

## Legal Protection for Children in Polygamous Families in View from Law Number 1 of 1974 in Bandung Regency

**Muchtarom**

Nusantara Islamic University, Bandung, Indonesia

muchtarom@uninus.ac.id

### Abstracts

The research objective to be achieved is to determine the implementation of legal protection for children in polygamous families. To determine the factors inhibiting the implementation of legal protection for children. To find out efforts to overcome the obstacles that occur. The research method uses qualitative methods that describe phenomena occurring at the research location. Data collection techniques include in-depth interviews, observation, and documentation studies. Conclusions on the implementation of legal protection for children of polygamous families in Bandung Regency. Because it has not been implemented very well, Factors that hinder the implementation of legal protection for children in polygamous families and efforts to overcome obstacles faced by families who practice polygamy. To find additional work for the wife, the children who can work help their father.

**Keywords:** Legal Protection, Children, Polygamous Families

### A. Introduction

Marriage aims to create a family that is happy, eternal, physically and mentally prosperous, and at peace between one's own family. Marriage will cause legal consequences in marriage between husband and wife so it will also affect the family relationships concerned. This family relationship is very important because it is related to the child's relationship with parents, heirs, guardianship, and guardianship. With marriage, a bond will arise that contains rights and obligations, for example, the obligation to live in the same place and be loyal to one another.

In Law Number 1 of 1974 concerning Marriage, it is stated in Article I, that "marriage is a spiritual and physical bond between a man and a woman as husband and wife, to form a happy and eternal family (household) based on the belief in the Almighty God".

This means that marriage according to custom is the implementation of an agreement between a man and a woman who legally fulfill the ability to marry and they are known as husband and wife. A marriage is not only based on physical ties or spiritual ties but is a manifestation of physical and mental ties. The outer bond is reflected in the marriage contract, while the inner bond is a feeling of mutual love from both parties. However, in certain circumstances, the institution of marriage which is based on monogamy in Article 3 of Law No. 1 of 1974 states that: (1) In a marriage, a man can only have one wife. A woman can only have one husband. (2) The court can permit a husband to have more than one wife if the parties concerned wish.

In this case, polygamy is difficult to avoid, because polygamy occurs for various reasons, including deficiencies on the part of the wife while the husband is reluctant to divorce his wife for various reasons. Apart from that, it is also caused by the wife not being able to carry out her obligations as a wife, such as being physically or mentally disabled and unable to produce offspring. Children need to receive legal protection to guarantee their rights.

They are the most important state assets to pay attention to. They are the successors of the ideals of the nation's struggle. It is on him that all the nation's hopes for the future depend. Therefore, great attention should be given to welcome a better tomorrow.

Apart from that, the husband must fulfill the requirements, among others, obtaining permission from the first wife, legal certainty that the husband can guarantee the living needs of their children and there must be a guarantee that the husband will treat his wives and children fairly, polygamy remains happens even without permission. So there are quite a few children who are the result of polygamous marriages who receive very little attention from their parents, receive little or no education, and some experience frustration, most of which is due to their father being a polygamist.

## **B. Research Methods**

This research uses a qualitative approach using jurisprudence to analyze various laws and regulations regarding marriage that are linked to child protection in polygamous families. The empirical approach used to analyze is not merely a set of statutory rules.

### **1. Data Collection Techniques**

The data required in discussing this thesis includes primary data and secondary data, namely as follows

- a. Primary Data Data obtained directly from the community through interviews with couples in polygamous marriages or polygamous families, in addition to conducting interviews with sources related to the research, questions asked in interviews that have been prepared in advance, as a guide for recipients of information.
- b. Secondary Data is data obtained from library research with document study, namely all data that includes

### **2. Data Analysis**

All data has been collected and obtained from primary data, namely data obtained directly from the public or respondents, and secondary data, namely data obtained from library materials. All the information obtained will be analyzed qualitatively. Namely by using the data obtained, then compiling it systematically, and then interpreting or implementing it, to answer the problem. The purpose of this analysis is to obtain views on legal protection for children in polygamous families in Bandung Regency.

