

Keabsahan perbuatan hukum yang memerlukan persetujuan dari pihak pasangan perkawinan pada perkawinan di bawah tangan (Siri) yang belum dicatatkan : analisis Putusan Pengadilan Negeri Nomor 468/PDT.G/2012/PN.JKT.SEL = The validity of legal acts that require the approval of the marriage couple in an unregistered marriage : analysis of civil court case Number 468/PDT.G/2012/PN.JKT.SEL

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Abstrak

[ABSTRAK

Tesis ini membahas mengenai perkawinan yang telah memenuhi rukun dan syarat menurut hukum Islam tetapi belum dicatatkan di Kantor Urusan Agama beserta akibat yang ditimbulkan dari perkawinan tersebut. Obyek yang akan diteliti dalam tesis ini adalah Putusan Pengadilan Negeri Nomor: 468/Pdt.G/2012/PN.Jkt.Sel. Yang menjadi permasalahan dalam tesis ini adalah apakah jual beli yang dilakukan oleh seorang istri dalam ikatan perkawinan siri harus mendapat persetujuan suaminya sebagaimana diatur dalam Pasal 92 Kompilasi Hukum Islam. Apakah Hakim dalam menjatuhkan putusan Nomor: 468/Pdt.G/2012/PN.Jkt.Sel sudah tepat bila ditinjau berdasarkan hukum Islam. Metode Penelitian dalam Tesis ini menggunakan metode analisis-preskriptif dengan menggunakan data sekunder yakni bahan hukum primer dan sekunder. Pendekatan Hakim dalam memutus perkara ini menggunakan prespektif berdasarkan ketentuan Pasal 2 ayat (1) dan (2) Undang-undang nomor 1 Tahun 1974 tentang Perkawinan. Hakim berpendapat bahwa perkawinan tersebut sah menurut hukum agama karena telah memenuhi rukun dan syarat-syaratnya sesuai dengan ketentuan Pasal 2 ayat 1, sehingga hakim menganggap bahwa pencatatan yang diatur dalam Pasal 2 ayat 2 tersebut hanya merupakan syarat administratif saja, bukan merupakan syarat sah perkawinan. Dengan demikian hakim menganggap bahwa ketentuan Pasal 2 ayat 1 dan 2 nya merupakan ketentuan sesuai yang berdiri sendiri. Dalam hal perkawinan tidak memenuhi ketentuan sesuai yang diatur dalam Pasal 2 ayat 1 dan 2, maka berdasarkan hukum negara, perkawinan tersebut dianggap tidak sah, karenanya negara tidak melindungi terhadap akibat hukum yang timbul dari perkawinan tersebut. Sehingga jual beli yang dilakukan oleh suami isteri yang terikat perkawinan siri tidak memerlukan persetujuan dari salah satu pihak.

ABSTRACT

This thesis discusses the marriage that have met the requirements and conditions according to the islamaic law but not yet registered in the registry office and its consequences. The object to be studied in this thesis

is a court verdict number 468/Pdt.G/2012/PN.Jkt.Sel. the problem in this thesis is whether the purchase is done by a wife in unregistered marriage must be approved by her husband as provided for in Article 92 Compilation of Islamic Law. The court verdict number 468/Pdt.G/2012/PN.Jkt.Sel viewed by Islamic law. The research method in this thesis-prescriptive analysis method using secondary data that primary and secondary legal materials. Judge approach in deciding this case using a perspective based on the provisions of Article 2 (1) and (2) of Act No.1 of 1974 about Marriage. The judge found that marriage is lawful religion because it has met along and sets of requirements in accordance with the provisions of Article 2, paragraph 1, so that the judge considers that the listing set forth in Article 2, paragraph 2 is merely an administrative requirement, not a condition of lawful marriage. Thus the judge considers that the provisions of Article 2, paragraph 1 and 2 it is appropriate stand-alone provision. In the event that the marriage does not meet the appropriate provisions set forth in Article 2, paragraph 1 and 2, then by state law, marriage is considered invalid, and therefore the state does not protect against legal consequences arising from the marriage. So buying and selling is done by a husband and wife are bound marriage siri does not require the consent of one party.;This thesis discusses the marriage that have met the requirements and conditions according to the islmaic law but not yet registered in the registry office and its consequences. The object to be studied in this thesis is a court verdict number 468/Pdt.G/2012/PN.Jkt.Sel. the problem in this thesis is whether the purchase is done by a wife in unregistered marriage must be approved by her husband as provided for in Article 92 Compilation of Islamic Law. The court verdict number 468/Pdt.G/2012/PN.Jkt.Sel viewed by Islamic law. The research method in this thesis-prescriptive analysis method using secondary data that primary and secondary legal materials. Judge approach in deciding this case using a perspective based on the provisions of Article 2 (1) and (2) of Act No.1 of 1974 about Marriage. The judge found that marriage is lawful religion because it has met along and sets of requirements in accordance with the provisions of Article 2, paragraph 1, so that the judge considers that the listing set forth in Article 2, paragraph 2 is merely an administrative requirement, not a condition of lawful marriage. Thus the judge considers that the provisions of Article 2, paragraph 1 and 2 it is appropriate stand-alone provision. In the event that the marriage does not meet the appropriate provisions set forth in Article 2, paragraph 1 and 2, then by state law, marriage is considered invalid, and therefore the state does not protect against legal consequences arising from the marriage. So buying and selling is done by a husband and wife are bound marriage siri does not require the consent of one party., This thesis discusses the marriage that have met the requirements and conditions according to the islmaic law but not yet registered in the registry office and its consequences. The object to be studied in this thesis

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