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## The Importance of Family Law Against Women in Polygamy

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### Abstract

In Indonesia, regarding the relationship between husband and wife or marriage law based on monogamy. However, polygamous marriages in Islam are not prohibited and are accommodated by the government in the Marriage Law. In Indonesia, regarding the relationship between husband and wife or marriage law based on monogamy. However, polygamous marriages in Islam are not prohibited and are accommodated by the government in the Marriage Law. This research method is descriptive qualitative. Data obtained through literature review or literature study. The results of the research are that there are government efforts related to family law that handle or overcome cases that occur to women including wives in polygamy who experience domestic violence, and their rights are not fulfilled. Permission to polygamy by the Religious Courts can be granted if the husband's reason has fulfilled alternative reasons in accordance with the provisions of Article 4 paragraph (2) and the cumulative conditions listed in Article 5 paragraph (1) of Law Number 1 of 1974.

**Keywords:** Family Law, Monogamy, Polygamy, Marriage Law



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### INTRODUCTION

Islamic law in the field of family occupies a very important position in Islamic law (Mulyana, 2020). This relates to his very significant contribution in the effort to create an orderly and harmonious society. That is why in many Islamic countries or where the majority of its citizens are Muslim, especially Indonesia, this field of law always gets high appreciation which is manifested in ongoing efforts to legalize/legislate Islamic law into positive law into various products of Indonesian legislation. (Ahyani et al., 2021; Rajafi, 2018).

One of the legal products resulting from the mujtahid's ijtihad is regarding laws, one of which relates to problems within the family, which is also called Islamic family law. (Riadi, 2021). The codified Islamic family law continues to be updated in order to answer the problems that arise in the family of the Muslim community. In the world of Fiqh there is one field, namely the field of al-Ahwal al-Syakshiyah or Family Law, namely fiqh which regulates the relationship between husband and wife, children and their families (A. Samad, 2021; Asmaret et al., 2020)

In Indonesia, regarding the relationship between husband and wife or marriage law based on monogamy (Septiandani & Astanti, 2021). However, polygamous marriages in Islam are not prohibited and are accommodated by the government in the Marriage Law. In Islam it is permissible for a husband to practice polygamy and does not stipulate any conditions expressly, except for only giving conditions to the husband to act fairly, whereas in the Marriage Law a husband who wants to practice polygamy must fulfill alternative conditions and cumulative conditions that have been regulated by law. (Septiandani & Astanti, 2021).

In the philosophy of Islamic law, polygamy is of course not just for biological satisfaction. But more than that, polygamy is interpreted as a solution to solving a number of social problems such as the existence of underprivileged orphans, the protection of weak widows and others. Philosophically polygamy also has the meaning of protection, avoidance of heinous acts, and justice for feminists (Hafas, 2021). However, in practice in Indonesia, the meaning of the philosophy of polygamy in the Marriage Law is considered by a number of parties to not be realized effectively. This is due to the absence of strict sanctions, weak administration, and

weak public awareness in complying with religious rules and the Marriage Law in Indonesia. (Setiyanto, 2017) In Indonesia, regarding the relationship between husband and wife or marriage law based on monogamy (Septiandani & Astanti, 2021). However, polygamous marriages in Islam are not prohibited and accommodated by the government in the Marriage Law (Rajafi, 2018; Septiandani & Astanti, 2021).

Polygamy is an issue in Islamic family law in both classical and contemporary fiqh discussions (Dedi & Saputra, 2021). Even polygamy is a discussion that is always debated theologically and anthropocentrically. In positive law in Indonesia, polygamy is permitted under certain strict conditions and is known as the principle of monogamy. The main requirement for polygamy, both in fiqh and in Law no. 1 of 1974 concerning Marriage is fair, both physically and spiritually. Polygamy is a right that is only owned by the husband and not owned by the wife (Setiyanto, 2017).

## **RESEARCH METHODS**

This research method is research that uses a descriptive qualitative research approach (Sugiyono, 2018, 2019). The research approach uses empirical legal research or in other terms it is usually called sociological juridical legal research, namely examining the operation of law in society related to these rules. Data obtained through literature review or literature study. The method of legal sociology examines both theoretically and empirically the legal phenomena that actually live in society (living law) (Tan, 2021).

## **RESEARCH RESULTS AND DISCUSSION**

### **The Importance of Family Law Against Women in Polygamy**

Polygamy is the marriage of a man with several women or a man who makes several women as his wife. Polygamy is still a study that always raises pros and cons for Indonesian society, especially for academics of Islamic law (Cahyani, 2018). For those who are against, polygamy is always considered to raise problems such as: omission of lust, quarrels in the household, infidelity, even to divorce between husband and wife. Meanwhile for the pros, polygamy is considered the best way to save the interests of the parties involved in polygamy (Dedi & Saputra, 2021).

