

Legal Protection of Children Born From Contract Marriage

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Abstract

Contract marriage is a marriage that is not religiously valid and not recognized under the laws of the State. The phenomenon of contract marriage still often occurs in some areas in Indonesia. Although in contract marriage is not desirable for children, but often occurs children born from the marriage of the contract. Contracted marriage children are not recognized for the validity of their legal status both in the perspective of Islamic jurisprudence and in the Marriage Law and also the Compilation of Islamic Law. This research is descriptive of analysis and uses legal research, with a research approach to legal principles. The source of this research data is in the form of secondary data. The procedure of retrieving and collecting data is carried out by means of library research. Data analysis in this study is done through qualitative data analysis. The result of the study is that the legal status of contract marriage in the perspective of Islamic fiqh is invalid, as it has been prohibited by the provisions of the syara'. Contract marital status under Law No. 1 of 1974 is not recognized because it is not in accordance with the principles of marriage law, e.g. marriage in contract marriage is only intended for a while, and contract marriage is not recorded in the state institution authorized for it. That the position of a child born from a contract marriage in the perspective of Islamic fiqh includes a child of adultery, since contract marriage which in the classical fiqh perspective is known as mut'ah marriage has been abolished by the syara's provisions. According to Law No. 1 of 1974, the position of children born from contract marriage is an illegitimate child, because it was born as a result of an unauthorized marriage.

Keywords

Protection; law; child;
contract marriage



I. Introduction

Humans have instincts created naturally from God Almighty to continue their generation. Meanwhile, the way that humans can do to continue and maintain this generation is to carry out marriage. Marriage itself is an absolute thing that must be carried out as one of the requirements for the formation of a family. In Indonesia, marriage is regulated in Section 2 paragraph (1) Invite - Invite number 1 1974. This article states that, a marriage is declared valid if the marriage is settled based on their respective religions and beliefs. Based on this article, it is also stated that no marriage is valid if it is carried out outside the laws of their respective religions and beliefs, in accordance with the 1945 Constitution. Based on this, it is certain that every marriage must be adjusted to every law of the religion adopted and not struggle with state law.

Based on article 1 Invite - Invite Marriage, it is stated that a marriage is a bond, both physical and spiritual, between a man and a woman who are husband and wife who are full of hope to form a family in accordance with the Shari'a of the One Godhead. This is similar to what Erwinsyahbana stated in that: marriage is a pre-arranged agreement in the

book II KUH Civil. Based on government regulations regarding marriage, it is also stated that marriage is prohibited. One of these prohibitions is contract marriage, which is considered a form of illegitimate marriage because it violates article 2 paragraph (2) law No. 1 year 1974.

Contract marriages are currently happening more and more in our country, Indonesia. Some cities with the highest number of contract marriages are Batam, Bogor, Jepara, and several metropolitan cities and Kalimantan. Usually, this is because one of the parties (husband or wife) comes from abroad. This problem, which has been in practice for a long time, apparently cannot be touched by the Indonesian government. Although it is clearly not in accordance with the standards written in the law. Invite Number 1 year 1974 concerning marriage. In fact, there has been no direct movement by the government in handling this case.

Marriage contracts from the dimensions of sacredness are special contracts compared to other contracts such as buying and selling, pawning and others. In addition to the marriage contract, it can be done several times without limits, while the marriage contract is only limited to four times, because most men are only permitted by four wives. Because in the concept of shariah a man is only able to take maximum responsibility for four wives.⁴ Marriage contract in Islam is considered as a matter that must be handled with care, because it will have legal implications for various other things caused by marriage, such as nafaqah, inheritance and also the sustainability of happy households. One of the most important elements of the marriage contract is only a parental guardian (nasab). Only a prospective bride has the right to marry a woman in her guardianship. This is only given by Islam to guardians, because women cannot marry themselves. If a woman marries herself, then her marriage is not legal. But in reality, the marriage guardian who has the right to marry sometimes loses his guardianship due to certain matters, which requires his guardianship to move to another guardian of marriage in the hierarchy that is in the ring further than that. (Imran, et al. 2019)

Based on the Islamic view, this kind of marriage has the term mut'ah marriage or muaqqat marriage or munqthu marriage which all three mean marriage for a certain period of time. Usually, the duration of this marriage is a few days, up to three months (depending on the time of the marriage agreement). This kind of marriage is meant for temporary fun, and has been abused a lot.

However, contract marriages sometimes produce offspring in the form of children. A child born from a legal marriage status will get the status of a biological child from both parents and get protection from the Marriage Law. It is set in chapter 42 Invite - the marriage law which states that, a child born into the world from a marriage agreement, is declared a biological child. However, a child who is born into the world from a marriage agreement, cannot get the same guarantee. The child, apart from not being able to get the status of a child from his parents, also cannot be protected by the laws and regulations of the Republic of Indonesia. Then, the child, at that time was only a victim because of the marriage agreement activities carried out by his parents. Children born with this contractual marital status will then get mental and social effects which are identified with the uncertainty of the fate of the child.

