

Legal Implications of Children Resulting from *Free Sex* "One Night Stand" in Indonesian Legal System

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Abstract

The phenomenon of sexual relations without a marriage bond (one night stand) is increasing in urban communities, especially among teenagers and young adults, and has the potential to give birth to children out of wedlock who face legal problems related to the recognition of nasab, civil rights, and administrative status. This study aims to analyze the construction of legal protection for children born from these relationships in the Indonesian legal system. The method used is normative juridical research with a legislative and conceptual approach through literature studies. Legal sources analyzed include provisions in the Marriage Law, population administration law, criminal law, and important jurisprudence such as the Constitutional Court Decision No. 46/PUU-VIII/2010 which expands the civil relationship of children out of wedlock with their biological father based on scientific evidence and other valid evidence. The results of the study show that normatively the state has provided legal protection instruments for children out of wedlock, both through the recognition of civil relations and the guarantee of population administration rights. However, implementation in the field still faces obstacles in the form of social stigma, regulatory disharmony, as well as obstacles to proof and administrative procedures that are not fully child-friendly. It is concluded that legal protection of children born from non-marital relationships has undergone progressive development, but has not been optimal in practice. Therefore, this study recommends harmonizing regulations across sectors, simplifying administrative procedures for child recognition, and strengthening a non-discriminatory approach based on children's rights in law enforcement policies and practices.

Keywords: *Complaint Offense; Legal Implications; Administrative Law; Positive Law; One Night Stand.*

Abstrak

Fenomena hubungan seksual tanpa ikatan pernikahan (one night stand) semakin meningkat di masyarakat urban, khususnya di kalangan remaja dan dewasa muda, dan berpotensi melahirkan anak di luar perkawinan yang menghadapi persoalan hukum terkait pengakuan nasab, hak perdata, dan status administrasi. Penelitian ini bertujuan menganalisis konstruksi perlindungan hukum terhadap anak yang lahir dari hubungan tersebut dalam sistem hukum Indonesia. Metode yang digunakan adalah penelitian yuridis normatif dengan pendekatan perundang-undangan dan konseptual melalui studi pustaka. Sumber hukum dianalisis meliputi ketentuan dalam Undang-Undang Perkawinan, hukum administrasi kependudukan, hukum pidana, serta yurisprudensi

penting seperti Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010 yang memperluas hubungan perdata anak luar kawin dengan ayah biologisnya berdasarkan pembuktian ilmiah dan alat bukti lain yang sah. Hasil penelitian menunjukkan bahwa secara normatif negara telah menyediakan instrumen perlindungan hukum bagi anak luar kawin, baik melalui pengakuan hubungan perdata maupun jaminan hak administrasi kependudukan. Namun, implementasi di lapangan masih menghadapi hambatan berupa stigma sosial, disharmoni regulasi, serta kendala pembuktian dan prosedur administratif yang belum sepenuhnya ramah anak. Disimpulkan bahwa perlindungan hukum terhadap anak yang lahir dari hubungan tanpa perkawinan telah mengalami perkembangan progresif, tetapi belum optimal dalam praktik. Oleh karena itu, penelitian ini merekomendasikan harmonisasi regulasi lintas sektor, penyederhanaan prosedur administrasi pengakuan anak, serta penguatan pendekatan non-diskriminatif berbasis hak anak dalam kebijakan dan praktik penegakan hukum.

Kata kunci: Delik Aduan; Implikasi Hukum; Hukum Administratif; Hukum Positif; "One Night Stand".

INTRODUCTION

Changes in modern values and lifestyles have given rise to complex social phenomena, one of which is brief sexual intercourse (promiscuity) without long-term commitment, or what is known as "*one night stand*". This phenomenon is often found in the lives of urban communities, especially among adolescents and young adults, along with the increasing trend of globalization, the influence of western culture, and advances in information technology that facilitate access to sexual content and free communication. The term "*one night stand*" itself comes from western culture which refers to a brief sexual intercourse that is done in just one night, without any further emotional bonding or commitment.¹ This kind of relationship is often done voluntarily by two adults, but in many cases it can also have long-term consequences, such as an out-of-wedlock pregnancy.

One of the most crucial problems with a "*one night stand*" relationship is if it produces children. Children born from this kind of relationship are legally categorized as out-of-wedlock children or out-of-wedlock children, i.e. children born to a woman who is not bound in a legal marriage to her biological father. In Indonesian law, the status of out-of-wedlock children often raises debates because it relates to civil rights such as inheritance, alimony, guardianship, and administrative records such as birth certificates. Although the child has no part or fault

¹ "Promiscuity That Is Rampant in Indonesia Due to the Aesthetic Acculturation of Western Culture According to the Glasses of Soren Aabye Kierkegaard | by Gonotemo | Medium

in the birth process, the reality on the ground shows that there are still many children out of wedlock who do not get their full rights due to legal limitations and social stigma that are strongly attached to society.

