



Legal Analysis for the Child Those born Outside the registry

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Abstract: This research was carried out at the Suwawa Religious Court Office as well as places related to the author's discussion. This study aims to determine the factors that cause the occurrence of a right for a child born from an unregistered marriage. Primary data and secondary data were collected and analyzed based on a descriptive qualitative problem formulation. Already pregnant out of wedlock, 2) Not getting permission for polygamy, 3) lack of attention or knowledge of the importance of having a legal marriage in the eyes of the law.

Keywords: Marriage; Children's Rights;

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1. Introduction

Currently, Indonesia is being hit by an increasingly rapid flow of globalization¹ and Every country needs a system of government as a state instrument in order to realize the goals of each country, as is the case with Indonesia.² Marriage is a very important bonding structure in society. This relationship is a legalization between the relationship of a man and a woman which aims to form a complete and eternal family, it can be interpreted that this relationship is recognized by religion and the state.³

According to Soetoyo Prawirohamidjojo, marriage is a form of life for a man and a woman which is made legally containing religion. The subekti opinion that the essence of civil law says a marriage is to form a bond that is so strong between a man and a woman to create eternal life. Likewise with HD kealany which says a marriage is filled with sharia or religious rules and also follows the rules applicable to prospective husbands and wives. In this way, the two people have the idea that marriage is also carried out legally and also has a formal religion.⁴

Paragraph 1: "Marriage is valid if it is carried out according to the law of each religion and belief".

Paragraph 2: "Every marriage is recorded according to the applicable laws and regulations".

Article 2 shows that marriage in Indonesia does not only regulate personal civil relations. The article also interferes with a religion and belief of each individual. For those who are not religious but adhere to a belief, they must still follow the rules so that a discipline is maintained, not only that, In the international context, the protection of personal data is regulated in Article 12 of the Universal Declaration of Human Rights, which states "No one may be subject to arbitrarily intruding on his privacy, family, home or correspondence, or attacks on his honor and reputation."⁵ and Indonesia is a country that pays attention to the individual interests of its citizens, as well as carrying out a personal nature, namely building a family, and the State will record After that event, a marriage certificate will be given. In this case, the provisions are no longer in line and in harmony with what is happening in the midst of the dynamics of some people today, where some people no longer pay attention to the provisions for the implementation of an essential marriage bond. Unregistered marriage has always been the center of

¹ Mellisa Towadi and Waode Mustika(2022). Initiating "Sister City for Smart City" as an Optimization of The Role of International Law in Gorontalo, Law Enforcement Scientific Journal. Vol 09 No.01 (2022): 87-97

² Fence M. Mantu, and Ahmad (2019). Mechanism of coordination and synchronization of state ministry institutions a praxis towards an effective cabinet. Journal Al Ahkam. Vol 15 Nomor 2 (2019): 69-80

³ Tutik, *Introduction to Civil Law in Indonesia*, Jakarta: PT.Prestasi Pustaka, 2006, Pg 106

⁴ R. Abdoel Djamali, SH, *Introduction to Indonesian Law*, Bandung: PT. RajaGrafindo Persada, 2021, pp 157-158

⁵ Fenty U. Puluhulawa, Jufryanto Puluhulawa, and M. Gufran Katili(2020). Legal Weak Protection of Personal Data in the 4.0 Industrial Revolution Era. Jurnal Jambura Review. Vol 20 No.02 2020 : 182-200

problems in the midst of the dynamics of society, especially children who are the object of the problem. Law Number 23 of 2002 Article 7 paragraph 1 concerning child protection explains that every child has the right to know his parents, to be raised, and to be cared for by his own parents. This is related to the child's right to know his origin, including his milk mother, so that there is no decline in genealogy and blood relations between the child and his biological parents. Law No. 1 of 1974 Article 43 Paragraph 1 states that children born outside of legal marriage only have a civil relationship with their mother and their mother's family. So the risk is that the child becomes difficult to carry out State Administration,

There are also traditional factors or community habits. For the Gorontalo people, Gorontalo customs must be preserved even though new rules will emerge from time to time regarding the cost of the marriage contract or which require the procession of the contract to be in the KUA. Before the PP is implemented and socialized in each Districts of all Customary Stakeholders and KUA Management in Gorontalo Province held a meeting to discuss whether the marriage contract process at KUA did not interfere with the Gorontalo traditional contract procession. One of the traditional stakeholders explained that the contract procession at the KUA would disturb the sacredness of the contract procession according to custom.

