

Children's Rights Resulting from Siri Marriage According to Islamic Law

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Abstract: Legal marriage in the eyes of religion and the state certainly has no difficulty in obtaining children's rights from a legal marriage. Unlike marriages that are only valid in religion but are not recorded in the State, it will be difficult to obtain children's rights, such as inheritance from their fathers. Siri marriage is now again a problem. Because, serial marriage perpetrators can now be recorded by the state on the Family Card (KK), after decades of not being recognized in the Marriage Law. In accordance with the Marriage Law, all marriages must be registered with the state. Research on "Children's Rights Due to Siri Marriage According to Islamic Law" is a literature review research. In this study we use a review of Islamic law, and understand how the process of children's rights due to serial marriage according to Islamic law. So if we look again at the provisions of article 43 of the Marriage Law and article 100 of the KHI, Where a child born out of wedlock only has a legal relationship or sexual relationship only with his mother and his mother's family, then the child has no legal relationship with his father. So that the child cannot become the heir of the father, unless the father has applied for recognition of the child in the Court.

Research Highlights:

- Highlights are a way of connecting your work with members of the research community.
- Highlights inform the reader about the contributions of your research or study to the research community.
- Highlights are three to five bullet points that should capture the novelty of your research results as well as the new methods that were used.
- Each highlight should be brief and concise.
- No abbreviations, acronyms, or jargon: employ keywords and a broad audience in mind.

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INTRODUCTION

Children have the longest childhood period, in contrast to flies which only need two hours or other animals which only need about a month (Sarwar, 2020). Every child needs guidance and love until he reaches adolescence and parents are the ones who are obliged to guide the child into adulthood. The obligations of parents towards children are stated in Article 45 paragraphs (1) and (2) of the Marriage Law No. 1 of 1974 which reads: Both parents are obliged to care for and educate their children as well as possible. The parental obligations referred to in paragraph (1) of this article apply until the child marries or is able to stand alone, which obligations continue to apply even if the marriage between the parents breaks down (Gallagher, 2001).

A child is anyone under the age of 18 who still has the full responsibility of their parents or someone who is the offspring of a husband and wife marriage that is legal in the eyes of the State or in the eyes of Religion (Grijns & Horii, 2018). Another definition of child is a man or woman who has not yet reached the stage of adolescence or adulthood, physically and mentally strong.

A marriage that is legal in the eyes of religion and the state certainly has no difficulty in obtaining the rights of children from a legal marriage (Nugraheni, 2019). In contrast to marriages which are only legal in religion but not registered in the state, it will be difficult to obtain children's rights, for example inheritance from their father.

Inheritance or inheritance according to Islamic law is different from forms of inheritance in Western law as well as customary inheritance law (Tono et al., 2019). Inheritance according to Islamic law is "a number of assets and all rights of the deceased in a clean condition" meaning that the inheritance inherited by the heirs is a number of assets and all rights, "after deducting the payment of the heir's debts and other payments. resulting from the death of the testator."

"Private marriage", "siri marriage" or "sirri marriage", is a marriage carried out based on religious rules or customs and is not registered at the marriage registrar's office (KUA for those who are Muslim, Civil Registry Office for non-Muslims). Siri marriages are not witnessed by many people and are not carried out in the presence of marriage registrar employees. This is still considered valid in accordance with regulations in the law which state that marriages are considered valid according to religion even if they are not recorded by civil registration officials.

The main purpose of marriage is to foster an eternal and happy domestic life between husband and wife with the aim of continuing their offspring (Wallerstein, 2019). Remembering that marriage is an instinctive demand for humans to have children in order to survive and obtain peace in life as well as to grow and cultivate human affection. The harmony that exists between two souls will make them integrated in a world of love and togetherness. From this background, the researcher formulated the problem as follows: How are the rights of children resulting from unregistered marriages viewed from Islamic law?

