



The Position of Siri's Husband Regarding the Distribution of Inheritance Assets in the Case at the Enrekang Religious Court from an Islamic Legal Perspective (Determination Study Number 161/PDT.P/2022/PA EK)

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Article Info

Article history:

Received 22 July, 2024

Revised 7 Sept, 2024

Accepted 18 Jan, 2025

Keywords:

Siri Husband;
National Law;
Islamic Law

ABSTRACT

The main problems in this research are 1) What are the Judge's Legal Considerations in Decision Number 161/Pdt.P/2022/Pa Ek?. 2) What is the Position of Siri's Husband as the Heir of Siri's Wife from a National Law Perspective? 3) What is the Position of Siri's Husband? As the Heir of Siri's Wife Seen from the Perspective of Islamic Law? This research uses a type of library research with a normative juridical approach. Data collection techniques using document studies (library materials). The theories used are utility theory and legal certainty theory. The results of the research concluded that 1) The judge's legal considerations in Judge Determination Number 161/Pdt.P/2022/Pa Ek were that the panel of judges did not include the husband of the deceased as an heir because there was no clarity regarding the condition of the deceased's husband. And there is no legally registered marriage registration. Therefore, the heirs from the unregistered marriage only fell to the deceased's biological mother and her 2 children. 2) The position of the unregistered husband as the legal representative of the unregistered wife, viewed from the perspective of national law, is that in an unregistered marriage there is no distribution of assets to the wife or children resulting from an unregistered marriage, unless there is an agreement or civil agreement between the husband and wife only. The existence of an agreement in a deed made before a Notary opens up opportunities for wives and children resulting from unregistered marriages to receive a share of the mutually beneficial assets. An unmarried wife/husband can obtain mutually beneficial assets through a mediation or negotiation process between husband and wife, with the help of a legal consultant or the family. 3) The position of the unregistered husband as the wawris expert of the unregistered wife is viewed from the perspective of Islamic law. In this case it can be said that a marriage that does not meet the provisions of maqashid sharia is considered not in accordance with the purpose of the marriage itself so that the marriage is not fulfilled.

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INTRODUCTION

Inheritance law is a part of family law that plays an important role, even determining and reflecting the family system that applies in society. Inheritance law is closely related to human life because it relates one human's assets to another. Death or passing away is an event that someone will definitely experience. In inheritance terms, people who die are called heirs and the family left behind are called heirs and their assets are called inheritance. Laws that discuss the transfer of inheritance, management and continuation of the rights and obligations of someone who dies, are regulated in inheritance law.

In Indonesia, there are three types of inheritance laws that apply nationally, namely Islamic inheritance law, western/civil inheritance law, and customary inheritance law. Inheritance law based on

Islamic law applies to those who embrace Islam, civil inheritance law applies to groups of citizens who come from China and Europe, while customary inheritance law is a law that has long been in force among society, most of which is still unwritten but still alive. in the daily actions of society, and this customary inheritance law applies to indigenous groups of Indonesian society.

One of the special principles of Religious Court procedural law is the Principle of Islamic Personality. The Principle of Islamic Personality, which states that those who submit and who can be subject to the authority of the Religious Court environment, those who claim to be followers of the Islamic religion, adherents of other religions outside or who are non-Islamic, do not submit and cannot be forced to submit to the authority of the Religious Court environment. The principle of Islamic Personality is stated in Article 2 jo. Article 49 of Law Number 3 of 2006 concerning Religious Courts. Law Number 3 of 2006 concerning Religious Courts confirms that Religious Courts only try those who claim to be Muslim.

In some Indonesian people, there are still many unregistered marriages that are not registered at the Marriage Registrar's Office. Most of the unregistered marriages that they carry out are carried out only based on Islamic Sharia and/or customs, but are not officially registered at the marriage registrar's office, namely the Office of Religious Affairs. for Muslims and the Civil Registry Office for non-Muslims. In fact, the law explains the importance of registering marriages, which states: "Every marriage is recorded according to the applicable laws and regulations.

Siri marriages are still widely practiced from the past until now by some people, those who carry out siri marriages think that marriage or marriage is a religious matter and religion is what can legitimize whether a marriage is valid or not. Even though people do not think about the legal consequences of unregistered marriage, it will have a very detrimental impact on both husband and wife. One of the impacts of unregistered marriages is that the husband or wife is considered invalid according to the laws and regulations in force in Indonesia. Husband and wife do not have the right to inherit from each other when they die.

