

# Legal Consequences on Children of Unrecorded Marriage Results: A Study on Kota Pari Village, Serdang Bedagai, North Sumatera, Indonesia

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## Abstract

*The Constitutional Court declared that children born out of unregistered marriages would still have a civil tie with their biological father "as long as science, technology, or other legal proof can show a blood relationship as the father." In the case of Aisyah Mochtar, aka Machica Mochtar, and Muhammad Iqbal Ramadhan, this petition for judicial review was filed. Muhammad Iqbal Ramadhan is the son of Machica and Moerdiono, the former Minister of State Secretary and State Secretary, respectively. The Decision of the Constitutional Court Number 46/PUU-VIII/2010 states: "Children born of unrecorded marriages will continue to have civil relations with their mothers and their mothers' families, as well as with men as their fathers, whose paternity can be proven through the use of science, technology, and/or tools." According to the law, other evidence, such as his civil contacts with his father, demonstrates that he has blood ties. Essentially, this ruling of the Constitutional Court seeks to establish that children have the right to locate a father who will become their biological father and protect their constitutional rights, since it is well recognized that when a child is born, he already has these rights under the law. In the meantime, the state is responsible for determining the paternity of the child. It is the responsibility of the state to choose which party will fulfill the child's rights. Children have the right to have rights and obligations toward their father, such as DNA results and witnesses who have married, as well as photos of the results of the marriage, but they cannot acquire rights, especially as heirs.*

**Keywords:** Legal Consequences, Children, Unregistered Marriages

## Introduction

Marriage is one of the most significant events in human existence, having several legal consequences. The law thus governs this aspect of marriage in great detail. Law No. 1 of 1974 regulates proper marriage practices in Indonesia. This Marriage Law aims to encourage a feeling of affection and mutual love inside the family by regulating a perfect, pleasant, and immortal social existence. Law No. 1 of 1974 Governing Marriage (hence referred to as the Marriage Law) defines marriage as "a physical and spiritual relationship between a man and a woman as husband and wife with the purpose of building a joyful and everlasting family (home) on the basis of belief in One Almighty God." Therefore, after a marriage, a man and a woman have their separate rights and responsibilities, both as husband and wife, as well as the offspring born from the marital bond, which are also governed by this marriage law (Afandi, 2012).

Legitimate children are a family's dream, since they are widely anticipated as the following generation of their parents. Children are the world's greatest gifts, and they are both a blessing and a test from Allah. Many expectations are placed on children, particularly as future caregivers for their parents. Nonetheless, the presence of a child can become a legal issue if the child is born from a marriage that is not in accordance with the provisions of the laws and regulations that apply in the field of marriage law in Indonesia, namely Law No. 1 of 1974 Concerning Marriage (UUP), where Article 2 paragraph (1) states that marriage is legal if it is conducted in accordance with the laws of each religion and belief. In addition, a new marriage is deemed lawful if it is documented in accordance with existing rules and regulations, as stipulated in Article 2 paragraph (2) of the UUP.

The Constitutional Court declared that children born from unregistered marriages still have a civil connection with their biological father "as long as science, technology, or other legal proof can show a blood link as the father" (Darwanto, 2008). Decision of the Constitutional Court of the Republic of Indonesia Number 46/PUU-VIII/2010 on the judicial review petition submitted by HJ. Aisyah Mokhtar and her son Muhammad Iqbal Ramadhan bin Moerdiono against the provisions of Article 2 paragraph (2) and Article 43 paragraph (1) of Law Number 1 of 1974 concerning marriage, in which Moerdiono, as a married man, remarried to his second wife named HJ. Aisyah Mokhtar According to Islamic law, is not included in the marriage certificate registry; consequently, she does not have a marriage certificate quote book.

With the entry into force of Article 2 paragraph (2) and Article 43 paragraph (1) of Law Number 1 of 1974, the constitutional rights of Hj. Aisyah Mokhtar and Muhammad Iqbal Ramadhan as Indonesian citizens, who are guaranteed by Article 28 B paragraphs (1) and (2) and Article 28 D paragraph (1) of the 1945 Constitution, have been harmed because their marital status has become invalid, as well as the rights of children whose birth becomes illegitimate. The legal consequence was the loss of marital status between Moerdiono and Hj. Aisyah and the status of Muhammad Iqbal Ramadhan as Moerdiono's son. Article 2, paragraph 1, of Law Number 1 of 1974 states: "Marriage is valid if it is carried out according to the law of each religion and belief." Paragraph (2) states: "Every marriage is recorded according to the applicable laws and regulations." Article 43, paragraph 1, of the Marriage Law states: "A child born out of wedlock has a civil relationship with his mother and his mother's family."