In Indonesian law, the status of out-of-wedlock children has been regulated in various regulations, such as Article 43 of Law Number 1 of 1974 concerning Marriage, which states that children born out of wedlock only have a civil relationship with their mother and her mother's family.² However, through the Constitutional Court Decision No. 46/PUU-VIII/2010, the Court reinterpreted the provision and granted legal recognition to the biological father, provided that there was scientific proof such as a DNA test. However, there are still many problems that arise, both from the aspect of administrative law (such as the recording of birth certificates), criminal law (especially complaints in cases of adultery), and from socio-cultural aspects that are rooted in society. Therefore, it is important to thoroughly examine the legal implications for children born from "*one night stand*" *free sex*.

RESEARCH METHODS

This study uses a normative legal research method (*normative juridical*) with a statutory approach and a case approach. This approach is based on written legal norms in laws and regulations and court decisions as the basis for analysis of the legal protection of children born from a one-night stand relationship. The focus of the research is directed at the construction of norms, regulatory synchronization, and their juridical implications in the national legal system.

The data sources used consist of primary and secondary legal materials. Primary legal materials include Law Number 1 of 1974 concerning Marriage, Law Number 35 of 2014 concerning Child Protection, Law Number 1 of 2023 concerning the Criminal Code, and Constitutional Court Decision Number 46/PUU-VIII/2010. The secondary legal materials are obtained from legal textbooks, reputable scientific journals, academic articles, and other official literature relevant to child protection and family law issues.

The data collection technique is carried out through library research by searching, inventorying, and classifying legal materials according to the focus of the research. Data analysis is carried out in a descriptive-analytical manner, namely by explaining the applicable legal provisions, examining their consistency and harmonization, and

² "Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage. Article 43

analyzing their application to legal problems of children resulting from extramarital relationships in order to obtain systematic and comprehensive legal arguments.

RESULTS AND DISCUSSION

Kids Have Free Sex "*One Night Stand*"

The word "*one night stand*" is apparently familiar among teenagers today. This term is another term for promiscuous sex activities that are a form of lifestyle that can be seen in urban life. Free sex is usually divided into two types, namely premarital sex and *extra marital sex*. In this case, premarital sex is sex that is done by a person before he or she gets married, this is usually done in a relationship with a partner or girlfriend. However, over time and the social environment in the community, premarital sex can become diverse where the sex activity is not only done with a partner but can also be with a stranger who has just met.

Hal inilah yang dikenal dengan istilah "*one night stand*", dimana seseorang bertemu dengan bertujuan untuk melakukan hubungan seksual dengan perjanjian tidak bertemu lagi setelahnya. Sedangkan seks extra nikah (*extra marital sex*) merupakan hubungan yang dilakukan seseorang didalam pernikahan namun berhubungannya selain dengan suami atau isterinya.³

"*One night stand*" is a term of western origin that is synonymous with free sex, which means short, natural sexual intercourse that lasts only one night, this is what *Webster's New World Dictionary* states in 1986. This relationship is usually carried out by a person with a stranger or a person he has just met, which if there is physical attraction then the "*one night stand*" relationship can be carried out, in other words "*one night stand sex*" can occur because there is no feeling of love but mere lust.⁴

If viewed from this understanding, if there is a possibility that the child born from the relationship is a child born out of wedlock. As for a child out of wedlock according to article 280 of the Civil Code, children born as a result of a relationship between a man and a woman who are not bound by marriage with another person and there is no prohibition for the two to marry each other, these children can be legally recognized by their fathers. In article 280 of the Civil Code, it is also emphasized that a recognition made against a child out of wedlock creates a civil

³ Silvia, "Netralisasi Perilaku Seks Bebas (One Night Stand) Pada Perempuan Dewasa Muda: Studi Kasus 2 Perempuan Dewasa Muda," *Jurnal Kriminologi Indonesia* 2 (t.t.): 11.

⁴ Silvia, 12.

relationship between the child and his father or mother. This can be interpreted as that the out-of-wedlock child and his biological father or mother basically have no legal relationship. The legal relationship only exists if the father and/or mother give a confession. That the child is his child.⁵

In civil law practice, there are two types of out-of-wedlock children, namely:

- 1) If one or both parents are still bound by another marriage, then they have sexual intercourse either with something like a "*one night stand*" or something else and it results in a pregnancy and she gives birth to the child, then the child is called an adulterous child, not an out-of-wedlock child.
- 2) If the parents of the child outside of it are still not bound by the marital relationship, and they do sexual activities without any desire to marry, such as free sex activities "*one night stand*" and producing children. So the child is an out-of-wedlock child.

