

REFLECTION PROBLEMS OF POLYGAMY DEBATES IN STRUCTURAL GENDER AND MODERNIZATION

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Abstract

A wife can only have a husband only if a wife wants and because of several factors that require the husband to have another wife such as the wife cannot fulfill her obligations etc. The court can give permission to the husband for more than one person, but for now polygamy is implemented only to fulfill satisfaction without realizing there are many negative impacts that will occur when you have fulfilled polygamy not the wife's mentality, but also their children who must be visited, for husbands who marry without the permission of the legal wife can be penalized but there are plans for wives who cannot be punished ask for permission.

Keywords: Marriage, Polygamy, Polyandry

INTRODUCTION

Polygamy is one area in family life that is always discussed.¹ Polygamy has been practiced in the modern age now as a continuation of the past. Including in Indonesia there have been many cases of polygamy that have been carried out by the husband in domestic relations. Even though polygamy is legally permissible, polygamy itself has many negative impacts, including: ² First, towards household life, including: disharmony in family members' relationships; frequent problems or disputes; lack of mutual trust; the absence of great concern from the husband for the children and wife; possibly lead to divorce. Second, the impact on the wife, including: 1) psychological impact: the wife's feelings of inferiority and self-blame because she feels that her husband's polygamous actions are the result of her inability to meet her husband's biological needs; 2) economic impact: economic dependence on husband; 3) violence against women, both physical, economic, sexual and psychological violence; 4) legal impact: marriages often occur under the hand so that the marriage is considered illegal by the state, even though the marriage is legal according to religion. The woman will be disadvantaged because the consequences of a marriage are considered non-existent, such as inheritance rights and so on. Third, the impact on children: the child feels that he is not getting attention from his parents; children become frustrated seeing the state of their parents; children get mental pressure; there is hatred for the father: ridiculed by his friends; Children do not feel comfortable at home, children have negative attitudes towards parents.

It is permissible to practice polygamy in Indonesia as long as it is in accordance with the provisions of the applicable polygamy law. The legal basis for polygamy is found in Law Number 1 of 1974 Article 3 Paragraph (2) Concerning Marriage which clearly stipulates that:

"The court can give permission to a husband to have more than one wife if the parties concerned wish."³

Whereas polygamy law for those who are Muslim is regulated in Article 56 Paragraph (1) KHI which reads:

"Husbands who wish to have more than one wife must obtain permission from the religious court."⁴

The mechanism for applying for someone to practice polygamy is explained by the State regulations contained in Law Number 1 of 1974 Article 5 Concerning Marriage that;

1. To submit an application to the religious court, it must be as referred to in Article 4 Paragraph 1 that meets the following requirements:
 - a. There is consent from the wife;
 - b. Guarantee that the husband is able to provide for the needs of his wife and children; and
 - c. There is a guarantee that the husband can act fairly.

2. The consent referred to in Paragraph 1 letter (a) of this article is not required for a husband if his wife cannot be asked for consent and cannot become a party to the agreement, or if there is no news from his wife for at least two years due to reasons others who need to get an assessment from a religious court judge.

Observing Article 4 Paragraph (1) Regarding the conditions for granting permission by the court to the husband to have more than one wife, we can find injustice in that article. This is what causes feminists to think that polygamy is a form of injustice to women, because only women feel the pain of polygamy.

Feminism appears against the background of the unequal relationship between men and women in society so that in the end there is awareness and efforts to eliminate this imbalanced relationship.⁵

The conditions that must be fulfilled by someone who wants polygamy are not light. The person must really be ready materially and economically so that it does not only aim to obey his desires but also to realize fairness in all matters, both material and non-material.⁶

For feminism, no one is capable of being fair in this world, let alone polygamy. This only gives an advantage to the men. They also think that if polygamy can be accepted in the social environment, polyamory can also be practiced in this modern era, if not, then neither can be done.

¹Bustaman, Usman, "Poligami Menurut Perspektif Fiqh", Jurnal Hukum Keluarga Dan Hukum Islam, Vol 1 No. 1 Januari-Juni 2017, Aceh: Falkutas Syari'ah Dan Hukum Uin Ar-Rainy, hlm. 275

²Mughni Labib Ilhamuddin IsAshidiqie, *Poligami Dalam Tinjauan Syariah Dan Realitas*, Al-Ahwal Al-Syakhsyiyah: Jurnal Hukum Keluarga Dan Peradilan Islam, Vol. 2, No 2, September 2021, hlm 199-218.

