

ANALYSIS OF REJECTION OF APPLICATION FOR MARRIAGE ISBAT AND ORIGIN OF CHILDREN

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Keywords

Divorce
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Child Protection

Isbat marriage is a process of ratifying the marriage of a married couple who previously had a sirri marriage. The purpose of marriage isbat is to obtain a marriage certificate as proof of the validity of the marriage in accordance with the legislation in force in Indonesia. As stipulated in Law No. 1 of 1974 concerning Marriage, article 2 paragraph (2) and the implementation of marriage isbat is only intended for certain matters as in Article 7 paragraph (1), (2), (3) KHI. In the determination of the Blora Religious Court, it was found that there was a determination of the application for isbat marriage for sirri marriages which was accumulated with the determination of the origin of the child register Number: 0056/Pdt.P/2015/Pa.Bla. Panel of Judges at the Blora Religious Court. did not grant all requests. In the determination, a husband and wife want to ratify their sirri marriage and determine the child from the marriage as their legal child. number: 0056/Pdt.P/2015/PA.Bla?. What are the legal consequences for the determination of the case related to the protection of children's civil rights? This type of research is juridical-empirical research. The primary data used is the case file of the Blora Religious Court Number: 0056/Pdt.P/2015/Pa.Bla. and an interview with the Judge who decided the case Number: 0056/Pdt.P/2015/PA.Bla. Data collection techniques are interviews and documentation. while the analysis technique uses descriptive-analysis. The results showed that 1). the determination of the Blora Religious Court Number: 0056/Pdt.P/2015/PA.Bla in the case of the application for marriage isbat and the origin of the child is still not able to provide justice and benefits for the justice-seeking community. That is not being able to provide protection, especially to the child, even though the child was born as a result of a legal sirri marriage, it's just that according to state law the conditions and pillars are not fulfilled, because the woman is "still being someone else's wife" but has been divorced verbally and legally. abandoned for more than 3 years. This kind of prohibition or condition is actually a temporary prohibition, therefore the Panel of Judges should review the marriage ban. So in this case, it would be better if the Panel of Judges did not only look at the procedural law which only concerned with the formality aspect, but the Panel of Judges also looked at the case from the fiqh perspective. 2) While the legal consequences for the determination of the Blora Religious Court Number: 0056/Pdt.P/2015/PA.Bla against the rejection of the application for marriage isbat and the origin of the child, namely the child born as a result of the sirri marriage does not have civil rights from the father the biology. even though the child born from the legal marriage Bla against the rejection of the application for isbat marriage and the origin of the child, namely the child born as a result of the sirri marriage does not have civil rights from his biological father. even though the child born from the legal marriage Bla against the rejection of the application for isbat marriage and the origin of the child, namely the child born as a result of the sirri marriage does not have civil rights from his biological father. even though the child born from the legal marriage

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1. INTRODUCTION

In the regulation of Law number 1 of 1974 article 2 paragraph (2) concerning marriage it is explained that "marriage must be recorded" which has implications for the strength and legal certainty of a harmonious marriage contract and the conditions are met. So it can be said that a valid marriage is a marriage whose implementation is in accordance with law number 1 of 1974 concerning marriage and Islamic law[1]. The phenomenon that occurs in today's society is that many people have done sirri

marriages for so many years they live together and have offspring from the marriage, they will register their marriages if there are interests that they address by submitting a marriage isbat to the Religious Courts where they live.[2].

Such sexual relations result in legal problems related to the civil rights of children with men as biological fathers, for example regarding the making of a child's birth certificate, child status, guardianship status if the child born is a girl and it is time to get married, the right to obtain living expenses, education costs and inheritance rights, because the birth of a child that is not based on a marriage registered at the Office of Religious Affairs (KUA) according to the Marriage Law number 1 of 1974 will arise legal problems for the offspring[3], [4].

The legitimacy of children is closely related to the validity of a marriage between their parents. The laws and regulations determine that a legitimate child is a child born from a legal marriage and is registered at the Marriage Registrar's Office. In contrast to marriages that are legal but not registered, the rights of children to live and develop are not given legal protection, considering that the mother who gives birth to the child will be faced with meeting the material and psychological needs of the child, while the father is not burdened with obligations and responsibilities.[5].