Both are different because adulterous children cannot be recognized by their biological parents, while children out of wedlock can be recognized by their biological parents if they are married, and in the deed can include an acknowledgment (*erkennen*) on the side of their marriage certificate.⁶

As for article 43 paragraph (1) of Law no. 1 of 1974, it is stated that children born out of wedlock only have a civil relationship with their mother and their mother's family. As for his position, it is stated in article 43 paragraph (2) of Law no. 1 of 1974 that his position is regulated in government regulations that have not been promulgated by the government until now. Therefore, based on article 66 of Law no. 1 of 1974 concerning marriage, what is enforced is the old provisions of the Civil Code. So that children out of wedlock have a legal position after the enactment of Law no. 1 of 1974 concerning marriage, a recognition is still enforced to create a civil relationship between the out-of-wedlock child and his parents. Whose recognition can be done by:

- 1) Voluntary recognition
- 2) A coercive confession.⁷

⁵ Rosnidar Sembiring, *Marriage Law: Property in Marriage*, 4 ed. (Depok: PT Raja Grafindo Persada, 2020), 123–24.

⁶ Abdul Manan, *Aneka Problemas of Islamic Civil Law in Indonesia*, 1 ed., 1 (Jakarta: Kencana, 2006), 181.

⁷ Sembiring, *Hukum Perkawinan: Harta-Harta Benda dalam Perkawinan*, 130–132.

Meanwhile, in the Constitutional Court Decision No. 46/PUU-VIII/2010 it is stated that regarding the recognition of children/the status of children outside marriage receives civil law recognition to their biological father, and in its dictum reviews the provisions of article 43 paragraph (1) of the Marriage Law Number 1 of 1974 becomes: "Children born out of wedlock have a civil relationship with their mother and their mother's family as well as with a man as their father which can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with his father's family".

With the issuance of FMD, children born out of a legal marriage can establish a civil relationship with their father, as long as it can be based on science and technology and/or other legally proven evidence of blood relations, including civil relations with the father's family.⁸ This decision has attracted controversy and people who consider that the Constitutional Court legalized and legalized the act of adultery, especially the "*One Night Stand*" relationship because children from illicit relationships can be legally recognized, meaning that there is no difference between a child born on the basis of a legal marriage bond and a child born without a valid marriage bond.⁹ From this Constitutional Court decision, there was initially a debate on the status of children born out of wedlock, because from the side of the Indonesian Ulema Council considered that from this decision the Constitutional Court seemed to legalize adultery. Because children out of wedlock are not only children born from a marriage that is not in accordance with the provisions of the law, but also children produced by adultery, even more so such as children produced through free sex "*One Night Stand*".

If you look directly at the public's view of children out of wedlock, especially if the child is the result of free sex "*one night stand*" is still very varied, with most still considering it as something taboo or disgraceful, but there are also those who are starting to be more open and accepting. This is because there is still a thick culture and norms in Indonesia. In addition, the phenomenon of free sex "*One Night Stand*"

⁸ Muhammad Iqbal Bangun Iqbal and A. Zarkasi, "Analysis of the Constitutional Court Decision No.46/PUU-VIII/2010 on the Status of Children Born Outside Valid Marriage," *Limbo: Journal of Constitutional Law* 1, no. 1 (March 26, 2021): 118, <https://doi.org/10.22437/limbo.v1i1.8655>.

⁹ Arfi Hilmiati and Kartika Yusrina, "The Impact of the Constitutional Court Decision No. 46/Puuviii/2010 on Marriage Law in Indonesia," *Mawaddah: Islamic Family Law Journal* 1, No. 1 (2023): 48–57, <https://Doi.Org/10.52496/Mjhki.V1i1.3>.

is still relatively foreign in the social life of the community, because as defined above, "*One Night Stand*" is a free western culture. In addition, this is still debated by the government, because until now there has been no government regulation that explicitly regulates the position of children out of wedlock, apart from the Constitutional Court Decision Number 46 of 2010.

In some cultures that uphold religious values and traditions, children born out of wedlock often face severe social stigma. They are often considered illegitimate in traditional family structures, so their rights in the social, educational, and even legal environment can be hampered. Not infrequently, the mother also experiences great social pressure because it is considered to violate the applicable norms. However, along with the development of the times, more and more people have a more open view of children outside of marriage.

In this modern era, many are beginning to realize that birth status is not the fault of the child and they still deserve the same treatment as other children. Awareness of human rights and equality has driven a change in mindset among people, especially in urban areas that are more accepting of social diversity.