METHOD

Research on "Children's Rights Due to Unregistered Marriages According to Islamic Law" is a literature review research. In this literature study, researchers took discussions from books, journals, magazines or articles that discussed children's rights as a result of unregistered marriages (Sandy & Tarigan, 2020). Meanwhile, for this approach method, the researcher uses an approach method that is viewed from Islamic law. In this research we use an overview of Islamic law, and understand how the rights of children resulting from unregistered marriages are reviewed from Islamic law (Maloko, 2015).

RESULTS AND DISCUSSION

In general, it can be understood that what is meant by a right is something that should be obtained or obtained for oneself from another person (Hart, 2017). The opposite of the word right is an obligation, namely something that must be given or done by oneself for another person.

So what is meant by children's rights is everything, whether concrete or abstract, that a child should receive or receive from his parents or guardians. What is a child's right is an obligation for their parents or guardians. Fulfilling children's basic rights is an integral part of implementing the fulfillment of human rights. In the Islamic perspective, children's human rights are a gift from Allah that must be guaranteed, protected and fulfilled by parents, family, society, government and state (Islam, 2015). This means that children's rights which should be fulfilled properly are not only the responsibility of both parents but also the responsibility of all aspects of society around the child's environment.

The convention emphasizes that there are 4 basic rights for every child, namely: first, the right to survival; second, the right to grow and develop; third, the right to obtain protection; and fourth, the right to participate. The existence of verses in the Qur'an and al-Hadith that talk about children, and in fact there are many more in other verses or hadiths of the Prophet, shows how much attention Islam has towards children (Al-Husseini, 2020). Or in other words, Islam views that children have a very important position or function, both for their parents, society and the nation as a whole.

It is narrated in the Qur'an (QS. Maryam: 4-6) which reads:

قَالَ رَبِّ إِنِّي وَهَنَ الْعَظْمُ مِنِّي وَاشْتَعَلَ الرَّأْسُ شَيْبًا وَلَمْ أَكُنْ بِدُعَائِكَ رَبِّ شَقِيًّا ﴿٤﴾ وَإِنِّي خِفْتُ الْمَوَالِيَ مِنْ وَرَائِي وَكَانَتِ امْرَأَتِي عَاقِرًا فَهَبْ لِي مِنْ لَدُنْكَ وَلِيًّا ﴿٥﴾ يَرِثُنِي وَيَرِثُ مِنْ آلِ يَعْقُوبَ وَاجْعَلْهُ رَبِّ رَضِيًّا ﴿٦﴾

Meaning: "He said 'My Lord, indeed my bones have become weak and my head has grown gray, and I have never been disappointed in praying to You, my Lord. And indeed I am worried about my mawaliku (who inherits me) as

my wife, while my wife is barren, so grant me a son from Your side, who will inherit me and inherit part of Ya'qub's family; and make him, my Lord, a person who is pleased." (QS. Maryam: 4-6).

If a marriage is not registered by a Marriage Registrar (VAT), especially for those who are Muslim, it is registered at the Office of Religious Affairs (KUA), then in the development of Islamic law in Indonesia this kind of marriage is called a siri marriage, which is the definition of a siri marriage. which is now different from the meaning of unregistered marriage in the past. At the time of the Prophet, what was meant by unregistered marriage was a marriage that fulfilled the pillars and conditions of marriage according to the Shari'ah, but the witnesses were asked to keep the occurrence of the marriage a secret to the public, and thus automatically there was no walimatul-ursy.

Article 43 of the Marriage Law states that children born out of wedlock will only have a civil relationship with the mother and their mother's family and Article 100 KHI states that children born out of wedlock will only have a civil relationship with the mother and their mother's family. These articles have the interpretation that children born out of wedlock will not have a civil relationship/cross-breed relationship with their father or their father's family.

Therefore, the legal status of children in inheritance relations is very important because children are descendants who will be the successors of their parents, besides that both parents also have the obligation to care for and provide support for their children, it is appropriate for the child to be the first party. as heirs who take precedence, but with the difference in child status between legitimate children and illegitimate children who are recognized, this will also have a different impact on the distribution of inheritance assets between the two.