The 1945 Constitution of the Republic of Indonesia in Article 28B paragraph (2) which reads: "every child has the right to survival, growth and development and the right to protection from violence and discrimination". reads: "everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law". Then article 27 paragraph (1) which reads: "all citizens have the same position in law and government and are obliged to uphold the law and government with no exceptions."[6]. Meanwhile, Ibn Hazm has an important principle that is held, namely the equality of human positions in the eyes of Islamic law with regard to rights and obligations, unless there is a text that states in certain cases. This according to him is a principle that is used or agreed upon by the Muslims[7]. So whatever the form, every child born in the Republic of Indonesia must be given legal protection regardless of the child being born is a legitimate child or a child out of wedlock because the Constitution of the Republic of Indonesia expressly guarantees that legal protection is a right for every citizen of the Republic of Indonesia.[8]. The law must be placed as a protector and shield for every citizen, to anyone including children born from unregistered marriages, such as due to sirri marriages.

In addition, legal protection for children has been guaranteed in Law number 23 of 2002 concerning child protection in article 1 paragraph (2) which reads: "Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, and develop. develop and participate optimally in accordance with human dignity and respect, and receive protection from violence and discrimination."24 On November 20, 1989, the United Nations ratified the Convention on the Rights of the Child (child rights convention), this convention has countries including the Republic of Indonesia. 25 This means that everywhere in the world it is obligatory to ensure the protection of children[9].

But the fact is that problems then arise when the child born out of wedlock takes care of his civil rights in government institutions such as the Civil Registration Office. Conditions like this occur in society so that there are still children who do not have birth certificates. This is because the child's parents have married under the hands. Underhand marriage is a marriage that fulfills all the pillars and conditions specified in fiqh (Islamic law) but without official registration at the authorized institution as regulated by the applicable laws and regulations. So from the descriptions above the only way to get the legality of marriage in order to get a nasab relationship between children out of wedlock and their parents is by submitting an application for marriage isbat and an application for the origin of the child in the Religious Courts, but submitting an application for marriage isbat and an application for marriage isbat and the origin of the child is not immediately granted. Such as the case of the application for the origin of the child at the Blora Religious Court with the case number: 0056/Pdt.P/2015/PA.Bla. which the author studied. Starting from a sirri marriage that was carried out between Sukorini Tri Rahayu (Petitioner I) and Jawahir (Petitioner II), on the grounds that Sukorini Tri Rahayu had been left by her previous husband, Sukahar for more than 3 years without being given physical and spiritual support, so Sukorini Tri Rahayu feels that Sukahar has been divorced.[8], [10]. So, when Sukorini Tri Rahayu and

Jawahir married sirri, Sukorini Tri Rahayu's status was still the wife of Sukahar under State Law. So from this sirri marriage, Sukorini Tri Rahayu and Jawahir were blessed with one son. After Sukahar found out that his wife was already married to someone else, Sukahar finally divorced his wife in the Religious Court[11].

Problems began to arise when Sukorini Tri Rahayu and Jawahir wanted to enroll their child in school, then in that registration the school required an official birth certificate as one of the requirements for school entry. So, from this problem, Sukorini Tri Rahayu and Jawahir wanted to make an official birth certificate for their child, namely a birth made by an authorized institution with the names of the father and mother written down.

2. METHOD

2.1 Types of research

This type of research is juridical-empirical research, which is a combination of juridical and empirical research.³⁵ juridical-empirical research regarding the implementation of normative legal provisions in their application to certain legal events that occur in a society. This juridical-empirical research is a category of judicial case study. In the form of a study of the determination document of the Blora Religious Court Number: 0056/Pdt.P/2015/Pa.Bla. Regarding the determination of the marriage isbat, the determination of the origin of children in 2015 was accumulated using a qualitative approach. This qualitative approach aims to explore and build a proposition or explain the meaning behind reality.

2.2 Data source

In this study the researchers used the following data sources;

a. Primary data

Primary data is a source of data or information used to find out various provisions relating to marriage isbat and the origin of children in this study is the register document or case file of the Blora Religious Court, namely the determination of the Blora Religious Court Number: 0056/Pdt.P/2015/ PA.Bla and the results of direct interviews from the panel of judges concerned.

b. Secondary Data

The secondary data in writing this thesis are KHI, Marriage Law No. 1 of 1974, Islamic Law, fiqh books and the Child Protection Act. Coupled with books, scientific works and other literature related to research.

