
Juridical Analysis of Legal Considerations of Constitutional Court Judges Number: 46/PUU-VIII/2010 Review of Article 43 (1) of Law Number 1 of 1974 concerning Marriage Regarding the Status of Children Out of Wedlock

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ABSTRACT

This investigation was carried out with the aim of proving the decision of the Constitutional Court regarding illegitimate children, in accordance with Law no. 46/PUU-VIII/2010, consideration of the Constitutional Court: Regarding the status of illegitimate children, see Law no. 46/PUU-VIII/2010 and its legal impact on the occurrence of the Constitutional Court Order regarding Article 43 paragraph 1 of the Marriage Law which regulates invalid marriages that produce children. The method used is normative legal research, namely an in-depth study of literacy related to the status of illegitimate children. The Constitutional Court's decision regarding the civil rights of children born out of wedlock is a decision that emerged from monitoring the rights of illegitimate children as a form of judicial review of marriage law. Children born from illegitimate marriages are not a matter of Constitutional Court decision no. 46/PUU-VIII/2010. This decision is an option that significantly affects the social freedom of illegitimate children. The novelty of this research lies in the research based on a phenomenon that often occurs today, namely the problem of pregnancy outside of marriage.

Keywords : child; marriage; Constitutional Court.

INTRODUCTION

The constitutional court is a court that was formed after the third amendment with the responsibility of upholding the constitution in Indonesian society so that it can carry out its function properly in upholding the constitution. (Sihaan, 2012). The Constitutional Court's duties are regulated in statutory regulations, namely as the Guardian of the Constitution so that it is carried out in accordance with applicable regulations and interpreters of the Constitution. The constitutional court plays an important role in guaranteeing the constitutional rights of the administration of a state so that all state activities are regulated and supervised by the Constitutional Court.

Basically the Constitutional Court has three powers in every decision. One of them is proof that national and state life must proceed in accordance with the constitution. This of course gives rise to conflict regarding the regulations that are drawn up, even though it is not impossible for the Constitutional Court's decision to create commotion or turmoil among the general public (Isna, 2022). In this regard, the constitutional court issued the Constitutional Court's decision creating a new and phenomenal meaning in family law. This regulation tests that there are rights that children have outside of marriage, namely civil relations not only with the mother and her family but also with the man as the father, and the father's family can be proven to have blood relations based on science and technology or other evidence.

The Constitutional Court regulations function as regulations adopted in Indonesia regarding marriages that occur in Indonesia. This Constitutional Court decision comes into force because the Constitutional Court's decision is absolute and takes risks into account. As a result, this decision is valid and applies to all situations, not just one. In fact, to establish a rule of law, legislation is needed to maintain balance and justice in all aspects of people's lives. This shows that the Indonesian legal system is very dependent on statutory regulations (Mema, 2014).

RESEARCH METHODS

Normative research is the method used in this research, namely an in-depth study of literature relating to the status of illegitimate children (Mertokusumna, 1996). A sociological approach is also taken to look at laws that deal with the legal status of children from marriages outside the realm of positive law. Sociologically by observing the reality of the field in relation to the problem to be investigated, as seen from the perspective of how the law is applied. The primary data source used is the Law on Marriage. Secondary data sources used are books, scientific articles, law books, papers, and expert opinions regarding the status of children born out of wedlock, Islamic Law Studies, FIQH, Compilation of Islamic Law, and Constitutional Court decisions regarding the status of illegitimate children.

RESULTS AND DISCUSSION

The Constitutional Court's decision regarding the rights of children born out of wedlock in the civil sphere arises from the follow-up regarding children's rights in the material review of the proposed marriage law on the basis of upholding human rights, in this case children. The issuance of the Constitutional Court's decision is a form of acceptance of the results of the judicial review or material review of Article 43 paragraph (1) of the Law. Regarding the 1945 Constitution, it can be concluded from the results of this decision that it is contradictory. If it is interpreted as insulting the civil relationship between the child and a man who is proven to have a relationship with a minor. The child will not get anything because it does not come from a relationship that is sanctioned by law or religion.

Article 43 paragraph (1) of the Law indicates that the mother is the party who grants civil rights to children who do not have clarity regarding marital status. This is because the status of children is not recorded during the process of an invalid marriage. Article 43 paragraph (1) of the Law also states that the mother's family is also the party that must exercise the child's civil rights so that the father has no obligations. Apart from that, Article 43 paragraph (1) of the Law also has shortcomings because it removes the obligation to exercise the child's civil rights from the father. In fact, the child's rights to the father are not immediately eliminated, but clarity is given so that the father can participate in the child's civil rights.

