

## **The Fulfillment of Children's Rights In Polygamic Marriage In Medan City (An Analysis of Islamic Family Law)**

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### **I. Introduction**

The rule of polygamous marriage in Indonesia is regulated by Act Number 1/1974, and the Compilation of Islamic Law (KHI). The act clearly states that the basic principle of marriage in Indonesia is monogini or monogamy.<sup>1</sup> However, the act does not block the possibility of polygamy for a husband within certain requirements.<sup>2</sup> The act also sets a condition that the polygamous marriage is legally permissible for a maximum limit of 4 wives.<sup>3</sup>

The act also states that the husband must prove his ability in polygamy by guaranting fulfillment of his family needs. It is proven by showing up the certificate of income of the husband which is signed by the treasurer of office or his work place, or the certificate of income tax, or any other letter acceptable to the Court.<sup>4</sup>

Meanwhile the husband's guarantee to be fair to his wives later is proven by written agreement.<sup>5</sup> The act also sets some obligation for husband in a polygamous marriage, they are:

1. Husband is required to assure the equal life for his wives and children.
2. The second or the third or the fourth wife have no right to the common property that have existed before husband marry them.
3. All wives have equal rights to common property which obtained since their marriage,<sup>6</sup> unless they establish certain agreement as an exception, this term shall not apply.<sup>7</sup>

Based on Act number 1 year 1974 on marriage / Government Regulation (PP) No. 9 year 1975 and the KHI, showed that the permissibility of polygamy caused the consequences and enactment of legal provisions to the husband. As stated by the Act, that the polygamous husbands are obliged to provide an "equal" life guarantees to their wives and children. The next problem will arises is how to measure, and what is the standard of measure of a husband to provide an "equal" life security to his wives and children. This problem do not stated in detail and concreted in the rules of the legislation. The Explanation of the Government Regulation (PP) No. 9 year 1975 Article 41 d: simply mentions: "The presence or the absence of a guarantee that the husband will be fair to his wives and their children are with the statement or promise of the husband made in the form prescribed for it."<sup>8</sup>

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<sup>1</sup>Article No. 3 verse (1) UU No 1 year 1974 stated that in the principle of marriage a man can only have a wife. A woman may only have a husband

<sup>2</sup>Article No. 3 (verse 2) UU 1 year 1974 stated that The court may grant permission to a husband to have more than one wife if desired by the parties concerned.

<sup>3</sup>Article No. 55 verse (1) KHI stated that: if the husband want to have more than wife it is limited to four wives only

<sup>4</sup>Article No. 41 verse c PP No. 9 year 1975

<sup>5</sup>Article No. 41 verse d PP No. 9 year 1975

<sup>6</sup>Article No. 65 verse (1) UU No. 1 year 1974 stated: In the case of a married husband of more than one, either by old law or by law in Article No. 3 paragraph (2) of this Law the following provisions shall apply: (1) the husband is obliged to provide equality of life to his wife and children, (2) the second wife and so on have no right to the existing joint property before the marriage with the second or subsequent wife takes place, (3) all wives have equal rights over common property which has occurred since their marriage.

<sup>7</sup>Article No. 65 verse (2) UU No. 1 year 1974 stated that: If the Court granting permission to marry more than one according to this Law does not specify otherwise, then the provisions of paragraph 1 of this article shall apply

<sup>8</sup>See in Article No. 41 verse d in PP No. 9 year 1975.

Furthermore, regarding the violation of the statement or promise of the husband to his wife and children in his polygamy marriage later, then the two legislation does not establish strict and proper sanctions. Sanctions granted as contained in Government Regulation (PP). 9 of 1975 article 45 is considered very unnatural for now. (1). Anyone who violates the provisions set forth in Article 3, 10 paragraph (3) and 40 of this Government Regulation (PP) shall be punished with a maximum fine of Rp. 7,500.<sup>9</sup>

The explanation of how the fulfillment of the rights of children in polygamous marriage also has not been on target. Also about what is belongs to the child in the polygamy family and how is the mechanism of the distribution of children's rights between wives in polygamous marriages has not been concretely explained. While the rights of the children in a polygamous marriage, such as the right to the livelihood, the education, the future of his life and most importantly the affection and care of his polygamous father is of great importance to be discussed in polygamy studies.

