



Legal Protection Of Children Resulting From Contract Marriages In Terms Of Islamic Law

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Abstract

The form of protection of children's rights, as regulated by Article 28B paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution, will be maximized if all marriages are registered. The Marriage Law stipulates that marriages must be registered so that if something happens in the household, it can contain legal protection. If a child is born from a legally recognized marriage by the state and/or the child's religion, the legal standing of the child is also made apparent. This study aims to determine and analyze the position of children resulting from contract marriages and to determine and analyze the legal protection of children resulting from contract marriages seen in Islamic law. The method used in this research is normative juridical. Normative Legal Research is research whose analysis is based on applicable laws and regulations and is relevant to the legal issues that focus on this research. Secondary data collection is done through literature study by collecting data from documents or other literature such as books or journals. The method of analysis used in this study is to analyze the data while writing this thesis. Namely, the data is analyzed by describing descriptively the data that has been obtained. The research found that the child's position resulting from a contract marriage is an illegitimate child because the contract marriage is not registered and registered with the Marriage Registrar. Protection is given to children resulting from contract marriages, such as protection from acts of domestic violence, protection from getting an education, protection by providing guarantees for fulfilling their rights, and treatment without discrimination.

Keywords: Child Protection, Contract Marriage, Islamic Law.

Abstrak

Bentuk Perlindungan terhadap hak anak sebagaimana diatur oleh Pasal 28B ayat (2) dan Pasal 28D ayat (1) UUD 1945, akan dapat dimaksimalkan apabila semua perkawinan dicatatkan. Undang-Undang Perkawinan mengatur bahwa perkawinan harus dicatatkan agar apabila terjadi sesuatu dalam rumah tangga dapat mengandung suatu perlindungan hukum. Status hukum anak juga menjadi lebih jelas apabila terlahir dari perkawinan yang sah menurut agama dan Negara. Tujuan dari penelitian ini untuk mengetahui dan menganalisis kedudukan anak hasil kawin kontrak serta perlindungan hukum terhadap anak hasil kawin kontrak dilihat dari Hukum Islam. Metode yang digunakan dalam penelitian ini adalah yuridis normative. Penelitian Hukum Normatif adalah penelitian yang analisisnya didasarkan pada peraturan perundang-undangan yang berlaku dan relevan dengan permasalahan hukum yang menjadi fokus penelitian ini. Pengumpulan data sekunder dilakukan dengan melalui studi pustaka dengan mengumpulkan data dari dokumen atau literature lain seperti buku atau jurnal. Metode Analisis yang digunakan dalam penelitian ini penulis untuk menganalisis data dalam penulisan skripsi ini adalah dengan cara kualitatif, yaitu data dianalisis dengan menguraikan secara deskriptif data-data yang telah diperoleh. Berdasarkan penelitian, diperoleh hasil bahwa kedudukan anak hasil kawin kontrak adalah anak luar kawin, karena kawin kontrak tidak terdaftar dan tercatat di Pegawai Pencatat Nikah, Menurut Hukum Islam anak yang lahir dari kawin kontrak tidak mempunyai nasab dengan ayahnya, hanya dengan ibunya. Perlindungan yang diberikan kepada anak hasil kawin kontrak seperti perlindungan dari tindak kekerasan dalam rumah tangga, perlindungan mendapatkan pendidikan, perlindungan diberikannya jaminan terhadap pemenuhan hak-haknya serta adanya perlakuan tanpa diskriminasi.

Kata kunci: Perlindungan Anak, Kawin Kontrak, Hukum Islam.

I. Introduction

As a legal state, the State of Indonesia already has its own rules in regulating Marriage, namely with the existence of Law Number 1 of 1974 concerning Marriage (in the future referred to as the Marriage Law). One of the essential points of this law in regulating marriage in Indonesia is the existence of registration requirements for every marriage that is carried out.

