

Legal Protection of Children's Rights Resulting from Incest After the Enactment of Law Number 17 of 2016 concerning Child Protection

Dinda Nuramalia¹; Budi Sastra Panjaitan².

Faculty of Sharia and Law, State Islamic University of North Sumatra, Indonesia.

E-mail: dinda206223063@uinsu.ac.id

Manuscripts received : 10/09/2026, Revision and Review : 28/09/2026, Approved 30/09/2026

Abstract

In Indonesia, incest is considered an uncommon and socially unacceptable form of sexual conduct because sexual relations with close family members, particularly children, are contrary to the proper function of the family. This study examines the legal protection of children born from incestuous relationships, particularly their right to know their origins and parents as provided under Article 7 of Law No. 17 of 2016 on Child Protection. This study employs a normative juridical method using statutory and conceptual approaches. Primary and secondary legal materials are analyzed to assess the extent to which child protection regulations prevent discrimination and safeguard the identity of children born from incestuous relationships is preserved by registering their births in accordance with Minister of Home Affairs Regulation No. 108 of 2019. The findings indicate that although Indonesian legislation guarantees the rights to identity and non-discrimination, the concealment of a child's origins by family members and the absence of clear implementing regulations may result in the loss of administrative rights, proper care, and legal certainty. This study recommends establishing clearer legal mechanisms, administrative protection measures, and support services, including psychosocial assistance and legal aid, to uphold the best interests of the child and ensure their rights to identity and legal status.

Keywords: *Identity Rights, Incest, Legal Protection.*

A. Introduction

Children as the nation's generation have the right to live, grow, develop, acquire identity, and receive protection from all forms of discrimination and violence.¹ The protection of children as part of human rights is guaranteed by the state as affirmed in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Child protection in Indonesia is regulated in Law Number 23 of 2002 which has undergone several changes, most recently through Law Number 17 of 2016 as a form of strengthening the protection of children's rights.²

Child protection can be done through two approaches, namely direct and indirect. Direct protection is aimed at children through meeting their needs, parenting, health, education, and prevention of various threats. Meanwhile, indirect protection is carried out through parents, caregivers, law enforcement officials, and other parties who play a role in

¹ The Republic of Indonesia, "Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law," Pub. L. No. 17 (2016).

² The Republic of Indonesia, "Constitution of the Republic of Indonesia in 1945" (1945).

ensuring the welfare, security, and development of children.³ However, there are still groups of children who are vulnerable and have not received optimal legal protection, one of which is children born from incest relationships.

Child protection includes not only identity and legal status, but also special protection as per Article 59A of the Child Protection Law through rapid handling, physical, psychological, and social rehabilitation, and prevention of health problems. This provision emphasizes the state's obligation to prioritize the best interests of children, including children from incest.⁴

Children born from blood relations are commonly called incestuous children. In the opinion of Benyamin Asri, *Bloed Schenneg* or incestuous children are children born from the result of a relationship between a man and a woman, between which there is basically a prohibition to carry out a marriage due to blood relations or still one sibling, for example it occurs between an older brother and his younger sister, or it can be with an older sister and his younger brother.⁵

In practice, the stigma against incest can encourage families to hide the origin of the child, not recognize the biological father, not record the birth, or list the identity of another male as the father.⁶ This condition has the potential to cause children to lose their rights to identity, civil rights, custody rights, population administration, and legal certainty. In fact, child protection provisions affirm that every child has the right to receive protection without discrimination based on the condition and origin of his birth.⁷

This issue has become increasingly complex related to the child's right to know his parents. Article 7 paragraph (1) of Law Number 17 of 2016 states that every child has the right to know his parents, be raised, and be cared for by his own parents. This provision aims to ensure that the relationship between the origin and identity of the child is not severed. However, in children resulting from incest, the identity of the biological father can be hidden, especially when the biological father does not marry the child's mother. Problems can also occur when the mother later marries another man and the male identity is used as the identity of the child's father. This situation raises the issue of the child's right to know his biological origin as well as the certainty of his identity and legal status.

