

LEGAL PROTECTION OF INHERITANCE OF EXTRAMARITAL CHILDREN IN THE CHINESE

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ABSTRACT

Abstract: The purpose of this research is to examine and analyze further the forms of inheritance protection for children born out of wedlock. The research method used is a normative juridical method, focusing on legal regulations, books, and related literature. The position of children born out of wedlock regarding inheritance issues certainly differs from legitimate children. Children born out of wedlock must fulfill certain conditions to obtain their inheritance rights, especially for children born out of wedlock within the Chinese community, which has customary regulations and legal conditions regarding the protection of their inheritance status. The research is conducted by studying the legal system related to legal regulations on the position, and inheritance status, and by examining secondary sources such as literature and expert opinions. The research analysis is conducted using a qualitative method. Thus, it will explain the inheritance status for children born out of wedlock within the Chinese community.

Keywords: Inheritance; Extramarital; Chinese

Introduction

Children are an investment in the future and hope for their parents in the future. Children are also considered as resources that can improve the standard of living and control the social status of parents. They inherit traits from their parents, both good and bad, as well as high or low. Marriage is an important event in human life that has legal consequences both for the relationship between married couples and with other parties who have interests.

If a child is born from the marriage, a legal relationship will be formed between the child and his parents. As a citizen, every child has the right to grow and develop according to his nature as God's creation. Children have the right to education, care, and direction to become adults. According to the Convention on the Rights of the Child, a child is any individual aged 18 years or less, including Law Number 23 of 2002 concerning Child Protection defines a child from the womb to better provide comprehensive protection to the child (Citradewi et al., 2022).

Indonesia has a rich cultural diversity. Although various rules exist, it is impossible to separate the cultural diversity that exists. The same is true when it comes to inheritance law. In Indonesia, no inheritance law applies nationally. In the arrangement of inheritance according to the Civil Code (Burgerlijk Wetboek), there is a division of heirs into four groups. This division aims to show who are the heirs who have priority based on that order. Thus, the heirs of the second class will not inherit if there are still surviving heirs of the first class. In Indonesia, there are customary inheritance law, Islamic inheritance law, and civil inheritance law. Each inheritance law has different rules. In the wealth of inheritance system in Indonesia, some elements must be fulfilled by the inheritance system in force in this country (Candra et al., 2022).

Based on the various inheritance law systems above, it can be seen that the provisions regarding inheritance law in Indonesia are pluralistic. In the field of civil law, legal pluralism also occurs in addition to the consequences of diverse populations as well as the result of the legal politics of the Dutch Colonial Government which enacted Article 131 Indische Staatsregeling IS before Article 75 Regarding Regulations RR, which in essence is as follows (Citradewi et al., 2022):

1. Civil and Commercial Law as well as Criminal Law along with Civil and Criminal Procedure Law must be placed in the Code.
2. For Europeans, it is followed by the example of legislation in force in the Netherlands, the principle of concordance.
3. For native Indonesians and Foreign Easterners Chinese, Arabs, etc., if it turns out that the needs of their people so desire, the rules for Europeans may be declared applicable to them, either completely or with changes, and also allowed to make a new regulation together, for others must be heeded the rules applicable among them, and deviations may be made if requested by public interest or necessity their society.

The enactment of inheritance law provisions in the Civil Code for citizens of Chinese descent cannot be separated from the constitutional history of the Republic of Indonesia before independence based on the provisions of article 131 IS jo. Staatsblad 1917 Number 129, then the Civil Code applies to:

1. Europeans and those equated with Europeans;
2. Chinese Foreign Easterners;
3. Other Foreign Easterners and Indonesians who submit themselves to European law.

The Chinese community is a population group to which according to Article 131 IS applies to the Civil Code, but in implementation, not all provisions stipulated in the Civil Code are included and sometimes even set aside, for example, provisions on inheritance as stipulated in Book II of the Civil Code. Among the Chinese community itself lives a tradition about inheritance. This inheritance law is dynamic following the development of society. Factors that cause this development are factors in the form of progress in education levels, environmental factors, and so on (Mariana & Djaja, 2023).

