

**POLYGAMOUS MARRIAGE REVIEW FROM  
LAW NUMBER 1 OF 1974 CONCERNING MARRIAGE**

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**ABSTRACT:** In principle, the Marriage Law adheres to the principle of monogamy, but it does not rule out those who wish to polygamy as long as their religion and belief allows and can fulfill the requirements stipulated by the Marriage Law. This is reflected in Article 3 paragraph 1 of the Marriage Law which reads: In principle, in a marriage a man can only have one wife, a woman can only have one husband; The court may give permission for a husband to have more than one wife if the parties wish to do so. Thus it can be seen that the principle of monogamy adopted by the Marriage Law is not absolute.

**Keywords:** Polygamous Marriage; The Marriage Law

## **INTRODUCTION**

It is the nature that humans are created in pairs between men and women, to legalize the relationship between men and women, a place is needed, namely in the form of marriage. Marriage is very important in human life, because marriage is an institution of life or the gate of a person's life that has always been passed by every human being since ancient times until now. With a legal marriage, the association of men and women becomes honorable in accordance with the position of humans as honorable creatures. To make the marriage valid according to law, the marriage must be in accordance with the laws of their respective religions and beliefs as stated in Article 2 paragraph (1) of Law no. 1 of 1974.

Sometimes there are some men who cannot restrain their lust with only one wife, while he is a man who maintains the honor of his religion so that he does not want to fall into heinous acts, namely adultery with women who are not lawful for him, or the purpose of a predetermined marriage. by law has not materialized with a wife, then the way out of this is by conducting a polygamous marriage.

## **PROBLEM**

Based on the description in the introduction above, the problem can be formulated as follows: How is polygamous marriage in terms of Law Number 1 of 1974 concerning Marriage?

## **DISCUSSION**

In Article 1 of Law Number 1 of 1974 it is stated that marriage is "an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God". In this sense it contains the following values:

- a. Marriage is an inner and outer bond between a man and a woman
- b. The inner and outer bond is intended to form a happy and prosperous family (household)
- c. The basis of inner and outer bonding and a happy and eternal goal is based on the Almighty God.

The purpose of marriage desired by the marriage law is ideal. Marriage is not only seen in terms of an outward agreement but is also a spiritual bond between husband and wife which is aimed at forming and fostering a happy and eternal family and based on Almighty God.<sup>1</sup> So what is meant by the meaning of marriage is the inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Almighty God.

The inner and outer bond in marriage means that it is not enough just to have an outer bond or an inner bond, but it must be both.

A birth bond is a bond that can be seen, revealing the existence of a legal relationship between a man and a woman to live together as husband and wife, in other words it can be called a formal relationship.

This formal relationship is real both for those who bind themselves, for others and for society. On the other hand, an inner bond is an informal relationship, a bond that cannot be seen. Even though it is not real, the bond must exist, because without this inner bond, the outer bond will become fragile. This should be felt especially by the person concerned. In the initial stage of holding a marriage, the inner bond begins with a real will to live together.

In life together, harmony is reflected, so this inner bond will form the core of the outer bond. The occurrence of physical and spiritual bonds is the foundation in forming and fostering a happy and eternal family.

Marriage that aims to form a happy and eternal family can be interpreted that the marriage must be for life and will not be broken for any reason except by death.

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<sup>1</sup> Wahyuni and Setiyowati, *Hukum Perdata I (Hukum Keluarga)*, FH UNTAG, Semarang, 2002, Pg. 18.

As mentioned above, the purpose of marriage is to form a happy and eternal family (household) based on the Almighty God.

For this reason, husband and wife need to help each other and complement each other so that each can develop their personality and achieve spiritual and material well-being.

The formation of a happy family is closely related to children, where the care and education of children are the rights and obligations of parents. Thus, the purpose of marriage according to the law is for the happiness of husband and wife, to have children and to uphold religion in a parental family unit.<sup>2</sup>

The Marriage Law states that marriage is legal if it is carried out according to the law of each religion and belief, and each marriage is recorded according to the applicable legislation.

In principle, in a marriage a man can only have one wife, likewise a woman can only have a husband, but in certain circumstances a marriage based on monogamy is difficult to maintain so that in very forced circumstances it is possible for a man to have more than one wife. based on the conditions specified in the Marriage Law.