So that the Gorontalo people are more or more dominant in carrying out marriage contracts at home in order to carry out a very sacred traditional procession which is considered if the implementation of the marriage contract is sacred and uninterrupted or seems rushed, the couple will be harmonious and their marriage will not be interrupted unless death separates them. The community previously knew about this rule, but not all of them understood the intent and purpose of the PP, the community on the contrary thought that the higher the cost of marriage issued by the government through the regulation would not eliminate the community's sense of trust in customs, especially Gorontalo customs which have been carried out for generations well.⁶

2. Research Method

The type of research used by the researcher in compiling this scientific article is a sociological juridical research type which has an object of study regarding rights related to children born outside of registration. The type of approach used by the researcher is the approach to legislation with the process of collecting data from the object studied in this study by using interview, observation and document studies. Data analysis techniques in legal research are divided into two, namely the types of primary and secondary data. Primary data is data obtained through field surveys directly by primary sources such as community members as seen from research.

⁶ Dolot Alhasni Bakung (2019). Ertium Comparatum Regulating the Customary Rights of Indigenous Peoples in the Implementation of the Marriage Contract. . Legality Journal. Vol 12, No 1 (2019)

3. Discussion

3.1 Settlement Concerning The Rights Of Children Birth Outside Registration In Civil Law

Marriage Registration Based on the Application of Objectification of Islamic Marriage Law in Indonesia to marriage registration in Indonesia is basically inseparable from the concepts of sharia law that can be applied universally in the field of marriage, which then these concepts are adopted and legitimized into a norm that regulates and binds all citizens, especially in the scope of marriage law. Before we discuss how the substance of the application of objectification of Islamic marriage law to marriage registration in Indonesia, we must know the following things below:

1. Definition of Objectification

Objectification is the translation of internal values into objective categories (al Asyari, 2016). That objectification can also be seen as the concretization of an internal belief. Objectification is an effort to understand that is aimed at the outside while externalization to the followers of a religion (al Asyari, 2016). Objectification is an act and an action which rationalizes the values embodied in a rational act so that outsiders can also enjoy it without having to agree with the original values. So the objectification of Islamic marriage law is an effort to rationalize legal provisions or principles that will be legalized by the state and become role models for Muslims with universal values in the form of Maqasid Shari'a values.'that developed in Indonesia (al Asyari, 2016).

In its development, when marriage law was developed in a very wide area, it interacted with various local rules with very varied structures and cultures adopted. Therefore, legal products with a local pattern emerged, and in Indonesia the idea of the need for an Indonesian fiqh formula was put forward, for example by Hasbi Ash Shiddieqy, Hazairin, Munawir syadzali, Busthanul Arifin and A. Qodri Azizy.

In reviewing Indonesian marriage law, which has interacted with various local rules and traditions, two successive steps were taken, namely first, efforts to objectify Indonesian marriage law, second, efforts to apply the concept of Indonesian marriage law in accordance with the spirit of modernity, but not leaving the same. various local rules and traditions.

2. Islamic Marriage Law

Before the Marriage Law Number 1 of 1974 was declared effective, marriage law in Indonesia was regulated in various legal rules that apply to various groups of citizens and regions, including customary law that applies to native Indonesians, Islamic law that applies to people of Indonesia. Native Indonesians who are Muslim, the Civil Code which applies to people of European and Chinese descent with some exceptions, and the Indonesian Christian Marriage Ordinance which

applies to native Indonesians who are Christians (Prodjodikoro, 1966). Marriage in the science of fiqh, is called the term marriage, which contains two meanings, namely according to language and according to terms. According to the language of marriage means gathering or intercourse, while according to the term, Marriage is a contract or agreement (sacred) with a certain pronouncement between a man and a woman to live together as husband and wife (Daly, 1988). As for marriage according to the Compilation of Islamic Law (KHI) is a very strong contract to obey Allah's commands and carrying it out is worship (Suhairi & Dissertation, 2001). Meanwhile, according to Law Number 1 of 1974 marriage itself is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty. The purpose of marriage according to the positive law contained in Law Number 1 of 1974 is to form a happy and eternal family (household). Meaning in this provision,

3. Marriage Registration System

Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead.

