

Legal Studies of Marriage Registration and the Problems of Isbat Nikah Polyandry and Its Legal Consequences for Children

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ABSTRACT

One of the important issues in marriage law in Indonesia is the registration of marriages and divorces in the Religious Courts. This happens because some of the rules in these regulations are considered relatively new because they have not been mentioned in the classical jurisprudence books which are used by the Indonesian people, especially the ulama. In statutory regulations as contained in Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage jo. Article 5 of the Compilation of Islamic Law states that every marriage must be recorded. This research discusses; What is the form of registration of polyandrous marriages and what are the problems with the legal status of polyandrous marriages and the legal consequences for children. This type of research is doctrinal research or normative legal research. Meanwhile, the approach used is a statutory approach, a conceptual approach and a comparative approach and the legal analysis uses descriptive qualitative analysis, namely by formulating and explaining significantly several legal issues that are the object of study in this research.

INTRODUCTION

The existence of law is intended to provide order for society. Especially when it comes to social interactions between citizens. The absence of legal regulation of relations between citizens can give rise to disorder (chaos). So the role of the state is very important to be present in the midst of these problems.

Marriage is a sacred institution and not just an ordinary bond. Because of this sacredness, the effect of the marriage bond creates rights and obligations as well as legal status between the husband and wife. Islam, as a religion that has a comprehensive set of rules, has rules related to marriage. The Al-Qur'an and Al-Hadith as sources of Islamic law were read and studied by Islamic legal experts, so that what is now called Fiqh was born.

One of the discussions of Islamic law that is directly related to the main duties and functions of the Religious Courts is the issue of marriage. The Compilation of Islamic Law as a legal book or if not said to be a codified book of fiqh which is a reference for law enforcers, especially judges in the Religious Courts, has outlined the provisions regarding marriage law in Book I of the Compilation of Islamic Law (KHI).

Apart from the Compilation of Islamic Law (KHI), several statutory regulations, such as Law Number 1 of 1974 jo. Law Number 16 of 2019 concerning Marriage, Law Number 7 of 1989 jo. Law Number 3 of 2006 jo. Law Number 50 of 2009 concerning Religious Courts also includes formal and material rules regarding marriage law.

One of the important issues in marriage law in Indonesia that seems to be discussed endlessly is the registration of marriages and divorces in the Religious Courts. This issue is still very hotly discussed not only by Islamic law experts (ulama) but also among ordinary people. This happens because some of the rules in these regulations are considered relatively new in the sense that they have not been touched upon in the classical jurisprudence books which are the subject of Indonesian society (especially the ulama), so that when they appear in the format of contemporary jurisprudence or new jurisprudence, it is as if these rules are not Islamic legal rules. One example of these regulations is the provisions regarding the registration of marriages by the Marriage Registrar of the Religious Affairs Office and mandatory divorce before a Religious Court session.

There are many practices in society that do not pay attention to these rules. For these groups, the important thing is that marriage is carried out according to the terms and harmony as it has always been known. The issue of recording is not a mandatory practice. Likewise with divorce, mandatory divorce before a court hearing is something that is not written at all in several classical jurisprudence books, therefore this provision is often forgotten by many people or if you could say it is ignored by some people. So many people marry without being registered and many people simply divorce without involving the courts, and consider the divorce to be religiously legal. As a result, there is a difference in perception between society on the one hand and the country on the other.

When the state has rules while society does not enforce them. So in the end his rights will not be protected because of his disobedience in carrying out his obligations as a citizen. So when people need state protection, then they carry out their obligations. The problem does not stop there, because in practice there are still many cases that leave legal problems related to this matter, especially those related to registering marriages and divorces in court.

In statutory regulations as contained in Article 2 paragraph (2) of Law Number 1 of 1974 jo. Law Number 16 of 2019 concerning Marriage jo. Article 5 of the Compilation of Islamic Law (KHI) essentially states that every marriage must be recorded. Registration of marriages by official state institutions has the consequence that the state only recognizes a person's marriage if there is an authentic certificate showing the existence of the marriage. So when there is an unregistered marriage, it has no legal force.

The state's policy regarding regulations regarding marriage registration actually still leaves gaps, if people who don't have a marriage book, one day want their marriage to be registered. So Article 7 paragraphs (2) and (3) of the Compilation of Islamic Law (KHI) provides the opportunity to carry out a marriage registration at the Religious Court as an effort to legalize the unregistered marriage.

