

## The Position of Children as a Result of Marriage Cancellation of Inbreeding

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### ABSTRACT

Human life is inherently paired. So that humans get married. Marriage is a legal and regular offspring connector so as to avoid mixing offspring or bloodline. Inbreeding is clearly prohibited in the Marriage Law. The Compilation of Islamic Law also regulates the prohibition of marriage. Then there is a cancellation of marriage from inbreeding. As a result of the cancellation of marriage, the position of children from the cancellation of marriage arises. In terms of the Marriage Law related to the consequences of marriage cancellation in Article 28, the cancellation of marriage begins after a decision from the Court that has permanent legal force and is valid from the time of the marriage. The decision regarding the cancellation of marriage states that it does not apply retroactively to children born from the marriage. This creates uncertainty regarding the position of children from the cancellation of marriage for inbreeding. A marriage is declared invalid according to law and religion if it violates the provisions regarding the conditions or prohibitions in marriage. So can these provisions also apply to the cancellation of marriage for inbreeding. As well as legal protection for the fulfilment of children's rights due to marriage cancellation of inbreeding.

### Keywords:

Marriage, Children, Inbreeding, Marriage Cancellation, Position, Legal Protection

### INTRODUCTION

Humans in the world are created to survive in need of others. Human life is essentially in pairs. With the aim of survival and survival. One of them is marriage, marriage is an aspect of life that is very important for the development of a society. The consequences arising from marriage are not only the relationship between humans in pairs but also between humans and their god as the foundation of the purpose of marriage. (Nuroniya & Salikin, 2011) So that marriage can create a household that has rules and norms in accordance with religious rules and does not conflict with morals and norms in society. The creation of rights and obligations between husband and wife is the most important foundation in creating a family.

Marriage in Indonesian regulations is regulated in Law No. 1 of 1974 concerning Marriage. Law No 16 of 2019 concerning Amendments to Law No 1 of 1974 concerning Marriage. Article 1 which states that "marriage is a physical and mental bond between a man and a woman as husband and wife which aims to form a happy and lasting family based on the almighty God." (Indonesia & Bab, 1974) The basis of marriage in article 1 clearly explains that the purpose of marriage is to form a happy and eternal household based on the Almighty God, so religion is the foundation of the continuity of marriage.

Indonesia is a country that has several religions. One of them is Islam. Islam is the religion of the majority of the population in Indonesia, approximately 207 million Muslims in Indonesia. (Kelib, 1993) Marriage according to Islam is contained in the Compilation of Islamic Law. Marriage in Article 2 KHI has the meaning of "A very strong agreement or called *mittsaqanghalidzan* to obey the commands of Allah SWT and can carry it out as an act of worship." (Kelib, 1993) Marriage in the compilation of Islamic law has a goal in terms of creating a family life that is *sakinah*, *mawaddah* and *rahmah*. So that marriage in Arabic

etymology has the meaning of Al-Nikah which means gathering, having sex, *jima'* and marriage contract. (Mardani, 2011) The definition of marriage in Law No. 1 of 1974 concerning Marriage jo. Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law do not have much difference in principle, both have the purpose of marriage based on Religion and God Almighty. (Jamaluddin & Nanda, 2016)

The legality of a marriage in Law No. 1 of 1974 concerning Marriage jo. Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage in Article 2, namely "marriage is valid if the marriage is carried out according to religious law and beliefs and the marriage is registered according to applicable laws and regulations." In the Compilation of Islamic Law, the validity of marriage in Article 4 states that marriage is valid if it is carried out according to Islamic Law and carried out in accordance with Article 2 Paragraph (1) of Law No. 1 of 1974 concerning Marriage. So that marriage can be carried out in accordance with the rules of Islamic law and the provisions of the laws and regulations in force in Indonesia.

Marriage is a legal and orderly offspring connector in order to avoid mixing offspring or bloodline, so that marriage provides clarity regarding the origins of human offspring that are well preserved. One of the prohibited marriages is inbreeding. Inbreeding or marriage that is still bound by blood relations between husband and wife. Prohibited marriages are contained in Article 8 of Law No. 1 of 1974 concerning Marriage jo. Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. Which states that:

Marriage is prohibited between two people who:

1. Related by blood in a straight line of descent downwards or upwards;
2. blood related in a lateral line of descent, namely between brothers, between a person and his parents' brother and between a person and his grandmother's brother;
3. related by marriage, namely in-laws, stepchildren-in-law and mother / stepfather.
4. related to breastfeeding, namely breastfeeding parents, breastfeeding children, breastfeeding siblings and aunts/uncles.
5. related to the wife or as an aunt or niece of the wife, in the event that a husband has more than one wife.
6. having a relationship which is prohibited by his religion or other applicable regulations."