Law No. 23 of 2002 also provides protection for children who are victims of criminal acts, including protection against identity disclosure and the right to legal aid and other assistance. However, the protection of children's identities to prevent stigma should not eliminate the right of children to know their biological origins. Until now, there has been no provision that specifically regulates legal protection mechanisms for children who are victims of incest, especially when the identity of the biological father is hidden or replaced with another male identity.

³ Selmaria Purba Dan Budi Sastra Panjaitan, "Journal Equity Of Law And Analysis Of The Implementation Of Child Protection Law In Combating Violence During Dating In Medan City (Lbh Medan Study)," *Journal Equality Of Law And Governance* 5, no. 1 (2022): 81–88.

⁴ Indah Maya Sari Ritonga and Budi Sastra Panjaitan "Criticism of Restorative Justice in the Case of Sexual Harassment in Islamic Boarding Schools: An Analysis of Law No. 12 of 2022," *Journal of Islamic Law and Criminal Law* 9, No. 1 (2024): 100–116.

⁵ Benjamin Asri and Thabrani Asri, *The Basics of Western Hereditary Law: A Theoretical and Practical Discussion*, 1st ed. (Bandung: Tarsito, 1988).

⁶ Masulatul Mabruroh, "Legal Protection of Children Resulting from Incest from the Perspective of National Law and Maqashid Sharia," *Maliki Interdisciplinary Journal (MIJ)* 4 (2026): 1286–95.

⁷ Republic of Indonesia, *Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law*.

Research on children as a result of incest has been conducted with diverse focuses. Afifah (2021)⁸ examines the legal protection of the rights of children resulting from *incest* by focusing on the status of incest and its implications for the legal status and inheritance rights of children. Ismalia (2025)⁹ discusses legal issues related to incest and criminal acts related to incest. Meanwhile, Dewi (2023)¹⁰ examines the optimization of legal protection for children as victims of incest crimes, especially on the physical and psychological impacts experienced by victims.

Previous research on incested children has mostly discussed legal protection of children in general, both from the perspective of national law and Islamic law, the handling of incest perpetrators, as well as the position of children out of wedlock. Meanwhile, research that specifically examines the protection of the rights of incested children to know their parents and biological origins based on the Child Protection Law is still difficult to find. These conditions show that there is a gap between normative guarantees of identity rights and children's right to know their parents and the practice of concealing the origins of children from incest.

Based on these problems, this research is important to find novelty regarding legal protection for children as a result of incest after the enactment of Law Number 17 of 2016 concerning Child Protection, especially regarding the right of children to know their parents and biological origins. This research also examines legal protection for children born of incest when the mother is not married to the biological father or when the mother is married to another man. Thus, this research is expected to provide a concept of legal protection that provides legal certainty, prevents discrimination, and prioritizes the best interests of children as a result of incest.

Therefore, this article discusses the following research questions: What is the legal protection of the rights of children resulting from incest to know their parents based on Law Number 17 of 2016 concerning Child Protection? What is the legal protection of these rights if the child's mother is not married to her biological father or if the mother then marries another man?

B. Research Methods

This research adopts a normative juridical method with a statute *approach* and a conceptual approach. This approach is carried out by examining all laws and regulations related to the legal issues being studied.¹¹ Legal research is a process to find legal provisions, legal principles, and legal doctrines in order to solve the legal problems being faced.¹²

In this study, the legal materials used are divided into two, as follows:

1. Primary Legal Materials, namely legal materials that are binding, include: ¹³
 - a. Constitution of 1945

⁸ Rindi Putri Afifah, Nindya Prasetya Wardhani and Aura Shava Dhinda Salsabila "Legal Protection of the Rights of Incested Children Based on Indonesian State Law," *Lex Generalis Law Journal* 2, no. 6 (2021): 498–509.

⁹ Rudy Ismalia, Noenik Soekorini and Dudik Djaja Sidharta "The Crime of Intentionally Murdering Incesting Babies Reviewed from the Criminal Code" 5 (2025): 59–68.

