

The Protection Of The Law Against Children Which It Is Not Mentioned The Name Of Father In A Birth Certificate (Study At The Office Population And Civil Registration Tanah Datar District)

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Abstract: Marriage is to raise a family and form of the needs of families who will abide. Indonesia is a country laws governing about the marriages Act Number 1 of 1974 about the marriages. A marriage cannot be assessed as being perfect when had yet to have children. Children are the mandate and free gift of Allah has given to any human being in marriage, the act of mating, there are two types of child status the birth of these legal and child marriage. A child entitled to obtain a birth certificate good true son of legal and children of the outside marriage. Recording to birth a child this very important be encouraged by the Act No. 35 years 2014 regarding the protection of children, in article 5. Based on it, writer interested make a review and then pour it in a thesis. Based on it, writers interested to have a research on how the protection of the law against children which it is not mentioned the name of your father in a birth certificate and what the consequences laws against that a child may it is not mentioned the name of father in a birth certificate. This thesis uses the method of writing an approach to a problem is empirical juridical who insists on the reality in the field associated with legal aspects or and regulations pertaining to with the object research. For get the rights of children who do not mention dad name in birth certificates for parents that already registered birth certificate the office civil registries, Several parents do itsbat marriage which reasons of the an applicant submit a request for itsbat marriage to the religious court is in order of organizing a birth certificate their children in addition to get legal certainty marriage the an applicant itself. Due to the law of birth certificate which does not mention dad name is gone the right civil son of father.

Key Words: Legal Protection, Outer Child Marriage, Birth Certificate.

1. INTRODUCTION:

Indonesia is a country laws governing about of marriage in Act No. 1 Year 1974 about the marriages. Article 1 act no. 1 year 1974 said that marriage is born inner ties between a man and a woman husband and wife with the aim of forming family (household) happy and lasting based on belief in God, so have it can be concluded that the wedding is an important event in human life based on religion and deeply affect legal status someone. While in Compiling Islamic Law mentioned in article 4 namely: marriage is legal, if conducted according to Islamic Law in accordance with article 2 paragraph (1) Act No.1 Year 1974 about the marriages.

A marriage cannot be assessed as being perfect when not yet been had a children. Children are the mandate and free gift of God has given to any human being in marriage, but how will all the good end is born in a lawful matrimony and many the fact which showed that parents are content to throw even kill a child own lives to cover a disgrace to his family. The birth of the child will make embarrassed for the family because the kid is produced from the relations of out of wedlock not justified by religion and ethics in effect in the community in general. Children can be divided into two groups the birth of these legal and child to be illegitimate child [1]

Endang Sumiarni in her book "The Protection Of The Law Against Children In Family Law" stated that [2]: The son of the outside marriage if they take off is the son of being reascent do not virtue of remarriage which is valid graduates and had only of justice civil relationship which has seen trade with his mother only a matter of time, made for yourself therefore his do not have the right of any kind from either the paternal but, because by law either religious law as well as the national legal he does not have the related by blood with a man who was father but, a kid out each other by marriage if will find no way of material rights which should have been should be obtained by a a son from his father, as the rights the cost of maintenance, the right of spend in pursuit of the, right of guardianship marriage for girls, and the right inheritance one with when there was the death of Children outside marriage arising caused the child born of a woman, the birth of a child are known and command of one or his mother, only one or both parents that it is still attached to marriage other. Children derived from marriage which are not written in office and civil registration/or religious affairs offices. The birth a child being without preceded by a the bonds of marriage will give status to the child born as a son outside marriage [3].

Arrangement on child institutions are recognized and child marriage that is in acknowledge, was the work of to lay legal relationships between children and adults who are believers. The ratification of the just happened to in marriage for her parents who have admit it first or admit it at the time of a marriage in conduct, so that this can be in child marriage souls and in acknowledge according to the provisions of a statute which already exist [4].