(Indonesia & Bab, 1974)

So that inbreeding is clearly prohibited in the Marriage Law. The Compilation of Islamic Law also regulates the prohibition of marriage, namely in Chapter IV Article 39 which states that:

"Marriage between a man and a woman is prohibited due to the following reasons:

1. Because of blood relationship:
  - a. with a woman who gave birth to him or who descended from him or his descendants;
  - b. with a woman descended from the father or mother;
  - c. with a sister woman who gave birth to him
2. Because of consanguinity:
  - a. with a woman who gave birth to his wife or ex-wife;
  - b. with a woman who is the former wife of the person who brought him down;
  - c. with a woman who is a descendant of his wife or ex-wife, unless the breakup of the marriage relationship with his ex-wife is qobla al dukhul;
  - d. with an ex-wife of his descendants.
3. Because of breastfeeding:
  - a. with the woman who is breastfeeding and so on in a straight line upwards;
  - b. with a woman who is a consort and so on in a straight line downwards;
  - c. c. with a woman who is a consanguineous sister, and a descending consanguineous sister
  - d. with a woman who is an aunt by consanguinity and a grandmother by consanguinity and above;" (Kelib, 1993)

Inbreeding is a marriage that is clearly prohibited by religion and by marriage regulations in Indonesia. So that this inbreeding marriage can be cancelled. Cancellation of marriage as stipulated in Article 70 letter d of the Compilation of Islamic Law which states that one of the marriages is null and void, namely a marriage between two people who are related by blood. Article 22 of the Marriage Law states that "A marriage can be cancelled if the parties do not fulfil the conditions for entering into a marriage". (Kelib, 1993)

The consequences of marriage cancellation arise regarding the position of children from marriage cancellation. In terms of the Marriage Law related to the consequences of marriage cancellation in Article 28, the cancellation of marriage begins after a decision from the Court that has permanent legal force and applies from the time of the marriage. The decision regarding the cancellation of marriage states that it does not apply retroactively to children born from the marriage. This creates uncertainty regarding the position of children from marriage cancellation for inbreeding. When viewed from the Compilation of Islamic Law, the result of marriage cancellation due to one of the husband or wife apostatising is that it does not apply retroactively to children born from the marriage. So can these provisions also apply to the cancellation of marriage for inbreeding. The validity of children in Islam is regulated in Article 99 of the Compilation of Islamic Law which states that a legitimate child is a child born of a legal marriage and or the result of a legal husband and wife outside the womb and born by the wife.

Marriage is declared invalid according to law and religion if it violates the provisions regarding the conditions or prohibitions in marriage as regulated in the Law and Islamic Law. One of them is inbreeding, this marriage is basically a marriage that is clearly invalid because it has been prohibited in Islam the prohibition of marriage is found in Surah an nisa verse 23 which means It is forbidden for you (to marry) your mothers; your daughters; your sisters; your father's sisters; your mother's sisters; the daughters of your brothers; the daughters of your sisters; your mothers who nursed you; your sisters-in-law; the mothers of your wives (in-laws); the children of your wives in your care from wives with whom you have had intercourse, but if you have not mixed with them (and have divorced), then you have no sin in marrying them; (and forbidden to you) are the wives of your children's children (sons-in-law); and the joining together (in marriage) of two women who are sisters, except as happened in the past; surely Allah is Forgiving, Most Merciful. (Islam, 1990)

This inbreeding has an impact on the *bloodline* of the resulting child, the status of the validity of the marriage and the physical impact on the child. So based on this, there is uncertainty regarding the position of the child due to the cancellation of marriage from inbreeding. So that children can have a clear position in the eyes of the law, and have proper legal protection. Because children are born with rights and obligations that must be fulfilled and protected.

## METHOD

Normative juridical research serves as a fundamental approach to legal inquiry, providing a structured method for examining legal regulations, principles, and theories related to a specific legal issue. This research method often begins with an analysis of statutory laws, case law, and legal doctrines, and then extends to interpretation and application in various contexts (Widjaja, 2020). By focusing on the systematic organization of legal norms and their relationships, normative juridical research aids in building a coherent understanding of legal systems and guides the development of sound legal arguments and solutions (Setiawan, 2018).

