



Equality of Rights of Children Born Outside of Marriage from the Perspective of the Constitution and Human Rights

Habibul Umam Taqiudin^{1*}, Burhanudin², Agil Panca Wardana³

^{1, 2, 3}Faculty of Law, Nahdlatul Ulama University of West Nusa Tenggara, Mataram, Indonesia

*Correspondence: habibulumamtaqiuddin1986@gmail.com

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Abstract

This study aims to analyze the legal provisions regarding the status of children born out of wedlock in the Indonesian legal system, examine the legal construction established by the Constitutional Court, and assess its compliance with human rights principles. This research is a normative legal study with a case law and conceptual approach. The legal materials used consist of primary legal materials, secondary legal materials, and non-legal materials. The legal materials were collected through literature review, while the analysis was conducted using legal reasoning through legal interpretation, legal theory, and legal principles. The results of the study indicate that: (1) the provisions in Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage initially limited the civil relationship of children to their mothers and their mothers' families, thus potentially giving rise to discrimination based on birth status and inconsistent with constitutional guarantees in the 1945 Constitution; (2) The Constitutional Court has constructed a new legal construction by recognizing the civil relationship between children and their biological fathers as long as it can be legally proven, thus shifting the formalistic approach towards substantive justice oriented towards protecting children's rights; (3) The legal construction has demonstrated alignment with the principles of non-discrimination, equality before the law, and the best interests of children in the national legal system. Restrictions based on birth status are not in accordance with the constitution and human rights, so there is a need for harmonization of regulations to fairly protect children born outside of marriage.

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Introduction

Children are legal subjects with basic rights that must be protected by the state without discrimination, including children born out of wedlock. In practice, the status of illegitimate children in Indonesia has long faced legal and sociological challenges, particularly regarding restrictions on civil relations with their biological fathers. These regulations not only impact family law but also affect the fulfillment of children's basic rights, such as identity, care, support, and comprehensive legal protection (Musbih & Andaryuni, 2025).

In the development of Indonesian constitutional law, a significant paradigm shift has occurred regarding the protection of children born out of wedlock. This is marked by the judicial review of legal norms against the 1945 Constitution of the Republic of Indonesia through Constitutional Court Decision Number 4/PUU-VII/2010, which became a significant milestone in affirming the protection of children's rights as part of constitutional rights. This decision reflects a more progressive interpretation of the constitution in guaranteeing children's rights without discrimination and affirms that the state has an obligation to protect every child regardless of their birth status (Mahfud et al., 2025).



The Constitutional Court's decision demonstrates that the law is no longer solely oriented towards formal norms, but must also consider the values of substantive justice and humanity. In this context, recognizing a child's civil relationship with their biological father, as long as it can be scientifically and legally proven, is part of the protection of children's rights, in line with human rights principles, particularly the principles of non-discrimination and equality before the law (Achmad Fitrian et al., 2025).

Furthermore, from a human rights perspective, every child has the right to identity recognition, protection, and equal opportunities to develop optimally. Therefore, discriminatory restrictions on the rights of illegitimate children are no longer in line with the spirit of the constitution, which upholds justice and protection for every citizen. Within the framework of constitutional law, the state plays a role not only as a norm-setter but also as a guarantor of the fulfillment of citizens' constitutional rights, including those of illegitimate children (Gusmarani, 2025).

The formulation of the research problem is: 1) How is the legal regulation regarding the position of children born outside of marriage in the legal system in Indonesia?, 2) How is the legal construction built by the Constitutional Court's decision regarding the recognition and protection of the rights of children born outside of marriage in a constitutional perspective?, 3) How is the suitability of the regulations and decisions of the Constitutional Court with the principles of human rights, especially the principle of non-discrimination and equality before the law?. While the objectives of the research include: 1) To analyze the legal regulations regarding the position of children born outside of marriage in the legal system in Indonesia, 2) To examine the legal construction formed by the decisions of the Constitutional Court in providing recognition and protection of the rights of children born outside of marriage, 3) To analyze the suitability of the legal regulations and decisions of the Constitutional Court with the principles of human rights.