Furthermore, this research problem poured in some formulation of the problem as follows:

1. What lies behind a person doing polygamous marriage?
2. What is the rights of children in polygamous marriage?
3. How does the justice fulfillment of child rights in polygamous marriage?
4. How is the impact of polygamous marriage on the fulfillment of children's rights?

## **II. Methodology**

This research is a socio-legal research<sup>10</sup> with used a case approach. The sociology and anthropology methods were chosen because this study explored and analyzed the practical law in society or the law in action. From the type of research and the nature of the issues raised, this study used qualitative methods<sup>11</sup> for the data collecting, analysing and reporting techniques.

### **The Setting And The Subject Of Research**

This research was conducted in Medan City, North Sumatera. Medan City is one of 26 Level Areas in North Sumatera with an area about 265. 10 km<sup>2</sup>. This city is the central government of North Sumatera which directly adjacent to Deli Serdang regency in the north, South, West and East.<sup>12</sup> The population of Medan city spread in 21 districts.

Aware of the vastness and number of Muslim communities in the city of Medan, the researcher limited the research area in Medan Denai, Medan Tembung and Medan Sunggal. The reason for choosing this location is because the three places are a densely populated Muslim location with very variant ethnic and race backgrounds.

### **The Research subject**

The subjects of this study were the polygamous married offenders of child, wives, and husbands. With purposive sampling and snowballing sampling techniques, the researcher will recruit subjects with categories and characteristics of registered polygamy and unregistered polygamy.

### **Data Collection Method**

The data were collected by using three commonly used qualitative methods: the Observation, an in-depth interview and the literature study.

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<sup>9</sup>See in PP No. 9 year 1975 about the Criminal provisions. (Article no. 40) if a husband intends to have more than one wife he must submit a written application to the Court. (Article No. 44) The Registrar Officer is prohibited from registering a marriage of a husband who will have more than one wife before a Court's permission as referred to article No. 43.

<sup>10</sup>In legal research, there are at least two schools of research, namely normative legal research and sociologis legal research. Normative legal research or also called doctrinal legal research is research conducted by examining the legal materials either the primary or the secondary. See Reza Banakar and Max Travers (eds), *Theory and Methods in Socio Legal Research* (Oxford and Portland Oregon: Hart Publishing, 2005). Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Group, 2005). H. 87. Soerjono Soekanto dan Sri Mamudji, *Penelitian Normatif: Suatu Tinjauan Singkat*, (Jakarta: Rajawali Perss, 1995), h. 14.

<sup>11</sup>Qualitative research is a study that intends to understand the phenomenon of what is experienced by research subjects such as behavior, perception, motivation, action etc., holistically and by way of description in the form of words and language, in a special context that is natural and by utilizing various methods natural. Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, (Bandung, Rosdakarya, 2010), h. 6.

<sup>12</sup>Badan Pusat Statistik Kota Medan Propinsi Sumatera Utara, *Medan Dalam angka* (Medan; BPS, 2008), h. 2.

## 1. Data Analysis

The process of this data analysis includes three stages performed on a cycle basis as suggested by Mile and Huberman data reduction, data display and conclusion.

### Data Validity Guarantee

This study uses the data validity assurance techniques commonly found in qualitative research that is credibility and transferability.

## Theory Review

### 1. Islamic Family Law

The Islamic family law referred to this study is the rules and the laws that contained of the practical family law and guided, which lived and developed in the Muslim community in Indonesia (the living law). This products of Islamic family law are contained in the Compilation of Islamic Law (KHI) and marriage law contained in the Law No. 1 year 1974 and classical Islamic family law.

### 2. Polygamous Marriage in Islamic Family Law

The Polygamy in this study is divided into two definitions, namely registered polygamous marriage and unregistered polygamous marriage. The registered polygamous marriage in this study means that a second marriage of a husband is officially and lawfully acknowledged by State. This polygamous marriage process is conducted by obtaining a polygamy permit from the Religious Courts, and then the married parties to register and record to the local KUA (religious affair office) after the Religious Courts has issued a letter of polygamy permit.

