

IMPLICATIONS OF POLYGAMY PRACTICES ON POSITIVE LAW IN INDONESIA

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Abstract

Polygamy is a form of marriage that often leads to polemics in the society despite the fact that the concept of polygamy in Islamic law is basically permissible if the husband acts fairly. However, in terms of positive law, to have a polygamous marriage, a husband must get permission from the court under limited justifications and strict conditions. Without the legal permission from the court, the practice of polygamy will have implications in the positive law in Indonesia. Therefore, the purpose of this study is to apprehend the implications of the practice of polygamy on positive law in Indonesia. The result is that Practices of Polygamy may have an impact on the Indonesian criminal and civil law system.

Keywords: Polygamy, Islamic law, Positive law

A. Introduction

Polygamy is a term that is derived from Greek word “poulugami”, meaning married all the time. In Arabic it is known as *Ta'addudz zaujat*, which means to marry several women/have more than one wife at the same time.² Polygamy is a subject of discussion and even triggers a debate among legal scholars. This is because the practice of polygamy can have implications for criminal law and civil law. The implications of polygamy for criminal law can be seen whereas husband who conduct a polygamous marriage without permission from their first wife so that the second marriage is not registered as legal marriage. Some husbands even falsify their marital identities. This kind of marriage, thus, in the future will also have implications for civil law, namely inheritance law.

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² Gus Arifin, *Menikah Untuk Bahagia*, (PT. Elex Media Komputindo, 2010) 291.

Marriage Law No.1 of 1974 in article 5 states that to submit an application for legal polygamy to the court, it must fulfill the following conditions: (1) there is approval from the wife or wives; (2) there is certainty that husbands are able to guarantee the necessities of life for their wives and children; and (3) there is a guarantee that the husband will be fair to their wives and children.

Islamic scholars have several opinions about justice in polygamy, especially for women who think that it is very hard to implement justice in polygamy. Some women even reject polygamy saying that men can never be fair, since it may lead to abuse of one party namely one of the women. In addition, it will also have implications for human rights and gender equality, namely human rights to be treated equitably. Additionally, disparate treatment does not comport with the precepts of the Pancasila of just and civilized humanity. Therefore, the Marriage Law No. 1 of 1974 article 4 reads: the court referred to in paragraph (1) of this article only gives permission to a husband who will have more than one wife if wife cannot carry out her obligations as a wife, the wife gets a disability or an incurable disease, or wife cannot give birth to offspring. This shows injustice because the ability to give birth is beyond the limits of human ability, because although a wife is trying to give birth, the destiny is Allah's prerogative.

B. Problem Formulation

The problem formulation for this research is "how is the implications of the practice of polygamy on positive law in Indonesia?"

C. Methodology

This study applied normative methodology. Approaches that utilized in this research is statutory and conceptual approaches. The statutory approach used to explain the existing laws related marriage in Indonesia. The conceptual approach used to analyze the marriage concept in Indonesia whether it implicates in different legal areas.

D. Discussion and Result

1. The Concept of Polygamy in Islamic Law

Among the most popular verses of the Qur'an talking about the case of polygamy is QS. Al-Nisa ' verse 3, which means the following:

"And if you are afraid that you will not be able to be fair to (rights) orphaned woman (if you marry her), then marry (other) women you like: two, three or four. Then, if you

are afraid you will not be able to be fair, then (marry) only one, or slaves you have. That is closer to not doing persecution.”

Surat al-Nisa verse 3 fell after the Uhud war, where there were many Muslim fighters were killed, which resulted in many of their wives being widowed and children becoming orphans. Based on the problem, polygamous marriage is the only way to solve the problem.