To answer the three problem formulations above, relevant legal theories are used. First, the Theory of the Rule of Law. This theory asserts that the state must guarantee the protection of human rights and uphold the principle of equality before the law. In this context, treatment of illegitimate children must not be discriminatory. Every child has equal standing before the law and has the right to receive protection and recognition of their rights without distinction based on their birth status. Therefore, the state is obliged to guarantee legal certainty and fair protection of children's identity rights, civil rights, and welfare rights as part of respect for human rights (Kurniawan, 2017)

Second, the Theory of Human Rights. Human rights are inherent rights inherent in every individual from birth. The principle of non-discrimination is the primary basis for ensuring that every child, regardless of their birth status, has the right to receive equal protection from the state. In this context, children born out of wedlock still have rights that must be respected and protected, including the right to identity, legal recognition, and civil rights. Therefore, the state is obliged to ensure that there is no discriminatory or detrimental treatment of children based on their birth status (Apaut & Fallo, 2025).

Third, the Theory of Legal Protection. This theory emphasizes that the law must protect individual rights, both preventively and repressively. Children born out of wedlock, as a vulnerable group, require optimal legal protection from the state. Therefore, the state is obliged to ensure that there is no discriminatory or detrimental treatment of children based on their birth status, so that every child receives legal protection and equal opportunities in community life and before the law (Izudin, 2023).

Fourth, the Theory of Justice. According to Rawls, justice must guarantee equal rights for everyone. In this regard, children born out of wedlock must be treated fairly and must not be disadvantaged due to their birth status. This principle of justice affirms that every child has the same right to legal

protection and recognition of their rights without any discriminatory treatment. Therefore, birth status cannot be used as a reason to limit or diminish a child's rights as a legal subject (Efendi, 2022).

Fifth, Progressive Legal Theory. This theory emphasizes that law must be oriented toward substantive justice and humanity. The Constitutional Court's decision can be understood as a form of progressive law that seeks to correct normative injustices against illegitimate children. This decision demonstrates an effort to prioritize the protection of children's rights and the value of justice, so that children are no longer disadvantaged due to their birth status (Setyawan, 2025).

Based on this description, the issue of equal rights for children born out of wedlock is not only related to family law but also touches on constitutional dimensions and fundamental human rights. The lack of synchronization between normative regulations and the development of more progressive legal thought has the potential to create legal uncertainty and unfair treatment of children, who should be maximally protected by the state. In this context, the Constitutional Court's ruling is a crucial point that requires in-depth analysis to understand the direction of legal reform that is just and oriented toward protecting children's rights.

Therefore, this research is crucial and urgent to provide a comprehensive understanding of the legal construction of equal rights for children born outside of marriage from a constitutional and human rights perspective. Furthermore, this research is expected to provide a conceptual contribution to the development of national law, particularly in realizing a legal system that upholds the principles of justice, legal certainty, and non-discrimination for every child regardless of their birth status.

Methods

This research is a normative legal study with a prescriptive-analytical character. It focuses on examining applicable legal norms and providing arguments regarding how the law should regulate the equal rights of children born out of wedlock from a constitutional and human rights perspective. This research also examines the gap between positive legal regulations and the ideal conditions that should be realized based on constitutional principles, human rights, and relevant legal principles, in order to formulate a more just and responsive legal framework for protecting the rights of children born out of wedlock.

The approaches used include a statutory approach, a case approach, and a conceptual approach. The statutory approach is used to examine various legal provisions governing the status of children born out of wedlock. The case approach is used to analyze Constitutional Court decisions as part of legal development through legal discovery by judges. The conceptual approach is used to understand basic concepts such as human rights, equality, and non-discrimination.

The materials used in this research consist of legal and non-legal materials. The legal materials include primary legal materials, namely the 1945 Constitution of the Republic of Indonesia, Act Number 1 of 1974 concerning Marriage, Act Number 39 of 1999 concerning Human Rights, Act Number 35 of 2014 concerning Amendments to Act Number 23 of 2002 concerning Child Protection, laws and regulations, and Constitutional Court decisions. Secondary legal materials include relevant books and scientific journals. Non-legal materials include supporting sources such as dictionaries, encyclopedias, and other references related to social and conceptual aspects to strengthen the analysis in this study.