In the other side, the unregistered polygamous marriage is conducted without obtaining a polygamy permit from the Religious Courts, nor registered at the local KUA office.

### 3. The Concept of Justice in Polygamy.

To be just in polygamy is a difficult thing to do by a husband to his wife as mentioned in surah An-Nisa` verse 129,

Meaning: *And you will never be able to do justice between your wives, even if you are eager to do so, so do not be too inclined (to those you love), so you let others hang. And if you make repairs and keep (from cheating), then verily Allah is Forgiving, Merciful.*<sup>13</sup>

Al-Zamakhsyari says that the demands of the ability to do justice to the wives must be in accordance with the maximum ability, because of imposing themselves in doing something above his ability is a kind of cruelty. However any attempt to do justice, human beings will not be able, especially if connected with the ability to share in the field of non-material. Therefore, God forbids to incline to one wife that causes the other to be abandoned. In other words he asserts, there should be a maximum effort of a husband to be able to do justice to his wives when polygamy.<sup>14</sup>

Quraish Shihab states that the justice required by the verse that permits polygamy is justice in the material field. The justice referred to by this verse is justice in the field of immaterial (love). That is why a husband in polygamous marriage is forbidden to indulge in its heart and exaggerated in its tendency to the most beloved wife.<sup>15</sup>

In the deviation of the monogamy principle, the meaning of justice becomes very important, because it is the benchmark of permissibility of deviation from the principle of monogamy. In fact, the injustice in deviation from the monogamic principle can lead to a person committing persecution, and in Islamic law, the act of persecution is not allowed, and therefore becomes a sin.

According to Wahbah al-Zuhayli that God's command is addressed not because of its essence, because God gets no profit from obedience of human being nor gain harm from the sinful deeds. But such obedience is only a way to broaden the behavior and a way of education that can bring good to the individual and society.

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<sup>13</sup>Departemen Agama RI, Al-Quran dan Terjemahnya..h. 210.

<sup>14</sup>Abu Qosim Mahmud bin Ahmad al-Zamakhsyary, Tafsir al-Zamakhsyari, Juz 1, (Beirut: Daar al-Araby, 1407 H), 466.

<sup>15</sup>M. Quraish Shihab, Wawasan Alquran Tafsir Tematik atas Pelbagai Persoalan Umat, Mizan, Jakarta, 2007, h. 266.

### **III. Results and Discussion**

#### **1. The factors which lead men to polygamous marriage.**

There are several main factors for husbands to engage in polygamous marriages. The biggest factor is family disharmony.

Unlawful marital relationships ultimately impact on informants who then look for "good friends". Relationship with these "good friends" often result in the marriage of *sirri* / marriage secretly.

The second factor is desire to practice the Shari'a and Sunnah of thre Prophet. Polygamous marriage in their doctrine and worldview is not only to seek *sakinah*, *mawaddah* and *rahmah*, but also to worship and spread *da'wah* to Islam. This community considers that by polygamous marriage then the *silaturrahmi* among Muslims can be established tightly and well. With polygamous marriage also the number of Muslim community will be more in number and be more strong, because the community become more and more.

The third factor is no heredity. Among those three factors, this third factor is relevant to the prerequisites of polygamy as stipulated in article 57 KHI and Article 4 of Act number 1 year 1974. "Wife can not bear offspring"

According to the researchers there is a relevance between polygamous marriage factors and religious understanding of polygamous marriages. Polygamous marriages based on a religious understanding, to practice the sunnah of the Prophet for instance, is certainly due to the strength and consistency of Islamic teachings of a husband. The high understanding of religious beliefs, practices and experiences of husbands on Islamic teachings is of great significance in determining the success or failure of polygamous marriages. With a perfect understanding of the Islamic teachings and jurisprudence, the husband will be able to place his position on rights, duties<sup>16</sup> and the role of his wives. A high level of religiosity further ensures the husband to be conduct Islamicly and humanely to his wives. And of course the experience and practice of the wives on the teachings of Islam should be the same with the understanding of their husband, so that the vision and mission of their family to create *sakinah mawaddah* and *rahmah* comes true.