In contrast to the provisions on marriage registration, in the case of divorce, the laws and regulations in Indonesia do not seem to provide any loopholes for carrying out itsbat divorce. Article 39 Law Number 1 of 1974 jo. Law Number 16 of 2019 concerning Marriage jo. Article 65 Law Number 7 of 1989 in conjunction with Law Number 3 of 2006 jo. Law Number 50 of 2009 concerning Religious Courts, confirms that divorce can only be carried out in front of a court session. In these regulations, there is no loophole for a divorce to be recognized outside of court.

This situation is something that people fail to pay attention to, when they carry out divorces under their hands, assuming that the divorce is legal, until finally they enter into new marriages. It was only at this new wedding that they considered the existence of a marriage book important. So of course itsbat is the only way to get state recognition regarding their marital status.

However, what still remains a problem is that when the marriage itsbat is submitted to the Religious Court, of course the religious court will examine the marriage, and what does not escape the court's examination is the status of the previous marriage. When confirmed by the parties and also witnesses at trial, it was proven that the parties had been married before, but on the other hand, they did not have authentic evidence in the form of a divorce certificate as the only certificate that proved their divorce. So it is at this stage that problems begin to emerge, because it means that parties who were previously married and divorced under their hands are legally declared to still be bound by their previous marriage.

The problem will be more complicated if the position of the woman is there. When a woman has been married and divorced under the hand, then remarries and submits a marriage certificate to the court. From a legal perspective, she is still bound by her previous marriage to another man before

she married her new husband, this is what is called polyandry which is clearly prohibited by Islam.

Based on the description of the background above, there are several problems that researchers will discuss in this research, including:

- a. What is the form of registration of polyandry marriages?
- b. What are the Problems with Itsbat Polyandry Marriages and the Legal Consequences for Their Children?

LITERATURE REVIEW

There are several theories that are used as analysis tools in this research, including:

a. Legal Certainty Theory

The theory of legal certainty is one of the objectives of law and it can be said that legal certainty is part of efforts to realize justice. Legal certainty itself has a real form, namely the implementation and enforcement of law regarding an action that does not look at the individual who carries it out. Through legal certainty, each person is able to predict what he will experience if he carries out a certain legal action.

Legal certainty is also needed to realize the principles of equality before the law without discrimination. The word certainty has a meaning that is close to the principle of truth. This means that the word certainty in legal certainty is something that can be strictly syllogized using a formal legal method.

With legal certainty, it will guarantee that someone can carry out behavior in accordance with the provisions of the applicable law and vice versa. Without legal certainty, an individual cannot have standard provisions for carrying out a behavior. In line with this goal, Gustav Radbruch also explained that legal certainty is one of the goals of the law itself.

b. Legal Protection Theory

In Philipus M. Hadjon's opinion, legal protection is the protection of dignity, as well as the recognition of human rights possessed by legal subjects based on legal provisions against arbitrariness. There are two classifications of forms of legal protection for the people based on the means, namely preventive and repressive.

The meaning of preventive protection is that the people are given the opportunity to submit their opinions before a government decision takes a definitive form to prevent disputes from occurring. Meanwhile, repressive protection is to resolve disputes. Legal protection is a guarantee provided by the state to all parties to be able to exercise their legal rights and interests in their capacity as legal subjects.

According to Satjipto Rahardjo, the theory of legal protection was inspired by the aim of law put forward by Fitzgerald, namely, to integrate and coordinate various interests in society by arranging protection and restrictions on these various interests. This concept is interpreted by Satjipto Rahardjo that legal protection is an effort to protect a person's interests by

allocating a human right, the power to him to act in the context of those interests.

METHODOLOGY

Provide clear and concise versions of your methods of conducting research, population and samples, and data analysis tools. This type of research is doctrinal research or normative legal research. The approaches used are a statutory approach, a conceptual approach and a comparative approach. Meanwhile, the analysis of legal materials uses descriptive qualitative analysis, namely by formulating and explaining significantly several legal issues that are the object of study in this research, and are answers as a result of findings from research objectives through systematic and sequential thinking patterns.

