

LEGAL POSITION OF SECOND WIFE DUE TO ANNULMENT OF POLYGAMOUS MARRIAGE WITHOUT PERMISSION

Muhammad Zarka Fawdhi^{1*}, Joko Widodo², Markoni³, Helvis⁴

^{1,2,3,4}Magister Hukum, Fakultas Hukum, Universitas Esa Unggul, Jakarta Barat, Indonesia
muhammadzarka44@student.esaunggul.ac.id^{1*}, joko.widarto@esaunggul.ac.id²,
sh.markoni@gmail.com³, mey.mooi@yahoo.com⁴



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Abstract: This study analyzes the legal consequences and legal position of a second wife whose marriage is annulled by the court. In this study, the case raised is a case that has been decided to annul the marriage by the court because the husband falsified his identity to be able to marry a second time with another woman without the permission of his first wife, if there is a polygamous marriage without the permission of the first wife, then the parties who do not meet the conditions for the marriage to take place, the marriage can be canceled by the court. This study uses an approach in analyzing the problem with a statutory approach and a case approach, namely by looking at cases sourced from court decisions and statutory provisions. There are various forms of marriage in Indonesian society, but the most popular are monogamy and polygamy. Polygamy, which is carried out without the permission of the first wife, raises various problems, including problems arising from the position of the second wife, including the rights and obligations of a wife, children, and property owned during marriage up to the issue of dividing the inheritance.

Keyword: Marriage, Marriage annulment, Polygamy

I. INTRODUCTION

The institution of marriage is a noble institution with an honorable position in Islamic and Indonesian law. The special rules related to marriage, namely Law Number 1 of 1974 Marriage, provide evidence for this. A legal marriage will be a means to achieve the dream of creating a happy household where husband and wife are united and can live in harmony and peace for the realization of material and spiritual welfare.

The implementation of marriage gives a person additional rights and obligations in personal, family, and community life. However, the change in a person's status due to marriage does not mean that the person understands his or her rights and obligations. To achieve the purpose of marriage, there are regulations that form the basis and conditions that must be met before a marriage can take place.

Marriage is an instinctual demand that applies to all creatures, both humans, animals, and plants, because humans are intelligent beings. For humans, marriage is a culture to produce offspring for continuity and obtain peace of life, which is regular and follows the development of human culture. In simple societies, the culture of marriage is simple, narrow, and even closed, while in modern societies, the culture of marriage is advanced, broad, and open (Hilman Hadikusuma, 2003).

There are various forms of marriage in Indonesian society, but the most popular are monogamous and polygamous marriages. Monogamous marriage is considered the most ideal and appropriate of the two forms of marriage. Monogamous marriage is a marriage between a man and a woman, where the man essentially has only one wife and vice versa, the woman has only one man.

Islam allows polygamy for several reasons, namely if the husband has a great urge of lust so that the wife can no longer fulfill her husband's desires, the wife is in a state of excuse or illness so that she can no longer serve her husband, and it has the aim of defending women who still do not have the opportunity to marry so that they do not fall into the valley of sin and women who have become widows because their husbands have died in jihad fi sabilillah (Kasmuri Selamat, 1998).

Polygamy, in the view of social anthropology, has several types, namely the first polygyny, which is a marriage system that allows a man to have several women as his wives at the same time. Second, polyandry is a marriage system that allows a woman to have more than one husband at the same time. And thirdly, group marriage is also called group Marriage in English, which is a combination of polygamy and polyandry. While all three forms of polygamy have been found in history, polygamy is the most common. Some cultures allow polygamy, but it is opposed by others.

The marriage law in Indonesia adheres to the principle of monogamy, but the principle of monogamy in the marriage law is not absolute because the law gives the husband the option to marry more than one wife if there are certain reasons and conditions. (Wahyono Dharmabrata, 2003).

The laying out of the basic provisions of the articles of the Marriage Law on the principle of monogamous marriage is one of the results of the struggle for the emancipation of the Indonesian women's community, but the lawmakers still appreciate realistic thinking in this matter of marriage for real human life.

Thus, Article 3 paragraph 2 in conjunction with general explanation number four letter C of Law Number 1 Year 1974 stipulates the possibility of polygamy on the condition that the religious law of the person concerned allows it, the parties concerned want it, and the permission of the court.

According to the court's requirement for permission from the court, a person who wishes to obtain a polygamy license must apply to the Religious Court. To obtain this permission, people who want to commit polygamy must have one of the three reasons

stipulated by Article 4 paragraph 2 of Law Number 1 of 1974 in conjunction with Article 57 of the Compilation of Islamic Law, which states the reasons that include the wife can no longer carry out her obligations as a wife, the wife has a disability or disease that cannot be cured, and the wife cannot give birth to offspring.