Any event that emerged in the community, whether it is the birth of a child outside marriage also needs to in any number of households to the registrar office for obtaining birth certificates. As by the presence of the birth certificate is law will protect work completed which means that owners by law to have certificate in admit perfectly related to his private to be such as the name of, date of birth, the names of these two their parents and others concerned with the identity of his birth [5].

A child has the right to for obtaining birth certificates whether it was the child legal marriage and children of the outside. A birth certificate are civil registries for certificates of recording the results of the birth of a person. Until now there are still many Indonesian children not/has not been registered in a birth certificate, in de thought there was no conjure its existence by the state. This resulted in the child who is born not recorded the name of the, genealogy, and citizenship, and has been manipulated its existence. Birth certificate shall be regulated subsequently in the No. 23 years 2006 about population administration later changed into a law number twenty-four 2013 on changes to the No. 23 Years 2006 about population administration. Ideally, the birth certificate was conducted over 60 (sixty days) days since birth.

2. CONCEPTUAL FRAMEWORK:

1. Legal Protection

Legal protection is giving protection to human rights wrong others and protection was given to the people so that they have in all vested rights by law or in other words legal protection is a legal remedy to be given away by law enforcement officials to provide security, in mind and physical of disorder and warners from any party [6].

2. Child

Based on Act No. 35 years 2014 about Children Protection in article of this act 1 1 declare a child is someone who have not aged 18 (eighteen) years including children who are still in the womb. And the being yet in reveal and still in the womb mother according to this law have a legal protection.

3. Birth Certificates

A Birth certificate are civil registries the results of recording of the birth of a person .Until now there are still many Indonesian children who his identity is has not been registered in birth certificate , in de jure its existence regarded as non-existent by the state .This resulted in the children born the not recorded his name, the genealogy and its nationality and has been manipulated the existence of himself.

3. LITERATURE REVIEW:

Prior to the establishment of the act of mating , according to the stipulations of Indonesia book of the civil code. At the time the registration is used to do before held a religious ceremony. The book in article 81 of the civil code that states that “may not a religious event in doing , before the two sides to religious official they proved , that a marriage in sent to you a civil registration employees. based article 81 mentioned above , can be concluded that although there was no a religious ceremony, but if recording to the office civil registration or the office of religious affairs has in do , so marriage it be valid. As by recording this was a sign validity of the marriage.

The registration of marriage aims to make the marriage it became clear, be better for itself or for others in society, because it can be read in a chapter that is both official and loaded anyway in a list of the specially provided for that, so that sewaktu-waktu can be used where necessary, especially as a means of written evidence that ontentik. dengan there was a proof of that dapatlah justified or prevented a. other acts [7]. The act of mating put recording a marriage in a important as has recognized by the state that safety marriage. This prompted by article 2 paragraph (2) the act of mating states that “every marriage noted according to regulations”.

Started recording marriage notice held marriage and will be the end of a moment after marriage according to law that some each his religion and no one marriage certificate signed by the two, done a and employees attend the evildoers marriage (for the marriage muslim) with the deed marriage so marriage is officially. (Article 11 Implementation Regulations Number 9 Years 1975) when marriage is not registered at the registry marriage , according to state law the couple not listed as a person bound in marriage (not in status mate) and they are not subject to the undang-undang marriage .Because the country determined that recording as conditions validity of the marriage besides the marriage according to religion and their beliefs .But the marriage be perfect , legal according to religion and legal according to state.

Civil registration is recording important event experienced by a recording civilians in in a register offices.Civil registration made by a civil registration to allow a person to have legal certainty the truth on the his life. All events the registered by a civil registration, so that it a person concerned nor anybody else stakeholders permit can have for

evidence of the incident. So a while a third person have interest in knowing of, marriage, recognition, divorce and death [8].

For obtaining birth certificates one who is in attach is. marriage certificate The marriage certificate of parents, indicates that the child born of marriage legal according to state. And if there is no marriage certificate, the child is getting certificates, birth certificate of course by the process is longer and proof of parents only in wrote the name of mom and not father’s name. Children that assumed as children outside marriage. It thereby of course to deviate from a right to have by the son.

