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Determination of Nasab Validation of Children Born Outside a Legal Marriage (Study Analysis of the Religious Court Decision Number: 115/PDT.P/2021/PA. Bjb)

Herianto¹, Sahmiar Pulungan²

¹Universitas Islam Negeri Sumatera Utara, Medan, Indonesia, ajjaherianto@gmail.com

²Universitas Islam Negeri Sumatera Utara, Medan, Indonesia, sahmiarpulungan@uinsu.ac.id

Corresponding Author: ajjaherianto@gmail.com¹

Abstract: The purpose of this study is to briefly explore the factors considered by judges in deciding the offspring status of children born from legal marriages and its legal impact, especially for unregistered children. This research is focused on analyzing regulations related to literature or secondary sources, utilizing a qualitative approach and normative legal methodology. The methods used in this research include a statute-based approach and a case-based approach. The research results show that: 1) The judge in his decision rejected the plaintiff's request to affirm the child's relationship with his father. 2) The legal impact on children and women in a siri marriage according to the Overview of Islamic Law is as follows: For the child, it is difficult to obtain a birth certificate because his birth is constrained by administration at the civil registry office. In contrast, the wife's status as a legal spouse is not recognized by state law.

Keyword: Compilation of Islamic Law; Stipulation of Validation; Nasab Child; Nikah Siri.

INTRODUCTION

In terms of family law, children are categorized into 2 main categories, namely legitimate children and illegitimate children. Children born from a marriage that is recognized in accordance with applicable law are considered children. Law number 1 of 1974 explains the rules of law number 16 of 2019 concerning amendments to the marriage law. The legal statement that "a legitimate child is a child born of a legal marriage" is stated in Article. A child born outside of a marriage that is legally recognized by state law is said to be an illegitimate child. Children born outside a valid marriage are mentioned.

In Indonesia, the validity of a marriage and its recognition depends on its celebration in accordance with the religious beliefs of the community and its official registration in accordance with regulations. Paragraphs 1 and 2 of Article 2 of Law No. 1/1974 on Marriage state that a marriage is considered valid if it is performed in accordance with existing legal provisions and religious teachings. Partners must be officially registered according to the applicable law. Article 5 of the Compendium of Islamic Law emphasizes the importance of marriage registration to maintain order in Islamic society. Article 6 further underscores this

point. "A marriage performed without the supervision of a marriage registration officer is not valid according to the law."

Often in our society we are faced with marriages that do not fully comply with applicable regulations, for example, marriages without official procedures which are often called *nikah siri*. Unofficial marriages that are not registered with the KUA are called *siri* marriages. Although recognized according to religious beliefs, it does not yet have legal value in the eyes of the State; it has not been registered in accordance with the provisions in There are several opinions according to which a sharia marriage is held if it does not meet the requirements of the applicable legal procedures. Regarding the legal status of secret marriages, there are differences of opinion, especially regarding the interpretation of Article 2 of Law Number 1 Year 1974 concerning marriage. This article places more emphasis on the preservation of marriage, while article 2 places more emphasis on recognizing the validity of a marriage under the laws and religions adopted by both parties.

In the era of globalization, problems often arise that result in the blurring of *nasab*, ranging from promiscuity, adultery, to pregnancy outside of marriage, *nikah siri* is often celebrated in order to avoid the sin of adultery. From a religious point of view, unregistered marriages are recognized as valid because they meet the conditions set out in marriage. However, according to Indonesian law, marriages that are not officially registered at the Office of Religious Affairs are not recognized by the government. As a result, this situation has an impact on legal rights and children resulting from marriage, not getting proper legal recognition.

Based on the view of the *ulama*, children born as a result of adultery or *li'an* only have a bond with the mother who gave birth to them. This view is generally accepted. However, according to the Shia view, the child has no blood relationship with his parents, with the father or with the mother, and is not entitled to inheritance from them. Determining the lineage of the son-in-law is very important because it has an impact on the *mahram* status of the child and his father. Even though the child is biologically descended from his father's sperm, this is not always in accordance with the genealogical rules of Islamic law.

