

Unregistered and Unseen: The Marginalization of Children Lacking Birth Certificates

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Abstrak: Penelitian ini bertujuan untuk mengetahui dan menganalisis aturan atau norma yang mengatur tentang akta kelahiran sehingga dapat memahami anak yang tidak mempunyai akta kelahiran serta dampaknya bagi kehidupan anak. Metode penelitian yang digunakan adalah penelitian hukum normatif preskriptif dengan pendekatan perundang-undangan. Dengan menganalisis bahan hukum primer berupa Undang-Undang. Hasil penelitian menunjukkan bahwa akta kelahiran adalah bukti autentik yang diakui oleh negara sebagai identitas anak tersebut, sehingga dapat mengakses hak-hak lainnya, namun akta kelahiran bukan syarat agar seseorang menjadi subjek hukum, akta kelahiran hanya berfungsi sebagai bukti autentik bukan sebagai penentu lahirnya kepribadian hukum. Akibat tidak adanya akta kelahiran pada anak berdampak tidak dapatnya mengakses layanan seperti Pendidikan, Kesehatan, sehingga berdampak pada masadepan anak. Berdasarkan hasil tersebut, peneliti merekomendasikan pemerintah diharapkan dapat berperan aktif untuk memberikan fasilitasnya terhadap pemenuhan hak-hak masyarakatnya sehingga dapat menciptakan mekanisme yang mempermudah masyarakat. Pemerintah dan pembentuk Undang-Undang diharapkan dapat merevisi aturan-aturan yang ada ataupun menghapus aturan yang dapat menghambat masyarakat dalam memperoleh hak-haknya sebagai warga negara Indonesia.

Kata Kunci: Akta Kelahiran, Anak Luar Nikah, Akibat Hukum.

Abstract: This study aims to determine and analyze the rules or norms governing birth certificates so that they can understand children who do not have birth certificates and their impact on children's lives. The research method used is normative prescriptive legal research with a statutory approach. By analyzing primary legal materials in the form of laws. The results of the study show that a birth certificate is authentic evidence recognized by the state as the child's identity, so that they can access other rights, but a birth certificate is not a requirement for someone to become a legal subject, a birth certificate only functions as authentic evidence not as a determinant of the birth of legal personality. The absence of a birth certificate in children has an impact on not being able to access services such as education, health, thus impacting the child's future. Based on these results, researchers recommend that the government is expected to play an active role in providing facilities for the fulfillment of the rights of its people so that it can create mechanisms that make it easier for the community. The government and lawmakers are expected to revise existing regulations or eliminate regulations that can hinder the community in obtaining their rights as Indonesian citizens.

Keywords: *Birth Certificate, Children Outside of Marriage, Legal Consequences.*

INTRODUCTION

Every child has rights, and these rights must be protected and guaranteed by the state as the primary guarantor. This is stipulated in Article 28B, Paragraph 2 of the 1945 Constitution of the Republic of Indonesia, which states: *“Every child has the right to survival, growth, and development, as well as the right to protection from violence and discrimination.”* This provision affirms a child’s right to life and development, including the entitlement to a decent standard of living.

The rights of children, as outlined in the aforementioned article, encompass the rights to life, growth, and development, among others. Consequently, every child has the right to obtain a birth certificate, which serves as a fundamental instrument supporting their survival, growth, and overall development. Legal recognition of such life events is crucial, as it provides formal evidence of an individual’s existence and status within society. This principle is further reinforced in Article 1865 of the Indonesian Civil Code (KUHPerdata) regarding the burden of proof, which states: *“Anyone who claims to have a certain right, seeks to affirm their right, or disputes the right of another person, with reference to a particular event, is required to prove the existence of that right or event.”* This provision underscores that every individual possesses rights, but these rights necessitate substantiation through evidence. Therefore, it is essential for each person to have a solid legal foundation to verify significant events in their life. In the context of children, a birth certificate not only affirms their existence but also serves as an indispensable legal tool for asserting and protecting their civil rights, ensuring that they can fully access the protections and opportunities guaranteed under law.

