

A Study of Children's Rights from Illegal Marriage

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ABSTRACT

The Constitutional Court decides that a child born from a marriage that is not recorded still have a civil relationship with his biological father "as long as it can prove based on science and technology or other evidence according to law that can prove blood relations as his father. The decision of the Constitutional Court Number 46 / PUU-VIII / 2010 states "Children born from marriages are not recorded will continue to have civil relations with their mothers and their families and with men as fathers that can be proven based on science and technology and / or tools the other evidence according to the law has a blood relationship, including having a civil relationship with his father. Based on this research a deeper assessment was made of the Rights of Children Caused by Marriage Not Recorded.

Keywords: Children's rights, consequences and marriage not recorded

INTRODUCTION

A legitimate child is the dream of a family that is highly expected as the next generation of father and mother. The child is a world treasure which is also a blessing and a trial from Allah SWT. Many children are given hope, especially as people who will take care of their parents in the future. The Constitutional Court decides that children born from marriages are not recorded as having civil relations with their biological fathers "as long as they can prove based on science and technology or other legal evidence can prove blood ties as his father, "said Chief Justice of the Constitutional Court Mahmud Md, who at that time was

the Chair of the Constitutional Court, when reading the verdict in the Constitutional Court building, Friday, February 17, 2012.

The position of children born from an unregistered marriage only has temporary civil relations with his mother with his father having no legal relationship except his father's acknowledgment of the child which must be done with an authentic deed. Besides that children born from unregistered marriages will have difficulty obtaining birth certificates. With the absence of birth certificates for children, the state has obstacles in protecting children, because legally there is no record of the birth status of children and the data of both parents. cause the birth of the child. Every person who carries out child care must pay attention and carry out their obligations, in the form of giving the rights of the child. In this case for children who still have parents, the care of children is the responsibility of their parents. In Article 45 the Marriage Law stipulates that parents must care for and educate children who are not yet mature until the children concerned are adults or can stand alone. Parents are also the first to be responsible for the realization of the welfare of children both spiritually, physically and socially.

In carrying out this research so that the community knows the rights of children resulting from the marriage is not recorded in the Village of Pantai Mirror Tanjung Pura so Based on the above background can be formulated the problems that will be studied later is as follows: a. How the child's right of marriage is not recorded with the verdict

of the Constitutional Court b. How to inherit the child from unmarried marriage and also this study aims to: 1. To know the rights of the child from marriage is not recorded with the verdict of the Constitutional Court 2. To know the right to inherit a child from an unmarried marriage.

LITERATUR REVIEW

Regarding children born from this series of marriage is still a long debate. According to Article 4 of the Islamic Law Compilations ("KHI"), Marriage is lawful, if conducted pursuant to Islamic law in accordance with Article 2 paragraph (1) of Law No. 1 Year 1974 on Marriage stating "Marriage is legitimate if done according to the law of each religion and its beliefs." However, the marriage must be reported and recorded in the Office of Religious Affairs or in the Catalan for non-Muslims.

This is in accordance with the provisions of Article 2 paragraph (2) of the Marriage Law stating "Every marriage is recorded according to the prevailing laws and regulations, as specified in Article 5 of the Islamic Law Compilation is mentioned; (1) In order to ensure the order of marriage to the Muslim community of every marriage must be noted; (2) The registration of the marriage in paragraph (1), shall be done by the Marriage Registrar As stipulated in Law No. 22 of 1946 jo Law No. 32 of 1954 on Marriage Registration.

In Law No. 1 year 1974 Article 42 stipulates that "legitimate children are children born in or as a result of legitimate marriage" and Article 43 verse (1) states "Children born outside marriage only have a civil relationship with her mother and her mother's family." It is also reinforced in the Islamic Law Compilation of the 186th heir who reads "The child born out of wedlock only has a mutual relationship with his mother and his mother's family." Therefore, he is only inherited from his mother alone. Without such recording, a child born from an unmarried marriage only has a legal relationship with her mother or her mother's family. Article 42 of the Marriage Law

stipulates that "the lawful child is a child born in or as a result of a legitimate marriage", and Article 43 paragraph (1) of the Marriage Law states "The child born outside the marriage only has a civil relationship with his mother and his mother's family. "This is also reinforced by KHI's provision of heir to Article 186 which reads" The child born out of wedlock only has a mutual relationship with his mother and his mother's family. "" Therefore, he only wants from his mother.