Islamic scholars differ on the law of polygamy. Masjfuk Zuhdi explained that Islam considers polygamy to carry more risk than benefit or *mudhorat* than its *mashlahat*. Humans according to their nature have envy, jealousy, and complaining character. These characteristics are endemic in polygamous families. Polygamy can be a source of conflict in family life, both between husbands and wives, and children of their wives, as well as conflicts between wives and children of their respective wives. Therefore, the law of marriage origin is monogamous marriage because monogamy will easily neutralize the nature or character of envy, jealousy and complaining in a monogamous family. Unlike the polygamous life, people will easily be sensitive and advent of jealousy, envy, and complaining that can unsettle families and may compromise the integrity of the family. Thus, polygamy is only allowed when in an emergency, for example, sterile (unable to produce offspring), wife having diseases that cause her unable to fulfill her obligations as a wife.³

Imam Shafi'i in the book al-Umm chapter Nafaqah ala an- an- Nisa ', explains that God's surah an- Nisa verse 3 showcases the practice of polygamy with the terms that are not partial, which means not acting arbitrarily.⁴ Polygamy was practiced before the arrival of Islam even with a very large number of wives. Therefore, when Islam came, it applied the rules that limited a maximum of four wives on condition that they could be fair.

Understanding justice in the text is not that difficult because there are some simple formulations that can answer the notion of justice. However, to understand the meaning of justice it is not as simple as reading the text of the notion of justice given by experts, because when talking about the meaning of justice it has moved in a philosophical level that needs deep reflection to arrive at the innermost essence, especially the concept of justice in polygamy.

³ Masjfuk Zuhdi, *Masail Fiqhiyyah*, (CV. H. Masagung, 1989) 12.

⁴ Ahmad Musthafa Al- Farran, *Tafsir Al- Imam Asy-Syafi 'i*, (Dar At Tadmuriyyah, 2006) 6.

Mahmud Syaltut has had ijthihad about polygamy by asking on the verses of the Qur'an an-Nisa 'verse 3, Mahmud Syaltut argues that basically the law of polygamy is *mubah* (allowed).⁵ Later, he added verses of surah an-Nisa '129 which speaks of a man about to commit polygamy, which reads:

”And you will never be able to be fair among your wives), even though you really want to do that, so don't be too inclined (to the one you love), so you let the others hang around. And if you make reparation and take care of themselves (from cheating), then indeed Allah is the most Forgiving, Most Merciful”

Mahmud Syaltut view is that Islam does not prohibit the practice of polygamy, but it requires husbands to be fair, and not persecuting their wives. If there are concerns about the possibility of persecution and to break away from the possibility of the feared sin, it is recommended and suggested to have only one wife. Thus, the guarantee of fairness and the absence of fears of mistreatment of wives is the main condition allowed for polygamy in Islam.

The given verse also talks about the impossibility of a husband being fair to his wives in polygamy. The polygamy permits, which requires fairness is a very subjective matter because a husband may claim to be fair, but in reality, he cannot be fair, because being able to do justice is a trait that is very difficult to realize, even though he really wants it.

A similar opinion was also expressed by Mahmud Muhammad Thaha in his book entitled *Ar-Risalah ats-Tsaniyah min al-Islam*. He argues that justice in polygamy is something that is very difficult to realize because it does not only cover material needs, but also justice in treating the tendency of the heart.⁶

Muhammad Abduh is of the opinion ,which is different from Mahmud Syaltut that polygamy is an act that should not be done or haram except in an emergency or can only be done by the husband in certain circumstances, according to the situation and condition of the times. This opinion of Muhammad Abduh is based on the surah Nisa 'verse 3 that bans polygamy, not advocating polygamy.⁷ Furthermore, Abduh is in the Arabic interpretation stating that polygamy is a deviation from reasonable marital relations and only justified in syar'i in social emergencies, such as war, with conditions that do not cause damage and tyranny. ⁸

⁵ Gus Arifin, *op. cit.* 296.

⁶ Mahmu Muhammad Thoha, *Arus Balik Syari'ah, a translation from Ar- Risalah ats- Tsaniyah min al- Islam*, Syracuse University Press,1987, translated by Khairon Nahdiyyin, (LKIS, 2003)169.

⁷ Gus Arifin, *op. cit.*, 297.

