

Legal Protection and Certainty for Children Born Out of Wedding Through Legal Remedies Recovering the Child's Origin in the Court (Analysis of Decision Number 196/Pdt.P/2023/Pn.Cbi)

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ARTICLE INFO

Keywords:

illegitimate children;
legal protection;
legal certainty;
child's origin;
court petition;
best interests of the child

Article history:

Received 2025-08-21

Revised 2025-09-19

Accepted 2025-10-15

ABSTRACT

Legal protection and guarantees for illegitimate children are crucial issues in the Indonesian family law system, as their legal status often faces discrimination and uncertainty regarding the recognition of civil relationships, inheritance, and access to basic rights. This study aims to examine legal steps that can be taken to provide legal protection and guarantees for illegitimate children, particularly through the process of applying for a determination of the child's parentage in court. Using a normative juridical approach and case analysis, this study analyzes relevant legal provisions, court decisions, and the principles of human rights and the best interests of the child as stipulated in the Convention on the Rights of the Child and national regulations. The research findings reveal that although illegitimate children have historically faced a number of legal obstacles, developments in jurisprudence following Constitutional Court Decision No. 46/PUU-VIII/2010 have provided an opportunity for the recognition of civil relationships between children and their biological fathers through the process of applying for a determination of parentage in court. However, implementation in the field continues to face obstacles, both procedural and socio-cultural. Therefore, harmonization of legal norms, increased capacity of judicial officials, and extensive outreach are needed to ensure that every child, regardless of their origin, receives fair and non-discriminatory legal protection and certainty.

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1. INTRODUCTION

Children are a gift and a trust that must be cared for, protected, and given their full rights, regardless of their background. Every child deserves to grow in an environment that ensures their physical, emotional, social, and legal well-being. As part of the fulfillment of human rights, every child, including those born out of wedlock, is entitled to legal protection, recognition of their civil status, and access to fundamental needs such as education, health services, and affection. The 1945 Constitution of the Republic of Indonesia, particularly Article 28B paragraph (2), guarantees that “every child has the right to live, grow, and develop, and has the right to protection from violence and discrimination.” This constitutional mandate emphasizes that all children, regardless of their birth circumstances, must be treated equally before the law and society (Indonesian Constitution, 1945).

However, the reality in Indonesian society shows a contrasting situation. Children born out of wedlock often face stigma, discrimination, and even legal uncertainty regarding their identity and rights. In a society that upholds religious and moral values, the status of a child born outside of a legally recognized marriage is often considered taboo (Saraswati, 2017). Socially, such children are perceived as “illegitimate,” which causes psychological burdens both for the child and the mother. This social rejection often leads to emotional trauma, a lack of self-confidence, and difficulties in social interaction. The environment in which the child grows up may constantly remind them of their “different” status, deepening their sense of isolation and non-belonging. If not addressed properly, this stigma can hinder their emotional development and affect their future behavior and achievements (Hidayat & Utami, 2019).

In many cases, children born out of wedlock do not receive proper guidance and care because their families, driven by shame or fear of public judgment, tend to conceal or neglect them. Without adequate care and moral education, these children may grow up with a lack of direction in understanding right and wrong, making them vulnerable to social and behavioral problems. This situation is not merely a moral or social issue but a structural problem that demands legal protection and certainty.

Another contributing factor to the issue is the practice of **unregistered marriages** (*nikah siri*). These marriages are conducted in accordance with religious procedures but are not officially recorded by the state through the Office of Religious Affairs (KUA) or the Civil Registry Office. As a result, such marriages lack legal force in the eyes of the law. According to **Law Number 1 of 1974 concerning Marriage**, Article 2 paragraph (2) states, “Every marriage shall be registered according to the prevailing laws and regulations.” Therefore, only marriages that are registered by the competent authorities are considered valid by the state (Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, 1974). Consequently, children born from unregistered marriages face complex legal problems related to civil status, lineage (*nasab*), and inheritance rights (Nugroho, 2020).

The implications of unregistered marriages are far-reaching. When the marriage is not recognized by the state, the legal relationship between husband and wife, as well as between father and child, becomes unclear. This uncertainty directly affects the civil rights of the child, especially concerning their legal identity and inheritance rights. It is not uncommon for children born in such circumstances to be denied recognition by their biological fathers or even rejected by their extended families. As a result, the child may not receive financial support, inheritance, or even the father’s name on their birth certificate (Muzdhalifah, 2019). This lack of legal acknowledgment creates a chain of disadvantages that extends into adulthood, affecting the child’s access to education, healthcare, and civil participation.