However, Indonesian law has regulated in chapter 42 Invite -law In marriage, the child resulting from a contract marriage is a child who was conceived illegitimately and forced to use reason to be recognized as a legitimate child. However, children born from a marriage agreement are declared as "victims" of legitimate activities carried out by their parents. Based on this, then, it is very inappropriate for a child to bear the burden of wrongs committed by both parents. This condition should be a strong concern by public authorities to

provide legal guarantees as well as legal security for young people born into the world from contractual relationships.

The privileges brought by a child into the world as a result of this contractual marriage relationship should not be ignored by the state. Even though the parents' marriage is not legal based on law and religion, the rights of children born into this world must still be fulfilled by both parents. In accordance with the above background, the authors are interested in conducting research with the title "Legal Protection against Children Born from Contract Marriages".

II. Research Methods

Journal this use method study Law normative or legal research the doctrinal conceptualized As a what written in the laws and regulations (law in books) regarding Legal Protection Against Children Born From Contract Marriage. Approach research using approach legislation (State Approach), conceptual approach. Based on this, the researchers conducted an assessment of the law of the Book of - Law Civil, Invite - Invite Number 1 year 1974 about Marriage, Invite - law Number 1 Year 1974 concerning Marriage, Presidential Instruction Number 1 Year 1991 about Deployment Compilation Law Islam.

III. Result and Discussion

1. Children who experience behavior problems, namely children who provide behavior that deviates from societal norms.
2. Spiritually or physically disabled children are children who have spiritual and physical barriers so that they interfere with abnormal growth and development.

Basically, children should have a tendency to live with their parents, especially their biological father and mother. However, once in a while the child no longer has a guardian which is the reason the child becomes down. With this state of abandonment that creates a need for guardians who neglect to complete their commitments. Regarding the privileges of child government assistance, it has been managed in chapter II Invite - Invite Number 4 Year 1979, the rights are explained as follows:

1. The right to welfare, care, care and guidance
2. Right to service
3. Right to care and protection
4. Right to environmental protection
5. Right to first aid
6. Right to care
7. Right to help
8. The right to special services

The real commitment of the guardian is to focus on the needs required by the child's freedom, for example, legal training and home conditions that have conditions that are helpful for the development and progress of children. The obligation of guardians to their children is to address problems from physical to psychic. Appropriate circumstances will determine the appropriate behavior for the next child. The right to child insurance itself will provide a guarantee in securing their right to live, create and take part in their ideals, just like the dignity of human beings. The World International itself has provided the principles identified with guaranteeing the freedom of young people at the United Nations event on the privilege of the child in 1989, this was approved by 191 countries. Through Decision President No. 36 Year 1990 adopted the Convention on the Rights of the Child in raising

general standards on child insurance, in particular non-segregation, great importance to children, durability, development and the value of children's wages. UN Conventions become Indonesian law and are binding on Indonesian citizens.

3.1. Legal Protection for Children Born from Contract Marriages

Contract marriages have occurred in various parts of Indonesia, but this has never been regulated in Invite – Invite No. 1 Year 1974 About Marriage. Therefore, contract marriage is a phenomenon that can be said to be a new thing in society. The marriage agreement is the basis of marriage depending on an agreement or understanding - certain arrangements by a man and a woman identified with the time of marriage, compensation for one of the meetings normally held by women, freedom and individual commitment when marriage occurs. The main reason for contract marriages is to frame the family as a channel of hopeless desire in forming an eternal family, which is also given the condition of not wanting to have children. The embodiment of a covenant marriage is a marriage that has a temporary nature. The inspiration in this covenant marriage itself is marriage which has an impermanent nature. In particular, the presence of this marriage agreement is only expected in light of financial intentions, so this contract marriage is not the same as the marriage we know as a whole. It may be argued that contract marriage is a matter that reveals the honorable motivation behind the marriage.

Marriage contract is to describe the family as a channel of desire without assumptions in forming a family that never ends, which is also given the conditions not to expect children. A child with this status will make the child resulting from the contract marriage not have any legal certainty. The basic legitimacy behind contract marriage is to form the family as a conduit of necessity. The embodiment of a contract marriage plan is a marriage that is basically, inspired in the understanding of marriage that has an explicitly temporary nature, this action is only expected to have a financial purpose.