Article 5, paragraph (1) of Law Number 1 Year 1974 on Marriage regulates polygamous marriages, which require the consent of the wife or wives if a husband is to have more than one wife. Most polygamous marriages can be performed without the first wife's consent or permission in the real world. As a result, new legal issues arise regarding the position of the second wife, including rights and obligations, children, property owned during the marriage, and issues of inheritance distribution.

In addition, Article 65, paragraph 1, of the Marriage Law states that in cases where a husband is polygamous, he must provide equal living guarantees to all his wives and children. When a husband marries a second or subsequent wife, neither the first wife nor the second wife will have any rights to each other's inheritance. (Bagir Manan, 2009).

A husband who wishes to have more than one wife can be found by arguing for various reasons. Under certain conditions, polygamy will be better than committing adultery. However, when viewed from the perspective of each party, for men, there will certainly be no disadvantage for them to be polygamous, as long as they are able to carry it out fairly. As for women, psychologically speaking, it is rare for a woman to be willing to be polygamized by her husband because there are hardly any "beneficial" things for women from the act of polygamy.

We often find that resolving polygamy issues is difficult, which causes a tendency to complete the administrative process of polygamy management secretly and dishonestly. From a woman's perspective, it is rare for a polygamous husband to get direct permission from his wife. This is especially true if the wife is able to fulfill her duties as a wife well and does not have a disability or an incurable disease. One example is using a false identity for the marriage registrar. In this case, the polygamist claimed to be a virgin, even though he was legally still the husband of another woman. Falsifications are common in letters and authentic deeds showing the perpetrator's identity of the perpetrator usually contain such falsifications. The annulment of marriage can be submitted to the Religious Court under Law No. 1/1974 on Marriage. Marriage annulment occurs when the valid conditions of marriage were not fulfilled at the time of the marriage (Arso Sosroatmodjo, 1981).

Law Number 1 of 1974 does not explain in detail how to annul a marriage due to identity forgery. Instead, the Marriage Law only discusses how a husband or wife who is mistaken (feels cheated or that there is an element of fraud in the marriage) can apply to the Religious Court for a marriage annulment to the Religious Court. However, a court decision is necessary to annul a marriage and deem it to have never existed. However, the fact that the marriage is considered to have never existed does not necessarily negate the legal consequences of the marriage that has occurred (Soemiyati, 2006).

Court decisions that decide to annul an invalid marriage can have legal consequences for the husband or wife and their respective families, as regulated in Marriage Law No. 1 of 1974 and the Compilation of Islamic Law (KHI). In this case, the husband and wife can return to their original state or be together as if there had never been a marriage.

If the marriage is annulled due to identity forgery, which constitutes a material violation rather than a formal one, the consequences include a statement letter and a decision from the Religious Court declaring the marriage null and void. However, if the violation occurs due to a formal prohibition, then the existing marriage can be canceled by itself or considered to have never existed, so there are consequences in the form of not getting legal protection for the husband or wife who falsified the identity.

Therefore, if polygamy is carried out without the wife's permission through the court and the documents made are false to enter into marriage, then the marriage is considered to be ineligible to enter into marriage, and each party involved has the right to cancel the marriage. Article 22 of Law No. 1/1974 states that if the parties do not meet the conditions for entering into a marriage, the marriage can be annulled. In this case, the core of the legal rules listed in Article 22 states that annulment efforts can be made due to a failure to fulfill the requirements for marriage. Based on this, the author feels that the impact on a second wife in a marriage annulment submitted to the court needs to be discussed in a paper specifically regarding the regulation of the position and legal consequences for the second wife. If permission from the Religious Court is not obtained, then according to the provisions of paragraph 44 of Government Regulation No. 9 of 1975, the Recording Officer is prohibited from recording the marriage of a husband who will have more than one wife. However, in reality, polygamous marriages are often recorded at the KUA, even though the marriage is without the consent of the first wife, and there is also no permission from the Religious Court in the area where the first wife lives.

Whereas administratively, the registration of polygamous marriages can be carried out after fulfilling the conditions, including the existence of a court permit attached when making a notification of marriage intention to the KUA in the area where the marriage is registered (article 6, number 2, letter d of PP No. 9 of 1975). Thus, if a polygamous marriage is registered at the KUA and the first wife's permission and the permission of the religious court are not available, then the interested party can file a petition for annulment of the marriage with the religious court in the area where the respondent resides or where the marriage was performed.

Therefore, the judge's decision on the perpetrator of marriage annulment must not only fill the legal vacuum but also address the impact on the second wife. Therefore, in this research, the author will examine the legal position and legal consequences for a second wife whose marriage is annulled by the court, with the title Legal Position of the Second Wife as a Result of the Annulment of an Unauthorized Polygamous Marriage (case study of the West Jakarta Religious Court Decision Number 1153/Pdt.G/2018/PA.JB).

