

## The Modernization of the Surname of Child

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### Abstract

To ensure the family surname will be carried to future, the marriage type can be categorized into two types to rule the surname of the children. The first type is wedlock marriage and the second type is uxrilocal marriage. The surname of the children should follow father's surname in the first type and should follow mother's surname in the second type or to follow father's surname if there is a predetermined agreement by the parents. The wedlock marriage can also be classified into two types: wife-marriage and concubine-marriage. The child born under wedlock marriage will carry father's surname. As for the child born out of wedlock marriage will be treated as illegitimate child and should follow mother's surname.

As the family law of the Civil Code legislated in 1930 was influenced by the concept of equality of the sexes and independent character, the surname of the children was actually a compromise between new and old thoughts. In article 1059, child under wedlock marriage should follow father's surname (item 1) and child under uxrilocal marriage should follow mother's surname or to follow father's surname if there is a predetermined agreement. The concubine-marriage was removed as it goes against the rule of equality of the sexes; however, the uxrilocal marriage was still left for the purpose of carrying family surname to the future.

In 1985, the family law of the Civil Code went for another revision but the contents still did not fully adopted the concept of equality of the

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sexes. Later in 2007, article 1059 of the family law was substantially revised and regulated: “Parents should agree in writing before filing the child’s birth registration regarding if the child assumes the father’s or mother’s surname. After filing the child’s birth registration and prior to the child reaching maturity, the parents may in writing change the child’s surname to either the father’s or mother’s. Where the child reached his/her maturity, he/she may change his/her surname to either the father’s or mother’s surname. Either the parents or the child can petition in the interest of the child for a judicial declaration to change the child’s surname to either the father’s or mother’s surname.” Above regulations also apply to the surname of child out of wedlock marriage and adopted children.

The family law in 2008 failed to regulate the rules regarding how to settle the surname issue if the parents had different opinions. Consequently, before the revision of the Civil Code, the article 49 of Household Registration Act regulates that: “the applicant can decide the child to be registered with the father or mother's surname upon taking a draw.”

In 2010, the Legislative Yuan made more revision of the article 1059 of the Civil Code by stating that: “Parents should agree in writing before filing the child’s birth registration regarding if the child assumes the father’s or mother’s surname. Without such an agreement or when the agreement cannot be made, the surname should be determined by drawing lots at the Household Registration Office.” Nevertheless, if there is any surname disputes for the child born out of wedlock or adopted child, the legislators failed to add on the “determined by drawing lots” rules as applied to the legitimate child. This negligence of the law should be corrected as soon as possible.

Keywords: Legitimate child (child born under wedlock), Illegitimate child (child born out of wedlock), Adopted child, Surname of the child, Equality of the sexes, Independent character