2.3 Method of collecting data

a. Documentation

Looking for data on things or variables in the form of notes, transcripts, books, inscriptions, newspapers, agendas and so on.³⁷ The documentation referred to here is data on the origins of children at the Blora Religious Court in particular.

b. Interview

Is a process of interaction and verbal communication with the aim of obtaining important and principal information that is desired as the main source. During the interview, there was a relationship between two or more people, both of whom behaved according to their respective statuses and roles.³⁸ Interviews were conducted on the judges who tried the case, namely Drs. Sutiyo, MH to obtain information needed by the author, including the determination of the judge and the basis for the judge's legal considerations.

Data analysis method

The method used is descriptive method by means of document analysis. Descriptive analysis is to describe the case of the application for marriage isbat and the origin of the child at the Blora Religious Court, in this case focused on the determination of Judge Number: 0056/Pdt.P/2015/PA.Bla

3. RELUST AND DISCUSSION

3.1 Description of the Determination of the Blora Religious Court Number: 0056/Pdt.P/2015/Pa.Bla Regarding the Rejection of the Application for Isbat Marriage and the Origin of the Child

Contents of stipulation in determination Number : 0056/Pdt.P/2015/PA. Blah. at the Blora Religious Court. The Blora Religious Court, which examines and hears civil cases in the first instance, has issued a ruling on the case for the application for marriage isbat and the origin of the child contains the following:

1. Identity of the Parties

Sukorini Tri Rahayu Binti Sukarno, 42 years old, Muslim, job not working, last education is junior high school, residential address in Hamlet Trembulrejo RT 002 RW 004 Trembulrejo Village, Ngawen District, Blora Regency. Hereinafter referred to as Petitioner I. Jawahir Bin Masiran, age 45 years old, religion of Islam, odd job, last education elementary school, address of residence in Hamlet Trembulrejo RT 002 RW 004 Village Trembulrejo Ngawen District

2. Subject matter

applicant I and applicant II with their application letters dated June 23, 2015 which have been registered with the Registrar of the Blora Religious Court on Register Number: 0056/Pdt.P/2015/PA.Bla. dated June 23, 2015 filed a petition regarding the origin of the child with the following reasons: Petitioner I on October 11, 1995 married a man named Sukahar who was registered at the Office of Religious Affairs, Ngawen District, Blora Regency as evidence in Excerpt of Marriage Certificate Number : 317/21/X/95 dated October 11, 1995.

In the marriage, applicant I was blessed with 1 child named Fitri Nur Chalimah, 18 years old and currently married. Petitioner I's marriage to a man named Supardi Bin Sukahar did not go well because since the beginning of 2002 there were always fights because Supardi was lazy to work, Supardi often asked for money from applicant I, Supardi liked to play gambling and rarely came home Because Supardi did not After visiting home from the beginning of 2003 until 2006 when applicant I felt lonely and it was hard to bear the household living expenses alone, applicant I got acquainted with a man named Jawahir Bin Masiran at the end of 2005, which was finally encouraged by parents, applicant I and Jawahir (applicant II) married sirri on October 22, 2006, who became the marriage guardian of applicant I was Sukarno (the biological father of applicant I) with 2 witnesses namely Mr. Juwahir (modin of Trembulrejo village) and Mr. Talbi (chairman of RT) with a dowry of Rp. 10,000, - (Ten Thousand Rupiah) in the presence of Mr. Nur Khozin (religious figure in Trembulrejo village) witnessed by the families of applicant I and applicant II as well as neighbors. After applicant I and applicant II got married, they were blessed with 1 child named Raka Reza Pradana, born on June 19, 2010 at that time applicant I was still married to Supardi. But at that time Supardi had long since left the applicant I - (Ten Thousand Rupiah) in the presence of Mr. Nur Khozin (religious figure in Trembulrejo village) witnessed by the families of applicant I and applicant II as well as neighbors. After applicant I and applicant II got married, they were blessed with 1 child named Raka Reza Pradana, born on June 19, 2010 at that time applicant I was still married to Supardi. But at that time Supardi had long since left the applicant I - (Ten Thousand Rupiah) in the presence of Mr. Nur Khozin (religious figure in Trembulrejo village) witnessed by the families of applicant I and applicant II as well as neighbors. After applicant I and applicant II got married, they were blessed with 1 child named Raka Reza Pradana, born on June 19, 2010 at that time applicant I was still married to Supardi. But at that time Supardi had long since left the applicant I

