

Status hukum anak yang lahir sebagai akibat hukum dari pembatalan perkawinan ditinjau dari perspektif undang-undang Nomor 1 tahun 1974 tentang perkawinan analisis putusan Mahkamah Agung Nomor 628 K/PDT/2008 = The legal consequences of a marriage annulment to a child s legal status observe from marriage act 1 74 analysis of supreme court verdict no 628 K/PDT/2008

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Abstrak

[Perkawinan yang tidak memenuhi syarat-syarat, dapat diajukan permohonan pembatalan ke Pengadilan. Permasalahannya adalah bagaimana akibat hukum pembatalan perkawinan tersebut terhadap status hukum anak. Dengan metode penelitian kepustakaan, penulis berusaha menguraikan dan menganalisisnya. Pembatalan perkawinan yang dilakukan melalui Putusan Pengadilan Agama Jakarta Pusat No. 090/Pdt.G/2005/PA.JP yang kemudian dikuatkan dengan Putusan Pengadilan Tinggi Agama Jakarta No. 76/Pdt.G/2005/PTA.JK, menurut hemat penulis adalah sudah tepat karena terdapat syarat perkawinan yang tidak dipenuhi. Namun pada Penetapan Pengadilan Negeri Jakarta Selatan No. 87/Pdt.P/2006/PN.Jak.Sel terdapat kekeliruan, yakni hakim menetapkan bahwa si anak tidak mempunyai hubungan hukum dengan ayahnya dan tidak berhak menyandang nama ayahnya atau keluarga ayahnya. Sayangnya, kekeliruan tersebut berlanjut hingga proses perlawanan sang ibu (terhadap penetapan tersebut) pada Pengadilan Negeri Jakarta Selatan memperoleh kekuatan hukum yang tetap. Sesungguhnya, baik menurut UU No. 1 Tahun 1974 Pasal 28 maupun Kompilasi Hukum Islam Pasal 75 dan 76, pembatalan perkawinan tidak berlaku surut terhadap anak yang telah lahir dalam perkawinan; A marriage which doesn't fulfill the conditions, can be filed for annulment to the court. The question is how the legal consequences of the marriage annulment affect the legal status of a child. Using the method of library research, writer tries to elaborate and analyze them. Marriage annulment that has been determined by the verdict of Central Jakarta Religious Court No. 090/Pdt.G/2005/PAJP was upheld by the verdict of High Religious Court of Jakarta No. 76/Pdt.G/2005/PTA.JK, according to writer, the verdict is absolutely right because of the unfulfilled marriage conditions. However, in the decision of South Jakarta State Court No. 87/Pdt.P/2006/PN.Jak.Sel has some errors, such as the Judge determined that a child did not own a legal relation with his father and did not have a right to carry neither his father's name nor his family. Unfortunately, the error continues until the resistance process of the mother (towards the decision) at the South Jakarta State Court which is binding and legally forceable. Actually, either the Act 1/74 in article 28 or The Compilation of Islamic Law in article 75 and 76, marriage annulment is not retrospective for a child that were born in a marriage., A marriage which doesn't fulfill the conditions, can be filed for annulment to the court. The question is how the legal consequences of the marriage annulment affect the legal status of a child. Using the method of library research, writer tries to elaborate and analyze them. Marriage annulment that has been determined by the verdict of Central Jakarta Religious Court No. 090/Pdt.G/2005/PAJP was upheld by the verdict of High Religious Court of

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