



PROOF OF THE STATUS OF ILL-WED CHILDREN REGARDING INHERITANCE RIGHTS

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Abstract

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 based on the One and The Almighty God. From marriage children are born. Children born from an unregistered marriage are called illegitimate children, where these children cannot receive protection and rights maximally, because according to Law Number 1 of 1974 (Marriage Law), children born from an unregistered marriage according to the applicable laws and regulations are to only have a civil relationship with his mother and his mother's family. This certainly causes harm to the child. This is what happened to Freddy Widjaja, an illegitimate child of Eka Tjipta Widjaja and Lidia Herawati. The status of an illegitimate child caused Freddy receiving inheritance rights that were not the same as those of his siblings who were legitimate children from the registered marriage between Eka Tjipta Widjaja and Trinidewi Lasuki, and his second wife Melfie Pirieh Widjaja. This writing uses a normative juridical approach that analyzes legal rules, legal dogma as well as legal teachings that aim to answer the legal cases under study. This approach is also known as the literature approach, namely by studying books, laws and other documents related to this research. The conclusion of this study shows that the status of illegitimate children is very weak because the state cannot provide legal protection maximally therefore The marriage is not registered accordingly.

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Introduction

Allah created humans as His most perfect creatures in His own image. Humans were created as social beings who cannot live alone. In life, humans will always have a reciprocal relationship with other humans. Humans cannot live alone, and are interdependent on other humans.(Anonim 2024b) From this basis comes the main group in society, the family. The family is the main and smallest community in society that contains teachings about the life of a person or family itself that occurs because of a marriage.(Rohmat 2017) Article 1 of Law Number 1 of 1974 concerning Marriage (Marriage Law) explains that marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty.

Article 2 of the Marriage Law defines marriage as valid if it is conducted according to the laws of each religion and recorded according to the laws and regulations in force in Indonesia. From the occurrence of marriage, children are born. Based on Article 272 of the Civil Code, it is explained that a child born from a legal marriage is a legitimate child, while a child born outside a legal marriage or not registered according to the laws and regulations in Indonesia is a child outside marriage. The case of children outside of marriage is often debated among the community. Where in ancient times, many married couples did not legalize and register the marriage with the Population and Civil Registration Office (Dukcapil) so that under Indonesian law, the marriage was an underhand marriage because it was not legally recorded. The legal effect of an unregistered marriage is that there is no authentic evidence and no legal certainty that can guarantee that the marriage is valid and actually occurred. A Marriage Certificate is an authentic proof of a valid marriage and is registered at the Dukcapil. A marriage certificate is the perfect proof of a marriage.(Rachmadi 2006) Underhand marriage will have an impact on the status of the wife and children born from the marriage. The state cannot guarantee legal certainty to wives and children outside of marriage. Many cases like this occur and are found in the community, one of which is the case of Freddy Widjaja, the son of Eka Tjipta Widjaja, one of the conglomerates in Indonesia.

Eka Tjipta Widjaja, known as one of the conglomerates in Indonesia, has 15 (fifteen) children from his marriage with his first wife, Trinidewi Lasuki, and second wife Melfie Pirieh Widjaja. Until the end of his life, Eka Tjipta was known to have 28 (twenty-eight) children and 4 (four) wives based on the will deed number 60 made by Notary Winanto Wiryomartani, S.H., M.Hum, in West Jakarta on April 25, 2008.(Anonim 2024) Eka Tjipta

