

## CRIMINALIZATION OF THE PRACTICE OF POLYGAMY SIRRI AND ITS IMPLICATIONS FOR HARMONY HOUSEHOLD

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### ABSTRACT

Polygamous marriages can be carried out by first fulfilling the requirements as stipulated in the legislation. But in fact, there are cases of polygamous practices being carried out not in accordance with statutory regulations, and not obtaining permission from the Court, the practice of polygamous marriages is carried out secretly without the knowledge of the first wife and is carried out in sirri. The purpose of this article is to analyze the factors that led to the practice of polygamy in Notoharjo Village, Kec. Trimurjo Kab. Central Lampung, then the implications of deviant polygamy behavior on household harmony and whether deviant polygamous behavior can be punished. This type of article is qualitative, with a case study approach that is analyzed from a criminal law perspective. The primary data source for this article is the perpetrators of deviant polygamy. Data collection techniques through observation, interviews and documentation. The results showed that the factor of deviant polygamy was due to an affair that the first wife did not want to know about. The implications of deviant polygamous marriages are that they result in damage to harmony in the household, and deviant polygamous practices can be subject to criminal sanctions.

**Keywords:** Deviant Polygamy, Implications and Criminal Sanctions.

### A. INTRODUCTION

Law No.1 of 1974 concerning Marriage (UUP) adheres to the principle of monogamous marriage, (Ali, 2007, p. 139) although the principle is monogamy, the state still provides space to be able to carry out polygamy, of course with strict requirements. These requirements include that polygamy can only be practiced when the wife is unable to provide offspring, and most importantly, justice for his wives when polygamous. It is also stipulated that in carrying out polygamy, the husband must have sought permission from his wife, as well as approval from the religious court, (Suma, 2008) Meanwhile, according to the Compilation of Islamic Law, it has the same conditions as the UUP in the event that the husband wants to be polygamous, with the addition of the main requirement that the husband must be able to be fair to his wives and children, (Abdurrahman, 1992) In connection with the Al-Quran verse which is the basis for the law of polygamy, the scholars and fuqaha have set requirements if a Muslim man wants to marry more than one person. Wives, namely: a. A man must have sufficient financial capacity to pay for

various needs with the increase in the number of wives he marries. b. A man must treat all his wives fairly. Each wife must be treated equally in fulfilling her marital and other rights, (Characteristics of Islamic Law and Marriage, p. 261) If a man feels that he will not be able to be fair, or does not have the wealth to support his wives, he must refrain from marrying only one wife. Not only the above requirements, the process of polygamous marriage must first obtain permission from the Court. The court first examines and verifies and ensures that the reasons used by the applicant are in accordance with the provisions regulated by the Law.

The provisions as above, it appears that polygamy is not something that is easy to do. Because the conditions for a person to be able to commit polygamy are also not simple, there are even threats of punishment for those who violate these provisions contained in both positive law and Islamic law. These provisions tend to be very complicated, and between positive law and Islamic law. This is certainly aimed at respecting the nature of marriage itself and preventing to a minimum the possibility of various negative consequences in domestic life, both in terms of mental, social and economic psychology which are detrimental to all family members and certainly not in line with the nature and purpose of marriage.

In fact, the case that arises is that the concept of polygamous marriage in society is still being carried out which is not in accordance with the requirements of the UUP as above, such marriages can be referred to as deviant polygamy. Deviant polygamy is the practice of polygamy that is not in accordance with the applicable provisions and rules (Tabroni, 2016). Deviant polygamous behavior is generally carried out without the permission of their wives, resulting in quarrels, fights and also eliminating the integrity and harmony in the household. As in this study, researchers found the phenomenon of deviant practices in polygamy, where some of these practices have become common among polygamous people. In the practice of polygamy found by the author in Notoharjo Village, Trimurjo District, Central Lampung, the rights of married women as wives are often ignored and even denied. Secret marriage or marriage under the hand is the most common. This means that the marriage is carried out in secret (*sirri*) and is not witnessed by KUA officers. *Siri* polygamy usually occurs because the husband does not get permission from the first wife. In addition, it can also be due to fear of workplace sanctions that do not allow employees to have more than one wife. The second offense takes the form of falsifying identity at the KUA.

For example, married status is replaced with single. Or it can also report an identity that does not match the Identity Card (KTP) by changing the name, address and marital status. In

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addition, a common offense requires the first wife to give permission for polygamy. This coercion can be classified as a criminal offense of domestic violence (KDRT).

