

THE RELATIONSHIP OF CHILDREN AND THEIR BIOLOGICAL FATHER (COMPARATIVE STUDY OF POSITIVE LAW OF INDONESIA, THAILAND AND JORDAN)

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Abstract: The civil connection between a child and his biological father is covered in this article. Looking at the legal certainty of a child born as the result of a man and a woman's relationship, whether it be without marriage (adultery) or as the result of a marriage whose validity is not recognized by the state, is in quotation marks (marriage). It will also have an effect on the child's status, which will have an effect on the child's lineage, among the numerous relationship statuses that result in a child. The research's methodology is Law No. 1 of 1974 Concerning Marriage, Thailand Civil and Commercial Code, and Law No. 36 of 2010 Law of Maintenance and Personal Status are the main legal documents used in this comparative research. The method employed is a juridical-comparative, qualitative analysis technique. The author will look at numerous states in Southeast Asia and the Middle East in addition to looking at this issue from the standpoint of Indonesian positive law. Regarding the Asian milestone section, the author will evaluate this issue in light of the State of Thailand's existing and enacted Marriage Law provisions. And for the Middle East, the author will look at the State of Jordan's Marriage Law restrictions. This article utilizes normative juridical research, which takes a comparative approach to law. A comparative technique is employed in this literature review research as an analytical tool to explain the civil relationship provisions that are in place between children and their biological dads in Indonesia, Southeast Asia, and the Middle East.

Keywords: Civil Relations, Lineage, Father Biology

Abstrak: Hubungan perdata antara seorang anak dengan ayah kandungnya tercakup dalam pasal ini. Menilik kepastian hukum seorang anak yang lahir sebagai hasil hubungan laki-laki dan perempuan, baik tanpa perkawinan (zina) maupun akibat perkawinan yang tidak diakui sahnyanya oleh negara, dalam tanda kutip (perkawinan).). Itu juga akan berpengaruh pada status anak, yang akan berpengaruh pada garis keturunan anak, di antara banyak status hubungan yang menghasilkan anak. Metodologi penelitian ini adalah UU No. 1 Tahun 1974 Tentang Perkawinan, Hukum Perdata dan Dagang Thailand, dan UU No. 36 Tahun 2010 Hukum Pemeliharaan dan Status Pribadi adalah dokumen

hukum utama yang digunakan dalam penelitian komparatif ini. Metode yang digunakan adalah teknik analisis kualitatif yuridis-komparatif. Penulis akan melihat berbagai negara di Asia Tenggara dan Timur Tengah selain melihat persoalan ini dari sudut pandang hukum positif Indonesia. Mengenai bagian tonggak sejarah Asia, penulis akan mengevaluasi masalah ini dengan mempertimbangkan ketentuan Undang-undang Perkawinan Negara Bagian Thailand yang sudah ada dan berlaku. Dan untuk Timur Tengah, penulis akan melihat batasan Undang-Undang Perkawinan Negara Yordania. Artikel ini menggunakan penelitian yuridis normatif dengan pendekatan hukum komparatif. Teknik komparatif digunakan dalam penelitian tinjauan pustaka ini sebagai alat analisis untuk menjelaskan ketentuan hubungan keperdataan yang berlaku antara anak dan ayah kandungnya di Indonesia, Asia Tenggara, dan Timur Tengah.

Kata Kunci : Hubungan Perdata, Silsilah, Bapak Biologi,

INTRODUCTION

Regarding the Asian milestone section, the author will evaluate this issue in light of the State of Thailand's existing and enacted Marriage Law provisions. And for the Middle East, the author will look at the State of Jordan's Marriage Law restrictions. This article utilizes normative juridical research, which takes a comparative approach to law. A comparative technique is employed in this literature review research as an analytical tool to explain the civil relationship provisions that are in place between children and their biological dads in Indonesia, Southeast Asia, and the Middle East. The status of the three children will certainly get different rights, obligations and treatment. Of the three categories of children, children born without marriage are very vulnerable to their rights and legal status, and what is certain is that their lineage is not connected to their father.¹

Every child born, nevertheless, needs to be protected by the law and have a defined legal standing. All children, without exception, including those born to parents who were never married. In a different sense, even though a child born as a result of adultery must still be provided with legal protection, his status remains as holy and innocent as other children born in marriages that are legally recognized by both religion and the state, such as other children who are born in non-adultery unions. He was created free from the errors that his parents had made.²

Related to the absence of rights and obligations from lineage status between children who are born without marriage to their fathers, there are few and limited civil relations between the two. This is of course

¹ Muhammad Hajir Susanto, Yonika Puspitasari, and Muhammad Habibi Miftakhul Marwa, "Kedudukan Hak Keperdataan Anak Luar Kawin Perspektif Hukum Islam," *JUSTISI* 7, no. 2 (2021): 105.