## **C. Results and Discussion**

Based on data from research results, both answers from respondents themselves and information, overall it states that the number of answers from respondents and informants after being divided on average from 5 sub-districts, 87 villages, 13 sub-districts there are 195 heads of polygamous families (KKP) even more, but what is trusted is only the data of respondents and informants, in making observations, researchers make direct observations.

Then in practice, these marriages are proven to be polygamous marriages, this is because there are several reasons for polygamy, including the following:

- a. Taboo or abstinence, meaning that traditions in Bandung, in general, are very taboo/abstinence, for a man to marry more than one wife and children will become an object of ridicule.
- b. It is a disgrace, meaning that a married woman will feel ashamed and sad if it is discovered that her husband has remarried, and is a disgrace in the eyes of the general public.
- c. Psychologically, the reason why women don't want to be married is that most women don't want to be matched in love, affection, or affection.

Thus, the polygamous marriages that were discovered were not unregistered or unofficial, but began with administrative manipulation, so that the goal of marriage was achieved, so that it was generally known but specifically kept secret by the polygamous husband to his wife and family. However, some second wives already know that their husbands already have a wife and children, and some don't know at all.

### **1. Reasons for Polygamous marriages.**

- a. Previously there had been an affair with a prospective polygamous wife. Based on data from research results, it was found that 26.67% (8 people) of respondents and 16.67% (5 people) of informants said that the marriage was officially carried out as a polygamous marriage at the District KUA, but the matter was complicated. - complicated, if the first wife does not give permission and does not agree to be married, besides that she is also already having an affair and loves another woman, then secretly certain efforts are made to achieve her goals and the marriage is valid, therefore administrative manipulation is carried out in the sub-district, meaning they made a certificate of identity from the sub-district stating their status as male and then they married in another area.
- b. Children's education In the beginning, polygamous marriages were very secretive at the time of marriage and the marital status was monogamous, after the second wife had children, the secret was open and known to all parties. And the first wife began to surrender with consideration for her children. Because of this, the husband did not want to divorce his first wife, considering the education of his children and other rights. So it is very rare for wives to take issue with polygamy to the Bandung Regency Religious Court
- c. Wives cannot give birth to offspring. Based on the results of interviews answered by 3 people, not everyone who has a family can produce results, namely children, but some have been building a household for 10 years but have not had children, and have even tried to seek treatment from specialist doctors and also to alternative medicine, but it has not been successful.

### **2. Implementation of Legal Protection for Child Care in Polygamous Families**

Children are a trust and a gift from God Almighty, which we must always look after, as stated in Article 45 paragraph (1) of Law No. 1 of 1974, that both parents are obliged to care for and educate their children as well as possible. Likewise, child protection is regulated in Law No. 23 of 2002. However, the implementation of legal protection for children in polygamous families is somewhat difficult to implement in practice, because the purpose of legal protection for children has a fairly broad meaning, not only seen at the level of care and period. maintenance only, but legal protection here is seen at the level of education.

Based on the findings of the research results from the table above, the most dominant in providing legal protection for children in polygamous families in the form of Hashanah (child care) were 11 people (36.67%), who gave the answer to care for and care for them, while in terms of fulfill all life's needs and protect the child's honor from all disturbances, answered by 8 respondents (26.67%). This was followed by answers from 7 respondents (23.33%) regarding guiding and

educating them. Regarding the issue of maintaining children's health and welfare, only 4 respondents (13.33%) gave this answer.

Thus, the implementation of legal protection in terms of Hashanah (child care) in polygamous families in Bandung Regency is running at the level of nurturing and care, namely, 36.67%, while the other three elements are still below the target, even in terms of child health and welfare it is still minimal. Once handled by polygamous parents, that is, from 100% it can only be reached by 13.33%. Therefore, fulfilling a husband's responsibilities towards his wife and children is a reflection of a husband's objections in a polygamous family.

The husband as the head of the household is a refuge for his wives and children. To support his family, the husband is required to work diligently to provide for the rights of his wives and children. This protection will be easier for husbands who are not polygamous to bear. However, for husbands who practice polygamy, this responsibility seems heavier and difficult to fulfill.

### **3. Legal Protection for Polygamous Families' Living Costs**

From the research data described in Table 4 previously, the most dominant jobs for polygamous husbands are as private sector workers (shop workers, public transportation drivers, motorcycle taxi drivers, etc.), farmers, small traders, and drivers and husbands who work as Very few civil servants practice polygamy, this is due to special regulations that limit civil servants from practicing polygamy.

