

STATUS OF CHILDREN OF AHMADIYYA MARRIAGE BASED ON THE PERSPECTIVE OF ISLAMIC SHARIA AND LAW NO. 1/1974

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Abstract : This research focuses on the status and position of children resulting from marriages between Muslim women and Ahmadiyya men or vice versa. In terms of Islamic law, the Indonesian Ulama Council said that the Ahmadiyya sect is not a Muslim religion. If Ahmadiyya marry Muslim women, it will have implications for the status of their children, namely the status of children from marriages with Ahmadiyya from the perspective of the Islamic Shari'at Court with positive law. In this case the positive law in Indonesia indirectly gives magnitude norms so that it has an impact on the status of interfaith marriages so that all children born from these marriages, their civil relations must be registered with the civil registry. Thus, this shows that the civil rights of children out of wedlock which have implications for civil rights, nafaqah (living expenses), guardianship, and inheritance, are obtained from the father and his father's family as long as these problems only apply to same-religious marriages. As for civil rights to children out of wedlock who are not based on out of wedlock such as the result of adultery, incest, living together and the like or even interfaith marriages, the civil rights are only for the mother and the mother's family.

Keywords : Ahmadiyya, Islamic Shari'ah, Status Of Children

Abstrak : Penelitian ini berfokus pada status dan kedudukan anak hasil perkawinan antara perempuan muslim dengan laki-laki Ahmadiyah atau sebaliknya. Dari segi hukum Islam, Majelis Ulama Indonesia menyatakan aliran Ahmadiyah bukanlah agama Islam. Jika seorang Ahmadi menikah dengan perempuan muslim, maka akan berimplikasi pada status anak-anaknya, yaitu status anak hasil pernikahan dengan Ahmadiyah dalam perspektif Pengadilan Syari'at Islam dengan hukum positif. Dalam hal ini hukum positif di Indonesia secara tidak langsung memberikan besaran norma sehingga berdampak pada status perkawinan beda agama sehingga semua anak yang lahir dari perkawinan tersebut, hubungan keperdataannya harus dicatatkan pada catatan sipil. Dengan demikian, hal ini menunjukkan bahwa hak keperdataan anak di luar nikah yang berimplikasi pada hak keperdataan, nafaqah (biaya hidup), perwalian, dan warisan, diperoleh dari ayah dan keluarga bapaknya sepanjang permasalahan tersebut hanya berlaku pada orang yang sama. pernikahan agama. Adapun hak-hak keperdataan terhadap anak di luar nikah yang bukan berdasarkan perkawinan di luar nikah seperti hasil perzinahan, inses, hidup bersama dan sejenisnya atau bahkan perkawinan beda agama, maka hak keperdataan tersebut hanya dimiliki oleh ibu dan keluarga ibu saja.

Kata Kunci : Ahmadiyah, Syariat Islam, Status Anak

INTRODUCTION

Ahmadiyya has existed in Indonesia since 1926, even in 1953 it was legalized based on the Decree of the Minister of Justice of the Republic of Indonesia No. JA /23/ 13 dated March 13, 1953, which was later published in the Supplement to the State Gazette of the Republic of Indonesia No.26 dated March 31, 1953, thus becoming proof of legality as a religious community that must be recognized. Many Muslims are misled by the teachings of Ahmadiyya so they think they are only changing their understanding from one of the schools of thought within Islamic teachings so that they can enter into marriages as marriages between views, sects or schools of thought exist in Islamic teachings. Currently, followers of the Ahmadiyya sect are spread all over the world, including in Indonesia, where up to now there have been 75,000 people, and these have been passed down for generations decades ago. They live in the midst of the Muslim community, socialize and even establish family relationships through marriage, in the end Muslim women follow their husbands and are officially married before the prince and are recorded in the marriage certificate at the KUA (Office of Religious Affairs). Likewise with Muslim men, not a few of them married Ahmadiyya women and were officially married before the prince and recorded in the marriage certificate at the KUA (Office of Religious Affairs).

The Indonesian Ulema Council (MUI) issued a fatwa regarding the deviance of the Ahmadiyya sect in the VII MUI National Conference (MUNAS) which was held on 19 to 22 Jumadil Akhir 1426 H coinciding with 26 to 29 July 2005 AD (MUI Fatwa, 2005) . The Indonesian Ulema Council (MUI) in the Second National Conference issued a fatwa on Mixed Marriages which took place from 11 to 17 Rajab 1400 H coinciding with 26 May to 1 June 1980 AD (MUI Fatwa, 2005).