II. RESEARCH METHODS

The method used in this research is a normative juridical approach method, namely library law research (Tan, 2021). This research method is carried out deductively by analyzing and reviewing secondary data in the form of articles in laws and regulations that regulate the issues discussed by the author. This research uses descriptive and analytical research specifications. It is a study that aims to describe, write, and analyze the laws and rules that apply. These will then be connected to legal theories and the implementation of positive law in Indonesia in relation to the problems that were studied.

The theories that the author uses in this research are the theory of justice and the theory of legal responsibility theory. The theory of justice is basically a relative concept that everyone is not the same and that what is fair to one is not necessarily fair to another. When someone asserts that he is doing justice, it must certainly be relevant to the public order where a scale of justice is recognized (Maulida & Busyro, 2018). Law is closely related to justice; there is even an opinion that law must be combined with justice so that it really means law, because the purpose of law is to achieve a sense of justice in society.

The theory of legal responsibility, according to Hans Kelsen states that every person is legally responsible for a certain act, meaning that he is responsible for a sanction in the event of an act that is contrary to the law. Hans Kelsen further states that the failure to exercise the care required by law is called negligence; and negligence is usually seen as another type of fault (*culpa*), although it is not as hard as the fault that is fulfilled because it

anticipates and intends, with or without malicious intent, harmful consequences. Hans Kelsen in his theory of responsibility, also divides responsibility into several parts, namely individual liability, collective liability, liability based on fault, and absolute liability (Somardi, 2007).

III. RESULT AND DISCUSSION

A. Legal Effects of Polygamous Marriages Without Permission

The legal consequences of annulment of marriage, when viewed from the perspective of Indonesian legislation, the marriage that is declared void begins after a Court decision that has permanent legal force, the legal consequences of annulment of marriage can be seen in its impact on children, on property obtained during marriage, and on husband and wife.

Children born from a marriage that has been annulled do not apply retroactively, so these children are still considered legitimate, even if one of the parents is in bad faith or both are in bad faith (Reksopradoto, 1978). In BW if both parents are in good faith, or one of the parents is in good faith, then the child born in the dissolved marriage is validated. In Law No. 1 of 1974, it is fairer to say that all children born in a dissolved marriage, even if both parents acted in bad faith, are still legitimate children.

This is based on humanity and the interests of innocent children, who deserve legal protection. And it should not be if innocent children have to bear the consequences of not having parents, just because of the mistakes of their parents, thus according to Law Number 1. 1974 children who are born have a clear legal status as legitimate children of their parents whose marriage is annulled.

It can be emphasized that the children born from the annulled marriage remain as legitimate children. Thus, the child remains the responsibility of both parties, husband and wife. Both parents are still obliged to educate and maintain the child based on the interests of the child. For girls, the biological father is also entitled to be a marriage guardian. In the event of inheritance, the child still has inheritance rights from both parents, and also has a family relationship from both sides of his parents.

Children born from an annulled marriage still have a relationship with their parents so that a child born from an annulled marriage does not only have rights to their parents, but children also have obligations to their parents. These obligations are:

1. Children must respect their parents and obey their good will.
2. If the child is an adult, he is obliged to maintain his parents and family in a straight line up according to his ability, if they need his help.

So in essence, according to Law Number 1 of 1974 regarding the position of children is still under the control of their parents and is still recognized as their child even though the marriage of the two parents has been broken or canceled. Even though the child is produced from a marriage that is prohibited by religion, the father and mother are still obliged to provide affection to him and are also obliged to provide for the fulfillment of his child's life until he grows up. Even the status of the child does not change, remaining a legitimate child. Another case is if the status of the child born is an extra-marital child or adulterous child, he only gets the fulfillment of rights from his mother and his mother's family because the nasab relationship has been cut off and is only related to the mother and the mother's family.

However, since the decision of the Constitutional Court No. 46/PUU-VIII/2010, which states that Article 43 paragraph (1) of Law Number 1 Year 1974 concerning Marriage which reads "Children born outside of marriage only have a civil relationship with their mother and their mother's family" is contrary to the 1945 Constitution and has no binding legal force insofar as it is interpreted to eliminate civil relationships with men who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship as the father, so that the paragraph should be read, "Children born out of

wedlock have a civil relationship with their mother and mother's family and with the man as their father who can be proven based on science and technology and / or other evidence according to the law to have a blood relationship, including a civil relationship with the father's family.

This is intended to provide legal protection to children who have been born in a marriage. This is related to child protection, which must be interpreted as all activities to ensure and protect children and their rights in order to live, grow, develop, and participate optimally in accordance with human dignity, and receive protection from violence and discrimination.

The annulment makes it seem as if there was never a marriage between those whose marriage was annulled. Or, in other words, the husband and second wife are considered to have never entered into a marriage. Because it is considered that there was never a marriage, it is also automatically considered that there was never any joint property between the husband and the second wife, meaning that the property that existed during the polygamous marriage was their respective property, where one is not entitled to the other's property. Thus, the joint property in the canceled polygamous marriage is also retroactive unless there are children born from the canceled polygamous marriage; then, the court's decision does not apply retroactively to them.

