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Legal Protection of Inheritance Rights of Children from Unregistered Marriages (Analysis of Supreme Court Decision No. 671 K/Ag/2015)

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Abstract. *A valid marriage in Indonesia requires its implementation in accordance with religious law and registration by an authorized official for legal certainty. Children born from unregistered marriages have only a civil relationship with the mother and her family. However, the inheritance rights of children from unregistered marriages have undergone progressive development through jurisprudence. This study aims to analyze the legal status of inheritance rights of children from unregistered marriages within the context of legal certainty and to examine the legal protections afforded to these children. This research method uses normative legal research. The approaches used are the statute approach and the conceptual approach. The data type is qualitative, and the data sources are secondary data. The data collection method is through literature review, while data analysis is conducted descriptively. The research findings indicate that although unregistered marriages are religiously valid, the lack of administrative registration traditionally limits children's rights. However, Constitutional Court Decision No. 46/PUU-VIII/2010 has recognized the civil relationship of children with their biological fathers based on scientific or other evidence. Supreme Court Decision No. 671 K/AG/2015 further affirmed the inheritance rights of children from unregistered marriages, prioritizing the principle of substantive justice in accordance with Gustav Radbruch's Theory of Legal Certainty. Legal protection for children, as stipulated in Law No. 35 of 2014 concerning Child Protection, applies without discrimination based on origin. Legal remedies for obtaining legitimate child status for children from unregistered marriages include Marriage Confirmation in the Religious Court for Muslims, and marriage registration in the District Court for non-Muslims, which then facilitates the issuance of complete birth*

certificates. Nevertheless, challenges in the implementation and access to comprehensive children's rights remain, demanding more holistic and proactive policy reforms.

Keywords: *Children's inheritance; Legal protection; Unregistered marriage.*

1. Introduction

A family is formed through marriage, a bond between two people of different sexes with the aim of forming a family to maintain and protect as well as improve the welfare and happiness of the family. A law is drawn up that regulates marriage and family. Marriage law is regulated in Law Number 1 of 1974 concerning Marriage. Article 2 paragraph (1) of the Marriage Law emphasizes that a marriage is valid if it is carried out according to the laws of each religion and belief. Then in paragraph (2), it states that each marriage is registered according to the applicable laws and regulations. For Indonesian citizens who are Muslim, in addition to the Law in Indonesia, it is also contained in the Compilation of Islamic Law. So, for citizens who are Muslim, their marriage is only considered valid if it is carried out according to Islamic law.[1] An unregistered marriage is a marriage that is carried out based on religious rules or customs. An unregistered marriage is very detrimental to wives and children, both legally and socially. Legally, women are not considered legitimate wives. A wife is not entitled to maintenance or inheritance from her husband if he dies. Furthermore, the wife is not entitled to marital property in the event of a divorce, as the marriage is considered never to have occurred.

Socially, women whose marriages are not registered are often considered illegitimate wives. Furthermore, the status of any children born to them is considered illegitimate.[2] The Compilation of Islamic Law also regulates the permissibility of polygamy. The legal basis that allows polygamy in Islam is found in the Word of Allah SWT in the Qur'an Surah An-Nisa Verse 3: "And if you are afraid that you will not do justice to (the rights of) an orphaned woman (if you marry her), then marry (other) women that you like: two, three, or four. But if you

[1] Itsnaatul, (2015), Pencatatan Perkawinan: Melacak Akar Budaya Hukum dan Respon Masyarakat Indonesia terhadap Pencatatan Perkawinan, *Al-Mazahib*, Volume 3 Nomor 1. June
[2] Faizal, Liky, *Akibat Hukum Pencatatan Perkawinan*, Fakultas Syariah, Universitas IAIN, dalam https://media.neliti.com/media/publications/58206-ID-akibat-hukum-pencatatan-perkawinan.pdf, accessed on 10 July 2025

are afraid that you will not do justice to (the rights of) an orphaned woman (if you marry her), then marry (other) women that you like: two, three, or four. But if you are afraid that you will not do justice, then just marry one, or use a slave servant. This is closer to Doctrine: Journal of Law, 3 (2) October 2020: 173-183 175 without persecution."

The Marriage Law in Indonesia actually adheres to the principle of monogamy contained in Article 3 paragraph (1) of the UUP, that in principle men can only have one wife, where women can only have one husband. However, the law provides an exception, namely in Article 3 paragraph (2) of the Marriage Law which states: "The court may grant permission to a husband to have more than one wife with the consent of the parties concerned. "The consent of the wife or wives for a husband who intends to remarry another woman (polygamy) is one of the requirements for submitting an application for permission to practice polygamy to the Religious Court. The regulation of joint property in a polygamous marriage is that each wife has joint property separately and independently, where ownership of the joint property is calculated from the time of the second, third or fourth marriage contract. According to Islamic law, Article 1 letter (f) of the general provisions of the Compilation of Islamic Law states that property in marriage or syirkah is property obtained individually or jointly during the marriage without questioning whose name it is registered in. Since the marriage occurred, a mixture of the husband's and the wife's assets (algehele van goederen), if no agreement is made. This situation continues and cannot be changed during the marriage. Polygamous marriages, whether viewed from Civil Law, Customary Law or viewed from Islamic Law, have many difficulties in determining joint property, because in polygamous marriages that often occur in Indonesia, in practice it is very rarely registered with a marriage registrar. Based on the explanation above, there are many problems that arise due to the law not registering marriages, one of which is the problem of inheritance. Inheritance problems are usually a source of disputes in families, especially related to provisions regarding who has the right and who does not have the right and provisions regarding each portion that triggers disputes, which can ultimately lead to the breakdown of family ties. One example of a problem that occurs in society is taken from the study of Supreme Court Decision Number 671 K / Ag / 2015.[3]

[3] Abubakar, Zainal Abidin, (1993). *Kumpulan Peraturan Perundang-undangan Dalam Lingkungan Pengadilan Agama,* Jakarta: Yayasan Al-Hikmah.