Legal Implications for Children Resulting from Free Sex "*One Night Stand*" According to Positive Law in Indonesia

Law No. 1 of 1974 concerning Marriage regulates various aspects of marriage, but does not specifically discuss the rights of children out of wedlock, let alone children resulting from "*One Night Stand*" free sex. To overcome this injustice, the Constitutional Court issued Decision Number 46/PUU-VIII/2010 which aims to provide equal legal protection for children out of wedlock. The decision equates their rights with legitimate children, including in terms of inheritance and alimony from their biological father, even if they were born out of a legal marriage.¹⁰

In the Constitutional Court's decision No. 46/PUU-VIII/2010, the rights of children born from the result of free sex "*one night stand*" are no different from the rights of children out of wedlock. The Constitutional Court stipulates that children born out of wedlock remain in a civil relationship with their biological father, as long as they can be scientifically proven, such as through DNA tests. This decision is an important step in strengthening legal protection for children out of

¹⁰ Eunike Loist Hutasoit et al., "Legal Protection for Children Out of Wedlock in Indonesia; Comparative Study of the Constitutional Court Decision Number 46/PUU-VIII/2010 and Islamic Law," *Jurisprudence: Journal of Sharia Science, Islamic Legislation and Economics* 16 (2024): 422.

wedlock in Indonesia. Before the verdict was issued, children born out of wedlock only had a legal relationship with their mother and her mother's family. This condition overrides the rights of children to their biological father, including the right to maintenance, education, and inheritance. This legal injustice is not only contrary to the principle of justice, but also violates recognized human rights. With the Constitutional Court's ruling, it is recognized that the rights of children out of wedlock must be protected and must not be discriminated against just because of their parents' marital status. Legal protection for children out of wedlock in Indonesia is not only limited to recognition as children of a biological father, but also includes other rights, such as receiving support, obtaining education, and obtaining health services. Child Protection Law No. 23 of 2002, which was later updated through Law No. 35 of 2014, affirms the importance of protection for all children regardless of their birth status. This reflects the state's commitment to ensuring children's rights as a whole.¹¹

Regarding the problem of out-of-wedlock children, previously there have been changes and additions to the provisions in Article 43 of the Marriage Law with the emergence of the Constitutional Court Decision Number 46/PUU-VIII/2010. Regarding the position or status of the out-of-wedlock child. The Constitutional Court's decision arose because of the application for the Testing of Law Number 1 of 1974 concerning Marriage, precisely the test of Article 42 and Article 43 submitted by Hj. Aisyah Mochtar¹² and her son Muhammad Iqbal Ramadhan, who at that time Iqbal was an out-of-wedlock child, because his parents were only married in series. The Constitutional Court on February 17, 2012 at that time gave a decision to add the provisions of Article 43 paragraph (1) in Law Number 1 of 1974 concerning Marriage to: (1) Children born out of wedlock only have a civil relationship with their mother and family and with a man as their father which can be proven based on technology and/or other evidence according to the law to have a blood relationship, including civil relations with his father's family.

However, before the child results from free sex "*One Night Stand*" gets its rights. He must be able to prove how his civil relationship with his biological father can be scientifically proven. As mentioned in the

¹¹ Hutasoit et al., 427–428.

¹² "The wife of the late Drs. Moerdiono, former Minister of State Secretary in the Soeharto era."

Constitutional Court Decision. The urgency of this proof is to avoid the possibility of errors in making judgments. In this case, a child born from the "One Night Stand" free sex needs to prove his or her biological relationship with his biological father through technology-based biological inheritance proof such as by using a DNA test which stands for *Deoxyribo Nucleic Acid*, which is by examining nucleic acids that store human genetic information. To identify the biological relationship between the child and his father resulting from the "One Night Stand" free sex, the DNA test according to Dr. Herawati Sudoyo, PhD and Dr. Helena Suryadi states that this test is 100% accurate if done correctly. Therefore, DNA can be used as a *ratio legis* in determining the fate of children to their biological father.¹³

The rights obtained by children born as a result of free sex "One Night Stand" are no different from the rights for children born out of wedlock, namely: First, for children born out of wedlock before the issuance of the Constitutional Court Decision Number 46/PUU-VIII/2010 they are not entitled to be given inheritance, both for children out of wedlock as a result of serial marriages and children out of wedlock as a result of adultery such as free sex "One Night Stand". However, after the issuance of the Constitutional Court's decision, children out of wedlock are entitled to inheritance rights as well as the calculation and distribution of legal children's inheritances. With legal considerations that the child's biological destiny has been proven, this is done for the sake of the child's survival.¹⁴

Second, providing support for children outside of marriage is an obligation for the biological father that needs to be fulfilled. This is because children born from biological relationships even without a legal marriage bond are basically not much different from legal children. Therefore, the biological father is still obliged to provide a decent livelihood and livelihood, both from health support, education and so on to the child according to his ability.¹⁵

Third, the legal basis of child guardianship is article 42 of the Marriage Law Number 1 of 1974 which states that the person who has the right to be a guardian is a father who has a nasab relationship with his daughter from a legal marital relationship. Nasab is the strongest

¹³ Bahrudin Muhammad, *The Inheritance Rights of Children Outside of Marriage: A Study of the Constitutional Court's Decision Number 46/PUU-VIII/2010* (Semarang: Fatawa Publishing, 2014), 223–33.