4. METHODS:

An approach to a problem that is used in this research was legal information about nature of the decrees issued empirical one who lays stress on the reality in the field to be associated with the legal aspects or act which is valid for five pertaining to with the object the research which is discussed and see law norm and order were pretty good with the bad and have joined with reality or facts that was found in the community. This research is descriptive namely research which gives you the about a state of being or social symptoms that develops in the midst of society hopefully with a research is expected can obtain a whole description, complete and systematic about the object to be in minutely [9].

A theory that used in writing this research is a theory of legal certainty for them and the theory of the protection of the law. The type and of the source of data will be used for the this is a material the members of primary law, a material of wool or secondary law, and as materials for law tertiary by the support of the technique of data collection in the form of the study of literature that that is synthesised in a qualitative manner.

5. DISCUSSION:

Legal protection for children, is one side child protection. Child protection law is a guarantee in terms of the privileges of the law. Child protection in a juridical manner seeks devoted to prevent children had any child both a direct or indirectly, ensure survival and the growing a a natural, either physical, mental and social. [10].

The state responsibilities provide legal protection provide facilities registration of births and the technical guidelines that easily understandable. Population and civil registries agencies need to do coordination with village and the hospital when has this come to doubt so there is no problem that are bad .Marriage is not registered resulting in there is no marriage certificate. Here are the number of birth certificates children registered as son mother of the total number of birth certificates a year in take from year 2005 until 2010 in Tanah Datar District seen on the table below:

Table 1

No.	Years	A birth certificate on behalf of father	A birth certificate on behalf of mother	Total
1.	2005	4.480	122	4.602
2.	2006	4.483	78	4.561
3.	2007	6.017	175	6.192
4.	2008	7.533	81	7.614
5.	2009	8.720	56	8.776
6.	2010	9.077	181	9.258

Source of data: Office Of Population and Civil Registration Tanah Datar District .

According to the interviews writers with head of birth, adoption of the child death, and civil registration District Tanah Datar said that the registration of the son of a mother (a deed which not tercatumkan) there are still many registered the name of your father, the registration of children mother mostly done on child from under the hands marriage, in reaction to this, the government through institutions who has given birth to a compilation of islamic law that arranged that marriage like the above can be in catatkan back for example through itsbat marriage, but in reality itsbat proposed is not that easy marriage in god by religious courts because the process of hearing and the witnesses will be evidence in shall also propose an additional budget allocation is pretty convincing it just as there has been a legal marriage in religion. Obstacles such as this was one of the reason the marriage sirih lots going on which has the effect of certificate to the birth of a child that can only be include his mother name.

Before the constitutional court, the decisions the registration the accompanied by a marriage book their parents are categorized as “son mother” in the birth certificate. After the decisions, the constitutional court this the same still pay, because despite the constitutional court gave the decisions to admit beyond father. The following is the child birth certificate listed as a mother of the total number of birth certificate in extract from year 2011 (after the constitutional court) untill 2017 in Tanah Datar District as shown in table below:

Table 2

No.	Years	A birth certificate on behalf of father	A birth certificate on behalf of mother	Total
1.	2011	4.157	75	4.232
2.	2012	8.434	118	8.552
3.	2013	7.936	155	8.091
4.	2014	9.630	95	9.725
5.	2015	3.802	105	3.907
6.	2016	4.618	25	4.670
7.	2017	5.034	44	5.078

Source of data: Office Of Population and Civil Registration Tanah Datar District .

The government through the regulation of the minister of 2016 the number 9 about the acceleration of increasing the coverage of ownership of birth certificates, give new hope to a child to been listed as a child of the father and mother by issuing a statement of absolute responsibility as mentioned in article 1 paragraph (18) and paragraph (19).