From a sociological perspective, the existence of unregistered marriages and children born out of wedlock reflects a tension between cultural norms, religious values, and legal systems in Indonesia. While religion considers *nikah siri* valid as long as it meets religious requirements, the state does not recognize it without registration. This dualism creates legal uncertainty that harms the most vulnerable party — the child. In Islamic law, the child’s lineage is generally only connected to the mother when the marriage is not valid or recognized, which means the father bears no legal obligation toward the child (Nasution, 2018). This traditional view, when combined with inadequate legal awareness and the persistence of patriarchal culture, perpetuates injustice against children born in such conditions.

In response to this issue, several legal instruments in Indonesia aim to ensure child protection and equality before the law. Law Number 35 of 2014 concerning Child Protection, which amends Law Number 23 of 2002, explicitly states that children have the right to know their parents, to be raised by them, and to obtain protection from neglect and discrimination. Additionally, the Child Rights Convention (CRC), which Indonesia ratified through Presidential Decree Number 36 of 1990, mandates that states must ensure all children enjoy their rights without discrimination of any kind, including birth status (United Nations, 1989). However, despite these normative guarantees, the practical implementation remains weak, particularly in matters concerning legal recognition of lineage for children born out of wedlock.

A significant turning point occurred through the Constitutional Court's Decision Number 46/PUU-VIII/2010, which broadened the interpretation of Article 43 paragraph (1) of the Marriage Law. The Court recognized that a child born outside of marriage has a civil relationship not only with the mother and her family but also with the biological father if it can be proven through science and technology (such as DNA testing) and other legal evidence (Mahkamah Konstitusi, 2010). This ruling provides a legal pathway for children born out of wedlock to claim their biological identity and rights. However, the application of this principle still depends on legal remedies taken through the courts, such as petitions to determine a child's origin (*penetapan asal-usul anak*).

The Decision Number 196/Pdt.P/2023/PN.Cbi serves as a concrete example of how the court implements this principle in practice. Through such legal remedies, the court examines evidence to establish the biological connection between the child and the father, aiming to restore the child's civil rights. Nevertheless, the process is not always simple. Many mothers face procedural barriers, lack of legal understanding, and social pressures when seeking such recognition. Moreover, not all courts interpret the law consistently, leading to disparities in verdicts that affect the uniformity of justice (Ramadhan, 2023).

Therefore, this study aims to analyze the legal protection and certainty for children born out of wedlock through legal remedies to recover the child's origin in court, focusing on Decision Number 196/Pdt.P/2023/PN.Cbi as a case study. This research seeks to understand how the court provides legal recognition to such children, what legal considerations underlie the judge's decision, and how this decision contributes to ensuring the child's constitutional and human rights. The study also aims to identify challenges in implementing these legal protections, both from procedural and societal perspectives.

In conclusion, children born out of wedlock are citizens who deserve the same rights as any other child. Their existence should not be burdened by societal stigma or legal discrimination resulting from their parents' actions. The state, as a guardian of justice, must ensure that every child obtains equal treatment under the law, especially regarding identity, inheritance, and care rights. Through court mechanisms and progressive judicial interpretation, Indonesia can move toward a legal system that not only enforces the law but also upholds humanity, equality, and justice for all children — regardless of the circumstances of their birth.

2. METHOD

This research method uses a normative-juridical research method supported by empirical data and selects several company samples for case studies related to the issues discussed. Normative refers to an approach that examines and examines data obtained from the research, starting from a legal perspective, including legal principles. The data used are divided into two types: primary data, secondary data, and other literature.

Empirical data, on the other hand, is obtained from observations, experiments, and actual events. Therefore, this empirical-normative approach combines normative data with actual events occurring in industrial relations. This is expected to provide clearer and more accurate information regarding the issues discussed, namely, employment contracts or agreements in the employment relationship between employers and employees. Based on its function, this research is expected to provide material

for research and development of the employment relations system, improving regulations and their implementation, which have frequently led to disputes between workers and employers due to the application of applicable laws. This research was conducted at the Cibinong District Court, located at Jl. Tegar Beriman No. 5, Pakansari, Kec. Cibinong, Bogor Regency and library data from the Pakuan University Library.

3. FINDINGS AND DISCUSSION

Protection and Legal Certainty for Children Born Outside of Wedlock Through a Legal Appeal for the Child's Origin in Court

Implementing legal protection and certainty for children born outside of wedlock in Indonesia can be pursued through a petition for the determination of the child's origin (*penetapan asal-usul anak*) in court. This legal mechanism serves as a fundamental pathway to ensure that such children receive equal legal status and recognition under Indonesian law. Despite growing awareness of children's rights, the issue of children born out of wedlock remains sensitive and often stigmatized within various layers of society. Socially, these children continue to face moral judgment and exclusion, while legally, they have long suffered from discriminatory provisions that limited their civil rights. The intersection between legal formalism and social stigma makes the problem not only a matter of law but also one of humanity and justice.