³Lihat Undang-Undang No. 1 Tahun 1974 Pasal 3 Ayat (2) Tentang Perkawinan

⁴Lihat Kompilasi Hukum Islam Bab IX Pasal 56 Ayat (1)

⁵Nurul Hidayati, *Teori Feminism: Sejarah, Perkembangan dan Relevansina dengan Kajian Keislaman Konteporer*. Jurnal Harkat: Media Komunikasi Gender, Vol. 14, No 1,2018, hlm 23-29.

⁶Muhammad Arif Mustofa, *Poligami dalam Hukum Agama dan Negara*, Al-Imarah: Jurnal Pemerintahan Dan Politik Islam, Vol. 2, No 1, 2017, hlm 47-58.

RESEARCH METHOD

This study uses the nature of normative law and the type of literature research. Library research or literature study is a series of activities related to methods of collecting library data, reading and recording and processing research materials. Meanwhile, normative legal research is a scientific research procedure to find the truth based on the scientific logic of law from a normative perspective. The scientific logic in normative legal research is built on scientific discipline and the workings of normative legal science, namely the science of law whose object is law itself.

RESULTS AND DISCUSSION

A. Sanctions for husbands who enter into polygamous marriages without permission or without the knowledge of the first wife

Pursuant to the provisions of Article 279 paragraph (1) of the Criminal Code (KUHP) it is stated that it is punishable by imprisonment for a maximum of 5 years:⁷

1. Whoever enters into a marriage knowing that his existing marriage or marriage is a legal obstacle to it
2. Whoever enters into a marriage knowing that the other party's marriage or marriages is an obstacle to it. However, it can be seen that some people who practice polygamy do not fulfill the requirements set by law. Polygamy in this area is generally carried out without the permission of their wives, resulting in disputes, fights and also eliminating the unity and harmony in the household.

In principle, marriage law in Indonesia adheres to the principle of open monogamy, where a man can only have one wife and a woman can only have one husband..⁸ However, it is possible for a husband to have more than one wife or polygamy if he meets certain requirements, namely obtaining permission from the Court, where one of the conditions for granting such permission is the consent of the legal wife except in special conditions.⁹ The act of a husband entering into a polygamous marriage without court permission is a crime. Menurut Pasal 199 KUHPerdata, perkawinan dapat lepas jika:

1. Due to death;
2. Because someone left him for 10 years and was followed by the marriage of one of them with another person;
3. Because there is a divorce verdict by the judge; and

Because there was a divorce as stipulated in the Marriage Law, the Civil Code, and the KHI.

Based on the description above, it can be concluded that husbands who remarry without permission from the first (previous) wife can be subject to Article 279 of the Criminal Code (KUHP), with a maximum penalty of 5 to 7 years in prison. Marriage requirements must be fulfilled absolutely to get the validity of a marriage. Legally, a woman who is married without the permission of the first wife is not considered a legal wife. In other words, the marriage is considered invalid. Therefore, the siri wife is not entitled to maintenance and inheritance of the husband if the husband dies. Siri's wife is not entitled to gono gini assets in the event of a divorce. A siri wife is not entitled to receive wife benefits and retirement benefits from her husband.

The parties, both husband and wife, cannot obtain rights in terms of legal protection for the marriage they are living in. The rights of a husband or wife can be protected by law after they have authentic proof of their marriage. The clarification of the marital status of husband and wife through authentic evidence about their marriage, becomes the basis for clarity of the legal status of a child. As for the management of the child's birth certificate, the foundation is a marriage certificate. If the husband and wife have never registered their marriage, then when a child is born and requires a birth certificate, the population office will not issue the birth certificate.

In addition, with unregistered marriages, the certainty of the rights and obligations of parents and children cannot be fully protected by law. The child loses his father's name or lineage, education, spiritual and physical living, and inheritance from his father. Has no legal relationship with his father.¹⁰ Then clarity regarding the status of the child will only have civil relations with the mother and the mother's family. Polygamous marriages without the permission of the first wife can be a serious

⁷Khiyaroh, *Tujuan Aturan Poligami Dalam Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan*. Usrah: Jurnal Hukum Keluarga Islam, Vol. 3, No. 1, April 2022, hlm 21-30.