It is so that the marriage has legal force. Additionally, it specifies that marriage is lawful if each party performs it. An unrecorded marriage may cause the rights of the wife and children to be lost. Legally they also cannot afford protection.¹ The Marriage Law states that the marriage must be registered so that if something happens in the household dipper, it can contain a legal act.² Marriage is not only a civil relationship but also includes the rights and obligations of husband and wife, common rights, the position of the child, and the relationship between the old and the child, but concerns the relationship of customs, kinship, and neighbors and concerns also traditional and religious ceremonies.³ In addition, the legal status of a child becomes clear if born into a legal marriage according to the State. Those rights and obligations must be fulfilled, especially in the child's rights, because human beings have those rights from the moment they are born. Even since it was still in the womb, that right has been contained in the right of inheritance.⁴

According to Law No. 1 of 1974 Article 1, marriage is "an inner birth bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the Almighty Godhead." According to the Marriage Law, the legal conditions of marriage include: There is a candidate, No bond with others, and No blood relationship; it is 19 years for men and women.⁵ While the legal requirements for marriage according to the Compilation of Islamic Law Article 14 include: There are Candidates, Guardians, Witnesses, Ijab, and Qobul.

Although it is apparent in the rules regarding the meaning and legal conditions of marriage, there is also a rampant Contract Marriage in Indonesia. Contract Marriage can be interpreted as a marriage with a specific time limit because the male marries the female only for a specific time limit, such as one day, one month, one year, or another time limit, as mentioned in the contract.⁶ KA contract marriage meets the following criteria: *Sighah* (utterance) 'ijab' and his 'kabul' must wear *lafaz zawwajtuka, unkihuka* or *matta'tuka* (I marry you temporarily), No guardian, No witnesses, In the contract mentioned the time limit. The deadline is set based on the agreement of both parties (husband and wife); if the agreed time limit ends, then this marriage will naturally end. The contract must be mentioned, and the dowry must be under the agreement of both parties. There is no inheritance-inheriting right between husband and wife. The marriage will end according to the time agreed at the beginning without any *talak* or *khuluk*.

Contract marriage is a marriage that is contrary to the Marriage Law because it does not comply with the rules of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage and Article 5. 6 of the Compilation of Islamic Law, besides that the contract marriage does not comply with applicable regulations relating to the marriage registration process by the Marriage Registrar Employee or which requires to register the marriage with the KUA (Office of Religious Affairs)⁷ to result in the marriage having no legal force because it is carried out beyond the knowledge and supervision of the marriage registrar, it can be said that the contract marriage has no legal force and is considered invalid in the eyes of the law, and is included outside the marriage.⁸ According to civil law, contract marriage is a form of marriage

¹ Sukiati & Ratih Lusiani Bancin. "Perlindungan Perempuan Dan Anak: Studi Akibat Hukum Pengabaian Pencatatan Perkawinan". *Internasional Journal of Child and Gender Studies*. Vol. 06. No. 1. 2020.

² Fathurrohman, Syafrulloh. *Perlindungan Hukum Terhadap Hak Anak Akibat Kawin Kontrak Dihubungkan Dengan Pasal 8 Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak*. Diploma Thesis, UIN Sunan Gunung Djati Bandung, 2017.

³ Wiratni Ahmadi. "Hak Dan Kewajiban Wanita Dalam Keluarga Menurut Undang-Undang No 1 Tahun 1974 Tentang Perkawinan". *Jurnal Pro Hukum Justicia*. Vol. 26. No. 4. 2008.

⁴ *Ibid.*

⁵ Akhmad Munawa. "Sahnya Perkawinan Menurut Hukum Positif yang Berlaku di Indonesia". *Al 'Adl Jurnal*. Vol. VII. No. 13. 2015.

⁶ Isnawati Rais. "Praktek Kawin Mu'ah di Indonesia Dalam tinjauan Hukum Islam dan Undang-Undang Perkawinan". *Jurnal Ilmiah*. Vol. XIV. No. 1. 2014.

⁷ Dilla Pratiwi Puji R. :Tinjauan Yuridis Status Anak dari Perkawinan Kontrak Dalam Perspektif Hukum Positif Indonesia". *Jurnal Ilmiah*. Vol. 07. 2018. 3-4.

