

Analysis Legal Impact of Cancellation Marriage in Religious Court

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Study This aiming For knowing marital status second according to legislation in Indonesia and For know impact law cancellation marriage in religious courts . Research This use method study normative law , namely studies verdict . Research Results show that : first , according to positive law Polygamy allowed but very limited For protect rights women and children . Husband who wants polygamous must own legitimate reason , get permission from wife first , and submit application to religious court . Meanwhile , according to complications law Islam polygamy allowed with condition tight , especially dam matter applicable fair to wives and children . Second , the judge's considerations regarding impact law cancellation marriage in decision Number 586/ Rev.G /2022/ PA.Mks . Although marriage both of his parents canceled However decision the No applicable ebb to rights children and children still entitled get right inheritance towards his parents as well as if child born That women , then the father also has the right become guardian of his child's marriage .

INTRODUCTION

Indonesia is a country of law as mentioned in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states : that , "The Republic of Indonesia is a country based on law , so that all over joints life in socialize nation and state must based on legal norms , meaning all actions taken by the Indonesian people must based on the laws applicable in the Republic of Indonesia". [1] According to Article 2 paragraph (1) of the Marriage Law mentioned as following : " Marriage is valid , if done according to the laws of each religion and its beliefs that ." According to the contents of Article 2 paragraph (1) are : marriage That is a action religious , therefore That legitimate or whether or not a marriage hung up completely according to the laws of each religion and its beliefs , this means that a marriage that was carried out contradictory with religious law with by itself according to Constitution Marriage considered No valid . [2] In the provisions of Article 2 of the Compilation of Islamic Law (KHI), " Marriage is marriage , namely very strong agreement or thank you gholidhan For obey Allah's commands and carry them out is a purposeful worship For realize life House " The ladder of peace , love and mercy ." Mukhtar also emphasized essence marriage is is bond or binding institution they together from different conditions in attitude , fun , character , and maybe also style live , for united in bond in order to be able to reach happiness in this world and in the afterlife with align will For life together forever in frame practice religious teachings and fulfil need biologically . [3]

Marriage is nature natural specifically for circles people man in continue descendants . [4] In an effort operate marriage , every individual want A a full marriage with happiness . Everyone aspires to to form happy family so that cause a a full life with peace and tranquility . This is in accordance with objective marriage that has been mentioned in Article 1 of the Law Number 1 of 1974 concerning Marriage Law Number 16 of 2019 , namely to form family or House the happy and eternal ladder based on Belief in the one and only God. [5] However No all individual Can pass the occurrence A marriage in accordance with what has been expected . [6] Most likely in the middle journey happen shock to House stairs that can end to divorce . Problems arise when happen divorce , each party will maintain each person's property that he considers is results tired how hard it is during this . [7]

Constitution Number 1 1974 about Marriage and Law Number 16 of 2019 adheres to principle monogamy , will but what if provision a certain laws and religions allow , then a husband can married more from somebody with fulfil condition certain and permitted by the court . A man can do polygamy provided fulfil condition certain that have been determined in Constitution marriage This as listed in Law No. 1 of 1974 Article 3 paragraph (2) namely court can give permission to a husband For married more from somebody if desired by the parties concerned . Article 22 of the Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 , states that " marriage can cancelled , if the parties No fulfil terms and conditions marriage For carry out marriage " . Conditions For carry out marriage is : [8]

Marriage based on on agreement second candidate bride .

There is permission both parents or guardian for candidate the unmarried bride 21 years old .

Age candidate bride 19 year old man and candidate bride 16 year old female , except There is dispensation from court .

Between the candidates bride men and women No There is connection family or blood that causes No may married . [7]

There are rules the law that reviews reasons that can be cause cancellation wedding if condition marriage No fulfilled , according to with the provisions contained in Article 22 of the Law Number 1 of 1974 concerning Marriage and Law Number 16 of 2019 is confirmed that " A wedding Can canceled if the parties No fulfil the necessary conditions For carry out marriage . [9]

Then clarified Again in Article 27 which states that . A husband or wife can submit application cancellation marriage if marriage held under threat of violation law .