For a marriage to be considered valid, it must be entered into according to the law and the principles of each religion and belief system. So, basically, Indonesian marriage law, apart from being based on the law, is also based on the principles that apply in religion. In principle, marriage is monogamous, as stated in Article 3 paragraph (1) of the Marriage Law, namely that in a marriage, a man can only have one wife and a woman can only have one husband.

The principle of monogamy in the Marriage Law is monogamy with the exception of Article 9 of the Marriage Law, which explains that a person who is still bound by marriage with another person cannot remarry except in the cases mentioned in Article 3 paragraph (2) and Article 4 of this law. This article means that if the husband wants to commit polygamy, the court can give permission on the grounds that the wife meets the conditions for the husband to be polygamous.

In Islamic law, a husband who wants to be polygamous does not need to ask for the consent of his previous wife or wives, because Islamic law itself gives husbands the opportunity to practice polygamy for certain reasons and strict conditions, but there is a provision that husbands who want to practice polygamy must obtain permission from a religious court; a second marriage conducted without permission from a religious court has no legal force (Compilation of Islamic Law Article 56, paragraphs (1) and (3)). The existence of this provision allows for the provision of an annulment of marriage.

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1. The assets owned by each husband and wife before marriage are inherited property, grants, their own efforts, or can be called inherited property.
2. The assets owned by each husband and wife before marriage are inherited assets, grants, own efforts, or can be called inherited assets.
3. Assets obtained after they are in a marital relationship for their efforts, or the efforts of one of them, are called search property.

In essence, marital property is separate property, namely property inherited by each spouse, property obtained by one of the spouses through his own efforts, or property granted to one of the spouses. Two properties can be obtained through grant, will, or inheritance, and they are connected by marital relations. Nevertheless, the authorities have officially opened the possibility of shirkah over the assets of husband and wife according to certain methods. Husband and wife may enter into shirkah over the commingling of assets acquired by the husband and/or wife during the period of marriage through the efforts of the husband or wife individually or through their joint efforts. As well as regarding the wealth of their own efforts, before marriage, property derived not from the efforts of one or both of them but from gifts, inheritances, or others specifically for each of them (Sayuti Talib, 2009).

Whereas the Compilation of Islamic Law outlines that basically there is no mixing between the husband's property and the wife's property due to marriage, the existence of joint property does not rule out the possibility of the existence of property belonging to each husband and wife. The wife's property remains the right of the wife and is fully controlled by her, just as the husband's property remains the right of the husband and is fully controlled by him.

Joint property (gono-gini) is joint property that belongs together; it's just that it must not harm the party in good faith; however, the party in good faith must benefit, and even the party in bad faith must bear all losses, including interest.

The legal consequences of marriage annulment on husbands and wives are that husbands are obliged to provide proper mut'ah to their former wives. Either in the form of money or objects, unless the former wife is qobla al-dukhul (KHI Article 149). Husbands who divorce their wives, qobla al-dukhul, are obliged to pay half the mahr determined in the marriage contract (KHI Article 35, paragraph (1)). The husband is obliged to provide nafkah, maskan, and kiswah to the former wife during the iddah period, unless the former wife has been sentenced to divorce bain or nusyur in a state of not being pregnant and paying off the mahr that is still owed in full and half if qabla al-dukhul (KHI Article 149).

The iddah time for widows whose marriages break up due to khulu'fasakh and lian applies to the iddah of divorce (KHI Article 155), which is as stated in Article 153 paragraph (2) KHI jo. Article 39 paragraph (1), (2) of Law Number 1 of 1974 concerning Marriage, which states that for those who are still menstruating, the iddah is determined three times pure with at least 90 days. If the widow is pregnant, the iddah lasts until childbirth. In Article 153 at (30), KHI added that if iddah for wives who have menstruated while undergoing iddah does not menstruate because of breastfeeding, then the iddah is three times pure time. If the situation in paragraph (3) is not due to breastfeeding, then the iddah is for one year, but if within one year he menstruates again, then the iddah becomes three times pure time. This is what is mentioned in Article 153, paragraph 6 (KHI).

Case Analysis

Solving the problem that will be discussed by the author requires case analysis of decisions that are used as case studies in writing this scientific work, where the case studies are obtained from research in West Jakarta City, specifically at the West Jakarta Religious Court. It is necessary to analyze the decision to determine whether the West Jakarta Religious Court Number 1153/Pdt.G/2018/PA.JB is in accordance with applicable laws and regulations, it is necessary to analyze the decision. This case can also be seen in the theory of substantive justice, where legal reasoning needs to provide space for sociolegal approaches. With a socio-legal approach, you will be able to understand legal issues in society more contextually in relation to the community's socio-cultural conditions of the community. These are the things that are considered to give rise to substantive justice. Justice whose measurement is not

quantitative, as appears in formal justice, but qualitative justice, which is based on public morality and human values, is able to provide satisfaction and happiness for society.