⁸Lihat Undang-Undang Pasal 3 Ayat (1) Tentang Perkawinan

⁹Misbahul Munir Makka. (2022). Poligami Tanpa Izin Istri Pertama Dan Dampaknya Terhadap Keluarga. *Al-Mujtahid: Journal Of Islamic Family Law*, Vol. 2, No. 1, 2022, hlm. 34-51.

¹⁰Noer Azizah, *Poligami Sirri dan Dampaknya Terhadap Mental Istri dan Anak Persepektif Sigmund Freud*, Egalita: Jurnal Kesetaraan dan Keadilan Gender, Vol. 15, No. 1, 2020, hlm 1-9.

problem in married life. This is because the husband has secretly betrayed his sacred marriage vows when he married his wife.¹¹

B. Polyandry in Islamic and Indonesian Law in the Modernization Era

Polyandry is a marriage system that allows a woman to have more than one husband at the same time. Generally, this practice of polyandry occurs in certain areas where there is a scarcity of women, so that often a man shares his wife with another sibling. Basically, marriage law in Indonesia adheres to the principle of monogamy. This is stated in Article 3 paragraph (1) of Law no. 1 of 1974 concerning Marriage (UUP), that a man may only have one wife, and a woman may only have one husband.

In the perspective of criminal law, polyandry is part of the criminal act of the origin of marriage which is prohibited in legal norms¹² Meanwhile, Islamic law does not allow polyandry because it is feared that problems will arise in determining the father of the child the wife is carrying. Based on the Compilation of Islamic Law (KHI) Article 40, it is stated that men are prohibited from marrying a woman who is still married to another man. In addition, a woman cannot be married if she is still in her iddah period after divorcing her husband. Because the woman in question is still bound by a marriage with another man.¹³ Women who marry in polyandry are considered adultery and can be subject to criminal sanctions according to Article 284 of the Indonesian Criminal Code. Polyandry is a religious, state and biological deviation, where all are of the view that polyandry is a deviation, so there are no other words except to prohibit the existence of polyandry in Indonesian society.¹⁴

CONCLUSION

Sanctions for husbands who practice polygamy without permission or without the knowledge of the first wife can be punished according to what is regulated in Article 279 of the Criminal Code:

1. Punished with a maximum imprisonment of five years;
2. Whoever enters into a marriage knowing that his existing marriage or marriages are a legal obstacle to it;
3. Whoever enters into a marriage when it is known that his marriage or the marriages of other parties are valid marriages for that purpose.

If the person who commits an act based on paragraph 1 point 1 conceals to another party that an existing marriage is a legal obstacle to this, he is threatened with a maximum imprisonment of seven years.

The ratio of polyandry law is not allowed in Islam or Indonesia. In line with the philosophical perspective, in a normative perspective polyandry law is forbidden based on the argument of the Al-Quran letter An-Nisa 4:24 and Al-Sunnah Hadith of Ahmad's history. In addition, from a juridical perspective, polyandry law contradicts Article 3 paragraph (1) which states that a wife can only be married to one husband (monogamy principle).

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¹¹Rizkal, *Poligami Tanpa Izin Isteri Pertama Dalam Perspektif Hukum: Bentuk Kekerasan psikis Terhadap Istri*, Jurnal Yustika Media Hukum Dan Keadilan, Vol. 22, No. 1, Juli 2019, hlm 26-36.

¹²Martunis & M. Iqbal, *Penegakan Hukum Terhadap Tindak Pidana Poliandri*, Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana, Vol. 6, No. 1, Febuari 2022, hlm 87-96.

¹³Irma Nur Hayati, *Hikmah Dilarangnya Poliandri*, Jurnal Qolamuna, Vol. 3, No 2, Febuari 2018, hlm.181-206.

¹⁴Siti Maryam Qurotul Aini, *Poligami Dan Poliandri Dalam Al-Qur'an*, Usratuna: Jurnal Hukum Keluarga Islam, Vol. 3, No. 2, 2020, hlm 46-60.

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