In the eyes of the law, children resulting from an unregistered marriage cannot be said to be "legitimate" children (Sandy & Tarigan, 2020). The status of children resulting from unregistered marriages is the same as children outside of marriage. These provisions are as regulated in Article 42 of the Marriage Law which states that a legitimate child is a child born in or as a result of a valid marriage.

Furthermore, Article 43 paragraph (1) of the Marriage Law. Article 100 KHI states that children born out of wedlock only have a blood relationship with their mother and their mother's family, unless science and technology and/or other legal evidence can prove that they are blood related to their father.

It is important to know that children resulting from an unregistered marriage can still receive a birth certificate (Latifiani, 2014). However, in the deed, the name listed is only the name of his mother. In order for a child resulting from an unregistered marriage to be recognized by the father, a court decision is needed regarding the father's recognition of the child.

As long as the court decision regarding the child's recognition has not been obtained, the relationship between the father and child resulting from an unregistered marriage has not been recognized. As a result, the child has no right to inherit from his father. From the perspective of Islamic law, when recognized, children from unregistered marriages are only entitled to obligatory wills (Maloko, 2015). Meanwhile, according to Article 863 of the Civil Code, if the deceased leaves legal descendants according to the law or a husband or wife, then the illegitimate children inherit one third and the share that they would have received, if they were legitimate children according to the law. invite.

Children's Rights Resulting from Siri Marriage According to Islamic Law

Generally, people understand that what is meant by a right is something that should be obtained or acquired for oneself from another person (Mack, 2010). The opposite of the word right is an obligation, which is something that must be given or done by oneself for the benefit of others. So, what is meant by a child's rights is everything, whether concrete or abstract, that a child should obtain or receive from his parents or guardian. What is a child's right means that it is an obligation for his parents or guardian.

It turns out that there are quite a lot of verses from the Qur'an and hadiths of the Prophet that talk about the rights that children must obtain, including (Arfat, 2013):

1. The right to live and develop
Article 28 B paragraph (2) of the 1945 Constitution reads: Every child has the right to survival, growth and development and the right to protection from violence and discrimination (Sutherland, 2015). Furthermore, Law Number 23 of 2002 concerning Child Protection in article 4 also states: Every child has the right to live, grow, develop and participate appropriately in accordance with human dignity, and to receive protection from violence and discrimination.
2. The right to receive protection and protection from the torment of hellfire.
According to Budiyanto, even though Allah has equipped humans with a natural tendency to avoid the dangers that threaten them, it turns out that Allah still firmly reminds every parent to

continuously protect and protect themselves and their families, especially their children and wives, from the torment of hellfire.

3. The right to earn a living and welfare

Parents who are capable are obliged to provide support for their children until the child has the ability to support himself (Buhai, 2006). This means that children who are not yet capable have the right to receive support from their parents who are capable. The word that is used as the basis for this command to provide living, among others, is QS. Al-Baqarah: 233.

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنَمِّمَ الرِّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا تُضَارَّ وَالِدَةٌ وَلا بَوْلِدُهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تُسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُم بِالْمَعْرُوفِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ ﴿٢٣٣﴾

Meaning: Mothers should breastfeed their children for two full years, for those who want to complete breastfeeding. It is the father's duty to provide for their food and clothing in a proper manner. A person is not burdened, except according to his ability. A mother should not be made to suffer because of her child and a father should not be made to suffer because of his child. Heirs are like that too. If both want to wean (before two years) based on agreement and consultation between the two, there is no sin on them. If you want to nurse your child (to someone else), there is no sin for you if you give payment in a proper way. Fear Allah and know that indeed Allah sees what you do. (Al-Baqarah/2:233)

1. The right to education and teaching

If you look again at QS. at-Tahrim: 6 which commands that parents take care and protect their children from the torment of hellfire, then it means that parents are obliged to educate and teach their children to the best of their ability. Because the child will be spared from the torment of hell fire if he knows about the actions that bring sin.

