

Status of Children from Siri's Marriage (Case Study of Constitutional Court Decision No. 46/PUU-VIII/2010)

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Abstract

This study aims to examine or analyze the Constitutional Court Decision Number 46/PUU-VIII/2010. This decision was made based on a request submitted by Aisyah Mokhtar to the Constitutional Court for a Judicial Review or re-examination of the Law which will be assessed whether the Law is contrary to the norms of the 1945 Constitution or not. Aisyah Mokhtar submitted this application to risk the civil relations rights of her son, Muhammad Iqbal Ramadhan, with his father, Moerdiono. This was done because Aisyah Mokhtar's marriage to Moerdiono was a marriage that was legalized according to religion but not according to the state (unregistered marriage) because marriage registration was not carried out. After this MK decision, children outside of marriage can have a civil relationship with their father and father's family. However, this envoy only applies to children out of wedlock from unregistered marriages (siri marriage) and not children out of wedlock as a result of adultery. Because if this decision is applied to children out of wedlock resulting from adultery, then the Constitutional Court delegates will be considered contrary to Islamic law. According to Islam, a child born from an adulterous relationship only has a relationship with his mother and his mother's family, and not with his father.

Keywords: Constitutional Court, Judicial Review, Islamic Law, Civil Relations.



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INTRODUCTION

A child is one of the gifts from God Almighty which is given to us to always be cared for and nurtured properly and also full of love, because a child certainly has the right to be protected from the moment he is born, so that in the future when the child When he grows up he will become a child who is useful and beneficial to himself and others. Children are the "most expensive gift" from God for every married couple. However, with the influx of modernization with Western cultural values into today's life, which has an impact on liberal understanding of the development of social patterns of teenagers today. The existence of these impacts resulted in the neglect of norms, namely legal norms and religious norms. This can affect unwanted things, for example, is a pregnancy that occurs outside of marriage. Pregnancy outside of marriage is a serious problem that is currently happening in society.

Basically, God Almighty created humans in pairs and with marriage or marriage as a tool to form and continue offspring. According to Law Number 1 of 1974 concerning Marriage Article 2 paragraph (2), each case is determined in accordance with the applicable laws and regulations. The institution that has the authority to register marriages for those who are Muslim is the Office of Religious Affairs (KUA). Instead, the marriage will be followed by civil registration for non-Muslims for those who are majority non-Muslims. Because marriage is also included in civil ties, the aim is for a law to be obeyed.

However, it is still common to find people out there who are reluctant to follow the existing rules and carry out "underhand marriage" or what is commonly known as unregistered

marriage where the marriage is carried out without being registered at the KUA. Underhanded marriages are often considered illegal marriages so that the impact on the wife and children born from the marriage will not get legal protection such as civil relations with the father. This is mentioned and can be proven in Article 43 paragraph (1) of the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage which reads, "Children born out of wedlock only have civil relations with their mothers and their mothers' families". It is also common for things to happen, such as the prosecution of the status and civil rights of children that have been produced in the marriage through legal channels in court. Conditions like this are increasingly popping up which makes the Constitutional Court grant the request to review Law Number 1 of 1974 concerning marriage against the 1954 Indonesian Constitution on Friday, February 17, 2012.

A case that was popular at that time was the case that was being experienced by Aisyah Mokhtar, who had a religious or unregistered marriage with Moerdiyono but was not recorded, so she did not have a marriage certificate. This marriage produced a son named Muhammad Iqbal Ramadhan, who was the main factor in the submission of a judicial review to the Constitutional Court conducted by Aisyah Mokhtar so that her son would obtain legal status as the child of Moerdiono. This demand was finally allowed or granted by the Constitutional Court Decision Number: 46/ PUU - VIII/ 2010 to be precise on February 27 2012 which stated, "Part of the lawsuit filed by Aisyah Mokhtar alias Machicha bint Mochtar Ibrahim was granted, namely Article 43 paragraph (1) that "a child born out of wedlock only has a civil relationship with his mother and his mother's family". With the Decision of the Constitutional Court Number: 46/ PUU - VIII/ 2010, children from unregistered or unregistered marriages will have the same status and civil rights as registered marriages.