RESEARCH RESULTS

Polyandry Marriage Registration Form

Among Islamic jurists there are differences of opinion that seem to never be resolved. Whether marriage registration can be included in the pillars of marriage or not. For some groups, marriage registration is not included in the category of marriage pillars, so that by fulfilling the conditions and pillars that have been stated in Islamic jurisprudence books, the marriage is considered valid. This is different from other groups who want registration to be included in the pillars of marriage. They consider that the pillars of marriage that have been mentioned in classical jurisprudence books are not absolute, in fact they are *ijtihadi* principles. Therefore, based on the *ijtihad* methodology and interpretation they hold, they conclude that marriage registration can be included in the category of pillars or pillars of marriage.

In this debate, Indonesian ulama, especially those who took part in formulating several related regulations, seem to be in the middle of the debate, this can be seen from Law Number 1 of 1974 concerning Marriage or in the Compilation of Islamic Law where marriage registration is not included. marriage harmony category, but on the other hand, citizens must register their marriages. By not registering the marriage, the consequence that will be borne is that the marriage will not be legally recognized, which means the state will not protect citizens who do not register their marriage. For example, in everyday life, the country has certain regulations, which include the requirement for a marriage certificate. Such as carrying out the Hajj, Umrah, issuing a child's birth certificate or in several government policies such as the distribution of social assistance, usually requires a marriage certificate for those who are already married, not to mention when there are legal issues in court such as inheritance disputes which require authentic proof in the form of a marriage certificate when explaining marital relationship of the parties.

Some of the situations above make it difficult for citizens when they do not have a marriage certificate, and these are the consequences they have to bear when state regulations are not obeyed. Although the rules regarding marriage registration were not clearly stated in the *syar'i* texts of the Al-Qur'an and Al-Hadith or the *fiqh* books of classical scholars at that time. However, in subsequent developments, contemporary ulama began to get used to making

ijtihad a problem solving problem for the current reality. So the study of maqashid shari'ah becomes the answer when new problems are faced with Islamic law. Because theoretically, Islamic law is formulated by its formulator (Allah SWT). In general, the aim is to achieve benefit and avoid harm.

Sheikh Jaad Al-Haq Ali Jaad al-Haq, one of the Egyptian muftis, divided the provisions governing marriage into two categories, namely sharia regulations and tawsiqi regulations. The syara' regulations referred to here are matters relating to regulations that have been established by syara', such as the conditions for harmony in marriage which have been formulated by scholars in various schools of thought originating from the Qur'an and al-Hadith. The tawsiqi regulations are additional regulations intended to ensure that marriages among Muslims are not illegal but are registered by the agency authorized to do so.

This division, of course, is not intended to mean that every citizen will go around breaking the rules relating to marriage, because in the Al-Azhar mufti's fatwa also really emphasizes the importance of registering marriages, because compliance in registering marriages is an anticipation when it is necessary to deal with official institutions. courts or other government policies.

The main purpose of registering marriages is to create orderly administration of marriages in society as well as ensuring the upholding of the rights and obligations of husband and wife. This is a state legal policy that is preventive in nature to coordinate society in order to create order and regularity in the life system, including in marriage matters which are believed to not be free from various irregularities and disputes between husband and wife, therefore the involvement of the authorities/state in regulating marriages is in the form of registration. is a must.

Therefore, this formulation regarding marriage registration does not conflict with Islamic law, in fact, based on maqashid sharia, especially related to the theory of benefit, marriage registration is a necessity that will provide legal and administrative order for every Muslim. In this regard, the public needs to be educated that Islamic law is not just something written in the texts, but can also be obtained from various legal ijtihad, when there are new problems in society, or when existing laws cannot answer problems. existing in society, then ijtihad is the solution.

Of course, making ijtihad is not as easy as turning over the palm of your hand, but you need certain qualifications and even a factor of caution when making ijtihad, especially now that many are proposing joint ijtihad (ijtihad jamai') consisting of expert scholars in their respective fields. respectively, so that the quality of ijtihad will be better than just ijtihad personally.

In reality, there are still many Muslims who do not register their marriages at the local Religious Affairs Office, due to several factors, including; a) centric jurisprudence and lack of understanding of the importance of recording; b) Imam's Negligence; c) Carrying out marriages in front of officials who are not authorized to carry out marriages; d) Marriage abroad.

To bridge the existence of people who do not register their marriages, Article 7 of the Compilation of Islamic Law provides an opportunity to submit a

request for Isbat Nikah to the Religious Court. This isbat nikah itself is a trial process to legalize a previous marriage that was not registered.