⁸ Muhammad Rasyid Rido', *Tafsir Al- Manar*, (Dar al- Fikir, 1973) 284.

According to Murtadha Motahhari, fair concepts contain four things, namely: first, fairness, meaning balance in the sense that a community wants to survive and be established. Then, the community must be in a balanced state, where everything in it must exist with the proper level and not the same level. Second, being fair is to maintain equality of rights, because justice requires such an equation, and requires it. The third, fairness is maintaining individual rights and giving rights to everyone who has the right to receive them. Fourth, there must be fairness to preserve the rights and continuity of existence.⁹

Based on the opinion of Murtadha Motahhari, the author believes that justice has a very broad understanding and scope, not only limited to the dimensions of legal compliance but includes all dimensions, including social dimensions that must be respected in law and every individual is ordered to enforce.

Morals and ethics basically contain good and bad values. Good values are views and ideals that are upheld. In it there are values of truth, justice, morality, and various other values that are considered good. Understanding of good, right, fair and moral is according to the measure of the nation concerned. Good law must be based on all of those things. Laws that are formed without regard to national morals will be in vain to be applied.

Justice should be accompanied by religious values, because it is this religion that is used by humans in reviving their relationship with forces above human reach, namely the power of the unseen and in these forces, human beliefs depend on their hopes. Religion is a guide for humans to distinguish good and bad, and right and wrong. The instructions come from God that can be proven through ethics, logic and aesthetics.

For human ethics to agree on the existence of justice, justice must shape human behavior and life in relation to God, and with humankind, with society, with government, with nature and with other creatures of God. Justice must be realized on all fronts of life, and every human must enforce the values of justice, because in truth behavior and products that are unfair will give birth to imbalances and disparities that cause damage on this earth.¹⁰ Likewise, in the case of polygamy, even though Islam provides the ability to practice polygamy, justice is very essential.

⁹ Murtadha Muthahhari, *KeadilanIlahi; Azas Pandangan Dunia Islam*, (Mizan, 1995) 53-58.

¹⁰ Sukarno Aburaera, *Filsafat Hukum Teori Dan Praktek*, (Kencana Prenadamedia Group, 2013) 177.

According to Quraish Shihab, surah al-Nisa': 3 is the basis for polygamy, but this verse does not make a rule about polygamy because polygamy has been known and implemented by the Sharia religion and customs before Islam. This verse also does not require polygamy or advocate it. He only talks about the possibility of polygamy. It is also treated as a solution to an emergency case, which is only taken when it is very necessary and with conditions that are not light¹¹.

The difficulty of doing justice in polygamy has also been described in Surah al-Nisa: 129, which means:

And you cannot be fair between your wives, even though you are very eager to do so, therefore do not be too inclined (to those you love), so that you let the others. And if you make reparation and take care of yourself, then Allah is Forgiving, Most Merciful.

The verse above speaks of the impossibility of a husband being fair to his wives in polygamy. The requirement for the ability of polygamous marriage, to be fair, is a very subjective matter. A husband may claim to be able to be fair, but the reality is that he is not fair. Being able to be fair is a trait that is very difficult to realize, even though he really wants it, and almost certainly he cannot fulfill it.

Justice is central in Islamic teachings and is universal. This universal character can be seen from the existence of human beings everywhere and at any time who always longs for the presence of justice.

In polygamous marriage, all wives want to be treated fairly, both physically and mentally because if there is justice then there is satisfaction, but where there is injustice, there will be separation. A husband, who intentionally carries out injustice or arbitrariness in treating his wife, will suffer from anxiety in himself, even though it seems uneasy, the tyranny that is done will torture him, because the sense of justice according to the author is inherent in human beings.

In humans, there is a potential for spiritual beings who whisper the feeling of justice as something that is right and must be upheld. Deviations from justice tarnish the essence of humanity. Therefore, Islam whose main mission is *rahmatan lil al- 'alamin*, the bearer of mercy for all nature, puts the justice as something fundamental.