On August 10, 2014, Supardi submitted a request for divorce to the Blora Religious Court which was registered at register No. 1102/Pdt.G/2014/PA.Bla. and has obtained the Deed of Divorce Number: 1419/AC/2014/PA.Bla. November 11, 2014, because the child who is currently in need of a Birth Certificate, but applicant I to arrange a Birth Certificate on behalf of Raka Reza Pradana, born June 19, 2010 has difficulty in the Civil Registry, because at that time applicant I was still bound by marriage with Supardi so that the child has not received proof of the Birth Certificate which is the result of the marriage of applicant I with applicant II, because the child named Raka Reza Pradana, born on June 19, 2010 really needs proof of a Birth Certificate, we ask that the child (Reka Reza Pradana, born June 11,

2010) is the child of the marriage of applicant I (Sukorini Tri Rahayu Binti Sukarno) with Jawahir Bin Masiran (applicant II). At present, the marriage between applicant I (Sukorini Tri Rahayu Binti Sukarno) and applicant II (Jawahir Bin Masiran) has not been registered at the Office of Religious Affairs. Until now, Petitioner I and Petitioner II are still living in harmony as husband and wife and have never been separated in bed. The marriage of applicant I with Jawahir has not been registered administratively and to maintain legal certainty in the marriage of applicant I with Jawahir, applicant I requests that the marriage between applicant I and Jawahir be legalized. To support the truth of the arguments in the petition, Petitioner I and Petitioner II also presented witnesses for questioning. Based on the foregoing matters, the applicant requests that the Head of the Blora Religious Court immediately examine and try this case, then render a decision which reads as follows:

- a. Accept the applicant's application
- b. To determine the validity of the marriage between Petitioner I and Petitioner II who got married on October 22, 2006
- c. Ordered the District Religious Affairs Office (KUA) Ngawen, Blora Regency, to register the marriage between applicant I (Sukorini Tri Rahayu Binti Sukarno) and applicant II (Jawahir Bin Masiran) in the marriage register at the local KUA.
- d. To stipulate, declare that the child named Raka Reza Pradana, born on June 19, 2010 is the child of applicant I (Sukorini Tri Rahayu Binti Sukarno) and applicant II (Jawahir Bin Masiran)
- e. Determine court costs according to law.

3. Judge's Legal Considerations

Legal considerations are a description of how judges qualify the facts, then evaluate the facts submitted in detail and contain the legal basis used by judges in assessing facts and deciding cases, both written and unwritten laws. In a copy of the determination of the Blora Religious Court Judge Number: 0056/Pdt.p/2015/PA. Blah.

In Law Number 1 of 1974 concerning Marriage, Chapter II regulates the terms of marriage which consists of 7 articles, namely articles 6 to 12, in article 9 it reads: "A person who is still bound by marriage with another person cannot marry. again". Likewise, more firmly in the Compilation of Islamic Law (KHI) in Chapter VI regulates the prohibition of marriage which consists of 6 articles, namely articles 39 to 44, in article 40 it reads: "it is forbidden to carry out marriages between a man and a woman because of certain circumstances. ;

- a. Because the woman in question is still bound by one marriage to another man
- b. A woman who is still in the period of iddah with another man
- c. A woman who is not Muslim

Based on these provisions, the panel concluded that the marriage between Petitioner I and Petitioner II which took place on October 22, 2006 violated the provisions of the Prohibition of Marriage and Prohibition of Marriage as regulated in Law Number 1 of 1974 Jo. Islamic Law Compilation. Thus, if the application for the validity of the marriage is rejected, the application for the validity of the child must also be rejected.

