
Unrecorded Marriage Heart Rights According To Positive Law And Islamic Law

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Abstract

The problem in this research is related to the importance of marriage registration. In addition to its substance to realize legal order, it also has preventive benefits for both parties. Marriages that are not recorded will have a negative impact (loss) on the wife, children, and/or husband. By law, as the wife of a marriage that is not recorded, it is considered an illegitimate husband and wife. The wife is not entitled to a living, inheritance and other assets in the event of separation or death because the marriage is considered to have never occurred. The formulation of the research problem is First, how is the impact of unregistered marriage laws for children according to positive law and Islamic law, second, how are the legal solutions offered for marriages that are not registered according to positive law and Islamic law. The research method used is normative juridical and comparative law to analyze legal problems that refer to legal norms contained in legislation and court decisions as well as solutions offered in dealing with these problems.

Keywords: *Inheritance, Marriage, Unregistered*

INTRODUCTION

In addition to its substance, the registration of marriages is to create legal order, it also has preventive benefits, such as preventing deviations from the pillars and conditions of marriage, both according to religious provisions and the provisions of the laws and regulations in force in Indonesia. There is no marriage between a man and a woman, between the two of whom it is forbidden to enter into a marriage contract. Avoid falsifying the identities of the parties who are getting married, such as a man who claims to be a teenager but actually has a wife and children. This preventive action in laws and regulations is realized in the form of research on marital requirements by employees.

Even though marriages are carried out according to religion and beliefs, in the eyes of the state, marriages are considered invalid if they have not been recorded by the Office of Religious Affairs or the Civil Registry Office. Children born out of wedlock or unregistered marriages, aside from being considered illegitimate children, also only have a civil relationship with their mother or family. There is no civil relationship with his father.

A further consequence of an unregistered marriage is that neither the wife/husband nor the children born of the marriage have the right to demand maintenance or inheritance from their father or mother. Not entitled here means the government does not provide services to them because their marital status is not recorded by the official Marriage Registrar. Even though according to religious or customary law it is considered that the marriage that took place was valid, but the marriage that was carried out outside the knowledge and supervision of the marriage registrar did not have legal force and was considered illegal in the eyes of the law (of the state). So thus, researchers are interested in studying legally and practically related to marital inheritance rights that are not recorded according to positive law and Islamic law.

RESEARCH METHODS

In this study, the researchers applied normative empirical legal research methods. This is because the researchers used a legal case study approach due to a conflict by linking library materials as data to analyze marriage inheritance rights that were not registered according to positive law and Islamic law by linking them to legal theories and statutory provisions and perspectives. Islamic law.

RESULT AND DISCUSSION

Results

Based on the author's research on a case that was tried by a panel of judges at the Rantau Prapat Religious Court where on 10-12-1990 there was a marriage between ND and AN according to Islam. Whereas ND is the second wife of AN, in the course of the life of the husband and wife (ND and AN) 4 children have been born. Whereas before ND as the second wife married AN, it turned out that AN had previously married ZL and was also blessed with 5 children.

That AN died in Islamic circumstances on Saturday, March 9 2019 at the house (ND) which is located in Siringo-ringo Village, Rantau Utara District, Labuhanbatu Regency. when the late AN passed away, his biological father named IM had passed away earlier on June 29, 1982 from the deceased and the biological mother of the deceased also named: ZH had also passed away earlier on January 13, 1988. That the late AN besides leaving the Expert The heir during his lifetime has owned, controlled and or left inheritance, namely 1 (one) plot of oil palm plantation land covering an area of ± 28.7 Ha (Twenty-eight point seven Hectares) located in Karang Sari Hamlet, Sisumut Village, Pinang City District , South Labuhanbatu Regency.

Then since the late AN passed away, ZL and all of his children have mastered the papers and also the physical land as well as control and enjoy the fruit of the oil palm from the land/garden and income from the object of oil palm plantations covering an area of ± 28.7 Ha (twenty eight point seven hectares) also taken and enjoyed by ZL as the first wife and their children;

This problem led to the filing of a lawsuit at the Rantau Prapat Religious Court with the Case Register Number 651/Pdt.G/2020/PA.Rap which in the end in filing the lawsuit the Panel of Judges Rejected the Malinheritance Lawsuit of the Plaintiffs on the consideration that marriage to the second wife was considered never existed so that he did not have legal standing to file a malwaris suit at the Rantau Prapat Religious Court, then in his legal considerations it was also stated that Defendant-I (as the first wife) never gave permission to the late AN to marry Plaintiff-I and there was no permission for polygamy from the Court Religion. Thus, based on the case as Case Register Number 651/Pdt.G/2020/PA.Rap at the Rantau Prapat Religious Court, a conclusion can be drawn that marriages that are not recorded are considered as illegitimate husband and wife, so that it implies that the wife and children who are born from a marriage that is not recorded has no right to the assets left behind (not entitled to inherit).