¹⁴ Muhammad, 316.

¹⁵ Muhammad, 317.

bond that connects a child to his father, so that each is an inseparable part of the other. This bond is what knits the cord of family relationships so that it becomes a strong relationship that unites each other based on blood unity.¹⁶ Thus, a child born out of wedlock is declared unable to connect his guardianship with his biological father. However, after the issuance of the Constitutional Court Decision Number 46/PUU-VIII/2010, the guardianship of children born out of wedlock can be continued to their biological father on the condition that it can be proven through technology such as DNA tests. However, the guardianship of the biological father is only for children out of wedlock who are produced through a series of marriages and for children born through adultery such as "*One Night Stand*" which are both related before the marriage bond with another person and for children born out of wedlock through adultery such as "*One Night Stand*" free sex which if the biological parents before having sex are still bound in a legal marriage with another person. Therefore, the guardianship can only be transferred to the guardian of the judge.¹⁷

Fourth, the right of maintenance for the child given by the biological father is the child's maintenance as the father's obligation, the interests of the child in terms of physical, spiritual, and intellectual growth. In this case, for children born out of wedlock, such as children resulting from free sex marriage, "*One Night Stand*" still get maintenance rights from their biological father.

There is a view that if a child is born from an illegitimate relationship such as the result of free sex, "*One Night Stand*" tends to get stigma and a weak status before the law that makes the child seem as if he has no right to custody from his biological father. Therefore, with the Constitutional Court Decision Number 46/PUU-VIII/2010 it is one of the legal protection efforts for children born out of wedlock to get maintenance and education costs so that they can live a more decent life. Although, the view and *stigma* of the community that he is a child of adultery will still be borne by him for life, which is actually the result of the actions done by his parents.¹⁸

The impact that arises based on the Constitutional Court's consideration is the existence of a civil relationship between the man

¹⁶ Muhammad Taufiki, "The Concept of Nasab, Istilhâq, and Civil Rights of Children Out of Wedlock," *AHKAM : Journal of Sharia Science* 12, no. 2 (August 7, 2012), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/966>.

¹⁷ Muhammad, 321–322.

¹⁸ Muhammad, 327.

who causes the pregnancy or the biological father and the child born outside the legal marriage. After the Constitutional Court Decision Number 46/PUU-VIII/2010, an out-of-wedlock child can have a legal relationship with his father if it can be proven that there is a blood relationship. This ruling resulted in the child out of wedlock obtaining civil rights against his biological father. If a man denies any biological relationship with the child, then the mother or child can file a lawsuit to prove his status.

If it is legally and convincingly proven through the court that there is a blood relationship, then the man can be obliged to fulfill his responsibilities towards the child. However, the Constitutional Court's decision that stipulates the existence of a civil relationship between the biological father and the child out of wedlock is considered inappropriate. A more relevant relationship is the biological parent's responsibility to his or her child. This responsibility is in line with the Child Protection Law, in particular Article 26 Paragraph 1, which regulates parental responsibilities without reference to the Marriage Law. This is due to the fact that the relationship is not a maintenance relationship (*alimentation*) arising from a valid marriage or formal recognition.¹⁹

With the legitimacy of PMK Number 46/PUU-VIII/2010, it adds to the legal impact of children born as a result of free sex, especially children born from the result of free sex "*One Night Stand*" to get recognition of their human rights, so that this can ensure that children born from free sex are no longer differentiated in obtaining their civil rights like children born in a legal marriage. This also strengthens legal protection for children who result from free sex, especially those born from the result of free sex "*One Night Stand*" from discrimination related to their rights in the future.

However, proving children out of wedlock, especially children from *the results of One Night Stand*, has many obstacles such as the high cost of DNA testing being the main obstacle. DNA tests in Indonesia generally cost between IDR 5 million to IDR 10 million per individual, depending on the laboratory institution. For mothers or children from the lower middle economic class, these costs are difficult to reach. As a result, many cases of child recognition cannot be continued because the

¹⁹ Siti Salma, Abd Rahman, and Zainuddin, "The Implications of the Constitutional Court Decision Number 46/PUU-VIII/2010 on the Status of Children Outside Marriage Associated with the Compilation of Islamic Law," *Journal of Lex Generalis (JLS)* 4 (2023): 771.

requirements for scientific proof as required by the Constitutional Court's decision are not met. In addition, the refusal of the biological father to undergo a DNA test. In practice, there is no clear coercive mechanism for a man to be willing to take a DNA test if he denies a biological relationship with the child in question. The only legal procedure available is civil lawsuits, which are time-consuming and often emotionally and financially exhausting for the mother or guardian. This shows that there is a gap between normative law and the reality of judicial practice. Social stigma against mothers who give birth to children out of wedlock is also a significant barrier. Many women are reluctant to file a child recognition lawsuit for fear of social pressure, embarrassment, or concerns about the family's reputation. In some cases, the public still views the act of suing the biological father as an attempt to expose personal disgrace. This condition shows that the implementation of PMK 46/2010 does not only depend on formal legal aspects, but also on socio-cultural factors that affect women's courage and ability to demand the rights of their children.