Heritage law in Indonesia from the past until now is still diverse in form, each population group is subject to the legal rules that apply to it by the provisions of Article 131 IS Indische Staatsregeling The population group consists of Europeans and those equated with them, the Chinese and Non-Chinese Foreign Easterners, and the Bumi Putera group. In the Chinese community, the Civil Code BW was enforced.

There are various problems, one of which is in the Bandung High Court Decision Number 264 / Pdt / 2018 / PT Bdg, in that case explaining that on June 3, 1969, Mr. Joe Kok Tjong recognized Tan Kong Lay as his illegitimate son, where Tan Kong Lay was born on March 30, 1961, who was the son of a woman named the late Tan Kwie Nio. In the facts of the trial, there is not a single document and evidence that explains that Joe Kok Tjong and Tan Kwie Nio had entered into marriage either by belief or by the provisions of Law No. 32 of 1954 concerning the Stipulation of the Enactment of Law of the Republic of Indonesia dated November 21, 1946 Number 22 of 1946 concerning Marriage Registration, Talaq and Reference in All Areas Outside Java and Madura, of course, at that time Law Number 1 of 1974 was not yet in effect, and although it is stated that Tan Kong Lay's birth certificate only explains that Tan Kwie Nio is his biological mother, it was not shown at the time of proof. The judge in the judgment made a judgment that Tan Kong Lay's children and wife were the legal heirs of the deceased, but there was no consideration and the ruling stated unequivocally whether Tan Kong Lay was the heir of Tan Kwie Nio (hereinafter TKN) or Joe Kok Tjong (hereinafter JKT).

Therefore, based on this, there is an adjustment in the dynamics of inheritance for the Chinese community regarding the inheritance of illegitimate children, which is still an interesting dynamic of legal issues to be discussed. So, take the title “**Legal Protection of Inheritance of Extramarital Children in the Chinese.**”

Research Method

The research method used in research is normative juridical. Whereas the normative juridical itself focuses more on library materials as sources such as books, laws, and regulations related to this research (Muhammad, 2004). This research approach is carried out by looking at laws and regulations, especially those related to marriage. This research refers to the Civil Code, Law Number 1 of 1974 concerning Marriage and Regulation of the Minister of Agrarian State/ Head of the National Land Agency Number 16 of 2021 concerning the Third Amendment to the Implementation Provisions of Government Regulation Number 24 of 1997 concerning Land Registration.

The analysis method used is the qualitative analysis method. Where this research refers to rules, principles, and legal theories to obtain further views that will eventually be analyzed for research. The form of this research is descriptive-analytical, which is research that emphasizes secondary data which includes legal norms and regulations relating to the position of inheritance of extramarital children in the Chinese group according to applicable legal provisions in Indonesia

Result And Discussion

A form of protection against inheritance status for extramarital children in the Chinese

Regulations regarding legal protection for extramarital children are contained in Law No. 1 of 1974 concerning Marriage and Article 43 of the Civil Code regulating legal protection for extramarital children in Indonesia. However, within the Chinese community, there are still differences in legal recognition and protection for extramarital children. Such extramarital children have the right to receive alimony or the right to provide as extramarital children, including children born of adultery and discordant children. This is explained in Article 867 B.W. However, there are restrictions on the juridical relationship between an adulterous child and a discordant child and his biological father because the law prohibits the parent and child from giving legal recognition ([Hartanto, 2015](#))

According to Chinese customary tradition, extramarital children are not officially recognized and have no direct rights to inheritance. However, extramarital children still have the right to receive inheritance from their biological parents through other legal channels. During the trial, the judge found the facts that in deed No. 1 dated June 3, 1969, concerning the adoption of children, TKL was recognized as an extramarital child born to a woman named TKN. However, evidence showing whether the biological parents of TKL are bound by a legal marriage or religious marriage does not exist, so the status of TKL as a legally recognized extramarital child becomes unclear by Article 272 of the Civil Code ([Suparman, 2022](#)). Extramarital children cannot become heirs without recognition as referred to in Article 280 of the Civil Code. The recognition made by JKT's parents plays an important role in determining the rights and obligations of inheritance owned by TKL. If the recognition of extramarital children is by the provisions of Article 280 of the Civil Code, basically TKL has the same rights as legal children ([Pradipta et al., 2021](#)).