Scholars agree that descent has legal effects that create rights and obligations. Descent is a great gift from Allah to His people, as stated in the Qur'an, Surah Al-Furqan verse 54.

وَهُوَ الَّذِي خَلَقَ مِنَ الْمَاءِ بَشَرًا فَجَعَلَهُ نَسَبًا وَصِهْرًا وَكَانَ رَبُّكَ قَدِيرًا ﴿٥٤﴾

Meaning: "And He (also) created man from water and then made him (have) offspring and family relations, your Lord is the Most Powerful".

An example of a *siri* marriage case related to a request for determination of a child's *nasab* filed with the Banjarbaru Religious Court based on number. 115/PDT.P/2021/PA. Bjb. In this case the first applicant Andhi Kristianto bin and the second applicant Marlina binti Kamrani were recognized as married according to Islamic law on 6 September 2014. The marriage guardian was the second applicant's brother although the marriage had not been officially registered by a religious institution. From the marriage, they were blessed with a son named Muhammad Vino Rafael, born on June 2, 2016.

In this situation, the applicants were seeking to obtain a birth certificate for their son. Unfortunately, the application was not approved by the relevant authorities as they were unable to verify the validity of the marriage as proof of the legitimacy of the relationship between the parents and the child. Applicant I and Applicant II entered into a bond with each other in accordance with Islamic law on September 6, 2014, knowing at the time that they were still bound by a previous marriage that was not legally valid. It was later revealed that the applicant had undergone divorce proceedings before the court in 2019, while applicant II had been divorced in 2020. Faced with this situation, the applicant requested that the parents of her child be confirmed as legitimate.

The purpose of this study is to describe the judge's perspective on the status of children born from unregistered marriages and evaluate the legal impact experienced by the child after being recognized as a child from an unregistered marriage, based on the views of the Compilation of Islamic Law.

METHOD

This research method is qualitative with a normative juridical approach, which means analyzing legal regulations based on literature or secondary materials. The focus of qualitative research is the understanding of phenomena in a natural context using a variety of relevant methods, without involving statistics or quantitative methods. Normative legal research assesses the law from an internal perspective, aiming to provide juridical argumentation when there is a vacuum or conflict of norms. The method chosen in this research is descriptive analytical method. This method aims to provide an in-depth view of the issues discussed by combining two main approaches, namely a statute-based approach and a case-based approach. This research utilizes data that includes primary regulations, such as Law Number. In 1974, then updated with Law Number. Regulations governing marriage passed in 2019, and other regulations related to this matter. In addition, additional information was obtained from various sources, such as books, articles, magazines, and reports published by the media.

RESULTS AND DISCUSSION

Judges' Considerations in Determining the Nasab Status of Children Born Outside a Legal Marriage

1. Background of Case Number (115/PDT.P/2021/PA. BJb)

This case concerned the application of the first applicant Andhi Kristianto bin Marsum (father) and the second applicant Marlina binti Kamrani (mother). Based on the facts, on September 6, 2014, the applicants entered into a marriage in accordance with Islamic teachings, although the marriage was not officially registered at the local Religious Office, but was nevertheless officiated with several witnesses, including the brother of the second bride-to-be who became the marriage guardian, and was later confirmed by the village head, KH Ridha Anshari. Also present were two male witnesses, who brought a dowry in the form of a set of prayer tools that had been paid in cash.

At the time of the marriage, Applicant I was still in a previous marriage, and Applicant II was still married to her former partner. Applicant I was officially divorced in 2019 in the religious court, while Applicant II was divorced in 2020. After the divorce, Applicant I and the applicant lived in the same house and the applicant did not have a relationship with another man because for Applicant I, he was currently her husband.

From their marriage, the couple was blessed with the presence of a son named Muhammad Vino Rafael, born on June 2, 2016. Since the birth of the child, no one has challenged or doubted that the child was the legitimate child of Applicant I and Applicant II. On March 9, 2021, they celebrated their holy bond of marriage at the Office of Religious Affairs. Later, they requested a birth certificate for their child, but unfortunately the request was not granted by the hearing panel.