Even for husbands, unregistered marriages can be detrimental to themselves, namely, if the wife dies first, then he has no right to inheritance. For Indonesian Muslims, Allah SWT's rules regarding inheritance have become positive law that is applied in the Religious Court system in deciding cases of determination and distribution relating to inheritance disputes.

In Islamic law, inheritance law has a very important position. This is understandable because inheritance problems will be experienced by everyone, apart from that, inheritance problems are a problem that is very easy to cause disputes or disputes for families whose heirs have died. This can be seen in the Determination of the Enrekang Religious Court Number 161/Pdt.P/2022/PA.Ek. The legal issue in this determination is an heir who wants a decision from the Religious Court to manage the inheritance of the heir. In this case the Petitioner is the heir. The applicant is the biological mother of the testator and leaves behind 2 (two) minor children and her husband from an unregistered marriage who is still alive. The Petitioner himself submitted a request for determination aimed at managing the deceased's inheritance.

In this determination, the deceased's husband was not included as an heir and the circumstances and conditions of the deceased's husband were not explained. The author is interested in researching this determination because the deceased had 2 (two) children while the status of the deceased's husband was unclear in this determination. At first glance from this determination, the Panel of Judges only found the facts that the deceased's only heirs were the biological mother and the testator's 2 (two) children who had the right to manage her inheritance while her husband was not included as an heir because the deceased's marriage to her husband was a siri marriage. , while in some Religious Court rulings and decisions regarding heirs and distribution, they include heirs from unregistered marriages, whether husband, wife, biological parents or children. Therefore, the author tries to examine this problem in terms of Islamic inheritance law and national inheritance law based on the case of determining heirs registered at the Enrekang Religious Court Number 161/Pdt.P/2022/PA.Ek., regarding the position of the deceased Siri's husband who was not listed. as the heir in the determination.

METHODOLOGY

This research uses a type of library research with a normative juridical approach. Data collection techniques using document studies (library materials). The theories used are utility theory and legal certainty theory.

RESULTS AND DISCUSSION

Siri marriage in Indonesia is certainly not something new. We often hear the term unregistered marriage, especially among celebrities, religious teachers and state officials. Siri marriages are carried out in accordance with the terms and conditions of marriage, but for certain reasons, they are not registered at the Office of Religious Affairs. One of the debates regarding the terms and conditions is marriage registration. Does the recording include conditions or pillars? This is a matter of debate, because there is no clear text in the Qur'an and hadith that requires this, and that is why classical jurisprudence does not recognize the existence of marriage registration. Islamic provisions, but it is contrary to the Marriage Law and the

Compilation of Islamic Law, because it is not registered at the District Religious Affairs Office.

Siri marriage is not a new problem, but has long been a topic of discussion among religious experts. The majority of Indonesian people have heard the term unregistered marriage, and even unregistered marriage has spread among Indonesian society. The large number of cases of unregistered marriages makes people often wonder what is meant by unregistered marriage and what the law is in Islam.

Please note that unregistered marriage is not a Muslim tradition. According to Islamic law, this marriage is considered valid by several groups because it meets the criteria for the validity of a marriage, namely consent, two brides and grooms, guardians and two witnesses. So unregistered marriage is still often used as an alternative to anticipate promiscuity between men and women who psychologically, morally and materially are not yet ready to marry formally. Unfortunately, the unregistered marriages that occur so far are sometimes not in accordance with Islamic law, because in carrying out the marriage contract the actual guardian of the lineage is not used. But using it from someone else is then told to claim to be a guardian. So according to marriage law in Indonesia, such a marriage is considered void or false.