The results of the decision from the Supreme Court Number 671 K / Ag / 2015 which eliminates the inheritance rights of the Plaintiffs, where the Plaintiffs are children from the first, third and fifth marriages with the testator. The Plaintiffs did not receive inheritance rights because they could not explain when the testator married his wives. Because according to the Plaintiff in the past, it was very rare for marriages to be registered at the Office of Religious Affairs so there were no marriage books. And the only party who received the inheritance was the Defendant's wife The fourth and their children. Based on the description above, this research is important to conduct considering that many polygamous marriages are still carried out in secret in society. Therefore, by conveying the many consequences that occur when marriages are carried out in secret, whether polygamous or not, the community can reconsider when considering carrying out a secret marriage and for children born from registered polygamous marriages, knowing the legal efforts that can be made to obtain legal protection. So the purpose of the problem that will be raised in this study is the legal protection of children from unregistered polygamous marriages and the status of children's inheritance rights in unregistered polygamous marriages according to the provisions of Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI), and the legal considerations of the Judge in the Supreme Court decision Number 671 K / Ag / 2015 related to the fulfillment of the principle of justice in Islamic inheritance law.[4]

2. Research Methods

Based on the formulation of the problem in compiling this research, the type of research used is normative juridical research using a statute approach. Supported by secondary data supported by interview guidelines. Normative research is research that examines legal materials, both primary, secondary, and tertiary, to answer research problems. This research relies on secondary data and primary data support to support legal arguments resulting from secondary data analysis. Secondary data is data obtained from the results of a literature review or review of various literature or library materials related to the problem or research material. Primary data is data obtained from research results, namely data obtained from field research by conducting interviews with Religious Court Judges.

3. Results and Discussion

Legal Protection for Children from Unregistered Polygamous Marriages The Compilation of Islamic Law (KHI) stipulates that having more than one wife is stated in Chapter IX starting from Article 55 to Article 59. If a husband wishes to practice polygamy, he must be fair. If he is unable to do so, it is forbidden and the maximum number of wives he is allowed to marry is four, with the note that if the husband is only able to fulfill three wives, it is forbidden for him to marry four wives. If he is

[4] Departemen Agama RI, (1984). *Al-Qur'an Dan Terjemahannya*, Jakarta : Yayasan Penyelenggara Penerjemahan Al-Qur'an

only able to fulfill the rights of two wives, it is forbidden for him to marry two or three wives. Likewise, if he is worried about committing injustice by marrying two wives, it is forbidden Likewise, if he is worried about committing injustice by marrying two wives, it is forbidden for him to practice polygamy. The process of polygamous marriage that does not meet the specified conditions can be called a sirri marriage. Only carrying out the pillars and conditions of marriage but the sunnah of marriage has not been carried out, one of which is the announcement of the marriage (walimah), then this marriage is interpreted as a silent/secret state (sirri). There are registered and unregistered sirri marriages, secret marriages are marriages attended only by those concerned, without witnesses, without announcements, there are registered sirri marriages and there are also unregistered sirri marriages, Then the problems that arise due to sirri marriages are the rampant practice of polygamy carried out with sirri marriages to avoid permission in religious courts, negligence in providing maintenance, denial of the status of children from marriages carried out in sirri, as well as absurd division of joint property in the event of a divorce.

In terms of economic women will be disadvantaged especially the application for itsbat nikah and the application for determining the origin of the child is basically the same as other cases, namely the interested party as a legal subject submits an application to the Religious Court in its jurisdiction. Of course, the application must meet the formal requirements of the application, namely the existence of identity, posita and petitum. After that, the Court will issue a decision after a careful examination based on evidence that meets the requirements. In addition to itsbat nikah, a form of legal protection for children's inheritance rights is that children born in a secret marriage are legitimate children because there is recognition from their father and must be accompanied by a court decision. Recognition from a biological father can now be proven technologically through DNA testing, so that the accuracy in recognizing children outside of marriage who are recognized cannot escape responsibility. This clearer recognition results in the child legally obtaining a civil relationship with his biological father in relation to obtaining a civil relationship. Civil relations in terms of inheritance are not discussed in the Constitutional Court Decision 46/PUU-VIII/2010, however, this Constitutional Court Decision provides clarity regarding the relationship in terms of civil relations so that children born out of wedlock who are recognized can obtain their rights.[5]

4. Conclusion

Based on the description above, the author can conclude that legal protection for children from unregistered polygamous marriages can be obtained in 2 (two) ways, namely first through a request for marriage confirmation based on Article 7 paragraph (2) of the KHI and second, recognition from a biological father which is

[5] Ma'sum, H. Endang Ali, (2013). Pernikahan Yang Tidak Dicatatkan dan Problematikanya, *Jurnal Musawa*, Volume 12

proven technologically through a DNA test. Both of these ways can be used as a legal basis for children born from unregistered polygamous marriages so that their rights and obligations can be fulfilled. If the parents' marriage is legal with the ratification of the marriage, the child born automatically becomes a legitimate child. The status of inheritance rights for children from unregistered polygamous marriages is the same as the status of inheritance rights for children.

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