However, in these regulations, not all marriages can be attributed, Article 7 paragraph (3) of the Compilation of Islamic Law states that matters that can be attributed are limited to matters relating to; 1) There is a marriage in the context of divorce; 2) Loss of marriage certificate; 3) There is doubt about whether one of the conditions of marriage is valid or not; 4) Marriages that took place before the enactment of Law Number 1 of 1974 and 5) Marriages carried out by those who did not have obstacles to marriage according to Law Number 1 of 1974.

Regarding the authority of the Religious Courts in examining Isbat Marriage cases, especially marriages that occurred after 1974, in fact, among the judges of the Religious Courts themselves, there are still differences of opinion as to whether the Court has the authority to examine Isbat Marriage cases where the marriage occurred after the promulgation of Law Number 1 of the year 1974 concerning Marriage.

The first opinion states that marriages before 1974 can be attributed while marriages after 1974 cannot be attributed. The argument built by this opinion is because Article 49 letter (a) number 22 of Law number 3 of 2006 in its explanation only mentions the authority of the Religious Courts in relation to marriage isbat cases where the marriage event occurred before the existence of Law Number 1 of 1974 Apart from that, marriage isbat cases are generally voluntary cases (one-sided/no opposition), so when voluntary cases are to be the authority of the Religious Courts there must be provisions of law that regulate and designate them. When the law does not regulate it (in relation to marriages after 1974) then the court has no authority.

Meanwhile, in the Compilation of Islamic Law, according to this opinion, judging from the hierarchy of statutory regulations as regulated in Law Number 12 of 2011 concerning the Formation of Legislative Regulations, the Compilation of Islamic Law as a Presidential Instruction (Inpres) is not included in the hierarchy of statutory regulations. -invitation, and its level is far below the law, therefore the provisions of the Presidential Instruction must not conflict with the Law.

Thus, when Law Number 3 of 2006 only states that marriages before 1974 can be attributed, then the provisions in Article 7 of the Compilation of Islamic Law must be interpreted to mean that marriages that can be attributed are marriages before 1974.

As for the opinion that allows marriage isbat after 1974, in terms of juridical reasons, the Compilation of Islamic Law was prepared on the initiative of the State authorities, in this case the Chief Justice of the Supreme Court and the Minister of Religion (through a Joint Decree) and received recognition from various elements of the ulama. Officially, the Compilation of Islamic Law is the result of consensus (ijma') of ulama from various groups through workshops held nationally which then received legalization from state authorities. The preparation of the Compilation of Islamic Law can be seen as a process of transforming Islamic law in its unwritten form into Legislative Regulations.

Apart from that, the fact is that currently the Judges in the Religious Courts have used the Compilation of Islamic Law as a source of law in deciding the cases they are handling, so from this brief argument, the Compilation of Islamic Law can be categorized as a binding regulation. By referring to Article 7 paragraph (3) letter € Compilation of Islamic Law, namely marriages carried out by those who do not have marriage obstacles according to Law Number 1 of 1974. This article is usually used as legitimacy for Judges when accepting marriage isbat cases (even if the marriage is after in 1974). In the Marriage Law Number 1 of 1974, Article 2 paragraph (1) is stated which states that marriage is valid, if it is carried out according to the laws of each respective religion and belief.

Thus, as long as a private marriage is carried out either before or after the Marriage Law is implemented in the context of marriage based on the Islamic religion, the harmony and conditions have been fulfilled and do not violate the prohibitions on marriage regulated in the Islamic Religion and statutory regulations, especially the Marriage Law and Compilation of Islamic Law, then there is a very big chance that the application for itsbat marriage (marriage legalization) will be accepted/granted by the Religious Court.

Researchers themselves tend to follow the latter opinion, even though the marriage was performed before 1974, the court has the authority to examine the marriage isbat case. Another reason that needs to be stated is that it needs to be acknowledged that public awareness of the importance of marriage registration is not yet fully understood and even implemented by the community, including among the Islamic boarding school students themselves. This is because the public's doctrine and knowledge is still ingrained through classical jurisprudence books which do not require the term marriage registration to even be known, besides of course due to the incomplete socialization factor from the government regarding the existence of this rule, plus it needs to be acknowledged that the government has not been optimal. Be a good facilitator for orderly marriage administration.