This kind of underhand marriage certainly directly or indirectly has an impact on the pattern of household relationships that occur, considering that the husband does not only have one wife, especially since the other wife is not known by the first wife. The symptoms that arise are usually that the husband often comes home late, even starting several times not to come home even though he is on the grounds of outside service and so on. In addition, the maintenance provided by the husband also tends not to be as usual before polygamy, both in terms of physical and mental nafakah. The openness between husband and wife is also getting thinner, as if there are so many personal secrets of the husband, many consider that the husband's closedness to his wife is a form of husband's love for his wife because he does not want his wife to be burdened with what is the husband's problem. Symptoms like this, if left unchecked, can have a serious impact on the harmony of the household itself. Forms of violence against wives and their children, ranging from psychological distress, physical abuse, neglect of wives and children, threats and terror and denial of wives' sexual rights can occur. Such suffering is very likely to be experienced by both the first wife and the other wives and their children.

The reasons why this article is important to write are 1). The background of polygamy needs to be explored more deeply so that this research can objectively convey the reasons why polygamy occurs in the middle of the family, this aims to examine more deeply the motives carried out by husbands to polygamy so that the impact caused by deviant polygamous behavior itself can be handled appropriately. 2). To find out the extent to which the implications of deviant polygamous behavior on household harmony, in terms of criminal law. 3). This research is very important to do because it proves that deviant behavior in polygamy has a very serious effect so that it can be punished criminally. So that the results of the research can be used as recommendations for the wider community, especially matters relating to the adequate prosecution of perpetrators of deviations in polygamy.

There are several research results whose studies discuss deviant polygamy, including research conducted by Dian Septiandani, and Dhian Indah Astanti with the title "Legal Consequences for Husbands Who Practice Polygamy ...". The results of this study reveal that a polygamous marriage that is not in accordance with the laws and regulations and Islamic law, will have implications for the status of the marriage itself where the marriage is considered null and void. Septiandani and Astanti, (Astanti.) Furthermore, research by Nutfirah, (Nutfirah, 1974) with the title "The Phenomenon of Polygamy Without Wife's Permission Against Household

Life ...". The results of this study reveal that polygamy without the wife's permission has more negative impacts than benefits, another impact is that the marital status with the young wife has no legal force. Further research by Barzah Latupono, (Latupono, 2022) with the title "Juridical Study of the Impact of Polygamy on Family Life". The results of this study explain that most polygamy is not carried out in accordance with the objectives of polygamy mandated by religious law so that it will result in responsibilities in the form of fulfilling civil rights and economic rights that must be carried out by a father or husband not being carried out as it should. From the background as above, the novelty of this article reveals or analyzes the factors of the occurrence of polygamous practices in Notoharjo Village, Trimurjo District, Lamp.

## **B. METHODS**

This type of article is qualitative, the purpose of qualitative analysis is to reveal the reasons why some Javanese people in Kotabaru Village still believe in kejawen science as a consideration in the concept of marriage. The object of extracting data is field research or field studies, which are carried out in a part of the Javanese community in Kotabaru Village, Padang Ratu District, Central Lampung Regency. The approach in writing this article is a phenomenological approach, which is to reveal a phenomenon about the belief in kejawen science that is still applied by some Javanese people. To obtain data in accordance with the research problem, the data collection technique is through observation, interviews and documentation.

## **C. FINDINGS AND DISCUSSION**

### **I. Legal Basis for Polygamy**

In terminology, polygamy is a man having more than one wife or a man having more than one wife, but limited to a maximum of four people. Law No. I of 1974 Article 3, polygamy can be interpreted as a marital bond in which the husband has more than one wife. (Suma M. A., 2008, p. 523) In the Compilation of Islamic Law, it is explained that polygamy is having more than one wife at the same time, limited to four people. As in Article 55 paragraph (1) KHI, (Abdurrahman, Compilation of Islamic Law in Indonesia, 1992, p. 126) In Islamic Law, polygamy means more than one marriage, with a limit of only up to four women. Although there are those who understand the verse on polygamy with a limit of more than four or even more than nine wives. (Nasution, 1996) This difference is due to the understanding and interpretation of the verse in QS. An-Nisa (4): 3, as the determination of the legal basis of polygamy.

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Basically, the UUP stipulates that a man can only have one wife. However, a husband who wants to have more than one wife can be allowed if desired by the parties concerned and the Religious Court has given permission. The basis for granting permission for polygamy by the Religious Court is regulated in Article 4 paragraph (2) of the Marriage Law as expressed as follows: The court referred to in paragraph (1) of this article only gives permission to a husband who will have more than one wife if: The wife is unable to fulfill her obligations as a wife; The wife has a disability or illness that cannot be cured; The wife cannot give birth to offspring (Law, p. 523).

