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MODEL OF LEGAL PROTECTION OF UNMARRIED CHILDREN IN THE PERSPECTIVE OF INDONESIAN LAW

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Abstract

The nasab theory states that to obtain legitimate offspring is by means of a legal marriage. Legitimate children and children born out of wedlock the state is obliged to provide legal protection. The purpose of this research is to find a model of legal protection for children born out of wedlock in the perspective of Indonesian law. This research is normative legal research, with philosophical, legislative, and conceptual approaches. The legal materials used are primary, secondary, and tertiary legal materials to be analyzed descriptively. The results of the research obtained are, The model of legal protection of extramarital children in Indonesia in the future is that there needs to be a new norm construction on the phrase extramarital children in accordance with the principles of Islamic law. According to the author's analysis, extramarital children must get legal protection in the form of, the child is appointed by the biological father to become an adopted child which has implications for the fulfillment of his civil rights.

Keywords: Model, Legal Protection, Unmarried Children, Indonesian Law.

INTRODUCTION

The theory of nasab states that the only medium or instrument to form or obtain offspring is by means of legal marriage, not by adultery or others. According to a study conducted by the Moroccan NGO Insaf (Institution Nationale de Solidarité avec les Femmes en détresse), 27,199 women gave birth to 45,424 unmarried children in Morocco in 2009, and every day, 153 children are born without a known father[1]. The free association of life is certainly contrary to Islamic law and Indonesian law, and not only contradicts but will also damage the nasab itself which results in the legal status and inheritance rights of children born out of wedlock, where the child then has no legal status and also does not get inheritance rights from his biological father, and this will certainly harm the child both moral or psychological losses and also material losses, namely not getting inheritance rights. Every child has a dignity that must be upheld, and every child who is born must receive their rights without the child asking. These rights are basic rights that are inherent in human nature, universal and eternal. Therefore, they must be protected, respected, guarded, and must not be ignored, reduced or eliminated by anyone[2].

This can be seen in the 1945 Constitution (UUD 1945) in Chapter X on Human Rights, in the provisions of Article 28 letter A it is stated: "Every person has the right to live and to defend his/her life and livelihood". Human rights as a gift of God Almighty, usually formulated as

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inherent rights owned by humans as a gift given by God to humans in maintaining life on earth. DF. Scheltens as quoted by Nurul Qomar in his book said that human rights are a consequence of being born as a human being[3].

Article 1 paragraph (1) of Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, hereinafter referred to as the Human Rights Law, provides a formulation of human rights as a set of rights inherent in the nature and existence of humans as creatures of God Almighty and is His gift that must be respected, upheld, and protected by the state, law, government, and everyone for the sake of honor and protection of human dignity[4].

Indonesian state regulations or Indonesian law distinguish between legitimate children and children out of wedlock, a legal marriage will produce legitimate offspring in the eyes of religious and state law, but on the other hand many offspring are produced from parents who violate religious rules or violate prevailing norms in society, such as pregnancies that occur outside of marriage[5]. While Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law and Law Number 16 of 2019 concerning Marriage on the amendment of Law Number 1 of 1974 concerning Marriage says that out-of-wedlock children are related only to the mother and her family, if so, out-of-wedlock children are not related to their biological father, in contrast to the Constitutional Court (MK) in its decision Number 46 / PUU-VIII / 2010 which states that out-of-wedlock children have a civil relationship with their biological father if it can be proven by evidence based on technology. Because according to the government, in this case the Constitutional Court (MK), it is very important to protect the rights of these children, including the rights of children who are violated, namely out-of-wedlock children, but the Constitutional Court's decision is still unclear whether what is meant is children from siri marriage, children from adultery or sumbang children.

According to the provisions of Article 43 paragraph (2) of the Marriage Law which states that the position of extra-marital children will be regulated by government regulations, but until now the promised government regulations have not materialized, the government's attitude is still very giddy to regulate the legal position of extra-marital children in relation to their biological father, even though the marriage law has been in effect for almost half a century since its promulgation. Thus, these out-of-wedlock children do not get their rights as a child properly as those obtained by children born from a legal marriage[6]. The researcher fully understands and understands why the marriage law does not attribute the extra-marital child to his biological father, because it is indeed in the perspective of Islamic law that an extra-marital child cannot be attributed to his biological father, and the issue of extra-marital children is a sensitive issue.

