

The Status of Children Born of Illegitimate Marriages Due to Fake Guardians

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ABSTRACT

Marriage annulment or *fasakh* in Islamic law occurs when a marriage is deemed invalid due to the absence of one of its essential requirements or conditions, or because it is based on a prohibited cause. This study aims to analyze the court decision in case Number: 1322/Pdt.G/2012/PA.Plg concerning the annulment of marriage due to the use of a false guardian (*wali palsu*). The research focuses on: (1) how Islamic law regulates the role of a guardian in marriage as reflected in the decision, and (2) the legal status of the marriage and the child born from a marriage involving a false guardian. This study employs a library research method, utilizing both primary and secondary sources such as books, journals, notes, and legal documents. The findings reveal that a marriage conducted with a false guardian is void according to Islamic law, as it fails to meet the fundamental requirements of a valid marriage. Nevertheless, a child born from such annulled marriage remains legitimate, with lineage (*nasab*) recognized from both parents. This is consistent with Islamic legal principles that emphasize the protection of children's rights. Consequently, the child retains civil rights, including inheritance from both parents, based on kinship ties. In conclusion, although the marriage is annulled due to the false guardian, the status and rights of the child remain safeguarded to prevent any loss of fundamental entitlements.

1. Introduction

The annulment of a marriage due to the use of a false guardian raises serious legal problems, particularly regarding the validity of the marriage contract and the status of children born from the marriage. In case Number: 1322/Pdt.G/2012/PA.Plg at the Palembang Religious Court, the marriage was declared null and void because the guardian who performed the marriage did not have legal authority. This confirms that a guardian is one of the pillars of marriage that must be fulfilled for the marriage contract to be valid according to Islamic law and the Compilation of Islamic Law. The problem that then arises is regarding the legal status of the marriage and the status of children born from it. Even though the marriage is annulled, according to the provisions of Law Number 1 of 1974 Article 28 paragraph (2) and Article 75 of the Compilation of Islamic Law, the child still has legitimate status and has a lineage relationship with his father and mother. The difference between the annulment of the marriage and the validity of the child's lineage is the focus of this study, to provide legal certainty and protection for children's rights in the context of Islamic family law in Indonesia (Siti Hanifah, 2018). The difference in interpretation between positive law and several fiqh opinions has given rise to urgent legal controversy, because it concerns the protection of children's rights and the certainty of family law.

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The annulment of a marriage begins after a court decision that has definite legal force and is in effect from the time the marriage takes place. A marriage that is annulled according to law still has legal consequences, both for the husband/wife and their children and third parties until the time of the annulment declaration (Komariah, 2005). Article 42 of Law Number 1 of 1974 concerning marriage states that a legitimate child is a child born in or as a result of a legal marriage.

2. Literature Review

According to Islamic law, the marriage contract is a very important legal act and contains consequences and consequences as determined by Islamic law. Carrying out a marriage contract that is not in accordance with the provisions established by Islamic law is a futile act, and is even seen as an unlawful act that must be prevented by anyone who knows about it, or by means of annulment if the marriage has been carried out. (Abdul Manan, 2006)

An annulment of a marriage under Islamic law can be revoked, but a marriage that violates the prohibition is permanent. This means that, when linked to religious law regarding marriage, the annulment is permanent. Violating the prohibition is temporary, meaning the prohibition can also be related to religion or administration. (Mukhlis Marwan, 1986)

Regarding the annulment of marriage in Law Number 16 of 2019, the regulations are contained in Chapter VI, Articles 22 to 28, and the enactment of Decree Number 16 of 2019 Chapter VI, Articles 37 and 38. Further regulated by regulations. The courts authorized to annul a marriage are: The court whose jurisdiction includes the place where the marriage was held or the couple, spouse, or place of residence of the couple. For Muslims this occurs in the Inquisition and for non-Muslims this occurs in the District Court.

The annulment of a marriage has a clear legal basis in Article 22 of Law Number 16 of 2019 concerning Marriage. A marriage can be annulled if the parties do not meet the requirements to complete the marriage. A person who can file for an annulment of a new marriage due to the existence of a marriage, without being limited by the provisions of Articles 1 (2) and 4, while still binding the marriage to one of the two partners.

A false guardian is a guardian in someone's marriage but is not a real guardian, the same as a guardian who is not valid for carrying out the marriage ceremony. The meaning of this false guardian is that the marriage is carried out by falsifying the identity of the guardian, such as asking someone else to be the guardian of the line even though the real guardian does not know, and it could also be that the marriage is carried out with the approval of the guardian of the lineage to the judge's guardian even though the guardian of the lineage has not made a power of attorney for the guardian, but the power of attorney has been forged by the person who is going to carry out the marriage, so the marriage is invalid because it was married by a guardian who has no rights. The status of a guardian plays an important role in a marriage. If one of the pillars and conditions of marriage is not fulfilled, especially in the case of a guardian, the marriage is invalid and can be annulled. (Sri Turatmiyah, 2015)

Lineage is a blood relationship that also genetically shapes appearance patterns and is enculturative. This means that a child will physically resemble their mother or father, grandmother or grandfather, and so on. In fact, some children even walk, sound, and have a style similar to their mother or father. This stems from lineage. (Beni Ahmad Saebani, 2001)

"Nasab" refers to a blood relationship between one person and another, whether distant or close. However, when reading Islamic legal literature, the word "nasab" refers to a very close family relationship, namely the relationship between a child and their parents, especially the male parent.