¹⁰ Alya Nabila Adistia and Ali Maskur Elinda Novita Dewi, "Optimizing Legal Protection for Children as Victims of Incest Crimes," *Execution : Journal of Law and State Administration* 10, no. 3 (2023): 295–308.

¹¹ Muhaimin, *Legal Research Methods*, 1 ed. (Mataram: Mataram University Press, 2020).

¹² Nurul Qamar and Farah Syah Rezah, *Legal Research Methods: Doctrinal and Non-Doctrinal*, 1 ed. (Makassar: CV Sosial Politic Genius (SIGn), 2020).

¹³ Soerjono Soekanto and Sri Mamudji, *Normative Law Research: A Brief Review*, 4th ed. (Jakarta: Raja Grafindo Persada, 1995).

- b. Law No. 23 of 2002 Jo. Law No. 35 of 2014 Jo. Law No. 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law.
 - c. Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019 concerning Implementation Regulations of Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration.
 - d. Law Number 23 of 2006 Jo. Law Number 24 of 2013 concerning Population Administration.
 - e. *Convention on the Rights of the Child (CRC)*.
2. Secondary Legal Materials, which are legal materials that contain explanations related to primary legal sources, such as textual books, research results in legal journals that are in line with this research.¹⁴

Legal materials were analyzed qualitatively by identifying, interpreting, and comparing legal provisions regarding child protection, parental rights and origins, and birth registration. The results of the analysis were then used to answer two conditions of children resulting from incest, namely when the mother was not married to the biological father and when the mother married another man, based on the principles of legal protection, non-discrimination, and the best interests of the child.

C. Results and Discussion

1. Incest

Incest is a sexual relationship or marriage between two siblings that is considered to violate customs, laws, or religions.¹⁵ *Incest* consists of two categories. First, it is *parental incest*, which is the relationship between parents and children. Second, sibling *incest* is a relationship between siblings, who have power over the child, such as cousins, uncles, aunts, grandparents.¹⁶ The absence of a marital bond between the biological mother and father due to the legal prohibition emphasizes the position of the child as an out-of-wedlock child who is threatened with losing his civil rights. This condition creates a normative clash between the imposition of criminal sanctions for incest perpetrators and the state's obligation to ensure the protection and fulfillment of the right to the origin of children.

2. Protection of Children's Rights Due to Incest When Mothers Are Not Married to Biological Fathers

The notification of the child's origin is a form of legal recognition of the existence of the child as a legal subject whose identity is then recorded. In order to ensure the fulfillment of the rights of children resulting from incest, the legal system in Indonesia has provided various protection instruments through laws and regulations, especially Law Number 17 of 2016 concerning Child Protection.

Administrative guarantees for each child as a legal subject are realized through the issuance of birth certificates, as stipulated in Law No. 24 of 2013 concerning

¹⁴ Zainal Asikin and Amiruddin, *Introduction to Legal Research Methods*, 1st ed. (Jakarta: Raja Grafindo Persada, 2004).

¹⁵ Bing Waluyo, "The Legality of Marriage According to Law Number 1 of 1974 concerning Marriage," *Journal of Communication Media for Pancasila Education and Citizenship* 2, no. April (2020): 193–99.

¹⁶ Saiful Abdullah, et al., "Insured Relations (Incest) Committed Consensually in Adulthood from the Perspective of Moral Crimes," *Media Iuris* 6, no. 1 (2023): 127–50.