A key objective of normative juridical research is the development of new legal concepts or theories that can be used to address emerging legal issues. Researchers analyze relevant laws and case precedents to construct innovative arguments or proposals that might shape future legal practice (Utama, 2021). This method also emphasizes the importance of historical legal perspectives to contextualize existing laws and inform potential reforms (Hadi,

2022). Through a critical examination of legal norms and their evolution, researchers contribute to the ongoing advancement of the legal system and its capacity to respond to contemporary challenges.

## RESULTS AND DISCUSSION

### 1. The position of children as a result of marriage cancellation from inbreeding

Inbreeding, the practice of individuals with shared ancestry reproducing, has been associated with various effects on children resulting from such marriages. Research has shown that inbreeding can lead to negative consequences for children's health and well-being. Studies have indicated that children of inbreeding parents may experience gingival health issues (Wais & Al Rawi, 2020) immunological changes leading to frequent illnesses lower 2D:4D digit ratios (Özener et al., 2014) and inbreeding depression affecting intellectual behaviors, mental health, and cognitive efficiency (Ali et al., 2019) Inbreeding has also been linked to reduced growth in children and increased rates of major abnormalities (Alvarez et al., 2009)

Marriage in Law No. 1 of 1974 concerning Marriage jo. Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage aims to make marriage a happy and lasting household. In a family there is not only a husband and wife. But it is hoped that with marriage there are offspring who can continue the continuity of life. Children are the successors who are expected to provide happiness. Marriage has ties to children related to the status of the child's position. The validity of marriage has consequences for the child. A child after being born must be registered according to the laws and regulations. Civil registration is a recording of important events in a person's life that he experiences and then registers with the Civil Registry at the Implementing. Important events in this case are events experienced including birth, death, stillbirth, marriage, divorce, child recognition, child attestation, child adoption, change of name, and change of citizenship status. This is regulated in Law No. 23/2006 on Population Administration jo. Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration.

Marriage is valid if the marriage is in accordance with the applicable provisions in Article 2 of Law No. 1 of 1974 concerning Marriage jo. Law No 16 of 2019 concerning Amendments to Law No 1 of 1974 concerning Marriage which consists of:

- a) A marriage is valid if it is performed according to the laws of each religion and belief.
- b) And the marriage is registered in accordance with the applicable laws and regulations.

In this case, it is also in accordance with the Compilation of Islamic Law that marriage is valid according to Islamic law and is registered. It is stated in Article 5 of the Inbreeding in this case is a marriage that is clearly prohibited in Law No. 1 of 1974 concerning Marriage jo. Law No 16 of 2019 concerning Amendments to Law No 1 of 1974 concerning Marriage and Islam. Inbreeding that has occurred can be submitted for marriage cancellation. Marriage cancellation is an effort to follow up on the existence of a marital relationship that has previously occurred. The court to decide on a marriage cancellation petition will always be based on the consideration of the religion of each spouse. If the marriage is religiously valid, the court cannot annul the marriage. (Rasjidi, 1982)The filing of a petition for annulment of marriage in this case can be done by, among others:

- a) Relatives in the straight line of descent upwards from the husband or wife;
- b) Husband or wife;
- c) Authorised officials as long as the marriage has not been dissolved;
- d) An official appointed by the husband or wife;
- e) 5) Any person who has a direct legal interest in the marriage.(Indonesia & Bab, 1974)

A marriage cancellation petition may be filed with the court in which the marriage took place, or may be filed at the domicile of the husband or wife. (Indonesia & Bab, 1974)

Marriage here is divided into 2, namely legal marriage and invalid marriage. According to H.M Anshary's opinion regarding inbreeding in this case is categorised into 2 types. The



first is inbreeding which is initially legal according to the law and the second is inbreeding which from the beginning the marriage violates the law. (Maimunah, 2018) This is in line with the provisions in Article 42 jo 43 of Law No. 1 of 1974 concerning Marriage jo. Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage jo Articles 99 and 10 of the Compilation of Islamic Law as if marriage is divided into 2, then the position of children in law is also divided into legitimate children and children outside marriage. In this case, legitimate children are children based on the consequences of a legal marriage. Extra-marital children are children who are based outside of marriage and only have a civil relationship with the mother and the mother's family.