Husbands who practice polygamy earn an average monthly income of Rp. 400,000 up to Rp. 600,000, this income must be divided equally between the two wives plus their children, namely Rp. 200,000 or Rp. 300,000 per family. With a relatively small amount, of course, it is not enough to cover daily needs, especially the living needs of the first wife and children. These needs include clothing, food, and shelter as well as children's school needs, plus tertiary household needs.

Children who do not have adequate living needs met tend to do things that deviate from legal norms. The situation as described above has not been seen in the polygamous families studied. In reality, children still obey their parents' recommendations, especially their father's orders. However, compliance is relative.

After research, it turned out that this obedience arose out of fear of his father, meaning that he did everything without his awareness. Even though children's attitudes and behavior have not deviated from legal and moral norms, it is feared that one day children will commit delinquency and crime, if they are not fully nurtured and educated properly by their parents.

### **4. Factors That Inhibit the Implementation of Legal Protection for Children in Polygamous Families**

As is known, the development of children in a family is not the same, children's lives, whether social, religious, economic, or educational, are not the same from one family to another.

In the lives of children from polygamous families, the implementation of legal protection is not free from several problems that become obstacles, especially since polygamy that occurs is generally not recorded, then naturally Legal protection for polygamous children will be weak, so if the mother is impatient, then his son will encounter many obstacles. Therefore, based on data from respondents, the research results can be seen in detail in the table below.

Therefore, the qualitative approach in the description that has been analyzed above, so that the analysis is clearer, needs to be discussed in detail as follows:

- a. Inhibiting factors for the needs of polygamous children. In general, men who carry out polygamy and have more children, compared to monogamous marriages, are faced with major problems regarding the lives of their wives and children, both regarding housing and needs. everyday life.
- b. Inhibiting factors for children's education in polygamous families. Education is the main problem in family life, both formal and non-formal education because education is one of

the determining factors in the future and lives of their children. In general, children who receive a better education will have a brighter and more successful future than those whose education receives less attention from their parents.

- c. Inhibiting factors for relationships between children from polygamous families. Relationships between one child and another child in a polygamous family are a problem for the family itself, let alone in polygamous families, in monogamous families, relationships between children often also cause incompatibility. , the relationship between children is quite fragile
- d. Inhibiting factors in the relationship between children and parents. These obstacles are the same as the relationships between their children, between siblings, and between half-siblings. Most of the incompatibility or disharmony between them begins with their parents not getting along, especially between the old wife and the young wife, and the attitude of the husband who is unfair and less wise.

## 5. Efforts to overcome obstacles that occur in polygamy

Efforts to overcome these family problems, even temporarily or to minimize the obstacles that arise, so that they do not become ongoing, causing family breakdown. In a polygamous family, the most ideal efforts to overcome crises and family problems are the example set by the Prophet for his family. Therefore, based on data from the research results of respondents, several efforts to overcome or overcome obstacles that occur in polygamous families can be analyzed, which can be seen in the table below.

- a. Upholding the husband's leadership in the family. The husband is not a dictator who must act dictatorially towards his children and wife, but the husband, regardless of his condition as a worker and his social status, is the leader of the family.
- b. The husband's objectivity and neutrality In carrying out his leadership as head of the family, especially in a polygamous life, the husband must act neutrally and objectively. The husband is neutral, meaning he does not side with one of his wives or a group of children, because if the husband takes one side, there will be a group that feels defended and there is a group that feels like a stepchild or has been disadvantaged, resulting in a lack of sympathy for the husband/father.
- c. Husband's justice Efforts to overcome family problems then depend on the husband's justice towards his wives, both small and large problems, starting from the distribution of days to the needs of the family as a whole. This fair action from the husband is a continuation of the husband's objective and neutral attitude based on an attitude of rational, unemotional thinking.
- d. The husband acts wisely. Justice and wisdom are two things that cannot be separated, but it is not impossible that wisdom can break a rule. The implementation of legal regulations does not have to be rigid, there still needs to be wisdom in their implementation, so that implementation can be flexible.
- e. A husband's love A husband's love for his wives and children is the main pillar in family life and peace. The husband's actions must not be based on hatred or revenge even if he scolds one or all of his wives, and the same goes for his attitude towards his children.
- f. Husbands dare to give in for the sake of family harmony. Because they want to always be cared for, wives often demand their rights from their husbands, especially as wives who are married to them feel like they are competing with their honey so they try to be closer to their husbands, wanting more attention from their husbands so that in this competition it is not impossible to happen. conflict between wives or between a wife and her husband which sometimes involves their children.
- g. Husbands can maintain a balance of rights and obligations. In family life, especially polygamous families, family problems often occur because each person involved in it tries