The 1945 Constitution of the Republic of Indonesia states that Article 28 B paragraph (1) states that "everyone has the right to form a family and continue offspring through a legal marriage." Article 28 B paragraph (2) states that "every child has the right to survival, growth, and development and has the right to protection from violence and discrimination," and Article 28 D paragraph (1) states that "everyone has the right to recognition, guarantees, harassment, fair legal certainty, and equal treatment before the law." On this request, the Constitutional Court argued that, regarding the provisions of Article 2 paragraph (2) of Law Number 1 of 1974 regarding the registration of marriages, according to general explanation number 4 letter b of Law Number 1 of 1974, the Constitutional Court concluded that (1) marriage registration is not a factor that determines the validity of a marriage. (2) Recording is an administrative obligation required by law. These administrative obligations can be seen from two perspectives, namely: first, from the perspective of the state, the registration referred to is required in order to fulfill the function of the state to provide guarantees for the protection, promotion, enforcement, and fulfillment of the human rights concerned, which are the responsibility of the state and must be carried out in accordance with the principles of the rule of law as contained in Article 281 paragraph 4 and paragraph 5 of the 1945 Constitution (Syahuri, 2013). Husband and wife have a balanced position in household life and social life. Each party has the right to take legal action. The husband is the head of the family, and the wife is the housewife. Between the two husbands and wives, no one has a position above or below the other.

This concept relates to the goal of marriage, which is to create a happy and affluent family. Happiness entails peace, whereas wealth entails sufficient clothes, food, and shelter for the relatively limited number of family members. Article 28B, subsection (1), of the Constitution of 1945 states: "Everyone has the right to create a family and sustain procreation via lawful marriage."

The desired marriage is in accordance with both religion and state law. So long as they adhere to the norms that have been enforced, all forms of marriage, including mixed marriages, are lawful. God made male and female genitalia as parts of nature, not as human inventions. Humans have been able to transform male genitalia into female genitalia due to scientific and technological developments (remember the case of Vivian Rubianti?). Men who become women as a result of this genital surgery are not considered women under this statute. Every union must serve a function. This objective is shown by the roles of the husband and wife. Without a purpose, there can be no function between husband and wife. This objective is explicitly stated in the UUP: to establish a happy and everlasting family or household based on Belief in One Almighty God. In Article 1 of the UUP, the definition of marriage involves an intention. The specifics are that "marriage is an inner and outward relationship between a man and a woman as husband and wife with the intention of building a joyful and everlasting family/household based on faith in One Almighty God."

Physical and spiritual relationships are only formed between a man and a woman within a certain timeframe. A man is a male individual, whereas a woman is a female being. This gender is innate (a divine gift), not the result of marriage. As a consequence of an inner and exterior link, the roles of husband and wife are the responsibility of each party. Without a physical and spiritual connection, there can be no marriage. Conditions refer to anything that must be met in accordance with legislative requirements. Marriage requirements are all aspects of

marriage that must be satisfied in accordance with legislative restrictions prior to the wedding. The Marital Law specifies several marriage requirements (UUP). Material needs and formal requirements are the two sorts of marriage prerequisites. Material conditions, also known as subjective terms, are circumstances that exist and are related to the parties to a marriage. While the formal requirements are methods or processes for conducting a marriage in accordance with religious rules and ordinances, often known as "objective requirements."