died in 2019 at the age of 97 (ninety-seven), and this was the beginning of the conflict over inheritance. Freddy Widjaja, who is known as the son of Eka Tjipta's wife Lidia Herawati Rusly, sued his half-brothers to get his inheritance rights which were considered inappropriate and unfair. Eka Tjipta and Lidia Herawati were married on October 3, 1967 in a Buddhist custom/religion in Jakarta but the marriage was not registered at the Dukcapil (Civil Registration Office). (Nurdiana 2020) Thus causing Freddy's status to become a child out of wedlock. Freddy felt an irregularity in the will left by his father, Eka Tjipta, where the executor of the will was his half-brother, Indra Widjaja, the son of Eka Tjipta's first wife, Trinidewi Lasuki. After the death of Eka Tjipta, Indra, who was appointed as the executor of the will, gathered all of Eka Tjipta's children and distributed a check or giro worth Rp. 1,000,000,000 (one billion rupiah) in accordance with the will deed number 20 of 2008. Freddy doubts the validity of the will deed because Eka Tjipta's wealth and assets in 2019 are estimated to reach Rp. 700,000,000,000,000 (seven hundred trillion rupiah). Freddy also said that his father's marriage with his first wife in 1943 was not legally registered. Then in the marriage with the second wife in 1951, the marriage was carried out legally and recorded at the Dukcapil, this was then followed by civil registration of the marriage with the first wife in 1953. (Nikmatur 2024) To obtain inheritance rights, Freddy made various legal efforts, namely by applying for the determination of the child's status as a legitimate child from Eka Tjipta Widjaja's marriage with his mother, Lidia Herawati Rusly. The application for the determination of Freddy as the legitimate child of Eka Tjipta was granted by the Central Jakarta District Court through a Court Decision dated February 3, 2020 Number 36/PDT.P/2020/PN JKT.PST which reads:

1. Grant the Applicant's request;
2. Establish the Applicant who was born in Jakarta on October 14, 1968 as per Birth Certificate Excerpt No. 2731/DP/1968 dated October 30, 1968 as the child of the Marriage between Mrs. Lidia Herawati Rusly and Mr. Eka Tjipta Widjaja;
3. Authorize the Head of the Population and Civil Registration Office of the City of Jakarta who is authorized to do so, to record the ratification of the Applicant on the Applicant's Birth Certificate Excerpt;
4. Determine the costs of this application to the Applicant in the amount of Rp. 146,000 (one hundred forty-six thousand rupiah).

Based on the Court decision letter stating that Freddy is the legitimate son of Eka Tjipta, Freddy filed a lawsuit for inheritance rights to his half-brothers. However, Freddy's

efforts encountered obstacles when Court Decision Number 36/PDT.P/2020/PN JKT.PST which granted Freddy's application as the legitimate son of Eka Tjipta Widjaja was canceled. In August 2020, Freddy's half-brothers filed an appeal to the Supreme Court and in December 2020 the Supreme Court Decision Number 3561K/Pdt/2020 was issued, which contents canceled the Central Jakarta District Court Decision dated February 3, 2020 Number 36/PDT.P/2020/PN JKT.PST. The Cassation Petition by Freddy's half-brothers was accepted and granted at the Supreme Court level with the following considerations:

1. Lidia Herawati Rusly's relationship with Eka Tjipta Widjaja is not related to a legally valid marriage;
2. Recognition of a child out of wedlock can only be made by the father or mother, it cannot be submitted by the child who himself requests to be recognized as a child;
3. Eka Tjipta Widjaja is not proven to have recognized Freddy as a child in his lifetime, therefore there is no legal relationship between Freddy and Eka Tjipta Widjaja, so the *Judex Facti*'s decision must be canceled.

This weakens Freddy's status so that his claim for inheritance rights is canceled because it is considered not to have a strong legal basis with his status as a child outside of marriage.(Al Hikmah 2022) Based on the foregoing, problems arise that will be discussed in detail. How to prove the status of children outside of marriage against inheritance rights. This research will discuss how to prove the status of children outside of marriage based on the Marriage Law and the Civil Code.

PROBLEM

How to prove the status of children outside of marriage to inheritance rights seen from the Marriage Law and the Civil Code (KUHPer)?

RESEARCH METHODS

1. Type of Research

This research uses a normative juridical approach. Normative juridical is a method that analyzes legal rules, legal dogma and legal teachings aimed at answering the legal cases studied. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this research.

2. Research Specifications

The specification of this research is prescriptive - evaluative. Prescriptive means trying

to get advice on what to do in researching legal problems that occur and making a formulation of the problems that occur in the study. Evaluative means evaluating the applicable laws and regulations and how they are implemented against the legal problems that occur. In this case there is still a legal vacuum in enforcing the recognition of the status of children outside of marriage because everything depends on the father. If the father does not want to admit, then the child cannot get recognition as a legitimate child even though the evidence is real and complete.