Muhammad Syahrur considered that polygamy is a unique problem, especially for women, as well as being a problem (*qadiyah*) that has never been discussed by the world community. If the verse of polygamy is viewed from the perspective of the boundary

¹¹ See M. Quraish Shihab, *Wawasan Alquran*, (6th edn, Mizan, 1997) 200.

theory (*nazariyah hududiyah*) of Shahrur, it will be clear that the problem has a close bond between the dimensions of humanity and the social dimension. The boundaries that have been outlined by God will not be separated from the human condition, in addition to having benefits (*hikmah*) for human life.

According to Shahrur, polygamy is basically *mubah* (permissible), if it fulfills two conditions, namely widows who have orphans and justice. This will explain the various social difficulties experienced by women in living in society, including:

1. The presence of a man on the side of a widow will be able to maintain her and maintain him so that he does not fall into adultery.
2. Multiplication of safe shelters for orphans where they grow and are educated in them.
3. The presence of the mother on the side of orphaned children can always educate and look after them.¹²

The essential requirement in the practice of polygamy according to Shahrur is the first involvement of widows who have children as second, third and fourth wives. Second, there must be justice among the children of the first wife and orphans of the widows who are to marry.

Abu Zayd, an Egyptian modernist thinker in responding to the problem of polygamy, argues that in fact the solution set by the Qur'an is a temporary solution, not permanent and does not mean justifying polygamy. Polygamy is only a solution to the problem of orphans that is suitable for the 7th century. However, today, Abu Zayd argues that polygamy is not permissible or even prohibited because polygamy is now more a woman's defamation.¹³

Even according to the temporary assessment of the author, polygamy is now mostly carried out with lust factors, because most polygamous men are not intended to protect orphans and widows who are old but tend to look for young widows without children or even choose younger girls from the first wife.

2. The Concept of Polygamy in the Perspective of Marriage Law Number 1 of 1974 and the Compilation of Islamic Law

Marriage is a bond between a man and a woman as a husband and wife with the aim of forming a *sakinah-mawaddah-warahmah* family. To achieve *sakinah-mawaddah-*

¹² Muhammad Shahrur, *Nahwa Usul Jadidah Li al- Fiqh al- Islami: Fiqh al- Mar'ah*, (al- Ahali, 2000) 303- 304.

¹³ Hendri Shalahuddin, *Al- Qur'an Dihujat*, (Al- Qalam, 2007) 50.

warahmah, requires not only compassion, but also the law obedience, both according to the religion they adhere to, as well as the laws that apply in Indonesia.

Law on Marriage Number 1 of 1974, Article 2 states that: marriage is legal if carried out according to the laws of each religion and its beliefs; each marriage is recorded according to the applicable laws and regulations.

The article 2 of the Marriage Law above implies that polygamy is surreptitiously clearly illegitimate and has no legal force, because the recording of each marriage is the same as recording important events in a person's life, such as birth, death stated in certificate, an official certificate also included in the listing.

The marriage law adheres to the principle of monogamy. It is just that if it is desired by the person concerned, but it must fulfill various specific requirements and be decided by the court.

Marriage Law No. 1 of 1974 article 3 states that the principle in a marriage is that a man may only have one wife, while a woman may only have a husband, but a religious court can give permission to a husband to have more than one wife if desired by the party - the party concerned.¹⁴

To propose the intention of a husband who will have more than one wife, the Marriage Law requires them to submit an application to the religious court, to meet the requirements as stated in article 4 paragraph 2, namely:

- a. The wife cannot perform her obligations as a wife;
- b. The wife has a disability or an incurable disease;
- c. Wives cannot give birth to offspring.¹⁵

In addition to the requirements of the substance of the Religious Courts, it also requires the administrative requirements listed in article 5 of the Marriage Law as follows:

- a. Approval from wife / wives;
- b. There is certainty that the husband is able to guarantee the necessities of life for their wives and children;
- c. There is a guarantee that the husband will be fair to their wives and children.¹⁶

Requirements for polygamy are listed in the Compilation of Islamic Law (KHI). Polygamy is regulated in articles 55-59. Article 55 in KHI states that there is more than one wife at the same time, limited to only four wives; the main requirement for having

¹⁴ Law No. 1 of 1974 on Marriage, article 3.