to obtain greater rights without carrying out their obligations properly. Maybe the husband requires his wives to serve him well but their obligations are not thought about enough.

#### **D. Conclusion**

Based on the findings and discussion, several conclusions can be drawn, including the following:

- a. The implementation of legal protection for children in polygamous families in Bandung Regency has not been implemented well, this is caused by several factors: - The hidden polygamous marriage factor - The husband's income is not sufficient so the children are poorly cared for and even neglected in terms of education and other needs.
- b. Factors that hinder the implementation of legal protection for children in polygamous families are the existence of hidden polygamy (underhand marriages) so that such marriages do not have permanent legal force and children born are also registered as illegitimate children, where illegitimate children only have civil relationship towards his mother and his mother's family (Article 43 paragraph (1) Law no. 1 of 1974).
- c. Efforts to overcome the obstacles that occur in polygamous families are to find additional work for both the wife and children who can work with their father, after returning home from school. Apart from that, the husband also tries to uphold his leadership in the family, is objective and neutral, and tries to act fairly even though everything is not fulfilled, but with wisdom and love the husband dares to give in for the sake of family harmony while trying to maintain a balance of rights and obligations.

#### **E. Suggestions**

From the discussion and conclusions above, suggestions can be made as follows:

- a. For the Office of Religious Affairs and the District Office to establish good cooperation in terms of accuracy regarding a person's identity, especially regarding marital status. For the Office of Religious Affairs, if someone gets married and includes a transfer letter, they must request a letter of recommendation from the office where the person comes from.
- b. Parents who practice polygamy should be fully aware of the risks that will occur and not just because of biological purposes so that their children will be neglected. It is necessary to realize that children are a trust of Allah SWT who must be cared for and educated as well as possible because every parent will be asked to be responsible in the future by Allah SWT for their obligations to care for and educate children. Likewise, the mother should be able to give permission or blessing to her husband sincerely, if indeed her husband has the will and excess biological desire to practice polygamy wisely so that polygamy does not have too bad an impact on the lives of her children.
- c. Families who practice polygamy, should always adhere to the applicable laws and regulations and be guided by the Al-Qur'an and the Sunnah of the Prophet, for those who are Muslim, it is better if polygamy is carried out openly and registered at the Religious Affairs Office, not underhand marriages, which carried out by capable husbands and for the reason that polygamy is indeed acceptable under the applicable laws and regulations, especially Law no. 1 of 1974, by acting fairly, honestly and capably so that children are protected and protected in terms of costs, attention and love from their parents.

#### **Reference**

- Addin. 2019. Legal Aspects of Siri Marriage and Its Legal Consequences, Vol.XII. No I  
Ali, Sodik, Dan Sandu, Siyoto, 2015, Basic Literacy Research Methodology Publishing,  
Yogyakarta.  
Abintoro, Prakoso, 2016, Child Protection Law, Laksbang Pressindo, Yogyakarta.