3. Data Collection Types and Techniques

The type and technique of data collection in this research is a literature study, namely by uniting, combining and conducting research on primary and secondary sources. Primary materials consist of laws and regulations such as the Marriage Law, Civil Code and Constitutional Court Decisions. Secondary materials consist of journals that analyze similar cases.

4. Research Approach

Statue Approach. This approach is carried out by reviewing all laws and regulations relating to the legal issues at hand.(Marzuki 2005) This approach conducts legal research based on legal principles, laws and regulations, and court decisions.

DISCUSSION

In Indonesian law, a child out of wedlock is a child born out of a relationship between a man and a woman who are not bound in a legal marriage. This refers to Article 43 paragraph (1) of Law Number 1 Year 1974 on Marriage (Marriage Law), which states that children born out of wedlock only have a civil relationship with their mother and her family. However, after the decision of the Constitutional Court (MK) Number 46/PUU-VIII/2010, the Constitutional Court stated that "children born outside marriage only have a civil relationship with their mother and their mother's family", contrary to the 1945 Constitution of the Republic of Indonesia to the extent that it is interpreted to eliminate civil relationships with men who can be proven based on science and technology and / or other evidence according to the law turns out to have a blood relationship as the father. The existence of the Article "children born out of wedlock only have a civil relationship with their mother and their mother's family" closes the possibility for children to have a civil relationship with their biological father, which is the risk of an unregistered marriage under the Marriage Law. It is not appropriate for the child to bear the losses incurred by the actions (marriage) of both parents. In other words, the potential loss due to a marriage that is not in accordance with the

Marriage Law is a risk for the man and woman who perform the marriage, but not a risk that must be borne by the child born in the marriage. Thus, the Constitutional Court stated that the fulfillment of the rights of children born from a marriage, regardless of whether or not the marriage is valid according to the state, remains the obligation of the biological parents.

Regarding the inheritance rights of children out of wedlock, in general, children out of wedlock only have inheritance rights from their mother. However, after the Constitutional Court's decision, children out of wedlock can also have inheritance rights from their biological father, if the relationship between the two can be proven. One thing that is problematic is how to prove the status of a child out of wedlock as a legal child and the civil rights that follow if it can be proven that there is a relationship between father and child. This proving process is crucial for a child to be able to get his rights as a legitimate child such as inheritance rights and other rights. The proof process involves several mechanisms, namely:

1. Test DNA

Test DNA is the most commonly used scientific method to prove the biological relationship between the child and the father. The test has a very high accuracy rate, so it is often strong evidence in court;

2. Confession from Father

In addition to DNA testing, acknowledgment from the biological father can also be a basis for strengthening the rights of children out of wedlock. This recognition can be made voluntarily through an official statement or through a court decision during his lifetime, either in writing or orally in the presence of witnesses.

3. Testimonies and Other Documents

In some cases, testimony from witnesses who are aware of the relationship between the mother and biological father as well as relevant documents are acceptable to the court, such as letters, photographs, or official documents showing the father-child relationship. If the child can prove that he or she is the biological child of the deceased, then he or she can file a lawsuit in court to obtain his or her rights, including inheritance rights. However, the procedure and success of this lawsuit is highly dependent on the available evidence and the judge's decision. In practice, many out-of-wedlock children have succeeded in obtaining their civil rights after going through the court process with sufficient evidence.

In the case of Fredy Widjaja, he is an extramarital child of the late Eka Tjipta Widjaja, previously Fredy had obtained his rights and status as a legal child with evidence submitted