The collection of legal materials was conducted through literature review, identifying, inventorying, and classifying legal materials according to the research focus. Legal material analysis techniques were conducted using legal reasoning. The analysis process employed legal interpretation methods,

including grammatical interpretation, systematic interpretation, and teleological/ sociological interpretation.

Furthermore, the analysis is based on relevant legal theories and principles, namely the rule of law theory, human rights theory, legal protection theory, justice theory, and progressive legal theory, as well as the principles of non-discrimination, equality before the law, and the best interests of the child. This research is expected to produce systematic and comprehensive legal arguments regarding the equal rights of children born outside of marriage in the Indonesian legal system.

Results and Discussions

Legal Regulations on the Status of Children Born Outside of Marriage in the Indonesian Legal System

Regulations regarding the status of children born outside of marriage in Indonesian positive law are normatively regulated in Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states that children born outside of marriage only have a civil relationship with their mother and their mother's family. Based on grammatical interpretation, this norm indicates the existence of limitations on children's civil relationships which have implications for the non-recognition of legal relations with biological fathers. This limitation, if understood textually, reflects a formalistic approach in law, which has not fully paid attention to the aspect of substantive justice.

In practice, this provision has legal consequences in the form of the severing of civil relations between the child and his biological father, even though in fact there is a blood relationship that can be proven through science and technology (Setiawan, 2024). This situation has the potential to ignore children's inherent rights, such as the right to identity recognition, support, and legal protection from both parents. Furthermore, this absolute restriction can also lead to injustice, placing children at a disadvantage due to their parents' marital status (Musbih & Andaryuni, 2025). Therefore, a more comprehensive understanding of these norms is needed so that they do not only stop at formal aspects, but also consider the values of justice and protection of children's rights in the Indonesian legal system.

Through systematic interpretation, the provisions in Article 43 paragraph (1) cannot be understood as a stand-alone, but must be placed within the entire national legal system, particularly within the framework of the hierarchy of norms that places the 1945 Constitution of the Republic of Indonesia as the highest legal norm. Within this framework, statutory norms must be in line with constitutional provisions, including Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which guarantees children's rights to protection from discrimination and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which guarantees equality before the law.

Within the framework of a state based on the rule of law, protecting children's rights is not only a moral obligation but also a constitutional responsibility of the state, which must be realized through the creation and implementation of laws that guarantee justice for every citizen. Therefore, regulations regarding civil relations for children born out of wedlock must be interpreted proportionally, taking into account the principle of equality before the law and the protection of vulnerable groups. The state cannot allow legal provisions that result in different treatment of children solely because of their birth status, as this contradicts the principle of non-discrimination guaranteed in the constitution and human rights instruments (Corputty et al., 2025). The existence of law must be able to provide certainty and substantive justice for children, so that their rights as legal subjects remain fully protected in the national legal system.

Through a systematic interpretation of Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage with the provisions in Article 4 and Article 5 of Law No. 35 of 2014 concerning Child Protection, it can be understood that every child has the right to identity, care, and legal protection without any discriminatory treatment. Therefore, the recognition of the civil relationship between a child born outside of marriage and his biological father is part of the fulfillment of the child's constitutional rights which must be guaranteed by the state. This interpretation shows that the law must not place the child as the party that bears the legal consequences of the status of his parents' relationship, because every child has the same position before the law and has the right to obtain protection of identity, support, maintenance, and other civil rights in a fair and proportional manner (Baihaki, 2023).