Based on the description above, the writer has an interest in conducting research or case studies regarding "Status of Children Out of Siri Marriage (Case Study of Constitutional Court Decision Number 46/ PUU - VIII/ 2010)". The issues to be raised in this research or analysis are as follows: How is the Constitutional Court Decision Number 46/ PUU/ VIII/ 2010 involved in the status of children out of wedlock? What is the status of children out of wedlock after the Constitutional Court Decision Number 46/PUU/VIII/2010 in terms of Islamic Law? The purpose of writing this article is to analyze the Constitutional Court's decision No. 46/PUU/VIII/2010 on the status of children out of wedlock. The benefit is to increase knowledge and knowledge about how the status of children out of wedlock before and after the Constitutional Court decision No. 46/ PUU/ VIII/ 2010.

RESEARCH METHODS

The research method used in writing this article is the normative or juridical method. Normative research is research that conducts literature studies to find primary and secondary sources. What is meant by primary sources is one of the legal principles and norms. While secondary sources in the form of dictionaries, internet, articles, and others. In this study, data and information sources were obtained from scientific articles, news, and laws and regulations.

RESEARCH RESULTS AND DISCUSSION

Involvement of Constitutional Court Decision Number 46/PUU/VIII/2010 Against the Status of Children Out of Marriage

Submission of the judicial review filed by Aisyah Mokhtar, in the decision of the Constitutional Court Number 46/PUU/VIII/2010 concerning the right to extramarital rights, the legal status (legal standing) is Aisyah Mokhtar and Muhammad Iqbal Ramadhan as children of Aisyah Mokhtar's unregistered marriage with Mordiono. This decision also has a very broad

impact on the status of children out of wedlock which does not only apply to applicants I and II, but also to all people in Indonesia with the same case as that experienced by Aisyah Mokhtar to get the same civil rights as well. After the issuance of this decision, an impact was generated on the status obtained by children outside of marriage. However, the decision of the Constitutional Court does not include an explanation regarding children out of wedlock as meant in this decision. In fact, children out of wedlock do not only include children out of wedlock from unregistered marriages, but also from children out of wedlock resulting from adultery.

However, based on the Aisyah Mokhtar case, the illegitimate child in question is of course an illegitimate child from an unregistered marriage. Mahfud M.D., as Chief Justice of the Constitutional Court at that time stated that, "What the Assembly meant by "children out of wedlock" did not mean children from adultery, but children from marriage that were not registered". To clarify regarding the absence of restrictions on the phrase "children out of wedlock". Civil relations given to children out of wedlock are not limited to status, inheritance rights, and marital guardian matters. Civil relations as explained in civil law, contain broad implications which include inheritance, the right to be a guardian, provision of alimony, demands for protection and using "bin" or "binti" behind the child's name.

The main points of the petition for the right to judicial review submitted by Aisyah Mokhtar to the Constitutional Court are Article 2 paragraph (2) and Article 43 paragraph (1) of the Republic of Indonesia Law/1/1974 with Article 28 B paragraph (1) and paragraph (2).) and Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. However, not all of these lawsuits were approved by the Constitutional Court, for example regarding administrative records as recorded in Article 2 paragraph (2) of the Republic of Indonesia Law/1/1974. According to the Constitutional Court, Article 2 paragraph (2) of Law RI/1/1974 does not contain elements contrary to the 1945 Constitution of the Republic of Indonesia, because as the general explanation for number 4 letter b of Law RI/1/1974 reads, "The role of the state is to provide protection to form a family and continue offspring through legal marriage, which is the embodiment and form of guarantee for human survival. Thus marriage cannot be seen from a purely formal aspect, but must also be seen from a spiritual and social aspect. Religion determines the legality of marriage, while the law determines the legality of the administration carried out by the state". In Article 2 paragraph (2) UU RI/1/1974 it is explained that, "Marriage is declared valid, if it is carried out in accordance with the laws of each religion and belief". The existence of a marriage certificate is the same as the existence of other certificates, examples of birth certificates and many more.

