

The Legal Reasoning of Judges of the Batang Religious Court in the Decision of Itsbat Marriage Case Number 16/Pdtp.P.2022.PA.Btg

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Abstract

This research examines the legal reasoning of judges at the Batang Religious Court in the decision of itsbat marriage number 16/Pdt.P/2022/PA.Btg. Legal reasoning is needed by judges in making legal considerations in a case. This type of research is empirical legal research with a qualitative approach. The results showed that in the decision of itsbat marriage No. 16/Pdtp.P.2022.PA.Btg, the Panel of Judges was guided by Law No. 1 of 1974 concerning Marriage and Compilation of Islamic Law as a decision on the validity of the Petitioners' marriages. Apart from that, the reason for the interests of population administration is also a legal consideration in granting the application for itsbat marriage. For the researchers, the Panel of Judges made it too easy for the process of granting itsbat marriage for the perpetrators of unregistered marriages, which was feared to have an impact on the spread of unregistered marriages in society.

Keywords: legal reasoning, decision, itsbat marriage,

Abstrak

Penelitian ini mengkaji tentang penalaran hukum hakim di Pengadilan Agama Batang dalam putusan itsbat marriage nomor 16/Pdt.P/2022/PA.Btg. Penalaran hukum diperlukan oleh hakim dalam membuat pertimbangan hukum pada suatu perkara. Jenis penelitian ini adalah penelitian hukum empiris dengan pendekatan kualitatif. Hasil penelitian menunjukkan bahwa pada putusan itsbat marriage Nomor 16/Pdtp.P.2022.PA.Btg, Majelis Hakim berpedoman pada Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan dan Kompilasi Hukum Islam sebagai putusan atas sahnya perkawinan para Pemohon. Selain itu, alasan kepentingan administrasi kependudukan juga menjadi pertimbangan hukum dalam mengabulkan permohonan Itsbat Marriage tersebut. Bagi peneliti, Majelis Hakim terlalu mempermudah proses dalam pengabulan Itsbat Marriage para pelaku marriage sirri yang dikhawatirkan berdampak pada merebaknya marriage sirri di masyarakat.

Kata Kunci : penalaran hukum, putusan, itsbat marriage

A. Introduction

Judge is a profession that uses legal reasoning more often than other legal actors. In this context, judges are required to use their reasoning to direct decisions that are correct and fulfill a sense of justice for people seeking justice. This proves the importance of legal reasoning for judges (Basuki Kurniawan, 2021, p.60)¹ Article 5 Law no. 48 of 2009 concerning Judicial Power, in deciding cases the most important thing is the legal conclusion of the facts revealed in court. Therefore, judges must explore values, follow, and understand legal values and a sense of justice that lives in society.² A.G. Guest, states “The object of a scientific research is discovery; the object of legal research is a decision.” (Basuki Kurniawan, 2021, p. 59-60)³ Ratification or itsbat of marriage which is one of the absolute authorities or

¹ Basuki Kurniawan, *Logika dan Penalaran Hukum*, (Bondowoso : Licensi, 2021), p. 60.

² Nur Iftitah Isnantiana, “Legal Reasoning Hakim Dalam Pengambilan Putusan Perkara Di Pengadilan” *Islamadina Jurnal Pemikiran Islam*, No. 2 (Juni, Volume XVIII, 2017) 41-56. Hlm 44

³ Basuki Kurniawan, *Logika dan Penalaran Hukum*,..., hlm 59 -60.

competencies for the Religious Courts cannot be separated from the role of the judge in the process of legal reasoning. Legal reasoning in this case plays a role in the formulation of legal considerations and decision making of the case. For judges an adequate understanding of legal reasoning has an important role in providing legal considerations (*ratio decidendi*) in making decisions. (Taqiudin, 2019, p 192)⁴

Previous studies on the legal reasoning of judges and marriage certificate decisions have been carried out by academics with various focuses and approaches. The study can be mapped into several categories. *First*, the study of legal reasoning, among others. Habibul Umam Taqiuddin (2017); Urbanus Ura Weruin (2017); Agus Setiawan (2017); Mario Julyano dan Aditya Yuli Sulistyawan (2019), Tommy Hendra Purwaka. (2011). *Second*, the legalization of marriage through a marriage certificate decision, among others : Asriadi Zainuddin (2022); B. H. Siregar (2022); Satriani Hasyim. (2021). This study specifically discusses the legal reasoning of judges in granting *itsbat* marriage where this theme has not been studied by previous researchers.