From the perspective of the legal protection theory put forward by Philipus M. Hadjon, the state has a constitutional and legal obligation to provide legal protection to every citizen, especially vulnerable groups such as children. This legal protection is not only interpreted as law enforcement actions after a violation occurs, but also includes preventive efforts to ensure that children's rights are protected from the outset. In this case, preventive legal protection is realized through the establishment of laws and regulations, state policies, and oversight mechanisms aimed at preventing violations of children's rights. Meanwhile, repressive legal protection is provided through dispute resolution, enforcement of sanctions, and provision of redress to parties whose rights have been violated. Thus, the state is responsible for ensuring the fulfillment of children's rights in a fair, certain, and sustainable manner within the framework of a state based on the rule of law (Faiz, 2017).

Through a teleological interpretation of Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, as well as Article 3 letters a and b and Article 4 of Law Number 35 of 2014 concerning Child Protection, it can be understood that the main objective of child protection is to guarantee the fulfillment of children's rights in full and provide protection from all forms of discrimination. This interpretation shows that every child, regardless of their birth status, has the same right to obtain legal protection, identity, welfare, and recognition of their civil rights. This understanding is in line with the theory of justice put forward by John Rawls through the concept of justice as fairness, which emphasizes that every individual must receive fair and equal treatment before the law, including children born out of wedlock, so that there must be no discriminatory treatment that reduces their basic rights as legal subjects (Putra et al., 2025).

In this context, the limitation of civil relations of children based solely on birth status as formulated in Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage is not in line with the objectives of the law which are oriented towards justice and the protection of human rights. This provision has the potential to ignore the best interests of the child because it places the child as the party who must bear the legal consequences of his/her parental relationship. In fact, the child has no involvement or fault for the circumstances of his/her birth. This condition can give rise to discriminatory treatment against children born outside of marriage, especially in the fulfillment of their civil rights, such as the right to identity, maintenance, sustenance, and legal certainty regarding their origins. Therefore, this limitation is contrary to the principle of non-discrimination, the principle of equality before the law, and the principle of the best interests of the child, which are fundamental principles in national law and human rights law (Anam, 2024).

This situation demonstrates that a child's birth status should not be used as a basis for reducing or eliminating their civil rights. Children remain legal subjects who are obliged to receive equal protection and treatment before the law. Therefore, legal regulations regarding children's civil

relations must be directed at ensuring the comprehensive protection of children's rights, including the right to identity, support, care, and legal certainty regarding their relationship with their biological father (Maulidah, 2025). In this way, the law can carry out its function as a means of protection and justice for every child without discrimination based on their birth status.

From the perspective of progressive legal theory put forward by Satjipto Rahardjo, law should not be understood solely as a collection of written rules applied rigidly and formally, but rather should be positioned as a means to realize substantive justice oriented towards human values (Aji, 2026). Progressive law emphasizes that law enforcement must be able to adapt to societal developments and provide protection for parties in vulnerable positions, including children born outside of marriage. Therefore, the norm in Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage cannot be interpreted solely based on its textual content, but must be interpreted by considering the principles of justice, protection of children's rights, and respect for human rights. This aims to ensure that the law does not become an instrument that perpetuates discrimination against children due to their birth status, but rather becomes a means that is able to guarantee the recognition, protection, and fulfillment of children's civil rights in a just and humane manner. (Ali Munib, 2026).

The application of the law is not only oriented towards normative certainty, but must also consider social realities and the values of justice that exist in society. In the context of civil relations for children born outside of marriage, an overly formalistic interpretation of Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage has the potential to cause injustice because it can eliminate the child's rights to his biological father. In fact, the law is essentially there to protect humans and guarantee human dignity, including the child's right to identity, care, sustenance, and certainty of legal status. Therefore, the interpretation of these provisions must be directed towards protecting the interests of children as the most vulnerable party, so that the law does not become a tool to justify discrimination, but becomes a means to realize substantive justice (Muhammad Idris Nasution, 2026). The Constitutional Court's ruling demonstrates that child protection must be placed above formal considerations regarding the marital status of their parents. Children born out of wedlock still have the constitutional right to recognition, protection, and legal certainty regarding their civil relationship with their biological father. This recognition is crucial because it directly relates to the fulfillment of children's rights, such as the right to identity, care, maintenance, and other civil rights. The existence of law in this regard not only functions to maintain normative order but also to ensure the fulfillment of a sense of justice and humanity for every child without discrimination based on their birth status. This norm cannot be understood narrowly based solely on the text, as an overly textual interpretation could potentially ignore the values of justice and protection that should be afforded to children. A reading limited to formal aspects could actually narrow the scope for legal protection for children born out of wedlock, even though they still have the same rights as legal subjects. Therefore, this norm must be interpreted more broadly and contextually to align with the principles of non-discrimination, equality before the law, and guarantees of protection of children's rights in the Indonesian legal system. This more comprehensive interpretation is crucial to ensuring that the law not only provides certainty but also achieves justice that favors the best interests of children regardless of their birth status.