¹⁵ *Ibid*

¹⁶ *Ibid* Article 5.

more than one wife, the husband must be able to be fair in his attitude to his wives and children; if the main conditions cannot be fulfilled, the husband is prohibited from having more than one wife.

The requirements for polygamy, both in the Marriage Law and in the Compilation of Islamic Law mentions the main conditions of having to be fair.

Other requirements stipulated in the Compilation of Islamic Law are husbands who wish to have more than one wife, must obtain permission from the Religious Court by submitting permit application. Marriage carried out with the second, third or fourth wife without permission from the Religious court has no legal force and can be canceled.¹⁷

Article 57 of the Compilation of Islamic Law states that the Religious Courts only give permission to a husband who will have more than one wife if: the wife cannot carry out her obligations as a wife; the wife gets a disability or an incurable disease; wife cannot give birth to off spring.

The compilation of Islamic Law also in article 58 adds requirements other than the main conditions mentioned in article 55 paragraph (2) so that obtaining a polygamy permit from the court of Religion must also fulfill the conditions specified in article 5 of Act No.1 of 1974. Without compliance to the provisions of article 41 letter b Government Regulation No. 9 of 1975, the agreement of the wife / wives can be given in writing or verbally, but even though there is written agreement, this agreement is confirmed by the wife's oral agreement at the Religious court session.

Approval is no longer needed for a husband if his wife or wives are unlikely to be asked for their consent and cannot be parties to the agreement or if there is no news from his wife or wives at least 2 years or because of other reasons that need to be judged.¹⁸

In the event that the wife does not want to give consent, and requests for permission to have more than one wife based on one of the reasons set out in article 55 paragraph (2) and 57, the Religious court can stipulate the granting of permission after examining and hearing the relevant wife at the Trial the Religious court, and for this determination, the wife or husband can appeal.¹⁹

Compilation of Islamic Law normatively only allows polygamy if permitted by wives and courtiers Religion, in addition to the conditions, fairness. The wife's agreement can be oral and written in front of the Religious court. This is what distinguishes the

¹⁷ Compilation of Islamic Law, Article 56; 71.

¹⁸ *Ibid* Article 58.

¹⁹ *Ibid*

concept of polygamy in the Sharia perspective, which allows polygamy on the condition that it can be fair, even without the consent of his wife/ wives.²⁰

The author thinks that although Islam only requires fairness if wanting to do polygamy, justice in Islam is very broad. Even the author believes that if the husband does polygamy without telling his wife / wives, there are indications of lies committed by the husband, which automatically means being dishonest or fair to his wife and children.

3. The implications of the practice of polygamy on Criminal Law and Civil Law.

The problem of polygamy is indeed one of the central points of feminist criticism of the Marriage Law. Nursyahbani Katjasungkana, for example, argues that polygamy is an act of violence and results in injustice not only for women, but also for their children. She considers polygamy actors to have deflected the meaning of holy verses in accordance with their interests as justification for the arbitrariness of fulfilling their sexual desires.²¹

In 2014, the case database in the Religious Court stated that cases in 2014 amounted to 536,652 with a divorce occupying the first position amounting to 240,828 cases, followed by divorce in the second position with 104,346 cases and polygamy permits in the third position with 701 cases, while in 2015 the number of cases registered to the Religious Courts amounted to 592,827 cases including divorce cases totaling 314,515 cases, divorces totaling 148,201 cases and permits for polygamy 888 cases.²²

Based on the results of monitoring of the National Commission on Violence Against Women, polygamy has resulted in various forms of violence against women and children, physically, economically and psychologically. Not a few also that the case of polygamy became a trigger for divorce by women, because women victims of polygamy experienced various in conveniences and injustices. *Komnas Perempuan* believes that polygamy is a source of violence against women.²³

Annual records in 2015 National Commission on Violence against Women reported that there were 71 cases of polygamy carried out by public officials who did not fulfill the

²⁰ Sulistyowati Iranto, *Perempuan Dan Hukum: Menuju Hukum Yang Berspektif Kesetaraan dan Keadilan*, (Yayasan Obor Indonesia, 2006) 143.

