

RINGKASAN

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Perlindungan Hukum Terhadap Anak Akibat Pembatalan Perkawinan Orang Tua Sedarah (*Incest*) Ditinjau Menurut Undang-Undang Perlindungan Anak Dan Undang-Undang Perkawinan

(Dr. Faisal, S.Ag.,S.H.,M.Hum. dan Fauzah Nur Aksa, S.Ag.,M.H.)

Perkawinan sah apabila dilakukan menurut hukum masing-masing agamanya dengan memenuhi seluruh ketentuan yang telah diatur dalam peraturan perundang-undangan. Larangan perkawinan diatur dalam Pasal 8 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. Permasalahan dalam penelitian ini adalah perlindungan hukum terhadap hak anak akibat pembatalan perkawinan orang tua sedarah dan akibat hukum terhadap anak akibat pembatalan perkawinan orang tua sedarah. Tujuan dari penelitian ini untuk mengetahui dan menjelaskan perlindungan hukum terhadap hak anak akibat pembatalan perkawinan orang tua sedarah dan juga untuk mengetahui akibat hukum terhadap anak akibat pembatalan perkawinan orang tua sedarah.

Metode penelitian yang digunakan dalam penelitian ini adalah penelitian hukum normatif. Pendekatan kualitatif yang bersifat deskriptif dan berbentuk analisis. Sumber hukum yang digunakan adalah primer, sekunder dan tersier.

Hasil penelitian adalah anak wajib mendapatkan perlindungan sebagaimana diatur dalam perundang-undangan. Menurut Undang-Undang Nomor 35 Tahun 2002 tentang Perlindungan Anak Pasal 21 memberikan jaminan perlindungan hak kepada setiap anak. Pasal 45 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan memberikan peran kepada orang tua dalam memberikan hak dan kewajibannya kepada anak. Pembatalan perkawinan tidak berlaku surut terhadap anak yang dilahirkan dan tidak akan memutuskan hubungan dengan orang tuanya meskipun perkawinan dibatalkan. Perkawinan yang dilakukan dengan ketidaksengajaan menurut pandangan *fiqih*, Al-Jaziri tidak dianggap perbuatan zina, serta anak dapat dinasab kepada ayahnya, mendapatkan waris dari kedua orang tuanya, apabila adanya kesengajaan maka dapat dilihat pada keputusan MK No.46/PUU-VIII 2010 nasab anak tetaplah anak luar kawin yang hanya mempunyai hubungan dengan ibunya, dan Pasal 186 KHI mengatakan bahwa waris sendiri kembali kepada ibunya serta perwaliannya menggunakan wali hakim sebagaimana dijelaskan dalam Pasal 23 ayat 1 Kompilasi Hukum Islam.

Pencegahan perkawinan sedarah, perlu sosialisasi oleh Pemerintah mengenai aturan larangan terkait pelaksanaan perkawinan ini, agar masyarakat lebih mengetahui dampak jika aturan tersebut dilanggar dan dampak jangka panjang yang di akibatkan, serta orang tua harus memberikan pendidikan moral dan agama kepada anak sejak kecil.

***Kata Kunci:* Perkawinan Sedarah, Perlindungan Anak.**

SUMMARY

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Legal Protection for Children Due to the Annulment of the Marriage of Their Blood Parents (Incest) Reviewed According to the Child Protection Law and the Marriage Law

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Marriage is valid if it is carried out according to the laws of each religion by fulfilling all the provisions stipulated in the laws and regulations. The regulation regarding the prohibition of marriage is regulated in Article 8 of Law Number 1 of 1974 concerning Marriage explained that "Marriage between a man and a woman is prohibited if blood relations are in the lower or upper lineage, there is blood relations in the lineage, having sexual intercourse, breastfeeding, or there is kinship". The problem in this study is the legal protection of children's rights due to the annulment of blood parent marriages and the legal consequences for children due to the annulment of blood parent marriages. The purpose of this study is to know and explain the legal protection of children's rights due to the annulment of blood parent marriage and also to determine the legal consequences for children due to the annulment of blood parent marriage.

The research method used in this study is normative legal research. A qualitative approach that is descriptive and in the form of analysis. The sources of law used are primary, secondary and tertiary.

The research findings indicate that children are entitled to protection as regulated by the laws. According to Law Number 35 of 2002 concerning Child Protection, Article 21 guarantees protection of the rights of every child. Article 45 of Law Number 1 of 1974 concerning Marriage assigns roles to parents in granting rights and obligations to their children. The annulment of marriage does not retroactively affect children born from the marriage and does not sever the relationship with their parents even if the marriage is annulled. Marriage that occurs unintentionally according to fiqh perspective, as Al-Jaziri pointed out, is not considered adultery, and the child can be attributed to their father, inheriting from both parents. However, if there is intentionality, it can be seen in the decision of the Constitutional Court No. 46/PUU-VIII 2010, where the lineage of the child remains with the unmarried mother, and Article 186 of the Compilation of Islamic Law states that inheritance returns to the mother and her guardianship is conducted through the judge's guardian as explained in Article 23 paragraph 1 of the Compilation of Islamic Law.

In preventing incestuous marriages, the government needs to provide socialization about the prohibitions related to the implementation of such marriages, so that the public is more aware of the consequences if these rules are violated and the long-term effects that result. Additionally, parents should provide moral and religious education to their children from an early age.

Keywords: *Inbreeding, Child Protection.*