The existence of restrictions made through registration of marriages is only to guarantee recognition and respect for the rights and freedoms of other people with general considerations in a society, which makes registration of marriages of course not limiting a person's human rights and of course aims to guarantee certainty of rights arising from the marriage. This is of course supported by Article 28 J paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely: "In exercising his rights and freedoms, everyone is obliged to comply with the restrictions determined by law with the intention of guaranteeing recognition and respect for the rights and freedoms of others and to meet just demands in accordance with moral considerations, religious values, security, and public order in a democratic society."

In general, civil relations that arise, of course, also include legal relations, rights and obligations between children and their fathers and mothers. Examples of this are: Lineage relationships (offspring/relatives), Mahram relationships, Inheritance relationships (inheritance), Rights and obligations relationships, and Marriage guardian relationships between daughters and fathers. As in Article 43 of the NRI Law No. 1 of 1974 concerning Marriage, it is explained that "Children born out of wedlock only have civil relations with their

mothers and their mothers' families." However, this article covers a broad scope and does not limit what kind of child out of wedlock is meant. However, it needs to be underlined that the decision on this application is a decision on an application granted by the Constitutional Court for Aisyah Mokhtar, who has filed a legal standing against Moerdiono, who is a husband and wife who are legally married according to religion or what we are familiar with is marriage. series. And it can be concluded that, This Constitutional Court decision applies to all Indonesian people who have experienced the same case as the case of Aisyah Mokhtar and Moerdiono who was involved in an unregistered marriage relationship that produced children out of wedlock and not for children out of wedlock as a result of adultery, because of course there are differences in the cases .

Status of Children Out of Wedlock After Constitutional Court Decision Number 46/ PUU/ VIII/ 2010 Judging from Islamic Law

The Constitutional Court decision has granted Aisyah Mokhtar's request to review Article 43 paragraph (1) of the Republic of Indonesia Constitution Number 1 of 1974 concerning Marriage, this makes the article mandatory to be read as "Children born outside of marriage have a civil relationship with their mother and his mother's family as well as with a man as his father which can be proven based on". The considerations made by the panel of judges are of course to realize the common good, namely the existence of protection for children outside of marriage so that they get guaranteed life and avoid negative stigma in their daily lives.

According to Islamic law, the purpose of law enforcement is to achieve a benefit or good. Islamic law attaches great importance to harmony in human life. The legal burden that humans carry from birth, of course, does not aim to make the world of destruction for humans, but rather to lead humans to their happiness in this world and the hereafter. Even so, enacting laws with considerations of goodness does not mean we can justify things that have clearly been prohibited. This consideration, of course, must also not ignore the possibility of damage that could be caused by the law itself. This can be proven in one of the principles of Islamic law, namely that "Refusing damage must take precedence over realizing a benefit".

The Constitutional Court added that Article 43 paragraph (1) of the Republic of Indonesia Constitution Number 1 of 1974 concerning Marriage through Decision Number 46/ PUU/ VIII/ 2010 is not only limited to the right to protection, but also has a meaning attached to legitimate children. If related to RI Law/1/1945, the definition of children out of wedlock is divided into 2, namely children out of wedlock as a result of unregistered religious marriages or unregistered religious marriages, and children out of wedlock as a result of adultery. According to Article 2 paragraph (1) of the Republic of Indonesia Law Number 1 of 1974 concerning Marriage, Article 4 of the Republic of Indonesia Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, and provisions for marriage according to Islamic law, for children who have been born as a result of legal marriages religiously or unregistered marriages, Decision Number 46/ PUU/ VIII/ 2010 is deemed appropriate and also in accordance with Islamic law. Based on the provisions of Islamic law, a marriage is considered valid if the conditions and pillars have been fulfilled. Therefore, if a marriage is considered valid according to the Islamic religion, of course all legal consequences are also valid and the child resulting from the marriage is considered to have legal bloodlines with both parents.