⁸ Delviana Cizza. *Tinjauan yuridis kawin kontrak dan akibat hukumnya dalam perspektif UU Perkawinan dan Hukum Islam*. S1 Thesiis. Universitas Mataram, 2018.

that is limited by a specific time as promised by both parties and is a form of invalid marriage according to Law No. 1 of 1974 concerning marriage. Contract marriage has violated the provisions of article 2 paragraph (2) of Law No.1 of 1974, namely, "Each marriage is recorded according to the applicable laws and regulations" however, in this marriage, no registration is carried out with the authorized official (KUA or Civil Registry) to obtain legal certainty through a marriage certificate.⁹

According to Islamic Law, contract marriage is *haram* because it is only an outlet for sexual appetite, and many negative impacts are caused by contract marriage. A case in point is the ignored *nasab* of the child, which undermines the marriage's intended permanence but instead results in a temporary contractual union. Contract marriage is also forbidden based on postulates derived from the Qur'an and Hadith. One of them is from the Hadith of Imam Muslim, who narrates, That Rosululloh forbids contract marriage with his means, saying: "O all men, indeed, I once allowed you to marry a woman with a *mut'ah* marriage. Indeed, Allah has now forbidden him to the end of the apocalypse, so whoever has a wife with a *mut'ah* marriage, then let go of him and do not take back something that you have given to her (dowry)".¹⁰ Although initially justified by Rosululloh for a while because the army was far from their homes and wives, it was allowed to be *dinasakh* (abolished) by Rosululloh during the Khaybar war, and He expressly forbade *Mut'ah* Marriage or Contract Marriage.¹¹

For example, in Kaliaman Village, Kembang District, Jepara Regency, W (initials of the name), a woman married to a foreign citizen, nationality. W chose to do a Contract Marriage because of the difficult economic conditions of the W family and W's low educational background, so without thinking, W was willing to do marriage with A predetermined time limit and without thinking about what legal consequences may have on him and the other party concerned.¹² From the contractual marriage performed, a child was born. Children born from contractual marriages experience not a few sufferings that they experience, such as being a person who tends to be in trouble due to the lack of affection and education of both parents, in terms of inheritance also does not get from the father, difficulty taking care of the birth certificate because the marriage of his parents is not recorded. However, because of the status of contract marriage, the child born also has an unclear status or position. In addition, according to the Compilation of Islamic Law, it is not entitled to obtain a *nasab* relationship, a living, maintenance, or upbringing of a child from the father who fixes it, but the mother.¹³

Based on the description above, the author is interested in raising the study with the title "LEGAL PROTECTION OF CHILDREN RESULTING FROM CONTRACT MARRIAGES IN TERMS OF ISLAMIC LAW."

II. Research Problems

1. What is the child's position resulting from contract marriage seen from Islamic Law?
2. How is the legal protection of children from contract marriages seen in Islamic Law?

⁹ Ari W Puspitosaru. *Kawin Kontrak Menurut Perspektif Undang-Undang No. 1 Tahun 1974 dan Hukum Islam di Indonesia*. (Skripsi tidak di Publikasikan). Fakultas Hukum. Universitas Airlangga Surabaya.2002.

¹⁰ A Dzzarin Al-Hamidy. "Nikah Mut'ah Dalam Sorotan Hukum Islam dan hukum Positif". *Al Qonun Jurnal*. Vol. II. No. 1, 2018.

¹¹ Mutiara Citra. "Tinjauan Yuridis Terhadap Kawin Kontrak Dalam Perspektif Hukum Perjanjian Dan Hukum Islam". *JOM Fakultas Hukum*. Vol. III. No. 1. 2016.

¹² Muhyidin, Navanya Gabriel Cuaca. "Nikah Muth'ah (Kawin Kontrak) Dalam Perspektif Hukum Positif Indonesia Serta Akibat Hukum Atas Harta Perkawinan Dan Harta Waris". *Jurnal Diponegoro Privat Law Review*. Vol. 7 No. 1. 2020.