A husband or wife can submit application cancellation marriage when at the time ongoing marriage there was a misunderstanding about self husband or wife .

If threat has stop , or the guilty one think That realize the circumstances , and in term 6 (six) months time after That Still still life as husband wife , and not use his rights For submit application cancellation , then his rights fall .

The marriage that has been canceled by the court according to Constitution Number 1 of 1974 concerning Marriage and Law Number 16 of 2019 which is not legitimate still own consequence law , good for husband or wife , children , and party third at the time statement cancellation said . Cancellation marriage This can implemented only in the Religious Court where they together settled . Because For avoid existence cancellation marriage outside instanti Religious courts . [10] Article 27 paragraph (2) of the law Number 1 Year 1974 Concerning Marriage Law Number 16 Years 2019 and Article 72 paragraph (2) of the Complications of Islamic Law states If fraud or mistaken about self husband wife who is included inside it is forgery identity . So that forgery identity can made into reason For submit cancellation marriage . [11]

In Islamic law , cancellation marriage also called fasakh . Fasakh means to pull out or delete . Because based on Because our observations on fiqh , we did not find it term cancellation marriage . Islamic law does not arrange or know cancellation on marriage . If it turns out that in connection husband wife No can maintained again , then divorce that will done . [12] Cancellation marriage bring consequence law to right on the status of the child . Both as right inherit child towards his parents or right on guardianship child . Article 42 of the Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 states : " Legitimate children is child born in or as from consequence legitimate marriage " . Definition cancellation marriage according to dictionary law is a action cancellation a an unsuccessful marriage have consequence the desired law Because No fulfil conditions determined by law or Constitution .

Cancellation marriage also has a very important meaning, this is because of from annulled marriage will impact not only for partner marriage just but also has an impact for related parties with marriage such as treasure object in marriage as regulated in Article 35 of the Law Marriage. If cancellation done after have descendants or child so also has an impact on the children born from a annulled marriage as regulated in Article 45 paragraph (1) and Article 46 paragraph (1) of the Law Marriage. [12] Cancellation marriage also gives rise to consequence law to husband wife. According to Article 35 of the law Number 1 of 1974 Concerning Marriage and Law Number 16 of 2019, "Assets objects obtained during marriage become joint property". However treasure default from each husband wife and property obtained by inheritance, is under control between the parties No determine.

The law of the Religious Court in the city of Makassar, based on results pre research that the author do, there is a number of case cancellation marriage by the Religious Court submitted by the parties with reason do marriage second without permission or to fake identity. Like one of the example of the author thorough in the Makassar Religious Court in Decision Number 586/ Rev.G /2022/ PA.Mks, in decision the Application applicant For cancel marriage her husband with wife both of them Because wedding both of them stated disabled procedural. This is what makes writer want to analyze impact law cancellation marriage in the Religious Court.

In order not to happen existence cancellation marriage so before marriage happen There is a number of things to do noticed, even has explained about terms and conditions choose partner life in the Al-Qur'an Surah An-Nisa Verse 24: Translation: "(It is also forbidden for You marry) married women, except servants women (prisoner) war) that you have as God's decree on you. It is permissible for You other than (women) like that that, namely You looking for (wife) with your property (dowry) for marry her, not For commit adultery. Because of the pleasure that has been You get from them, give it to they the reward (the dowry) as a obligation. There is no sin for You about something mutual You let go after determine obligation (it). Indeed, Allah is All- Knowing Again All-wise."

In the case of cancellation marriage a judge must give considerations the right law in accordance with existing facts. Then tools proof as well as the existing information, then analyzed return whether tool proof as well as information submitted by the parties to the case Already Correct or on the contrary. to break case a judge does not bound and free from mix hand party power. As mentioned in Constitution Power Justice.

METHOD

Type Study This is study law normative, namely research that uses secondary data sources or is study literature that is study against secondary data. [13]

DISCUSSION

Marital Status (Polygamy) According to Positive Law and Complications of Islamic Law.