6. ANALYSIS:

A. The Protection Of The Law Against Children Which Is Not Mentioned The Name Of Father In A Birth Certificate

Children born from the relations outside marriage, according to the act of mating children are relatives with the his mother civil and family that a child outside marriage have rights to life and is objective the one of them is right which includes arising rights of the family, one power to his parents and power for their child, the maintenance against saved him. maintenance outer clear the marriage will support the child marriage only the outer beyond the boy and a power the younger kids was the mother of the child. Maintenance adult son of low up to when the child will intercourse law hence should be represented by his mother.

Article 55 paragraph (1) and (2) marriage law states that:

- 1) The origin of a child can only be proven by birth certificate, authentic issued by authorities.
- 2) Mentioned when the birth certificate in paragraph of this article (1), no so the court can emit the about the origins of a child after careful examination held based on evidence that qualifies.

Efforts laws against a child born out of marriage that were not have the status as children valid for a couple muslim arranged in article 7 Islam Law Compilation said that:

- a) Marriage only evidenced by marriage certificate made by officials in marriage registry.
- b) In the event no marriage evidenced by marriage certificate can be requested itsbat nikahnya to the religious court.
- c) Itsbat marriage submitted to the religious court limited to the things related to:
 - a) In marriage in order to complete the divorce.
 - b) Loss of marriage certificate.
 - c) The presence of doubt about legal or failure one of the requirements marriage.
 - d) In marriage that took place before enactment of laws number 1 years 1974 about the marriages.
 - d) Are entitled to submit a request for itsbat marriage is husband or wife, their children.

Itsbat marriage was because there was marriage enforceable not in the presence of or under the supervision of acting authorized, so that it would not recorded and can not be proven marriages between the single here on Wednesday and Thursday by deed of marriage .The process to determine the was a result necessary demands whenever the occasion marriage certificate in order to take care of a birth certificate of that can be displaying their names both parents with a view to turning to earn the right from both parents [11].

Marriage certificates is one of the requirements the birth certificate which states child who is a son of father and mother specified in birth certificate was based on his parents marriage certificate and in child birth certificate they could name both his father and mother.

To earn the right of children who are not attend the father name on the birth certificate for parents who has registered birth certificate at its, civil registry several parents itsbat do marriage which reasons of the petitioner request itsbat marriage to the religious court is in order mengurus birth certificates of their children in addition to the matrimonial law the applicant. itselfThis means that parents wanted to clarify the status of their children born of marriage are not registered or not marriage registry officials appear on religious affairs offices in.Children born of a marriage which are not written, a birth certificate issued by the civil registry will provide only his mother name like birth certificates of children born out of wedlock.

Legal consequences, if girls his father cannot be wali marriage when getting married since they are only ascribed to her mother and/or family his mother, so in juridical they will only are the heirs and inherited his wealth a relic his mother when did his mother died, while for his father difficult to are the heirs and inherited his wealth his father because in a juridical manner there is no evidence authentic that he his father son. Moreover if his father having in another son of your wives marry or each other legally and recorded on the marriage registry employees. The determination of marriage itsbat by religious courts among others aimed at to provide protection against children born of a marriage which are not written .

Decisions the constitutional court Number 46/PUU-VIII/2010 about the marriage is one of the outer controversial issued by the constitutional court, because new besides giving rules relating to law of household in Indonesia in particular the requirement of the marriage, outer also caused the pros and cons in society especially muslims especially in Indonesia. Statement of absolute responsibility could be provided by the registrar office to be signed the mother is enough showing family card that account in a letter signed by the head of nagari the abode of the mother is. Of the guardian that a reference letter on the nagari they anyone had showed that the concerned do live as husband wife in a family who lived in areas which are led by the Head of Nagari [12].

As one of the organs of the regional government, on the other side department of population and civil registration also find that there had been no legal certainty if minister of home affairs regulationi is in practice the on the region, based on the consideration that fixed affairs regulation if implemented the registration of marriage as the message of the act of mating will the less done by the society, because their children who is born of a marriage which are not written those countries will be recognized as a son valid will .The decision of the constitutional court and this in affairs regulation seems evil to provide legal certainty, because the person would be the more will do marriage siri, so that the registration of marriage on the state in accordance with the act of to not sacred again.[13].