Moreover, when talking about the beneficial aspect, the examination of marriage isbat must also be viewed from the aspect of protection, both for the rights and obligations of husband and wife, marital assets, and children born from the marriage. You can imagine what happens when people have no way to legalize their previously unregistered marriages, whose marriages were previously in accordance with their religious laws and then now feel that they are aware of the importance of registering marriages. So, if their previous negligence was not due to bad faith, then if the marriage not being registered is a general phenomenon and is based on good faith or there are emergency factors, then the judge must consider the request for marriage isbat.

Thus, the opportunity for marriage isbat is very wide open for the community to carry out, if the marriage that has been carried out is hampered because it is not registered, of course the judge must be careful regarding this examination, especially because this marriage isbat is a voluntary case/petition which is vulnerable in nature. by smuggling the law because there is no opponent who can correct the arguments he puts forward. In the past,

marriages were not registered because of common factors in society, such as economic factors, ignorance, negligence of officers, etc. Of course, after the terms and conditions of the marriage were fulfilled, the marriage isbat deserved to be granted. However, on the other hand, when the request for marriage isbat is due to the reason of the previous marriage being hidden from the first wife or other factors which are essentially for smuggling the law or are clearly intentionally breaking the law, then the judge may state that he cannot accept the application for marriage isbat.

The Problems of Itsbat Polyandrous Marriages and the Legal Consequences of Their Children

One of the reasons for rejecting the marriage itsbat is because the wife is still married to another man. This is because when the wife first married, she felt that she had divorced her first ex-husband. In connection with a wife who claims to have divorced her first husband, this is a phenomenon that occurs in society, and it has even become a belief in society that divorce can only be done verbally through the husband's words to his wife without having to go through a trial process in court. There are several things that religious court judges need to pay attention to when assessing this status, namely; Firstly, such divorce has become a belief and custom in society, even classical jurisprudence books consider divorce in this way to be legal; Second, on the other hand, our country has very strict regulations for the purpose of protecting the marriage institution which states that divorce is difficult and must go through a process in court.

The two things above are a double-edged coin, on the one hand, the condition of society is such (low legal awareness), that it would be unwise not to recognize the divorce. However, on the other hand, when the judge recognizes the validity of the divorce, it means that the judge recognizes that a divorce outside of court deserves to be accepted as valid. This would be contrary to the concept of legal certainty, usually when handling divorce cases, religious courts make divorce difficult with strict procedures, even the divorce itself must be in accordance with several reasons stated in statutory regulations, but when adjudicating cases of itsbat nikah (marriage previously the status was divorced privately or according to Islamic law, in fact the judge easily acknowledged the validity of the divorce under private hands. Of course this decision will set a bad precedent for law enforcement and legal order in society.

From the above, researchers are more inclined not to recognize private divorce because this will undermine the divorce system that is already implemented in religious courts. By recognizing the validity of divorce privately or according to Islamic law, of course the authority of the court, especially when handling divorce cases, will be more or less eroded, because people may think that there is no need to divorce through court, in the end if it isbat,³³ then the divorce will also be recognized.

There is a case where the wife was previously married to her first ex-husband who was not registered with the Religious Affairs Office (KUA) and claimed to be divorced, whereas now the wife is married to her second husband and will perform the marriage isbat at the Religious Court. Related to this problem, if the wife's first marriage is not registered, it means that there is no

legality regarding the status of her first marriage and it is considered to have never existed, because how could she want to divorce while her marriage is considered non-existent. Unless he first submits a divorce case to the Court with the accumulation of marriage isbats for the purpose of divorce as stated in Article 7 paragraph (3) letter a of the Compilation of Islamic Law, then even though the marriage is not registered, the Court has first recognized the validity of the marriage, so that when examining divorce, the court deemed the marriage to be valid.

From the description above, it can be concluded, firstly, that when a woman has a husband and is divorced outside the court (her marriage status is registered), when she remarries (under his hand) to another man and then applies for marriage isbat, then related to this case, the petition This is likely to be rejected by the panel of judges because there are several things that are violated, such as the woman being judged to still be tied to another man. Second, when a woman divorces outside of court with her ex-husband (a private marriage) with another man and then applies for a marriage isbat. So regarding this matter, it is possible that the Court will accept the marriage law because even though the woman divorced under her hands, because her previous marriage was not registered, her marriage is considered non-existent, so that if she remarries another man, she will be deemed not to be in a marriage. , because by law the previous marriage (the first) was considered non-existent (never existed). Several cases like this often occur in society, in the end they will have difficulty getting population administration letters because their marriage is not legal. Besides this, it will have an impact on the offspring that result from their relationship.