² Bernadeta Resti Nurhayati, "Harmonisasi Norma Hukum Bagi Perlindungan Hak Keperdataan Anak Luar Kawin Dalam Sistem Hukum Indonesia," *Ganesha Law Review* 1, no. 1 (2019): 55–67.

very detrimental to the child, such as not being able to use his father's name, being unable to become an heir, and if she is a woman, her father cannot be her marriage guardian. In fact, sometimes, the child often gets a negative stigma and gets unfair treatment in society. On the other hand, because the two of them do not have a familial bond, as the author stated above, the father likewise has no responsibility towards the child he gives birth to. The smallest negative potential is that a father has no legally obligatory obligation to care for his child, which leaves child abandonment as a growing possibility.³

In order to restrain and stop this from happening, the state, through government agencies with regulations or laws that are implemented and enforced, has the power to control and ensure the rights of these children. This affirmative law serves as a foundation and guide for preserving the child's rights so that they can continue to be provided by their biological father and prevent mistreatment. As article 21 of Law Number 23 of 2004 concerning child protection,; *"The state and government are obliged and responsible for respecting and guaranteeing the human rights of every child regardless of ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status of the child, order of birth of the child, and physical and/or mental condition."* With this positive law, of course, it becomes a guarantee of protection given by the state to every child, especially these disadvantaged children.⁴

Indonesia has different positive laws in various other countries. For example, in Asia, say Thailand, the provisions in the positive legal regulations are different and not the same as those applied in Indonesia. Likewise with Jordan as a country in the Middle East, the positive law that applies is also different from that applied in Indonesia. These three countries in regulating the provisions and limitations on the status of children with their biological fathers are not the same in processing their legal products.

This happens because it relates to legal traditions in various countries and the role of statutory law in a country depends on the legal traditions adopted by the country concerned. This means that each country has its own background and provisions which are of course not the same in regulating a regulation.⁵

Therefore, it would be interesting if the authors conducted research on the limitations of the status of civil relations between children and their biological fathers, in terms of the positive laws that apply in Indonesia, Thailand and Jordan. The author will compare the three positive laws of this country regarding the extent to which a child's lineage can be determined so that it can be connected to his father, which of

³ Siti Musawwamah, "Pro-Kontra Atas Putusan Mahkamah Konstitusi Tentang Pengesahan Hubungan Keperdataan Anak Luar Kawin Dengan Ayah Biologis," *NUANSA: Jurnal Penelitian Ilmu Sosial Dan Keagamaan Islam* 10, no. 1 (2013).

⁴ "Hukum Perlindungan Anak Di Indonesia - Google Books," accessed January 27, 2023, https://www.google.co.id/books/edition/Hukum_Perlindungan_Anak_Di_Indonesia/PtgDEAAAQBAJ?hl=en&gbv=1&dq=pasal+21+Undang-undang+Nomor+23+tahun+2004+tentang+perlindungan+anak,&pg=PA7&printsec=frontcover.

⁵ Nur Fitri Hariani, Muh Saleh Ridwan, and Marilang Marilang, "Hubungan Hukum Anak Hasil Surrogate Mother Dengan Ayah Biologis Perspektif Hukum Islam (Telaah Putusan Mahkamah Konstitusi (MK) No. 46/PUU-VIII/2020)," *Jurnal Al-Qadai: Peradilan Dan Hukum Keluarga Islam* 8, no. 2 (2021): 117–37.

course also mentions the rights and obligations between the child and his biological father. Because as mentioned above, different countries also have different provisions in terms of civil law that they apply.

METHOD

In this essay, the author employs normative or literary research, i.e., study that analyzes applicable written law or what is sometimes referred to as positive law. Therefore, the authors of this paper concentrate on the positive law governing the issue of civil ties between children and their biological fathers.