Legal protection against children is not mentioned the father name in birth certificates in terms of perceptive theory legal protection according to Fitzgerald that law protecting the interest of someone with a way to allocate his power in measurable, in a determined sweep and depth, to act in order to their interests, called as a right .

B. DUE TO LAWS AGAINST CHILD WHO IS NOT LISTED THE NAME OF FATHER IN A BIRTH CERTIFICATE

A children outside marriage stipulated in article 43 paragraph (1) the act of mating said “children born out of wedlock had only civil relationship with his mother and his mother family“. Writer thought that besides marriage is not registered will result in parents of the register birth certificates for child be include the name of his father and besides was also raised loss of the rights of the child another. One of them a child is got care of parents especially father, not received education and other rights. A child as the subject of a law having civil rights have been sharply and independence, he had meant by that the right of a bni offered for its shares or constituting the state responsibilities enough to make it. Civil rights have been sharply comprises the rights in order to obtain the identity of, the right of maintain the identity of , freedom of assembly, while ensuring the protection of the private lives of, have obtained information that worthy of, protection from into wrenching state of independence [14].

In addition due to be distracted from that child in reveal from the marriage feast are not registered or that which is reveal of the impact of the matrimonial law who unlawfully (the son of adultery then for them is, the son of discordant) had no relationship civil plaintiff perfectly with both of his parents, of justice civil relationship which has seen trade include:

- **The Right Of Well Aware Of The Origin Went**

The right to know the origin of for a child is the right of civil the guaranteed article 56 paragraph (1) Act Number 39 Years 1999 Of Human Rights and article 7 paragraph (1) Act Of Child Protection which the contents its requirements same, that every child entitled to know who her parents.

- **Right To Maintenance And Education From Parents**

For children outside marriage passed apply article 277 Civil Act resulting in the child will apply the provisions of the act the same as if a. were born in marriage, This means that the act for the law imposed against children born in marriage as contained in the books to, II chapter to XIV civil act. parents about power For children outside marriage recognized by their parents apply the provisions of article 306 paragraph (1) civil act said that children outside marriage that had been recognised is in the guardianship; paragraph (2) against them also apply article 298. Under the provisions of article it can be discovered that children outside marriage recognized that earned the right to the same education maintenance and legal, but he is under guardians because his parents not in matrimony.

- **Right Represented In All Legal Matters Within Or Outside The Court And The Damn Thing The Care Of A Treasure.**

In the act of mating not explicitly set about the interests of what you want from children born out of wedlock that can be carried by his, as against children valid in power parents set in article 50 paragraph (2) the act of mating. In relation to this, abdukkadir muhammad thought that been for wali it is actually pass power parents, so wali also to

represent children in all his works law at home and outside the court, guardianship about personal for children or his wealth. While the child born out of wedlock not in power parents, it is the right to wakili children in all his works law. Article 50 paragraph (2) the act of mating determine that guardianship of personal children himself or his wealth.

Unless the interest the boy, at home and outside the court, for children or who bestowed on personal are his guardian. Special in the born out of wedlock which is subject to civil law, their rights to represent in what you at home and outside the court, for children or bestowed on personal, as defined in civil law stated that:

- a) To all boys and girls marriage if they take off played down expectations of any that have been ratified, to take possession therein as under guardians but is not within my power on the part of parents, so that the parents are concerned that their representatives which was pounded by the , just as happened with the supervision of their children this town of which the two hearts in his inside concerning the validity of .
 - b) Played down expectations of any that are acknowledged by to all boys and girls marriage if they take off , done by crossing parents that admit it or a who was responsible for the of that which was appointed.
- Right In Get Inheritance

Based on article 272 BW that children outside marriage if they take off down expectations of any breakthrough that can be recognized man is a wise son was born of a mother but who does not dibenihkan by a man who up a sense of anticipation in the bond of lawful matrimony with the mother of the child them and they will come termasukdi in a group the son of sexual vice and the son of discordant [15].