The existence of children is an infinite gift from Allah SWT. Therefore, parents must actually be able to maintain their survival, especially when they have not yet reached puberty. Every child born into this world certainly cannot choose whose child they want to be. Of course, if he wants to choose, he wants to be born from a good family, wealthy, authoritative, and so on. Currently, there are many children whose rights cannot be protected, either because of the fault of their parents, the surrounding environment or because of a system that prevents these children from getting their rights.

Related to the context being discussed in this research is that children often do not have their rights protected because their parents' marriage is not registered or because their parents' marriage is considered invalid, which has an impact on the child's status. If their parents' marriage is not valid, it means that the child's status is also considered not to be a legitimate child. As a consequence, the child only has a civil relationship with the mother and the mother's family. This means that the child has no legal relationship with his father, as stated in Article 42 and Article 43 of Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage and the Compilation of Islamic Law Article 100, in his birth certificate his status is considered as illegitimate child, so the name of the mother who gave birth to him is included. Information in the form of status as an illegitimate child and the absence of the father's name will have a very deep social and psychological impact on the

child and mother. Then, the unclear status of the child before the law means that the relationship between father and child is not strong, so that one day the father may deny that the child is not his biological child.

As for the case that the researcher discussed previously, the legalization of the marriage is often hampered because the wife is still tied to someone else's marriage, in the sense that the wife previously felt that her husband had already divorced her (divorced outside the Religious Court). With this kind of reality, judges often judge it as a marriage that cannot be legalized.

In the perspective of Islamic law, there are the terms fasid marriage and vanity marriage. According to Al-Jaziry, what is meant by fasid marriage is a marriage that does not meet the legal requirements for carrying out a marriage, while a false marriage is a marriage that does not fulfill the pillars of marriage that have been determined by the syara'. The marriage law of both forms of marriage is equally invalid. In connection with this case, among the Shafi'i school of thought, fasid marriage can occur in several forms, including; a) A marriage between a man and a woman but the woman is during another man's iddah period; b) Marriage during the istibro period because the woman is doubtful; c) A marriage between a man and a woman but whose iddah is doubtful for the woman because of signs of pregnancy; d) Marrying a Watsani woman and an apostate woman, the latter two are false because of Islamic requirements.

In contrast to the Syafi'iyah, according to the Hanafi School, fasid marriage can occur in several forms such as; a) Marriage without witnesses; b) Contract marriage; c) Marrying more than 4 (four) women at one time; d) Marrying two female siblings at the same time, marrying the wife and her aunt at the same time, either her father's aunt or her mother's aunt; e) Marrying a woman without knowing that she is still someone else's wife (polyandry); f) Marrying a mahram even knowing that it is not permissible.

Based on the opinions of the two schools of jurisprudence mentioned above, polyandrous marriages can be categorized as fasid marriages. especially if the woman feels that she has divorced her previous husband even though she has not. So this is where there is confusion regarding the status of his previous marriage, especially regarding his first divorce.

Relating to the status of children resulting from fake marriages. Can it be attributed to his biological father? In Islamic law, especially according to several Hanafiyah scholars such as Imam Al-Kasani (Imam 'Alauddin Abu Bakar bin Mas'ud Al-Kasani Al-Hanafi) and Shaykh Nizhan (Al-'Allamah Humam Mawlana Al-Sheikh Nizham), states that children Those born from a fasid marriage can still be assigned to their biological father.

From the perspective of positive law in Indonesia, it is not explicitly stated that there is a nikahul fasid institution in marriage law in Indonesia. There are only a few articles that regulate the annulment of marriages, namely Articles 27 to Article 38 PP Number 9 of 1975. In these articles the authority of the Religious Court is stated to annul a marriage if the marriage is considered invalid (no legal force), or if a marriage is has been determined, or if the

marriage that has been carried out is known to be legally defective as a result of lies and mistakes or because of coercion.

Regarding a marriage that can be annulled, this is for several reasons, one of which is because the woman who was married was later discovered to still be the legal wife of another man. Related to the case being discussed here is a woman who felt that her husband had divorced her outside of court. So the researchers considered that this was almost the same as this situation, where the woman felt that she had divorced her husband (divorced under his arm) but in reality in the eyes of the law she was not divorced. So the man feels like he is marrying a woman who is not tied to someone else's marriage, but in reality he is marrying a woman who is still tied to someone else.