Law no. 1 of 1974 pertaining to Marriage, Thailand's Civil and Commercial Code, and Law no. 36 of 2010 pertaining to Maintenance and Personal Status are the key legal sources considered for this comparative research. The methodology employed is juridico-comparative and qualitatively assessed. The author employs this methodology because it adheres to the principles of comparative studies, namely "find out what the law is in other countries and consider whether it can be adapted, with or without modifications leading to legal reform or legal development." The author compares the positive law applied in Indonesia to the positive law applied in other countries.

RESULTS AND DISCUSSION

In Islam the term civil relations is limited, narrower than lineage relations, civil relations in Islam do not include the right of inheritance to inherit and become a guardian, because the right of inheritance to inherit and become a judge's guardian is bound by the existence of a lineage relationship. As a result of the existence of a kinship relationship, rights and obligations arise between people who have a kinship relationship, which includes kinship rights and civil rights.⁶

Lineage rights, such as the right to inherit each other, the right to become a marriage guardian for a daughter when entering into a marriage contract, the right of a child to use his father's name as bin or binti behind his name. These rights cannot be obtained, unless they have to go through legal marriage, legal according to religion and legal according to laws and regulations. As for civil relations, it is used only limited to matters relating to the interests of the child which is the duty of the parents in the field of welfare, educational expenses, living expenses, care and upbringing or maintenance of the child.⁷

⁶ Nur Azizah, "Putusan MK No. 46/2010 Tentang Hubungan Keperdataan Antara Anak Luar Nikah Dengan Ayah Biologis (Analisis Dalam Perspektif Hukum Islam, Hukum Positif, UIDHR, Dan UDHR)," *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman* 4, no. 2 (2018): 243–60.

⁷ Fahmi Nabil Nabil, "Hak Keperdataan Anak Hasil Perkawinan Incest" (PhD Thesis, universitas 17 Agustus 1945 Surabaya, 2022).

In order to know the status of the child, it is necessary to first know the origin of the child, from where, by whom the child was born, it may be that both parents are bound by a valid marriage, an invalid marriage or both parents have never been married.

A person's relationship to his mother occurs due to pregnancy because of sexual intercourse with a man, whether the relationship is based on a marriage contract or not. Meanwhile, the determination of the lineage of a child to his father can occur through a legal marriage.[9]

1. Status and Civil Relations of Children and Biological Fathers in Indonesian Positive Law

According to Chatib Rasyid (former Chairman of PTA Semarang) a child, in terms of his birth status, there are three (3) types of status, namely:

1. Children born in or as a result of a legal marriage;
2. Children born out of wedlock (children of siri marriage);
3. Children born without marriage (children of adultery).

First, Children born in or as a result of legal marriages. Based on Article 42 of Law no. 1 of 1974 concerning Marriage (UUP), "*A legitimate child is a child born in or as a result of a legal marriage*". Meanwhile, according to Article 99 of the Compilation of Islamic Law (KHI) there are two possibilities:⁸

Legitimate children, namely:

- a. "*children born in or as a result of a valid marriage*"
- b. "*the result of the legal acts of husband and wife outside the womb and born by the wife.*"

As for legitimate children, according to the Civil Code (KUHpd) article 250, legitimate children are "*A child born or brought up during a marriage gets a husband as its father.*"

As for what is meant by a legal marriage according to the UUP is a marriage that is materially carried out according to the laws of each religion it adheres to, and is formally recorded according to the applicable laws and regulations. As stipulated in UUP article 2 paragraph 1 and paragraph 2:

- (1) "*Marriage is legal, if it is carried out according to the laws of each religion and belief.*"

⁸ Muhammad Tahir Azhary, "HUKUM PERKAWINAN ISLAM DAN UU NO. 1 TAHUN 1974," *Jurnal Hukum & Pembangunan* 17, no. 1 (2017): 49–56; Imam Rusdi, "Penetapan Nasab Anak Zina Kepada Ayah Biologis Dengan Dna Perspektif Masalahah," *AL-HAKIM: JURNAL PENELITIAN MAHASISWA PRODI HUKUM KELUARGA* 1, no. 1 (2019): 55–78.

(2) "Every marriage is recorded according to the applicable laws and regulations."

Legal marriage is required in a country, in this case Indonesia, in order to start a family and continue the lineage. The government does not guarantee the freedom to build a family and procreate without being legally married. In order for a genuine kid or a child from a materially and formally valid marriage to immediately have a familial relationship with the father and his father's family, there are no legal limits on this child's position.