In Islam, the term unregistered marriage is actually not known, because the Prophet Muhammad did not teach it. In fact, he recommended that the marriage be announced or better known as walimatul ursy (wedding party). The aim is not to cause slander in society. 192 From Anas bin Malik ra, the Prophet SAW saw that on one part of Abdurrahman bin 'Auf's body there was a trace of musk oil. He asked, 'what is that? Abdurrahman bin 'Auf answered, 'O Messenger of Allah, indeed I have married a woman with a dowry worth one gold nugget'. He said: "May Allah bless you. "Is there a walimah (reception) even if it's just by (cutting) a goat." (Muttafaq 'alaihi. Recitation of this hadith by Muslim). Socio-culturally, a wedding party (walimatul 'ursy) is important so that the couple is known and gets recognition from society. On the other hand, a marriage carried out in secret will arouse suspicion and prejudice from local residents.

From the hadith above, it can be concluded that unregistered marriage was never taught by Rasulullah SAW. Thus, there is no teaching about unregistered marriage in Islam. If you look at the opinions of ulama, the law on unregistered marriage is still controversial. Most ulama reject the existence of unregistered marriages and consider unregistered marriages to be religiously invalid. But there are also those who allow it.

An unregistered marriage or what is called a sirri marriage in contemporary fiqh is known as zawāj „urfī, namely a marriage that meets the requirements for marriage but is not officially registered by the government official who handles marriages. According to Mahmud Syaltut, a sirri marriage is a marriage contract carried out by both husband and wife without the presence of witnesses, not made public, and also not recorded in an official deed and a husband and wife live in secret so that no one else knows. Mahmud Syaltut added another explanation regarding sirri marriage which is often carried out by society, namely „urf marriage, this form of „urf marriage is seen as having two forms, the first is a marriage which is recorded in an official book but there are efforts to keep it secret, according to him it is the same as with sirri marriage, namely forbidden. Second, marriages that are registered in the official book but there is no attempt to record them, marriages like this are pure „urf marriages.

From the explanation above, it can be concluded that the sharia law for unregistered marriages is as follows: First, unregistered marriage, which means a marriage that meets the requirements and harmony of a legal marriage in accordance with Islamic provisions, but is carried out without registration at a civil registration institution or KUA (Affairs Office). Religion). This marriage has two different laws, namely the marriage law and the law of not registering the marriage at the KUA. Second, unregistered marriage, which is a marriage without a guardian. Islam clearly prohibits women from marrying a man without the consent and presence of a guardian. This act of unregistered marriage is an immoral act which is sinful if carried out. The perpetrators of this unregistered marriage deserve sanctions both in this world and in the afterlife.

In the Enrekang Regency area, we can see the low legal awareness of the community regarding the importance of registering marriages. In several villages where the majority of the population is Muslim, it turns out that there are several people whose marriages are not registered by the local KUA. This can be seen clearly, with the large number of people who submit applications for marriage registration at the local Religious Court to obtain legalization of their marriage according to state law. The large number of marriage isbat application cases cannot be separated from the efforts of the leadership of the Enrekang Regency Religious Court who have attempted to provide legal education, especially in certain sub-district areas where the majority of the population is Muslim. Seeing the enthusiasm of the community to get their marriage legalized at the Religious Court after gaining an understanding of the law, shows that the community's legal awareness is actually starting to rise.

The Compilation of Islamic Law states that the importance of registration is to ensure orderly marriages, namely in article 5 paragraph 1 "In order to ensure orderly marriages for the Islamic community, every marriage must be recorded". In principle, the KHI prohibits unregistered marriages. Even though the term unregistered marriage is not mentioned at all in the KHI based on the provisions regulated therein, it clearly indicates the impossibility of unregistered marriage.

The most visible difference between unregistered marriages and marriages in general concerns the registration of the marriage with the civil registrar. Another thing apart from marriage registration concerns

the validity of the marriage. If in an unregistered marriage, its validity is only a matter of religion (valid in the eyes of Islamic jurisprudence scholars) and it is not valid in positive law. Meanwhile, marriage in Law No. 1 of 1974 is in accordance with the applicable law.

The assets of a person who has died automatically pass to living people who have a relationship with the person who has died. In Islamic Law or Fiqh literature, it is stated that there are four relationships that cause a person to receive inheritance from someone who has died, namely kinship, relationship marriage, wala' relationships and relationships between Muslims.