Marital status second according to positive law, according to law positive that regulates about giving permission polygamy like Constitution Number 1 of 1974 in conjunction with Law No. Number 16 of 2019 concerning marriage Article 3 paragraphs 1 and 2 state that Indonesia adheres to principle monogamy which means in a marriage, a man only may have a wife, and a woman only may have a husband, will but court can give permission to husband For married more from One If desired by the parties concerned. [14] The problem of polygamy is quite a problem controversial, giving rise to pros and cons in society. The parties that support existence polygamy based on the rules religious provisions. While the opposing party look at polygamy as action arbitrary and is

form superiority race men . He adheres to principle monogamy in provision Article 3 paragraph 1 of the Law Marriage reflect priority implementation principle monogamy in every marriage . However , in matter condition certain and emergency , it is possible existence polygamy with base reason strict and very heavy requirements . This is also intended For value view part public muslims who allow polygamy with condition must capable applicable fair . [15]Article 3 paragraph (1) of the Law Marriage explain that law marriage in Indonesia adheres to principle monogamy which states a man only may own a wife and one woman only may own a husband . However , in another part it is stated that in condition certain polygamy justified as intended in Article 3 paragraph 2 (two) that Court can give permission to a husband For married more from a if desired by the parties concerned . In the case of This means court can give permission to somebody For polygamous if existence agreement from wife .

Marriage polygamy is action law that does not prohibited by religious provisions , but only set up so so that its implementation truly done in accordance with purposes justified by law positive . Positive law is applicable law moment This . Bagir Manan interprets law positive law that applies in Indonesia is that " Positive law" is gathering principles and rules law written and not written that at the time This currently valid and binding in a way general or special and enforced by or through government or court in the country of Indonesia"

Related with the laws in force in Indonesia that do not give leniency to polygamy , except in urgent situation so that No There is another way that can taken , Therefore that , if Polygamy allowed in law positive but No is right absolute . polygamy only may done If condition conditions determined by law has fulfilled so perpetrator polygamy No will experience difficulty in homeless ladder consequence from demands his wives .

marriage law in force in Indonesia also adheres to principle monogamy , as poured out in article 3 paragraph (1) Law no. 1 of 1974 Jo Law Number 16 of 2019 concerning marriage . " on the basis marriage a man only may have a wife . A wife only may have a husband ." Thus , the principle monogamy the nature open , meaning law positive in Indonesia no close fully door polygamy for a husband.Polygamy allowed towards people who according to the law and religion that he adheres to allow a husband married more from a . However , Law Marriage give sufficient limits strict about exception namely , can fulfil condition accompanied by with reasons that can be accepted , and must can permission from court , as stated in Articles 4 and 5 of the Law marriage .

Condition polygamy based on Constitution Number 1 of 1974 concerning marriage . According to Article 4, the court only will give permission to husband For married more from One if : Wife No can operate his obligation as wife ; Wife get physical disability or disease that is not can healed ; Wife No can give birth to descendants . According to Article 5, conditions For submit permission polygamy to court . There is an agreement from wives , the existence of certainty that husband capable ensure necessities life wives and children they , the existence guarantee that husband will applicable fair to wives and children They . The restrictions on polygamy in Indonesia that apply for Islam , because other religions in Indonesia such as Christianity , Catholicism and Hinduism teach in their respective religious teachings monogamy as form a valid marriage because of that , Christians , Catholics and Hindus in Indonesia do not allowed For polygamous , good according to state law and teachings religion. polygamy only allowed for people Islam in Indonesia according to provision Constitution Number 1 of 1974 in conjunction with Law Number 16 of 2019 concerning a marriage that separates rule wedding for people Islam and non-Muslims . Therefore That Indonesian state law does not justify polygamy for religious communities other than muslim .

According to regulation Government Regulation No. 9 of 1975 concerning implementation of Law no. 1/1974 also in effect firm No allow polygamy except If the party concerned give permission agreement . According to Article 10 of the Regulations government Number 45 of 1990 civil servants the man who will married and employee civil the woman who will become wife second , third or fourth from someone who is not government employees required to obtain permission moreover formerly from official . [16]

Permission the only Daoat given by an official , if fulfil condition alternative , namely : Wife No can operate his obligation as a wife . wife get physical disability or disease that is not can healed . Wife No can give birth to descendants . As for the conditions cumulative , namely . There is agreement from wives . Male civil servants who want to Marry Again must show that he have adequate For sufficient need more from a wife and children child those who are proven with letter information tax or another document stating ability financially .