to the Central Jakarta District Court, which then the family of the deceased filed an appeal and the Cassation Decision determined that the relationship between Lidia Herawati Rusli and Eka Tjipta Widjaja was not a legal marriage; that the recognition of an extra-marital child can only be done by the father or mother, it cannot be done by the child who asks himself to be recognized as a child, and during his lifetime Eka Tjipta Widjaja was also not proven to have recognized Fredy Widjaja as a child, therefore the Supreme Court determined that there was no legal relationship between Fredy Widjaja and Eka Tjipta Widjaja, thus canceling the decision of the Central Jakarta District Court Number 36/Pdt. P/2020/PN Jkt.Pst. Although Fredy has also provided evidence that he is Eka's son, one of the evidence is a will with his name on it. Although a will is not absolute evidence, a written acknowledgment from the father (through a will) can be used as evidence in court to prove the biological relationship between the child and the deceased father. However, several things need to be considered, one of which is that if the will clearly mentions the child as part of the heirs or states the acknowledgment that the child is a biological child, this can be a strong basis in the process of recognition and inheritance rights. Although a will is important evidence, the court usually requires other supporting evidence, such as family testimonies or other documents that support the father-child relationship. But every case is different, so the strength of the will will also be assessed based on other evidence and context. In Fredy's case, the judge said otherwise and determined that there was no legal relationship between Fredy Widjaja and Eka Tjipta Widjaja, so his claim to have his inheritance rights divided more fairly was also unenforceable.

In Indonesia, the status of children out of wedlock is regulated by the Marriage Law and the Civil Code (KUHPer). The Civil Code regulates the status of children out of wedlock, which can then be legalized into the status of legitimate children through legalization and recognition. What is the difference between recognition and legalization of the status of an unmarried child? The legalization of the status of an unmarried child is regulated in Article 272 of the Civil Code, where the legalization here means that the child is the result of a father and mother outside of marriage, where after the child is born and the couple marries, then to make the child a legitimate child, the process of legalizing an unmarried child is used. Recognition of children outside of marriage is regulated in Article 280 of the Civil Code where children born to fathers and mothers who did not marry until the time the child was born, if the child wants to be legalized into the status of a legal child, the process is called recognition of children outside of marriage. So it is clear that there is a difference between

legalization and recognition, where in legalization, a legal marriage occurs after the child is born, while recognition of a child outside of marriage does not occur.

In Fredy's case, although there is a Constitutional Court Decision stating that there is a legal relationship for children out of wedlock to their parents as a child is born due to a relationship, in practice proving this is still difficult to do because it requires recognition from the parties themselves. In fact, many parents refuse to acknowledge so that civil relations do not occur, if that happens then the child cannot sue or there is no way to get his civil rights from his parents so that a new rule is needed that can provide guarantees to every child, especially children out of wedlock so that the rights of children can be obtained as legitimate children in marriage. In the will, Fredy's name is listed as one of the beneficiaries, which means that although the late Eka Tjipta never legally recognized Fredy as his legitimate child, the inclusion in the will of the deceased makes one proof that Fredy is indeed Eka Tjipta's child. However, referring to the applicable law in Indonesia, both the Marriage Law and the Civil Code, in order to obtain recognition as a legitimate child of a marriage, the recognition must come from the parents, in this case the father. Although the Constitutional Court Decision justifies recognition through DNA testing, the recognition depends on the recognition of the child's father. In Fredy's case, the father's confession cannot be made because Eka Tjipta has passed away.

KESIMPULAN

In Indonesia, children out of wedlock are legally recognized as children who have a civil relationship with their mother and her family, based on Article 43 paragraph (1) of the Marriage Law. However, following Constitutional Court Decision No. 46/PUU-VIII/2010, out-of-wedlock children can also have a civil relationship with their biological father if the relationship can be proven through scientific mechanisms, such as DNA tests, acknowledgement from the father, or other documents and testimonies. However, in terms of inheritance, out-of-wedlock children can only inherit from their father if the relationship is recognized or proven in court. The Fredy Widjaja case shows that even if evidence is submitted, the legal recognition of an out-of-wedlock child still depends on the father's formal acknowledgement during his lifetime or a court decision. In this case, the Supreme Court rejected Fredy's claim to inheritance from Eka Tjipta Widjaja, as there was no legal recognition from Eka Tjipta Widjaja. Proving the father-child relationship is a major obstacle for children out of wedlock to obtain their rights, especially inheritance. This challenge

reflects that despite the Constitutional Court's decision to provide legal protection for children out of wedlock, implementation is still difficult without direct recognition from the biological father. Therefore, stronger additional regulations are needed to ensure that children out of wedlock can obtain their rights on par with legitimate children of marriage.

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