Can be seen in article 863 Civil Act that the magnitude of a part of children outside marriage recognized it depends upon the mewaris, together at the time namely:

- a. When children outside marriage inherit with class i consisting of both and the, and we said go and their share is 1/3 part of which is to be obtained if he was the son of legitimate, when children outside marriage.
- b. When the battery is in child marriage inherited together with civil service ii consisting of parents and their brethren and his descendants was 1/2 part of estate of inheritance.
- c. When the battery is in child marriage inherited together with civil service iii consisting of grandparents and so on upward , or mewaris together with (iv consisting of the family in a line sideways those that are more distant , including brethren the heirs the iii and his descendants was 4/3 part of estate of inheritance.
- d. When the battery is in child marriage inherited along with among the people of the heirs of persons who rank different, god gives you a calculated by see a family which is nearest rank with heir to the relationship.

The birth certificate which do not have the name of his father theory perceptive in terms of legal certainty that legal certainty is one of legal purposes, there are other benefits and justice to every single human being as a member of the plural in conjunction with another single without differentiating the origin of where he is.

Jan meichel otto as saying by khairani said that indicators for taken a legal certainty and a rule 5 (five) must meet conditions, namely [16]:

- a. Existence of a rule of law that which is obvious fit with the clear , be consistent and can be accessed everybody always keeping your temper (accessible) , which is issued by on or upon the name of a country.
- b. Agencies with the aim start applying the standards aturan-aturan saying it was destroying any consistent and they themselves subject to the regulations are.
- c. In principle, the regulations are in accordance with some of the largest of its kind the community.
- d. The existence of the judiciary of the who is independent and imparzial apply the rules of expel them from their houses consistent in with the resolution of disputes . Supreme court decision.
- e. Messenger will be unjust to, are actually, it can bear they will.

Legal certainty is one of legal purposes, other besides who profit them and justice for everyone man as a member of the plural in interaksinya with insan another without distinguish origin of from which he is [17]. In writing so that legal certainty to be legal certainty over children who are not to put the father name on their birth certificates linked to the act of mating. child protection and lawsTo get legal certainty it must be done based on regulations so, marriage registration birth certificate registration to legal certainty to the marriage and. status and the rights of the child Akta-akta issued by the civil registry power is not able to be refuted by other parties.This child birth certificate is a strong and perfect. is an authentic deed.

7. CONCLUSION:

- a) Legal protection against children is not mentioned the father name on the birth certificate to earn the right of children not included the father name on the birth certificate for parents who has registered birth certificate at its, civil registry several parents do itsbat wedlock to the matrimonial law the applicant itself. Children born of a marriage are undocumented / registered, on a birth certificate issued by the registrar office will only included the names his mother the same as a birth certificate children born out of wedlock. In a juridical they will only be an heir and inherit the legacy of his mother when her mother had died.

b) Birth certificates for children not included her father name caused loss of another children rights to obtain maintenance. Marriage were not reality it is causing no responsibility to father, a child especially children get a good education and other privileges. Being without a child to be recording marriage have legal relations good to him and his family. If girls, he can not be when getting married for marriage as they only ascribed to mother and/or family his mother, so in juridical will are the heirs of property left by parents and inherited his mother when mother died, and to his father difficult to are the heirs of his father and inherited wealth because in authentic juridical no evidence that he his father son.

SUGGESTIONS

- a) All recording related to birth , marriage and death have to be arranged in one agencies . So that there is clarity starting from recording marriage , birth and death .Improvements to systems to birth registration, a marriage performed through good service , procedures and the requirements filings easy . The community must unaware of the importance of recording marriage .Related agencies need to do about the importance of recording marriage .
- b) The people need to think first for repeated do marriage siri which is a very hilangnya civil rights impact the children of your father, like the relationship civil rights include the right of the fulfillment of parents against children, then kept education, the right of each other, right of guardianship to women over a child marriage, civil rights and the other.

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