



The status of a child born outside of the wedlock (An analysis of Indonesian laws)

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Abstract

Article 43 paragraph (1) of Law No. 1 of 1974 Concerning Marriage (hereinafter referred to as the Marriage Law) only mentions the civil relations of children born outside of marriage, i.e., children born outside of marriage only have civil relations with their mothers and their mothers' families, while their rights that must be protected as human beings lack clear and detailed provisions. The normative juridical approach is utilized in the preparation of this study. The purpose of this study is to explain the position of children born out of wedlock based on the considerations of the Constitutional Court judges in the decision 46/PUU-VIII/2010 based on the opinion of experts and the position of children born out of wedlock based on the Constitutional Court decision 46/PUU-VIII/2010 reviewed from the perspective of Islamic law. The condition of children born outside of marriage, according to the judge's reasoning in judgment Number 46/PUU-VIII/2010, is that Article 43 paragraph (1) of the Marriage Law is deemed unjust to the child and in violation of the Constitution, namely. "Everyone has the right to marry and have children in a legal marriage." This provided the basis for the Constitutional Court's decision 46/PUU-VIII/2010, which established the rule in Article 43 paragraph (1) of the Marriage Law that will result in an out-of-wedlock child having civil connections with his mother, her relatives, and men. - A guy who can be confirmed to be the father through science, technology, and/or other legal evidence has blood links, including civil relations, with his father's family. According to the judge's analysis in decision Number, 46/PUU-VIII/2010 in the context of Islamic Law, a child born out of wedlock in the sense that a child born out of wedlock has sexual relations outside of wedlock has only a family link with his mother and his mother's family.

Keywords: child status, outside of wedlock

Introduction

Children born outside of marriage are referred to as illegitimate children in culture. Legally speaking, the child suffers no legal repercussions from the conduct of his or her parents. However, pregnancy outside of wedlock creates numerous legal issues, such as the familial link between the child and his biological father.

Article 43 paragraph (1) of Law No. 1 of 1974 Concerning Marriage (hereinafter referred to as the Marriage Law) only mentions the civil relations of children born outside of marriage, i.e., children born outside of marriage only have civil relations with their mothers and their mothers' families, while their rights that must be protected as human beings lack clear and detailed provisions. Article 100 of the Compilation of Islamic Law (KHI) stipulates that children born outside of marriage are only related to their mother and her family. Article 186 KHI stipulates that children born outside of marriage can only inherit from their mother and her family. This also applies to *sirri* marriages because, according to Article 5 paragraph 1 KHI, every marriage must be registered/recorded.

Article 43 paragraph (1) of the Marriage Law is deemed unjust to children and opposed to the Constitution, which states, "Everyone has the right to form a family and procreate through legal marriage." This provided the basis for the Constitutional Court's decision 46/PUU-VIII/2010, which established the rule in Article 43 paragraph (1) of the Marriage Law that will result in an out-of-wedlock child having civil connections with his mother, her relatives, and men. - A guy who can be confirmed to be the father based on scientific and technological proof and/or other legal

evidence has blood links, including civil relations, with his father's family.

The legal discoveries made by the Constitutional Court judges suggest that the considerations of the MK judges in decision No.46/PUU-VIII/2010 are *ultra vires*, i.e., exceeding their authority. The decision of the Constitutional Court No.46/PUU-VIII/2010 can damage the Islamic inheritance law order, and the position of adulterous children born out of wedlock has been equated with legitimate children, which greatly deviates from Islamic law.

Research method

This research was conducted using the Normative Juridical research approach, which involves examining literature or secondary data ^[1] as well as conducting research on legal principles, legal systematics, legal synchronization, legal history, and legal comparability ^[2]. The form and content of library items have been compiled by earlier researchers and can be accessed regardless of time constraints ^[3].