In the context of this discussion, marital requirements are confined to material or subjective factors, while the formal or objective criteria are covered in a separate section under "Methods or Procedures for Getting Married." Article 6 paragraph 1 of the UUP stipulates that marriage must be founded on the consent of the prospective bride and groom. This indicates that the prospective bride and groom agree to marry without compulsion from any outside party. This is consistent with the human right to marriage and the aim of marriage, which is to create a happy and forever family (household). The agreement between the prospective bride and groom does not diminish the legal requirements for marriage, nor does it lessen the restrictions that apply according to their individual religious laws. For instance, because marriage is a human right and the approval of the prospective bride and groom is required, parental consent and marriage guardians are no longer required, which is not the meaning of this illness. In addition, marriage will always have legal ramifications for property possessed by both husband and wife, which will form part of their and their children's joint property. Property is an issue that often arises in current marriages and divorces. Property has a significant influence on the lives of all humans, even those who are married and have children. As a result, property-related marriage decisions have been governed by the marriage law and the issuance of a new rule by the Constitutional Court regarding property-related marriage decisions.

In fact, based on the findings of the observations, many of the marriage's aims were only partially met. This accomplishment is limited to the formation of a family or home since it is quantifiable. Meanwhile, the condition of being joyful and immortal has not been met in any way. This is shown by the many divorces.

This study's question is: Why aren't marriages in Kota Pari Serdang Bedagai Village written down? What are the legal consequences if a marriage in Kota Pari Serdang Bedagai Village doesn't get registered? From the results of an interview with Mr. Hambali as Secretary of Kota Pari Village, we learned that between 10 and 15 percent of the 1,594 households did not have any record of married inhabitants.

### Research Methods

This research was carried out using a qualitative descriptive method with a jurisprudential model. According to Soerjono Soekanto and Sri Mamudji (2006), using this method, the primary and secondary data obtained will be elaborated in order to obtain an overview of the situation and conditions in the research area. This research is a type of quantitative descriptive research, which is research conducted on independent variables without making comparisons or connecting with other variables. The goal of descriptive research is to create systematic, factual, and accurate descriptions, drawings of facts, and descriptions of the characteristics and relationships between the various phenomena under consideration. According to Johnny Ibrahim (2005), this study aims to test and provide empirical evidence about the analysis of mixed marriages and the consequences of carrying out these marriages. In line with the research design that uses a qualitative descriptive model, the data collection techniques in this study include the following:

1. Interview method; the interview technique was conducted in an open way with informants in the research coverage area related to existing regulations and SOPs as well as the Kota Pari Serdang Bedagai Village. This open interview technique can be the right tool to get real information. The draft interview questions that will be asked about the legal consequences for children from marriage are not recorded.
2. Direct observation; formal and informal direct observations were made with the goal of seeing what kinds of things are going on in the marine environment near Kota Pari Serdang Bedagai Village.
3. Data collection; taking data from CSOs and OPD who are informants and research sources in the related OPD includes the Kota Pari Serdang Bedagai Village.

According to the results of an interview with Mr. Hambali, Secretary of Kota Pari Village, the data we received regarding residents who were married was not recorded for around 10 to 15% of the total 1,594 households. The data will be analyzed using a qualitative descriptive method, and in order to draw conclusions from the data, criteria will be developed from an overview as an object of research. Raimon Hartadi (2010) says that qualitative descriptive analysis is a method that describes and explains the meaning of the data that has been collected by paying attention to and writing down as many details of the situation being studied at that time as possible, so that a general and complete picture of the real situation can be made.

## Discussion

By establishing an affinity connection, the marriage law will develop and control the rights of children and their parents. Article 2 paragraph 1 of Law No. 1 of 1974 regulates the prerequisites for a lawful marriage, stating that "marriage is valid if performed according to the rules of each faith and belief." According to Article 2, paragraph 1, a marriage is lawful if it is performed in accordance with the rules of each faith and belief. Law No. 1 of 1974, according to Roeslan Zainuddin (2011), sets the material and legal criteria for marriage.

The material requirements for marriage are basically regulated based on religious rules that exist in Indonesia. Islam, the majority religion adhered to by the majority of Indonesian people, of course, has a very big role in influencing the determination of the material requirements for marriage in Indonesian positive law, such as rules regarding the prohibition of marriage, waiting periods for women who divorce their husbands, provision of family maintenance, and so on. If a marriage does not meet the material requirements for marriage that have been regulated in Law No. 1 of 1974 in accordance with the rules of each religion and belief, the marriage can be prevented if a new marriage will take place, or the marriage can be canceled if it has already been implemented. Law No. 1 of 1974 also regulates the formal requirements for marriage as regulated in Article 2 Paragraph 2 of Law No. 1 of 1974, which states that "every marriage must be recorded according to the applicable laws and regulations." These formal requirements are conditions determined by the state to realize an orderly marriage in Indonesia. The formal requirements for marriage are regulated in PP No. 9 of 1975, Article 3 Paragraph (1), which states that "Every person who is going to get married shall notify his wish to the Registrar Officer at the place where the marriage will take place." So far, there are still problems in interpreting the material and formal requirements of marriage that apply in Indonesia, in the sense of whether the formal requirements are only related to the administration of marriage or affect material requirements. In the Compilation of Islamic Law, regarding the registration of marriages, it is regulated in Article 5 that "In order to ensure orderliness of marriage for the Islamic community, every marriage must be recorded."