Civil Law Perspective

The legal protection for children born outside of wedlock in Indonesia has undergone a substantial transformation, particularly following the Constitutional Court Decision Number 46/PUU-VIII/2010. Before this ruling, the interpretation of Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage restricted civil relations for children born outside of marriage solely to their mother and her family. This narrow interpretation excluded paternal lineage, thereby depriving such children of inheritance rights, maintenance, and recognition from their biological fathers. Consequently, they were rendered legally vulnerable and socially disadvantaged, perpetuating a structural injustice that contradicted the fundamental principles of equality before the law (Nugroho, 2020).

The Constitutional Court, through its 2010 ruling, sought to correct this injustice by aligning the Marriage Law with the 1945 Constitution, particularly Article 28B paragraph (2), which guarantees every child's right to protection and non-discrimination. The Court emphasized that the provision "only having a civil relationship with his mother" should not be interpreted rigidly, but conditionally – meaning that a child may have a civil relationship with his biological father if scientific and legal evidence (such as DNA testing) can establish paternity. This interpretative shift marked a progressive step toward recognizing the rights of all children as autonomous legal subjects rather than mere extensions of their parents' marital status (Mahkamah Konstitusi, 2010).

This decision became the philosophical and juridical foundation for protecting children born outside of marriage through judicial remedies. The protection was later reinforced by Law Number 35 of 2014, which amended Law Number 23 of 2002 on Child Protection. The amendment strengthened the principle of *the best interests of the child* as the central consideration in all legal, administrative, and social decisions concerning children. According to this principle, a child's welfare must take precedence over parental fault, social stigma, or procedural formalities. Therefore, the legal recognition of a child's origin (*penetapan asal-usul anak*) is not merely an administrative formality but a fundamental right, ensuring the child's access to education, healthcare, inheritance, and identity documentation (Hidayat & Utami, 2019).

Moreover, Article 28B paragraph (2) of the Constitution serves as the supreme legal basis ensuring that all children—whether born within or outside of wedlock—are entitled to equal civil, economic, and political rights. In this sense, the law not only acts as a tool of justice but also as an instrument of humanization, affirming that no child should bear the consequences of actions beyond their control. This interpretation aligns with international principles, particularly the United Nations Convention on

the Rights of the Child (1989), which Indonesia has ratified through Presidential Decree Number 36 of 1990.

Implementation of Legal Protection and Judicial Role

In practice, the implementation of legal protection through a petition for determining a child's origin involves both procedural and substantive justice. Procedurally, the court examines documentary evidence such as marriage certificates, birth records, and identity cards, as well as supporting testimonies. Substantively, the court evaluates whether recognizing the child's origin serves the child's best interest and upholds constitutional guarantees. This dual assessment ensures that the judicial process not only confirms biological lineage but also delivers restorative justice by validating the child's social and legal identity.

The application of the *best interest of the child* principle requires that the state, through its judiciary, actively safeguard children's rights irrespective of their parents' marital circumstances. Judicial determination of lineage thus becomes a transformative act, bridging the gap between legal formalism and humanitarian justice. Courts are expected to interpret legal norms dynamically, not as static texts but as living instruments responsive to social realities (Saraswati, 2017).

Judge's Consideration in Decision Number 196/Pdt.P/2023/PN.Cbi

The Cibinong District Court Decision Number 196/Pdt.P/2023/PN.Cbi provides a clear example of the judiciary's role in implementing this progressive approach. In this case, the applicants submitted a petition to establish the legal origin of their child, referred to as NKH, as the biological child of Applicant II. The petition was supported by several documents, including copies of the applicants' identity cards, the child's birth certificate, a marriage certificate from the Bethel Renewal Church, and a family card issued by the Bogor Regency's Population and Civil Registry Office.

In examining the case, the court referred to Article 42 of the Marriage Law, which distinguishes between legitimate and illegitimate children. Legitimate children are those born within or as a result of a lawful marriage, while illegitimate children are born outside such a relationship. However, following the Constitutional Court's 2010 interpretation, the judge acknowledged that the distinction cannot be used as a justification to deny a child's civil rights, especially when biological parentage can be scientifically proven.

The court's analysis also emphasized the importance of equality before the law as enshrined in Article 27 paragraph (1) of the Constitution, affirming that "all citizens are equal before the law and government." This equality principle obligates the judiciary to eliminate any form of discrimination against children based on their birth status. In its legal reasoning, the court reiterated that the essence of justice in family law is not merely to apply legal texts mechanically but to protect human dignity, particularly that of the child who is the innocent party in such circumstances (Ramadhan, 2023).