Substantive justice decisions do not only comply with the rules that apply in the most social stages of justice discovery. Justice is not merely a juridical issue but a social issue, which in many ways is highlighted by legal sociology. The character of substantive justice, which relies on the 'response' of society, beautifully forms the resolution of problems relying on law, which 'goes deeper into the conscience of the people.' This means that the law is able to recognize the public's desires and is committed to achieving substantive justice (Ridwan, 2008).

Substantive justice in a judge's decision is made based on objective, honest, impartial, and rational (logical) considerations. Based on this concept, there are four characteristics to measure whether a judge's decision contains substantive justice or not: objectivity, honesty, impartiality, and rationality (Luthan et al., 2013).

In the context of the West Jakarta Religious Court's decision regarding marriage annulment, judges are obliged to explore, follow, and understand the values of legal norms and the sense of justice that exists in society. In this case, if seen from the perspective of objectivity, honesty, impartiality, and rational considerations, it can be concluded that the judge has objectively decided this case by looking at the evidence, which points to the fact that the respondent has openly falsified his identity in his marriage to his second wife. . There is also a correspondence between the existence of the facts explained by witnesses at trial and the statements of fact concluded by the judge as true facts.

If you look at the applicant's perspective in this case, this decision fulfills a sense of justice for the marriage between the applicant and the respondent, but this is inversely proportional to the position of the respondent and his second wife, where the second wife is the respondent. So it is unfair for a second wife whose marriage was annulled by the court to not get anything from her marriage from the respondent. The second wife in this case can be said to have suffered losses, both material and immaterial. Material losses are caused because the woman whose marriage has been annulled has incurred many expenses, such as the cost of a pickle. fiancé, wedding reception costs, as well as other costs incurred while still in a marriage bond. Apart from material things, of course it cannot be separated from immaterial losses, namely in the form of psychological pressure experienced by women due to the loss of the virginity status of women whose marriages have been annulled but which are deemed by law to have never existed as well as feelings of shame and depression that may arise as a result. t the incident. These things are, of course, very detrimental to women, so their rights need to be protected.

Currently, there is still no clear regulation regarding the concept of legal protection for women whose marriages are annulled due to clandestine marriages, so there is still a legal vacuum. When a man or woman carries out a clandestine marriage for the second or more times, they ignore the principles of good faith and the provisions of laws and regulations, which can result in the marriage being annulled.

Here, the second wife whose marriage was annulled should be able to receive legal protection, a form of legal protection that provides protection for human rights, which is punitive and comes from government regulations. For second wives whose marriages are annulled by the court, legal protection can be seen from a civil and criminal perspective. From a civil law perspective, it will discuss the protection of rights relating to individual rights that are punitive in nature and can be obtained by the public from government regulations governing civil law. Below, the author explains the legal protection for second wives due to the annulment of clandestine marriages from a civil law perspective. As can be seen in the Civil Code, there is Article 1365, which regulates unlawful acts.

Based on Article 1365 of the Civil Code, a person can be declared to have committed an unlawful act if they have fulfilled five elements, namely: the existence of an act; the act must be against the law (*onrechtmatige*); the act must cause loss; the act must be carried out with error (*negligence*); and there must be a causal relationship between the act and the loss that arises. (Djojodihardjo, 1979)

From a criminal law perspective, criminal provisions pertaining to marriage provide legal protection that remains in effect or does not apply retroactively, even after the annulment of the marriage. This is based on Article 1 paragraph 1 of the Criminal Code, which stipulates that "an act cannot be punished except based on the strength of existing criminal law provisions." Furthermore, clandestine marriages can be classified as criminal acts. Manipulation of identity in marriage is an attempt to misrepresent or deviate by a person to falsify data in the form of status, signs, characteristics, or special circumstances of a person or identity, which is considered a criminal act in the form of lying to state officials with the aim of getting married.

Illegal polygamy is no longer seen as just an administrative offense (*wetsdeliktern*), but has been upgraded to a minor criminal offense (*rechtsdeliktern*) with a maximum prison sentence of six (six) months as the punishment option for the illegal polygamy in question (Roszi, J. P., 2018).

As a form of responsibility for a man who has entered into a clandestine marriage for the losses experienced by his second wife as a result of the annulment of the marriage, Article 1365 of the Civil Code stipulates that every unlawful act that results in harm to another person obliges the person who commits the act to compensate for losses. Losses that arise as a result of unlawful acts can be in the form of material losses or immaterial losses. Material losses are physical (real) losses experienced by the victim as a result of illegal acts against the law. Immaterial losses are losses that are not visible to other people, for example, mental stress (trauma), fear, and so on.