According to these provisions, marriage registration is not a legal requirement for marriage but is something that ensures legal order. Registration of marriages should be emphasized in legislation, not only at the administrative level but also as part of the material requirements of marriage. Thus, a marriage is considered valid not only because it fulfills the pillars and conditions of marriage determined by their respective religions and beliefs, but also because it is said to be valid if it is registered with the competent authority. Marriage is one of the important events in human life; therefore, marriage must be registered as a form of legal recognition and protection for citizens. In Indonesia, the registration of marriages is carried out differently for each citizen who enters into marriage. This difference is based on the fact that every citizen has the right to adhere to the religious law that he believes in. According to Abdullah Mahdanto (2010), for those who are married according to the Islamic religion, the registration of their marriage is carried out at the Sub-district Office of Religious Affairs, while for those who are Christian (Catholic and Protestant), Buddhist, and Hindu, the registration is carried out at the Civil Registry Office. In a marriage that is not registered, the husband and wife do not have authentic evidence that they have entered into a legal marriage.

The impact, when viewed from a juridical aspect, is that the marriage is not recognized by the state, so it does not have legal force. Unregistered marriages have many negative impacts on the continuity of the household. Juridically, a husband, wife, and children born cannot take legal action related to their household. Children born will only be recognized by the state as children out of wedlock and will only have civil relations with the mother and the mother's family. Wives and children who have been abandoned by their husbands and biological fathers cannot file lawsuits for the fulfillment of economic rights or shared assets.

The situation of a kid born from an unrecorded marriage is that of an illegitimate child, since the unrecorded marriage is considered illegitimate. In a wide sense, "illegitimate kid" is sometimes used as a synonym for "child born out of wedlock." In the doctrine, adultery, illegitimate children, and children born outside of marriage are distinct from illegitimate children (also called children out of wedlock in the narrow sense). Children born out of wedlock who are not registered are included in the restrictive definition of "children born out of wedlock." This implies that children are born from relationships between men and women who are not legally bonded by marriage, and that getting married is not prohibited. Prior to Constitutional Court Decision No. 46/PUU-VIII/2010, children born out of wedlock whose legal status was not documented were the same as children born out of wedlock, i.e., they had merely a civil connection with their mother. The result is that children born to unregistered marriages do not have a legal link with their dads. This is shown, among other places, by the fact that only the mother's name appears on the child's birth certificate. Also, since there is no

legal tie between the father and the child, an illegitimate child born of an unregistered marriage can't inherit from the father.

Based on the decision of the Constitutional Court No. 46/PUU-VIII/2010, which challenges Article 43 paragraph (1) of Law No. 1 of 1974, the article must read: "Children born out of wedlock have civil relations with their mothers and with men as their fathers, which can be proven based on knowledge, technology, and/or other evidence according to the law. They also have civil relations with the father's family." Children born out of wedlock who are not registered may establish they are legal biological offspring from their parents' marriage and have the right to inherit their father's property under this ruling. In accordance with the above-mentioned Constitutional Court decision, the recognition of an illegitimate child as a legitimate child entails that he will have an inheritance relationship with his biological father, provided that the existence of a biological relationship between the child and the father can be scientifically demonstrated. This decision of the Constitutional Court reflects the principle of equality before the law as stated in Article 28 D, paragraph 1, of the Constitution of 1945, which states: "Every person has the right to recognition, guarantees, protection, and legal certainty that is fair and equal before the law."

