

ABSTRAK

Penelitian ini mengkaji tentang sengketa hak waris anak yang perkawinan keduanya orang tuanya terjadi pembatalan dikarenakan terdapat penetapan *itsbat nikah* dan penetapan ahli waris mustahaq, dalam Putusan Pengadilan Agama Nomor 1912/Pdt.G/2014/PA.Mdn. kedua penetapan tersebut dilakukan secara sepihak padahal penetapan tersebut dapat merugikan pihak lain yakni anak dari perkawinan lain suami pemohon. Akibat dari penetapan tersebut, perkawinan orang tuanya berstatus batal demi hukum sebab Pemohon dan ibu Penggugat merupakan saudara seayah sehingga termasuk dalam kategori larangan perkawinan. Oleh karena itu anak mengajukan gugatan atas penetapan tersebut. Penelitian ini menggugakan penelitian hukun normatif dengan pendekatan perundang-undangan. Hasil penelitian ini menunjukkan bahwa penetapan yang dilakukan secara sepihak mengandung konsekuensi status hukumnya dapat dibatalkan. Selain itu, penetapan ahli waris mustahaq yang diajukan oleh Tergugat, seharusnya dibatalkan apabila terbukti terdapat pihak yang dirugikan. Dengan demikian anak tersebut tetap mendapatkan hak waris seperti halnya anak sah yaitu mendapatkan *ashabah* dari harta waris. Konsideran hakim dalam Putusan ini menyatakan bahwa gugatan tidak dapat diterima sebab anak dianggap bukan pihak yang berkepentingan atas penetapan tersebut. Maka konsideran tersebut tidak tepat sebab dalam Undang- Undang Perkawinan maupun Hukum Islam disebutkan bahwa akibat hukum dari pembatalan perkawinan tidak berlaku surut terhadap anak- anak yang dilahirkan dari perkawinan tersebut.

Kata Kunci : Pembatalan, *Itsbat*, *Nikah*, Waris, Anak.

ABSTRACT

This research studied on the dispute settlement of inheritance case. The plaintiff here was the heir whose parents' marriage considered null and void because of *itsbat nikah* (marriage legalization) and the defendant was his father's ex-wife who asked for legalization of the status of marriage and heir. This case had been examined and decided on The Syariah Court Decision Number 1912 / Pdt.G / 2014 / PA.Mdn. Those legalizations were asked voluntary by the defendant without consideration of the plaintiff. Therefore, it created the plaintiff's loss because his parents' marriage voided as the defendant and her mother are half-sister and thus he lose his status as heir. This research is categorized as case study on legal research. It used statute approach to analyze the legal issue the approach of legislation. The results of this research indicated that the voluntary legalization of marriage has legal consequence on its status which can be voided. In addition, legalization as heir of the Defendant could also be annulled when there was a party whom able to prove getting lose because of the legalization. In another word, the plaintiff should not lose her right to get inheritance rights even though his parent's marriage was voided. The ratio *decidendi* (consideration) of the judge, which argue that the plaintiff was not categorized as person in charge in this case, could be considered as invalid. In fact, the plaintiff is the one whom got lose more. Based on Indonesian Marriage Law and Compilation of Islamic Law, the marriage annulment is not retroactively impacted to the legal status of the children whom born in the marriage.

Keywords: Annulment, Legalization, Marriage, Inheritance, Heir.