Second Children born outside of marriage (marriage sirri) are children born from marriages conducted in accordance with their individual religions and beliefs, but not recorded with the government. [16] This understanding demonstrates that there is a marriage, and if it is performed in accordance with Islamic law, such a marriage is lawful according to Islamic jurisprudence so long as it satisfies the marriage's needs and foundations. Thus, the marriage is legitimate in the eyes of religion, i.e., legally valid, but its status is formally invalid because it has not been administratively recorded by the state.

Because the marriage was performed without complying with article 2 paragraph 2 of the UUP, which states, "Every marriage is documented in accordance with the appropriate laws and regulations." "Outside of marriage" cannot be understood as adultery because adultery was committed outside of any marital relationship; there is a significant distinction between "outside of marriage" and "without marriage."

Similarly, children born out of wedlock are born to a man and a woman who are materially wedded but whose marriage is not technically recognized because it is not registered with the Marriage Registrar.

In reality, children from unregistered weddings are born as a result of a relationship between a man and a woman in a marriage that satisfies the legal criteria and is religiously harmonious, but is not registered by the state, and therefore is not recognized by the state. From a legal standpoint, this marriage satisfies only article 2 paragraph 1 of the UUP, which states, "Marriage is legal if performed in accordance with the laws of each religion and belief," but not article 2 paragraph 2 of the UUP, which states, "Every marriage is recorded in accordance with the applicable laws and regulations."

Initially, children had only civil relations with their mother and her family, as stipulated by the marital law.

As stated in UUP Article 43 Paragraph 1 and KHI Article 100: "A child born outside of wedlock has only civil relationships with his mother and her family." All forms of child civil connections, including guardianship from birth, child power of attorney, custody rights, and child care, are limited to the child's mother, according to this article. When a child is set to enter a legal partnership, he must be represented by his mother, as there is no legal link between him and his biological father.

After the issuance of the Constitutional Court's decision No. 46/PUU-VII/2010 and the concurrent amendment of Article 43 of the Marriage Law, illegitimate children not only have civil relations with their biological mothers, but also with their biological fathers, so long as the mother or illegitimate child has civil relations with the biological father. The marriage can demonstrate paternity. In the Constitutional Court's decision, article 43 paragraph 1 of the UUP, civil relations between a man and his biological child which can be proven based on science and technology and/or other evidence according to the law are found to have blood relations as the father, so that paragraph must be read "*A child born out of wedlock has a civil relationship with his mother and his mother's family **as well as** with a man as the father who can be proven based on science and technology and/or other evidence according to law to have blood relations, including civil relations with his father's family*".

With the Constitutional Court's decision, the status of children born out of wedlock in quotation marks for unregistered marriage, the clarity of their status becomes clear because it states that the relationship of a child out of wedlock does not only have a civil relationship with the mother, but also has a civil relationship with the biological father as long as the child is out of wedlock and the mother of a child out of wedlock can prove her biological paternity with a DNA test.⁹

Therefore, a father of a child from an extramarital connection can no longer refuse to provide for his child's necessities. The Constitutional Court's decision further strengthens legal certainty and legal protection in civil relations between illegitimate children and biological fathers in terms of being responsible for providing for and providing a living for these illegitimate children, so the burden of caring for and providing a living for illegitimate children is not borne by only one family member (the mother of the child out of wedlock) but must be shared with the family of the biological father.

Third Children born out of wedlock are offspring of a relationship between a man and a woman that lacks marital connections. Children born in a relationship between a man and a woman outside of marriage are materially and legally illegitimate.

⁹ Rusdi, "Penetapan Nasab Anak Zina Kepada Ayah Biologis Dengan Dna Perspektif Masalah."

The child is the consequence of an unwed biological relationship between a man and a woman, or in other words, the offspring of adultery. Even though he was born illegitimate practically and legally, he was born in a condition of purity and without inherited sin. However, the youngster is still not linked to his original father, as he is only related to his mother.

The preceding description suggests that the decision of the Constitutional Court of the Republic of Indonesia No. 46/PUU-VII/2010 cannot apply to children born outside of this marriage, as the judgement solely applies to children born from unregistered unions. There is a marriage that has taken place but has not been recorded. Meanwhile, children born outside of marriage are unaffected by the duration of a marriage.

This indicates that the state will only ensure the fulfillment of the right to form a family and continue the lineage if legal marriage is used. It is also fitting that the state will only guarantee and protect the rights of children born to legitimate marriages.