#### **2. Children's rights in polygamous marriage in Medan city**

Regarding what rights are the responsibility of father to child in polygamous marriage, then based on data that researchers get is that there is always a problem about the rights of children who are met by the husband in polygamous marriage. The background of polygamous marriage with the factor of the lack of harmony affects the husband's responsibility for the survival of his family with his first wife and children. The conflict that occurred in the family coupled by polygamous marriage by the husband increasingly enlarge the conflict in the first household. This generates the lack of attention of the husband to his former family, in terms of living and inner living.

Some wives of polygamist acknowledges that if the right to eat and school fees, the husband still provides "limited money" through his wife, and the management is left to the wife, whether that money is enough or less later, in this case the husband is not too willing to know, because the other wife demands the same rights. About how the fulfillment of the rights to the cost of education and teaching, the division of love and compassion in polygamous marriage is more difficult to implement, because the children's rights in general are limited to the right to eat, and the right of school tuition. While other rights such as education / courses and religious guidance / (ngaji), clothing rights and other child needs like go shopping, walking around and do some hobbies, almost never fulfilled by the father. Additional needs besides eating and education costs as if given by the husband to his wife. So the mother's burden increases, the children's rights are also reduced to get the attention of his father.

#### **3. The fulfillment of justice for children's rights in polygamous marriage in Medan city**

In some cases, polygamous marriage as mentioned above shows that the child in a polygamous marriage does not get his rights whether it is the right over living cost, the right over education and teaching, and even over conjugal rights such as the full love and affection of the father after he has being polygamist. It can even be said that in fact the father can not fulfill the basic necessities of family life because the role of father or husband in material not able to meet the needs of his family's livelihood. So the husband's decision to marry in polygamy harms many people, especially his children. Furthermore, the tendency of the husband to choose his second wife as his new wife even to prefer to stay forever with his second wife and then leave his children with the first wife is one indication of husband's injustice in fulfillment of his children's rights. Indeed, a father as the head of a family has a great responsibility to all of his children from his wives. The fulfillment of right over living cost, education and teaching and affection and love to their children as the conjugal right is the

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<sup>16</sup>Some obligations of husbands against wives are: (1). Pay the dowry to the wife. ( The Quran: al-Nisa: verse 4), (2). Provide living and clothing to wives and children (The Quran. al-Baqaraah: verse 233), (3). Do good to wife. The Quran: an-nisa: verse19).

burden of a polygamist father. So the father should try as much as possible to fulfill the justice by giving attention to his children and of course by giving priority to the interests and needs of his children.

The issue of justice is not merely a financial issue. The most basic thing related to justice in the context of polygamy is an attempt to obtain a balance of moral social order. This is the point of emphasis on the practice of polygamy in AlQuran, because the behavior of polygamy in general have trends to the act of persecution. This is certainly contrary to the balance of moral social order. The idea of justice in polygamy is actually to regulate the temperature of the moral social order of society that begins with a plural family relationship, because humans are so easily trapped in their own passions of lust or egoism that they have created themselves, so that egoism gradually turns into a source of rebellion that describes the uncontrolled freedom of the individual and ultimately forgets and denies the existence of others and often ends with acts of persecution.

#### **4. The impact of polygamous marriage on the fulfillment of children's rights**

Based on some polygamy cases, many women have chosen to divorce in the future after being a conflict in their polygamous marriage. The reason why polygamy often leads to conflict in the future is a factor that justice can not be fulfilled by the husband. So the effort to create a just and equal order for all, children and wives, becomes something impossible. And so far the justice in polygamous marriage is still rarely fulfilled, so it always culminates in divorce. In some cases of polygamous marriage, the child does not get the full rights from the father after he has been polygamist. Even in fact, the father is not materially sufficient to provide the basic necessity for a monogamous family. This situation is aggravated by the age of polygamist fathers which is usually already aged, so their ability to work hard has been reduced, and of course their income is also not increased. However there are still many husbands without a consciousness deep inside, and also encouraged by the enormity of their lust, then resist the desire to be polygamist, because in fact, in the perspective of economic fulfillment of their old family alone is not feasible to do polygamous marriage. So the decision to marry in polygamy will hurt many people, especially the wives and their children.