Amendments to Law No. 23 of 2006 concerning Population Administration.¹⁷ Technically, Permendagri No. 108 of 2019 regulates the registration procedure for children outside the legal marital bond. For children from incest relationships whose mothers are not bound by marriage to their biological father, the issuance of a certificate is carried out as an out-of-wedlock child by including the mother's name as 'a mother's child'.¹⁸

This identity registration emphasizes that the protection of children resulting from incest is not enough to be realized through the punishment of the perpetrator alone, but also through the fulfillment of children's rights, such as the right to self-identity, parenting, recovery of psychological conditions, and protection from various forms of discrimination and social stigma. Given their position as a vulnerable group, children resulting from incest require optimal protection and attention from the state, family, and society to ensure the fulfillment of *the best interest of the child*. Thus, the legal protection system must be able to provide comprehensive guarantees for the child's right to life, growth and development, and future regardless of their birth background.¹⁹

Law Number 23 of 2002 concerning Child Protection contains the provisions and principles of the Convention on the Rights of the Child, one of which is the child's right to his or her identity. This right is strengthened by Law Number 23 of 2006 concerning Population Administration, where every child must be registered for birth. In line with this, Permendagri Number 108 of 2019 groups the types of child birth certificates into 4 groups, including: birth certificates for children from legal marriages, out-of-wedlock child certificates, child certificates with unregistered marriage phrases, and abandoned children's certificates.²⁰

Birth is recorded as a 'child of a mother' if the requirements for registering the marriage of the child's parents are not met. Nevertheless, the author underlines that the administrative procedures in accordance with the Minister of Home Affairs Regulation No. 108 of 2019 do not automatically negate the child's fundamental right to know who his biological father is. This shows that there is a firm separation between the two legal realms.

These differences can be analyzed through the theory of legal protection by Philipus M. Hadjon. Birth registration is a form of preventive protection in the administrative aspect because it provides identity and legal certainty to children. When a child's right to know his biological identity is illegally obstructed, a repressive legal protection mechanism must be intervened as an instrument of redress for violations of children's constitutional rights.²¹ However, this protection has not fully answered the problem of children's access to information about their biological father. Therefore, the

¹⁷ The Republic of Indonesia, "Law of the Republic of Indonesia Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration" (2013).

¹⁸ Ministry of Home Affairs of the Republic of Indonesia, "Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019 concerning Implementation Regulations of Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration," Pub. L. No. 108 (2019).

¹⁹ Twina Resia dan Budi Sastra Panjaitan, "Legal Protection for Persons with Disabilities as Victims of Sexual Violence (Study of Medan District Court Decision No. 1245/Pid. B 2023 Pn Mdn)," *Legal Brief* 13, no. 3 (2024): 836–43.

²⁰ Republic of Indonesia, *Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019 concerning Implementation Regulations of Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration*.

²¹ Philipus M. Hadjon, *Legal Protection for the People in Indonesia* (Surabaya: Bina Ilmu, 1987).

fulfillment of administrative identity cannot be equated with the fulfillment of all children's rights to biological origin.

In such circumstances, the principle of non-discrimination requires that children resulting from incest continue to receive the same protection without being reduced due to the circumstances of their birth. Meanwhile, the principle of the best interests of the child is the basis for determining how the right to know the biological origin is exercised. Information about the biological father in incest cases cannot be provided openly without considering the risk of stigma, psychological disorders, identity secrecy, and the child's family condition. Thus, the best interests of the child are not a reason to remove the right to know the parents, but rather the parameters in determining the form, time, and procedures of access to the information.

Based on this analysis, birth registration by including only the mother's name has provided protection for the child's administrative identity, but has not specifically provided a mechanism to ensure children's access to information about their biological father. These findings show that there is a normative gap between the guarantee of the right to know parents and the administrative mechanism of birth registration. Therefore, the necessary protection is not only in the form of identity registration, but also in the mechanism of access to information on biological origin that is carried out in a limited, confidential, and oriented manner in the best interests of the child.

The determination of the identity of the biological father in order to fulfill the child's right of origin cannot be based on unilateral recognition, but requires scientific proof based on DNA tests that take into account the confidentiality and best interests of the child. As a result, the existence of this biological relationship data should be managed in a system of protected mechanisms without immediately changing the administrative record on the birth certificate.