Polygamy or having more than one wife is not a new problem. Polygamy has existed since time immemorial, in the lives of humans in various societies throughout the world. (Doi, 1996, p. 529) Before Islam came, the practice of polygamy carried out by the Arab community did not have a limit in terms of the number of wives, so that at that time a husband had up to 8 (eight) wives or even more was not prohibited and it was considered a natural thing. (Ahmed, 1992, p. 7) After the arrival of Islam, the practice of polygamy that developed in Arab society was not limited. 7) After the arrival of Islam, the practice of polygamy that developed in Arab society was accommodated by Islam but Islam provided a limit in terms of the number of wives and Islam also provided conditions that must be met if a person wants to be polygamous, (Azizah, 2008, p. 1) In Islam, the permissibility of polygamy is stated by Allah SWT in Surah An-Nisa verse 3 regarding the permissibility of polygamy with justice as the main requirement.

### **2. Factors of Deviant Polygamy in Notoharjo Village, Trimurjo Sub-district, Central Lampung District**

Based on interviews with wives as victims of polygamy, that the factors of deviant polygamy in Notoharjo Village, Trimurjo District, Central Lampung, which are carried out by the husband are carried out secretly under the pretext of avoiding immorality and difficult to obtain the understanding and consent of the wife. When it is already known, it is expected that it will be easier to give understanding, (First, 2023)

According to the first wife, her husband was polygamous because he only wanted to satisfy his biological lust. This is proven objectively, the first wife is physically and mentally healthy, the first wife is obedient and obedient to her husband, the wife carries out her obligations, the wife maintains the honor of herself and her family, the wife takes care of her husband and children, the wife maintains the household well, the wife can also provide and give birth to children and the wife can educate children to adulthood with love and affection, but her husband still commits polygamy.

Referring to the results of interviews with religious leaders in Notoharjo Village, Trimurjo District, Central Lampung, who stated that some people understand and believe that polygamy is a sunnah of the Prophet. Some consider that polygamy is an Islamic teaching. Many think that polygamy was only recognized after Islam, they consider Islam to be the one who brought the teachings about polygamy, in fact, to the extreme, they argue that if it were not for Islam, polygamy would not be known in human history.

### **3. Implications of Perverse Polygamy for Household Harmony**

Deviant polygamous behavior that is carried out casually in Notoharjo Village, Trimurjo Sub-district, Central Lampung District, results in disharmony in the household. Another problem arising from deviant polygamous behavior is the emergence of injustice due to the non-fulfillment of polygamy requirements as stipulated in Law No. 1 of 1974 and Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law. Even so, the practice of polygamy continues to occur and even flourish in the midst of community life.

Another implication is that it has a psychological impact on the wife. Psychologically, the wife will feel disturbed and hurt to see her husband in a relationship with another woman. Another psychological problem is in the form of internal conflict within the family, either between wives, between wives and stepchildren or between children with different mothers. Polygamous marriages also have a negative impact on the mental development of children, especially girls. Polygamous marriages create a heavy psychological burden for children. Children are embarrassed when their father is called a "married man", so they feel inferior and avoid socializing with their peers. For girls, it is usually difficult to get along with their male friends. Most of the children whose fathers are polygamous then look for other escapes, such as drugs, promiscuity and so on.

### **4. Criminalization of Sirri Polygamy Practices**

Based on the research findings as above, deviant polygamous marriages can be subject to criminal charges. According to the Criminal Code, a polygamous marriage without the consent of the legal wife is considered a polygamous crime. The legal basis is formulated in Article 279 of the Criminal Code which reads:

- I) Shall be punished by a maximum imprisonment of five years:
  - a. Whoever enters into marriage knowing that his existing marriage or marriages are a legal barrier thereto

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- b. Any person who enters into marriage knowing that the marriage or marriages of the other parties constitute an obstacle thereto
- 2) If the person who commits the act described in paragraph I, item I, conceals from the other party that an existing marriage has become a legal obstacle thereto, he shall be punished by a maximum imprisonment of seven years.

Husbands who want to have more than one wife must fulfill the conditions for polygamy and these conditions for polygamy are often violated. The Criminal Code regulates the provisions of marriage and the application of sanctions for those who violate them. Based on Article 279 of the Criminal Code, a person can be convicted if one of the parties enters into another marriage while being hindered by the previous marriage. The obstruction in question is an indicator that causes the subsequent marriage to be prohibited. Criminal punishment with aggravation is carried out when a person conducts a remarriage even though it is still hindered by a previous marriage and he also hides it to his next marriage partner.