Bloodline, etymologically meaning Arabic connection or descent. (Rifai, 2012) In terminology, bloodline means as a derivative or a family bond that has a blood relationship. Bloodline can also be understood as a legal and binding blood relationship. (Irfan, 2013) Bloodline is the basis for determining other legal consequences of an event in a person, be it mahram, inheritance, guardianship, and so on. Bloodline to the child from the father occurs because of several things that cause it, including:

- a) Legal marriage, in this case the scholars agree that the child born from a marriage between a woman and a man in a legal marriage, the child can be related to both husband and wife. (Irfan, 2013)
- b) Fasid marriage, in this case, is a marriage that takes place in a state of lack of conditions.
- c) Bodily intercourse by way of *Shubhat*, in this case it can be said that there is bodily intercourse of a man or woman outside of a marriage contract, whether the marriage is valid or invalid. The intercourse was based on ignorance and misunderstanding.

Inbreeding has legal consequences for the children it produces. Children of inbreeding are categorised as extra-marital children. According to some scholars, this is equated or harmonised with children out of wedlock. So that the child only gets a relationship with the mother and the mother's family. On the basis that the marriage entered into previously by both parents is a marriage based on a marriage clearly prohibited by religion, it is considered that the marriage is null and void. (Maimunah, 2018) Because inbreeding will cause uncertainty related to bloodline and its position in terms of inheriting if the child is categorised as a legitimate child. Because the position of a child will have an impact on other legal consequences. However, the difference in the status of children due to the cancellation of marriage from inbreeding cannot be an obstacle for children to get their rights.

## **2. Legal protection of children's rights due to marriage cancellation from inbreeding**

Children are one of the weak and vulnerable humans in passing their growth and development, so children need more attention in the process of growth and development. With the aim that children can develop properly. Because children are vulnerable human beings so that children get a disadvantaged situation, due to not having the courage to voice their will, resulting in children's rights that are not seen as important. (Gosita, 1985)

Protection of children is already contained in Law No 23 of 2002 concerning Child Protection in conjunction with Law No 35 of 2014 amending Law No 23 of 2002 concerning Child Protection. Protection has a word meaning that comes from *lindung* which means a place of shelter or things that can protect. Legal protection is protecting the legal rights of each person. So legal protection is a process of legal actions and methods in protecting the rights, possessions, authority and power of a person. (Tektona, 2012) The Convention on the Rights of the Child is categorised into four areas, among others:

- a) The right to survival, in this case, is a right with the aim of survival so that health is properly fulfilled. With care that is optimally endeavoured.
- b) The right to protection, in this case the right to protection includes protection against discrimination against children, child exploitation, violence and child neglect. Because children are human beings who are vulnerable to crime in the community.

- c) The right to growth and development, in this case children have the right to education and a good quality of life in their growth and development in society as individuals both in terms of spiritual, physical and mental growth and development and in terms of socialising in society.
- d) Right to Participate, in this case the child has the right to be able to use his/her opinion and give a statement on all matters that can affect the rights of the child.

The obligation of parents is never interrupted even if there is a marriage cancellation between the parents of the child. The parents are still obliged to maintain the child and ensure the child's proper growth and development. The legal basis regarding the rights and obligations of parents is regulated in Article 45 of Law No. 1 of 1974 concerning Marriage jo. Law No 16 of 2019 concerning Amendments to Law No 1 of 1974 concerning Marriage which states, among others:

- a) Both parents are obliged to nurture and educate their children to the best of their ability;
- b) The parental obligations referred to in paragraph (1) of this article shall apply until the child is married or able to stand on his own. Which obligation shall continue even if the marriage between the parents breaks down.

In the legal protection of children due to the cancellation of marriage from inbreeding, their rights as a child must still be fulfilled. Although the marriage of both parents has been cancelled and the marriage is clearly prohibited. But children must still get legal protection related to the fulfilment of their rights and obligations. The rights of the child include:

- a) Parenting rights,

In the care of children, they have the right to be cared for by their own parents, unless there are clear legal reasons that separation is in the best interests of the child. So that children resulting from the cancellation of inbreeding still have the right to be cared for by their own parents until the judge determines other provisions.

- b) The right to maintenance or living expenses from both parents

Children who in this case are children as a result of marriage cancellation still have the right to be provided with alimony by their parents with the aim of meeting their needs for life, education and health. This maintenance can be determined by the court when there is a marriage cancellation. So that it is clear the obligation of parents, especially fathers, to provide maintenance to their children if the child is not related to them.