3.2 Analysis of Judge's Legal Considerations in Determining Religion in Blora Number: 0056/Pdt.P/2015/PA.Bla. Regarding Rejection of Applications for Isbat Marriage and Child Origins

Isbat marriage or what is called marriage ratification, in the authority of the Religious Courts or the Syar'iyah Court is a voluntary case. Voluntary cases are types of cases in which there is only the applicant party, there is no opposing party and there is no dispute.¹ In the Marriage Law Number 1 of 1974 it is explained that a valid marriage is a marriage carried out according to Religion and Belief and must be registered at the Marriage Institution .

In the stipulation, it was stated that the Blora Religious Court Judge rejected all applications submitted by Petitioner I and Petitioner II in the determination Number: 046/Pdt.P/2015 to determine the isbat of sirri marriage and the determination of the child who had been born as the legal child of Petitioner I and Petitioner. II. The Panel of Judges is of the opinion that the case is a case that is the absolute authority of the Blora Religious Court as stated in Article 89 paragraph (1) of Law Number 7 of 1989 as amended

by Law Number 3 of 2006 and amended again by Law No. Law Number 50 of 2009.

Problems began to arise when Sukorini Tri Rahayu and Jawahir wanted to enroll their child in school, then in that registration the school required an official birth certificate as one of the requirements for school entry. So, from this problem, Sukorini Tri Rahayu and Jawahir wanted to make an official birth certificate for their child, namely a birth made by an authorized institution with the names of the father and mother written down.

Taking into account the facts that have been presented by Petitioners I and Petitioners II and the witnesses presented by the petitioners, the Panel of Judges concluded that Petitioner I and Petitioner II when they entered into a sirri marriage and finally had one child, Petitioner I was still the wife of a marriage which was first. Based on the facts in the trial, the Majelis Judge considered that the marriage which had been carried out by Petitioner I and Petitioner II was not in accordance with Article 9 of Law Number 1 of 1974 concerning the Marriage of Jo. Article 40 Compilation of Islamic Law. Law Number 1 of 1974 concerning Marriage in Chapter II regulates the Terms of Marriage which consists of 7 articles, namely articles 6 to 12, in article 9 it reads:

In this case, the writer sees that the unregistered marriage which had been carried out by Petitioner I and Petitioner II was legal according to Islamic Law, because before marriage, Petitioner I had been verbally divorced and left by her first husband without being given a living for 3 consecutive years. Thus, the husband of applicant I from the first marriage when pronouncing verbal divorce has fulfilled the pillars and conditions of divorce. The pillars according to Abdurrahman al-Jaziri in the book Drs. H. Djaman Nur, there are 4 pillars of divorce, namely husband, wife, sighat talak and volition.¹² While the conditions for divorce, the scholars agree that it is permissible for a husband to divorce his wife and the divorce is accepted if he is reasonable, mature and based on his own choice.¹³ So that as a result of the punishment the husband who said the word divorce according to Islamic law had fallen talak. In relation to the case of marriage between Petitioners I and Petitioners II, according to the author, the marriages that have been carried out by Petitioners I and Petitioners II according to positive law in Indonesia do not meet the requirements of the pillars of marriage that have been stipulated in the legislation. These conditions were not fulfilled because Petitioner I was still married to her first husband. The marriage was carried out with the condition that Petitioner I did not divorce and did not register his divorce beforehand from his first marriage. recognized if they have undergone a divorce trial process in the Religious Courts. So any form of divorce if it has not been tried in court, the divorce cannot be recognized by state law. Meanwhile, in Islamic law, a divorce which is done verbally is considered as a divorce. This is the dilemma between Positive Law in Indonesia and Islamic Law. On the one hand, positive law in Indonesia prohibits, on the other hand Islamic law allows and vice versa.

If reviewed in the determination of the Blora Religious Court Number: 0056/Pdt.P/2015/PA.Bla, the author sees that the status of applicant I at the time of the sirri marriage with Petitioner II was not bound by another man. This means that when Petitioner I carries out a sirri marriage with another man, Petitioner I has no obstacles to marry. In the Compilation of Islamic Law article 116, namely; "divorce can occur for reasons or reasons:

- a. One of the parties commits adultery or becomes a drunkard, compactor, gambler and others who are difficult to cure
- b. One of the parties leaves the other party for 2 (two) consecutive years without the permission of the other party without a valid reason or for other reasons beyond his control.
- c. One of the parties gets a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place
- d. One party commits atrocities or severe abuse that endangers the other party
- e. One of the parties gets a disability or disease as a result of not being able to carry out his obligations as husband or wife
- f. Between husband and wife there are continuous disputes and quarrels and there is no hope of living in harmony again in the household
- g. Husband violates taklik taklak

h. Religious conversion or apostasy that causes disharmony in the household.

