

Birth Certificate As Authentic Evidence Of Children's Origin

Syahrul Bakti Harahap

Al Washliyah Nusantara Muslim University, Jl. Garu II No. 93 North Sumatra, Indonesia

ARTICLE INFO

Article history:

Received Oct 01, 2022
Revised Oct 08, 2022
Accepted Oct 29, 2022

Keywords:

Birth Certificate,
Evidence,
Child Origin.

ABSTRACT

Birth certificate is a letter made based on a birth report submitted within a maximum of 60 (sixty) working days for Indonesian citizens, and 10 (ten) working days for foreign nationals. Based on Article 55 Paragraph (1), Law No.1 of 1974, concerning Marriage, it is stated that the origin of a child can only be proven by an authentic birth certificate issued by an authorized official. This study analyzes children born after their mothers are pregnant and newly married, whether the child is legitimate based on an authentic deed issued by local officials in this case is the Population and Civil Registry Office (DUKCAPIL), where the child was born. This study uses a normative juridical legal methodology, only using literature research, while the nature of the research used in this research is descriptive analysis which only describes legal norms, legislation related to Article 55 Paragraph (1) of Law no. 1 of 1974, concerning Marriage. Dance Based on the research that has been done, the legal study of Article 55 Paragraph (1), Law No.1 of 1974, concerning Marriage, the child is a legal child, based on the birth certificate, unless there is a denial from the father who married his mother.

ABSTRAK

Akata kelahiran adalah surat yang dibuat berdasarkan laporan kelahiran yang disampaikan dalam waktu selama-lamanya 60 (enam puluh) hari kerja bagi warganegara Indonesia, dan 10 (sepuluh) hari kerja bagi warganegara asing. Berdasarkan Pasal 55 Ayat (1), Undang-Undang No.1 Tahun 1974, tentang Perkawinan menyebutkan bahwa asal usul seorang anak hanya dapat dibuktikan dengan akta kelahiran yang autentik yang dikeluarkan oleh pejabat yang berwenang. Penelitian ini menganalisis anak yang lahir setelah ibunya hamil baru menikah, apakah anak sah berdasarkan akta autentik yang dikeluarkan oleh pejabat setempat dalam hal ini adalah Dinas Kependudukan dan Catatan Sipil (DUKCAPIL), dimana anak dilahirkan. Penelitian ini menggunakan metodologi hukum yuridis normatif, hanya menggunakan penelitian pustaka, sedangkan sifat penelitian yang digunakan dalam penelitian ini adalah bersifat deskriptif analisis yang hanya menggambarkan norma hukum, perundang-undangan yang berhubungan dengan Pasal 55 Ayat (1) Undang-Undang No. 1 Tahun 1974, tentang Perkawinan. Berdasarkan penelitian yang telah dilakukan, kajian hukum Pasal 55 Ayat (1), Undang-Undang No.1 Tahun 1974, tentang Perkawinan, anak tersebut adalah anak sah, berdasarkan akta kelahiran, kecuali ada penyangkalan dari ayah yang menikahi ibunya.

This is an open access article under the [CC BY-NC](https://creativecommons.org/licenses/by-nc/4.0/) license.



Corresponding Author:

Syahrul Bakti Harahap,
Al Washliyah Nusantara Muslim University,
GMWX+7Q7, Harjosari I, Kec. Medan Amplas, Kota Medan, Sumatera Utara 20217
Email: syahrulbakti@umnaw.ac.id

I. INTRODUCTION

A birth certificate is a letter made based on a birth report submitted within a maximum of 60 (sixty) days for Indonesian citizens, and 10 (ten) working days for foreign nationals. Marriage is an inner and outer bond between a man and a woman which aims to form a happy and eternal family (household) based on the One Godhead.

One of the goals of marriage apart from fostering a *sakinah* and *mawaddah warohmah* family is about the existence of offspring in the household. The origin of the child can only be proven by an authentic deed, issued by an authorized official. In this case, marriages often occur which are preceded by a legal event in which the mother becomes pregnant first and then the child is born. This problem will cause legal problems as a result of legal events from children.

Based on Islamic law, the legal position of the child is that the marriage carried out by the two parents of the child is still valid as long as the person holding the marriage is not prohibited by sharia law. However, the status of the child will be a problem where according to the concept of Islamic law, even though the child is born in a legal marriage, he does not have a kinship relationship with the father. So that the child is not the heir of his father, then there is no blood relationship with his father. The problem then is if the child has a sister who when he grows up wants to marry, the child is not the legal guardian of his brother.

Article 100. Compilation of Islamic Law (KHI), states that children born outside of marriage only have *nasab* with their mother and their mother's family. So, those who are included in the class of children born outside a legal marriage are: Children born to women who do not have a legal marriage bond with the man who impregnated them, Children born to women whose pregnancy was the result of rape by one or more persons, Children born by *di li'an* (denied by her husband) by her husband. The child who was born by the wrong person (misguided) thought her husband was not, Children born to women whose pregnancies are due to forbidden marriages such as marrying siblings or breastfeeding.

Article 27 Paragraph (1) and Paragraph (2), Law No. 23 of 2002, states that the identity of a child must be given from birth. The identity as referred to in Paragraph (1) shall be stated in the birth certificate. Decision of the Constitutional Court dated February 17, 2012, regarding children out of wedlock as stated in Article 43 Paragraph (1) of Law NO. 1 of 1974 concerning marriage, states that children born out of wedlock have a civil relationship with their mother and their mother's family as well as with a man as their father.