In order to protect the fundamental rights of unmarried children and their civil relationships with their biological father, the Indonesian Ulema Council (MUI) establishes legal provisions in Fatwa No. 11 of 2012:

- "1. A child born of adultery does not have a lineage, guardian, heir, and nafaqah relationship with the man who gave birth to him.*
- 2. The child of adultery only has a relationship of lineage, heirs, and nafaqah with his mother and his mother's family.*
- 3. A child born of adultery does not bear the sin of adultery committed by the person who caused its birth.*
- 4. Adulterers are subject to hadd punishment by the authorities, in the interest of protecting legitimate offspring.*
- 5. The government is authorized to impose ta'zir punishment on adulterous men who result in the birth of a child by obliging him to:*
 - a. meet the needs of the child's life;*
 - b. give assets after he died through a mandatory will.*
- 6. The punishment referred to in number 5 aims to protect the child, not to legitimize the family relationship between the child and the man who caused the birth."*

Initially, the background to the formulation of the MUI Fatwa No. 11 of 2012 was only intended to respond to the Constitutional Court Decision Number 46/PUU-VIII/2010 which was considered to have raised questions in society about the legal status of children born out of wedlock in the perspective of Islamic law.

This fatwa explains the act of adultery from the point of view of Islamic law and emphasizes that adultery is a crime (*finger*) against which provisions apply, namely the threat of punishment that has been determined in the texts / arguments of the Koran and Sunnah. As a form of crime, deed/*finger* In general,

they are threatened with certain punishments in order to protect the collective interests of the community, while at the same time saving the moral values that serve as guidelines in social life.

In the MUI fatwa No. 11 of 2012, it is clearly emphasized that adulterers are subject to punishment *let* by the authorities, in the interest of protecting legitimate offspring (*biḥẓah alnasl*). Not only giving confirmation about punishment *let* Of course, MUI fatwa No. 11 of 2012 also provides for additional punishment in the form of *ta'zir* the authority to impose it is left entirely to the government. *Ta'zir* is a type of punishment for a crime whose form and extent is left to the ulil amri (the party authorized to determine the sentence).[28] Form of punishment *ta'zir* for the perpetrators of adultery in this fatwa is through an order for the perpetrators of adultery to provide for the needs of children born from adultery and provide assets after the perpetrators of adultery die through *obligatory will*. Through this addition, MUI fatwa No. 11 of 2012 further strengthens the affirmation of adultery as a prohibited form of crime and is threatened with severe punishment.

The obligatory will in this case is in the form of imposing an obligation on the man who results in the birth of an adulterous child to have the will to give assets to the child resulting from adultery after the person concerned dies. The important thing here lies in the obligatory nature attached to this obligatory will for adulterers, where the will is issued not on the basis of the wishes of the property owner or the testator, but issued through a judge's decision. This removes the element of effort (willingness) for the testator and the appearance of the element of obligation. Through the establishment of this obligatory will, legal protection for children resulting from adultery can be carried out directly without having to wait for the initiative of the man which results in their birth.

2. Civil Relations of Biological Fathers and Children in Thailand's Positive Law

In general, Thailand is a country where the majority of the population is Buddhist. Thus overall, Muslims in Thailand are a minority population which is only up to 5% of the total population of Thailand.

The Muslim community on average lives in and fills the Southern Thailand region. 80% of the population of Southern Thailand adhere to Islam as the majority religion of the place. But the Thai government embraced them by giving special autonomy in the field of law related to family and inheritance to the Muslim people who live in the Pattani area. To hold a separate religious court at the regional level, especially in the field of family and inheritance law.

The one given the right and authority by the government to organize and exercise special autonomy in Southern Thailand is the Islamic Religious Council (MAI). This MAI is a religious institution, based on the awareness of local Muslims led by scholars in order to implement al-Islamic sharia, in addition, its growth aims to protect the purity of religion so that it is not influenced by deviant and misleading trends, this is to fight for the nation in demanding God's pleasure.

The Islamic Religious Council of the Patani Region also has the role of administering the affairs of Islamic Religious Affairs which include aspects of Religion, Social, Economic, Education and so on. The government and the people put their trust in the Islamic Religious Council to continue to play a role in society.