If pursuant to Article 863 - Article 873 of the Civil Code, the offspring of the marriage who are entitled to heritage of the father are offspring of the deceased father (inheritors) or unmarried children authorized at the time of marriage between his parents. from unmarried marriages will not receive the right of inheritance although the marriage of their parents is legally religious, but in this case, it is not legally registered in the country. The position of the child is legally weak, he may be entitled to the inheritance but to the recognition of his biological father. For an out-of-bound child who has never been recognized or never recognized by the Heir (in this case his father), based on the Constitutional Court's Decision Number 46 / PUU-VIII / 2010 which examines Article 43 Paragraph (1) of the Marriage Act, should read; "Children born outside marriage have a civil relationship with her mother and her mother's family as well as with men as her father may be proved by science and technology and / or other evidence under law having blood relations, including civil relations with her father's family.

One of the reasons for inheritance in Islam is the existence of a legitimate lawsuit. If the birth resulted in offspring, then the offspring were titled to the right of the heirs of both parents. There are three types of marriages and each type of influence whether or not there is a right of inheritance for the child born of the marriage.

With the existence of the Constitutional Court Decree Number 46 /

PUU-VIII / 2010 in the case of the petition for Testing Law Number 1 of 1974 concerning marriage proposed by Hj. Aisyah Mochtar alias Machica Mochtar binti H. Mochtar Ibrahim and Muhammad Iqbal bin Moerdiono so that the latest development was decided on Monday, February 13, 2012 and pronounced in the Constitutional Court Plenary Session open to the public on Friday, February 17, 2012 which requires additions to article 43 paragraph 1 of Law Number 1 of 1974 relating directly to marriage which is not specifically recorded regarding the status of the child which reads "A child born outside marriage has a civil relationship with his mother and his mother's family as well as a proven father based on science and technology and / other evidence according to the law has a blood relationship, including having a civil relationship with his father."

The legal implication is that a legitimate child has a civil relationship with his father as a result of a legitimate marriage, whereas a child from a marriage is not recorded does not have a civil relationship with his biological father as a result of the absence of marriage or unrecorded marriage. Constitution No.46 / PUU-VIII / 2010 is: Accommodation rights of children, Obtaining clear legal status, obtaining legal protection and guaranteeing the rights of children outside of marriage by the state, and removing the bad stigma of society against unregistered marriages. In addition, growing practice in the community that marriage is not recorded is a practice of covert polygamy. Men, in particular, often deny the existence of the marriage so that the rights of unregistered marriages of children are unfulfilled.

RESEARCH METHODS

The approach method used in this study uses a normative approach. Location and Time of the study are in Pantai Cermin-Tanjung Pura Village. When the study was conducted in November 2018 where the population in the study were students of

Pantai Cermin-Tanjung Pura Village. Based on the approach and data in this study, the data collection method used is library research, which examines primary legal material and secondary legal material relating to the rights of children resulting from unregistered marriages (Study of Pantai Cermin-Tanjung Pura Village) so that the Analysis the data carried out in this study by qualitative means, namely analyzing through data and then processed in opinions or responses and secondary data obtained from the library then analyzed so that data can be obtained that can answer the problems in this study.

RESULTS & ANALYSIS

The discussion of children's rights resulting from unregistered marriages (Study of Pantai Cermin-Tanjung Pura Village) has carried out a study that has never been carried out. Marriage registration is an important matter as proof that a marriage has been held also has a purpose to realize legal certainty and proof so that by recording the marriage event it becomes clear, both for the concerned and for other people and the community, because it can be read in a letter that is official and also included in a list specifically provided for that, so that at any time it can be used primarily as an authentic written evidence. Every marriage that has been carried out in a religious manner must be recorded because of the marriage registration, a marriage certificate will be issued which will be a proof of the marriage.

Marriage records have legal consequences for the position of the child born from the marriage. The marriage law recognizes two types of child status, namely legal children and extramarital children, as explained in Article 42 and Article 43 paragraph (1) of the Marriage Law. Article 42 of the Marriage Law affirms that: "A legitimate child is a child born in or as a result of a legal marriage." The definition of legal child in the Marriage Law can also be interpreted as a child born from a legitimate marriage between a husband and wife, even

though it turns out that the child is biologically not the child of a husband who marries the child's mother, it can be interpreted as a child which according to his blood is descended from both parents Marriage must be recorded so as to fulfill the provisions according to Article 2 paragraph (2) of the Marriage Law because the Law does require the registration of a marriage. This is a condition for the validity of a marriage in addition to creating legal and order certainty, and relating to one's civil status especially with civil status so that the child born from the marriage becomes a legitimate child as a legal child, the child will have a living right, good inheritance from his mother and father and his mother's and father's family. Children born from unregistered marriages are considered to be born from an illegitimate marriage so that the child born from the marriage becomes an illegitimate child and his position to be a child out of wedlock.