There is a guarantee written that He will applicable fair to his wife and children . While terms and conditions for government employees the woman who will become wife second , third , or fourth from man No civil servants , namely : Obtaining permission written from authorized official . Evidence that husband Already fulfil condition polygamy . There is agreement written from wife candidate husband . future husband have sufficient income For to finance more from a his wife and children who are proven with letter information tax . Statement letter justice from candidate husband , marital status second according to Complications of Islamic Law . Polygamy in Complications of Islamic Law (KHI) in Indonesia are permitted However with very strict terms and conditions . Polygamy is not right absolute husband , but allowed only in condition certain that is set in a way firm . Compilation of Islamic Law which regulates provision polygamy for Muslims . Conditions main polygamy is must fair to wife Good in living body and soul , attention to family and love darling , protection to family in order to create harmonious relationship . For the sake of comfort general required existence reasons to marriage polygamy .

Marriage in Islam in essence adhere to principle monogamy , because principle those that can ensure rights wife . However Islam allow husband do polygamy accompanied by with heavy conditions , namely ability husband applicable fair to wives nya . Requirements fair in polygamy show that wedding husband with more from one wife No only referring to to interest sexual , but accompanied by with respect to rights wife .

The scholars agree with it is permissible polygamous , but No make polygamy as a obligation for race Muslims . As for the disputes that occurred between they just amount number polygamy That alone , the majority of scholars differ opinion , ability polygamous only to four woman only . Polygamy is wedding with a husband with more from a wife in a way in conjunction with provision Sharia Islam provide the limitation that a husband only allowed have until four wives .

Basically , polygamy That the law permissible (allowed) , based on Q. S. An - Nisa verse 3. ability polygamy This No to grant limitations and conditions regulated by law Islam That own purpose For leveling welfare family and for guard height values among generation public Islam Next use increase kindness character race Muslims who are guided by the Qur'an and hadith . According to Complications of Islamic Law exist a number of article that explains requirements that must be met done husband If want to do polygamy including : According to Article 55 Having a wife more one person at a time simultaneously , limited only until four wife . Conditions main married more from a person , husband must capable applicable fair to wives and children they . If condition The main thing mentioned in paragraph 2 is not Possible filled , husband forbidden married more from a person . So, according to KHI article 55 , explain that a man who wants to polygamous No allowed marry more from four wives , then condition main For polygamous is husband must capable applicable fair for his wife and children , which means fair here is capable give cost needs For life daily to child his wife , then if condition main No can fulfilled , then a husband forbidden For do marriage Again .

The husband who wants to married more from one person must get permission from Religious Court . Submission application the permit referred to in paragraph (1) is carried out according to procedure as set up in Chapter VIII of the Regulations Government Regulation No. 9 of 1975. Marriages that are carried out with wife second , third , or fourth without permission from Religious Court , no have strength law . According to Article 56, there is addition condition formal that must be done a husband when want to polygamous among others are must get permission moreover formerly to Religious Court , while the author know that in the book Fiqh al-Islam wa

Justly , permission from The Religious Court No made into a condition primarily . Religious Courts only give permission to a husband who will married more from a if : Wife No can operate obligation as wife . wife get physical disability or disease that is not can healed . Wife No can give birth to descendants . It seems Article 57 of the KHI above , the Religious Court only give permission to husband who will married more from one person if there is reasons as called in Article 4 of the UUP. So basically court can give permission to a husband For married more from one person if desired by the parties concerned . The differences Polygamy based on Positive Law and complications Islamic law , namely , Polygamy in Positive Law If done without get permission from Religious courts are considered No legitimate according to State Law. While in Complications of Islamic Law if you do polygamy without get permission from religious court then marriage the still can acknowledged religiously but No can be recognized in a way state law .