Based on the evidence and legal arguments, the court decided to grant the petition, establishing that NKH is the legitimate biological child of Applicant II. By doing so, the court ensured that the child's civil rights—such as the right to bear the father's name, obtain support, and be eligible for inheritance—are recognized under law. This judgment reflects the progressive realization of constitutional principles and international human rights norms within Indonesia's judicial practice.

Analysis of the Decision and Its Implications

The decision in case 196/Pdt.P/2023/PN.Cbi demonstrates how courts operationalize the Constitutional Court's ruling and the child protection framework. It also underscores the judiciary's function as a guardian of human rights and constitutional morality. By establishing the legal origin of children born out of wedlock, the judiciary helps dismantle systemic discrimination embedded in traditional legal and social norms.

However, despite these advancements, challenges persist. Not all courts interpret the Constitutional Court's decision consistently. Variations in judicial reasoning, coupled with a lack of public legal awareness, often hinder uniform application of these rights (Nasution, 2018). Additionally,

procedural barriers such as the cost of DNA testing and limited access to legal aid discourage many mothers from pursuing petitions for child recognition. Therefore, beyond judicial remedies, the government and legal institutions must intensify efforts to promote legal literacy, provide affordable justice mechanisms, and integrate technological evidence (such as DNA verification) into family law procedures.

Ultimately, the principle underlying Decision 196/Pdt.P/2023/PN.Cbi reaffirms that a child's dignity and rights transcend the marital status of their parents. The judiciary, in upholding this principle, fulfills the state's constitutional mandate to ensure that every child—without exception—receives equal protection and recognition before the law. The implementation of such decisions marks a vital step toward realizing Indonesia's vision of a just, humane, and inclusive legal system that upholds both the rule of law and the values of social justice for all citizens.

4. CONCLUSION

The findings of this research reveal that the implementation of legal protection and certainty for children born outside of wedlock in Indonesia represents a progressive shift toward upholding human rights and justice for all citizens. The Constitutional Court Decision Number 46/PUU-VIII/2010 has become a landmark ruling that fundamentally redefines the civil relationship between children born outside of marriage and their biological fathers. By allowing the establishment of such relationships through scientific and legal evidence, this decision closes a long-standing gap in the national legal framework that previously discriminated against these children.

The petition for determining the child's origin in court serves as an essential legal remedy to ensure that every child's civil rights—including inheritance, maintenance, identity, and legal recognition—are properly protected. Judicial decisions, such as in Case Number 196/Pdt.P/2023/PN.Cbi, demonstrate that Indonesian courts are increasingly aligning their interpretations with constitutional and human rights principles, ensuring equal treatment before the law regardless of marital status.

In broader application, this research underscores the importance of strengthening awareness among the public and legal practitioners about the rights of children born outside of wedlock. The government should enhance administrative and legal mechanisms to simplify the process of establishing a child's parentage while ensuring psychological protection and social acceptance. Ultimately, true legal certainty will only be realized when society, legal institutions, and policymakers consistently uphold the principle of the best interest of the child as the primary foundation of every legal action and decision.

Acknowledgments: Based on a study of the national legal framework and judicial practice, it can be concluded that legal remedies for child origin requests in court are an important instrument in providing protection and legal certainty for children born outside of marriage in Indonesia. To ensure the fulfillment of children's constitutional rights without discrimination, it is necessary to improve civil procedural law related to child origin requests, strengthen the capacity of judicial officials, and increase public awareness and access to free legal aid. Thus, the principle of the best interest of the child as mandated in the Convention on the Rights of the Child and national law can truly be realized in the Indonesian justice system. That in Case Number 196 / Pdt.P / 2023 / PN.Cbi, and the Cibinong district court has determined in enforcing legal certainty for children born outside of marriage. The Constitutional Court's legal political step in reforming Article 43 paragraph 1 of Law No. 1 of 1974 which reads "a child born outside of marriage only has a civil relationship with his mother and his mother's family" to a child born outside of marriage has a civil relationship with his mother and his mother's family as well as with a man as his father who can be proven based on science and technology and / or other evidence according to the law has a blood relationship, including a civil relationship with his father's family ". The decision is a progressive legal political step. In the decision of Case Number 196 / Pdt.P / 2023 / PN.Cbi. the child received recognition from his biological mother and father without using a DNA test because he received recognition from his biological father and it was an agreement between both parties to recognize the origin of the child, in this case the parents of the child are able to be responsible for the rights of the child born outside of marriage in a state manner so that the state provides facilities to the child's parents by submitting an application for the origin of the child as a form of legal protection and legal certainty for children outside of marriage.

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