So the writer sees that according to the Compilation of Islamic Law Article 116, the marriage of Petitioner I with her first husband has fulfilled the reasons for divorce. In article 116 (b) "one of the parties leaves the other party for 2 (two) consecutive years without the permission of the other party without a valid reason or for other reasons beyond his control". Thus, when Petitioner I entered into a sirri marriage with Petitioner II, his first marriage was divorced and Petitioner I was not in the Iddah period with his first husband. Although materially the isbat divorce case in the Indonesian legal system there is no isbat divorce, but isbat divorce can be equated with marriage isbat, which is both an application for ratification. In a sirri marriage, the person who performs the sirri marriage can apply for isbat marriage, and therefore equated with the person who has been divorced sirri should also be allowed to apply for the isbat divorce at the local Religious Court. So that the filing for divorce isbat later can also become a judge's jurisprudence.

So according to the author in the determination of the Blora Religious Court Number: 0056/Pdt.P/2015/PA.Bla. In this determination, the author does not agree with the judge's decision to reject the application for marriage isbat and the origin of the child. It would be nice if the application for isbat marriage and the origin of the child that had been submitted by Petitioner I and Petitioner II at the Blora Religious Court Number: 0056/Pdt.P/2015/PA.Bla was accepted by the Panel of Judges, namely by considering:

1. Article 116 (b) One of the parties leaves the other party for 2 (two) consecutive years without the permission of the other party without a valid reason or for other reasons beyond his control.
2. Divorce sirri which has been pronounced by the husband of Petitioner I from the first marriage and has been left for more than 3 years without being given physical and spiritual support
3. The sirri marriage (second marriage) which has been carried out by Petitioner I and Petitioner II according to Islamic Law has fulfilled the requirements and pillars of marriage
4. Compilation of Islamic Law Article 7 paragraph (3), namely marriages carried out by those who do not have marriage barriers according to Law number 1 of 1974. Because Article 7 paragraph (3) opens opportunities for people who carry out unregistered marriages to apply for marriage isbat in local Religious Court.
5. And the fate of children born from the result of the sirri marriage.

The determination of the Blora Religious Court Number: 0056/Pdt.P/2015/PA.Bla in the case of the application for marriage isbat and the origin of the child has not been able to provide justice and benefits for the justice-seeking community, therefore it is very crucial to determine the role of a judge's decision based on the thought In such cases, a judge must improve his ability and skills in making good and quality decisions, a good decision or determination is certainly not just a formulation, but must be supported and in accordance with the facts and evidence obtained during the trial process.

3.3 Legal Consequences on the Determination of Case Number: 0056/Pdt.P/2015/PA.Bla. Regarding the Protection of Children's Civil Rights

The 1945 Constitution of the Republic of Indonesia in Article 28B paragraph (2) which reads: "every child has the right to survival, growth and development and the right to protection from violence and discrimination". reads: "everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law"²⁶. Then article 27 paragraph (1) which reads: "all citizens have the same position in law and government and are obliged to uphold the law and government without exception".

In addition, legal protection for children has been guaranteed in Law number 23 of 2002 concerning child protection in article 1 paragraph (2) which reads: "Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, and develop. develop and participate optimally in accordance with human dignity and respect, and receive protection from violence and discrimination". On November 20, 1989 the United Nations has ratified the Convention on the Rights of the Child (child rights convention), this convention has been ratified by many countries including the Republic of Indonesia. This means that everywhere in the world it is mandatory to ensure the protection of children.