As quoted by Neng Djubaedah, according to Bagir Manan, in understanding the law of marriage between Muslims in Indonesia, it is necessary to know in advance the principle of legality which underlies the law of marriage for Muslims. This principle of legality means that every legal act and action must and must have a certain basis that existed before the legal action was carried out. A valid legal action implies that the legal relationship and legal consequences

are also valid. Legitimate legal actions in connection with the implementation of a legal marriage between a man and a woman show that the husband and wife are legal. Likewise with other legal consequences, for example the occurrence of family relations which resulted in the prohibition of marriage, and also on assets, as well as children born as a result of the marriage.

Marriage that is legal according to religion is a marriage that fulfills the provisions as in Article 2 paragraph (1) UU RI/1/1974. However, a marriage that is legal according to Islamic law is if the conditions and pillars are fulfilled, and is the most important condition for determining the validity of a marriage that is produce children from the marriage. As discussed in the previous point, recording each marriage is the same as recording important events in life, such as birth certificates and death certificates. However, marriage registration is only an important event, not something that is required as a legal requirement. Marriage registration also has no legal consequences, so this event cannot rule out the validity of a marriage that has been carried out according to religion.

If prior to Decision Number 46/PUU/VIII/2010, Article 2 paragraph (1) of Law RI/1/1974 stipulates that marriages which are not performed before the Marriage Registrar do not have legal force, then this is also against Islamic law. Because a marriage that is valid according to Islamic law does not fulfill this article, it is considered to have weak laws and cannot be enforced. Nevertheless, Islamic marriage law which is in accordance with the Qur'an and in accordance with the sunnah has no legal force and is not supported by human-made marriage registration legal provisions. Whereas for children out of wedlock resulting from adultery, if Decision Number 46/ PUU/ VIII/ 2010 is also enforced, it is against Islamic law. According to Islamic marriage law, a child who is born "without marriage" to his parents, only has a family relationship with his mother and his mother's family. However, this decision does not apply to children resulting from adultery. Marriage is in accordance with the concept of Islamic law, its position is very strong according to what is stated in Article paragraph (1) of RI Law/1/1974 and Article 4 KHI.

One of the goals of marriage according to Islamic law is to maintain the sanctity of kinship relationships or kinship ties. It is from this relationship that can give rise to a right for a father or father's family from the male lineage to become a guardian in a daughter's marriage. Likewise in inheritance law arising from the existence of a valid marriage. If Article 43 paragraph (1) relates to a child resulting from adultery, then the addition made by the Constitutional Court according to Islam should only be limited to relating to the right to education and child care. Because protection from all forms of discrimination, neglect, cruelty, and many other bad things is a child's right from birth.

CONCLUSION

From the discussion above, we can conclude that the subject matter of filing a judicial review filed by Aisyah Mokhtar is a review of Article 2 paragraph (2) and Article 43 paragraph (1) of the Republic of Indonesia Law Number 1 of 1974 concerning Marriage with Articles of the Constitution Republic of Indonesia 1945. However, not all of these requests were granted by the Constitutional Court. Article 43 paragraph (1) of Law RI/1/1974 according to the Constitutional Court Decision Number 46/PUU-VIII/2010 must be read; "A child born out of wedlock has a civil relationship with his mother and his mother's family and with the man as the father which can be proven based on science and technology and/or other evidence according to law to have blood relations, including civil relations with his father's family." Likewise, the child produced is a child born out of wedlock that is produced in an unregistered marriage and is not the result of an adulterous relationship.