As for the written rules regarding family law in Thailand, regulated in *Thailand Civil and Commercial Code*, the whole of the family law, contained in one chapter in Chapter V.¹⁰

First, Children from legal marriage. A legitimate child according to regulations in Thailand is a child born from a legal marriage, so that the child can be registered and has a civil relationship with his father. This is regulated in positive legal regulations in Thailand namely *Thailand Civil and Commercial Code* Chapter V concerning Family Article 1536 "*Children born to a woman during marriage or within three hundred and ten days after her divorce from her husband, are considered the legitimate children of her husband.*"

As for marriages that are considered valid and valid, they are regulated and explained in *The Civil and Commercial Code* Chapter V concerning Family Article 1457 that "*The marriage will be considered valid when it has been registered.*", then reaffirmed in article 1458 namely "*Marriage can occur if a man and a woman have agreed to make each other husband and wife, and this agreement must be stated directly before the officer before being registered with the marriage registration officer.*"

Marriage registration in Thailand is required by law and must be done at a local office. Marriage law in Southern Thailand, particularly in the Pattani region, is based on Islamic principles. Religiously, the marriage must take place at the Islamic Religious Council (MAI), which serves as a backbone for the Islamic community in Southern Thailand, and not at the District Court or government agencies. Following the wedding ceremony at the Islamic Religious Council, the marriage will be re-registered at the District Court. With this, a legitimate child or child of a legal marriage automatically has a family relationship with the father and his father's family, allowing a birth certificate to be attributed to the father and the certificate to be authentic evidence. There are no legal standing constraints regarding this child's status.

Second, children born out of wedlock are not recorded in district court and are treated the same as children born of adultery by the Islamic Religious Council. In this case, it refers to a child born from his parents' marriage that has not been registered with the District Court or the Islamic Religious Council.

As a result, the child has only a civil relationship with the mother and her family. Children born out of wedlock or in an unregistered marriage are not only considered illegitimate, but also have only a civil relationship with their mother or the mother's family. In the meantime, he has no civil relationship with his

¹⁰ Rohanee Machae, Abdul Basir Mohamad, and Mutsalim Khareng, "Children Maintenance: The Rights in Islamic Family Law and the Law of Thailand," *Mediterranean Journal of Social Sciences* 6, no. 4 (2015): 193.

father. It is as described The Civil and Commercial Code Chapter V of article 1546 which reads: "a child born to a woman who is not married to a man is considered a legitimate child only from that woman".

If a married couple does not have a marriage certificate from the Islamic Religious Council or the District Court, the district court will issue the child's birth certificate without including the father's name. Because it is only attributed to the mother, the publication of such a birth certificate is the same as that of a child without a father or a child born out of wedlock. The names of both parents will be listed on the birth certificate, unlike the birth certificate of a child whose parents' marriage is recorded. So that it can be established that the child has no family or civil relationship with his biological father, including the loss of inheritance rights, marriage guardianship if the child is a girl, *hadhanab*, and others.

Third, children born from marriages registered only with the Islamic Religious Council. If a child is born from a marriage that is only registered at the Islamic Religious Council and not at the District Court, the child's status remains dependent. Despite the fact that the marriage was registered and recognized by the Islamic Religious Council, the child from the marriage cannot be considered 100% legitimate. The legal status of a child can only be proven through the legality and legal rulings of the district court or government agencies; the Islamic religious council has no authority in determining the child's status because the authority of this agency does not exist.

It is based on *The Civil and Commercial Code* Chapter V of article 1547 which reads: "*Children born to parents who are illegally married. The status of the child can become a legitimate child when the parents have registered their marriage, then the father also registers his child's birth certificate, and the court judge decides the child's status.*"

In this case, a child who is born in a situation where his parents are illegally married, only registers his marriage at the Islamic Religious Council (has not been registered and registered at the District Court. The status of a biological child can still be recognized and has a civil relationship with his father, when the father tries to register or register his marriage first with the District Court, in this case at the same time registering his child's birth certificate, which leads to the legality of the child which is only decided by the District Court.

As for the provisions on the legality of children regulated in *The Civil and Commercial Code* Chapter V article 1548 to article 1560.

3. Civil relations of biological fathers and children in Jordanian positive law

In this middle eastern country, Jordan enforces and legalizes all regulations regarding the scope of family law in the laws that apply in its country. These regulations are mixed to be applied to the public to obtain legal certainty in their country. The regulation is embodied in Law no. 36 of 2010 *Law of Maintenance and Personal Status* (Personal Status Law).