²¹ Amrie Hakim, 'Poligami, Masalah Krusial dalam Revisi Undang-undang Perkawinan' (*Hukum Online*, 25 November 2003) < <https://www.hukumonline.com/berita/baca/hol9232/poligami-masalah-krusial-dalam-revisi-undang-undang-perkawinan>> accessed 17 July 2017.

²² Komnas Perempuan, 'Catatan Tahunan Tentang Kekerasan Terhadap Perempuan 2015' (*Komnas Perempuan*, 07 March 2015) < <https://www.komnasperempuan.go.id/read-news-catatan-tahunan-tentang-kekerasan-terhadap-perempuan-2015>> accessed 17 July 2017.

²³ Andhika Prasetya, 'Komnas Perempuan: Poligami Diam-diam itu Kekerasan' (*Detik*, 23 March 2017) <<https://news.detik.com/berita/d-3455070/komnas-perempuan-poligami-diam-diam-itu-kekerasan>> accessed 14 July 2017.

requirements so that they were considered as marriage crimes because they violated Article 289 of the Criminal Code. Marriage is a crime if it involves more than an act of wives who violate reasons, conditions, and procedures as Law No. 1 of 1974 concerning marriage.²⁴

Marriage aims to make the husband and wife form a family that is eternal and happy, and in accordance with human rights. For this reason, the husband and wife need to help and complement each other so that each can develop his personality to help and achieve spiritual and material welfare.

To balance and overcome conflicts of interest in polygamy, the state law must be present by giving a sense of justice. Because without justice, the law will lose its supremacy and independent character. Conversely, the idea of justice for respect for humanity will only have value and benefits if it is manifested in formal law and material law and applied in social life.²⁵

Realizing the sensitive state of polygamy has made Islamic law experts try to make a more comprehensive study of law so that Islamic law still exists and can be used to solve all the problems of the people in the current era of globalization. The principle that must be used is the principle of *mashlahat*, which is based on justice and expediency,²⁶ because all humans want to be treated fairly, both physically and mentally. Justice is a fundamental right inherent in human beings, since it is still in the womb. Thus, if someone does an injustice, it means violating human rights, and justice is also one of the religious orders, even as worship for those who do it.

According Studio in his book "Holistic Legal Studies" that in the eyes of Allah, the whole process of "becoming of continuity" must or must be done in the context of worship, because the concept of worship Retained Earnings inclusive form of all actions that please Allah is not limited to religious rites (prayer, fasting, pilgrimage, and so on)²⁷. It also includes treating all beings fairly. Thus, when in the practice of polygamy, the husband does not treat his wife and children fairly, it is an act that violates the law, both God's law and positive law.

²⁴ *Ibid*

²⁵ Muhammad Erwin, *Filsafat Hukum, Refleksi Kritis Terhadap Hukum*, (Rajawali Press, 2012) 238.

²⁶ M. Abdul Manan, *Reformasi Hukum Islam Di Indonesia*, (Rajawali Press, 2013) 178.

²⁷ Sudjito, *Ilmu Hukum Holistik; Studi Untuk Memahami Kompleksitas dan Pengaturan Pengelolaan Irigasi*, (Gaja Mada University Press, 2014) 89.

Moeljatno argues that a criminal act is an act that is prohibited and threatened with crime for those who commit the act²⁸. This means that if the act is prohibited and threatened with crime, the act is a criminal act.