Before the enactment of the Marriage Law, the practice of polygamy in Indonesia, especially for Muslims, was guided by the provisions of Islamic law, namely the Surah An Nisa paragraph 3, their respective religions/beliefs, must also comply with the provisions contained in Law Number 1 of 1974. The basis for the regulation of polygamy in Indonesia is article 3 paragraph 2 which reads: The court may give permission to a husband to have more than one wife if the parties concerned want. The definition of polygamy can be interpreted as follows:<sup>3</sup>

1. Polygyny, where a man marries more than one woman
2. Polyandry, is a woman marries more than one man.

The term polygyny in its implementation is often confused with the term polygamy, so that polygamy is defined by the community and the makers of the Marriage Law itself in practice as a man marries more than one woman.

In principle, the Marriage Law adheres to the principle of monogamy, but does not rule out the possibility for those who want to be polygamous, as long as their religion and beliefs allow and can fulfill the requirements determined by the Marriage Law.

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<sup>2</sup> Solikhin Salam, *Meninjau Masalah Poligami*, Tinta Mas, Jakarta, 1983, P. 174

<sup>3</sup> Hilman Hadikusuma, *Hukum Perkawinan Indonesia*, Mandar Maju, Bandung, 2010, P.22.

This is reflected in Article 3 paragraph 1 of Law No.1 of 1974 which reads:

"Basically in a marriage a man can only have a wife, a woman can only have a husband"

However, paragraph 2 states that:

"The court may give permission to a husband to have more than one wife if the parties concerned want"

And of course, if the law of religion and belief permits, it can be seen that the monogamy principle adopted by the Marriage Law is not absolute.

According to Hilman Hadikusuma, that with the existence of this article, Law Number 1 of 1974 adheres to the principle of monogamy, because it is possible in circumstances where the husband is forced to practice closed polygamy which cannot simply be opened without the supervision of a judge.<sup>4</sup>

But whatever the reasons given for polygamy, society, especially women, cannot sincerely accept polygamy. This is due to the fact that polygamy causes things that are felt bitter in family life. For this reason, the law provides strict conditions regarding people who want polygamy, so that polygamy is the one that is tightened.

The conditions and reasons that allow a husband to have more than one wife are regulated in articles 4 and 5 of the Marriage Law and articles 40 to 44 of Government Regulation Number 9 of 1975.

The reasons that can be submitted to the Court for people who want polygamy are as follows:

1. The wife cannot carry out her obligations as a wife.

It means that the wife cannot carry out the obligation to form a happy and eternal household based on the Almighty God.

However, this situation must be investigated whether the wife really does not carry out her obligations as a wife because of herself or because of the husband's actions who are looking for reasons to remarry, so that all his actions irritate the wife, which in the end the wife does not carry out her obligations as a wife.

2. The wife has a disability or an incurable disease.

This reason is basically humanitarian because a wife who is disabled or suffers from an incurable illness is suffering, so it is better for the husband to remarry than divorce.

3. Wife can't give birth

This reason must be investigated properly that the wife is really barren, for example with a specialist doctor's statement. Because sometimes the husband is barren so that the wife cannot give birth, so this excuse is unacceptable.

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<sup>4</sup> Hilman Hadikusuma, *Hukum Perkawinan Indonesia menurut Perundang-undangan, Hukum Adat, Hukum Agama*, Mandar Maju, Bandung, 1990, p. 32.

The reason for this polygamy applies to those whose religion is permitted. For people who have mystical beliefs and recognize Islam, then in marriage they use Islamic law.

For a husband who has reasons for polygamy, he cannot simply carry out his marriage. To carry out this polygamous marriage in addition to the reasons mentioned above, it must also meet the following requirements:

1. There is consent from the wife/wives:

Regarding this agreement, it was not stated that the agreement was in the form of oral before the court or in writing. Even though there was a written agreement, the court still summoned the wife in front of the trial and the judge listened to the agreement directly.

With the obligation of the wife to immediately give consent in front of the court, the husband cannot fake the consent of his wife.

The wife's consent can be set aside, if the husband who wants polygamy turns out to be the wives it is impossible to ask for approval, because they cannot be a party to the agreement, for example under guardianship because of madness and others.<sup>5</sup>

There is no need for the wives' approval if:

a. No news from his wife for at least 2 years.