The recognized extramarital child becomes an heir with the Right of Saissine, the Right of Heredetatis Petition, and the Right to demand the division of inheritance. However, upon further investigation, their similarities are limited to that because, in other respects, their share is not the same as that of legitimate children. Extramarital children are not under parental power, but rather under guardianship, so their rights and share in inheritance are not as great furthermore recognition only creates a legal relationship between the child and the admitting parent, not included in the family that recognizes it. This recognition does not apply to extramarital children who cannot be recognized because they do not meet the recognition requirements. An extramarital child is a child born outside of a legal marriage and does not follow applicable legal provisions, such as the Marriage Law ([Agatha et al., 2021](#)).

Article 272 of the Civil Code explains that any child born out of wedlock between a woman and a man can be recognized and legalized, except for children who are the

result of adultery or discordant children. A discordant child refers to a child born from a relationship between a man and a woman who has a prohibition on marriage between the two (for example, a relationship between close family members). According to Article 43 Paragraph 1 of Law Number 1 of 1974 concerning Marriage, a child born out of wedlock only has a civil law relationship with his mother. However, after the Constitutional Court Decision Number: 46 / PUU-VIII / 2010 on February 13, 2012, in a request for judicial review of Article 43 Paragraph 1 of Law No. 1 of 1974, the formulation of the article was changed. The status of an extramarital child not only has a civil relationship with his mother but also with his father as long as it can be proven based on scientific knowledge and technology and/or other evidence.

The position of extramarital children in law is factually lower than that of legitimate children, meaning that the share of inheritance received by extramarital children is less than that of legal children. In addition, legal children are under parental power by Article 299 of the Civil Code, while legally recognized extramarital children are under guardianship by Article 306 of the Civil Code. Without recognition, an extramarital child has no chance to inherit. Article 272 of the Civil Code allows the legalization of children originally born out of wedlock in several ways (Bowontari, 2019):

1. His parents married
2. Before they marry, they first have acknowledged their child, or the recognition is made in the marriage certificate.
3. The existence of attestation letters. Attestation with attestation letters can be done for two reasons, namely:
 - a. Where parents neglect to acknowledge their children before the marriage takes place or when the marriage takes place (Article 274 of the Civil Code)
 - b. If there is a problem of intergenetic relationships, for example, the mother belongs to the Bumi Putera group or who can be likened to her, then there are important reasons in the judgment of the Minister of Justice that are like hindering the marriage of the parents.

Many factors hinder the implementation of testaments for extramarital children, which are as follows (Fazlon et al., 2022):

1. The execution of the will cannot be carried out because the procedure for distributing the will is not by applicable law and harms other heirs.
2. The status of the extramarital child is not recognized, thus causing any share in the inheritance of the extramarital child (Ani & Chime, 2021).
3. There is unauthorized control of existing property, causing other heirs to be harmed. This happened to the Supreme Court Decision Number. 186 PK/Pdt/2005.

From this description, it can be said that the restriction does not apply to extramarital children who do not inherit together with group I. As for unrecognized extramarital children, the existence of the Testament is very helpful in terms of the inheritance of their father's property. If the extramarital child is never recognized, then the child is

free to accept the testament of his natural father, because he is not restricted by Article 863 of the Civil Code who has the status of a third person, is not related by blood, and accepts the will exposed to his ab-instant part (Susanto et al., 2021).