Results and discussions

The word "position" refers to the real circumstance. A child born out of wedlock is a child whose parents, a boy and a girl, were not married or had not yet entered into a marriage at the time of the child's birth. The child is commonly referred to as a child of adultery or an illegitimate child. Islamic law, also known as Islamic law, is a way of life or set of principles established by Allah for his followers that must be adhered to, whether in the field of worship, muamalah, or character ^[4].

It is physically impossible for a woman to become pregnant without the meeting of the ovum and spermatozoa, either through sex or through technological advances that result in fertilization. Therefore, it is incorrect and unjust for the law to declare that a kid born from sexual encounters outside of marriage has only a mother-child bond with the woman. It is also neither just nor unfair if the law absolves a man of paternal responsibility after he has sexual encounters that result in pregnancy and the birth of a child, while simultaneously removing the child's rights against that guy as his father. In addition, depending on current technical advancements, it is possible to verify that a child is the offspring of a particular guy^[5].

The legal consequence of the legal event of birth due to pregnancy, which is preceded by sexual activity between a man and a woman, is a legal relationship with reciprocal rights and responsibilities, whose legal objects are children, mothers, and dads. The relationship between a child and a man as a father is not simply based on a marriage, but can also be established by establishing the existence of a child relationship between the child and the man as a father.

Consequently, regardless of the procedure/administration of the marriage, the child born must be afforded legal protection. If this is not the case, then the one who is hurt is the unwed kid, despite the fact that the child is innocent and was born against his choice. Children of unclear paternity are frequently treated harshly by society. The law must offer fair legal protection and certainty for the status and rights of a newborn child, including infants born when the validity of their parent's marriage is being contested.

In light of this legal analysis, the Constitutional Court emphasized Article 43, paragraph 1, of Law No. 1 of 1974, which states: "Children born outside of wedlock have only civil relations with their mother's family. Overall, the Constitutional Court ruled that Article 43 paragraph (1) of Law Number 1 of 1974, which states that "a child born out of wedlock only has a civil relationship with the mother's family," is conditionally unconstitutional insofar as this verse is interpreted as prohibiting civil relations with men who can be proven through science and technology and/or other legal evidence to have blood relations with the child's father^[6].

The existence of the Constitutional Court's ruling generated a great deal of commentary, both in favor of the ruling and in opposition to it. Prof. Dr. H. Ma'ruf Amin, the then-chairman of the Indonesian Ulema Council (MUI), declared unequivocally that he disagreed with the Constitutional Court's judgment. He asserted that "Due to the development of public opinion and understanding that the decision of the Constitutional Court had changed Islamic sharia, violated Islamic teachings, and altered the previous order of the Muslim community, the decision of the Constitutional Court sparked controversy, anxiety, concern, and even shock among Muslims.

The Indonesian Ulema Council (MUI) deemed the Constitutional Court's ruling no. 46/PUU-VIII/2010 to be excessive, contrary to Islamic principles, and in conflict with article 29 of the 1945 Constitution. MUI thinks that the ruling of the Constitutional Court has far-reaching implications, including the legalization of family connections, inheritance, guardianship, and maintenance between children of adultery and their father. Where this is not supported by Islamic doctrine. Clearly, the Constitutional Court's ruling has interrupted, altered, and

even harmed Islamic inheritance laws originating from the Quran and Sunnah. In addition, the decision of the Constitutional Court specifies that children born as a result of adultery shall inherit from the man who fathered them.

According to the MUI Fatwa, the government has the ability to impose takzir punishments on adulterers who result in the birth of children by requiring them to pay for the child's living necessities and provide assets after his death via a required will.^[7]

As a result of these events, the MUI is responsible for defending Islamic religious doctrines and protecting Indonesian Muslims. MUI feels it essential to submit the expected response to the Constitutional Court and to provide Muslims with firm and unambiguous advice by restoring the previous order of life for Muslims. MUI believes that the decision of the Constitutional Court No. 46/PUU-VIII/2010 violates religious norms that have been implemented for so long, as a result of which the status of a child resulting from adultery is the same as that of a legitimate child, despite the fact that in this case, the two are vastly different, as a legitimate child is a child born in a legal marriage (according to the pillars and conditions), thereby giving rise to a family relationship (biological father)^[8] According to the Constitutional Court, the ruling has nothing to do with whether or not a marriage is genuine, but rather with protecting the civil rights of children, therefore it must be understood that protecting children's civil rights and the issue of child adultery are vastly different. It is unfair if a man who causes the birth of an illegitimate kid is not charged with responsibility for the child who has been born and is only borne by the mother, as this might disturb the child's psychology and have repercussions for the child's growth, development, and education. The Constitutional Court is not interested in children^[9].