From the elements of the article in question, it can be seen that the prohibition against polygamy does not lie in the law of marriage, but lies in the administrative requirements that must be met first, as evidenced by the determination of the court. The elements contained in Article 45 of Government Regulation No. 9 of 1975 are not much different from the formulation of the article contained in the draft Bill on the Material Law of Religious Courts (hereinafter referred to as the HMPA Bill). The provisions of Article 145 of the HMPA Draft Bill state that "*Any person who enters into a marriage with a second, third or fourth wife without obtaining prior permission from the court as referred to in Article 52 paragraph (1) shall be punished with a maximum fine of Rp. 6,000,000, - (six million rupiah) or a maximum imprisonment of 6 (six) months*".

Based on the wording of Article 145 of the draft HMPA Bill, it can be seen that the act of polygamy is not prohibited at all as long as the husband who wants to be polygamous gets permission from the court. Polygamous acts committed illegally (without court permission) can be subject to criminal sanctions in the form of criminal offenses with sanctions that are slightly higher than the provisions of Article 45 of Government Regulation No. 9 of 1975, namely paying a maximum fine of Rp. 6,000,000, - (six million rupiah) or a maximum imprisonment of 6 (six) months, (Raflisman, 2016).

In addition, Article 7 of the Compilation of Islamic Law also states that a valid marriage is :

- I) Marriage can only be proven by a Marriage Certificate made by a Marriage Registrar.

2) In the event that a marriage cannot be proven by a Marriage Certificate, itsbat nikah can be submitted to the Religious Court.

Therefore, if a person is still married to another, and then marries again under the hand with another, then they can be punished according to the applicable law. A polygamist can be sanctioned with the mistakes he makes depending on what article the judge will impose. This depends on the judge's point of view in imposing punishment on the perpetrator of illegal polygamy. After the perpetrator is sanctioned, then the person who marries (penghulu) can be subject to legal sanctions as stipulated in Article 55 of the Criminal Code for participation in the commission of a criminal offense, (Astanti).

Related to the legal status of polygamous marriages carried out without the wife's permission, the marriage can be canceled by the wife, besides the wife, the parties allowed to cancel the marriage are family in a straight line of descent, husband or wife, authorized officials as long as the marriage has not been decided, appointed officials and have a direct legal interest in the marriage. The marriage can be annulled because it does not fulfill the conditions for entering into a marriage, where one of the conditions for a husband who wants to have more than one wife is the consent of the wife / wives. The wife can submit an application for annulment of marriage to the Court in the jurisdiction where the marriage is carried out or the residence of both husband and wife, husband or wife. After that, the nullity of a marriage begins after the Court's decision.

An example of a criminal decision on polygamy without the wife's permission can be found in Supreme Court Decision Number 1311K/PID/2000. In this case, it was found that the defendant who was already married remarried for the second time without the permission of his first wife. For his actions, the Panel of Judges stated that the defendant had been proven legally and convincingly guilty of the crime of "*committing a marriage, while his existing marriage is a legal obstacle for him to remarry*" with a prison sentence of 4 months.

Meanwhile, male civil servants are allowed to practice polygamy or have more than one wife. However, permission to commit polygamy is strictly regulated through Government Regulation (PP) Number 45 of 1990 concerning Amendments to PP Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants. Article 4 Paragraph I reads, "*Male civil servants who will have more than one wife must obtain prior permission from an official*" Requests for permission from civil servants to commit polygamy must be submitted in writing by stating the complete reasons for having more than one wife and the conditions that must be met. One of the conditions that must be met is the written consent of the wife.



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Sanctions for civil servants who polygamy secretly or without permission are contained in PP Number 94 of 2021 concerning Civil Servant Discipline. In this regulation, there are three types of severe disciplinary penalties that can be imposed on violating civil servants. The three sanctions, namely: demotion to a lower level for 12 months; release from his position to an acting position for 12 months; and dismissal with honor not at his own request as a civil servant.

### **D. CONCLUSIONS**

From the analysis as above, it can be concluded that, the factor of deviant polygamy is due to the difficulty of obtaining permission from the first wife, because then the husband commits polygamy secretly. Another factor is the practice of polygamy as a sunnah of the Prophet. The implications of polygamy lead to household disharmony, resulting in psychological burdens for both the first wife and children. The practice of polygamy that is not in accordance with the laws and regulations as regulated in the UUP, such as without the permission of the wife and the court, is punishable by a maximum imprisonment of five years.

Suggestion. According to the author's understanding, husbands who intend to practice polygamous marriage need to consider the impact of madhorot. Among them is the psychological impact on the wife. Psychologically, all wives will feel disturbed and hurt to see their husbands having relationships with other women. A number of studies have revealed that the average wife upon learning that her husband has remarried spontaneously experiences feelings of depression, prolonged stress, sadness, and disappointment mixed together, as well as hatred because she feels she has been betrayed. Surprisingly, such feelings do not only occur to the first wife, but also to the second, third, and so on.

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