Legal Construction by the Constitutional Court Decision on the Recognition and Protection of the Rights of Children Born Outside of Marriage from a Constitutional Perspective

The Constitutional Court, based on its authority in Article 24C paragraph (1) of the 1945 Constitution, has conducted a review of Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage and built a new, more progressive legal construction. In its legal considerations, the Constitutional Court emphasized that "It is inappropriate 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 as its mother. It is also inappropriate and unfair if the law frees a man who has sexual relations that cause pregnancy and the birth of the child from his responsibilities as a father and at the same time the law eliminates the child's rights to the man as its father." This statement shows that the Constitutional Court places biological relations as a legal fact that cannot be ignored in determining civil relations. This statement also confirms that the existence of a biological relationship has legal relevance in determining a father's civil responsibility for a child. This relates not only to moral aspects, but also concerns the protection of the child's rights, which should be proportionally fulfilled by both parents. By including biological relationships as a basis for establishing legal relationships, the Constitutional Court seeks to avoid a legal vacuum for children born out of wedlock. This situation ultimately reinforces the principle that every child has the right to legal certainty regarding the origins and civil responsibilities of both parents (Wiliyandari et al., 2026).

The implication of this legal construction is that it opens up space for the recognition of civil liability of biological fathers for children born out of wedlock, as long as it can be legally proven. This proof can be done through valid evidence, including scientific developments such as DNA testing, so that legal relationships do not solely depend on the parents' marital status. This also emphasizes that the law must be able to address the real needs of child protection, not just based on administrative formalities. Furthermore, this recognition provides a guarantee that children's rights can still be fulfilled fairly, so that there is no neglect of the interests of children as the most vulnerable party in family legal relations (Salam, 2023).

Through systematic interpretation, the norm in Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage must be read and understood in an integrated manner with the provisions of Article 28B paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia which guarantees children's rights to protection from discrimination, equality before the law, and the prohibition of discriminatory treatment. In addition, these provisions must also be interpreted consistently with Article 3 letters a and b, as well as Article 4 and Article 5 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which emphasizes the protection of children's rights and guarantees of non-discriminatory treatment. Restrictions on children's civil relations cannot be interpreted narrowly, because every legal provision must be subject to the principle of non-discrimination and the principle of legal protection in the entire national legal system.

The existence of Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage cannot be separated from constitutional values that place the protection of children's rights as part of human rights that must be guaranteed by the state. Therefore, the civil relationship of children born outside of marriage is not solely understood within the framework of the formal marital status of their parents, but must also consider the interests and rights of the child as a legal subject. Restricting civil relationships that are only associated with the mother and her mother's family has the potential to cause injustice and eliminate the child's right to recognition of identity, support, care, and legal protection from their biological father (Pane, 2022).

Meanwhile, through teleological interpretation, the Constitutional Court interprets the norm based on the legal objective, namely to provide fair protection and guarantee the best interests of children. This objective is normatively reflected in Article 28B paragraph (2) and Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia, as well as in Article 3 letters a and b and Article 4 of Law No. 35 of 2014 Amendment to Law No. 23 of 2002 concerning Child Protection. In this context, the principle of non-discrimination, the principle of equality before the law, and the principle of the best interests of children apply as the basis for determining the legal status of children born outside of marriage.