Regarding the position of a spousal child shall be regulated in Article 43 paragraph (1) of the Marriage Act which states that: "The child born outside the marriage only has a civil relation with his mother and his mother's family". Article 43 The marriage law is in accordance with the basis of reasoning Customary Law which entitles the child to his mother and his / her family. Children are given a clear human status although only with mother and mother's family, this is a national provision applicable to all Indonesian Citizens both native and offspring. The Marriage Act thus provides a clear and definite status for an offspring child

Based on the results of research that, due to the law if a marriage is not recorded against a child is the position of the child becomes a illegitimate child, the child only has a civil relationship with his mother. so that a child born from an unmarried marriage would have difficulty obtaining a legal birth certificate. According to Law Number 24 Year 2013 About Population Administration, in Article 27 is described as follows. (1) Every birth is obliged to be

reported by the Resident to the Executing Agency at least 60 (sixty) days from birth. (2) Based on the report as referred to in paragraph (1), the Civil Registration Office records in the Birth Certificate and publishes the Birth Certificate.

Likewise continued with article 28 described as follows. (a) Birth registration in the registration of Births and issuance of Birth certificate to the birth of an unknown person or his or her parents' existence, is based on the report of the person who discovered the Inspection and Police News. (b) Birth Certificate of Birth Act as referred to in paragraph (1) is issued by the Civil Registrar and kept by the Executing Agency.

The grouping of children is divided into 2 parts, legitimate children and unauthorized children. Legitimate children are divided into 2, namely, biological children and stepchildren, while unauthorized children are divided into 3 parts, the offspring of children, the adulterers and the incest. (1) Legitimate child Legitimate children have the highest and most perfect strata in the eyes of the law compared to children in other groups, because legitimate children carry all rights granted by law, including inheritance rights in the highest rank among groups another class of heirs, social rights where he will exceed one third of all the assets he owns or if it exceeds this amount, it must be approved by the heirs of the deceased parents. Stepchildren in inheritance law cannot inherit each other, but in family law they will still be bound by the right and obligation of alimentation between stepchildren and stepparents, meaning that the rights and obligations that apply to their biological parents and biological children also apply to stepparents with his stepson. (2) Invalid children, illegitimate offspring are descendants who are not based on a legitimate marriage. Illegal children in the broad sense include children outside of marriage, adultery children, and discordant children. Whereas in the sense of ownership, the meaning of illegitimate

children is only limited to children outside of marriage.

Each of these differences in children is illegitimate according to the Civil Code to have different consequences even though zina and discordant children are also children out of wedlock, in the sense that they are not legitimate children. Because illegitimate children need to be divided into three groups, including; (a) Unmarried children, also called illegitimate children in the narrowest sense, are children born from the relationship between a man and a woman both of whom are not bound by a legitimate marriage bond; (b) Adultery Children The difference in understanding adultery is based on two different views between Islamic law and western civil law. According to Islamic teachings all intercourse performed outside marriage is a form of adultery, so that according to western law a child cannot be categorized as an adultery child if the child is born of a husband and wife relationship carried out by a man and woman where one or both are married to another.

CONCLUSIONS

(1) The violation of the rights of the child is the difficulty of obtaining a birth certificate identity, even though the birth certificate is the first child's right that should be given by the state. The Child Protection Law clearly states that every child has the right to an identity. In the sense that this Law does not discriminate between children born to parents whose marriages are listed or from parents whose marriages are not registered. (2) Unregistered marriages will have a major impact on children's rights, especially the right of children to obtain an identity for their birth as a form of recognition from parents and from the State. Difficulty in getting an identity results in many children not having birth certificates. Based on data collected at this time only 40% of Indonesian children at the age of 5

have birth certificates, the rest do not have birth records and do not have a deed, consequently their rights as citizens are threatened. This is caused by several factors, including the difficulty of bureaucracy and the existence of discrimination.

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