¹³ Irma Devita. *Panduan Lengkap Hukum Populer Kiat-Kiat Cerdas, Mudah, Dan Bijak Memahami Masalah Hukum Waris*. (Jakarta : Kaifa). 2012. 220.

III. Research Methods

The method used in this study is the normative juridical method. Normative legal research is research with one type of legal research methodology whose analysis is based on applicable laws and regulations and is relevant to the legal issues that are the focus of this research.¹⁴ This study emphasizes secondary data that emphasizes the study of positive legal principles derived from literature data which means that it will be easier to research and examine secondary data as a normative approach.¹⁵ In addition, normative juridical research is legal research that examines books and rulings. The research specifications used in this study are Descriptive Research, where this research clearly describes the facts or data obtained from the field or literature and is then analyzed qualitatively and found a way to break under applicable regulations so that conclusions can be drawn.¹⁶ The data used in this study were Secondary Data. Secondary Data is data obtained from the results of literature through literature study actions, namely conducting documentation studies, archives, and literature by studying theoretical matters, concepts, views, and legal principles related to the main points of writing and legal science consisting of primary legal materials, secondary legal materials, and tertiary legal materials.¹⁷ Secondary data collection is carried out through literature studies by collecting data from other documents or literature such as books or journals. The author's analysis method used in this study to analyze the data in writing this thesis is qualitative. Namely, the data is analyzed by descriptively outlining the data that has been obtained.

IV. Research Results And Discussion

1. The position of the Child resulting from contract marriage is seen in Islamic Law

Whether the union is legal or not, a kid is the result of the union of a man and woman. Children are personal subjects (*persoon*) who, in the development phase to the stage of maturity, significantly affect parental factors and the environment. The Child is a gift given by God Almighty to man through the result of marriage. Gifting this gift helps continue the next life and maintain a family's bloodline.¹⁸

A valid marriage must be based on their respective religions and beliefs and be performed before the Marriage Registration Officer for the marriage to be recorded and considered valid before the law. The purpose of this marriage registration is to provide legal certainty and protection for the parties which carry out the marriage so that the state will provide authentic evidence of the occurrence of the marriage so that the parties can maintain the marriage to anyone before the law.¹⁹

The clarity of a conjugal marriage through authentic evidence of their marriage becomes the basis for the clarity of legal status for a child. For example, a marriage certificate is a basis for managing a child's birth certificate. If the husband and wife have never registered their marriage, when the child is born and needs a birth certificate, the population office will

¹⁴ Kornelius Benus & Muhammad Azhar. "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer". *Jurnal Gema Keadilan*. Vol 07. No. 1. 24. 2020.

¹⁵ Halyone Nurdin Singadimedja, M. "Penerapan Hukum Pidana Lingkungan Bagi Pelaku Pencemaran Citarum di Karawang". *Jurnal Ilmiah Hukum*. 34. Fakultas Hukum Universitas Singaparna Karawang. 2016.

¹⁶ Johny Ibrahim. *Teori dan Metode Penelitian Hukum Normatif*. Malang : Banyumedia. 2011, 295.

¹⁷ I Made Pasek Diantha. *Metodologi Hukum Normatif Dalam Justifikasi Teori Hukum*. Jakarta: Prenada Media Group. 142,145,149.2016.

¹⁸ Erlisa Puspita Sari. *Kawin kontrak ditinjau dari Undang-Undang No.1 Tahun 1974 tentang Perkawinan*. (skripsi tidak dipublikasikan), Fakultas Hukum Universitas Jember. 43. 2015.

¹⁹ Dilla Pratiwi Puji R. "Tinjauan Yuridis Status Anak dari Perkawinan Kontrak Dalam Perspektif Hukum Positif Indonesia". *Jurnal Ilmiah*. Vol. 07. 2018.

not take care of it or issue the birth certificate. Similarly to contract marriage, the status of the resulting child becomes unclear with the execution of contract marriage.²⁰

Law Number 1 of 1974 is a law governing Marriage. Therefore, since the enactment of the Act because of its coercive nature, it must be obeyed and implemented. The result of a contractual marriage is that there will be no legal protection due to the invalidity of the marriage. Therefore, there is no legalization of marriage certificates, ID cards, or KK, and the absence of birth certificates for children born from the marriage.