2. The right to get justice and equal status

Islam considers that all human beings, whether it is between men and women or between others, have the same degree in the eyes of God (Ali, 2016). What differentiates them is their level of piety as Allah says in QS. Al-Hujurat: 13.

أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَى وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتَقْوَاهُ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ ﴿١٣﴾

Meaning: O mankind, indeed We have created you from a male and a female. Then, We made you into nations and tribes so that you would know each other. Indeed, the most noble among you in the sight of Allah is the most pious. Indeed, Allah is All-Knowing and All-Knowing. (Al-Hujurat/49:13)

3. The right to get love

It is natural for every parent to love their children. Despite this, Islam still commands that parents show their love to their children, Mother (Banu az-Zubair, 2007). Yes, so that children really feel that their parents love and care. Every child has the right to get and feel the real existence of their parents' love.

4. Right to play

In Islam, children have the right to play. The Prophet SAW has also given an example in this regard, Mother (Arfat, 2013). It is narrated that one day the Prophet led a congregational prayer. At that time, Hasan and Husain, his grandsons, came.

When the Messenger of Allah was prostrating, the two climbed on his back, and the Prophet prolonged the prostration until the two grandsons got off his back. After finishing the prayer, the companions asked why he did one of his prostrations for a long time. The Prophet replied: "My two grandsons climbed on my back and I did not have the courage to tell them to get off."

Serial marriage in the Islamic view is a marriage carried out to fulfill the absolute requirements of the validity of the marriage contract which is marked by the presence of: male and female bridegroom, two witnesses, ijab and qabul (Agnes, 2011).

The conditions above are referred to as the pillars or mandatory conditions of marriage (Frantz & Dagan, 2004). In addition, there is a marriage sunnah that needs to be done as follows: marriage sermon, announcement of marriage by holding a wedding ceremony or celebration, mention of dowry or dowry, thus in the process of serial marriages that are carried out are the basis or obligation of the marriage only, while the sunnah of the basis of marriage is not carried out, especially regarding the announcement of marriage or the so-called walimah or celebration. Thus the people who know about the marriage are also

limited to certain circles only. Such a situation is called silent or secret or clandestine marriage (Mohler Jr, 2015).

Referring to history and development, unregistered marriage was originally a marriage that was prohibited in Islam because it did not fulfill the pillars and requirements of marriage in the form of witnesses. According to Islamic law, unregistered marriages are only valid in religion, whereas in the eyes of the State they are not valid because the marriage is not registered.

Marriage registration is still considered by some circles of society to be a minor problem (Brake, 2012). However, it has a huge impact on the legal consequences of the marriage, especially those related to proving lineage (blood relationship or descent), issues of joint property between husband and wife, mutual inheritance rights between children and parents, as well as husband and wife. It will become even more complicated if the private marriage is carried out for more than one wife (second marriage, third marriage, and so on).

Siri marriages contain many risks and are very detrimental, especially for the woman and the children resulting from the marriage, when disputes occur that lead to divorce (Razak, 2018). Several cases that occur as a result of unregistered marriages, include women who are abandoned by their husbands, wives who cannot obtain their rights and cannot sue legally in the Religious Courts, because they do not have a marriage certificate, children resulting from marriage are considered illegitimate children, wives and children cannot inherit from their husband or father, and in other cases this means that unregistered marriages have the potential to cause many mafsadah (negative impacts), especially for women and children.

As is known, one of the legal consequences of a siri marriage is that the child born is illegitimate or illegitimate, and has no right to inherit from his father. Distribution of inheritance in Islam is a necessity (infaq ijbary). The determination and distribution of inheritance as stated in the Qur'an must not be rejected by the heirs who are entitled to receive it before the inheritance is distributed.