In this context, the Constitutional Court positions children as legal subjects who must receive full protection regardless of their parents' marital status. Children born out of wedlock cannot lose their civil rights simply because the legal relationship between their parents is not registered or formally recognized by the state. From the perspective of protecting children's rights, the circumstances of a child's birth are not grounds for limiting their constitutional rights. Therefore, recognizing the civil relationship with their biological father is an important part of guaranteeing children's rights to identity, care, maintenance, inheritance, and legal certainty as a form of protection for children's dignity and human rights (Muthmainah, 2024).

Furthermore, the Constitutional Court emphasized that "...regardless of the procedural/administrative aspects of the marriage, children born must receive legal protection. If this is not the case, then the child born out of wedlock is the one who suffers the loss, even though the child is innocent because his birth was outside his will. Children born without clear paternity often experience unfair treatment and stigma in society. The law must provide fair protection and legal certainty regarding the status of a child born and the rights that exist, including for children born even though the validity of their marriage is still disputed." This consideration reflects the application of the principle of the best interests of the child, while also emphasizing that children must be positioned as protected subjects, not as parties burdened with the legal consequences of their parents' actions. Furthermore, this also demonstrates the application of the principle of legal protection, which requires the state to provide protection to vulnerable groups, including children (Asnawi & SHI, 2022).

In this regard, legal protection for children born out of wedlock is not only related to the recognition of civil status, but also concerns the fulfillment of children's basic rights as citizens. Children have the right to identity, care, sustenance, education, and legal certainty regarding their origins without any discriminatory treatment (Mardiyanto, 2024). Fulfilling these rights is part of the state's responsibility to ensure the proper and dignified growth and development of children. Therefore, the law must be able to guarantee fair protection for every child, including in their civil relationship with their biological father, so that children are not deprived of their rights simply because of their parents' marital status.

In addition, the Constitutional Court also considered developments in science and technology by stating that "...especially when, based on existing technological developments, it is possible to prove that a child is the child of a particular man." This consideration shows that the law must be dynamic and adaptive to social and scientific developments, and not be trapped in a purely formalistic approach, but rather directed towards achieving substantive justice. In this context, the principles of justice and humanity are also reflected as the basis for the formation and application of law (Rambe, 2019).

From the perspective of the theory of justice, the legal construction built by the Constitutional Court reflects the principle of justice as fairness, where every individual, including children born out of

wedlock, has the right to receive equal treatment without discrimination. Through legal reasoning based on the principle of non-discrimination, the principle of equality before the law, the principle of the best interests of children, and the principle of legal protection, the Constitutional Court has expanded the meaning of the norm of Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage by recognizing the civil relationship between a child and his biological father as long as it can be legally proven (Farahi & Ramadhita, 2016).

The ruling demonstrates that law is no longer understood narrowly as a set of rigid written rules, but rather as an instrument for realizing substantive justice in society. The recognition of the civil relationship between a child born out of wedlock and his or her biological father represents a correction to previous legal constructions that tended to position children as the ones who bear the consequences of their parents' actions. However, morally and constitutionally, children cannot be held responsible for their birth status. Therefore, the Constitutional Court's legal considerations serve not only to provide legal certainty but also to protect children's basic rights, such as the right to identity, the right to livelihood, the right to inheritance, and the right to receive recognition and protection from both parents. Thus, the ruling reflects a paradigm shift in family law in Indonesia toward a more humane, just, and human rights-oriented legal system (Mukhlas & Taufik, 2026).

Limiting children's civil relations based solely on birth status is no longer in line with the objectives of the law, as it potentially conflicts with the principles of non-discrimination, equality before the law, and the best interests of the child. This situation shows that children should not be burdened with the legal consequences of circumstances beyond their control, including the marital status of their parents. Therefore, this norm cannot be understood narrowly based on the text alone, but must be interpreted more broadly and contextually to align with the guarantee of protection of children's rights in the Indonesian legal system, so that every child receives fair, equal treatment and legal protection without any discrimination based on birth status.

