and/or other evidence according to law has blood relations, including civil relations with his father's family.⁷

Article 284 of the Civil Code explains that recognition will change the status of an illegitimate child to an illegitimate child recognized according to law, as an effort to prevent foreigners from deliberately admitting it for profit.⁸ The recognized status of illegitimate children is only regulated in the Civil Code, because according to the teachings of Islamic law the position of adulterous children or illegitimate children cannot be changed.⁹ In order to determine the status of a child in Islamic law, it can be traced back to its origins by calculating the time between the parents' marriage and the time of the child's birth.¹⁰ If the status of an illegitimate child has been recognized, so that it has binding legal force, an endorsement is made.

Legalization is a legal means for illegitimate children to obtain their rights as granted by law to a legitimate child.¹¹ Legalization of illegitimate children is carried out by a District Court decision as explained in accordance with the provisions of Article 52 Paragraph (1) of Presidential Decree No. 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration. After the court has issued a decision to legalize an illegitimate child, it is then recorded with the Disdukcapil to obtain a birth certificate.¹² The legal basis for recording child validation at Disdukcapil is regulated in Article 52 paragraph (2) of Presidential Decree no. 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration. After registering the legalization of an illegitimate child, the resulting product will be given on the child's birth certificate. At the back there is a "marginal note" and it is written that the child has a

⁶ Willa Wahyuni, "Children outside of marriage, what is their legal status?", *Law Online*, [https://www.hukumonline.com/berita/a/anak-di-besar-kawin--how-status-legal-lt6242e4d2c37dc/?](https://www.hukumonline.com/berita/a/anak-di-besar-kawin--how-status-legal-lt6242e4d2c37dc/?page=2) page=2, accessed on July 16 2024 at 02.49 WIB.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Op.Cit.*, J. Satrio, p. 172 – 173.

¹² Emir Dhia Isad, "How to Legalize an Illegitimate Child in Court", *Family Legal*, <https://www.legalfamili.id/cara-pengesahan-anak-luar-kawin-di-pengadilan/>, accessed on 16 July 2024 at 10.03 WIB.

biological father based on the child validation decision from the court and obtains a child validation certificate.¹³

3.2. Legal Strength of Statement of Support to Achieve Probationis Causa for Illegitimate Children

A marriage entered into by a husband and wife automatically gives rise to rights and obligations. These rights and obligations do not only cover husband and wife, but also the position as parents. Parents are obliged to care for and educate their children as well as possible so that the children are able to stand on their own and remain valid even if the marriage of both parents breaks down, this is proof of the confirmation of Article 45 Paragraphs (1) and (2) of the Marriage Law . One of the obligations as a parent is to provide alimony or maintenance which is confirmed in Article 299 and Article 329a of the Civil Code. This provision of alimony is reciprocal so that Article 321 of the Civil Code explains that every child is required to provide support for both parents and blood relatives in a straight line upwards, if they are in a state of incapacity.

This living provision can also be determined through a judge's determination as a fine as described in Article 329b of the Civil Code, and in Islamic law this is called ta'zir . The term ta'zir is defined in the context of Islamic civil law so that it does not only apply to legitimate children but illegitimate children. The Indonesian Ulema Council (MUI) is of the opinion that giving ta'zir is an effort to protect illegitimate children in order to bind them to a civil relationship with their biological father. This is because based on the determination of the National Working Meeting of the Supreme Court of the Republic of Indonesia in 2012 that illegitimate children have the right to receive a living like the rights obtained by legitimate children in general. In this case, the religious court is allowed to process civil justice regarding granting a claim for support for an illegitimate child by imposing ta'zir on the biological father in accordance with the MUI fatwa.

After the judge's decision is granted, the ta'zir or fine in the form of providing support is stated in the form of a statement in order to obtain strong evidence. In Indonesian civil law, formally the evidentiary system is still subject to specified evidence, including written evidence, witnesses, allegations, confessions and oaths, as confirmed in the provisions of Article 1866 of the Civil Code. Looking at the hierarchy confirmed in Article 1866 of the Civil Code, it shows that written evidence is the evidence that has the highest power. This shows that Indonesia adheres to the continental European legal system or known as civil law system , namely legal truth and justice lies in written provisions.

Article 1867 of the Civil Code explains that written evidence is divided into two types, namely authentic and private deeds. An authentic deed is perfect evidence and has the fullest force as the contents of its provisions must be considered true as long as there is no other evidence that proves otherwise. This statement is reaffirmed by Article 1868 which states that an authentic deed is a deed which is formed by law and made by or in the presence of a public official in the place where the deed is made. A private deed is a deed made without being required to appear before a public official or notary, its validity

¹³ *Ibid.*

only includes the signatures of the parties who made it. As a form of confirmation from Article 1 of the Law on the Position of Notaries, it is stated that a notary is a public official who has the authority to make authentic deeds and has other authorities as intended by this law and other provisions.

In order to obtain strong evidence, it is recommended that an agreement be outlined in the form of a parties' deed made before a notary, because the authenticity of the deed can function as probationis causa . Probationis causa is a deed that is deliberately made for future judicial proof and recognition of a legal act , this also applies to parties who will make a deed of maintenance statement as protection for illegitimate children.

4. Conclusion

Every child has equal rights, one of which is obtaining the right to support from their parents. Parents have an obligation to provide alimony for their children even though the child's status is not a legitimate child but an illegitimate child. In order to have strong legal protection for illegitimate children, the thing that must be done is through recognition. This recognition is carried out by requesting an application to the District Court until after it has been ratified it then goes through the recording stage by the Dukcapil Office to fulfill administrative requirements. The process carried out after recognition can make the status of an illegitimate child recognized. This can also make it easier to obtain maintenance rights for illegitimate children when the parents are given ta'zir or fines based on a court decision. In order to obtain strong evidence, a maintenance deed must be made before a notary to have legal certainty and protection in the future.

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