This can happen if the wife has left the house with no news or maybe the wife does not want to follow the residence together or the wife returns to her parents' house and does not want to live together. If this lasts up to 2 years then if the husband wants to remarry, it is permissible without his wife's prior consent.

b. Because of other reasons that need to get a judge's assessment regarding this second matter, it is felt that the boundaries are less clear because it will give the judge very broad freedom so that it may be misused. Meanwhile, the principles and objectives of the Marriage Law are towards a monogamous family system by making polygamy difficult.

2. There is certainty that the husband is able to provide for the necessities of life for his wives and children.

To know that a husband will provide certainty that he is able to guarantee the necessities of life for his wives, and their children, a judge as a human being will find it difficult to give an objective assessment, if he has to estimate the husband's ability to guarantee the necessities of life for his wives. and their children to come. Article 41 sub C PP No. 9 of 1975 has given instructions to examine whether or not a husband is capable by showing:

a. Income tax certificate

b. Certificate of husband's income signed by the treasurer where the husband works.

c. Other certificates that can be accepted by the court

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<sup>5</sup> Wahyuni and Setiyowati, Op Cit, Pg. 53.

3. There is a guarantee that husbands will treat their wives and children fairly.

Regarding the guarantee of doing justice, it is very difficult because of the moral problem of the husband. How is his life, behavior and actions on a daily basis because if only confession will do justice before a judge it will be very doubtful, especially in the case of polygamy which is very complicated and full of twists and turns of life.

Based on the foregoing, it is clear that there are 3 (three) reasons that are used as the basis for submitting an application for polygamy. It is not easy for husbands to practice polygamy, because polygamy is not a religious order but is only allowed with certain conditions that must be met.

For this reason, the husband must submit a statement or promise that he will treat his wives and children fairly. To be able to practice polygamy, you must follow the following procedures:

1. The husband submits a written application to the court with the conditions mentioned in Article 5 of the Marriage Law.
2. The court examines the application, both the terms and the applicant's reasons. And the court must call and hear the wife in question.
3. The court must examine the good application no later than 30 days after the receipt of the application letter and its attachments.
4. If the court is of the opinion that there is sufficient reason for the applicant to have more than one wife, the court will give its decision in the form of granting permission to marry more than one person.

Marriage registrar employees are prohibited from registering the marriage of a husband who has more than one wife before obtaining permission from the court. If he violates these provisions, he will be subject to a maximum imprisonment of 3 months and a maximum fine of IDR 7,500.

Likewise for the husband concerned if he violates Article 40 PP No. 9/1975 concerning the obligation to obtain permission from the judge to have more than one wife, then he will be subject to a maximum fine of IDR 7,500.

The threat of punishment mentioned above does not affect the marriage that takes place. Because marriage is still valid as long as it is carried out according to the law of the religion, so that if we observe further the punishment feels light.

This will result in a violation of the provisions of polygamous marriage. To reduce or avoid these violations, we should be able to look at the criminal provisions of Article 279 of the Criminal Code and Article 436 paragraph 1 of the Criminal Code. Where article 279 of the Criminal Code stipulates that anyone who marries while he knows there is an obstacle in his

marriage to marry will be sentenced to a maximum of 5 years in prison (for the person concerned).

Meanwhile, Article 436 paragraph 1 of the Criminal Code stipulates that whoever has the power to marry people according to the law that applies to both parties, to marry off people who have obstacles to marrying then he will get a maximum imprisonment of 7 years (for marriage registrar employees and religious leaders).

Although by religious law and belief a husband is allowed to have more than one wife, the Marriage Law provides quite severe restrictions, namely in the form of a fulfillment of conditions with a certain reason and permission from the Court.

## **CONCLUSION**

In principle, the Marriage Law adheres to the principle of monogamy, but it is not absolute, meaning that it is possible for a man to have more than one wife if according to his religion and belief it is permissible.

The reasons that can allow a husband to have more than one wife are one of the following:

- a. The wife cannot carry out her obligations as a wife
- b. The wife has a disability or an incurable disease.
- c. Wife can't give birth

One of the reasons mentioned above in its application to the court must be supported by the following three conditions:

- a. There is the consent of the wife / wives
- b. There is certainty that the husband is able to provide for the necessities of life for his wives and children.
- c. There is a guarantee that husbands will treat their wives and children fairly.

## **Suggestion**

1. Although in the Marriage Law polygamy is allowed, someone who will be polygamous should really be able to account for it in accordance with the regulations that have been determined.
2. In polygamy, the element of justice must be considered, because this will have an impact on whether or not it is happy in the household for both the wives and their children.

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