#### **An analysis on Fulfillment of Children's Rights in Polygamous Marriage**

Polygamy is aimed to create a good family, not merely to please the interests of the husband alone. From this principle it can also be understood that if polygamy is not able to create the benefits of a family, then polygamy is not allowed. Thus the purpose of polygamy are the benefit, welfare and harmony among family. Once a husband did not abandon his first wife as well as his children then polygamy can be implemented or continued.

Some cases of unregistered polygamous marriages as mentioned above were firstly done in secret. That situation indicates that a disharmonious relationship in a family leads to a conflict or dishonesty, in addition to the process of interaction between husband and wife is not harmonious anymore, and also an interference of third parties coming from outside makes their relationship more and more complicated. The polygamous marriage that back-grounded by family disharmony affects the husband's responsibility in order to sustain and maintain his family, with his first wife and children included. The conflict that happens in the family and then the husband married the second wife as the secret polygamous marriage increasingly enlarge the conflict in the first wife's household. This situation results in the lack of attention and responsibility of the husband to his previous family, especially in providing the basic necessity of family such as living cost and education as well as conjugal right such as love and affection. This condition is certainly very influential on their children.

Thus in polygamous marriages, all parties concerned; the husband, first wife, new wife or wives, children and families of both sides must know its nature and effect, so that polygamy is not a reason or a way to marry twice or three or four times. However, polygamy is the last way out after the right consideration and the right purpose too. So the right purpose in polygamy leads to the fulfillment of justice and happiness. One indicator of successful polygamy and of happiness achievement in polygamic family is if the parties concerned understand and implement the religion and obligations as a husband or father and as a wife/wives or mother(s) within the family, especially their children. Besides that, they also implement and obey the rule of the state law, so that the polygamy will be a healthy polygamy which will ensure justice for the parties. If the muslim family with its members really know and simultaneously practice islamic family law properly and well, surely the famil will become a truly *sakinah* (peaceful) family. Only this *sakinah* family will actually be able to build a strong community, civilization, nation and state. The *Sakinah* family would be able to be built properly when every member of the family really knows well the islamic family law for muslim families. While at present the most secure measure of the realization of a *mawaddah wa rohmah* household is when a husband has one and only wife (monogamy). Monogamy is the best way to realize a *sakinah* family. Family happiness is more likely to be manifested in monogamous marriage than polygamy. Because the husband in monogamy can devote all of his emotions and attention to only one wife and his children. It is easier for him to fulfill the rights of his wife and children includes affection, attention, and material needs. The same thing is difficult to do in polygamous marriage.

#### IV. Conclusion

That a disharmonious relationship in a family leads to a conflict or dishonesty or betrayal which makes their relationship worse and more complicated. The polygamous marriage that back-grounded by family disharmony affects the husband's responsibility in order to sustain and maintain his family, with his first wife and children included. The conflict that happens in the family and then the husband married the second wife as the secret polygamous marriage increasingly enlarge the conflict in the first wife's household.

Polygamy litigation aims to create a good family, not merely to please the interests of the husband alone. Thus the purpose of polygamy are the benefit, welfare and harmony among family. Once a husband did not abandon his first wife as well as his children then polygamy can be implemented or continued. In some cases, polygamous marriage as mentioned above shows that the child in a polygamous marriage does not get his rights whether it is the right over living cost, the right over education and teaching, and even over conjugal rights such as the full love and affection of the father after he has being polygamist. One indicator of successful polygamy and of happiness achievement in polygamic family is if the parties concerned understand and implement the religion and obligations as a husband or father and as a wife/wives or mother(s) within the family, especially their children. Besides that, they also implement and obey the rule of the state law, so that the polygamy will be a healthy polygamy which will ensure justice for the parties.

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