



JURIDICAL ANALYSIS OF POLYANDRY MARRIAGES REVIEWED FROM LAW NUMBER 1 OF 1974 ON MARRIAGE

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Abstract

This legal research aims to determine the juridical analysis of polyandry marriages in terms of Law Number 1 of 1974 concerning Marriage. This research is a juridical-normative legal research. The research approach used is a statutory approach. The types of legal materials used are primary legal materials and secondary legal materials. The data collection technique used is a literature study technique. Furthermore, using data processing techniques that are deductive and analyzed using content analysis. The results showed that polyandry marriages are part of polygamy just like polygyny, but polyandry marriages are prohibited in Indonesia, while polygynous marriages are permitted under certain conditions. However, even so, polyandry marriages also still occur, although very rarely, which is caused by several factors, namely economic factors, distance factors and the unfulfilled inner living, age factors, lack of family harmony, lack of faith and weak understanding of religion as social control. and cultural factors. Based on a juridical analysis of Law Number 1 of 1974 concerning Marriage, it is not found any article that regulates permission for women or wives to have more than one husband or permission to do polyandry. The practice of polyandry is prohibited in Indonesia because it can have several impacts, namely the impact on offspring and the impact on the parties.

Abstrak

Penelitian hukum ini bertujuan untuk mengetahui analisis yuridis mengenai perkawinan poliandri ditinjau dari Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. Penelitian ini merupakan penelitian hukum yuridis-normatif. Pendekatan penelitian yang digunakan adalah pendekatan perundang-undangan (*statute approach*). Jenis bahan hukum yang digunakan adalah bahan hukum primer dan bahan hukum sekunder. Adapun teknik pengumpulan data yang digunakan adalah teknik studi kepustakaan. Selanjutnya

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menggunakan teknik pengolahan data yang bersifat deduktif dan dianalisis menggunakan *content analysis*. Hasil penelitian menunjukkan bahwa Perkawinan poliandri merupakan bagian dari poligami sama seperti poligini, namun perkawinan poliandri dilarang di Indonesia sedangkan perkawinan poligini diijinkan dengan syarat-syarat tertentu. Namun meskipun demikian, perkawinan poliandri juga masih terjadi walaupun sangat jarang yang mana karena disebabkan oleh beberapa faktor yakni faktor ekonomi, faktor jarak dan tidak terpenuhinya nafkah batin, faktor usia, faktor kurang harmonisnya keluarga, faktor kurangnya iman dan lemahnya pemahaman agama sebagai kontrol sosial, dan faktor budaya. Berdasarkan analisis secara yuridis terhadap Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, tidak ditemukan pasal manapun yang mengatur mengenai izin kepada wanita atau istri untuk bersuami lebih dari seorang atau izin dilakukannya poliandri. Praktik poliandri dilarang di Indonesia karena dapat menimbulkan beberapa dampak yakni dampak terhadap keturunan dan dampak terhadap para pihak.

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A. PRELIMINARY

One form of fulfilling the demands of human instinct is by way of marriage. Every marriage is not only based on biological needs between a man and a woman who are recognized as legitimate, but also is an implementer of the process of human nature (Santoso, 2016, p. 413). Marriage is a legal act, in which marriage creates rights and obligations for the parties who bind themselves to a marriage.

In Indonesia, marriage is seen as a sacred thing, therefore religion, tradition or custom, as well as state institutions have regulated the marriage that applies among the community. The rules of procedure regarding this marriage have existed since a simple society maintained by community members and traditional community leaders and/or religious leaders. The rules of conduct continue to develop forward in a society that has governmental power and within a country. In Indonesia, the rules of marriage order have existed since ancient times, since the times of Srivijaya, Majapahit, until the Dutch colonial period and until Indonesia was independent. In fact, the marriage regulations do not only concern Indonesian citizens, but also foreign nationals, because of the wider association of the Indonesian people (Kusuma, 2007, p. 1).

Marriage is not only a matter between the bride and groom and their extended family, but also the interests of the wider community to realize the aspired social order. In order to maintain and protect the family and improve welfare, a law governing marriage was drafted, namely the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law) and in 2019 Law Number 16 of 2019 concerning Changes was drawn up. Based on Law Number 1 of 1974 concerning Marriage, but in this law, the essence of the change is in the age limit for marriage for women and men.