According to Article 28B, paragraph 1 of the 1945 Constitution, the requirements of the standard can only be met by a legitimate marriage. What is referred to here as a legal marriage must meet with Article 2 Paragraph 1 of the UUP, which states that a marriage is lawful provided it is done in accordance with the rules of each faith and belief. This standard dictate that everyone be provided the right to obtain legitimate offspring, i.e., offspring arising from religiously sanctioned marriages, and legalizes the right to obtain legitimate kids from a man and a woman without legal marriage connections.

Therefore, legal offspring are descendants born from legal marriages and do not include offspring from unmarried cohabitation. Article 28 B, paragraph 2 of the Constitution of 1945 is a continuation of the preceding paragraph. This paragraph outlines the rights of the child, including the obligation of the legal parents to provide everything necessary for the child's survival, growth, and development, as well as the state's duty to protect children from domestic violence and discrimination.

Article 28D, paragraph 1, demonstrates that the state owes every citizen the right to fair legal recognition, guarantees, protection, and assurance, as well as equal treatment under the law. Everyone in this paragraph in relation to children refers to every child born out of wedlock or born out of wedlock, including abandoned children whose origins are unknown, children abandoned by their parents, or children abandoned by their mothers, despite the differences in their status and identities. In light of Article 43, paragraph 1 of Law No. 1 of 1974, which states, "Children born out of

wedlock only have civil connections with their mother and their mother's family," the Constitutional Court determined that children born out of wedlock have civil links with their mother and her family. "Mother and the man who can be confirmed to be the father based on science, technology, and/or other legal evidence have blood links, including civil relations with the father's family." is mainly due to the existence of blood links resulting from physical relations between a man and a woman with legal and religious marriage bonds or not? ^[10].

Conclusion

The position of a child born out of wedlock is based on the judge's findings in decision Number: 46/PUU-VIII/2010 that Article 43 paragraph (1) of the Marriage Law causes injustice to the child and is in violation of the Constitution, which states, "Everyone has the right to form a family and continue offspring through legal marriage." This provided the basis for the Constitutional Court's decision Number 46/PUU-VIII/2010, which established the rule in Article 43 paragraph (1) of the Marriage Law that will result in an out-of-wedlock child having civil connections with his mother, her relatives, and men. - A guy who can be confirmed to be the father through science, technology, and/or other legal evidence has blood links, including civil relations, with his father's family. The relationship between a child and a man as a father is not simply based on a marriage, but can also be established by establishing the existence of a child relationship between the child and the man as a father. Consequently, regardless of the procedure/administration of the marriage, the child born must be afforded legal protection.

Based on the judge's consideration in decision Number 46/PUU-VIII/2010 from the perspective of Islamic Law, a child born out of wedlock in the sense that a child born out of wedlock has sexual relations outside of wedlock only has a family relationship with his mother, and his mother's family is considered to be in a just position. Even if his natural (genetic) father is the man who impregnated the woman who gave birth to him, he cannot be allocated to his father. The legal relationship between an illegitimate child and his mother is equivalent to that between a legitimate child and his father. In Islamic law, children are not recognized by their biological dads, hence there are no reciprocal inheritance rights between children born outside of marriage and their biological fathers. According to the opinions of classical scholars, children born to unwed mothers are only linked to their mothers, even if their mothers are married to the men who fathered them. This relates to the opinion of scholars that a child born within six months of his mother's marriage can be denied by his father and his *nasaab* cannot be linked to his father.

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