According to information obtained from online sources, a significant number of children do not possess birth certificates, which results in their inability to continue formal education. One report stated that *“approximately 3%, or as many as 11,994 children aged 0–18 in Batam, are not registered as having a birth certificate.”* This finding was reported by the Civil Registration Office (Disdukcapil) of Batam City as part of a local population data compilation. Such statistics highlight the real-world consequences of the lack of official documentation, which not only undermines children’s legal recognition but also limits their access to essential rights, including education, healthcare, and social protection.”[1]

According to a report from *Kompas*, due to administrative obstacles in civil registration, S, an 8-year-old child from Panarukan District, Situbondo, is now at risk of dropping out of school because they do not possess a birth certificate, which is a primary requirement for accessing education. This case illustrates how the absence of official documentation can directly impede a child’s right to education and highlights the broader social and legal challenges faced by children without civil registration in Indonesia.”[2]

The absence of a birth certificate significantly obstructs the realization of children's rights, which has prompted the author to investigate this issue in greater depth.

RESEARCH METHOD

This study employs a normative juridical method, utilizing a statutory approach to analyze relevant legal norms and provisions. Data collection was conducted primarily through literature review, which allowed the researcher to examine and interpret existing legal materials comprehensively. The analysis was carried out in a prescriptive manner, focusing on how the law should be applied to address the research problem. The study draws upon multiple sources of legal materials, including primary legal sources such as the 1945 Constitution of the Republic of Indonesia, the Indonesian Civil Code (KUHPerdata), and other relevant legislation, as well as secondary sources such as scholarly articles, books, and legal commentaries, and tertiary sources that provide supporting information and context. By integrating these sources, the research aims to provide a thorough and systematic understanding of the legal framework surrounding children's rights to birth registration and to offer insights that can inform both legal practice and policy development.

RESULT AND DISCUSSION

1. The General Concept of a Birth Certificate

A birth certificate is an official identity document issued by the state that verifies the occurrence of a birth and serves as a gateway to accessing other public services. Without this document, individuals face significant difficulties in processing essential civil registrations, such as the Family Card (Kartu Keluarga) or Identity Card (KTP). The utility of a birth certificate is extensive, ranging from serving as legal evidence for inheritance claims to fulfilling mandatory administrative requirements for school enrollment, pursuing a career as a civil servant (PNS), holding legislative office, or working in state-owned enterprises. In this sense, the birth certificate is not merely a formality but a fundamental instrument that underpins an individual's legal recognition and access to rights and opportunities within society.[3]

From a legal perspective, a birth certificate is an administrative product of civil registration that officially documents an individual's birth. It contains detailed information about the child's identity, including their name, gender, and the lineage of their biological parents. The document is validated through the signature of an authorized official and affixed with a legal stamp, thereby confirming its status as legally recognized evidence. In this way, the birth certificate serves not only as a record of vital events but also as a formal instrument that affirms the individual's legal existence and rights under the law.[4]

Within the civil law system, the creation of an authentic deed is formally entrusted to a notary, who acts as a public official, or to another official explicitly designated by applicable legislation. This delegation is intended to ensure that certain legal acts and documents are executed under the authority of a recognized public officer, thereby guaranteeing their authenticity and compliance with formal legal requirements. The key strength of an authentic deed lies in its capacity to function as a complete and conclusive instrument of evidence in judicial proceedings. Unlike private documents, an authentic deed carries full probative force, encompassing both formal and substantive validity. Formally, it demonstrates that the procedural requirements for its execution have been properly fulfilled, while materially, it attests to the truth of the facts and agreements recorded within it. Consequently, the law recognizes the content of an authentic deed as legally true without the need for further corroboration or proof, providing certainty and legal security to the parties involved. This characteristic makes authentic deeds indispensable in civil law, particularly in documenting critical events such as births, marriages, contracts, or transfers of property, where the reliability and legal recognition of the document are essential for protecting individual rights and upholding the rule of law.[5]

2. Functions of a Birth Certificate

As part of the state's obligation to its citizens, every child must possess a birth certificate to access various public services. Its benefits extend across multiple domains, including legal recognition for educational enrollment, official personal identification, eligibility for recruitment into civil service positions (ASN), the military (TNI), or the police (POLRI), and civil matters such as inheritance and marriage. Possession of this document effectively serves as a gateway for the full realization of children's rights, ensuring that they receive comprehensive protection and recognition under the law. By providing formal acknowledgment of an individual's existence, the birth certificate plays a crucial role in enabling children to exercise their legal, social, and economic rights throughout their lives.[6]

Possession of a birth certificate carries profound strategic and legal significance for every child, primarily because it is recognized as an authentic deed, or *akta autentik*, which inherently carries full evidentiary power and ensures legal certainty in both judicial proceedings and broader civil matters. As an official document issued and validated by authorized state officials, it serves as the foundational proof of identity and existence, forming the basis for a child's legal recognition in society. Functionally, a birth certificate operates as the primary instrument for validating a wide array of administrative, educational, and legal processes. It establishes an individual's citizenship status, confirms eligibility for school enrollment, facilitates recruitment into government institutions such as the military

(TNI) and police (POLRI), and is instrumental in determining legal rights regarding inheritance and succession.