Legal Consequences of Siri Marriage According to Marriage Law no. 1 of 1974 and the Compilation of Islamic Law in Indonesia. Judging from the material of Law Number 1 of 1974 concerning Marriage, it is not found that violations of this law (the practice of unregistered marriage) constitute a category of criminal law violation, because there is no article by article in the law. This law states that violations of this law are subject to legal sanctions. However, in Law Number 22 of 1946 concerning Marriage Registration, Divorce and Reconciliation, it is stated in Article 3 Paragraph (1):

"Anyone who enters into a marriage contract with a woman without the supervision of a marriage registrar's officer will be punished with a fine of up to Rp. 50,-"

Even though registration is not included in the pillars and conditions for the validity of a marriage contract, it is intended as written evidence that states that the marriage event has occurred. If you look at the legal clauses of Article 2 Paragraph (1) and Paragraph (2) it can be said to be the basis or benchmark for assessing whether or not an unregistered marriage is legally valid, both Islamic law and positive law. In this case, it can be said that a marriage that does not meet the provisions of maqashid sharia is considered not in accordance with the purpose of the marriage itself so that the marriage is invalid and can result in the status of the marriage contract being invalidated. Based on this clause, unregistered marriages are automatically invalid according to positive law.

Marriage law is an integral part of Islamic law, which is inseparable from the dimensions of Islamic faith and morals. On this basis, marriage law aims to make marriage among Muslims a marriage of monotheism and morals which is in line with the objectives of Islamic law. The ideal goal of marriage according to Islamic law is to form a happy and eternal family, as emphasized in article 1 of Law number 1 of 1974 concerning marriage. Juridically, marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household), based on the belief in the Almighty God.

The definition of inheritance can be found in various Islamic legal literature. Some of them are used with different terms, namely the terms faraid, jurisprudence of waris, and inheritance law. This difference occurs in the naming of the direction that is used as the main point in the discussion. However, the word that is commonly used is the word faraid which is the plural form of the pronunciation of faridah which means something whose parts are clearly defined. Meanwhile, the use of the word "waris" places more emphasis on what is the object of this law, namely assets that are transferred to living heirs. Because the word barus is the plural form of the word miwras which means maurus, namely inherited property.

Marriage has legal implications not only for the individuals who enter into the marriage, the rights and obligations that bind the individuals of husband and wife, but more than that it also has legal consequences for the assets of the husband and wife. Family law relationships and property law relationships are so closely intertwined, that both they can be differentiated but cannot be separated. Family law relations determine the legal relationship between property and marital property law is nothing but family property law.

Marriage using a valid contract is a cause for mutual inheritance between husband and wife, even though the two have not had the opportunity to have sexual relations and live together. If there is no guardian, the marriage will be invalid because it does not fulfill one of the pillars of marriage. Likewise, people who marrying his mahram and people who marry more than four women. All these forms of marriage cannot be a cause for mutual inheritance between husband and wife.

According to Article 2(1) of Law Number 1 of 1974, a marriage is considered valid after it is carried out in accordance with the rules of the religion and beliefs adhered to. Article 2 states that every marriage must be registered in accordance with applicable laws and regulations. In connection with the provisions of Article 2 paragraph 1, citizens who are Muslim when entering into a marriage are subject to Islamic religious law. In this case, if an inter-religious marriage occurs because there are no provisions in the law regarding procedures for inter-religious marriages, then the provisions of Article 2(1) aim to avoid legal conflicts between customary law, inter-group or inter-religious law. According to the provisions of Article 2(1), it is impossible to apply the provisions of religious law and belief in marriage simultaneously, because all religious regulations will definitely have different provisions regarding the procedures for the terms and conditions of marriage. wedding. The legality of marriage also depends on each religious law. Meanwhile, Article 2(2) of Law no. 1 of 1974 regulates that every marriage must be registered in accordance with applicable laws and regulations.

A legally valid marriage will give rise to the following legal consequences: 1) The emergence of a relationship between husband and wife; 2) The emergence of property in marriage; and 3) The emergence of

a relationship between parents and children. Then a marriage can break up due to the following reasons: 1) Death of one of the parties. 2) Divorce either at the request of the husband or wife and 3) Due to a court decision.

The origins of assets acquired in marriage are: 1) gifted assets and inherited assets obtained by one of the husband and wife; 2) assets from their own business before they married; 3) assets obtained during marriage or because of marriage such as dowry assets; 4) assets acquired during marriage.