Given the breadth and complexity of the problems related to matters regarding the status of children from official marriages but their beliefs deviate from the *usuludi*, for example (a) The problem of shamanism, (b) The problem of understanding liberalism, (c) The Shia problem, (d) The Wahhabi problem, (e) Problems of other deviant sects, so in this study the author will limit the problem to (1) What is the Status of Children from Marriages of the Ahmadiyya Sect from an Islamic Perspective, (2) What is the procedure for the status of children from marriages of Ahmadiyya from a Positive Law perspective? and (3) What are the legal consequences for children resulting from the Ahmadiyya sect in the perspective of Islamic law?

RESEARCH METHODS

Arikunto (2010: 203) explains that the research method is a method used by researchers in collecting research data. Meanwhile Alwasilah (2009: 149) reveals that the research method is a tool or way to answer research questions. Thus the research method is a method or tool used by researchers to answer a series of questions that are formulated in the formulation of the problem.

In this study, researchers used a descriptive qualitative method. Arikunto (2010: 151) explains, a descriptive study is collecting as much data as possible about the factors that are supporting the research. Meanwhile, Sukardi (2004: 14) adds that in a descriptive study, researchers explore, describe, with the aim of being able to explain and predict a phenomenon that applies on the basis of data obtained in the field. Moleong (2000: 6) states that reports from descriptive studies will be compiled in the form of data quotations to provide an overview of the presentation of the report.

In this study, researchers used a literature study approach, namely by researching and understanding the focus of research through books, documents or other written sources that are relevant and support regulations related to the status and position of children from marriages of the Ahmadiyya sect based on the perspective of Islamic law and Law no. 1 year 1974. Guba and Lincoln (in Alwasilah, 2009:155) distinguish between documents and records. Records are all written records that have been prepared by a person or institution to prove an event or present calculations, while documents are written or filmed items. Apart from that, the researcher also collects documents related to the Ahmadiyya sect, starting from history to its regulations. Researchers also use library sources from journals, research reports, scientific magazines, newspapers and books that are relevant to the field under study to enrich the research data conducted (Sukardi, 2004: 34).

Mardalis (2006) states that library research aims to collect data and information with the help of various materials found in the library, such as books, magazines, documents, notes, historical stories and others. In carrying out the analysis, the researcher uses the theory of Miles and Huberman (2018) which begins with data reduction, that is, the researcher looks for data that is relevant or supports the topic being discussed. The data obtained will be summarized according to the information needed. The next stage is to present the data. In this stage, the researcher interprets or interprets the data sources to obtain facts about the study to be discussed. Once collected, the data is arranged in a systematic and structured manner and as the final step in this literature study, the researcher draws conclusions.

RESULTS AND DISCUSSION

Interfaith Marriage According to Positive Law in Indonesia

Prior to the promulgation of Law No. 1 of 1974 concerning Marriage, the issue of interfaith marriage is carried out based on mixed marriage regulations (*Regeling op de Gemengde Huweliken*, commonly abbreviated as GHR) contained in S.1898 Number 158. Article 1 of the regulation states that "Marriage in Indonesia is between two people who each subject to different laws from each other, called mixed marriages. Paragraph 2 of the article explains that differences in religion, nationality or origin are not a barrier to a marriage. In carrying out life for a husband and wife who are married to differences in religion or nationality, the law is determined the same, as stated in Article 2 of the GHR, namely *"In a mixed marriage, the wife regarding civil law and public law, as long as the marriage lasts, complies with the applicable law for husbands"*.

Since the enactment of Law No. 1 of 1974 concerning Marriage, the solution provided by the regulations mentioned above has been repealed and declared no longer valid. In the latter law, the solution provided is only a small part of the differences between husband and wife candidates, namely if they differ in nationality or only nationality. This is regulated in Article 57 UUP which reads "What is meant by mixed marriage in this law is a marriage between two people who are subject to different laws in Indonesia, because of differences in nationality and one of the parties is a foreign citizen and one of the parties is an Indonesian citizen" . For people with different nationalities who enter into mixed marriages, they can obtain citizenship from their husband or wife and can also lose their citizenship, according to the methods that have been determined in the citizenship law of the Republic of Indonesia (Article 58 UUP).

So, there is no way out given religious differences for husband and wife candidates based on Article 57 UUP, because the provisions of this article only deal with differences in nationality. This is understandable because the validity of a marriage (including mixed marriages) will be determined based on Article 2 paragraph 1 of the UUP which states "Marriage is legal, if it is carried out according to the laws of each religion and belief". The discussion on the understanding of the article has been conveyed by the researcher before.

However, the provisions of Article 56 (1) UUP can overcome the difficulties of Indonesian citizens who carry out interfaith marriages. The article reads, *"Marriage held outside Indonesia between two Indonesian citizens or an Indonesian citizen and a foreigner is valid if it is carried out according to the law in force in the country where the marriage took place and for Indonesian citizens it does not violate the provisions of the law"*.