Against the legal decision of the Case Register Number 651/Pdt.G/2020/PA.Rap at the Rantau Prapat Religious Court, the Plaintiff then filed an appeal at the Medan Religious High Court according to the case register Number 1/Pdt.G/2021/PTA.Mdn on the grounds that Yudex's attitude Facti in the case decision Number: 0651/Pdt.G/2020/PA-RAP, dated 03 August 2020 – Page 23 is too formal without considering the Plaintiff/Comparator's replica of

the Defendant/Appeal's objection, namely Defendant-I never gave permission to the Alm. H. AN to marry Plaintiff-I and there was no permission for polygamy from the Religious Court but on the other hand Defendant-I never filed an objection against AN's marriage with Plaintiff-I even though the marriage was clearly known and there had even been a sibling relationship between the children. AN child of Defendant-I and Plaintiff-I.

Based on the reasons for the memory of the appeal submitted by the Appellant, the panel of judges at the Medan High Religious Court ultimately declared the plaintiffs' claim unacceptable. Therefore, based on the verdict of the panel of judges, both at the first level (Decision of the Rantauprapat Religious Court Number 651/Pdt.G/2020/PA.Rap) and at the second level (Medan Religious High Court Number 1/Pdt.G/2021/PTA.Mdn) which has stated that the Plaintiffs' lawsuit cannot be accepted with the understanding that the plaintiff's position as wife and children from a second marriage does not have a polygamy permit from the Religious Court, it can be concluded that marriages carried out according to Islam are considered valid, however, in the eyes of the state, marriage is considered invalid and has never existed because marriages carried out outside the supervision of marriage registrars do not have legal force so that it has implications for the position of inheritance rights for the husband and wife.

Discussion

In addition to the substance of marriage registration, to realize legal order, it also has preventive benefits so that there are no deviations from the pillars and conditions of marriage, both according to religious provisions and the provisions of the legislation in force in Indonesia. Also to prevent marriage between a man and a woman between the two it is forbidden to do a marriage contract. Avoiding the falsification of the identity of the parties who will marry, such as a man who claims to be a man but in fact he has a wife and children. This preventive action in the legislation is realized in the form of research on marital requirements by employees.

Even though marriage is carried out according to religion and belief, in the eyes of the state, marriage is considered invalid if it has not been recorded by the Office of Religious Affairs or the Office of Civil Registry. Children born out of wedlock or unregistered marriages, apart from being considered illegitimate children, also only have a civil relationship with the mother or family. There is no civil relationship with his father.

A further consequence of unregistered marriages is that neither the wife nor the children born of the marriage have the right to claim a living or inheritance from their father. Not entitled here means that the government does not provide services to them because their marital status is not recorded by the official Marriage Registrar. Even though according to religious law or customs it is considered that the marriage that has been carried out is legal, but marriages carried out outside the knowledge and supervision of the marriage registrar have no legal force and are considered invalid in the eyes of the law (the state). A marriage that is not recorded will have a negative impact (loss) on the wife, children, and husband. By law, the wife of an unregistered marriage is considered an illegitimate wife. The wife is not entitled to a living, inheritance and property in the event of separation or death, because the marriage is considered to have never occurred.

Whereas the legal consequence of a marriage between the two of them who did not have or obtained a Marriage Certificate from the Office of Religious Affairs, because the marriage between the two of them was not registered at the Office of Religious Affairs, resulted in that after the death of the husband, all joint assets and assets left by the husband were controlled and managed by the husband's sibling with the reason and position as the legal

heir. Even some of the objects of her husband's inheritance have been transferred (sold) by her husband's siblings to other parties.

Even though a marriage is carried out according to the Islamic religion, in the eyes of the state, a marriage is considered invalid if it has not been registered by the Office of Religious Affairs and or has not received a marriage certificate. From the examples of the cases above, we can draw a conclusion that marriages carried out according to Islam are considered valid, but in the eyes of the state, marriages are considered invalid and have never existed, so that it has implications for the position of inheritance rights for the husband and wife. The legal solution offered for unregistered marriages is by submitting a marriage isbath to the Religious Courts in order to legalize the existence of a marriage that has been carried out;

CONCLUSION

Marriages held according to the Islamic religion are considered legal marriages, however marriages carried out outside the knowledge and supervision of the marriage registrar do not have the force of law and are considered invalid in the eyes of the (state) law. Such a marriage will have implications for the position of inheritance rights for the husband and wife.

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