This study aims to explore and analyze the legal reasoning used by the Batang Religious Court judges by taking the case of determination Number 16/Pdt.P/2022/PA.Btg. in granting the marriage certificate. This study also explores the urgency of using judge's legal reasoning in making a decision. It is hoped that the results of this study will contribute to development thinking in the field of law and become a reference for judges in preparing material for legal considerations and decisions.

B. Discussion

1. Legal Reasoning

Reasoning can be interpreted as an effort to get facts or a thinking process to find the truth by using reason. This process is generated based on data and facts that have been collected by linking these data or facts which will then lead to a conclusion that can be realized in one statement..⁵ B. Arief Sidharta defines reasoning as an activity in the human mind in which movement takes place from one premise to another to finally reach a conclusion.(B. Arief Sidharta , 2010, p. 11).⁶

Legal Reasoning is: an activity to seek or explore the legal basis contained in a legal event, whether it is a legal act or a case of violation of law (criminal, civil or administrative) and incorporates it into existing legal regulations. For judges, legal reasoning is useful in taking consideration in deciding a case. (Teguh Samudera, t.t). Legal reasoning is defined as a systematic problematic thinking activity (*gesystematiseerd problememdenken*) of legal subjects, namely humans, both individually and socially within the cultural sphere. (Sidharta., 2013, p. 363).⁷

The activity of legal reasoning is an attempt to find the rule of law and in a balanced manner concentrates on qualifying the juridical facts. As far as possible, legal reasoning is sought so that the objectives of law, namely justice, legal certainty and benefit, are achieved proportionally. Although this is not easy. especially for individual concrete situations that are complicated or heavily influenced by non-legal matters, for example influenced by political,

⁴ Habibul Umam Taqiuddin, "Penalaran Hukum (Legal Reasoning) Dalam Putusan Hakim", *JISIP Jurnal Ilmu Soisal dan Pendidikan*, No. 2, (November, 2017), 191-199, p. 192.

⁵ Zaenal Arifin dan Amran Tasai, *Cermat Berbahasa Indonesia untuk Perguruan Tinggi*, (Jakarta, Akademika Pressindo, 2004), p. 137.

⁶ B. Arief Shidarta, "Refleksi Tentang Struktur Ilmu Hukum Sebuah Penelitian Tentang Fundasi Kefilsafatan dan Sifat Keilmuan Ilmu Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia", (Bandung: Mandar Maju, 2000) halaman 166-167.

⁷ Shidarta, *Hukum Penalaran Dan Penalaran Hukum Buku 1 Akar Filosofis*,(Yogyakarta : Genta publishing, 2013), p. 363.

practical ideological, economic, social, cultural, religious, psychological pressures, and so on. (Agus Setiawan, 2017, p. 204-215).⁸

The use of legal reasoning is a statutory mandate that must be carried out by judges in making legal considerations. Article 60 A (1) Law Number 50 of 2009 states: "*In examining and deciding cases, judges must be responsible for the decisions and decisions they make*" And paragraph (2) "*Determination and decision as referred to in paragraph (1) must contain the judge's legal considerations based on proper and correct reasons and legal basis.*"

2. The *Itsbat* Marriage

Itsbat Marriage is a legal determination by the Religious Courts for married couples whose marriages are not registered at the District Office of Religious Affairs (KUA). Unregistered marriage or in other terms unregistered marriage is a form of violation of article 2 paragraph 2 of Law Number 1 of 1974 concerning Marriage, hereinafter abbreviated as UUP, which states "Every marriage is recorded according to the applicable laws and regulations". *Sirri* marriages are usually carried out by several groups for various reasons and purposes.

Marriage registration aims to provide legal certainty regarding the marital status of husband and wife. along with the implications arising from the marriage, such as the legalization of children and inheritance matters. In addition to Article 2 paragraph 2 of the UUP, in Indonesia the provisions regarding the obligation to register marriages for Muslim communities are contained in Article 5 paragraph (1) of the Compilation of Islamic Law (KHI) which reads "In order to ensure orderliness of marriage for the Islamic community, every marriage must be recorded." In these provisions, that the registration of marriages aims to ensure order. Then in order to comply with these provisions, article 6 (1) regulates the obligation for marriage to take place before and under the Supervision of a Marriage Registrar. (PPN).