- c) Right of bloodline

In terms of determining the bloodline of the child due to the cancellation of this inbreeding, the bloodline relationship of this child is with the mother and her family. Article 100 of the Compilation of Islamic Law states that "Children born out of wedlock only have a bloodline relationship with their mother and their mother's family". (Kelib, 1993) and in the Explanation of Article 149 jo 185 of the Compilation of Islamic Law that "what is meant by a child born out of wedlock is a child born outside a legal marriage or as a result of an illegitimate relationship." (Kelib, 1993)

Children of inbreeding who have the status of illegitimate children cause differences in the rights obtained by these children when compared to legitimate children. because it is known that there is a prohibition on marriage while the parents continue to carry out the marriage between them, the child born from the marriage is invalid and has bloodline to the mother. In the provisions of article 19 jo 20 paragraph (2) letter a of the Compilation of Islamic Law regarding marriage guardians, if the child of the cancellation of inbreeding is a woman, the child, if in the future there will be a marriage, the biological father does not have the right to marry her or become a guardian of the child's marriage. So that it is replaced by the judge's guardian.

- d) Guardianship rights

Guardianship of children occurs when this is in accordance with the provisions contained in Article 50 of Law No. 1 of 1974 concerning Marriage jo. Law No 16 of 2019 concerning Amendments to Law No 1 of 1974 concerning Marriage which states that:

- 1) Children who have not reached the age of 18 (eighteen) years or have never entered into marriage, who are not under the authority of their parents, are under the authority of a guardian.
- 2) The guardianship concerns the child's person and property." (Indonesia & Bab, 1974)

Guardianship occurs when both parents are unable to fulfil and continue their responsibilities as biological parents, refuse to take responsibility for the child, and neglect and fail to carry out their responsibilities as parents. Or other things that make parents end up neglecting their children.

e) Right of Inheritance

In the case of inheritance of children due to the cancellation of this inbreeding, then with the status of the child's position is invalid or equated with an extra-marital child, the inheritance of the child can only inherit property from the mother and her mother's family. So that it is only entitled to be the heir of the mother and her mother's family and cannot make it the heir of the father and the father's family. (Syahrani, 1989) But if the father in this case wants to give some of his property to the child, one of the things that can be done is through a grant to his child. There are conditions in granting for the person who will give the grant, namely as follows:

- 1) Ownership of the goods
- 2) The person making the grant is not a person whose rights are restricted for any reason.
- 3) The person making the grant must be a legally capable person, in good health
- 4) Not under compulsion to make a grant. (Nuroniayah & Salikin, 2011)

## Discussion

Based on the research presented, the practice of inbreeding can have significant negative impacts on children born from such unions, including various health problems such as impaired growth, gingival health issues, and increased rates of abnormalities. Additionally, intellectual and cognitive deficits, as well as frequent illnesses, have been noted in these children. The annulment of a marriage due to inbreeding can result in children being classified as illegitimate, affecting their legal status and relationship to their parents.

Despite being classified as illegal, children from annulled inbreeding marriages must still receive legal protection and have their rights upheld. These rights include care from their parents, maintenance or financial support, and access to health and education. The child can only inherit from the mother and her family, and if the child is female, her biological father cannot serve as her marriage guardian. Thus, while the annulment of inbreeding marriages poses challenges for the legal status and inheritance rights of the children involved, their fundamental rights must still be ensured and protected according to existing laws.

## CONCLUSION

Marriage has ties to the child in relation to the status of the child. The validity of marriage has consequences for the child. Inbreeding in this case is a marriage that is clearly prohibited in Law No. 1 of 1974 concerning Marriage jo. Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage and Islam. Inbreeding that has occurred can be submitted for marriage cancellation. Marriage here is divided into 2, namely valid marriage and invalid marriage. Children of inbreeding are categorised as extra-marital

children. According to some scholars, this is equated or harmonised with children out of wedlock. So that the child only gets a relationship with the mother and the mother's family. On the basis that the marriage entered into previously by both parents is a marriage based on a marriage clearly prohibited by religion, it is considered that the marriage is null and void.

Children are one of the weak and vulnerable humans in passing their growth and development, so children need more attention in the process of growth and development. Protection of children is already contained in Law No 23 of 2002 concerning Child Protection in conjunction with Law No 35 of 2014 amending Law No 23 of 2002 concerning Child Protection. Parental obligations are never interrupted despite the cancellation of the marriage between the parents of the child. The parents are still obliged to maintain the child and ensure the child's proper growth and development. The legal basis regarding the rights and obligations of parents is regulated in Article 45 of Law No. 1 of 1974 concerning Marriage. Law No 16 of 2019 concerning Amendments to Law No 1 of 1974 concerning Marriage. These children's rights include parenting rights, maintenance rights, inheritance rights, guardianship rights. But if the father in this case wants to give some of his property to the child, one of the things that can be done is through a grant to his child.

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