According to researchers, the protection of children out of wedlock must still be given and must be in accordance with the relevant professional ethics, to prevent deviant behavior in the exercise of authority, power, and strength in the implementation of child protection, especially must not conflict with Islamic law which is part of the source of Indonesian positive law. The implementation of child protection must be based on the 1945 Constitution and various other applicable laws and regulations including religious norms. The application of this juridical basis must be integrative, namely the integrated application of laws and regulations from

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various related fields of law. Protection is the provision of guarantees for security, peace, welfare, and peace from the protector against all dangers that threaten the protected party[7].

The researcher chose the Indonesian legal perspective as the title of the dissertation writing because Indonesian law governing the legal status of children out of wedlock still occurs pluralism or diversity between one another and norm conflicts, for example between the Compilation of Islamic law and the Indonesian Civil Code, including the Constitutional Court Decision No. 46/PUU-VII/2010. 46/PUU-VII/2010. Law Number 1 Year 1974 concerning Marriage Article 2 states[8]:

1. Marriage is valid if performed according to the laws of each religion and belief.
2. Every marriage shall be recorded in accordance with the applicable laws and regulations.

Furthermore, Article 43 paragraph (1) of Law Number 1 Year 1974 states: "Children born outside of marriage only have a civil relationship with their mother and their mother's family."

In the perspective of the Constitutional Court's decision, the marriage law creates an injustice and there is no legal certainty, especially for children and mothers, while the position of the man who gave birth is very beneficial, because from a legal point of view he does not have any responsibility for the mother and her child[9]. But unfortunately the Constitutional Court Decision is also still ambiguous and multiple interpretations of which extramarital children are referred to in the decision. And the Constitutional Court Decision reads "children born out of wedlock have a civil relationship with the mother and her mother's family and with the man as the father who 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 the father's family." According to the Constitutional Court's decision, the formulation of Article 43 of the Constitution states that children born out of wedlock have a civil relationship with the mother and her family.

According to the decision of the Constitutional Court, the formulation of Article 43 of the Marriage Law seems as if the extra-marital child is only the responsibility of the mother, thus relieving the father of his responsibility for the extra-marital child. Whereas according to Article 45 of the Marriage Law, both parents are obliged to maintain the child.

The fact is that Indonesian law has not been able to provide certainty, justice and benefits for children out of wedlock. Whereas the Indonesian state of Indonesia is a state of law based on Pancasila which is based on the Almighty God and a just and civilized humanity which must provide true justice for every child of the nation including extramarital children. Until now, researchers have not found any data regarding the number of extramarital children in Indonesia, which means that according to researchers the state is less concerned and has not collected data on the number of extramarital children in Indonesia to protect their rights as befits a legitimate child. For this reason, the researcher raised the title of the dissertation on "Model of Legal Protection of Extramarital Children in the Perspective of Indonesian Law".

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RESEARCH METHOD

The type of research used in this research is normative legal research. Normative legal research is legal research that examines positive legal norms as the object of study. In normative legal research, the law is no longer seen as a mere utopia but has been institutionalized and has been written in the form of norms, principles and existing legal institutions. Normative legal research is also called dogmatic legal research which examines, maintains and develops positive legal buildings with logical buildings. Normative legal research or library legal research is legal research conducted by examining library materials or secondary data[10].

DISCUSSION

Model of Legal Protection of Unmarried Children in the Perspective of Indonesian Law

The form of legal protection of children out of wedlock in Indonesia to date has referred to jurisprudence, namely the Constitutional Court Decision Number: 46 / PUU -VIII / 2010, which as a result of this decision, all laws and regulations are no longer valid. However, the researcher disagrees with the decision of the Constitutional Court because according to the researcher the decision is contrary to the Indonesian marriage law, namely Article 2, and also contrary to legal law, religious norms, especially Islamic law, which Islamic law itself is one of the sources of Indonesian positive law.

Therefore, researchers offer a model of legal protection for children out of wedlock that does not conflict with existing legislation or does not conflict with Islamic law, the model or forms of legal protection for children out of wedlock are as follows:

The state requires biological fathers to adopt out-of-wedlock children as their adopted children.

The first solution is that the State requires the biological father to adopt the out-of-wedlock child as his adopted child, because with the adoption or appointment of the biological father, the out-of-wedlock child is then automatically entitled or gets, living, education and affection from his adoptive parents. Child adoption is also known as adoption.