Contract marriages are carried out without meeting the right conditions in Article 2 of the Marriage Law: "A marriage is valid if it is carried out according to their respective laws and regulations and is recorded according to applicable laws and regulations." Articles 5 and 6 of the Compilation of Islamic Law, namely Contract Marriage, are not carried out or recorded before the Marriage Registration Employee, which results in the marriage having no legal force because it is carried out beyond the knowledge and supervision of the marriage registrar, it can be said that the contract marriage has no legal force and is considered invalid in the eyes of the law.²¹ From this explanation, it is clear that contractual marriage will be very detrimental to the woman and child resulting from the marriage.

The negative effect caused by Contract Marriage is a conflict of two interests between contract marriage actors who do not want to register their marriage on one party and the state's interest in ordering the administration of the population in the other party so that the state does not recognize marriages that are not registered. One form of this recognition is that an authentic marriage certificate has occurred. With this marriage certificate, the marriage has legal force, and its rights are protected by law.²²

The legal consequences in a valid marriage based on the Law on children from marriage have been regulated in Law Number 1 of 1974 concerning Marriage regarding the position of children. The arrangement is provided for in Article 42, which reads: "A legitimate child is a child born in or as a result of a legal marriage." Then Article 43 reads: "A child born outside of marriage has only a civil relationship with his mother and his mother's family." The same is also stipulated in the Compilation of Islamic Law CHAPTER XIV Article 99, which reads: "A legitimate child is: a. A child born in or as a result of a legal marriage. b. The result of the conception of a legal husband and wife outside the womb and being born by the wife". Article 100 of the Compilation of Islamic Law states, "A child born out of wedlock has only a *nasab* relationship with his mother and his mother's family." A Contractual Marriage is based on the arrangements above, if a child is born from the result of contractual marriage, the child is an out-of-wedlock child, because contract marriage is an invalid marriage and the marriage has no legal force, so it is considered invalid in the eyes of the law. The child born from such an illegitimate marriage cannot demand anything from the father. He only had a civil relationship with his mother and his mother's family.²³

According to Law Number 1 of 1974 Article 43, an out-of-wedlock child and his (biological) father do not have a civil relationship, only a civil relationship with the mother and the mother's family. A mother who has a child born outside of marriage is legally responsible for raising him, and she has to provide for his upbringing and education and a right to inherit from both the child and the child's family. Every child has the right to know

²⁰ *Ibid.*, 44.

²¹ *Ibid.*,

²² M Alif. *Akibat Hukum Kawin Kontrak Dan Pembagian Harta Bersama Terhadap Anak Dan Isteri Menurut Hukum Perdata*. Skripsi. Universitas Muhammadiyah Palembang. 2015.

²³ Fajar Hernawan. *Tinjauan Yuridis Kawin Kontrak Dan Akibat Hukumnya Dalam Perspektif Hukum Islam Dan Hukum Positif Indonesia*. Disertasi. Universitas Islam Negeri Sunan Gunung Djati. Bandung. 2021.

his or her parents and to be nurtured and cared for by them, including the right to know the identities of both parents, according to Article 7, Paragraph 1 of Number 35 of 2014 Concerning Child Protection.²⁴

By law, children born due to contract marriages are categorized as out-of-wedlock. Although it is claimed to be a religiously valid marriage by the perpetrators, contract marriage is not a legal marriage bond based on religious law and is not recorded based on positive law in force in Indonesia. Contract marriages in Indonesia are currently considered close to the practice of adultery. Just as sharia law considers a child born of adultery, a child born from a contractual marriage is considered to have no nasab relationship with his biological father.