An extramarital child has inheritance rights if he is recognized as legitimate before his parents marry someone else. However, even if the child is recognized as a legitimate extramarital child it is different from the status of a legitimate child because it does not confer the same inheritance rights as children born by legal marriage. In addition, in the case of recognized extramarital children, such recognition shall not prejudice the rights of the wife or other children of the marriage (Masitoh, 2019). Thus, even if it is recognized as legitimate, it cannot harm. This means that the inheritance obtained does not exist or is zero. Article 285 of the Civil Code explains that: "A recognition given by one of the spouses during marriage for the benefit of a child out of wedlock, conceived before marriage with another person of the wife or husband, cannot bring harm, neither to the husband or wife nor to the children born of that marriage (Ro'fatul, 2019)."

In addition, the statement also mentions that even if a will is made, the recognized extramarital child will not be able to receive a share of the inheritance. This refers to Article 285 of the Civil Code which states that extramarital children recognized before marriage do not have inheritance rights. In this case, it can be concluded that extramarital children recognized before marriage do not get inheritance rights because they are hit by Article 285 of the Civil Code that the recognition of children cannot bring harm either to the husband or wife or to the children born from the marriage unless there is a residual property that can be distributed. This can be a consideration for parents who have extramarital children to pay attention to the interests of all family members in terms of the division of inheritance (Aini, 2020). Changes related to the inheritance rights of extramarital children are regulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The amendment is stated in Article 49 Paragraph 1 which states that a child born outside of legal marriage or the result of a marriage that is declared void or invalid has a civil relationship with his mother and biological father and his biological father's family, if legally recognized or proven according to applicable law. In the context of inheritance rights, this change extends the right of an extramarital child to inherit property from his biological father and his biological father's family, if it has been legally recognized or proven.

Based on the explanation outlined in this amendment, the recognition of extramarital children must be by the provisions of Article 281 of the Civil Code and cannot contradict Article 285 of the Civil Code which states that the recognition of children cannot bring harm to the husband or wife or children born from the marriage.

TKL is an extramarital child that is recognized as valid if JKT and TKN fulfill the form of confession and bring evidence explaining that JKT and TKN after giving birth TKL

states, they are married with the condition that one or both of them are not bound by marriage or do not have a marriage ban (Plaintiff must also bring a Marriage Certificate, Birth Certificate or Civil Registration Residence Statement) that supports the recognition of the child. If proof of recognition as a legal extramarital child is fulfilled by 281 of the Civil Code, TKL is protected by its inheritance by Articles 862 to 863 of the Civil Code, namely:

Article 862 of the Civil Code: "If the deceased leaves behind children out of wedlock who have been validly recognized according to law, his estate shall be divided in the manner prescribed in the following articles."

Article 863 of the Civil Code: "If the deceased leaves legal offspring according to law or husband or wife, then the children out of wedlock inherit 1/3 and the share they would have received, had they been lawful children; they inherit half and the estate, if the deceased leaves no descendants, husband or wife, but leaves blood relatives in an upward line, or brothers and sisters or their descendants, and three-quarters if only blood relatives remain alive to a greater degree."

If the statutory heirs are related to the deceased in unequal degrees, then the nearest one in the first line determines the amount of the share to be given to the child out of wedlock, even to those in the other line."

In the conditions as described, TKL is said to be an extramarital child who cannot be recognized if it turns out that his biological parents if or both of them have married someone else, then in that condition TKL and its heirs do not have inheritance rights from JKT and TKN. An extramarital child is recognized as legitimate whose inheritance is only recognized before his father or mother marries another party.

Conclusion

The form of protection of extramarital children depends on how the recognition of their biological parents, related to the status of children who are not recognized and cannot be recognized is something that must be ensured. Extramarital children cannot be equal regarding inheritance like legitimate children born in marriage, extramarital children can obtain their inheritance rights if recognized as valid according to the provisions of the Law and get 1/3 of the share received if they are considered legitimate children. If the right of inheritance for an adopted child depends on the adoption certificate of the child which results in the termination of civil relations with his biological parents and the emergence of a civil relationship with his adoptive parents, this will have an impact on his inheritance status if the deed of inheritance follows the provisions of the Law, has been reported/recorded in the civil registry and the child's birth certificate contains the status of the adopted child of his adoptive parents.

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