

ABSTRACT

Ismail, NIM 10210109, 2014. *Legal Protection For Children In The Second Marriage: Perspective Islamic Court Judges of Malang District and Gender Activist of Malang City (Case Study No: 6445/Pdt.G/2013/PA Kab. Malang)*. Thesis Al-Ahwal Al-Syakhshiyah Department, Sharia Faculty, The State Islamic University Maulana Malik Ibrahim of Malang. Supervisor: Dr. H. Fadil Sj., M.Ag.

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As a matter of reality, hidden marriage (sirri) practice even commits by polygamy way, still happen in social life, nothing agreement from the first wife is the factor for husband to do polygamy. So that, hidden marriage takes by husband as alternative way to do polygamy. That unregistered marriage makes rise a crash for low problem. For the example, if the wants to make birth certificate for his children, to have to marriage certificate firstly. Because his marriage unregistered, he must ask to Islamic Court to legalize his marriage. In Islamic Court he will find a difficulties, because he will be stand opposite with his first wife that not agrees for him to do polygamy. Even when Islamic Court judge decided to refuse his petition of polygamy permission. So that will be very difficult for a children to get his rights. This is very contradictory with the best interest of the child principle.

The problems raised are how judge arguments of Islamic Court of Malang District and Gender Activist argument of Malang City about legal protection of law for child in the second marriage.

This kind of research is empiric and used qualitative approach. Data collected are the primary and secondary data which are collected by interview and documentation techniques. The data are edited, checked and put in order that they are finally analyzed by descriptive analytic method.

For the result of this research indicated that child protection in the second marriage according to judge argument Islamic Court of Malang District is not realized and performed. In their opinion that second marriage which commits by polygamy, the alternative and cumulative of polygamy settlements are not completed. Referring to regulation no. 1 of 1974 regarding marriage, are agreement from the first wife, the husband able to guarantee his wives and children necessities, the husband will be fair between his wives and children, wife not make pass of her obligation as wife, wife got defects or diseases are not be cured, wife not able to give birth.

In Gender Activist opinion that the rights of the child must be protected in any marriages. By consideration that the child is grace from the God is not fair if child bear the burden as consequence from his parents problematic marriage. It contradictory with the best interest of the child principle and it must be a primary or paramount consideration.