The mother and family of an out-of-wedlock child who is declared to have a civil relationship based on Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage sometimes apply to the court to get clarity on their rights, but many of these efforts have failed. The situation reached its zenith when a request was made to the Constitutional Court because Article 43 of Law Number 1 of 1974 concerning Marriage did not guarantee children's constitutional rights outside of marriage. As a result, the Constitutional Court's decision Number 46 / PUU-VIII / 2010 was crucial in preserving those rights, and the individual in question was determined to have a civil relationship with his father.²⁵ The Constitutional Court's ruling is the final stage in the court proceedings in the Constitutional Court. The decision of the Constitutional Court has binding legal force since it was pronounced in the open Plenary Session. The Constitutional Court stated that children born outside of marriage have a legal relationship with the biological father and the father's family, no longer only with the mother and the mother's family; it is also affirmed in the Constitutional Court Decision Number 46 /PUU-VIII/2010²⁶. The legal relationship only exists if the father gives an acknowledgment that the child is his child, thus without the recognition of the father, in principle, the child is not a child of anyone, and the child outside of marriage or also called a contractual marriage has no legal relationship with anyone.

Because other factors can be used to establish a child's relationship with a man as a father in addition to their marital relationship, such as evidence of a child's blood relationship with the man, in addition to the consequences of the absence of a relationship between father and son legally also result in the child being out of wedlock and not getting an inheritance from his biological father and his father's family.

Contract Marriage is an invalid and legally illegitimate marriage according to Islamic Law, marriage law, and KHI. Therefore, the child born from a contractual marriage becomes a child from adultery. As a result of the law that a child will receive from a contract marriage based on Islamic law, the Marriage Law and KHI only have a civil relationship (nasab, living, inheritance) with their mother and their mother's family. His father was also unable to become a marriage guardian. Children born outside of marriage have a civil relationship with their mother and her family as well as with a man who is referred to as his father, who can be proven by science and technology and/or other evidence under the law to have a blood relationship, under Constitutional Court Decision Number 46 / PUU-VIII / 2010, which recognizes the rights of children born from contract marriages.

Meanwhile, based on Islamic Law, he has no civil relationship with his father. The child is only entitled to a living from his father, but that living is not categorized as a parent's

²⁴ Irma Devita. *Panduan lengkap Hukum Populer Kiat-Kiat Cerdas, Mudah, dan Bijak Memahami Masalah Hukum Waris.* (Jakarta : Kaifa, 2012).

²⁵ H. Moch. Isnaeni. *Hukum Perkawinan Indonesia*, (Bandung: PT. Refika Aditama. 24, 2016).

²⁶ J Satrio. *Hukum Keluarga Tentang Kedudukan Anak Dalam Undang-Undang.* (Bandung : PT Citra Aditya. 105. 2000).

obligation to his child but is a *ta'zir* punishment for his father. The child can also obtain his father's property after his father dies through a compulsory will. The guardian of the judge will also perform the child's marriage contract as his marriage guardian.²⁷

So it can be concluded that children born from contractual marriages The state recognize the child's rights, and the government needs to make separate rules regarding children born from contractual marriages.

2. Legal Protection of Children resulting from Contract Marriages because of Islamic Law

Legal protection of children's rights according to Indonesian Positive Law can be found in several laws and regulations, such as those stated in Presidential Decree Number 36 of 1990, which is a ratification of the United Nations Convention on the Rights of the Child (Convention on the Right of the Child), Law Number 4 of 1979 concerning Child Welfare, and Law No. 23 of 2002 concerning Child Protection.²⁸ Law Number 23 of 2002 also confirms that the responsibility of Parents, Families, Communities, Governments, and The State is a series of continuous activities to protect children's rights.²⁹

General Explanation of Law Number 1 of 1974 concerning Marriage, number 4a states, "Forming a happy family related to offspring is also the purpose of marriage, while the maintenance and education of children is the right and obligation of parents." Parents in the family must take the best care of and educate their children. While the child, on the contrary, the child is obliged to respect their parents and obey their goodwill, and when they grow up, the child is also obliged to maintain their abilities, parents, and families in a straight line upwards if they need help. The child needs to be cared for until a certain age because the child is physically and psychologically unable to meet his own needs, so it requires someone else to meet them. In this case, the responsible party is the parent of the child concerned. Regarding the rights a child must get, in the world, including in Indonesia, many legal provisions govern children's rights. As in Indonesia, there is a children's law.³⁰