From a normative standpoint, every birth is legally required to be reported to the competent civil registration authority no later than 60 days after the event. This requirement ensures that population records remain accurate, comprehensive, and legally recognized, which in turn supports the integration of children into formal systems of education, healthcare, and social protection. For cases in which reporting is delayed, the law provides mechanisms through the local Office of Population and Civil Registration (*Dinas Kependudukan dan Pencatatan Sipil*) to regularize the child's legal status, thereby restoring their entitlement to fundamental rights. In addition to its administrative and legal functions, the birth certificate plays a critical role in securing a child's long-term access to social and economic opportunities, ensuring that they are recognized as full members of society with enforceable rights. In this way, the document acts not only as a tool for verification and legal certainty but also as a vital instrument for upholding children's rights, safeguarding their protection, and supporting their overall development from infancy through adulthood.[7]

3. Civil Registration

The history of civil registration in Indonesia traces its roots to Dutch colonial influence, which initially adapted the system from France during the era of the French Revolution. As a former colony, Indonesia inherited many institutions and legal systems from the colonial administration, which extended across nearly all aspects of social life. However, the continued application of these colonial regulations has had a profound impact on the formation of national identity, as Indonesian legal identity often remained constrained by rules originally designed to reflect Dutch societal norms rather than the cultural and social realities of the Indonesian people. This historical legacy highlights the tension between inherited legal frameworks and the development of a civil registration system that genuinely represents and serves the Indonesian populace.[8]

Population administration encompasses the official registration of various vital events, including births, deaths, and marriages, which are recorded through the Civil Registry Office (*Dukcapil*) or the Office of Religious Affairs (*KUA*), depending on the individual's religious affiliation. In addition to these events, court-issued divorce decrees, the legal recognition of adopted children, and changes in citizenship status must also be formally documented to ensure official acknowledgment by the state. Such comprehensive record-keeping not only provides legal certainty for individuals but also supports the state in maintaining accurate population data, facilitating access to public services, and upholding the rights and legal protections of citizens throughout their lives.[9]

4. Procedures for Registering Civil Events

Procedurally, the registration of civil events is carried out by submitting official evidence or certification from the competent authority to the Civil Registration Officer. However, for reports that are submitted after the prescribed time limit, registration can only be processed based on a court-issued determination. The final document produced through this process constitutes an authentic deed, or *akta otentik*, which guarantees full legal validity for its holder, as it is issued officially under the authority of the state. This procedure ensures that all civil events are properly documented, providing both legal recognition and protection for individuals while maintaining the integrity and reliability of population records.[10]

5. Children

In general terms, a child is defined as the next generation born from the biological union between a man and a woman. This definition encompasses all offspring, including those born within legally recognized marriages as well as those born outside of marital unions. It emphasizes the child's status as an individual with inherent rights, regardless of the circumstances of birth, and underscores the importance of recognizing and protecting every child under the law.[11]

Children are vital assets for the continuity of the state, holding the status of legal subjects whose dignity must be protected from the earliest stages of life, even before birth. National law provides specific protections to ensure that children develop into fully realized individuals. This protection extends beyond the family environment, encompassing the fulfillment of children's rights to physical, mental, spiritual, and social development to the fullest extent possible. By safeguarding these rights, the law seeks to guarantee that every child has the opportunity to grow in a safe, supportive, and enabling environment, thereby contributing to the well-being of society and the nation as a whole.[12]

6. Children's Rights

Civil rights, or private rights, are inherently inclusive and apply to all individuals without discrimination based on nationality, religion, or any other background. These rights form a fundamental component of the legal system, ensuring that every person is recognized as a legal subject entitled to equal protection and treatment under the law. The principle of universality embedded in civil rights reflects the broader commitment to human dignity and equality, which lies at the core of modern legal frameworks.