From a human rights perspective, child adoption is a model of humanitarian-based childcare without breaking the blood/nasab relationship with the biological mother and father. Child adoption in this sense is a very noble act[11].

According to Law No. 35 of 2014 Amending Law No. 23 of 2002 on Child Protection, child adoption can only be carried out in the best interests of the child and is carried out based on local customs and the provisions of laws and regulations. The Compilation of Islamic Law (Presidential Instruction No. 1 of 1991) Article 171 letter h on child adoption states that "an adopted child is a child whose responsibility in terms of maintenance for his daily life, education costs and so on shifts from his original parents to his adoptive parents based on a court decision[12].

As described above, the Supreme Court itself, as the person responsible for the technical development of the judiciary, recognizes that the legislation in the field of child adoption of

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Indonesian citizens by foreigners is insufficient, but there are several legal regulations that can be used as a reference for judges in carrying out the main tasks of judicial power regarding child adoption, for example:

1. Staatsblad 1917 No. 129, Articles 5 through 15 regulate the issue of adoption which is a supplement to the existing Civil Code/BW, and specifically applies to the Chinese community.
2. Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA) No. 2 of 1979 dated April 7, 1979, concerning the adoption of children which regulates the legal procedures for submitting applications for validation and/or applications for adoption of children, examining and adjudicating them by the court.
3. Supreme Court Circular Letter No. 6 of 1983 on the improvement of Supreme Court Circular Letter No. 2 of 1979, which came into effect on September 30, 1983.
4. Decree of the Minister of Social Affairs of the Republic of Indonesia Number 41/HUK/KEP/VII/1984 on Guidelines for the Implementation of Child Adoption Licensing, which came into force on June 14, 1984.
5. Chapter VIII, Second Part of Law No. 23 of 2002 on Child Protection, which came into force on October 22, 2002.
6. Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA) No. 3 of 2005 on the Adoption of Children, which came into force on February 8, 2005, following the natural disaster of the earthquake and Tsunami waves that struck Aceh and Nias, which caused social problems in the form of many children who lost their parents and the desire of foreign volunteers to adopt them as foster children by NGOs and other religious social agencies which greatly endangered the religious faith of the child.
7. Law No. 3 of 2006 on the Amendment to Law No. 7 of 1989 on Religious Courts. Article 49 letter a, number 20 states that the Religious Courts have the duty and authority to examine, decide and resolve cases at the first instance between people of the Islamic faith in the field of: "...determining the origin of a child and determining the adoption of a child based on Islamic law".
8. Some jurisprudence of the Supreme Court and court decisions that have permanent legal force, which in judicial practice have been followed by subsequent judges in deciding or determining the same case, repeatedly, for a long time until now.

Unmaried children are granted inheritance rights through mandatory wills

Unmarried children must be given by their adoptive parents in lieu of inheritance rights or obtain inheritance property from their parents who have adopted them. That is the progressiveness of law or progressive law that can be given to extramarital children when extramarital children are closed to get inheritance rights, the right to get recognition from their biological father, so the law is for humans not humans for the law in the context of progressive law Sajipto Rahardjo, as the originator of progressive law. In Indonesia, mandatory wills are

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regulated in Article 209 of the Compilation of Islamic Law[13]:

1. The estate of the adopted child is divided based on Article 176 through Article 193 above, while the adoptive parents who do not receive a will are given a mandatory will as much as 1/3 of the adopted child's testamentary property.
2. Against adopted children who do not receive a will is given a mandatory will as much as 1/3 of the property of his adoptive parents.

Why adopted children and adoptive parents are required to get a mandatory will, because adopted children and adoptive parents do not inherit each other, because it is not part of the heirs. From several references about mandatory wills, it can be concluded that the application of mandatory wills between the Jumhur ulama, and the existing laws and regulations of mandatory wills in Islamic countries, as well as the Compilation of Islamic Law (KHI) is on the recipient of the mandatory will.

1. The majority of scholars are of the opinion that the recipient of compulsory probate is only a person who has a blood relationship with the testator.
2. In the legislation of Islamic countries, mandatory wills are only limited to the grandchildren down who are left dead by their parents.
3. In Indonesia, the recipient of the mandatory will is the adopted child and adoptive father and children of different religions with the testator who does not necessarily have a blood relationship with the testator (testator).