Marriages that are not executed before VAT and/or are not recorded, do not meet the legal aspects of state administration and do not have official documents from the state in the form of a marriage certificate, which has implications for the absence of legal force over the marriage. Article 6 (2) KHI states "Marriage conducted outside the supervision of a Marriage Registrar has no legal force." This legal force becomes one of the formal legal evidences and is binding on interested parties. Marriages that do not have legal force have a juridical impact on the rights of public services, they do not receive protection and legal services by the competent authorities as they should. As proof that a marriage is declared official, a marriage event must be recorded on the Marriage Certificate. Article 7 paragraph (1) KHI reinforces that "Marriage can only be proven by a Marriage Certificate drawn up by a Marriage Registrar." A marriage book or excerpt from a marriage certificate must be owned by a husband and wife as proof that their marriage is officially recognized by the state. This official registration has the objective of maintaining orderly matters of marriage and all its legal consequences. Even though it is so important, in reality there are married couples who do not/do not yet have a marriage certificate.

Marriage certificates from the Religious Courts are used by applicants as a condition for registering marriages at the KUA Marriage Registrar for married couples who do not have a Marriage Certificate as a result of a marriage that was carried out unofficially or *siri*. After the marriage registration process at the KUA in the area of residence concerned is declared eligible, the person concerned will receive a Quote of the Marriage Certificate in the form of a Marriage Book which can then be used by the person concerned as a basis for taking care of population administration needs and other needs.

⁸ Agus Setiawan, "Penalaran Hukum Yang Mampu Mewujudkan Tujuan Hukum Secara Proporsional", *Jurnal Hukum Mimbar Justitia*, No. 2 (Desember, Vol 3, 2017), p. 204-215.

Itsbat marriage can be submitted by certain parties, namely as explained in Article 7 paragraph 4 KHI which reads "Those who have the right to apply for *itsbat* marriage are husbands, wives, their children, marriage guardians and parties who have an interest in the marriage." Therefore, in Article 3, it is explained that the application for a marriage certificate is limited for the following reasons: a) The existence of a marriage in the framework of a divorce settlement; b) Loss of Marriage Certificate; c) There is doubt about whether or not one of the conditions of marriage is valid; d) The existence of a marriage that occurred before the entry into force of the UUP and; e) Marriages carried out by those who do not have marital obstacles according to UUP.

3. The Judge's Legal Reasoning in the *Itsbat* Marriage Decision

The judge's legal reasoning is carried out to realize consistency in legal rules and decisions. This is based on the principle (belief) that the law must apply equally to all people within its jurisdiction. The same case must be given the same decision based on the principle of *similia similibus* (equality). Legal reasoning seeks to maintain continuity in time (historical consistency). To guarantee the stability and predictability of legal reasoning, it must refer to previously formed legal rules and previous legal decisions.⁹

The decision on the marriage certificate No. 16/Pdt.P/2022/PA.Btg by the Panel of Judges at the Batang Religious Court Class I B on 15 February 2022 is an interesting legal phenomenon to study. There, the researcher saw a contradiction between the legal basis used in the legal deliberations and the results of the decision. Where the panel of judges used the argument contained in article 7 KHI as the basis for granting the application for *itsbat* marriage.

In this decision, the Panel of Judges has tried to carry out the process examination of the case for *itsbat* marriage application between RT (Applicant I) and SI (Applicant II) which ended with the ratification of the marriage between Petitioner I and Petitioner II which was held on November 29 2019 in Pretek Village, Pecalungan District, which is the jurisdiction area of Class I PA Batang B. Checkpoints have also been carried out in accordance with the procedural law that applies in the Religious Courts where the procedural law also applies to the General Courts unless specifically regulated. This means that the Panel of Judges has carried out the provisions of the case examination process, including: 1) Formulation of the Problem or Main Disputes, 2) Data Collection to Find Concrete Facts, and 3) Legal Findings (Doni Dermawan, t.t, p. 2).¹⁰