The losses felt by the second wife due to her marriage being annulled by the court can be seen from two sides: the material side and the immaterial side. Material losses are real losses; usually, these losses involve things that are clearly visible, such as property, which includes losses suffered and also profits that should be obtained by someone. Wealth (material) losses generally include losses suffered by the sufferer and the benefits they hope to receive, while moral (immaterial) losses include losses due to fear, shock, pain, and loss of enjoyment of life.

Usually the loss is given in the form of money or goods, but this compensation can also be given in the form of restoring the condition of something. If this compensation is not carried out, then forced money or *dwangsom* can be demanded, even though this forced money is not a form of compensation but only as reinforcement so that the intended compensation is carried out. The form of material loss experienced by a second wife is usually in the form of costs incurred during the marriage period, such as household expenses; costs incurred during the marriage preparation period, such as engagement ceremony costs; costs incurred during the day when marriages are carried out, such as wedding reception costs; and changes in body shape due to husband-and-wife relations carried out while still married.

Regarding material losses due to expenses incurred by a second wife whose marriage was annulled by the court during the marriage period and at the time the marriage took place as well as before the marriage, the second wife whose marriage was annulled by the court can claim compensation in the form of money. It is hoped that what is provided will be a replacement for the damage suffered.

Meanwhile, immaterial losses are losses that are intangible, because what is harmed is moral, ideal, cannot be valued in money, and is not economic, namely in the form of bodily

pain, mental suffering, fear, and so on. If we look at this decision, immaterial losses that a second wife experiences can be in the form of mental suffering in the form of losing the right to enjoy a decent life, the decline of a woman's good name, and having to endure the shame and stress resulting from the annulment of the marriage by the court.

Compensation for immaterial losses that should be claimed by women who experience marriage annulment is compensation in kind by returning the situation to normal, followed by compensation in the form of a statement by a second wife stating that her husband has committed an act that is against the law, followed by a statement containing a prohibition against doing this again, and after the condition was returned to its original state, an announcement was made that everything had been repaired to the way it was when the woman was not yet married to her husband.

Whether these losses can be recovered is the crucial point in marriage law, especially the regulations regarding marriage registration. This is a crucial point in marriage law, especially the regulations regarding marriage registration. In the context of the marriage legal system, protection by the state (government) for parties in a marriage, especially women as wives, can only be carried out if the marriage is carried out consciously in accordance with the marriage law. As a further consequence, for marriages that are annulled by the court, the state cannot provide protection regarding marital status, marital property, inheritance, and other rights arising from a marriage because the existence of the woman's (wife's) rights must be proven first. Previously, there was a marriage between a woman (her husband) and her husband.

B. The Legal Status of the Second Wife in a Polygamous Marriage Without Permission

If a Muslim marries more than one wife, then he is obliged to treat them equally in terms of feeding, shelter, clothing, and even sexual relations as far as possible. Justice here only pertains to efforts that are humanly possible. In terms of love, a person who really wants to do justice with a sincere goal will still not be able to do it, considering his limitations as a human. (Kasmuri Selamat, 1998).

Biological relationships can symbolize affection and more. Polygamy is permissible even though it is not forced. If a man is capable from a sexual perspective and is also capable from a material perspective and is able to act fairly, especially since there are more women and many are not married, then men who have advantages are recommended to marry more than one in order to fulfil the inner needs of women who really need protection and love in a legal and halal marriage according to sharia law. (Kholilah Marhijanto, 2000)

A marriage that is not registered according to sharia law is valid, but because it is not registered, state law does not recognise the marriage, so if in the future a divorce occurs or something undesirable happens, state law cannot fully protect it, including if it occurs in the future. When a divorce occurs, it can only be resolved outside of legal channels.

Marriages carried out according to sharia law or those that are not registered are valid as long as they fulfill the pillars and conditions of marriage according to sharia and do not violate state law. However, marriages conducted solely under sharia law, without utilizing state law, have significant negative impacts on the wife and children, particularly in cases of divorce. birth, in the case of divorce.

The negative impact that arises from unregistered marriages is that there are two conflicting and different interests, namely differences in interests between marriage actors who do not want to register their marriages for various reasons and problems that cause them to be reluctant to register their marriages in a positive legal manner.

According to fiqh law, the position of the second wife in a polygamous marriage without permission is valid as long as it fulfills the pillars and conditions of marriage

according to sharia and does not violate state law. However, marriages based solely on sharia do not utilize state law and are not registered. If the marriage is not recognized by state law, Women often reject polygamy in their families for various reasons they believe in, but some women also accept the concept of polygamy in their families. Wives support polygamous behavior by choosing a prospective wife or proposing another woman as their husband. This often happens because women understand the dangers of increasing the number of unmarried women and the negative impact it has on people's lives or on their morals. A woman's responsibility and love for her sisters, among those who are old and still single. Polygamy is an issue that is still controversial, inviting various perceptions of pros and cons. Anti-polygamy groups make a number of accusations that discredit and identify polygamy with something negative (Eka Kurnia, 2006).