First, Children born from legal marriages. Legal marriage according to state regulations will result in legal certainty for the husband and wife. On the other hand, the state will guarantee every legal impact and consequence arising from this marriage, including a child born from this legal marriage. With the existence of a marriage bond, the father's lineage will be connected to the child resulting from the legal marriage, which must be cared for and cared for. This is in line with article 157 letter (b) number 1 in Law no. 36 of 2010 *Law of Maintenance and Personal Status* / (Personal Status Law) which mentions: "*(b) the lineage of a child born is not assigned to the father, except ~1. the result of a valid marriage.*"¹¹

Not only that, a child from a valid marriage will be able to be passed down to the father if the mother has been pregnant with the child for at least the period of pregnancy counted since her marriage, as in article 158 letter (a): "*A child from a valid marriage can be inherited from his father, if his wife's pregnancy has passed the minimum period of pregnancy from the marriage contract.*"

As for the provisions for the time of pregnancy, explained in article 156: "*The wife's gestation period is a minimum of six months and a maximum of one year.*" From articles 158 and 156 it can be known that if a child is born from a valid marriage, but the wife gives birth to a child less than six months from the date of the marriage, then the child cannot be passed down to the father. In other words, the child only gets his mother's lineage.

Second, Children born from unregistered marriages are considered the same as children from adultery.

Apart from the provision of a child born from a valid marriage but not exceeding six months of pregnancy from the marriage cannot be attributed to the father as in articles 156 and 158 that have been mentioned before. Children cannot be inherited from their father and can only be inherited from their mother while children are born out of wedlock and also the result of serial marriages.¹²

If seen from article 157 letter (a), it states that every child who is born, regardless of the outcome in any circumstances of birth, of course the child will still have a lineage to his mother. "*The genealogy of a child born, will be assigned to the mother with the existence of a birth*". So with the birth of a child, naturally or automatically the child has a lineage to his mother, whereas to obtain lineage to his father, a child must be born from a legal marriage bond. From this it can be explained that children who are born out of wedlock or without marriage will only be assigned to their mother, and not bound by lineage to their father.

As with most other state marriage law policies, Jordan is one of many that requires and requires a registration in the implementation of marriages, but Jordan is a country that strictly stipulates registration as a requirement, so that parties who violate it can be punished or their marriage is not has legal force (the

¹¹ Article 1458 *Thailand civil and comercial code*.

¹² Anan Tapiromkul, "Legal Problems on Commercial Surrogacy in Thailand under the Protection of Children Born from Assisted Reproductive Technologies Act, BE 2558," *Thammasat Business Law Journal* 5 (2015).

marriage is considered void). Even for those who break it, not only do their marriages have no legal force, but they can be subject to punishment and a fine of 200 dinars (approx. 4 million Rupiah) either from the side of the bride or groom, or from the witnesses.

This is as regulated in article 36 letters (a), (b) and (c) explaining:

“a. It is obligatory for the bride and groom to report their intention to marry to the authorities;”, “b. the competent authority will record a marriage contract with an official certificate”. and “c. If the marriage contract is executed but it is not registered by the competent authority for the registration of the marriage contract, then the couple and the witnesses are punished with the prescribed punishment, and the court fines each of them with a fine of two hundred dinars.”

From this article, Jordan requires that there be a registration of marriages so that the marriage gets legal certainty and this deed can be used as evidence indicating that a marriage has taken place. Without these records and certificates, a marriage is deemed to have never happened. So that the impact also affects the children born in this marriage, where the child is also considered to be an illegitimate child, and of course his lineage cannot be relied on his father.

Comparative Analysis of Civil Relations of Biological Fathers and Children in Positive Law in Indonesia, Thailand, and Jordan.

Based on the explanation above, starting from the existing rules, the laws of Indonesia, Thailand and Jordan. It can be seen how the similarities and differences in civil relations between fathers and their biological children in each country, from a statutory point of view. To make it easier, the author will describe in tabular form as below.

Country	Positive Law	Children born from legal marriages	Children born from unregistered marriages	Children born without marriage (children of adultery)

<p>Indonesia</p>	<ul style="list-style-type: none"> · Law No. 1 of 1974. · Law No. 23 of 2004 Islamic Law Compilation. · Putus' MK RI No 46/PUU-VII/2010. 	<p>A child from a legal marriage, his lineage automatically goes to his father</p>	<p>Children from unregistered marriages are still related to their father when it can be proven by a DNA test</p>	<p>A child born of adultery, his lineage cannot be traced back to his father, and only has a lineage relationship to his mother</p>
<p>Thailand</p>	<p><i>The Civil and Commercial Code</i> BabV.</p>	<p>A child from a legal marriage, automatically his lineage is connected to his father</p>	<p>1) Children from marriages that are not registered at the Islamic Religious Council can still be related to their father when they are registered with the District Court</p> <p>2) Children from wedlock who are not registered at the Islamic Religious Council and at the District Court cannot be attributed to their father.</p>	<p>A child born of adultery, his lineage cannot be traced back to his father, and only has a lineage relationship to his mother</p>