Legal Implications of Children Proceeds of Free Sex "One Night Stand" According to State Administration

Children resulting from "*one night stand*" free sex, as provided for in the law, have complex consequences in the context of state administration. Legally, the child is entitled to recognition and protection, even if the relationship between the parents is not bound by marriage. According to the law, children are entitled to a valid birth certificate, which lists the identity of the parents. This birth certificate not only serves as an official document, but is also a civil right that gives identity to the child. Children who do not have a birth certificate or whose identity is not recorded have the potential to face various risks. For example, their identities can be falsified for certain purposes.

Therefore, a birth certificate is a very vital right and must be fulfilled by the state. It is important to ensure the child's civil and social rights, including the right to inheritance and benefits. However, in practice, recognition by parents, especially fathers, can be challenging. This can affect the legal status of children in society and their access to public services. The problem of birth certificates is not only an administrative problem, but also results in the loss of educational, health, economic and other rights that should be given to children.

In general, the Indonesian state defines children out of wedlock based on the background of the occurrence of out-of-wedlock children, including children born from unregistered marriages, children born out

of no marital relationship, and children born from serial marriages are also referred to as out-of-wedlock children. Even though the child is an out-of-wedlock child, the child still has basic rights attached to him.²⁰

Law No. 1 of 1974 on marriage distinguishes the position of a child in relation to the marriage of his parents, as stated in article 42: "a legitimate child is a child born in or as a result of a valid marriage". Keudian is also explained in article 43 of the first paragraph that: "A child born out of wedlock only has a civil relationship with his mother or his mother's family". Because it is biologically impossible for a child not to have a father, it is for the sake of the law that concerns all the consequences in the field of inheritance, citizenship, guardianship and so on. So through this recognition and ratification, a new civil legal relationship arises.²¹

If a child is born to a wife, but the husband has the belief that the child born is the result of intercourse with another third party, then the husband can choose one of two alternatives:

- a) He remained silent, did not express denial, so the child born was the legitimate child of the husband and wife.
- b) He can deny that the child is his son, but he must be able to prove that his wife has committed adultery with another man.

In the case of denying the validity of a child, all marriage laws, both Islamic law, BW and those listed in the Marriage Law No. 1 of 1974, provide the possibility for a husband to deny the validity of a child.²² Although the child who was born has been recognized by his father and mother, the status of the child cannot be said to be a legitimate child. Thus, it is important to get approval from an authorized institution. If the recognized child has received a reprimand, then the status of child becomes the same (no different) from the legitimate child in all respects. In the case of a child recognition deed or a child custody deed, in principle, it is more shown for the purpose of creating a civil law relationship between the recognized child and the confessor. Meanwhile,

²⁰ Maria Rosalina, "BIRTH CERTIFICATE OF OUT-OF-WEDLOCK CHILDREN AS A CIVIL RIGHTS OF CHILDREN," *Journal of Law and Society Al-Hikmah* 1, no. 1 (September 2020): 177.

²¹ Victor Situmorang and Cormentina Sitanggang, *Legal aspects of civil registration deeds in Indonesia*, Ed. 1, cet. 2 (Jakarta: Sinar Grafika, 1996), 42–43.

²² Soedharyo Soimin, *Hukum orang dan familia: perspectives of western civil law/BW, Islamic law, and customary law*, Revised ed (Jakarta: Sinar Grafika, 2004), 42.

a child attestation deed is a kind of statement that the child has been legalized as a legitimate child, in the sense of Civil Law.²³

Article 5 of Law Number 23 of 2002, as amended by Law Number 35 of 2014 concerning Child Protection states that: "Every child has the right to a name as personal identity and citizenship status". The right to personal identity and citizenship status can be seen and obtained from the child's birth certificate. Furthermore, Article 27 Paragraphs (1) and (2) say that the identity of each child must be given from the moment the child is born, which is stated on his birth certificate. The word must, which is contained in the article mentioned above, means that to have a birth certificate for a child is a must, regardless of whether the child is a legal child or a child born from an invalid marriage, in other words an out-of-wedlock child.²⁴