Legal remedies against polygamists are contained in the criminal law books articles 279 and 280, which are included in crimes against the origin of marriage. The followings are detail points about it:

- a. Threatened with a maximum of five years imprisonment:
 - 1) Whoever holds a marriage even though he knows that his existing marriage or marriage is a legitimate barrier to it.
 - 2) Whoever holds a marriage even knowing that the marriage or marriage of another party is a legitimate barrier to it.
- b. If the person who commits an action under paragraph 1 point 1 hides the other party that the existing marriage is a legitimate barrier, he is threatened with a maximum imprisonment of seven years.
- c. Revocation of rights as mentioned in Article 35 number 1-5 can be dropped.²⁹

Article 280 of the Criminal Procedure Code states as follows: "Whoever enters a marriage even though deliberately without informing the other party that has a legal barrier, is threatened with imprisonment for a maximum of five years, if later based on the barrier, the marriage is declared invalid."³⁰

When elaborating the elements of the article, we will obtain the following points:

- a. "Whoever is", is related to the existence of someone as a legal subject. This is related to a person's ability to be held accountable before the law. So as to fulfill the element of "Whosoever" is, a person must fulfill skills both in criminal law and civil law.
- b. "Holding a marriage" is that the marriage held is carried out through a procedure that is regulated, both in legal terms and in the habits of the community. A couple of brides will not be called to hold a marriage if they are alone in a room or a closed place, without the fulfillment of conditions or harmony, according to their religion and beliefs.
- c. "Knowing marriage is marriage that has existed". This element implies that someone who wants to carry out a marriage is consciously aware that he or she is still bound by marriage with others before.

²⁸Asmarawati, *Sosiologi Hukum Petasan Ditinjau Dari Perspektif Hukum Dan Kebudayaan*, (Deepublish, 2014)16.

²⁹ Indonesian Criminal Code article 279.

³⁰ *Ibid* Article 280.

d. "There is a legitimate barrier". This element means that both candidates must know before the marriage takes place, the elements in points 2 and 3 must be fulfilled first.

The explanation above, in broad outline, tells that the perpetrators of polygamy with their partners can be convicted if consciously and have intentions, even though it is known that one of them has been officially married to someone else. Thus, both can be criminalized.

From the provisions of Article 280 KUHP, it is clearly evident that the element of intention or intentionally to not informing the prospective partner so that she is not aware if he has been polygamous by making her as the second wife or next wife, can be filed a criminal report.

However, there are conditions that must be fulfilled, when the marriage is declared "invalid". This means that the marriage has been carried out, then canceled by the court, based on requests from parties categorized by the Criminal Code as "legitimate barriers."

If the cancellation occurs, the party who is harmed by the cancellation of the marriage can report his ex-spouse to the Police.

The legal implications of the practice of polygamy, especially hidden polygamy (unregistered marriage) are very clear so that for husbands who want to be polygamous, they should be able to fulfill the conditions for polygamy permits by the Religious Courts, because otherwise the law will apply. Moreover, it will affect the implication on inheritance law. If the husband dies and has a lot of wealth, and his wives and children ask for the distribution of inheritance. Even though one of the wives is an illegitimate wife of state law, and Islamic law may be justified if it meets the terms and conditions.

The legal implications of the practice of polygamy are increasing if there are elements of forgery of identity, requirements and procedures. Delegations in the Criminal Code regarding forgery of identity/letters can also be applied in certain cases. This offense aims to protect humans from actions that can harm one party. This case can be resolved in criminal act through the District Court. Whereas the cancellation of the marriage shall be carried out at the religious service. Even if there was evidence of discrimination and human rights violations, it was possible to settle it through court of human rights. Thus, if we look at the practice of polygamy, we can see that the harm is far greater than its benefit. Many of wives and children felt the harm, while the benefits were mostly felt by the husbands.

E. Concussion

Practices of Polygamy may affect the Indonesian criminal and civil law system. Implications for criminal law are found in article 279 and article 280 of the Criminal Code, while the other consequence affecting the civil law can be seen in inheritance law.

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