Basically, the Compilation of Islamic Law (KHI) does not regulate the issue of wills to non-Muslims. But the Supreme Court of Indonesia. Has handed down several decisions regarding this matter. Among others: First, the Supreme Court Decision No. 368K/AG/1995, dated July 16, 1998 which has determined that a child who is a Christian is entitled to get the heir's property, through compulsory testament. And the amount of acquisition is equal to the share of a daughter, not 1/3. Second, the Supreme Court of Indonesia's decision. Number: 51K/AG/1999 which has given consideration as follows: "Considering, that however the Supreme Court is of the opinion that the decision of the Yogyakarta Religious High Court must be corrected, because the Yogyakarta Religious High Court should correct the decision of the Yogyakarta Religious Court regarding non-Muslim heirs, they are entitled to inheritance through a mandatory will which has the same share as Muslim heirs[14].

Based on the decision of the Supreme Court of Indonesia mentioned above, the following legal lines can be drawn:

1. Different religions are one of the reasons for not inheriting from each other, whether the difference in religion is between the testator and the heirs or between the heirs, certainly between the testator and the heirs, not between fellow heirs.
2. The settlement of the division of inheritance depends on the religion of the testator. If the heir is Muslim then it is settled according to Islamic inheritance law.

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3. Non-Muslim heirs can receive part of the inheritance of Muslim heirs through the way of mandatory wills, not through inheritance.
4. The amount of the share of non-Muslim heirs obtained from the inheritance of the testator by way of a compulsory testament, not 1/3 part as the provisions of the maximum limit on the amount of the will, but non-Muslim heirs get the same share as other equal heirs.

The fatwa of the Indonesian Ulema Council mentioned above is a very important, wise, wise, and accommodating decision. There are many very good things to comment on in this fatwa which is a form of dynamization of Islamic law in Indonesia.

In the second point of the decision, number five, it is mentioned that the government has the authority to punish the adulterer who causes the birth of a child by obliging him to provide for the child's needs and to give his property after his death through a will. The takzir punishment for adulterers resulting in the birth of a child and the obligatory will for adulterated children are truly a breakthrough in Indonesian Islamic law that is good and dynamic[15].

The concept of obligatory bequest for adopted children according to the Compilation of Islamic Law (KHI)

In Indonesia, the term mandatory will is mentioned by the Compilation of Islamic Law (KHI) in Article 209 as follows: The property of the adopted child is divided based on Article 176 through Article 193, while the adoptive parents who do not receive a will are given a mandatory will as much as 1/3 of the property of the adopted child. The adopted child who does not receive a will is given a mandatory will as much as 1/3 of the inheritance of his adoptive parents[16].

Article 209 of the Compilation of Islamic Law (KHI). The article discusses the inheritance rations for adoptive parents and adopted children who, because they cannot get inheritance, are still given rations by the ulama' in Indonesia under the name of mandatory wills. In addition, the fatwa of the Indonesian Umala Council (MUI) also mentions that adulterous children can also be given rations or parts of their biological property under the name of mandatory wills, because adulterous children are the same as adoptive parents and adopted children in terms of both not getting inheritance. Because adulterous children do not have a nasab relationship with their biological father but only to their biological mother. This according to the Indonesian Ulema Council (MUI) is not a form of discrimination against children, but as an effort to provide legal protection to children.

Against the statement of the Indonesian Ulema Council (MUI) which states that the determination of nasab for adulterated children to the mother is intended to protect nasab, not as a form of discrimination. The author agrees with the decision of the Indonesian Ulema Council (MUI), but the author will provide recommendations to provide legal protection or the status and civil rights of these extramarital children.

Analysis of the form or model of legal protection of extramarital children in the perspective of Indonesian law

Basically, the existing laws and regulations have not fully guaranteed good protection for the civil rights of extra-marital children. This is due to the lack of harmonization of legal

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provisions. The existence of Decision of the Constitutional Court (MK) Number 46 / PUU-VIII / 2010 is essentially to protect and become a solution to the rights of extra-marital children who have tended to be neglected, but the existence of the content / material of contradicts the values of Islamic law which also apply and are recognized in society.