The Constitutional Court's decision is a decision that has a major impact on the civil rights of children outside of marriage. The decision confirms that children have the same civil rights as their fathers, however, the Constitutional Court's decision cannot be implemented or results in conflict because children born outside of marriage do not have inheritance and guardianship rights as existing in Islamic law. Children born from an invalid marriage do not receive rights from their father and have no blood relationship. Meanwhile, other rights such as living and education costs must still be given, but they cannot be inherited by themselves.

In this regard, children whose marriage is valid but not registered have different legal consequences from children who are not born from a valid marriage. Children whose marriages are valid but not registered have the privilege of submitting applications that can be made by the father regarding the child's origins. The court can make a decision about the child's origins so that the child has clarity about his parents on his birth certificate. However, children who do not have legal clarity in marriage will not get the same rights, in other words the child does not get the rights of heirs or guardianship so they do not get the same constitutional rights so the Constitutional Court's decision cannot be implemented.

The Constitutional Court's decision shows that the results of a valid marriage have a broad meaning. Due to legal defects, if children born outside of marriage have legal civil rights, it will cause confusion. If interpreted as the body of the legislation and the combination of its articles, then the Constitutional Court's decision regarding article 43 paragraph 1 has a very broad meaning. According to Article 55 of the Law, a child's birth certificate (as an authentic certificate that can explain a child's origins) must state that the child is the child of the biological mother and father if a man is the biological father. the father of a

child born out of wedlock is recognized by the state.

The Constitutional Court's decision is basically a decision that gives rise to various justifications for the civil rights that children outside of a valid marriage have. Even though it gave rise to many polemics, Constitutional Court Decision Number. 46/PUU-VIII/2010 is trying to be accommodated by various field implementers regarding the status of children of illegitimate marriages. The court continues to try to accommodate the requirements for a valid marriage through the stages of recognizing the child from its biological father and consent from its biological mother. This shows that there are laws and regulations that give rise to ambiguity in society.

Opponents believe that the Constitutional Court's decision has opened a pathway for adultery because there is a legal guarantee for children outside of marriage so that it will open up the intention to continue having a relationship without marriage. Many religious institutions and courts have criticized this regulation so that state courts have not been able to implement the decision optimally considering the many parties who oppose this decision.

In this case, the provision in question is Article 43 paragraph (1) of the Law which is considered to be contrary to the 1945 Constitution because it limits the civil rights of children who are the result of marriages that are not registered with the population service. In this regard, marriage registration is a process that is carried out, but does not determine whether the marriage is valid or not. This departs from the nature of marriage which must refer to legality according to religion and state. However, marriages are registered with the aim of providing protection for the rights obtained by those involved in the marriage, including children who will later become the fruit of the marriage. Marriage registration is the basis for fulfilling the rights and obligations regulated in Article 43 paragraph (1) of the Law. In other words, marriage registration is useful for the administrative process, not as a guarantor of a marriage. This shows that there is a judge's decision in determining the Constitutional Court's decision as a correction of the distortion created between Law Article 43 paragraph (1) of the Law and the 1945 Constitution. The consideration of the Constitutional Court states that the law must guarantee the legal status of a child, giving it his rights, and provide fair legal protection to him when he is born, even though there is still a dispute over the validity of the marriage.

The juridical impact of the Judgment on the law of children who do not come from a valid marriage. The religious court conducted a study that the Constitutional Court's decision provoked adultery, resulting in a large number of adultery being committed because children resulting from illegitimate relationships still received legal guarantees. This impact arises as a distortion or conflict of opinion between religious and constitutional legal foundations. The resulting impact is a request for a review of the Constitutional Court's decision which is seen as providing room for adultery because of the bad consequences which are seen to have been minimized by the Constitutional Court's decision. In fact, the Constitutional Court's decision seeks to provide equality for children born from invalid marriages. Apart from that, this equalization of rights is also born out of concern for the fate of children outside of marriage who are basically born from the mistakes of their parents and against their personal wishes.

In this regard, this impact can basically be minimized by carrying out further coordination with the courts and religious institutions to follow up on the Constitutional Court's decision so that it can provide peace for all parties and provide a solution to the problem of illegitimate children. The Constitutional Court's decision contains equality regarding the human rights of children who have just been born into the world. Apart from that, the Constitutional Court has tried to provide a solution by conducting a survey of various parties affected by the Constitutional Court's decision which actually aims to provide relief to children who experience feelings of injustice due to Article 43 paragraph (1) of the Law which only emphasizes mothers. as the holder of the child's civil rights.