According to Tri Andrisman (2011), this ruling has implications for the existence of a kindred bond between illegitimate children and their biological dads, as well as for the rights and responsibilities between illegitimate children and their biological fathers. This ruling of the Constitutional Court affects the management of children born outside of marriage who are not registered. Law Number 23 of 2006 regulates population management in Indonesia. With this ruling by the Constitutional Court, the unregistered father of an out-of-wedlock kid whose paternity can be proven by the child will be included in population administration, and his name will be included on the child's birth certificate. The presence of this civil registration might ensure legal certainty for the kid, allowing justice to be acknowledged in the pursuit of his rights as a child.

Actually, the recognition of unrecorded children born outside of marriage is governed by statutes and regulations. This is an effort to create a legal link between the kid and his father, thus the father's acknowledgment of the child must be voluntary and with the mother's consent. Unlike the situation with the Constitutional Court judgment, it does not need the father's consent or the mother's agreement; nonetheless, the kid must attempt to prove it against his father using science and technology. Every kid is entitled to complete protection, including the ability to acquire an identity. The Constitutional Court's ruling will result in a change to the way unrecorded children born outside of marriage are included on birth certificates. This is done to preserve the psychological development of the kid, regardless of how he was born. A birth certificate is essential for a kid, whether for school or other reasons.

Respecting the child's interests and rights motivates efforts to give birth certificates for unregistered children born outside of marriage. This consideration was made for reasons unrelated to the marriage's protocol or administration. Children who are born must get legal protection; otherwise, the kid who is damaged is the child who was born against his will, despite being innocent. A birth certificate is one of the most significant aspects of a kid's life. Birth certificates are a worldwide problem since they entail identification and citizenship, and they are also a manifestation of the Convention on the Rights of the Child and Law No. 23 of 2002 concerning child protection. State recognition of a person's civil status necessitates the availability of birth certificates everywhere. A newborn infant whose identification is not recorded may face a variety of issues in the future. According to Muhammad Joni and Zullechaina Z. Tanamas (1999), the state must ensure that all children's fundamental rights are met and offer protection for their survival, growth, and development. Article 102 of the Civil Code governs a child's validity. A youngster who wishes to establish his legitimacy cannot present or exhibit his parents' marriage certificate; thus, he must use his birth certificate and say that his parents are publicly married.

The legal ramifications of unregistered child marriages include the following: Children born of unrecorded marriages are deemed illegitimate by the state; therefore, they only have civil contacts with their mothers and their mothers' families but none with their dads. The application for a birth certificate filed with the Civil Registry Office reveals this. If the parents are unable to provide a marriage certificate, the kid's birth certificate is assumed to be that of an illegitimate child, and the name of the biological father is omitted in favor of the mother's. Information in the form of her status as an illegitimate child and the absence of her father's name will have a profound social and psychological influence on the kid. The ambiguous legal status of the kid weakened the bond between the father and son to the point that the father may one day deny that the boy is his biological offspring. The father might also easily avoid accountability by denying that the kid is his biological offspring and accusing the mother of infidelity. According to Article 44 of Law No. 1 of 1974, this is as follows: (1) A husband may challenge the legitimacy of a child born to his wife if he can demonstrate that his wife committed adultery and that the kid is the product of the adultery; (2) The court decides whether the child is lawful or not at the request of the interested party.

A further legal consequence of unregistered marriages is that the child born of the marriage is not entitled to demand maintenance, educational expenses, or an inheritance from his father. Children born from unregistered marriages only have family relations, maintenance rights, and obligations, as well as inheritance rights and relations with their mothers and their mothers' families.

### Conclusion

The violation of children's rights, specifically the difficulty in obtaining identity in the form of a birth certificate, despite the fact that a birth certificate is the first child's right that the state should provide. The Child Protection Act states clearly that every child has the right to an identity. in the sense that this law does not discriminate between children born to parents whose marriages are registered and those born to parents whose marriages are not registered. Unregistered marriages will have a major impact on children's rights, especially children's rights to obtain an identity at their birth as a form of recognition from parents and from the state. Due to difficulties in obtaining identification, many children do not have birth certificates. Based on the data currently collected, only 40% of Indonesian children at the age of 5 have a birth certificate; the rest do not have a birth certificate and do not have a certificate, and as a result, their rights as citizens are threatened. This is caused by several factors, including bureaucratic difficulties and discrimination.

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