The Convention on the Rights of the Child states that a child has civil rights and independence in addition to the fundamental rights (the right to survival, the right to thrive, the right to protection, and the right to participate in society) that must exist from the moment of a child's birth. Indonesia became one of the countries that ratified 135 of the Convention on child's rights, namely in Presidential Decree No. 36/1990 dated August 25, 1990.³¹ which consequently shall be obliged to recognize and fulfill the child's rights as formulated in KHA 136. Civil rights and independence in the KHA include "civil and political rights," which are intended, one which is the Right to Acquire Identity (Article 7), the Right to Maintain Identity (Article 8), and the Protection of Personal Life (Article 16). About these descendants, the law distinguishes between legitimate descendants and illegitimate offspring. In the sense that one is the offspring of the other based on birth in or as a result of a valid marriage, legitimate

²⁷ Anonim, Perlindungan Hukum terhadap anak hasil nikah mut'ah berdasarkan hukum islam: studi kasus atas anak x sebagai hasil nikah mut'ah. Retrieved from <http://lib.ui.ac.id/abstrakpdf.jspdetail?id=20346651&lokasi=lokal> . *Perlindungan hukum terhadap anak hasil nikah mut'ah berdasarkan hukum Islam: studi kasus atas anak x sebagai hasil nikah mut'ah y dan z*. accessed on 28 August 2021. At 22.06.

²⁸ Nashriana. 2011. *Perlindungan Hukum Pidana*. Jakarta : PT. Raja Grafindo. 2011, 13..

²⁹ Ahmad Zaenal Fanani. *Pembaharuan Hukum Sengketa Hak Asuh Anak di Indonesia (Prespektif keadilan Jender)*. (Yogyakarta : UII Press, 2015).

³⁰ Irwan Fahmi. *Kedudukan Anak Hasil Perkawinan Kontrak Menurut Hukum Perkawinan Di Indonesia*. Skripsi. Fakultas Hukum Universitas Muhammadiyah Sumatra Utara. Medan. 2020, 27.

³¹ Rika Saraswati. *Hukum Perlindungan Anak di Indonesia*, (Bandung: PT. Citra Aditya Bakti, 2015).

offspring is founded on the presence of a valid marriage. Such children are called legitimate children. An illegitimate offspring is not based on a (legal) marriage.³²

The Constitutional Court also stated in Article 43, paragraph (1) of the Marriage Law, which states, "Children born outside of marriage only have a civil relationship with their mother and their mother's family." The Constitutional Court also stated Article 43 paragraph (1), stating: "The Marriage Law has no binding legal force as long as it is interpreted to eliminate the civil relationship of a child with a man that can be proven based on science and technology or other evidence that is valid according to law turns out to have a blood relationship as his father."³³ All children are born outside of legal marriage as is generally practiced, then the child is only related by blood and civil relationship with their mother, which is meant by "outside of legal marriage" it includes serial marriage, contract marriage, infidelity, and living together without marital ties (cohabitation). So far, children born outside of legal marriage do not have a birth certificate and naturally will not obtain statehood rights for the child. Alternatively, as long as this child is born outside of official marriage, in the birth certificate of the out-of-wedlock child, there is no name of the father; there is only the name of the mother alone as a single parent. Children born outside of an official marriage have no legal, familial ties to those they marry. Therefore, as said by S.A, the child inherits only from his mother and the family from his mother alone. Judges in the book *Of Customary Law of Individuals, Marriage, and Inheritance*.³⁴

Children born outside of an official marriage still have a civil relationship with their father even though their father's name is not on the child's deed. With all children being born equal, there is no need for a difference in legal status for children born outside of an official marriage or in an official marriage. There has not been a family relationship between the child and his parents because they have children outside of marriage. All the events that follow the child and his parents realizing their child are only connected to the family after a confession. So, the child outside the marriage has the status of a recognized child.³⁵