In the Marriage Law, namely Article 1, it is stated about the meaning of marriage, namely "the inner and outer bond between a man and a woman as

husband and wife with the aim of forming a family, an eternal household based on the One Godhead". So based on this it can be concluded that the purpose of a marriage is to form a happy and eternal family. So husband and wife need to complement each other to achieve spiritual and material well-being (Rofiq, 2013, p. 48).

According to C.S.T. Cansil, the marriage law actually adheres to the principle that prospective husbands and wives must be mature in body and soul to be able to carry out a marriage so that they can realize the purpose of marriage properly without ending in divorce and getting good and healthy offspring (Rifa'i, 2017, p. 2).

In general, marriage adheres to the principle of monogamy. Monogamous marriage is a marriage in which a man is only allowed to have one wife and vice versa, namely a woman is only allowed to have a husband. However, in Indonesia because the law and religion of the person concerned allows it, a husband can have more than one wife, even though this is desired by the parties concerned, but can only be done if certain conditions are met and decided by the court (Rifa' i, 2017, p. 2). This marriage can be referred to as a polygynous marriage, namely marriage between one man and several women.

Polygynous marriage is a form of polygamy. However, so far there have been many misunderstandings in society that identify polygamy as marriage between one man and several women. Whereas in essence, polygamy is a form of marriage in which one party has more than one partner. Polygamy itself can be divided into three types, namely polygyny, polyandry and group marriage (Jaiz, 2002, p. 118). Polyandry means marriage between one woman and several men at once. Meanwhile, group marriage is a marriage in which a group of women can marry a group of men and vice versa, and each group member has the same rights over each wife and husband in the group (al-Jahrani, 1996, pp. 33-34).

Etymologically, polyandry comes from the Greek words *pollus* which means many, *aner* which means negative, and *andros* which means male. Then, polyandry is defined as a woman who has more than one. And in society, polygynous marriage is more widely known than marriage. Polyandry can be defined as one woman having many husbands, or a wife having two or more husbands at the same time.

The practice of polyandry is widely practiced in parts of India and Russia. Apart from the desire on the part of women to marry several men, polyandry can also occur because of the custom where if a woman marries a man in a village, the woman will automatically become the wife of the man's brothers. Polyandry was widely practiced in India and was also practiced in Arabia before the advent of Islam (al-Jahrani, 1996, p. 33).

Polyandry can be divided into two groups, namely *fatrenal polyandry* and *non-fatrenal polyandry*. The definition of *fatrenal polyandry* is that a man who is married to a woman still has a brother and sister relationship. Meanwhile, *non-fatrenal polyandry* is a man who is married to a woman who does not have a sibling relationship (Atosokhi, 2005, p. 39).

Similar to polygynous marriages, polyandry marriages are marriages between a woman and several men. Although almost the same as the concept of polygyny, polyandry marriage in which a woman has more than one husband is not allowed under Indonesian law. This is because this marriage is considered to be able to damage the purity of the offspring, because the mixing of the sperm of several

men in one woman will cause the status of a child to be unclear, namely which man will be the father of the child (Rohbaniah & Muliya, 2016, p. 364).).

In certain societies, such as Indian society, polyandry marriage is not a type of illegal marriage. For the people of India, this is a social and biological right of society and polyandry marriages are still happening today. Thus, in Indonesian society, poiandri is not a form of marriage that violates positive law (written law) or local customary or moral law (unwritten law).

In Indonesia itself there have also been several cases of polyandry marriages, although this is prohibited and can be declared as an illegal matter where Indonesian law does not allow polyandry marriages. One of the polyandry marriages in Indonesia occurred in Bali, which was carried out by Ayu, who is a woman from Bali. Ayu is married to her second husband, Arya, a man from Bali who still has a husband, a policeman from Nga.wi, East Java. Both of Ayu's first husband and second husband did not know about Ayu's status (Harianto, 2019).

In addition, there has also been a polyandry marriage in East Java by Luluk Mauludiyah who is a member of the East Java DPRD from the PDI-P (PDIP) faction. Luluk married her second husband, Teguh Digdayanto, in 2009 while still the legal wife of Pudjo Basuki. However, in this case Luluk has obtained permission to perform polyandry from her first husband (Noviyanto, 2011).