Conformity of Constitutional Court Regulations and Decisions with Human Rights Principles: The Principle of Non-Discrimination and Equality Before the Law

From a human rights perspective, the principle of non-discrimination and equality before the law are fundamental principles guaranteed in Article 28D paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia. These provisions affirm that every person has the right to recognition, guarantee, protection, and legal certainty that is fair and free from discriminatory treatment. This regulation is emphasized in Article 3 paragraph (2) of Law Number 39 of 1999 concerning Human Rights, which states that every person has the right to fair legal treatment without discrimination. Within the framework of systematic interpretation, these norms must be read as a whole that places the protection of human rights as the basis in every legal regulation, including in determining the status of children born outside of marriage.

In this context, any legal provisions governing the status of children born out of wedlock should not conflict with the basic principles of human rights guaranteed in the constitution and laws and regulations. Ignoring the principles of non-discrimination and equality before the law has the potential to create structural injustice, particularly for children in vulnerable positions. Therefore, regulations regarding civil relations for children must always be directed towards providing equal protection and ensuring legal certainty without distinction of birth background (Nurhayati, 2019). This is important so that the legal system remains consistent in placing human rights as the main foundation in every formation and application of legal norms.

The limitation on civil relations for children born out of wedlock as regulated in Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, before being interpreted by the Constitutional Court, contains the potential for discrimination based on birth status. Grammatically, this norm limits the child's legal relationship to only the mother and her mother's family. This limitation means that, legally, the biological father is not automatically recognized as having a civil relationship with a child born out of wedlock, so that all civil rights and obligations related to the father cannot arise unless there is further legal recognition or determination. This condition has implications for the obstruction of the fulfillment of the child's rights to his biological father, including the right to support, identity, and certainty of legal status in family relations (Kusuma, 2026).

However, through a teleological interpretation, these restrictions are inconsistent with the legal objective of guaranteeing protection and justice for every child, as they potentially eliminate the child's right to recognition and protection from their biological father. This situation demonstrates that the legal objective should not stop at formal regulations alone, but also ensure the actual fulfillment of children's rights in social life. If these restrictions are rigidly maintained, there is a risk of ongoing injustice for children born out of wedlock, particularly in terms of access to civil rights inherent in the parent-child relationship (Izudin, 2023).

The Constitutional Court in its legal considerations stated that "Article 43 paragraph (1) of Law 1/1974 which states, "Children born out of wedlock only have a civil relationship with their mother and their mother's family" is conditionally unconstitutional, namely unconstitutional insofar as the paragraph is interpreted as eliminating civil relations with men who can be proven based on science and technology and/or other evidence according to law to have a blood relationship as their father." This statement confirms that the norm is not in accordance with the principles of non-discrimination and equality before the law, and does not reflect fair protection for children as legal subjects.

From the perspective of human rights theory, every individual possesses inherent rights from birth, regardless of their birth status. These rights are natural, universal, and inalienable, as they arise from human dignity itself (Ashri, 2018). Thus, children born out of wedlock remain legal subjects with equal standing before the law and are entitled to protection of their identity, upbringing, welfare, education, and certainty of civil relations with their parents. Differentiating treatment based on birth status is fundamentally contrary to the principle of non-discrimination in human rights, as children cannot be burdened with legal consequences for circumstances beyond their control (Achmad Fitrian et al., 2025). Therefore, the state is obliged to guarantee the fulfillment of children's rights without discrimination, both through the formation of laws and regulations and through law enforcement practices that are oriented towards the protection and best interests of children.

This is in line with the theory of justice put forward by John Rawls, which emphasizes the principle of justice as fairness, where every individual must be treated equally. According to Rawls, justice demands the guarantee of the same basic rights for everyone without any discriminatory treatment (Rawls, 2020). In the context of protecting children's rights, this principle implies that children born out of wedlock must still receive fair and equal treatment before the law, including in the fulfillment of civil rights, identity, care, and social protection. Differences in birth status cannot be used as a basis for limiting or reducing children's rights, because justice essentially requires protection for groups in vulnerable positions so that they continue to receive equal opportunities and recognition as legal subjects (Hutagalung, 2023).