By emphasizing the element of the requirement "according to the law in force in the country where the marriage took place", it can be seen that there are two possibilities, namely: (1) If the country where the marriage took place allows interfaith marriages, it means that the Indonesian citizen can carry out interfaith marriages in there. (2) If on the other hand, the regulations are the same as Indonesia, namely prohibiting interfaith marriages, then the Indonesian citizen cannot carry out interfaith marriages in that country. Generally, countries that allow interfaith marriages are western countries. Furthermore, in Law No. 1 of 1974, concerning Marriage, Article 2 paragraph 1, it has been stipulated "Marriage is valid if it is carried out according to the laws of each religion and belief". From this article it can be concluded that wherever Indonesian citizens get married, its validity still depends on the regulations of that person's religion.

In terms of interpreting Law No. 1 of 1974 relating to interfaith marriage, there are several opinions:

1. Law No. 1 of 1974 has regulated interfaith marriages where the validity of the marriage depends on the rules that apply according to the religion adhered to. Article 2 paragraph 1, has stipulated that "*Marriage is legal if it is carried out according to the laws of each religion and belief*".
2. Some people still think that interfaith marriages in Indonesia are legally valid, this is based on GHR S.1898 Number 158. Article 2 which reads "*Differences of religion, nationality or origin are not a barrier to a marriage*".
3. There are no standard rules regarding interfaith marriages, so Law No. 1 of 1974 still needs improvement and refinement in relation to interfaith marriages.

The researcher looks at what is regulated in positive law, in this case the problem of interfaith or sect marriage has not been regulated by law. Because article 2 paragraph 1 of Law Number 1 concerning Marriage states that "*Marriage is valid if it is carried out according to the laws of each religion and belief.*" This confirms to us that Indonesian positive law does not accommodate and does not recognize interfaith marriages. If indeed the Ahmadiyya sect wants to carry out marriages with Muslims, then in order for their marriages to be valid in the eyes of the law, they must carry out marriages abroad by seeking a country that does not require religion in their marriage laws.

From the description above, it can be concluded that Ahmadiyya adherents are not legally married according to Islamic law. Then if a marriage has taken place which has an impact on the status of the children of the marriage, then the status of the children of the marriage is like a child from adultery. From the understanding of children out of wedlock according to Islamic law, the status of these children is as follows:

1. Civil status will be assigned to his mother and his mother's family.
2. Nafaqah (support) is not from the man who caused his birth (his biological father).
3. A biological father cannot be a marriage guardian.
4. Inheritance status cannot be mutually inherited with his biological father and his father's family.

Thus, the legal implications are:

1. Civil

Civility only to his mother and his mother's family. This is in line with Law No. 1 of 1974 concerning Marriage Article 43 paragraph 1: "*A child born out of wedlock only has a civil relationship with his mother and his mother's family.*"

2. Nafaqah (support)

Not having a nafaqah relationship with the man who caused the birth (biological father), because it was not through a legal marriage so that the position of the child is a child of adultery, namely a child born as a result of sexual intercourse outside of marriage that is legal according to religious provisions, and is a finger (crime crime). Regarding nafaqah, at least the government must give ta'zir (punishment) to a man who has committed adultery which caused his birth by obliging him to provide for the child's life needs and provide assets after he dies through a mandatory will. The obligatory will is the ulil amri (ruler) policy which requires the man who caused the birth of an adulterous child to bequeath to give assets to the child resulting from adultery after he dies (General Provisions of the Fatwa of the Indonesian Ulema Council Number 11 of 2012 concerning the Position of Adultery Children and their Treatment). This is all solely to protect the child, not to legitimize the child's kinship relationship with the man who caused the birth.

3. Trusteeship

The position of the biological father is not the same as the legal biological father, especially in the field of guardianship, more specifically the marriage guardian. So that it has implications for the ineligibility of the biological father to become the marriage guardian for the daughter of the result of adultery.

4. Inheritance

In the area of inheritance, there is no difference between the scholars of the four schools of thought, namely the Hanafi School (Nu'man bin Thabit at-Taymi), the Maliki School (Malik bin

Anas), the Shafi'i School (Muhammad bin Idris Asy-Syafi'i), the Hambali School (Ahmad bin Hambal) regarding inheritance which has implications for children resulting from marriages of the Ahmadiyya sect and biological fathers cannot inherit from each other.

The researcher looks at what the Indonesian Ulema Council (MUI) fatwa stated in terms of mixed marriages being unlawful. Then in *Junto* with the fatwa of the Indonesian Ulema Council (MUI) regarding the deviance of the Ahmadiyya sect. So, it is clear that marriages between Muslims and the Ahmadiyya sect are prohibited. If it has been done, it will impact on the status of the child from the marriage.