Therefore, Decision Number 46/PUU-VIII/2010 applies to all Indonesian people with the same case as that experienced by Aisyah Mokhtar and cannot be used for children resulting from adultery due to different situations or cases. According to Islamic Law, the Constitutional Court's decision is appropriate to apply to children born in religiously valid marriages but are not registered. Meanwhile, the decision of the Constitutional Court will be contrary to Islamic law if the decision is used against children resulting from adultery because according to Islamic law, children resulting from adultery only have civil relations with their mothers and their mothers' families.

BIBLIOGRAPHY

- Abu Ishaq Al-Syathibi, t.th., *al-Muwafaqat fi Ushul al-Syari'ah*, Juz II, Beirut: Daar al-Kutb al-Islamiyah.
- Arto, A. Mukti. *Diskusi Hukum Putusan Mahkamah Konstitusi RI Nomor 46. PUU-VIII/2010 Tanggal 27 Februari 2012 Tentang Pengubahan Pasal 43 UUP Tentang Hubungan Perdata Anak Dengan Ayah Biologisnya*, 2012.
- Djubaedah, Neng. "Pencatatan perkawinan & perkawinan tidak dicatat menurut hukum tertulis di Indonesia dan hukum Islam." (No Title) (2010).
- Hambali, Ahmad. "Penyelesaian Pelanggaran Berat HAM Masa Lalu sebagai Pelaksanaan Pasal 28I ayat (2) UUD NRI Tahun 1945." *Hasanuddin Law Review* 1, no. 2 (2015): 266-281.
- Hamzani, Achmad Irwan. "Nasab Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010." *Jurnal Konstitusi* 12, no. 1 (2015): 57-74.
- Kumoro, R. Youdhea S. "Hak dan Kedudukan Anak Luar Nikah dalam Pewarisan Menurut KUH-Perdata." *Lex Crimen* 6, no. 2 (2017).
- Musyafah, Aisyah Ayu. "Perkawinan Dalam Perspektif Filosofis Hukum Islam." *Crepido* 2, no. 2 (2020): 111-122.
- Pusvita, Sari. "Keperdataan Anak Diluar Nikah dalam Putusan Mahkamah Konstitusi dan Implikasinya terhadap Harta Warisan." *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 1, no. 2 (2018): 31-51.
- Putusan sidang Mahkamah Konstitusi RI Perkara Nomor 24/ PUU - XX/ 2022 Perihal "Pengujian Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Sebagaimana Telah Diubah Dengan Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945".
- Sihombing, Eka NAM. "Kedudukan Anak Luar Nikah Pasca Putusan Mk Nomor 46/Puu-Viii/2010." [sumut.kemendikham. go. id/berita/berita-utama/399-keduduk.](http://sumut.kemendikham.go.id/berita/berita-utama/399-keduduk.), diunduh tanggal 15 (2012): 88-97.
- Susanti Randa, "Status Anak Luar Nikah Dalam Perspektif Hukum Islam Dan Hukum Positif." PhD diss., Institut Agama Islam Negeri Palopo, 2018.
- Tamba, Paulus. "Realisasi Pemenuhan Hak Anak Yang Diatur Dalam Konstitusi Terhadap Anak Yang Berkonflik Dengan Hukum Dalam Proses Pemidanaan." PhD diss., UAJY, 2016.
- Undang-Undang Republik Indonesia Pasal 2 Nomor 1 Tahun 1974 tentang Perkawinan.
- Undang-Undang Republik Indonesia Pasal 43 Nomor 1 Tahun 1974 tentang Perkawinan.
- Yannor, Padli. "Menelaah Perkawinan Beda Agama Menurut Hukum Positif", diakses 3 April 2023. https://www.jdih.tanahlautkab.go.id/artikel_hukum/detail/menelaah-perkawinan-beda-agama-menurut-hukum-positif
- Zaki, Muhammad. "Perlindungan anak dalam perspektif islam." *ASAS* 6, no. 2 (2014).