As for Article 2 paragraph (1) and paragraph (2) of the Marriage Law which stipulates that a marriage must be carried out according to the law of each religion and belief and registered according to the applicable laws and regulations, therefore this provision constitutes a unity that does not its validity can be re-elected for the parties to the marriage. Even if it only fulfills one of the provisions, the event of the marriage does not meet the legal elements determined by law. Furthermore, the matter of marriage registration is regulated in Article 2 of Government Regulation Number 9 of 1975 which states that marriage registration for those who are Muslim, the registration is carried out by a registrar as referred to in Law Number 32 of 1954 concerning Marriage Registrars. Divorce and Refer. On the other hand, for those who are not Muslim, the registration is carried out by the marriage registrar at the Civil Registry Office, which means for those who marry according to the Islamic religion, the registration is carried out at the Office of Religious Affairs (KUA), which as we know is generally carried out in conjunction with the marriage ceremony because the marriage registrar from the KUA was present at the marriage ceremony. As for those who are Catholic, Christian, Buddhist, Hindu, the registration is carried out at the Civil Registry Office after the bride and groom are married according to their respective religions. For example, for those who embrace Catholicism or Christianity, first the bride and groom perform a wedding procession in the church,

Marriage registration functions to collect data on marriage administrative problems which are directly handled by marriage registrar officers (PPN) with the aim of creating legal and state order. Furthermore, regarding marriage registration, it also has the function of administrative order, transparency, and legal certainty in the implementation of marriage for Muslims, it is necessary to regulate marriage registration.

Article 2 paragraph (2) of Law Number 1 of 1974 also states that every marriage is recorded according to the applicable laws and regulations. In the general explanation it is stated that marriage registration is the same as important events in a person's life such as birth, death which is stated in certificates of an official deed which is also included in the register of records. The act of recording does not determine the validity of a marriage, but states that the event does exist and occurs, so it is purely administrative in nature (Saleh, 1976).⁷

Registered marriages to obtain a marriage certificate. A marriage certificate is evidence that a marriage has occurred or has taken place, not what determines the validity of the marriage. There is no evidence that this causes children and wives from unregistered marriages to have no legal status (legality) before the state.

Basically, if there is a marriage in which for Muslims the marriage has met the requirements and pillars of marriage or the Kabul consent as well as the provisions stipulated in the legislation or for those who are non-Muslim, the priest/pastor has performed a blessing or other ritual, then the marriage is legal, but in this case it is still in the legal category in the eyes of religion and public belief, it has not yet entered the realm of state law order. The current phenomenon, as described above, the parties often assume that their affairs have been completed even though they have just entered the realm of religion and are not yet in the realm of state law, as a result of this problem, many marriages are not registered so that they deviate from existing provisions.

The ignorance of the parties when they want to take care of the marriage is the reason that is often heard about the lack of marriage registration. In addition to these reasons, other reasons that also often exist are due to high costs, complicated procedures or there are also related to several parties such as for civil servants and ABRI, the absence of marriage registration aims to eliminate traces and be free from lawsuits and administrative penalties from superiors, especially for the second marriage and so on. This unregistered marriage is known as Underhand Marriage or more commonly known as Siri Marriage.

Civil Law Regulations in the case of children born from unregistered marriages, namely in this case Article 250 of the Civil Code⁸ explained A child born or raised during a marriage acquires the husband as the father. Article 251 of the Civil Code⁹ The legitimacy of a child born before the one hundred and eighty day (6 months) of marriage can be denied by the husband. Article 272 of the Civil Code¹⁰ It also explains that children out of wedlock, except those born from adultery or blasphemy, are legalized by a subsequent marriage from their father and mother,

⁷ Nasrudin, Nur Mohamad Kasim, Lusi Margareth Tijow (2021). Marriage Registration Based on the Application of Objectification of Islamic Marriage Law in Indonesia. Syntax Admiration Journal. Vol. 2 No. October 10, 2021.

⁸ 250 Civil Code

⁹ 25 Civil Code

¹⁰ 272 Civil Code

if they have previously legally recognized the child, or if the marriage took place in a deed of self-recognition. With the acknowledgment of a child out of wedlock, the birth of a civil relationship between the child and his father or mother, the statement is strengthened in Article 280 of the Civil Code.¹¹

In Law No.1 of 1974 it is stated that "Legal children are children born from legal marriages" and children born out of wedlock only have a civil relationship with their mother and their mother's family. The court gives a decision on whether or not a child is legal at the request of an interested party. So according to the Civil Code, a child is born during a marriage, even though the child is the result of a seed from another person who is the child of his mother's husband who is bound by a marriage. Meanwhile, according to Law No. 1 of 1974, a legitimate child is a child born from a legal marriage. So if a woman bears the seed of another man but marries a man who is legal in the eyes of law and religion, then the child is the legitimate child of the marriage.