Many relationships depend on a possible agreement on the substance of not having children. Children are brought into the world from the consequences of contract marriage despite the fact that the obligation will be passed on to the woman, when under the agreement or having completed the agreement. It can be found that the privileges of children brought into the world from the marriage contract cannot be guaranteed. As a standard setting "by legal marriage" this is suggested in chapter 28B verse (1) constitution 1945. It is planned that a "legal marriage" must be in accordance with the laws of every religion and belief. This important standard requires that everyone be granted the right to legitimate posterity i.e., children and grandchildren obtained from legal marriages and disapprove of the option of having children and grandchildren from the get-together of a man and a woman without substantial marital ties or cohabitation. According to the Constitution 1945, substantial children and grandchildren (children) are relatives brought into the world of legal marriage, which means not allowing the authorization of legitimate children and grandchildren of the relationship of a man and a woman without conjugal ties (to live together without being married). chapter 28 B paragraph (2) constitution 1945 is a derivative of the previous verse. This verse shows the rights of children which are the legal obligations of their parents to provide everything for the survival, growth and development of children. Thus, the state is obliged to protect children from violence (domestic) and discrimination.

Based on the theory of the rule of law, the protection of children must be carried out through 2 approaches, namely a formal approach and a substantive approach. Conventional methodology begins with the idea of rule by law, which is the point at which law is described as a device/instrument of government activity. In this proper methodology, public authorities

should clarify the rules identified with the legal guarantee of children brought into the world because of a covenant marriage. To date, no legislation has been identified with this. Rules so far have relied solely on the Marriage Act to identify only children out of wedlock. The decision is actually not related to the safety of the contracted children. Lack of instruments to protect children from covenant marriages, brings unprotected privileges from children.

The next methodology is a meaningful methodology, in which legal conditions create from the privileges of people. This means that the state must pay attention to and ensure the rights of people, especially children. The lack of a State to ensure the offspring of covenant marriages carries with it the right to equity. When concentrated on further, this sizeable methodology shaped into the notion of social government assistance whose standards combine equality and prosperity. Justice is a privileged correspondence between one resident and another. Children are brought into the world from contract marriages because their parents' conjugal status is very invalid and not perceived by the State, making the offspring clearly victims by the existing enforcement arrangements. This matter,

Children born from contract marriages will not get legal certainty regarding their status which will result in their rights as children against their biological fathers cannot be prosecuted. Then, his biological father honestly left his poor legitimate son from his destiny, a future full of vulnerabilities, the continuation of his schooling is still unclear, not to mention the love he can't get from his biological father. Cases that occur because of contract marriages, this is certainly detrimental to the spouse and child. A child brought into the world from a contract marriage will have no legal guarantee with respect to his status which will carry his privileges as a child to his unclaimed biological father. Then again, his organic father guiltlessly abandons his biological child to escape his destiny, a future full of vulnerabilities, his continuing schooling is still being called, not to mention the warmth he couldn't get from his biological father.

The public authorities, as the greatest power in the country, should open their eyes as wide as possible to see the pictures of contract marriages. The blurred and outdated representation is obtained from the exploratory consequences directed by analysts and social audiences, who find that contract marriages result in children who do not get warmth from one of the parents, mentally affecting the child. The mental effects are that, among other things, children will generally be rude, knit, rowdy, which is likely to continue as adults. These conditions and realities really show that public authorities are without a doubt less refined and will generally be apathetic about social miracles having legal effects occurring in the public eye.

IV. Conclusion

The legal status of a contract marriage is invalid. Contract marriage is a prohibited marriage, even though the Shia group still states that the law of contract marriage (muta'ah marriage) is never prohibited by syara' provisions. Contract marital status according to Invite - Invite Number 1 Year 1974 not recognized because no in accordance with the principles of marriage law, for example, marriage in a contract marriage is only intended for a temporary period, and a contract marriage is not registered in a state institution authorized to do so. Contract marriage is also not in accordance with religious provisions (especially Islam) as regulated in law Marriage. This contractual marriage status prevents children from having their rights properly.

Whereas the position of children born from contract marriages in the perspective of Islamic fiqh is included in adultery, because contract marriages which in classical fiqh perspective are known as mut'ah marriages have been abolished by the provisions of syara'.

The adulterous child in the provisions of Islamic fiqh is only related to his mother and his mother's family. according to law No. 1 Year 1974, the position of a child born from a contract marriage is an illegitimate child, because he was born as a result of an illegitimate marriage. The position as an illegitimate child certainly affects the lineage and rights that the child should get from his father. This contract marriage also causes the child to be unable to get the legal protection he should get.

Suggestion

The government, the Indonesian Child Protection Commission, should have made a strategic policy for children resulting from contract marriages related to their legal status which is not recognized either by religion or by state law. This is in view of the negative stigma from the psychological and social side that the child may get. This means that the rights that can be given by the government to the child must still be given because of his position as a citizen, no longer dependent on the marriage carried out by his parents.

It is recommended that relevant institutions such as the legislature, the Child Protection Commission, the central and local governments work together and collaborate to formulate appropriate policies for children resulting from contract marriages as an effort to provide the maximum possible protection so that the child does not feel discriminated against or marginalized in social life, because of sanctions. law against the actions of their parents.

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