So whatever the form, every child born in the Republic of Indonesia must be given legal protection regardless of whether the child born is a legitimate child or a child out of wedlock because the Constitution of the Republic of Indonesia expressly guarantees that legal protection is the right of every citizen of the Republic of Indonesia. The law must be placed as a protector and shield for every citizen, to anyone including children born from unregistered marriages, such as due to sirri marriages. As for the legal consequences of the rejection of the application for marriage isbat and the origin of the child determination Number: 0056/Pdt.P/2015/PA.Bla, namely

1. Legal Consequences on Children's Material Rights

a. Inheritance

The general rule that applies in inheritance law is people who have inheritance rights, namely people who have kinship relationships because of legal marriages. and by any law. Regarding the determination of Number: 046/Pdt.p/2015/PA.Bla. This is because all applications are rejected, the legal consequences of the determination of the Panel of Judges in inheritance law, the child is not entitled to the inheritance from his biological father.

b. Livelihood Rights

The provision of a living in this case is a living for the child, in the form of maintenance costs, the cost of the child's basic needs, the cost of children's education and all things needed to support the continuity and development of the child to become an adult or independent. Article 45 (1) stipulates that both parents are obliged to maintain and educate their children as well as possible. Furthermore, Article 49 (2) also states that even though parents are deprived of their powers, they are still obliged to provide maintenance costs for the child. A stricter provision is stated in article 41, namely that the father is responsible for all costs of maintenance and education needed by the child, if the father is in fact unable to fulfill these obligations, The court can determine that the mother will share the costs. So the child should be in the decision Number: 046/Pdt.p/2015/PA.Bla. The child has the right of inheritance from the biological father, but because the application is rejected, the legal consequence of the rejection of the entire application is that the child who has been born as a result of a sirri marriage is not entitled to the maintenance of the male parent as the biological father.

2. Legal Consequences on the Immaterial Rights of Children

a. Trust Rights

The person who is entitled to become a guardian is a father who has a kinship relationship, namely a child born in or as a legal marriage according to article 42 of the Marriage Law.³⁵ In Islamic fiqh it is stated that the guardian of marriage must be a man. This means that the marriage guardian must be a man from your family line. Therefore, if the child is born with a girl who wants to marry, the one who marries is the guardian of the judge.³⁶ So the cause of the guardianship right is due to the existence of a legal marriage bond and the child was born in a marriage bond.

b. Hadhanah's Rights

Hadhanah or maintenance is taking care of small children, both male and female, or people who cannot distinguish or manage their affairs, and guard them for their benefit, and guard them from everything that hurts and harms them, and educates them physically, mentally and intellectually. ³⁹. Child care includes the economy, education and everything that becomes the basic needs of children.

c. Children's Lineage Rights

Lineage is one of the strong foundations that supports the establishment of a family, because lineage binds family members by blood ties. A child is part of the father and the father is part of the child. The definition of a legitimate child in Islamic law is a child born from a legal marriage, which will later bear the name of his father.

4. CONCLUSION

The legal considerations of the Panel of Judges against the determination of the Blora Religious Court Number: 0056/Pdt.P/2015/PA.Bla namely Law No. 1 of 1974 article 9 Jo. Article 40 of the Compilation of Islamic Law "should not marry a woman who is still someone else's wife". From the legal considerations of the Panel of Judges in the case of the application for marriage isbat and the origin

of the child is not in accordance with Islamic law. This is because when Petitioner I entered into a sirri marriage with Petitioner II, the husband of Petitioner I had previously divorced and left Petitioner I for more than 3 consecutive years. Thus, the husband of applicant I from the first marriage when pronouncing verbal divorce has fulfilled the pillars and requirements for divorce, namely; husband, wife, sighat divorce and will. Other than that, According to the author, this determination has not been able to provide justice and benefits for people seeking justice. That is not being able to provide protection, especially to the child, even though the child was born as a result of a legal sirri marriage, it's just that the sirri marriage according to state law, the conditions and pillars are not fulfilled. This kind of prohibition or condition is actually a temporary prohibition, therefore the Panel of Judges should review the marriage ban. So in this case, it would be better if the Panel of Judges did not only look at the procedural law which only concerned with the formality aspect, but the Panel of Judges also looked at the case from the fiqh perspective. The legal consequences for the determination of the Blora Religious Court Number: 0056/Pdt.P/2015/PA. Bla against the rejection of the application for isbat marriage and the origin of the child, namely the child born as a result of the sirri marriage does not have civil rights from his biological father. Whereas children born from legal marriages should have civil rights with their biological fathers. For example; livelihood rights, inheritance rights, hadhanah rights, and guardianship rights.

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