Within this context, the legal system guarantees that no individual may be deprived of their legal status as a human being—a concept historically referred to as “civil death”—nor may

their citizenship be arbitrarily revoked as a form of punishment. Such protections are essential in preventing abuses of power and ensuring that individuals retain their fundamental rights regardless of their circumstances. By safeguarding legal personality and citizenship status, the law affirms the inseparability of human rights from individual existence, thereby reinforcing the notion that every person must remain a bearer of rights at all times. This framework not only upholds justice and equality but also serves as a critical foundation for the protection of civil liberties and the rule of law in a democratic society.[13]

The government bears full responsibility for providing adequate educational and healthcare facilities for children. This obligation aims to ensure that every child can develop their potential and receive proper health protection without exception. The fulfillment of these fundamental rights must be carried out equitably in order to support the physical and psychological well-being of the younger generation.[14]

The legal status of children within the legal system cannot be separated from the definition of a human being as a legal subject, or *natuurlijk persoon*. As legal subjects, all individuals are recognized as having the capacity to hold rights and bear civil obligations. The primary legal foundation governing the status and position of individuals can be found in Book I of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata / KUHPerdata*). This framework establishes the fundamental principles concerning legal personality, which also extend to children as holders of rights, thereby affirming their position within the broader system of civil law. [15]

7. A Birth Certificate as a Prerequisite for the Legal Recognition of a Child

Pursuant to Article 2 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata / KUHPerdata*), the status of a child as a legal subject and the recognition of their civil rights are established even while the child is still in the womb, insofar as it serves their interests. This provision indicates that a birth certificate is not an absolute prerequisite for the emergence of legal personality, and therefore, a child's rights must still be acknowledged and fulfilled regardless of the existence of such documentation.

Nevertheless, delays in reporting a birth may result in administrative sanctions, including fines, in accordance with population administration regulations. From a juridical standpoint, a birth certificate functions as an authentic legal instrument that provides certainty regarding a child's legal status, identity, and civil relationship with their parents. In this regard, although it does not determine the existence of legal subjectivity, the birth certificate plays a crucial role in ensuring legal protection and facilitating access to fundamental rights, such as healthcare services, education, and employment opportunities.

Thus, the birth certificate serves not merely as an administrative formality, but as an essential legal tool that strengthens the practical realization of a child's rights within the legal system and society at large.

8. A Birth Certificate as a Prerequisite for the Legal Recognition of a Child

The absence of a birth certificate gives rise to significant juridical implications for the protection and fulfillment of children's fundamental rights, both in the realm of civil law and in access to public services. From a civil law perspective, the lack of this authentic document creates substantial difficulties in proving the legal relationship between parents and the child, which directly results in uncertainty regarding legal status in matters such as inheritance, guardianship, and maintenance. This condition not only hinders the child's right to identity and citizenship as mandated under Article 5 of the Child Protection Law, but also generates administrative barriers that restrict access to essential services, including healthcare, education, and social security.

Furthermore, there exists a normative inconsistency between Article 28D of the 1945 Constitution, which guarantees legal certainty and equal treatment before the law, and the varied regional administrative sanctions—particularly fines—imposed for delays in birth registration. In practice, administrative systems that treat the birth certificate as an absolute prerequisite for accessing public services often overlook the principle of the best interests of the child. As a result, the state bears the obligation to harmonize legal regulations and administrative practices to ensure that procedural barriers do not undermine or negate the constitutional rights of children as legal subjects.

CONCLUSION

At the conclusion of this study, it can be inferred that a birth certificate constitutes an authentic document that must be provided to every child in order to secure formal legal recognition by the state. However, a birth certificate does not serve as the basis for a child's status as a legal subject, as a child inherently possesses rights from the moment of birth.

Nevertheless, the failure to fulfill a child's right to obtain a birth certificate can lead to significant legal and practical consequences, particularly in terms of limited access to essential services such as education, healthcare, and social protection programs. The absence of this document creates substantial administrative barriers that hinder the realization of fundamental rights and may result in long-term disadvantages. Therefore, the lack of a birth certificate is a critical issue, as it can seriously jeopardize a child's future by restricting their ability to fully participate in legal, social, and economic systems.

Based on the findings of this study, the author recommends that the government and legislative bodies undertake a review and revision of existing regulations, or eliminate provisions that hinder citizens from obtaining their rights as Indonesian citizens. In this regard, the state—particularly the government—is expected to take a more active role in providing adequate facilities and support mechanisms to ensure the fulfillment of citizens' rights.

Furthermore, it is essential for the government to develop more accessible, efficient, and inclusive administrative systems that simplify procedures for the public. By reducing bureaucratic barriers and enhancing service delivery, the state can create a more responsive legal and administrative framework that facilitates the realization of fundamental rights, particularly for vulnerable groups such as children. Such efforts are crucial in ensuring that all citizens can fully exercise their rights and participate equally in social, legal, and economic life.

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