Problems that always arise in a society that adheres to the religion of Islam, regarding the legal position of children. If the child is born to a pregnant mother who has just married, the community still considers it a child out of wedlock or an illegitimate child from both parents. It is this description of the problem that makes researchers interested in making a study entitled "Legal Studies on Article 55 Paragraph (1), Law no. 1 of 1974 concerning Marriage".

II. RESEARCH METHODS

The method used in this research is normative juridical which only uses library data. While the nature of the research is descriptive. Which describes the legal norms and legislation relating to birth certificates as authentic evidence in proving the position of origin of the child whether the child is legal or not based on Article 55 Paragraph (1) of Law no. 1 of 1974, concerning marriage and the perspective of the Compilation of Islamic Law and Islamic Law.

III. DISCUSSION RESULTS

The position of the child is based on Article 55 Paragraph (1), Law No.1 of 1974, concerning Marriage.

Children are the dream of everyone who does marriage, but not infrequently in marriage it often causes problems. There are often legal problems after marriage regarding the origin of a child when one of his parents dies. Based on Article 55 Paragraph (1) of Law no. 1 of 1974, states that the origin of a child can only be proven by an authentic deed issued by an authorized official. not based on his parents' marriage. Law No. 1 of 1974, concerning Marriage, only adopts children outside of marriage and legal children. Where an illegitimate child is a child born outside a legal marriage, while a legitimate child is a child born in a legal marriage.

Constitutional Court regarding Article 43 of Law no. 1 of 1974, regarding marriage, has examined the article above regarding whether it is contrary to the 1945 Constitution, based on the decision of the Constitutional Court no. 46/PUU-VIII/2020, changing the phrase, a child's civil relationship with his biological father, namely a child born outside a legal marriage, has a legal relationship with his father as long as it can be proven by science and technology. So children born to mothers who are pregnant first are newly married as long as the birth certificate issued by the competent authority is a legal child even though the mother is pregnant first and then married

The Position of Children Based on the Concept of the Compilation of Islamic Law (KHI)

In addition to Law no. 1 of 1974, regarding marriage, the law that applies positively is the Compilation of Islamic Law (KHI) which regulates the position of children. Compilation of Islamic Law Categorizing children according to the civil law relationship between children and their parents is almost the same as. Marriage Law No. 1 of 1974 concerning marriage.

Article 100 of the Compilation of Islamic Law (KHI), states that children born from legal marriages only have a nasab relationship with their mother. Referring to the rule of law above, then based on the Compilation of Islamic Law as long as the child is born after the mother is married, it is not dependent on the length of time then it is still considered a legitimate child. So that children born to mothers who are pregnant first, just married as long as they are born within the period of marriage after marriage, are considered legitimate children.

According to the Compilation of Islamic Law, children born out of wedlock include:

- a. Children born as a result of adultery with Muhson and adultery of Goiru Muhson, children out of wedlock.
- b. A mula'ana child, is a child born in the li'an by the husband.
- c. A doubtful child is a child who has no kinship relationship with a man who has intercourse with his mother.

Position of Children Based on Islamic Law

Islamic law subdues that the laws and regulations are from Allah Subahanahu Wataala, children out of wedlock only receive inheritance from those who are not good. Being a victim of something bad and unusual, he accepted. People have their own views. Islam classifies the position of children, among others:

- a. Legal children, children born in or as a result of a legal
- b. marriageChildren born from underhanded marriages (sirri marriages)
- c. Children born from biological relationships between men and women without marriage ties (children of adultery)

So a child who is born of adultery, has no kinship relationship and inheritance relationship with the man who has committed adultery with his mother, the child is only related to the mother who gave birth to him. However, in order to provide legal protection for the basic rights resulting from adultery, which in principle are born pure and do not carry inherited sins, the Indonesian Ulema Council (MUI), through its Fatwa No. 1 of 2012 states that the government has the authority to impose ta'zir punishments on adulterers who result in the birth of children by requiring:

- a. Meet the needs of the child's life
- b. Giving wealth after his father died through a mandatory will

Based on the foregoing, in Islamic law, children born from marriages whose mothers first became pregnant and then married, do not have nasab with fathers who harassed their mothers. Then the child is not a legitimate child but is an adulterous child who has no inheritance rights to a child who has committed adultery on his mother, then the child has no legal relationship with his biological father.

CONCLUSION

Based on the results of research that hasIf this is done, then there are differences in the concept of children out of wedlock with legitimate children in Islamic law adopted by some Indonesian people with applicable positive law. Based on Islamic law that children born to mothers who are pregnant first and newly married do not have a legal relationship with their father, while in positive law, Law no. 1 of 1974, concerning marriage and the Compilation of Islamic Law (KHI), as long as it can be proven by an authentic birth certificate issued by an authorized official, the child is a legitimate child and has a legal relationship with his father.

Suggestions, Based on the results of the conclusions above, the researchers suggest to the government, especially those related to marriage, if there are legal events that occur the same as this study at the time of marriage so that both parties are given an explanation of their rights and obligations to children.

References

- Hasbullah Bakry, 1985, Complete Collection of Marriage Laws and Regulations in Indonesia, Jakarta, Djambatan, Jakarta.
- Ramuloyo, Moh Idris, Marriage Law, Inheritance Law, Procedural Law for Religious Courts, Jakarta, Sinar Graphic,
- Harahap, Bakti Syahrul, Legal Studies on Public Administration Sanctions, Master's Thesis, 2014
- Basri R, Concepts in Fuqoha Thought, Legal Journal.
- Law No. 1 of 1974, Regarding Marriage
- INPRES No.1 of 1991, Compilation of Islamic Law