The Constitutional Court's decision refers to a review of the applicable law and its conformity with the 1945 Constitution. The norms in force in the Constitution must be in sync with the law in line with the dynamic development of society. The decision of the Constitutional Court is the embodiment of legal argumentation which is a comparison of interpretations between the applicable law and the 1945

Constitution which is the basis for all legal implementation in the country. Basically, the Constitutional Court's decision is a form of widening or limiting laws that are less relevant to the 1945 Constitution. Regarding the protection of children outside of marriage, the impact of the Constitutional Court's decision is that there is a conditional decision that changes the meaning of Article 43 paragraph (1). Legislation regarding marriage regarding the status of illegitimate children. The meaning in question is a change in the meaning of the civil status of children who are borne by parties who are related by blood as a legal bond. The Constitutional Court's decision clarifies the status of illegitimate children that the child's civil status is borne by the mother and family, in other words the father also has a role in being responsible for the child's civil status.

The impact of the Constitutional Court Regulation is that there is clarity on the status of children outside of marriage who must be borne by both parents as long as they can prove there is a biological relationship. Equalization is the main impact that is a consequence of the Constitutional Court Regulations. This is a manifestation of legal protection for illegitimate children. Marriage Law Number 1 of 1974, Article 42, only confirms the status of legitimate children, so the law does not state who can be considered an illegitimate child. (Prodjomiharjo, 2004).

The impact that can be identified from the Constitutional Court's decision is the misinterpretation of the decision. The existence of the Constitutional Court's decision created multiple perceptions due to protests carried out by various institutions because it created adultery which resulted in the non-fulfillment of norms in statutory regulations. The Constitutional Court's decision created various conflicting opinions, resulting in laws that became unconstitutional. In other words, the Constitutional Court's decision is a follow-up to the review of Article 43 paragraph (1) of the Law. The impact of these multiple interpretations creates conflicting opinions between opposing adultery or upholding the human rights of children born from illegitimate marriages. This is also reinforced by children resulting from illegitimate marriages who basically have the same rights as other normal children. The MUI firmly believes that the child of an adulterer has no right, according to sharia, to have a guardian in marriage, inheritance or lineage from his biological father or his father's family. The MUI even asked the Constitutional Court to cancel its decision (Kuspraningrum, 2004). This conflict of opinion essentially creates a dilemma because it intersects with the human rights of children.

However, children basically have birth rights that they carry with them. This includes child protection. In its scope, science does not only pay attention to children in the narrow sense. Fulfilling children's rights is an absolute thing they have from birth and therefore must be fulfilled by parties who are related by blood. Starting from the fetus and continuing until the child is 18 years old, child protection efforts need to be carried out as soon as possible. Starting from the concept of complete child protection, the law imposes an obligation to protect children and their rights that they have had since birth regarding views or opinions. from children and must go through a very thorough study (Hadisuprpto, 2008).

As reinforcement, the impact of this decision also legalizes unregistered marriages which produce children as the main object. Marriages carried out outside the knowledge and supervision of the marriage registrar at the KUA have no legal force and are considered invalid according to law, even though religion or custom is considered valid. In addition, the Indonesian legal system does not recognize marriages that have not been registered. The term "extramarital marriage" and similar terms are not recognized in the Indonesian legal system.

CONCLUSION AND SUGGESTION

Conclusion

The Constitutional Court issued a decision regarding children outside of marriage as a follow-up to the rights of children outside of marriage as a form of material review of the Marriage Law. Children born from an invalid marriage do not. The Constitutional Court decision stipulates that a valid marriage is the result of a marriage that took place but was not registered in the civil registry. Therefore, children born

from these marriages do not have constitutional rights to civil rights over children, custody rights, or the right to be heirs. The Constitutional Court's decision is a choice that significantly affects the social freedom of illegitimate children. The decision confirms that children have the same civil rights as their father, but the Constitutional Court Decision. Because according to Islamic law, children who are outside of legal marriage then 46/PUU-VIII/210 cannot be implemented or have negative consequences.

Suggestion

For law enforcers, especially in this case the Constitutional Court, to pay more attention to juridical matters in handing down a decision with the aim that the essence of protecting the constitutional rights of every legal subject is not deemed to be legalizing things that are contrary to the norms that exist in society.

For the general public, they must always follow the applicable norms so that every step they take does not cause harm to themselves or others.

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