This is where doubts or doubts arise in the marriage. Regarding the correlation with the legal consequences of a fasid marriage which can be annulled. The problem of revocable fasid marriages does not apply retroactively to children born from such marriages, this means that some of the mistakes made by the parents cannot be passed on to their children born from revocable fasid marriages. In this way, these children have a clear and official legal status as children of their parents.

The support for child protection in Indonesia was confirmed by the issuance of the Constitutional Court Decision Number 46/PUU-VIII/2010 dated 13 February 2012, in essence stating that Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage is contrary to the 1945 Constitution as long as it is interpreted as eliminating civil relations. a child with a person whose science and technology can prove that the man is related by blood to the child in question. With this Constitutional Court Decision, the editorial of Article 43 paragraph (1) which originally read: "Children born out of wedlock only have a civil relationship with their mother and their mother's family" does not have binding legal force as long as it is interpreted as eliminating a civil relationship with a man that can be proven. based on science and technology and/or other evidence according to law, it turns out that he is blood related to his father, so the verse must be read as follows: "Children born outside of marriage have a civil relationship with their mother and their mother's family and with a man as their father. who can be proven based on science and technology and/or other evidence according to law to have blood relations, including civil relations with their father's family."

The Constitutional Court's decision is actually an effort to protect children's offspring from unlawful marriages, in this case due to their mother's polyandrous marriage. So that the child's status is still maintained as the legitimate child of his parents so that the child's basic rights are guaranteed to be fulfilled by both of the child's biological parents.

Apart from that, it needs to be emphasized that responsibility for an act is borne by the party who made the mistake or liability by fault, does not apply to parties who did not make the mistake. Mistakes made by the parents of children who enter into a marriage as mentioned above are the burden or responsibility of the parents or the legal consequences of those born to them, do not extend to the status or position of the child born because after all the child is

born in a state of nature or purity and does not bear any sin or mistakes made by both parents. Based on this, it can be concluded that the legal consequences for an invalid or annulled marriage only apply to the parents, in case the marriage of the parents is a fasid marriage but the status of the child born is not affected.

It should be noted that the legal status of a child from a formal marriage is different from the result of a biological relationship without a marriage bond. A fasid marriage, as mentioned at the beginning, still fulfills the pillars of marriage, but because certain conditions are not met, the marriage is considered fasid. As for the status of children outside of marriage, of course they cannot be said to be legitimate children of their parents, however, as stated in the Constitutional Court's decision above, the child has the right to have a civil (limited) relationship with his biological father.

Related to this, don't let the existence of child protection for the status of children become a loophole for unattached couples to legalize children resulting from their offspring, especially now that there is Minister of Home Affairs Regulation Number 9 of 2016 which allows deeds the birth includes the names of the father and mother even though the marriage has not been legalized by the court. This is because the deed is only obtained on a family card, while the family card only comes from an acknowledgment that the two couples are indeed husband and wife, not based on research and assessment as is the case with examinations at the Religious Courts which carefully examine whether the marriage relationship between a man and a woman is valid. whether or not it is in accordance with Islamic law or related regulations.

CONCLUSIONS AND RECOMMENDATIONS

Based on the description above, if in practice in the field there are still marriage isbat applicants who are rejected for reasons of fasid marriage, then the next legal effort to protect their offspring is to file a case regarding the origin of the child. As has been mentioned, some Hanafi school scholars are of the opinion that children resulting from fasid marriages can still have their status linked to their biological father so that their status can still be recognized. So that even when making a birth certificate, the name of the biological father can still be included, and the court can also avoid making a copy of its decision to the local Dukcapil Service. When the child makes a birth certificate, the name of the biological father will appear on the certificate. Most judges do not agree with the opinion of the Hanafiyah imam, therefore the trial itself still really depends on the judge who examines the case.

The role of the State is very important to be present in society, in order to create order for society in accordance with the objectives of the existence of law, it is necessary to regulate the registration of marriages and divorces in the Religious Courts. The role of the State in this case is to socialize regulations related to the importance of registering marriages by marriage registrar employees of the Religious Affairs Office and mandatory divorce before a Religious Court session in accordance with the provisions contained in the Compilation of Islamic Law, Marriage Law Number 1 of 1974 concerning

Marriage and Law Number 7 of 1989 in conjunction with Law Number 50 of 2009 concerning Religious Courts.

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