Regulations regarding legitimate children and legal children's inheritance rights in Islamic law and KHI also have similarities and differences (Aladdin & Khisni, 2019). The similarity is that legitimate children in Islamic law and KHI are both born from marriages which are also legally conducted, apart from that, having the status of a legitimate child will both give rise to a lineage relationship and a civil relationship between parents and their children. The difference is that in Islamic law to prove whether a child from a marriage is valid or not, it can be sufficiently proven by a confession from the husband and that the child was actually born after 6 months of the marriage, whereas in KHI the proof must be with a birth certificate or it can also be possible with the presence of instruments, other evidence.

Regulations regarding illegitimate children and the inheritance rights of illegitimate children, whether according to Islamic law or KHI, namely that the status of illegitimate children results in the legal loss of legal relations, whether civil relations or lineage relations between illegitimate children and their father and their father's family, so that the relationship is mutually inherited. it won't appear either.

Based on Islamic law. In accordance with the provisions of article 171 letter c of the Compilation of Islamic Law (KHI).

"An heir is a person who at the time of death is related by blood or marriage to the testator, is Muslim and is not prevented by law from becoming an heir."

So if we look again at the provisions of article 43 of the Marriage Law and article 100 of the KHI, where children born outside of marriage only have a legal relationship or lineage relationship only with their mother and their mother's family, then the child has no legal relationship with his father.

So the child cannot be the heir of his father, unless the father has submitted a request for recognition of the child in court (Louw, 2010).

Talking about inheritance rights, the provisions in Article 863 of the Indonesian Civil Code regulate the inheritance rights of children outside of marriage as follows:

1. Get 1/3 (one third) of the share of those who were supposed to get it, from those who were supposed to get it, as long as they were legitimate children. If the heir leaves behind legitimate descendants, or a husband or wife.
2. Receive 1/2 (half) of the inheritance, if the heir does not leave behind descendants or a husband or wife, but leaves behind blood relatives in the upper line or brothers and sisters or their descendants.
3. Get 3/4 (three quarters), if the heir only leaves relatives in a further degree line.
4. Receive the entire inheritance, if the heir does not leave any legal heirs.

Explaining the contents of the Civil Code regarding the inheritance rights of illegitimate children in the Civil Code, the problem is that children outside of marriage can inherit as long as the child has been recognized by both parents so that they become legitimate children even though their share is smaller and different from the actual legitimate child. Various regulations regulated in various Civil Code regulations require the role of both parents, both father and mother, therefore clear legal regulations are needed to resolve this problem, this is because a regulation that is made and passed should provide justice without any discrimination.

CONCLUSION

Based on the fabric, the author can draw conclusions from the design improvements. Another conclusion from Aintairai is as follows: Children's rights are everything, whether concrete or abstract, that a child should receive or receive from his parents or guardians. What is a child's right is an obligation for their parents or guardians. Fulfilling children's basic rights is an integral part of implementing the fulfillment of human rights. In the Islamic perspective, children's human rights are a gift from Allah that must be guaranteed, protected and fulfilled by parents, family, society, government and state. This means that children's rights which should be fulfilled properly are not only the responsibility of both parents but also the responsibility of all aspects of society around the child's environment. One of the legal consequences of an unregistered marriage is that the child born is illegitimate or illegitimate, and has no right to inherit from his father. In Islamic law, to prove whether a child from a marriage is legitimate or not, it is sufficient to prove it by a confession from the husband and that the child was actually born after 6 months of the marriage. So the child cannot be the heir of his father, unless the father has submitted a request for recognition of the child in court.

AUTHORS' DECLARATION

Authors' Contributions and Responsibilities

The author was solely responsible for the conception, design, and execution of this research. This included conducting a comprehensive literature review, selecting appropriate methodology, collecting and analyzing data, and interpreting the findings in relation to the study's objectives.

Competing Interests

The author declares that there are no competing interests or conflicts of interest related to the conduct, analysis, or publication of this research.

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