In principle, the principles of Islamic law take a middle path between giving a person complete freedom to transfer their inheritance by will to the person they wish, as is the case in the system of capitalism/individualism, and completely prohibiting the distribution of inheritance as is the principle of communism which does not recognize individual property rights which themselves do not recognize an inheritance system.

Inheritance is only limited within the family, by marriage or due to legitimate lineage/descent relationships. Families that are more closely related to the deceased are given priority over those that are more distant. Those with a stronger relationship with the deceased take precedence over those with a weaker relationship. For example, fathers take precedence over grandfathers and siblings take precedence over half-siblings

In case Number 161/Pdt.P/2022/PA.Ek, the decision refers to an heir who wants a decision from the Religious Court to manage the inheritance of the heir. In this case the Petitioner is the heir. The applicant is the biological mother of the testator and leaves behind 2 (two) minor children and a surviving husband from an unregistered marriage. The Petitioner himself submitted an application for determination aimed at managing the deceased's inheritance.

In this determination, the deceased's husband was not included as an heir and the circumstances and conditions of the deceased's husband were not explained. The author is interested in researching this determination because the deceased had 2 (two) children while the status of the deceased's husband was unclear in this determination. At first glance from this determination, the Panel of Judges only found the facts that the deceased's only heirs were the biological mother and the testator's 2 (two) children who had the right to manage her inheritance while her husband was not included as an heir because the deceased's marriage to her husband was a siri marriage. , while in some decisions and decisions of the Religious Courts regarding heirs and their distribution, they include heirs from unregistered marriages, both husband, wife, biological parents and children. The implication of inheritance in unregistered marriages in positive law is that they do not have legal force and the position of the married husband Siri cannot be recognized by the State and is not registered with the State administration. The status of the husband or wife who is married is not recorded in the population register, so the husband who asks for heir rights is not.

CONCLUSION

The judge's legal considerations in Judge Determination Number 161/Pdt.P/2022/Pa Ek, namely that the panel of judges did not include the husband of the deceased as an heir due to the lack of clarity regarding the condition of the deceased's husband. And there is no legally registered marriage registration. Therefore, the heirs from the unregistered marriage only fell to the deceased's biological mother and her 2 children

The position of the unregistered husband as the legal representative of the unregistered wife from the perspective of national law is that in an unregistered marriage there is no distribution of assets to the wife or children resulting from an unregistered marriage, unless there is an agreement or civil agreement between the husband and wife only. The existence of an agreement in a deed made before a Notary opens up opportunities for wives and children resulting from unregistered marriages to receive a share of the mutually beneficial assets. A married wife/husband can obtain mutually beneficial assets through a mediation or negotiation process between husband and wife, with the help of a legal consultant or family member.

The position of the unregistered husband as the wawris expert of the unregistered wife is viewed from the perspective of Islamic law. In this case it can be said that a marriage that does not meet the provisions of maqashid sharia is considered not in accordance with the purpose of the marriage itself so that the marriage is invalid and can result in the status of the marriage contract being invalidated.

REKOMENDASI

Diharapkan Perkawinan yang dilakukan oleh setiap orang wajib mendapatkan dasar hukum untuk kepentingan kehidupannya ke depan nanti, yakni dengan mencatatkan perkawinan tersebut ke pancatatan sipil agar tercapai ketertiban perkawinan bagi masyarakat. Perkawinan siri termasuk aspek peraturan yang belum lengkap karena tidak di catatkan. Proses pencatatan setiap perkawinan telah menjadi bagian dari hukum positif, karena hanya dengan proses ini maka masing-masing pihak diakui segala hak dan kewajibannya di depan hukum, karena tanpa diakui kedudukan hukumnya perkawinan siri dapat menimbulkan bentuk pengingkaran terjadinya perkawinan yang dilakukan dan tak jarang pula anak yang dilahirkan dalam perkawinan tersebut itu tidak diakui pula kedudukan hukumnya.

Mengingat banyaknya timbul permasalahan atau sengketa tentang pewarisan kepada anak luar kawin atau hasil perkawinan siri, maka diharapkan adanya kejelasan dan perlindungan hukum untuk anak luar kawin, khususnya hasil perkawinan siri sebagai ahli waris di Indonesia, agar anak tersebut tidak mendapat diskriminasi dari berbagai pihak.

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