This counter-perception considers polygamy to violate human rights; polygamy is a form of exploitation and hegemony of men over women, a form of oppression, unjust action, betrayal, and looking down on women, and is discriminatory treatment of women. Another accusation is that polygamy is a form of harassment against the dignity of women because it is considered a medium for satisfying lustful desires. A man who practices polygamy commits an act of violence or even oppression of women's rights as a whole (Siti Musdah Mulia, 2004).

Perceptions that are pro-polygamy respond that polygamy is a legal form of marriage and has been practiced for centuries by all nations in the world. Polygamy actually raises the dignity of women and protects morals so that they are not contaminated by vile and immoral acts that are prohibited by religion, such as the proliferation of brothels, prostitution, women at night who earn a living by selling themselves, and other immoral acts that actually degrade dignity. Polygamy actually raises the dignity of women and protects them from becoming slaves to satisfy the lust of philanderers. Polygamy contains elements of rescue and efforts to protect and respect the existence and dignity of women (Ariij Binti Abdur Rahman As-Sanan, 2006).

Permission for polygamy by a religious court can be given if the husband's reasons meet the alternative reasons in accordance with the provisions mentioned above. The formal juridical provisions that form the legal basis for granting permits for polygamy are regulated in the Marriage Law, Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law, and Presidential Instruction Number 1 of 1991 concerning the dissemination of the Compilation of Islamic Law.

Marriages entered into with a second, third, or fourth wife without permission from a religious court have no legal force. The provisions contained in the Compilation of Islamic Law are essentially sharia law, which in the narrow sense is local jurisprudence. It is said that because the Compilation of Islamic Law is extracted from the sources and postulates of sharia law through *ijtihad* and contemporary legal thought,. . The aim of the compilation of Islamic law is the unification of the laws that apply to Muslims according to the conditions and legal needs of society.

The status of permission to practice polygamy according to the provisions above is mandatory, so if it is done without first obtaining permission, then the marriage has no legal force, and thus the marriage is also invalid because it is deemed to have never occurred. The consequences of the marriage will then become more complicated because all the legal consequences of the marriage relationship are also deemed non-existent, such as children born from the marriage, where the child is born outside of marriage and therefore has no civil (legal) relationship except solely with the mother. In this way, all civil rights of the child will be separated from those of the father, meaning that the father does not have any legal obligations, and in this case, neither the mother nor the children themselves can claim their rights, including those regarding assets.

Polygamy permit provisions are established to protect the interests, rights, and obligations that arise as a result of a marriage; thus, the formal requirements are crucial for achieving the goals of marriage as desired by material law. Material and formal provisions cannot be separated because both have the same influence in determining whether a marriage is valid or not, especially in achieving the goals of marriage. The urgency of permitting polygamy according to the provisions of the law is procedural in nature to provide legal guarantees for the occurrence of the marriage so that its existence is formally recognised.

The urgency of court permission in polygamous marriages is according to sharia law, where the formal law follows the material law, which also determines the validity of the marriage. A marriage that only fulfils the material provisions but does not meet the formal provisions is considered to have never occurred, which in fiqh terms is called *wujuduhu ka adamihi*, while a marriage that meets the formal legal provisions but apparently does not fulfil the material legal provisions can be annulled.

Materially, the marriage is valid, but formally, it is not yet valid, so the state will forever assume that the marriage never existed unless it can be proven by a marriage certificate issued by a marriage registrar, while the marriage registrar is prohibited from registering the marriage of a husband who is about to marry. The urgency of requiring court permission for polygamy is closely related to the existence of marriage in legal recognition and social interaction, as it necessitates obtaining court permission before marrying more than one person.

The formal juridical provisions regarding the necessity of court permission for polygamy are so that the existence and consequences of polygamous marriages run in accordance with what is desired by religious sharia, namely the creation of a household that can live up to the values of justice based on *sakinah*, *mawaddah*, and *rahmah* and the realisation of a peaceful family life so as to reap the happiness that each husband and wife hope for. Furthermore, such a household will become a social base that creates a sense of security in the social life of the general public. This is because a number of social problems, as described above, are dominated by factors of dilapidated household life built by each member of society (Reza Fitra Ardhan, 2015).

Currently, unregistered marriages are a cause for concern as they are not only conducted by ordinary people but also have an impact on all groups. Women who become a husband's second, third, or fourth wife and are not registered must accept the fact that the marriage contract they entered into is a weak one and not a very strong one (*mitssaqan ghalidzan*).

Several reasons why women want to be second, third, and fourth wives even though their marriages are not registered include their thinking about fulfilling economic needs (economic priority), loving their husbands, being afraid of their actions being discovered by the first wife, so they feel that unregistered marriage is the easiest way, and the high number of divorces, which has an impact on the increase in single-parent women who need a companion even if they are husbands and are looking for a companion who can protect them, be a good priest, and be considered capable both physically and financially (Novita Setiyoningrum, 2016).