As far as the researcher's observations, in terms of problem formulation or dispute points, as well as data collection to find concrete facts, the panel of judges complied with the stipulated procedures. However, in the process of using the basis of article 7 paragraph 3 (d) and (e) According to the judge's opinion, the KHI is inappropriate with regard to the fact that the provisions limit *itsbat* marriage only for marriages that were carried out before the UUP came into force and there was no violation of the UUP. In fact, the Petitioners violated both of these provisions. The Petitioner married long after the UUP came into effect, namely November 29, 2019. In addition, Petitioner II at the time the marriage took place did not fulfill the marriage age requirement as stipulated by law. Petitioner II at that time was still 18 years old, meaning that he had not met the age limit as stipulated in law number 16 of 2019 as an amendment to the age limit provisions in Article 7 of the UUP which limits the minimum marriage age to 19 years for both bride and groom.

Some of the things that underlie the Majeis Hakim in granting the application for *itsbat* marriage are marriages that are declared valid based on the facts at trial, and also based

⁹ B. Arief Shidarta, "Refleksi Tentang Struktur Ilmu Hukum Sebuah Penelitian Tentang Fundasi Kefilsafatan dan Sifat Keilmuan Ilmu Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia", (Bandung: Mandar Maju, 2000) halaman 166-167.

¹⁰ Doni Darmawan, "Metode Penemuan Hukum Oleh Hakim", tt., p. 2.

on consideration of the reasons for the application for the purpose of registering the marriage or for population administration purposes. On the first reason, the Panel of Judges The Panel of Judges applied the law based on the suitability between the statements of the applicants and the witnesses with the legal provisions of the marriage under Article 2 paragraph 1 of the UUP. Regarding the second reason, the Panel of Judges tried to apply the sociological aspect (benefits), in which the interests of population administration have benefits for the applicants in accordance with the provisions of Article 36 of Law No. 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013.

Legally, this stipulation, insofar as legal considerations have reasons and legal basis that are accurate and correct, then the decision is declared legally valid. Article 60 A (1) of Law Number 50 of 2009 says: "In examining and deciding cases, judges must be responsible for the decisions and decisions they make. And paragraph (2) The stipulation and decision as referred to in paragraph (1) must contain the judge's legal considerations based on the right and correct reasons and legal basis". interested parties. But on the other hand, academically the legal considerations on the use of the basis of Article 7 paragraph 3 (d) and (d) KHI cannot necessarily be declared as legal facts that can be taken for granted. That the use of the basis is inappropriate for legal considerations with the reasons described above. So the Panel of Judges should formulate stronger and more concrete arguments in making a decision to grant a Marriage Certificate for married couples who married after the UUP came into effect.

For researchers, considerations about the reasons for population administration interests are too weak, compared to madaharat there will be fears of the spread of unregistered marriages caused by the ease of the process of *itsbat* marriage at the Religious Courts. In the rules of Usul al-Fiqh it is stated that avoiding harm must take precedence over attracting benefit. The spread of sirri marriage due to the ease of *itsbat* marriage process must be seen as dangerous in terms of carrying out the government's mission in maintaining greater benefits for its citizens. While *itsbat* marriage has benefits only for the applicant. For the problem of legalizing their marriage, the solution for them is to register their marriage officially at the KUA according to normal procedures. As for the issue of validating children born as a result of sirri marriages, they are directed to go through the path of child validation.

In the end, the judge's legal considerations in granting the marriage certificate, which is part of the judge's legal reasoning, must lead to greater benefits and avoid harm. The Panel of Judges must consider the greater interests of the state rather than having to accommodate the interests of individuals who have the potential to harm the interests of the state.

C. Conclusion

In making legal considerations, judges must be able to use appropriate and correct legal reasoning. This legal reasoning is necessary so that decisions taken in a case can be accepted by all interested parties.

In the decision on *itsbat* marriage No. 16/Pdtp.P.2022.PA.Btg, the judge used the reason for the validity of the marriage as stipulated in the UUP and the reasons for the interests of population administration for the applicants to be strong legal considerations to grant the applicants' requests for *itsbat* marriage.

It is feared that the ease of the *Itsbat* marriage process in Batang PA will trigger the spread of unregistered marriages. An alternative that can be used for unregistered marriage couples after the enactment of the UUP is to carry out a normal procedural marriage registration at the sub-district KUA. For child validation, the public can apply for child validation in court.

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