Article 33 Paragraph (3) states that for the registration of births for children of Indonesian citizens, whose origin or whereabouts are unknown, and the child is not found, must meet the requirements for a report from the police and the requirement of a statement of absolute responsibility or SPTJM for the correctness of the child's birth data with 2 (two) witnesses who know about the child's birth.²⁵ The law has required every citizen to register every birth that occurs based on the data about the birth. In Indonesian civil law, a birth certificate is an authentic evidence that records a person's birth and is the legal basis for the recognition of the individual's identity and legal status. As in Articles 280 to 299 of the Civil Code, it regulates the status of children born in marriage, child recognition, and civil registration.²⁶

The existence of the classification of the status and position of children in the eyes of the law results in the process of recording birth data for each child containing differences, depending on the marital status of the parents. Therefore, it can be said that the child resulting from free sex "*One night stand*" is an out-of-wedlock child, which is due to the provisions of Article 43 paragraph (1) of the Marriage Law jo. Article

²³ Situmorang and Sitanggang, *Legal aspects of civil registration deeds in Indonesia*, 42.

²⁴ Rosalina and Hum, "Birth Certificates of Out-of-Wedlock Children as a Civil Rights of Children," 177–78.

²⁵ Rosalina dan Hum, 178.

²⁶ Syahrudin Nawi and Ilham Abbas, "The Position of Inheritance Rights of Out-of-wedlock Children Who Have Birth Certificates Reviewed from the Civil Code and the Complications of Islamic Law," *Journal of Lex Philoshopy (JLP)* 5, no. 2 (December 2024): 996.

100 of the Compilation of Islamic Law which states that children born out of wedlock only have a civil relationship with their mother and family. This has an impact on the way and mechanism of recording birth certificates for the child. In the birth certificate of an out-of-wedlock child, only the mother's name will be listed, while the father's name will not be recorded. The severance of the legal relationship between the child and the biological father results in the father not having any obligations towards the child, and on the contrary, the child does not have the right to demand anything from the father in relation to civil rights.²⁷

However, in practice, several Population and Civil Registration Offices mention that there are obstacles in the issuance of birth certificates for children out of wedlock. Obstacles to the issuance of birth certificates for children out of wedlock at the population and civil registration offices due to the lack of awareness of the child's parents of the importance of birth certificates, internet network disruptions when entering data, lack of public knowledge about the requirements for managing birth certificates for children out of wedlock.²⁸

The Constitutional Court Decision No. 46/PUU-VIII/2010 is an important basis for expanding the civil relationship between a child out of wedlock and his biological father if it is proven that they have a blood relationship based on science and technology (DNA). The legal implication of the decision is that there is an obligation for state administrative institutions, especially the Population and Civil Registration Office (Disdukcapil), to adjust the birth registration system to accommodate the results of the Constitutional Court's decision. Thus, the state's administrative law plays a role not only as a recording mechanism, but also as an instrument of substantive justice for children born out of wedlock.²⁹

So far, what has been recognized and applied in the enforcement of family law, especially in relation to out-of-wedlock children, is seen as sacrificing and ignoring the basic rights and interests of the child

²⁷ Lina Nur Anisa, "The Status of Children's Rights Outside Marriage After the Decision of the Constitutional Court of the Republic of Indonesia (RI)," *Journal of Economics & Business* 7, no. 1 (2022): 43.

²⁸ Ronaldo Alves et al., "Juridical Review of the Issuance of Birth Certificates of Out-of-Wedlock Children at the Population and Civil Registration Office of East Manggarai Regency," *Journal of Business Law* 12, no. 06 (2023): 3, <https://doi.org/10.47709/jhb.v12i06.3244>.

²⁹ Yusriyadi, "Implementation of Constitutional Court Decision No. 46/PUU-VIII/2010 in Population Administration," *Journal of Law and Development* 50, no. 2 (2020): 285.

himself, even though in fact the child is born in a holy state and does not inherit the sin that has been committed by his parents.³⁰ It is not right and unfair if the law stipulates that a child born from a pregnancy due to sexual relations outside of marriage only has a relationship with the woman, it is also unfair if the law exempts the man who has sexual intercourse that causes the pregnancy and the birth of the child from his responsibility as a father.³¹

Legal Implications According to Criminal Law

In the context of Indonesian criminal law, sexual relations outside of marriage, including those that occur in free sex in the form of a one-night relationship or "*one night stand*", are not automatically classified as criminal offenses. The application of criminal sanctions against these acts is highly dependent on the existence of reports or complaints from certain legally valid parties. This is closely related to the concept of complaint deliction regulated in the new Criminal Code (KUHP), namely Law Number 1 of 2023 concerning the Criminal Code.³²

Complaint delik is a type of criminal act whose prosecution can only be carried out if there is a complaint from the aggrieved party or has a direct interest, as stipulated in Article 411 and Article 412 of the new Criminal Code.³³ Article 411 states that anyone who has sexual intercourse with a person who is not his legal partner can be sentenced to a maximum of one year in prison, but only if there is a complaint from the authorities. The complaint can only be made by the husband or wife of one of the perpetrators, or by parents or children if the perpetrator is not married yet. This means that law enforcement officials cannot process cases of adultery due to free sex "*one night stand*" without an official complaint from a direct interested party.