The principle of marriage in Islam is basically monogamy. This is found in Surah An-Nisa verse 3 which is understood as the basis for the permissibility of polygamy. Allah SWT gives opportunities for men to have up to four wives, but this opportunity is accompanied by conditions that are actually quite tough to fulfill except by certain people. This is found in the Al-Qur'an surah An-Nisa verses 3 and 129 which is about the law of the obligatory condition for a husband who wants to be polygamous, namely to do justice to his wives (Hafas, 2021).

In the context of family law, justice becomes a principle that must be upheld, because justice is to provide a balance between these sides by giving each of them their rights without reducing or exaggerating. However, one must still consider the psychological justice side of one wife to another, by understanding all the character and psychology of his wife. Polygamy will be a blessing when it is actually carried out by looking at the goals of sharia, by being excited about the motivations of the Prophet Muhammad, with sincerity not lust which can lead to tyranny if lust and misunderstanding dominate the marriage (Islamiyati et al., 2020).

Permission to marry more than one person is included in the absolute authority of the Religious Courts as long as the legal subjects are Muslims and marriages are carried out according to Islamic law. Polygamy in positive law in Indonesia has conditions determined by law in Article 4 paragraph 2 and Article 5 paragraph 1 of law no. 1 of 1974 where the Court only gives permission to a husband who will have more than one wife if the wife cannot carry out her obligations as a wife, the wife has a disability or an incurable disease and the wife cannot

give birth to offspring As well as in Article 5 paragraph 1 concerning to submit an application to the Court there are conditions that must be met, namely the existence of the consent of the wife or wives and certainty that the husband is able to guarantee the necessities of life for his wives and their children as well as a guarantee that the husband will treat wives fairly and their children (Septiandani & Astanti, 2021; Setiyanto, 2017). Permission to polygamy by the Religious Courts can be granted if the husband's reason has fulfilled alternative reasons in accordance with the provisions of Article 4 paragraph (2) and the cumulative requirements listed in Article 5 paragraph (1) of Law Number 1 of 1974 as mentioned above (Lubis & Andayani, 2020).

Family law is the law that regulates the relationship between humans and their families, starting from marriage to ending in a distribution of inheritance because a family member dies. In this case, family law plays an important role for society, one of which is for women whose husbands are polygamous. There are rights and needs that polygamous husbands must fulfill for their wives (Handayani et al., 2019; Ishaq, 2018). In both Islamic law and positive law, there are laws governing polygamy, one of whose goals is to protect the rights of wives whose husbands want to be polygamous. The author found several cases regarding the non-fulfillment of the wife's rights and the occurrence of domestic violence committed by husbands against their wives (Lubis & Andayani, 2020).

There was one case where the husband practiced polygamy and was without the knowledge of the first wife for 4 years. Then the first wife found out that as time went on there was injustice resulting in changes in the wife's behavior such as throwing tantrums and often getting angry for asking for a divorce but the husband did not want a divorce which led to fights and causing domestic violence perpetrated by the husband against his first wife. In this case, according to the results of his consultation with a psychologist, the first wife felt unappreciated and felt it was unfair with the attitude of her husband who rarely came home and then often spent the night at the second wife's place. While the second wife also demanded that the house be built and demanded other things. The husband becomes depressed so that it causes a lot of harm and bad effects in the household (Akbarizan et al., 2021; Ma'u, 2021).

There are government efforts in family law to handle or overcome cases that occur to women including wives in polygamy who experience domestic violence, and whose rights are not fulfilled. One of them is the protection and rule of family law for women and children in marriage, such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT). Meanwhile, government agencies such as Women's Empowerment and Child Protection are currently launching call center services for friends of women and children. This supports the resolution of cases of domestic violence and so on, including against women or wives who are in polygamy. This can also be filed with a lawsuit and the case resolved to the Religious Courts and to the District Court if domestic violence occurs according to the nature of the case and its authority (Lubis & Andayani, 2020; Zamzami, 2018).

## **CONCLUSION**

In Islamic Law or Positive Law there is a law regulating polygamy which aims to protect the rights of a wife whose husband wants to be polygamous. There are several cases regarding the non-fulfillment of the wife's rights and the occurrence of domestic violence committed by husbands against their wives. Many of the government's efforts in family law have dealt with or overcame cases that have happened to women, including wives in polygamy, who have experienced domestic violence and whose rights have not been fulfilled. One of them is the protection and rule of family law for women and children in marriage, such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT). Meanwhile, government

agencies such as Women's Empowerment and Child Protection are currently launching call center services for friends of women and children.

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