Jordan	Law Number 36 of 2010 <i>Law of Maintenance and Personal Status /</i> (Personal Status Law)	Children from legal marriages, their lineage can continue to their father, provided that the child is born six months after the marriage between the father and mother	Children from unregistered marriages cannot be related to their father, they are considered the same as children from adultery	A child born of adultery, his lineage cannot be traced back to his father, and only has a lineage relationship to his mother
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From the description above, the author tries to describe what rights are obtained from the child with his father from various statuses of the child's birth. Along with the similarities and differences regarding the civil relationship between fathers and their biological children in the positive legal regulations in force in Indonesia, Thailand and Jordan. Along with what rights are obtained from the child with the father of the various statuses of the child's birth.

1. The rights obtained by children with their father, who were born from a legal marriage materially and formally

Children from legal marriages and offspring from unregistered relationships exemplify the variations in civil relationships between fathers and their biological children. In Indonesia and Thailand, children from legal marriages continue to have a lineage with their biological father, however in Jordan, the child must be born six months after his parents' marriage in order to be assigned to his father's lineage. Then the status of this child is that of a legitimate child, and the child will automatically acquire a lineage to his father; consequently, in addition to obtaining the right of civil relations in the form of the child's interests, which is the duty of the parents in the field of welfare, education costs, living expenses, care and upbringing or maintenance of children, the child will also obtain the rights of bloodline relations, including mutual inheritance rights, the right to become a marriage guarantor, and the right.

2. The rights obtained by children with their fathers, who were born in unregistered marriages (marriage *siri*)

In Indonesia, a child from a siri marriage can still obtain bloodlines to his father if it can be established by a DNA test that there is truly a blood tie with his father and that the child was born from a marriage despite the siri nature of the union.

In Thailand, the child's lineage can still be connected to the father if the marriage has just been registered at the District Court along with the legalization of the child by the judge at the district court; however, the status of children from unregistered marriages in the Islamic Religious Council (MAI) and the district court is identical to that of a child of adultery. In other words, the relationship between the child and his father is limited to a civil one.

In Jordan, a child from an unregistered marriage is treated the same as a child from adultery; hence, his lineage relationship is limited to his mother and he has no lineage relationship with his father. Even if they were born outside of marriage, the marriage has no legal standing and is declared null and invalid. In other words, the child has little civil interactions with his father, or a limited relationship with him. Not receiving the rights of bloodline ties, such as the right to inherit, the right to be a marriage guardian for a daughter when executing a marriage contract, and the right of a child to use his father's name as bin or binti behind his name.

3. The rights obtained by children with their father, who were born out of wedlock (results of adultery)

The similarities of the three countries above can be seen from the status of children born without marriage or children from adultery. The family relationship of this child is not connected with his biological father either from positive regulations in Indonesia, Thailand and Jordan. The child will only get a lineage relationship with his mother and no lineage relationship with his father. If this child's family relationship is not continuous with his father, then automatically his civil relationship is not bound by bloodline relations, such as mutual inheritance rights, the right to become a marriage guardian for a daughter when entering into a marriage ceremony, the right of a child to use his father's name as son or daughter in behind his name. These rights cannot be obtained. As for the civil relationship obtained by the father and his biological child, it is only limited to matters relating to the interests of the child which are the parents' duties in the field of welfare, educational expenses, living expenses, care and upbringing or maintenance of the child.

CONCLUSION

Based on the preceding explanations, it is possible to conclude that understanding a family relationship is critical. Because a person will have a relationship with whom he is named as a result of that relationship.

The importance of a lineage relationship is automatically related to a child with all civil relations to his father, and the provisions of a lineage apply to determine legal issues of inheritance, guardianship, alimony, *badhanah*, and other rights.

It is clear that each of the three positive laws implemented by the countries of Indonesia, Thailand, and Jordan has its own style, which has given rise to several different boundaries of lineage relations and civil relations regarding rights and obligations between children and biological fathers. The status of children born from unregistered marriages shows a significant difference (sirri marriage).

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