In essence, a married woman is prohibited from marrying another man as long as she is still married to her husband. This is regulated in Indonesian law, namely the Marriage Law which only allows a man to have a wife and a woman only to have a husband. However, in accordance with Article 3 paragraph (2) of the Marriage Law which stipulates that "the court can give permission to a husband to have more than one wife if the parties concerned want", then polygynous marriages are allowed in Indonesia. As a result of this, some communities demand polyandry licensing on the grounds of gender equality. In addition, several tribes and regions in Indonesia have also made polyandry a tradition.

Based on this background, in this study a juridical analysis of polyandry based on the Marriage Law in Indonesia will be conducted. Therefore, this study took the title "Juridical Analysis of Polyandry Marriages Judging from Law Number 1 of 1974 concerning Marriage".

B. RESEARCH METHODS

To determine whether or not a research is achieved, it is necessary to have an appropriate research method. The research method is a scientific way to obtain data with certain purposes and uses (Sugiyono, 2013, p. 3). The choice of method is also one of the determinations of the perfection of a research, while the method used in this research is the research method used, namely juridical-normative research, which is carried out by examining library materials or mere secondary materials (Mughtar, 2015, p. 84). This method examines objects in the form of statutory regulations or legal norms that apply or are applied to a certain legal problem (Diantha, 2017, p. 12).

The approach used in this research is the statutory approach, which is the approach taken by reviewing all laws and regulations related to the legal issues being handled (Marzuki, 2011, p. 93). Then the legal materials used in this research are primary legal materials consisting of Law Number 1 of 1974 concerning

Marriage, and secondary legal materials consisting of books, related research results, and expert opinions.

In this study, the technique of collecting legal materials used is a literature study technique by exploring a normative framework using legal materials that discuss legal theories regarding the juridical analysis of polyandry marriages based on the Indonesian Marriage Law. Furthermore, the data obtained will be processed deductively, namely by drawing conclusions from a general problem to the concrete problem being faced. Then after the legal material is collected, the legal material is analyzed to get a conclusion, the form of the legal material analysis technique is Content analysis. In this analysis of legal materials, it will show that the analytical methods are integrative and conceptually tend to be directed to find, identify, process, and analyze legal materials to understand their meaning, significance, and relevance (Bungin, 2007, p. 203).

B. DISCUSSION

Factors that Cause Polyandry Marriages in Indonesia

Marriage of a woman with several men or in this case referred to as polyandry marriage is generally caused by several factors. These factors encourage the existence of polyandry marriages which are legally illegal marriages in Indonesia. The factors are as follows (Misran & Agustina, 2017, pp. 265-267).

1. Economic Factor

This factor is one of the factors causing polyandry marriages in Indonesia, because of the economic crisis in the family, a woman as a wife tries to find a solution by marrying another man.

2. Distance Factor and Unfulfilled Inner Livelihood

The factor of distance and unfulfillment of inner livelihood is one of the factors causing polyandry marriages because a woman or wife who is far from her husband so that her biological desires are not fulfilled causes a wife to remarry another man.

3. Age Factor

The existence of an aspect of the husband's advanced age and often sickly is one of the factors for a wife to have a polyandry marriage. The reason is because the husband who is old and often sick is no longer able to provide physical and spiritual support to his wife.

4. Factors Lack of Family Harmony

Lack of harmony in the household, causes a wife to perform polyandry marriages. Husbands who are not able to give love and husbands who cheat are factors that cause a wife to remarry and have polyandry.

5. Lack of Faith and Weak Understanding of Religion as Social Control

The last factor is the lack of faith and the weak understanding of a wife's religion so that she is tempted by worldly desires which lead to polyandry marriages.

Apart from these factors, there are also other factors, namely cultural factors. However, this factor is broadly a factor that causes polyandry outside Indonesia, polyandry marriages are very rare in Indonesia due to cultural factors. This factor occurs because of the culture that develops in society. Such as the culture that developed in the Toda tribe in India, the Maasai tribe in Kenya, the Guanches tribe

in the Canary Islands, the Mosuo tribe in China, and the Tibetan population in China (Puspitaningrum, 2019).

Juridical Analysis of Polyandry Marriages Reviewed from Law Number 1 of 1974 on Marriage

In Indonesian law, the type of polyandry marriage, or a combination of polyandry-polygyny, is explicitly prohibited, and is considered an illegal marriage, that is, a marriage that violates the law. Polyandry marriages in society are more common than polyandry marriages because society is more receptive to polygyny marriages than polyandry marriages, so empirically it is very rare for women to marry more than one man, and even if it happens it is only casuistic (situational).