Based on this, the author provides a model or form of legal protection for extra-marital children in Indonesia in the future by: first, the State requires the biological father of the extra-marital child to adopt him as an adopted child, that way the adoptive father is legally obliged to then provide the child's civil rights to the maximum, this provides more maslahah or benefits to the continuity of his life. This is in accordance with the theory of benefits or maslahah, this theory assesses whether something is good or bad and whether something is moral or immoral in terms of the usefulness or benefits it brings, with the appointment of the extra-marital child; Second, providing mandatory wills when the adoptive parents die, of course this is very beneficial for the extra-marital child. According to maslahah theory or benefit theory, a good thing is useful, useful and beneficial. Conversely, evil or bad things are those that are harmful, useless and useless. Therefore, good and bad behavior and actions are determined in terms of whether or not they are useful, beneficial or not, and profitable or not in addition to not contradicting the Sharia or other regulations. This theory emphasizes the aspect of legal certainty and the importance of a generally applicable rule, because the law aims to realize what is useful or in accordance with usability (effective)[17].

The purpose of law according to this theory is to ensure the greatest happiness for the greatest number of people. In essence, the law is used to produce the greatest amount of pleasure or happiness for the greatest number of people. The principle of utility theory was put forward by Jeremy Bentham in his famous work, Introduction to the Principles of Morals and Legislation, which states that humans are under the rule of two sovereign masters, namely suffering (pain) and joy (pleasure). Both show and determine what to do[18].

Bentham further explains that the principle of benefit underlies all activities based on the extent to which they increase or decrease happiness, or in other words, increase or decrease happiness. More concretely, within the framework of utility theory, three objective criteria can be formulated that can be used as an objective basis as well as a norm for assessing a policy or action, namely the benefit criterion, the greatest benefit criterion and the greatest benefit criterion for whom. According to this theory, the ethical quality of an action is obtained by achieving the purpose of the action. An action that is well-intentioned but produces nothing, according to this theory, does not deserve to be called good. Utility theory underlies ethical decision-making with consideration of the greatest benefit to many parties including extramarital children as the end result. This means that the right thing is defined as that which maximizes what is good or minimizes what is harmful for most people. The more beneficial to the greater number of people, the more ethical the action. The purpose of law, according to Bentham, is to realize the greatest happiness for the greatest number of people. The existence of the state and the law is solely for the true benefit, which is the happiness of the majority of the people[19].

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By nature, man avoids displeasure and seeks pleasure. Happiness is achieved when he has pleasure and is free from distress. Since happiness is man's ultimate goal in life, an action can be judged good or bad to the extent that it increases or decreases the happiness of as many people as possible. The morality of an action must be determined by weighing its usefulness to achieve the happiness of mankind, not the happiness of selfish individuals. Thus, Bentham arrived at utilitarianism's central tenet of the greatest happiness of the greatest number of people being the norm for private actions as well as for Government policy for the people[20].

The theory of maslahah or benefits above can be used as a basis or reference to help formulate a solution to the model of legal protection of children out of wedlock, of course this protection must be beneficial and not contrary to religious norms and legal norms.

And the form or model of legal protection can be through adopting the extra-marital child as an adopted child by his biological father and the state gives the will to the extra-marital child, then this is a legal progressivity given to the extra-marital child, where the original law of the extra-marital child's status in the perspective of Islamic law is only related to the mother and her mother's family. This is in accordance with the progressive law coined by Satjpto Rahardjo that progressive law says that the law is for humans, not humans for the law[21], what is important in the morning of the author is that in order to provide legal protection to children out of wedlock it does not conflict with religious norms or existing legal norms.

Progressive law starts from the basic assumption that (1) law is for humans not the other way around, (2) progressive law does not accept law as a multi- and final institution, but is determined by its willingness to serve humans, and law is a moral institution, and not a technology that has no conscience. Satjito Raharjo[22], as the initiator of progressive law, stated that law is an institution that aims to lead humans to a just, prosperous, and happy life. As a consequence, law is a process that continuously (law in the making) builds itself towards this ideal. This is the essence of progressive law.

On the basis of this assumption, the criteria of progressive law are (1) it has a big goal in the form of human welfare and happiness; (2) it contains a very strong moral content of humanity; (3) progressive law is a liberating law covering a very broad dimension that not only moves in the realm of practice, but also theory; and (4) it is critical and functional, because progressive law never stops seeing existing shortcomings and determining ways to improve them[23].