Legal Impact of Cancellation Marriage Regarding the Status of Children (Decision Study) Makassar Religious Court Number 586/ Pdt.G /2022/ PA.Mks)

In the provisions Article 42 of the law Number 1 of 1974 in conjunction with Law No. Number 16 of 2019 concerning marriage confirm that , " legitimate child is child born from legitimate marriage ". Which means that legal marriage become determinant legitimate or No legitimate a children . While in article 76 Complications law Islam state canceled a marriage No will decide connection law between children and their parents .

In Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 Article 28 paragraph (2) is stated decision No applicable ebb towards the children born from marriage said , Husband or a wife who has good intentions with in good faith well , except to treasure together , if cancellation marriage based on existence another marriage that is more formerly , the third person other No including in letters a and b along they to obtain rights with faith Good before decision about cancellation have strength law remain . While according to The complications of Islamic Law as contained in Articles 75 and 76 are explained , decision cancellation marriage No applicable ebb to void marriage because one of them from husband apostate wife , Children born from marriage said , the Party third throughout they to obtain rights with in good faith well , before decision cancellation marriage have strength fixed law . Such as case at the Makassar Religious Court Number 586/ Rev.G /2022/ PA.Mks whose parents ' marriage canceled because of marriage under hands and no get permission polygamous from wife first . Based on results interview with the Judge at the Religious Court regarding right maintenance children , livelihood children and rights inherit child . The child entitled inherit towards his parents and both parents own obligation For maintain and educate child the . The marriage that has been canceled naturally own consequence law regarding status and position children , until maintenance child . Article 76 Complications law Islam state canceled a marriage No will decide connection law between children and their parents .

From the cases that exist in Decision Number 586/ Rev.G /2022/ PA.Mks this is very clear that marriage his has violate condition legitimate marriage that is No operate marriage according to law . In case the Defendant 1 and Defendant 2 are marriage under hands and no get permission For polygamous . Therefore That the marriage that took place between Defendant 1 and Defendant 2 must canceled because it is considered has violate law . Marriage that has been canceled naturally own consequence law regarding status and position children , until maintenance child . According to Constitution Number 1 of 1974 in conjunction with Law Number 16 of 2019 concerning marriage , If the marriage is carried out under hand Then stated cancelled by the religious court , then wedding the considered No ever happen according to law . Cancellation This Can done Because existence disabled law , such as No fulfillment condition legitimate marriage . According to The Great cancellation marriage give impact law to the status of a child that is Children born from marriage the still has clear legal status as child valid cancelled from parents whose marriage Cancelled . Cancellation marriage both of his parents No delete or No result in loss of status from child . So in matter This children born from annulled marriage still entitled get right inheritance

towards his parents as well as if child born That women , then the father also has the right become guardian of his child's marriage . As a result law from cancellation marriage by the court that has have strength law still is his parents ' marriage cancelled . The decision is not applicable ebb to children born from marriage said , no influential to right child . Child remains entitled on rights child must filled by his parents until child move on adults . So it is the parents' obligation maintain and educate his children until they get married and can stand yourself . Based on explanation from Clerk Makassar Religious Court that Legal Impact of Cancellation Marriage regarding the Child's Status is : The child still become child legitimate from his biological father . The child still own rights his as child both parents . The child entitled get inheritance from both parents . If child the is female , then her biological father entitled become guardian of his child's marriage .

CONCLUSION

Good law positive and Complications of Islamic Law You're welcome allow polygamy although both of them have requirements that are not same . Polygamy in law Islam allowed but own very strict conditions , especially in aspect justice . While That in law positive , polygamy No forbidden but restricted with regulation strict laws , including must get permission from wife and court . Cancellation parents ' marriage No affect legal status child . Children born from marriage the still has clear legal status as child valid cancelled from parents whose marriage Cancelled . Cancellation marriage both of his parents No delete or No result in loss of status from child and remain get inheritance from both parents . Should a husband own broad knowledge and insight in problem marriage and life husband wife , especially in ethics polygamy and how applicable fair before do silver polygamy . In order to prevent the occurrence cancellation marriage so for candidate bride men and women before do marriage must more thorough in fulfil pillars and conditions marriage .

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