CONCLUSION

The results of this study indicate that the status of children from Ahmadiyah marriages from the perspective of Islamic Shari'a is that they do not have civil relations with their biological father and his father's family. The status of a child resulting from an Ahmadiyah marriage from a positive legal perspective is having a civil relationship with his mother and his mother's family as well as his biological father and his father's family. The legal consequence of a child resulting from an Ahmadiyya marriage from an Islamic Shari'ah perspective is that his civil rights only apply to his mother and his mother's family. Meanwhile, from a positive legal perspective, his civil rights concern the man who caused his birth (his biological father) and his father's family.

Meanwhile, the legal implication for children resulting from marriages with the Ahmadiyya sect from the perspective of Islamic law is that there is no civil relationship with the man who caused the birth (biological father), cannot inherit each other, and the man who caused the birth (biological father). it cannot be a Marriage Guardian against him. While the legal implications for marriage outcomes with the Ahmadiyya sect from the perspective of Positive Law are civil relations with the man who caused the birth (his biological father), can inherit each other, can be a living, and guardianship can be passed on to him through the general court.

REFERENCES

- Abdullah, Boedi dan Beni Ahmad *Saebani*. (2013). *Perkawinan Perceraian Keluarga Muslim*. Bandung: *Pustaka Setia*.
- Ahmad, Hazrat Mirza Bashiruddin Mahmud. (1989). *Da'watul Amir*. terj. Sayyid Shah Muhammad al-Jaelani, R. Ahmad Anwar. Bandung: Jemaat Ahmadiyah Indonesia, 1989
- Alwasilah*, A. Chaedar. (2009). Pokoknya Kualitatif Dasar-dasar Merancang dan Melakukan Penelitian Kualitatif. Jakarta : Pustaka Jaya. Hlm 149.
- Anwar Haryono. (2005). *Keluwesanan dan Keadilan Hukum Islam*. Jakarta: Bulan Bintang
- Anwar Dessy. (2005). *Kamus Lengkap Bahasa Indonesia*. Surabaya : Amelia. Hlm. 225.
- Arikunto*. (2010). *Prosedur Penelitian: Suatu Pendekatan Praktek*. Jakarta: Rineka Cipta. Hlm 203.
- Hazrat Mirza Basyirudin Mahmud Ahmad, *Da'watul Amir*, diterjemahkan oleh Sayyid Shah Muhammad al-Jaelani, (Tanpa Tempat : Yayasan Wisma Damai, 1989), hlm. xi
- Mardalis (2006). *Metode Penelitian : Suatu pendekatan proposal*. Jakarta : Bumi aksara.
- Miles, M. B., Huberman, A. M. and Saldana, J.* (2018). *Qualitative Data Analysis*. (Fourth Ed). SAGE Publication. Ltd.
- Moleong, J* (2000). *Metodologi Penelitian Kualitatif*, Bandung: PT Remaja. Rosdakarya.
- Sidang Tahunan MPR Tahun 2000 telah menetapkan Ketetapan No. III/MPR/2000 tentang Sumber Hukum dan Tata Urutan Perundang-undangan
- Simorangkir, J.C.T, S.H., Drs. Rudy T. Erwin, S.H., J.T. Prasetyo, S.H. (2010). *Kamus Hukum*, Jakarta : Sinar Grafika, Cet. Ke-14, hlm. 69.
- Soerjono Soekanto.(1983). Faktor-faktor yang mempengaruhi penegakan hukum. Jakarta: Grafindo Persada.
- Subagyo, J.* (2011). *Metode Penelitian Dalam Teori Dan Praktik*. Jakarta: Rineka Cipta.
- Sukardi.* (2004). *Metodologi Penelitian Pendidikan: Kompetensi dan Praktiknya*. Jakarta: Bumi Aksara. Hlm 14.
- Yayasan Penyelenggara Penterjemah/Penafsir Al-qur'an (1971). *Al-qur'an dan Terjemahnya* Jakarta : Departemen Agama Republik Indonesia. Hlm. 644.

MUI fatwa

Fatwa of the Indonesian Ulema Council Number: 11/Munas VII/Mui/15/2005 Concerning the Ahmadiyah sect.

MUI Fatwa in the Second National Conference of 1400/1980 concerning Mixed Marriages.

Fatwa of the Indonesian Ulema Council Number 11 of 2012 concerning the Status of Children Resulted from Adultery and Their Treatment.

Laws

General Provisions of the Fatwa of the Indonesian Ulema Council Number 11 of 2012 concerning the Status of Children Produced of Adultery and Their Treatment. p.9

Decree No. III/MPR/2000 concerning Sources of Law and Order of Legislation

Decree of the Minister of Justice of the Republic of Indonesia No. JA /23/13 dated 13 March 1953 concerning Ahmadiyah

Supplement to the State Gazette of the Republic of Indonesia No. 26 dated 31 March 1953

Law No. 1 of 1974 concerning Marriage