The presence of progressive law is not a coincidence, not something that is born without a cause, and also does not fall from the sky. Progressive law is part of a never-ending process of seeking truth. Progressive law can be seen as a concept that is looking for its identity starting from the empirical reality of the operation of law in society, in the form of dissatisfaction and concern about the performance and quality of law enforcement in the Indonesian setting at the end of the 20th century[24]. The idea of progressive law emerged due to concerns and anxiety about the state and performance of the law which has failed to solve many of the nation's problems. Trust in the law is decreasing due to the poor performance of the law itself. During the New Order era, the law had increasingly shifted into a political tool to maintain power at that time. Thus, according to Podgorecki and Olgarki[25], the law is no longer a law as a tool of

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social engineering in a positive way, but has led to dark engineering. Since the fall of the New Order in 1998, the Indonesian people have not succeeded in lifting the law to an ideal stage, but instead it has caused more disappointment. The essence of this setback is that honesty, empathy and dedication in carrying out the law have become something very rare and expensive[26].

Progressive legal morals are a never-ending concern about how to encourage the law to provide better and better to its people. Progressive legal morals want to encourage that the way of law never knows the time to stop, but to do something even better. The moral content is due to the acceptance of the human paradigm over the legal paradigm (rule). The history of law bears witness to how from time to time, from century to century, humans struggle to build the order of their lives[27].

One way of doing law that is very troubling to the idea of progressive law is that it absolutely relies on words or sentences in legal texts. According to Bergh[28], law is something that has been completed (legislative). This is very common among the legal community, which is called maintaining legal certainty. The law is a text and remains as such until changed by the legislature. It is not easy for the law to follow the dynamics of life. This method is referred to as a way of law that maintains the status quo. Responding to this, it is also necessary to remember what Gustav Radbruch once stated that a sense of justice sometimes lives outside the law, so that the law is felt to be unfair. According to him, that in legislation products (gezets) sometimes there is gezetsliches unrecht, namely injustice in the law, while not a few are found ubergezetsliches recht, namely justice outside the law[29].

So progressive law offers a form of thinking that is not submissive to the existing legal system, but rather affirmative to dare to make liberation and breakthroughs from conventional practices. If we relate it to the provision of legal protection to extramarital children in the form of adopting these extramarital children as adopted children by their biological father and the state provides mandatory wills to these extramarital children, then this is a legal progressivity given to extramarital children, where the original law of extramarital children's status in the perspective of Islamic law is only related to the mother and her mother's family. This is in accordance with the progressive law initiated by Satjpto Rahardjo that progressive law says that the law is for humans, not humans for the law, what is important for the author is that in order to provide protection to children out of wedlock it does not conflict with religious norms or existing legal norms. With this paradigm, if the people face or are afflicted by a problem, it is not the people who are to blame, but must do something about the existing law, including reviewing the principles, doctrines, substance, and procedures that apply. That is what the law means for humans as a solution to provide protection to people for whom there are no regulations or laws governing them[30].

According to the author, the model of legal protection for children out of wedlock in Indonesia in the future is that there needs to be a new norm construction for the phrase out-of-wedlock children in accordance with the principles of Islamic law. According to the author's analysis, out-of-wedlock children must receive legal protection in the form that the child is appointed by the biological father to become an adopted child which has implications for the fulfillment of

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his civil rights, including when his adoptive father or biological father dies, the adopted child must be given a mandatory will instead of his inheritance rights.

CONCLUSION

The model of legal protection of extramarital children in Indonesia in the future is that there needs to be a new norm construction on the phrase extramarital children in accordance with the principles of Islamic law. According to the author's analysis, out-of-wedlock children must receive legal protection in the form that the child is appointed by the biological father to become an adopted child which has implications for the fulfillment of his civil rights, including when his adoptive father or biological father dies, the adopted child must be given a mandatory will instead of his inheritance rights.

From the explanation of some of the conclusions above, the author can provide recommendations in this dissertation, namely as follows:

1. The House of Representatives and the President are obliged to add the provisions of Article 43 paragraph (2) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage which reads "the biological father is obliged to adopt his extramarital child as a child.
2. The House of Representatives and the President are obliged to add a new norm construction to the regulatory provisions regarding biological fathers in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage Article 43 paragraph (3) which reads, "The adoptive father is obliged to give a mandatory will to his adopted child when he dies.
3. For citizens whose constitutional rights are harmed, they can submit a judicial review to the Constitutional Court (MK) of the Constitutional Court Decision (MK) which reads: "A child born out of wedlock has a civil relationship with his mother and his mother's family and with the man as his father who 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."

Footnote

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