Unlike a child born out of wedlock, for example a woman who is pregnant and then the child is born without knowing who the child's father is, the child only has a civil relationship with the mother who gave birth and the mother's family only. The 1974 Law also explains that a child born out of wedlock only has a civil relationship with his mother and his mother's family, but does not mention that it is not permissible to investigate who the child's father is and this sees that Law No. 1 of 1974 does not justify recognition of children out of wedlock, such as the Civil Code which confirms to say so.

After that, regarding the position of children both based on the Civil Code and Law No. 1 of 1974 which only determines the legal and illegitimate positions of children and then does not talk about the position of other children such as in family life and in society. In the statement here that the Civil Code states that a child's fulfillment can be fulfilled by law if both parents acknowledge both parents in court by bringing medical evidence, as well as acknowledging that the child is their biological child.

In this case, the researcher knows the pros and cons in the issue of the rights of children born from marriages that are not registered in the civil law world, only focusing on the position of the child, not guaranteeing protection from either internal or external terms. Researchers came to know why the Constitutional Court emphasized that there must be a marriage isbat and biological evidence, in order to ensure the needs of the child.

The legal codification and unification system has a positive impact on children which is described transparently in several laws and regulations. The position of the child in the legal environment as a legal subject is determined by the form and legal system of the child as a group of people who are in legal status. Efforts to protect children must be carried out as early as possible, namely from the fetus in

¹¹ 280 Civil Code

the womb. This is based on the conception of child protection that is complete, comprehensive, and comprehensive. Law No. 23 of 2002 explains that the obligation to provide protection to children. In the dimension of Civil Law. Protection in the event that a child commits an unlawful act (Onrechtmatige Daad), where parents and guardians are responsible for the child's actions as regulated in Article 1367 of the Civil Code¹²

3.2 Settlement Concerning the Rights of Children Born Outside the Registration in the Matter of Islamic Law Complication

Compilation of Islamic Law Regulations Regarding Children Born from Unregistered Marriages. Namely, in this case Article 2 Paragraph (1) of Law Number 1 of 1974 concerning Marriage states that a valid marriage is a marriage that is carried out religiously and also in accordance with the legal norms in it. Whereas in Article 5 paragraph (1) the Compilation of Islamic Law (KHI)¹³It is mentioned that in order to create a guaranteed marriage regulation for the Muslim community, every marriage is required to register a marriage. Then how about aspects of children born from unregistered marriages? Mentioned in Article 100 KHI¹⁴it is stated that a child born out of a legal marriage only has a lineage with the mother and her mother's family, then added with article 186¹⁵KHI states that children out of wedlock can only get inheritance by the mother and her mother's family, and this applies to betel marriages. Just as the Civil Code does not explain the position of other children such as in family life and in society it only focuses on the inheritance rights of the child. In this case the researcher knows that KHI in the issue of the rights of children born from marriages is not recorded, namely only discussing the inheritance of the child, not discussing the protection of the child from internal or external terms. That's why Mr. Sunyoto, SHI, SH As the Supreme Court of the Suwawa Religious Court said that Article 5 of the KHI stated that a marriage must be registered, if it is not recorded then problems arise, namely administration and we good citizens must meet administrative requirements, If in the case of unregistered marriage, it means that he is a citizen who has no administrative order so that the rights of the child will be eroded, for example in the case of inheritance rights. He said that we as judges, if there is a lawsuit regarding inheritance, we ask for proof of the relationship with the heir, the only thing that can be proven is the administration section such as marriage books, birth certificates and so on. However, if there is no administrative evidence in the trial, the inheritance rights will be hindered by the State, but if it is Islamically allowed, it will be allowed. He also said that apart from the world of inheritance rights, health rights must also be proven by the administration, such as in the administration of BPJS, where family cards, birth certificates and other related

¹² Dolot Alhasni Bakung (2018). Analysis of Law no. 1 of 1974 concerning marriage and Law No. 23 of 2002 concerning the protection of children related to underage marriage. Al-Hurriyah, Vol. 15, No. 1, January-June 2014

¹³ Article 5 Paragraph (1) KHI

¹⁴ Article 100 KHI

¹⁵ Article 186 KHI

administration are needed. That's why there are so many things that children's rights have been eroded.