In addition, Article 412 of the new Criminal Code also regulates the act of living in the same house without a marriage bond (cohabitation), which is also a complaint offense. This article makes it even clearer that the state does not actively criminalize consensual relations between two adults unless there is a report from the nuclear family. Thus, a *one-night stand relationship* under criminal law cannot

³⁰ Afifah Rangkuti, "Analysis of the Position of the Rights of Out-of-Wedlock Children to Their Biological Father in the Decision of the Constitutional Court Number: 46/PUU-VII/2010 and Fiqh As-Syafi'i," *Journal of Comparative Law and Madhhab Al-Muraqanah* 2, no. 1 (2024): 10.

³¹ Rangkuti, 13.

³² "Law No. 1 of 2023," concerning the Criminal Code

³³ "Law No. 1 of 2023." Articles 411 and 412

be immediately subject to criminal sanctions, even though socially and ethically it may be considered deviant.

However, the legal implications for children born from this kind of relationship are very different. Criminal law does not recognize the concept of criminalization of children based on the origin of their birth. Children resulting from extramarital relationships cannot be punished or have their rights limited simply because they are born from a relationship that is not legal according to the law. In this case, Indonesian criminal law is subject to the principle of non-discrimination against children as stipulated in Law Number 35 of 2014 concerning Child Protection.³⁴ Children still have the right to identity, upbringing, and protection from all forms of social stigma and violence.

Furthermore, legal issues related to children resulting from free sex "*one night stand*" are actually more encountered in the realm of civil law, especially regarding the recognition of children and the legal status of parents which have also been discussed in this article. The Constitutional Court Decision No. 46/PUU-VIII/2010 has provided a bright spot that children out of wedlock still have a civil relationship with their biological father, as long as it can be proven through science and technology (such as DNA tests) and have a real civil relationship. However, in practice, such recognition is still often a source of conflict that has the potential to cause new legal problems. For example, if one of the parties denies having a relationship that produces offspring, and then spreads certain accusations, then this issue can turn into a defamation case as stipulated in Article 310 of the Criminal Code.³⁵

Sexual relations in a *one-night stand* are not automatically a criminal offense, unless there is a complaint from the husband, wife, or parents (Articles 411 and 412 of the 2023 Criminal Code). The state cannot take action without complaints, because it is classified as a complaint. Children resulting from this relationship cannot be punished or discriminated against, in accordance with the principles of child protection and non-discrimination in Law No. 35 of 2014.

Thus, although the act of free sex "*one night stand*" has the potential to cause legal consequences, especially for children who are born, the criminal law can only enter the realm of criminal law if there is a complaint from the right party. The focus of criminal law remains on adult perpetrators, not on children who have no part in the act. The state

³⁴ "Law No. 35 of 2014," concerning Child Protection

³⁵ "Law No. 1 of 2023." Article 310

is obliged to provide legal protection to children, regardless of their birth background, in accordance with the principles of human rights and child protection in Indonesian positive law.

CONCLUSION

Based on the results of the study, it can be concluded that children born from the practice of free sex one night stand in the Indonesian legal system still receive legal protection as legal subjects, even though they are categorized as out-of-wedlock children. Through the Constitutional Court Decision No. 46/PUU-VIII/2010, the state has expanded the recognition of civil relations between out-of-wedlock children and their biological fathers as long as they can be scientifically proven, including through DNA tests. The decision affirms the principle of protecting children's rights, especially related to the right to identity, maintenance, and inheritance, thereby reducing legal discrimination previously attached to the child's birth status.

Administratively, children are still entitled to obtain a birth certificate as a form of legal identity recognition, even though the inclusion of the father's name requires recognition or proof of blood relationship. Meanwhile, in the criminal dimension, the regulation regarding sexual relations outside marriage in the 2023 Criminal Code places it as a complaint offense, so law enforcement depends on complaints from parties who have legal standing. This conception shows a balance between the protection of public morality and respect for the private sphere, but at the same time it has implications for the effectiveness of law enforcement.

This research contributes to strengthening the perspective of constitutional rights-based child protection by emphasizing that birth status should not be the basis for discrimination against the fulfillment of children's civil rights. These findings enrich the study of contemporary family law and criminal law by integrating constitutional, administrative, and criminal aspects in one comprehensive analytical framework. Therefore, it is recommended that the government harmonize derivative regulations more technically related to the mechanism of proving biological fathers and recording population administration, as well as increase legal socialization to the public to ensure legal certainty and optimal protection for children born out of wedlock.

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