2. Considerations and Legal Basis for Judges in Determining the Nasab Status of Children Number (115/PDT.P/2021/PA. BJb)

Based on the points that have been submitted, the judge's view is that based on Article 42 of Marriage Law Number 1 of 1974, which has been amended by Law Number 2019, as well as Article 99 paragraph of the Compilation of Islamic Law, a recognized child is a child born from a legally valid marriage. In addition, article 2 paragraph 2 of the updated law number 16. In 2019, article 4 of the Compilation of Islamic Law states that a marriage is considered valid if it is carried out in accordance with the applicable Islamic religious rules.

Based on these regulations, it appears that the legal status of a child is determined by examining the validity of the parents' marriage first; in order to be considered valid, a marriage must follow the applicable regulations regarding marriage. Thus, the practice of siri marriage carried out by the applicants was not in accordance with the provisions of Article 3 of Law No. 1 of 1974 which was later amended by Law No. 16 of 2019 concerning marriage. This provision clearly states that in a marriage, a man may only have one wife, and a woman may only have one husband. This situation occurred in 2015, when the Applicant and Applicant II entered into a siri marriage. At that time, Applicant I already had two wives, including Applicant II, and Applicant II had two husbands, including Applicant I.

The judge has held that the marriage of the applicant and appellant did not fulfill the applicable provisions, particularly in this case concerning the principles in the institution of marriage. To determine the Nasab status of the child in this case the judge considered several factors relating to the Nasab law in accordance with the provisions of the law.

According to Islamic and Indonesian law, the relationship between a child and his or her father varies depending on a number of factors.

- a. A valid marriage is one that respects all applicable rules and regulations and does not violate any prohibitions set by law.
- b. A step marriage refers to a marriage that is invalid or incomplete, because some or all of the terms and conditions that apply to a marriage are not connected to the child's father based on a number of predetermined conditions. For example, in a step marriage, one of the essential elements such as the guardian or witness does not meet the legal requirements. Such irregularities are only revealed after the marriage has taken place, not at the outset.
- c. A questionable incident occurs between a husband and a woman who is considered his legal wife, but the validity of the relationship is in doubt, for example because of a mistake in understanding or performing the marriage contract, so that the marital status is unclear.

Based on the above provisions, the Judge considered that Muhammad Vino Rafael, the son of Applicant I and Applicant II who was born on 2 June 2016, was still recognized as a legal child even though he was born from a marriage that was not based on the applicable rules. However, in this situation, the judge decided that the applicants had violated the rules regarding the prohibition of marriage in accordance with the provisions in verse 24 of the Qur'an. Verse 24 of Surah An-Nisa and Articles 3, 9 and 10 of the Marriage Act. This related to the previous marital status of Applicant I and Applicant II. The marriage entered into by Applicant I and Applicant II on 6 September 2014 cannot be considered valid or suspect, as Applicant II was still married to another man known and accepted by both of them. The marriage took place because at that time Applicant II was still legally the wife of her previous husband, not because of a lack of understanding of the status of the marriage which had not been officially divorced by Applicant II.

The practice of siri marriage conducted by the Plaintiffs cannot be justified by religious, legal and propriety norms because it is considered to "simplify" the sacred institution of marriage to then marry siri even though the previous marital status has not been officially divorced. The Plaintiffs have also consciously practiced siri polygamy and polyandry wildly, therefore it is contrary to religious norms, law and decency so that the child named Muhammad Vino Rafael can only be attributed to his mother and the religious court rejected the applicant's request to be attributed to his father.

Legal Effects on Children After the Establishment of Children Born from Unregistered Marriages in the State in Review of the Compilation of Islamic Law

The understanding of the status of children in Islamic law contained in KHI is always in accordance with the rules of the Marriage Law. Article 100 KHI is similar to Article 43 paragraph (1) of the 1974 Marriage Law which states that children born outside the bonds of a legal marriage only have a family relationship with the mother and her family.

In the context of a siri marriage, if the marriage results in a child, the impact on the status of the child and the mother can relate to nasab recognition, inheritance rights, and the legal status of the child.