The national mechanism and regulation is in line with the principle of *non-discrimination* and *the best interests of the child* (CRC), the birth status of children resulting from incest does not invalidate the right to identity and biological origin, as long as its implementation is carried out in an encrypted or secret manner to protect children from social risks.²² Based on the principle of *non-discrimination* in the Child Protection Law, children resulting from incest remain legal subjects and are entitled to guarantee protection, upbringing, identity, health, and education in a comprehensive manner without discriminatory treatment.²³

3. Protection of Children's Rights as a result of incest when mothers marry other men

The second condition occurs when the mother of the child as a result of incest then marries another man who plays the role of father in the child's daily life. This situation raises legal problems because the parenting relationship formed with the surrogate father does not necessarily change or erase the biological origin of the child. Therefore, it is necessary to distinguish between biological identity, administrative identity, and parenting relationship because the three are not always attached to the same person. This distinction is important because the existence of a surrogate father in a parenting relationship does not in itself prove a biological relationship or fulfill the child's right to know its origin.

²² United Nations, "Convention on the Rights of the Child" (1990).

²³ Ibnu Mardiyanto, "Protection of International Law for Children Out of Wedlock of Indonesian Migrant Workers (Critical Analysis of the Application of Non-Discrimination Principles)," *Progressive: The Law Journal*, no. 1 (2024): 132-66.

The existence of a surrogate father does not automatically remove the rights of the child as guaranteed in Article 7 paragraph (1) of the Child Protection Law. From the perspective of Hadjon's preventive legal protection, information about biological origins needs to be protected so that it is not lost, and at the same time not disseminated uncontrollably. Disclosure of the identity of the biological father in incest cases risks exposing the identity of the victim, triggering destructive stigma, and damaging the stability of parenting; Therefore, restricting information is a form of legal protection to minimize the juridical and social impact on the child. This protection is important because the disclosure of the identity of the biological father in incest cases can have an impact on the child's relationship with the mother, surrogate father, and the family environment. In order to avoid the dangers of exploitation of victims' identities, social stigma, parenting disorders, and adverse juridical consequences, access to biological origin data must be managed within a framework of limited privacy. This system ensures that the right to biological knowledge is met.

Verification of the identity of the biological father in order to fulfill the child's right of origin requires objective scientific validation through DNA analysis, not just a one-sided claim. This proof must be subject to data confidentiality, legality of authority, and the principle of the best interest for the child. These biological findings do not automatically trigger publicity or changes to the Population Act, but function as a closed database for access to children's information.

In these conditions, the principle of the best interests of the child is the basis for determining the manner and timing of information disclosure. Considerations can include the age and maturity of the child, psychological conditions, parenting relationships that have been formed, and potential risks after the information is provided. Thus, the best interests of the child do not remove the right to know biological origins, but become a parameter in its implementation.

Legal findings in this condition show that the parenting relationship with the surrogate father cannot be equated with a biological relationship. Legal protection therefore needs to ensure that information about biological origins remains available and can be accessed safely if needed by the child, without having to interfere with the parenting relationship that has been formed. So that the child's right to know his parents and their origins is preserved through the provision of a limited verification mechanism that prioritizes the doctrine of *the best interests of the child* and the confidentiality of the victim. As a result, the availability of access to biological information does not need to sacrifice the stability of ongoing parenting or compromise the physical and psychological safety of the child.

D. Conclusions and Recommendations

1. Conclusion

In the condition that the biological father does not marry the mother, the right of the child resulting from incest to know the parents and their origins remains inherent based on Article 7 of the Child Protection Law. Birth registration by only listing the mother's name as 'a mother's child' based on Article 48 of Permendagri Number 108 of 2019 only forms an administrative identity, so it does not determine whether or not the child's right to information about his biological father is fulfilled or not. The findings of the research show that there is a normative gap in the verification mechanism and access to information about the biological father in a safe and confidential manner.

In the condition that the mother is married to another man, the parenting relationship with the surrogate father does not replace the biological identity of the

child. The legal findings point to the need for a separation between biological identity, administrative identity, and parenting relationships through verified, limited, and confidential information access mechanisms based on the best interests of the child.