Also supported by an interview on December 13, 2021 to the Supreme Court of the Suwawa Religious Court:

1. Arini Indika Arifin. As the Supreme Court of the Suwawa Religious Court, said that the rights of children born from unregistered marriages have two categories, namely the first children from betel marriages according to Islamic sharia and the second children from marriages not in accordance with Islamic sharia, for the rights of children resulting from Marriage according to Islamic sharia, namely guardian rights for girls, inheritance rights, support rights, rights related to care. Meanwhile, children resulting from marriages that are not in accordance with Islamic sharia are only limited to providing for them, so that they are not related to guardianship, inheritance, etc., they only have the right to have a relationship as a biological child.¹⁶

2. Kaharudin Anwar,¹⁷As the Supreme Court and also as chairman of the Suwawa Religious Court, he said that children whose marriages were not registered had big problems compared to children whose parents had performed istbat marriage. inheritance, right to education, right to identity, right to have welfare and others, while children whose parents have done itsbat marriage are guaranteed from the things mentioned. He also said that there were so many cases like this that 100 (one hundred) cases could be obtained or even more in a year.

3. Noni Tobito,¹⁸As the Supreme Court and also as a representative at the Suwawa Religious Court, said that since the birth of the decision of the Constitutional Court No. 46/ PUU-VII/2010. Children born out of wedlock have the same status as legitimate children, but with medical evidence, namely biological. In this case, which is offensive and nurturing can be sued for children born out of wedlock, this effort is so that the child gets his rights. Even though in terms of inheritance, guardians and so on, they are not obtained or can be said to be unfulfilled.

4.Sunyoto,¹⁹As the Supreme Court of the Suwawa Religious Court, said that Article 5 of the KHI states that a marriage must be registered, if it is not recorded, then the problems that arise are administration and we are good citizens who must meet administrative requirements. which is not administratively orderly so that the rights of the child will be eroded, for example in terms of inheritance rights. He said that we as judges, if there is a lawsuit regarding inheritance, we ask for proof of the relationship with the heir, the only thing that can be proven is the

¹⁶ Interview with Mrs. Arini Indika Arifin, SH., MH. At the Suwawa Religious Court, On December 13, 2021 At 10.23 In His Room.

¹⁷ Interview with Mr. Kaharudin Anwar, SHI, MH at the Suwawa Religious Court, on December 13, 2021, at 10.23 in his room.

¹⁸ Interview with Mrs. Noni Tobito, SEI, MH at the Suwawa Religious Court, on December 13, 2021, at 10.23 in her room.

¹⁹ Interview with Mr. Sunyoto, SHI, SH at the Suwawa Religious Court, on December 13, 2021, at 10.23 in his room.

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4. Conclusion

The State of Indonesia is a country that upholds moral values that guarantee the rights of every citizen. The moral values contained are a reference for us to obey every existing rule. And also the State guarantees the rights of everyone and accommodates them so that the Indonesian people have a guarantee that is protected from danger, whether it is criminal or other things. In this case, it also protects the rights of the child, especially for the child, whether it is external or internal. It is also supported by statutory regulations and also by the compilation of Islamic law.

Reference:

Book:

- R. Abdoel Djamali, SH, Introduction to Indonesian Law, Bandung: PT. RajaGrafindo Persada, 2021, pp 157-158
- Tutik, Introduction to Civil Law in Indonesia, Jakarta: PT.Prestasi Pustaka, 2006, Pg 106

Journal:

- Dolot Alhasni Bakung (2018). Analysis of Law no. 1 of 1974 concerning marriage and Law No. 23 of 2002 concerning the protection of children related to underage marriage. Al-Hurriyah, Vol. 15, No. 1, January-June 2014
- Dolot Alhasni Bakung (2019). Ertium Comparatum Regulating the Customary Rights of Indigenous Peoples in the Implementation of the Marriage Contract. . Legality Journal. Vol 12, No 1 (2019)
- Fence M. Mantu, and Ahmad(2019). Mechanism of coordination and synchronization of state ministry institutions a praxis towards an effective cabinet. Al Ahkam Journal. Vol 15 Nomor 2 (2019). : 69-80

Fenty U. Puluhulawa, Jufryanto Puluhulawa, and M. Gufran Katili(2020). Legal Weak Protection of Personal Data in the 4.0 Industrial Revolution Era. *Jurnal Jambura Review*. Vol 20 No.02 2020 : 182-200

Mellisa Towadi and Waode Mustika(2022). Initiating "Sister City for Smart City" as an Optimization of The Role of International Law in Gorontalo, *Law Enforcement Scientific Journal*. Vol 09 No.01 (2022) : 87-97

Nasrudin, Nur Mohamad Kasim, Lusi Margareth Tijow (2021). Marriage Registration Based on the Application of Objectification of Islamic Marriage Law in Indonesia. *Syntax Admiration Journal*. Vol. 2 No. October 10, 2021.