The legal status of children born outside of marriage as unification in the field of marriage law is stated in Law Number 1 of 1974, which is stated in Article 43 paragraph (1). It means that the child has a familial relationship with the consequences, especially the right of inheritance, so it is almost the same as the familial status with the legal child; only the difference is that the child outside of marriage has no relationship with the father. On the other hand, the legal child has a civil relationship with his mother and his mother's family and a civil relationship with his father and mother.³⁶

Children born out of contract marriages receive legal protection from the government in the form of protection of their rights as best as possible under human dignity and law number 23 of 2002, which has been amended by law number 35 of 2014 concerning child protection, including protection from acts of domestic violence, protection for education, and protection for the fulfillment of their rights. In addition, another form of protection is that with the father's recognition, a civil relationship between the child and his father or mother is born. Based on this, the forms of protection provided to children resulting from contract marriages

³² Irwan Fahmi. *Kedudukan Anak Hasil Perkawinan Kontrak Menurut Hukum Perkawinan Di Indonesia*. Skripsi. Fakultas Hukum Universitas Muhammadiyah Sumatra Utara. Medan. 28-29, 2020.

³³ Mardani. "Praktik Nikah Mut'ah (Kawin Kontrak) dalam Perspektif Hukum Islam". *Binamulia Hukum*. Vol. 1, No. 2. 96. 2011.

³⁴ Soedharyo Soimin. *Hukum Orang dan Keluarga*, Cetakan Pertama, (Jakarta: Sinar Grafika, 2001) 39.

³⁵ Andreas Resa Krisharyanto, dkk. "Akibat Hukum Kawin Kontrak Terhadap Kedudukan Istri, Anak, Dan Harta Kekayaan Dalam Perspektif Hukum Islam". *Jurnal Krisna Law*. Vol. I. No. 2. 11. 2019.

³⁶ *Ibid.* . 12

such as protection from acts of domestic violence, protection for obtaining education, protection for the fulfillment of their rights and the existence of treatment without discrimination, guaranteeing freedom for survival, growth, and development, and the right to protection from violence and discrimination.

V. Conclusions

After the Constitutional Court's Decision Number 46 / PUU-VIII / 2010, the rights of children born from contract marriages are recognized by the State. Children born outside marriage have a civil relationship with their mother and her family, and a man referred to as his father, who can be proven by science and technology and/or other evidence under the law to have a blood relationship. So it can be concluded that children born from contractual marriages The state recognize the child's rights, and the government needs to make its own rules regarding children born from contractual marriages. Based on research, it was obtained that the child's position resulting from the contract marriage is an out-of-wedlock child because the contract marriage is not registered and recorded in the Marriage Registrar Employee. According to Islamic Law also had no civil relationship with his father. The father is required to provide the child with a means of subsistence. However, this is viewed as a ta'zir penalty for the father rather than a parent's responsibility to their child. The child can also obtain his father's property after his father dies through a compulsory will. The guardian of the judge will also perform the child's marriage contract as his marriage guardian.

Legal protection of children's rights according to The Positive Law of Indonesia can be found in Law No. 23 of 2002 concerning Child Protection. Law Number 23 of 2002 also confirms that the responsibility of Parents, Families, Communities, Governments, and The State is a series of continuous activities to protect children's rights. In civil law, a child born outside of a legal marriage can only be recognized by his mother. Based on this, the forms of protection provided by the government to children from contract marriages such as protection from acts of domestic violence, protection for obtaining education, protection for the fulfillment of their rights and treatment without discrimination, guaranteeing freedom for survival, growth, and development, and the right to protection from violence and discrimination. In addition, another form of protection is that with the father's recognition, a civil relationship between the child and the father is born.

VI. Suggestions

1. It is expected that citizens who want to perform marriages should be carried out legally according to Religion and the State so that it is recorded by the Employee of the Marriage Defector (KUA or Civil Registry) to obtain legal certainty through a marriage certificate. In addition to obtaining legal certainty of the status of children born from legal marriages, they also obtain a clear legal position and protection.
2. There needs to be socialization in the community from the government about understanding the importance of children's status in the future because it will impact the psychological development of children in the future.

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