3. Methodology

This research is library-based, meaning the primary data is library data. This data is collected through general and religious books, papers, and other relevant writings. Based on the literature, because this study focuses only on the conceptual level, the library method is the method the author applies in data collection.

This research uses a normative juridical approach, namely legal research conducted by examining library materials, the Quran, the Hadith, or secondary data as the basis for research by conducting searches of regulations and literature related to the research. This approach aims to explain what is being studied and researched, namely norms or laws through Islamic legal

sources. Normative legal research is legal research conducted by examining library materials or secondary data. The normative legal approach emphasizes normative-qualitative analysis.

4. Results and Discussion

The annulment of marriage in case Number: 1322/Pdt.G/2012/PA.Plg, between plaintiff Abdullah bin Abdurrahman, 58 years old, a trader, versus Muhammad Reza Vahlevi bin M. Ridwan, 24 years old, a private employee (Defendant I), and Fitri binti Abdullah, 22 years old, a private employee (Defendant II). That the plaintiff, in his lawsuit dated September 5, 2012, registered with the Palembang Religious Court Clerk's Office, filed a lawsuit under Number: 1322/Pdt.G/2012/PA.Plg.

In this decision, the panel of judges took into account several considerations, namely the applicant's aim and intention, namely to annul the marriage between Respondent I and Respondent II, the main point of the annulment request was that the applicant objected, the acknowledgement from Respondent I and Respondent II, which acknowledgement was complete and binding, statements from witnesses regarding administrative requirements in the form of letters whose truth could not be guaranteed, paying attention to the provisions regarding marriage contained in Article 2 paragraph (1) jis. Article 26 of the Marriage Law Number 1 of 1974, Article 71 letter (e), Article 73 of the Compilation of Islamic Law, Book II Guidelines for the Implementation of Duties and Administration of Religious Courts, Revised Edition, 2010, Page 146, number 5 letters (a and b), Hadith of the Prophet Muhammad SAW regarding marriage and marriage guardians, Article 89 paragraph (1) of Law Number 7 of 1989, Law Number 3 of 2006, Law Number 50 of 2009 concerning Religious Courts, where all of the judge's considerations have been matched with the facts of the existing incident.

In the decision Number: 1322/Pdt.G/2012/PA.Plg in the Palembang Religious Court, the decision solely concerns the annulment of the marriage as requested by the plaintiff. Therefore, regarding the status of children and others, it is not mentioned at all in the decision. In this case, because the Judge may not determine or decide something that is not demanded or the Judge may not add to the decision. This is in accordance with the principle that states *Ultra Petitem Partium* (The Judge may not demand more than what is not demanded). And in case Number: 1322/Pdt.G/2012/PA.Plg the plaintiff only requests to annul the marriage.

4.1 The Status of Children According to the Compilation of Islamic Law

In the history of the development of Islamic law in Indonesia, the Compilation of Islamic Law (KHI) represents the realization of the Indonesian school of thought. This fiqh (Islamic jurisprudence) is the result of the renewal of Islamic law in Indonesia and emerged from the belief that the imposition of customs that are incompatible with the Indonesian national character is wrong. (Nourrouzzaman Shiddiqie, 1997) Therefore, Islamic law is declared the living law of Indonesian Muslim society. Article 99 of the Compilation of Islamic Law (KHI) states that a legitimate child is: A child born in or as a result of a legitimate marriage.

4.2 Status of Children According to Law Number 1 of 1974

According to Article 42 of Law Number 1 of 1974, there are two interpretations. The first interpretation is that Article 42 of Law Number 1 of 1974 has one meaning, namely that a legitimate child according to the Marriage Law is a child born as a result of a legal marriage. Then, regarding the status of children resulting from an annulment of marriage, Article 28 (2) of Law Number 1 of 1974 also emphasizes that even if the marriage is annulled, the decision does not apply retroactively to "children born from the marriage."

Children born of an annulled marriage retain a relationship with their parents. Therefore, a child born of an annulled marriage not only has rights towards their parents but also has obligations towards them. These obligations are:

- 1) Children are obliged to respect their parents and obey their wishes, should their parents become lawful.
- 2) Once they reach adulthood, they are obliged to support their parents and their immediate family, within their immediate family line, to the best of their ability, should they require their assistance. Therefore, in essence, according to Law Number 1 of 1974, a child's status remains under the control of their parents and they are recognized as their children even if their marriage has ended or been annulled.

5. Conclusion

Based on the results of the analysis that the compiler has carried out regarding the status of children resulting from marriages that were annulled due to fake guardians (study decision number: 1322/Pdt.G/2012/PA.Plg), the compiler provides the following conclusions:

- 1) The marriage conducted on July 24 2011 by Respondent I (husband) with Respondent II (wife) as recorded in the extract of Marriage Certificate Number: 565/23/VIII/2011 is a marriage that does not fulfill the requirements for a marriage to be conducted, in that the marriage was conducted by a guardian who was not entitled. ". Therefore, according to Article 22 of the Marriage Law Number 1 of 1974 which states "a marriage can be annulled if the parties do not fulfill the requirements for conducting a marriage." Therefore, the marriage that was carried out on July 24, 2011 as recorded in the Marriage Certificate Number: 565/23/VIII/2011 is an invalid marriage and can be annulled.
- 2) Children born in a marriage that is later found to be annulled remain legitimate children and their lineage remains linked to their father and mother, because Article 28 paragraph (2) of the Marriage Law Number 1 of 1974 states that the legal consequences of an annulment of marriage do not apply retroactively to children born from the marriage. And the children of Respondent I and Respondent II still receive inheritance from their parents because the children have the right to inherit their parents' property based on kinship (lineage).

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