In all cases of unregistered marriages, the woman is always the victim, while the men can be free from legal entanglement if their marriages are not registered. The juridical implication of a second, third, or fourth marriage that is not registered for the wife is that the wife cannot sue the husband; if the husband leaves and divorces unilaterally, the wife's status is considered invalid. As a result, the husband has legal freedom if a marital conflict occurs; he is not entitled to shared assets in the event of a divorce; he has no right to inherit if the husband dies first; and he is vulnerable to acts of domestic violence both physically and psychologically, which cannot receive legal protection.

Based on the author's analysis regarding the position of the second wife in a polygamous marriage without permission, it still has weaknesses because marriages that are not legally registered by the state do not have legal force, and the wife cannot put up any kind of resistance and defence, and the wife cannot claim her rights as a wife to her husband. . Meanwhile, based on Aristotle's theory of justice, he says that there must be equality before the law and that it must provide justice to everyone who has the right to receive it.

Marriage registration is needed as state protection for the parties to the marriage and also to avoid the tendency for inconsistencies in the perfect or complete application of religious teachings and beliefs in marriages that are solemnised according to those religions and beliefs. In other words, marriage registration is necessary to avoid the application of religious laws and beliefs in marriage in a piecemeal manner to legitimise a marriage, while post-marital home life is not in accordance with the purpose of the marriage in question.

The existence of abandonment of wives and children, domestic violence, the phenomenon of contract marriages, the phenomenon of mistresses (other dream women), and so on, is evidence of a lack of consistency in implementing the goals of marriage as a whole. Aside from the sake of orderly administration, the essence of recording is to protect women and children. Marriage registration requirements serve two main purposes: (i) preventing and (ii) protecting women and children from irresponsible marriages. Setting conditions to avoid and reject marriage plans with the potential to cause harm can carry out registration as an effort to protect women and children from marital abuse.

If connected to Hans Kelsen's theory of legal responsibility, every person is held legally accountable for their actions, resulting in sanctions for any acts that violate the law. In this case, the respondent should be responsible for his second wife. The second wife should be able to receive legal protection from the consequences of her husband's treatment. The second wife can receive a certificate from the judge stating that her unmaidenness is due to a marriage that has been annulled, so that there are no misjudgments in the future when the woman will remarry.

IV. CONCLUSION

Conclusion

The annulment of a marriage means that the marriage is broken up; the husband-and-wife relationship between the two is invalid, so the marriage becomes annulled and returns to its original state. There are three legal consequences of an annulment of marriage: to children born from the marriage, to joint and inherited property, and to third parties. When a polygamous marriage is entered into by falsifying the child's identity, the child is still considered legitimate. This is regulated in Article 28 paragraph (2) of the Marriage Law, Article 76 KHI. This provides protection for children, so that even though the polygamous marriage has been annulled, the children are still legitimate children, so they can inherit from their father or mother.

Regarding joint assets, namely assets obtained during marriage, The joint property between husband and wife can act with the consent of both parties. The distribution of joint assets for each party must be in accordance with applicable legal provisions; however, if a marriage annulment is based on the existence of a previous marriage, then the parties to the marriage are not entitled to joint assets from the marriage of a husband who has an older wife. from one person, each separate and independent. Then for third parties, for third parties who have good intentions, the annulment of the marriage does not have legal consequences that apply retroactively, so all civil actions or agreements made by the husband and wife before the annulment of the marriage remain valid, and this must be carried out by the husband and wife so that the third party has good intentions. not harmed. Regarding the position of the second wife in a polygamous marriage without permission, it still has

weaknesses because marriages that are not legally registered in the state have no legal force, the wife cannot make any kind of resistance or defence, and the wife cannot claim her rights as a wife to her husband.

Recommendation

The importance of prospective husbands and wives who want to get married is that they must first know the pillars, terms, and prohibitions of marriage, both those determined by the sharia and the law. Apart from that, it also needs to be noted that marriage is Maqasid al-Shari'ah in Islamic law. In the concept of Maqasid al-Syari'ah, it is hoped that everything that is done by both husband and wife in the future will not be separated from the benefit. Therefore, everything that is not in line with Maqasid al-Shari'ah must be avoided. Especially in the case of a marriage that will be carried out, it must be maintained for the benefit of both the husband and wife and their future descendants. Anything that can cause harm to a marriage must be avoided, such as marriages that do not have sufficient harmony and conditions and the occurrence of marital violations that can cause the marriage to be annulled.

The Office of Religious Affairs is an institution that has sacred goals, including uniting the bonds of love between Allah SWT's creatures. It requires seriousness, foresight, and thoroughness in carrying out its duties. To reduce the risk of forgery of letters or documents required to carry out a marriage, a more organized data collection system should be implemented to prevent polygamous marriages carried out contrary to the law, specifically through identity falsification. Apart from that, marriage registration officers need to be more careful and thorough in checking the documents provided by prospective husbands and wives who are going to get married.

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