References

A. Books

- Amiruddin, and Zainal Asikin. 2004. *Introduction to Legal Research Methods*. 1 Ed. Jakarta: Raja Grafindo Persada.
- Asri, Benjamin, and Thabrani Asri. 1988. *The Basics of Western Heritage Law: A Theoretical and Practical Discussion*. 1 ed. Bandung: Tarsito.
- Hadjon, Philipus M. 1987. *Legal Protection for the People in Indonesia*. Surabaya: Bina Ilmu.
- Muhaimin. *Legal Research Methods*. 1 Ed. Mataram: Mataram University Press, 2020.
- Qamar, Nurul and Farah Syah Rezah. 2020. *Legal Research Methods: Doctrinal and Non-Doctrinal*. 1 ed. Makassar: CV Social Political Genius (Sign).
- Soekanto, Soerjono and Sri Mamudji. 1995. *Normative Law Research: A Brief Review*. 4th ed. Jakarta: Raja Grafindo Persada.

B. Journal

- Afifah, Rindi Putri, Nindya Prasetya Wardhani and Aura Shava Dhinda Salsabila. 2021. "Legal Protection of the Rights of Incested Children Based on Indonesian State Law." *Lex Generalis Legal Journal* Vol. 2, No. 6.
- Abdullah, Saiful, et al. 2023. "Consensual incest in adulthood from the perspective of moral crimes." *Media Iuris*, Vol. 6, No. 1.
- Dewi, Elinda Novita, Alya Nabila Adistia and Ali Maskur. 2023. "Optimizing Legal Protection for Children as Victims of Incest Crimes." *Execution: Journal of Law and State Administration*, Vol. 10, No. 3.
- Ismalia, Rudy, Noenik Soekorini and Dudik Djaja Sidharta. 2025. "The Crime of Intentionally Murdering Incesting Babies Reviewed from the Criminal Code". *Court Review: Journal of Legal Research*, Vol. 5 No. 4.
- Mabrurroh, Masulatul. 2026. "Legal Protection of Children Resulting from Incest from the Perspective of National Law and Maqashid Sharia." *Maliki Interdisciplinary Journal (MIJ)* Vol 4.
- Mardiyanto, Ibnu. 2024. "International Legal Protection of Out-of-Wedlock Children of Indonesian Migrant Workers (Critical Analysis of the Application of Non-Discrimination Principles)." *Progressive: Legal Journal*, No. 1.
- Purba, Selmaria dan Budi Sastra Panjaitan. 2022. "Journal Equity Of Law And Analysis Of The Implementation Of Child Protection Law In Combating Violence During Dating In Medan City (Lbh Medan Study)." *Journal Equality Of Law And Governance* Vol 5, No. 1.
- Ritonga, Indah Maya Sari, Budi Sastra Panjaitan. 2024. "Restorative Justice Criticism in the Case of Sexual Harassment in Islamic Boarding Schools: An Analysis of Law No. 12 of 2022." *Journal of Islamic Laws and Criminal Law*, Vol 9, No. 1.
- Resia, Twina dan Budi Sastra Panjaitan. 2024. "Legal Protection For Persons With Disabilities As Victims Of Sexual Violence (Study Of Medan District Court Decision No . 1245 / Pid . B / 2023 Pn Mdn)." *Legal Brief* Vol 13, No. 3.
- Waluyo, Bing. 2020. "The Validity of Marriage According to Law Number 1 of 1974 concerning Marriage." *Journal of Pancasila Education Communication Media and Citizenship*, Vol 2. No. 1.

C. Laws and Regulations

Republic of Indonesia. 1945. *Constitution of the Republic of Indonesia in 1945*.

———. 2016. *Law of the Republic of Indonesia No. 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law*, Pub. L. No. 17.

———. 2013. *Law of the Republic of Indonesia Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration*.

Republic of Indonesia, 2019. Ministry of Home Affairs. Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019 concerning Implementation Regulations of Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration, Pub. L. No. 108.

United Nations. 1990. *Convention On The Rights Of The Child*.