Juridically, when examined in marriage law does not regulate polyandry. In the marriage law, only polygamous marriages are regulated in Article 3 paragraph (2), Article 4, and Article 5. However, although not explicitly regulated, the law on polyandry marriage can be traced in Article 3 paragraph (1) and Article 9 Marriage Law.

Article 3 paragraph (1),

“ Basically in a marriage a man can only have one wife. A woman can only have one husband ”.

Article 9,

“ A person who is still bound by the bond of marriage with another person may not remarry, except in the case mentioned in Article 3 paragraph (2) and Article 4 of this Law ”

In this article, it is not permitted for a person who is still in a marriage bond, both a woman and a man, to hold another marriage, except as stated in Article 3 paragraph (2) and Article 4 of the Marriage Law.

After referring to the excluded articles, the two articles only regulate the granting of permission from the Court to a husband who will have more than one wife. There is no article that regulates permission for a woman or wife to have more than one husband. So it can be concluded that polyandry marriages are illegal marriages and are prohibited under Indonesian law, especially the marriage law in Indonesia, namely Law Number 1 of 1974.

The existence of a ban on the practice of polyandry marriages in Indonesia is certainly based on several reasons. These reasons are as follows.

1. The impact on offspring

which in general marriage will produce an offspring, if a polyandry practice occurs, the child will be shaken. This is because marrying several men will cause confusion, namely which man will be the guardian or father of the child. If you don't negotiate first, it can cause a commotion or trouble in the family. In addition, the issue of heredity also affects the distribution of inheritance (Rohbaniah & Muliya, 2016, p. 368).

2. Impact on the parties

The existence of polyandry marriages will have an impact on the rights and obligations of husband and wife. Which as a legal relationship, marriage will give rise to the rights and obligations of husband and wife.

A right is something that belongs to or can be owned by a husband or wife arising from their marriage. While the obligation is something that must be done or held by a husband or wife to fulfill the rights of other parties (Rohbaniah & Muliya, 2016). The rights and obligations of husband and wife are regulated in the Marriage Law in Articles 30-34, which are broadly determined as follows:

- a. husband and wife bear a noble obligation to uphold the household which is itself the basis of the structure of society;
- b. the rights and position of the wife are balanced with the rights and position of the husband in domestic life and social life together in society;
- c. husband and wife have a permanent residence that is determined together;
- d. husband and wife are obliged to love each other, respect, be loyal and provide physical and spiritual assistance to each other;
- e. the husband is the head of the household and the wife is the housewife. The husband is obliged to protect his wife and provide all the necessities of household life according to his ability, and the wife is obliged to take care of the household as well as possible.

If there is a polyandry marriage, of course there will be difficulties in fulfilling the rights and obligations of husband and wife. For example, the husband is the head of the household and the wife is the housewife. If a woman marries two men, in one family there are two heads of household. Or the woman becomes a housewife in two families.

C. CONCLUSION

Based on the results of research and discussions that have been studied, it can be concluded as follows:

- a. Polyandry marriages are part of polygamy just like polygyny, but polyandry marriages are prohibited in Indonesia while polygynous marriages are permitted under certain conditions. However, even so, polyandry marriages also still occur, although very rarely, which is caused by several factors, namely economic factors, distance factors and the unfulfilled inner living, age factors, lack of family harmony, lack of faith and weak understanding of religion as social control. and cultural factors.
- b. Based on a juridical analysis of Law Number 1 of 1974 concerning Marriage, it is not found any article that regulates permission for women or wives to have more than one husband or permission to do polyandry.
- c. The practice of polyandry is prohibited in Indonesia because it can have several impacts, namely the impact on offspring and the impact on the parties.

SUGGESTION

Based on the results of the research and discussion that have been reviewed, the suggestion that can be given is that the government should make explicit arrangements regarding the permissibility or prohibition of the practice of

polyandry so that in the future it will not confuse the public. If polyandry is indeed prohibited, it must be strictly regulated so as to prevent people from carrying out polyandry marriages. And if polyandry is permitted, given the existence of gender equality, it is necessary to immediately set out the conditions that must be carried out if you want to have a polyandry marriage.

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