Furthermore, the state has an obligation to provide protection to vulnerable groups, including children, as a manifestation of the principle of legal protection. This protection is not only interpreted

as an effort to prevent rights violations, but also includes the state's obligation to guarantee legal certainty, justice, and benefits for every citizen without discrimination. Children, as a group with physical and psychological disabilities, require special protection so that their rights can be optimally fulfilled. (Erdianti, 2020). In the context of children born out of wedlock, legal protection is crucial to ensure that their birth status does not result in discriminatory treatment that could hinder the fulfillment of their rights to identity, civil rights, custody, or welfare. Therefore, the state, through legal instruments and court decisions, is obligated to provide protection mechanisms capable of ensuring the best interests of children as legal subjects whose dignity and rights must be respected. Furthermore, the Constitutional Court's decision also reflects the application of the principle of the best interests of the child, by placing the protection and fulfillment of children's rights as the main priority in determining legal relationships. This principle emphasizes that every policy, action, and legal decision related to children must be oriented towards the interests and welfare of the child as the primary consideration. In this context, the recognition of the civil relationship between a child and his biological father is a concrete form of fair and non-discriminatory protection of children's rights, because it provides legal certainty regarding the child's status and guarantees the fulfillment of civil rights that were previously potentially neglected. This recognition also indicates a shift in the legal paradigm from a purely formalistic approach to a more humanistic approach oriented towards the protection of human rights, particularly the rights of children as a vulnerable group (Maulana et al., 2026). Thus, the Constitutional Court's decision not only functions as an instrument for enforcing the constitution, but also as a means to realize substantive justice in protecting children's rights in Indonesia.

The Constitutional Court's decision reflects alignment with human rights principles and constitutional provisions, particularly in guaranteeing the protection of children from discrimination, ensuring equality before the law, and the application of the principle of the child's best interests. Through this decision, the Constitutional Court positions children as legal subjects whose rights must be protected regardless of their birth status. This demonstrates the development of legal thinking that is more oriented toward protecting human dignity and fulfilling children's constitutional rights as citizens entitled to recognition, protection, and legal certainty.

Nevertheless, further harmonization of laws and regulations is still needed to prevent disharmony between the Constitutional Court's rulings and various provisions in the national legal system, including marriage law, population administration, and civil law. Such harmonization is crucial for creating synchronized norms and legal certainty in their implementation in society. Furthermore, strengthening law enforcement practices and administrative policies is also necessary so that protection of the rights of children born out of wedlock is not limited to the normative level but can be realized consistently, effectively, and fairly in social life and the judicial process. In this way, the goal of a state based on the rule of law to guarantee the protection of human rights and justice for every child can be optimally realized.

Conclusion

The provisions regarding the status of children born out of wedlock in Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage initially limited the child's civil relationship to the mother and her mother's family. This limitation, if understood textually, has the potential to give rise to discrimination based on birth status and is inconsistent with the constitutional guarantees in Article 28B paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution,

as well as the provisions of Law Number 35 of 2014 concerning Child Protection and Law Number 39 of 1999 concerning Human Rights.

Through the Constitutional Court's decision, a new legal construct was established that affirms that children born out of wedlock have a civil relationship with their biological father as long as it can be legally proven. The Constitutional Court's consideration that children should not bear the consequences of their parents' actions, along with the recognition of the fact of the biological relationship, demonstrates a shift from a formalistic approach to substantive justice oriented toward protecting children's rights.

The legal arrangements and legal constructions established by the Constitutional Court have moved toward alignment with human rights principles, particularly the principles of non-discrimination, equality before the law, and the best interests of the child. This also addresses the research objectives formulated in the introduction, namely to examine and argue how the law should regulate the equal rights of children born out of wedlock from a constitutional and human rights perspective.

Moving forward, it is necessary to strengthen the harmonization of norms within legislation to prevent disharmony, as well as further affirmation in the formulation of legal norms that explicitly accommodate the recognition and protection of the rights of children born out of wedlock. Furthermore, further research within the normative legal framework can be directed toward developing a more comprehensive legal conception through comparative legal studies and doctrinal deepening to strengthen the system of child rights protection in national law.

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