- Arafat, Y. 2015. *Rechtens Journal*. Principles of Balanced Legal Protection in Contracts, Vol. IV
- Arofik, Slamet, 2020, Alvian RiskiYustomi, Analysis of Ushul and Fiqh Rules on the Implementation of the Dispensation for Underage Marriage in the Office of Religious Affairs, Vol. 4, *Ustratuna Journal*.
- Cahyani, A. I. 2018. *Law Journal*. Polygamy in Islamic Law Perspective, Vol. V, No. II DOI: Din Mujibussalim Eli Dani Isma, Mohd, 2017, Policies in Handling Underage Marriage, Vol. 7, no. 1, *Journal of Islamic Law*, Faculty of Sharia and Law UIN Ar-Rainry, Banda Aceh.
- Elkairati, 2018, Marriage Age Limitations (Review of Laws and Maqashidasy-Shari'ah), Vol. 3, *Al Istimbath Journal*.
- Eoh, O.S, 2018, *Interfaith Marriage in Theory and Practice*, Raja Grafindo Persada, Jakarta.
- Fadlyana, 2016, *Early Childhood Marriage and Its Problems*, Sari Pediatrics, Jakarta
- Hikmah, Dhorifah, Hafidhotul, 2017, The Effect of the Marriage Age Limit in Law Number 1 of 1974 on Underage Marriage, Vol. 6 No. 2, *Diponegoro Law Journal*.
- Imron, Ali, 2013, Protection and Welfare of Children in Underage Marriages, Vol. 13 No. 2, *Al-Tahriri Journal*.
- Irawan, F. P. P. 2021. *Siri Marriage in a Review of Islamic Law and Law Number 1 of 1974 concerning Marriage*, Vol. VIII, No. I
- Ma'arif, Siti, 2019, The Impact of Early Marriage in Rural Areas, Vol. 10 No. 01, *Law Journal*, University of Indonesia, Depok.
- Mardani. (2016). *Islamic Family Law in Indonesia*. Jakarta: Kencana.
- Muhammad, B. (2014). *Inheritance Rights of Children Outside of Marriage (Study of the Results of Constitutional Court Decision No. 46/PUU-VIII/2010)*. Semarang: Fatawa Publishing.
- Musfiroh, Mayadina, Rohmi, 2016, Early Marriage and Child Protection Efforts in Indonesia, Vol. 8 No. 2, *Journal of Law and Sharia*.
- Mubarok, Jaih, 2015, *Marriage Law Reform in Indonesia, Teen Rosdakarya*, Bandung.
- Mustofa, Syahrul, 2019, *Law on Preventing Early Marriage*, Guepedia, Jakarta.
- Moearifa. 2015. *Journal of Marriage Religion According to Islam and Protestantism*, Vol. I, No. II
- Puniman, A. 2018. *Marriage Law According to Islamic Law and Law Number 1 of 1974*, Vol. 19, no. 1
- Santoso. 2016. *Law Journal*. The Nature of Marriage According to Marriage Law, Islamic Law, and Customary Law, Vol. VII, No. II.
- Syamdan, A. D. 2020. *Legal Aspects of Siri Marriage and Its Legal Consequences*, Vol. XII, No. I
- Nuzul, Andi, 2019, *Indonesian Civil Law*, Truss Media Graphics, Jakarta.
- Rofiq, Ahmad, 2018, *Islamic Law in Indonesia*, Rajawali Press, Jakarta.
- Ria, Wati, Rasimi, Muhammad Zulfikar, 2015, *Islamic Legal Studies*, Sinar Sakti, Bandar Lampung.
- Rika, Saraswati, 2015, *Child Protection Law in Indonesia*, PT. Cipta Aditya Bakti, Bandung.
- Rina, Hardianti, Nurwati Nunung, 2020, Factors that cause marriage and women, Vol. 3 No. 2, *Journal of Social Work*.
- Rodliyah, Nunung, 2014, Legal Consequences of Divorce Based on Law Number 1 of 1974 concerning Marriage, *Journal of Progressive Justice*.
- Rohman, Holilur, 2016, Ideal Age Limit for Maqasid Shariah Prospective Marriage, Vol. 1, *Journal of Islamic Studies Humanities*.
- Susilo, Zumriton, K, 2016, *Child Marriage Status of Women*, Women's Journal Foundation, Yogyakarta.
- Simanjuntak, P.N.H, SH, 2015, *Indonesian Civil Law*, Prenada Media Group, Jakarta.
- Sunggono, B. (2016). *Legal Research Methods (Vol. 15)*. Jakarta: PT Raja Grafindo Persada.
- Syarifuddin, A. (2006). *Islamic Marriage Law*. Jakarta: Kencana.
- Wibawa, K. P. 2021. *Juridical Review of Siri Marriages According to Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 concerning Marriage (Case Study in Singaraja Village)*. *EJournal*. Vol. IV, No. II