- a. From a legal perspective, children from siri marriages are generally considered to be children out of wedlock, as the marriage is not officially recorded by the authorities. This can be seen in the child's birth certificate, which only lists the mother's name, without including the father's name.
- b. From a religious point of view, marriages in Syria are considered valid, but unfortunately they are always abused by irresponsible parties. Often, a woman's lack of knowledge is taken advantage of by her husband who neglects his responsibilities as a husband because the marriage is not legally recognized by State law.

Article 103 of the Islamic law collection emphasizes that to know the ins and outs of a child, one can only go to the birth certificate or other officials. However, children born from Syrian marriages do not have birth certificates because their parents' marriages are not registered at the state civil office or KUA. As a result, the father's name is not recorded in the child's birth certificate, which can lead to uncertainty about the father's obligations in matters of inheritance, child support and responsibility for his wife. In addition, the absence of marriage registration of Syrians at the KUA can cause a number of problems, difficulties or issues for the parties involved.

If a child is born outside of a legal marriage, then he or she has a legal relationship only with the mother and her family. MUI offers several legal remedies to safeguard the rights of children born from adultery or similar acts. In this case, first of all, the man involved will be in the ta'zir punishment in the form of a person to fulfill the needs of the child, whose size and shape will be determined by the authorities. Then the delegation of inheritance rights to the child is carried out in a mandatory probate procedure after the death of the father.

In Islamic law, a child born out of a registered marriage is considered a child born out of wedlock. As such, the child only has a legal relationship with the mother and the mother's family, as stipulated in article 186 of the collection of laws of the Ministry of Health. The rules regarding civil legal relations between fathers, both biological and non-biological, are contained in articles 99 to 103 of the Civil Code. However, the rules regarding the recognition of children from marriages in Syria after itsbat nikah are still not clearly regulated in the law, even in the KHI, which is the basis of Muslim law.

A siri marriage can lead to legal problems related to the condition of the child who is born, which is considered to be a child out of wedlock. This means that the child only has legal ties with the mother and the mother's family, without any legal recognition from the father. Only the mother's name appears on the birth certificate. From a social and psychological perspective, a child's status as an out-of-wedlock child can have certain impacts. In addition, for the wife who entered into a nikah siri, there are other negative impacts, such as not being entitled to receive inheritance or maintenance if divorced. The main legal issue that arises in this case is the existence of unclear laws or vague norms.

The legal effect of a siri marriage on the child is that it is difficult for the child to obtain a birth certificate, especially if the parents cannot produce a marriage certificate when applying to the registry office. At the time of birth, the child will be recorded as an illegitimate child, with only the mother's name and no father's name. This unmarried child status can have a major

social and psychological impact on both the child and the mother. Although the child can obtain a birth certificate through birth registration, the father's name is still not listed. In order to include the father's name, a court decision is required that certifies the child as the legal child of the father. This lack of legal status can affect the relationship between father and child, with the father possibly refusing to be recognized as the legal parent in the future.

The negative impact of this condition is felt most by children, who are often not treated properly, especially when compared to children born from legal marriages. In the perspective of Islamic law, the child's relationship with his parents is not problematic, but in the context of state law, the civil bond with his biological father is not considered. The child's problems become worse when the father and his family do not recognize his existence, while the child is only recognized by the mother and her family, which results in the termination of the rights that the child should receive. This situation is even worse when the mother is abandoned or divorced by the father, because in this case, the rights of the mother and child will not be fulfilled unless the father is aware of his religious obligations.

CONCLUSION

The results of the study show that the Judge's consideration that the existence of a siri marriage practice carried out by the applicants cannot be justified by religious, legal and propriety norms because it is considered to "simplify" the sacred institution of marriage to then marry siri even though the previous marital status has not been officially divorced. The Plaintiffs have also consciously practiced siri polygamy and polyandry wildly, therefore it is contrary to religious norms, law and decency so that the child named Muhammad Vino Rafael can only be attributed to his mother and the religious court rejected the applicant's request to be attributed to his father. Legal events against the rights of children and wife in a siri marriage, according to the Compilation of Islamic Law shows that children cannot obtain birth certificates. In the process of making a civil birth certificate, if the parents' marriage certificate is not valid, the child will be registered as an extramarital child, with only the mother's name and no father's name. This status can have social and psychological impacts on the child and mother.

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