

ABSTRAK

Tesis dengan Judul: “Hak-hak Keperdataan Anak Luar Kawin Akibat Isbat Nikah Poligami (Analisis Putusan Pengadilan Agama Rembang Nomor 99/Pdt.G/2018/PA.Rbg.)” ditulis oleh Rofi’atun, SH. Dibimbing oleh Dr. H. Akhmad Khisni, SH,MH. selaku pembimbing I dan Dr. H. Rozihan, SH.,M.Ag. selaku pembimbing II.

Penelitian ini membahas tentang hak-hak keperdataan anak luar kawin akibat isbat nikah poligami, Permasalahan yang diambil penulis dalam tesis ini adalah bagaimana perlindungan hukum terhadap anak luar kawin terkait hak-hak keperdataannya khususnya menyangkut hak perwalian nikah dan hak waris terhadap laki-laki sebagai ayah biologisnya, karena Konstitusi Indonesia yakni Undang-undang Dasar 1945 dan peraturan lain yang terkait dengan hak-hak anak mewajibkan hal demikian, pasal 28 B ayat (2) hasil perubahan atas Undang-undang Dasar 1945 menyatakan “Setiap anak berhak atas kelangsungan hidup, tumbuh dan berkembang serta berhak atas perlindungan dari kekerasan dan diskriminasi, demikian pula dalam norma hukum Islam setiap anak yang lahir melekat kepadanya predikat suci (*fitroh*)”, sehingga hak-hak keperdataannya secara hukum Islam juga dijamin, terlepas apakah anak tersebut lahir dari dan /atau akibat perkawinan yang sah ataupun Akibat perkawinan sirri.

Metode penelitian yang digunakan penulis adalah metode pendekatan yuridis normatif dimana penelitian ini dilakukan berdasarkan bahan hukum utama dengan cara menelaah teori-teori, konsep-konsep, asas-asas hukum serta peraturan perundang-undangan yang berhubungan dengan penelitian ini.

Hasil penelitian menunjukkan bahwa berdasarkan putusan nomor 99/Pdt.G/2018/PA.Rbg. dalam perkara isbat nikah poligami, hak-hak keperdataan anak luar kawin (poligami) sirri sama dengan hak-hak anak yang lahir dari dan/atau akibat perkawinan poligami yang resmi, sehingga secara hukum hak-hak anak luar kawin dalam putusan tersebut menyangkut perwalian dan hak waris anak sama dengan anak kandung lainnya yang lahir dari perkawinan pertama. Dengan demikian berdasarkan putusan tersebut hak-hak keperdataan anak mendapat perlindungan hukum, mendapat keadilan, serta kepastian akan status serta hak-hak keperdataannya.

Kata Kunci : *Hak-hak Keperdataan anak luar kawin, Poligami sirri, Hak perwalian dan hak kewarisan.*

ABSTRACT

Thesis entitled: “Civil Rights of Out-of-Wedlock Children Due to *Isbat* of Poligamy Marriage (The Analysis on Verdict of Religious Court of Rembang Number 99/Pdt.G/2018/PA.Rbg.)” written by Rofi’atun, SH. Advised by Dr. H. Akhmad Khisni, SH. MH as the Advisor I and Dr. H. Rozihan, SH.,M.Ag. as the Advisor II

This research discussed the civil rights of out-of-wedlock children due to *isbat* of poligamy marriage. The problem taken by the author in this thesis regarded to how is the legal protection of the out-of-wedlock children related to their civil rights especially on the marital guardianship rights and the inheritance rights of men as the biological father because the Constitution of Indonesia which is the Constitution of 1945 and other regulations which associated to children rights obligate that item, article 28 B verse (2) as the result of the Constitution 1945 stated that “Every children has the right on life continuity, growth and flourishing and also protection from violence and discrimination”, similarly in Islamic legal norms “Every children which is born inherent a holy predicate (*fitroh*) in his/her”, so that their civil rights were also guaranteed under the Islamic law regardless whether they were born from and/or a legal marriage or *sirri* marriage.

The research used a method of normative juridical approach which research is conducted based on main legal material by examining the theories, concepts, legal principles and the laws and regulations relating to this research.

The result showed that based on the verdict Number 99/Pdt.G/2018/PA.Rbg in the case of *isbat* poligamy marriage, the civil rights of the children from *sirri* outside marriage (poligamy) are same as the civil rights of children born from the official poligamy marriage, so legally the right of out-of-wedlock children, in the verdict concerning guardianship and inheritance rights of children are same as the other biological children born from the first marriage. Thus, based on this verdict that children civil rights get legal protection, justice and certainty about the status and other civil rights.

Keywords : *The civil rights of out-of-wedlock children, sirri poligamy, guardianship rights, and inheritance rights*