

Research Article

Legal Protection and Gender Justice for Women in the Practice of Siri Polygamy: An Analysis of the Principles of Islamic Civil Law

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Abstract: This study aims to analyze Legal Protection and Gender Justice for Women in the Practice of Siri Polygamy: Analysis of the Principles of Islamic Civil Law. The practice of polygamy in Indonesia often causes injustice for women, who do not receive adequate legal protection. This study analyzes the relationship between the principles of Islamic civil law and the reality faced by women in the practice of siri polygamy. Although Islamic law emphasizes justice and protection of women's rights, many women are trapped in situations of injustice due to a lack of legal understanding and social stigma. This study uses a normative juridical method to explore the truth between legal norms and practices in the field. The results of the study indicate that minimal social support, lack of understanding of legal rights, and social stigma contribute to the injustice experienced by women. To improve legal protection and gender justice, it is recommended that there be recognition and registration of siri polygamous marriages, strengthening of legal regulations, assistance for women, and education and socialization regarding legal rights. With these steps, it is hoped that women's rights in the practice of siri polygamy can be fulfilled fairly within the framework of Islamic law and state law.

Keywords: Gender Justice, Polygamy Siri, Protection

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1. INTRODUCTION

Polygamy is someone who has two or more spouses at the same time. Actually, the more appropriate term in the problem of polygamy is "polygyny" which means a husband has two or more wives at the same time. Polygamy is a practice that has long existed in various cultures and religions, including Islamic law. In Indonesia, polygamy is regulated in Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law. Although polygamy is permitted in certain contexts, this practice often raises complex problems, especially in relation to the protection of legal and gender justice for women (Ichsan, 2013).

The practice of polygamy in Indonesia, especially Siri polygamy, has become a controversial and complicated topic in society. In many cases, women involved in Siri polygamy do not receive adequate legal protection, and their rights are often ignored. This creates deep injustice where women are vulnerable and powerless. In this context, it is important to understand the relationship between Das Sein (the existing reality) and Das Sollen (what should be) in the practice of polygamy. Sollen is in the realm of "ideas" resulting from moral accumulation, while sein is in the realm of "reality" which should be a direct

manifestation of *sollen*. The dynamics between *sollen* and *sein* are the relationship between normative ideas and the reality of the validity of norms. The validity of *sollen* is the extent to which it is valid in society (*sein*). Hans Kelsen himself firmly stated that the validity of a legal order is highly dependent on its reality or effectiveness. However, the problem is that the purpose of the law itself, which is something ideal, is very abstract and not operational.

In this study, reality shows that many women are trapped in situations of injustice, while the law should guarantee protection and justice for all parties. This gap is a major challenge in efforts to achieve gender justice in society (Prihardiati, 2021). In the context of Islamic civil law, there are principles that emphasize the importance of justice and protection of women's rights. However, in practice, many women do not get the protection they should receive. This shows a mismatch between existing laws and the reality that occurs in the field. Many women are unaware of their rights in the context of polygamy, making it difficult to fight for them.

This lack of understanding is often exacerbated by the social stigma attached to women who try to demand their rights. In many cases, women who dare to speak up actually face greater social pressure, which makes them even more marginalized. Gender justice is the main theoretical framework in this study, which emphasizes the importance of equal rights and legal protection for women.

Gender justice theory criticizes social and legal structures that often disadvantage women, including in the institution of marriage. In the context of polygamy, this theory highlights the need for stronger protection for women so that they do not become victims of injustice. In addition, positive legal theory is also relevant to analyzing the application of legal rules and their responsiveness to real conditions in society. Existing laws should reflect the values of justice and equality, but are often not applied fairly in practice (Nurdin, Salam, Abdurahman, Acip, & Rizal, 2024).

The social stigma against women involved in the practice of unregistered polygamy is very strong and often gives rise to unofficial but real discrimination. Women are often seen as passive recipients of injustice, sometimes even blamed for problems arising from polygamy. This negative view reinforces social inequality and hinders legal protection efforts that should be accessible to all parties fairly. Women who try to claim their rights often face pressure from their family and community environments, making the process of seeking justice even more difficult. This stigma also affects the psychology of the women and children involved, which can lead to long-term negative effects (Nurhidayah & Nurhayati, 2023).

This can be seen from the case of polygamy experienced by a wife in Sidoarjo. The case of unregistered polygamy in Sidoarjo illustrates the reality (*das Sein*) of injustice experienced by women in the practice of polygamy without official registration. Women like Nur Khotimah face economic violence because their husbands remarry without fulfilling their maintenance obligations, and the lack of legal protection means that their rights are neglected. This situation reinforces the social stigma against women and makes it difficult to seek justice. This case directly illustrates the gap between the real conditions that occur (*das Sein*) and the principles of Islamic civil law which should guarantee justice and protection (*das Sollen*).

The lack of support from legal institutions and the community is a major obstacle in enforcing legal protection for women. Legal institutions are sometimes less responsive to cases of unregistered polygamy, especially those involving the protection of women's rights. This can be caused by various factors, including the lack of knowledge of law enforcement officers regarding unregistered polygamy cases and the suboptimal legal protection mechanisms that exist. On the other hand, the community tends to consider the issue of unregistered polygamy as a private matter that does not require legal intervention, thus ignoring the aspect of protecting human rights.

From the perspective of Islamic law, the principles of justice and welfare are the main foundations that must be upheld in the implementation of polygamy. Islamic law requires that polygamy be carried out by fulfilling the requirements, namely justice and ability, including clarity of status and protection of the rights of all parties. However, unregistered polygamy often runs outside the official mechanism, so that these principles are difficult to enforce. The irregularity of the administration of unregistered marriages causes legal protection to be less than optimal for women and children from these marriages. This increases the risk of violations of their basic rights (Septiani, 2012).

Legal awareness among the community, especially women, is also a determining factor in the success of legal protection. Many women do not understand their rights that are guaranteed in Islamic civil law and state law. This limited information causes low awareness to demand rights and legal protection. On the other hand, factors of education and inadequate legal socialization exacerbate the situation. The inconsistency between real social conditions (*das Sein*) and the principles and legal norms that should apply (*das Sollen*) gives rise to various serious problems in the practice of unregistered polygamy.

Therefore, this study can bridge this gap by conducting an in-depth study of legal protection and gender justice for women in the context of Islamic civil law.

2. RESEARCH METHODS

The research method is a scientific way to obtain data with a specific purpose and use. Sugiyono emphasized that a method is said to be scientific if it meets rational, empirical, and systematic criteria. The method used in this study is normative legal research. The purpose of this study is to explore the coherent truth between the principles, norms, and regulations of Islamic law related to the practice of unregistered polygamy. The primary legal materials used include laws and regulations regarding marriage, population administration, the Compilation of Islamic Law, and fatwas from the Indonesian Ulema Council.

3. RESULTS AND DISCUSSION

Legal Protection Experienced by Women in the Practice of Siri Polygamy in Indonesia

In Islamic Law, as regulated in Article 2 of Book I concerning Marriage in the KHI, it is explained that "Marriage in the view of Islamic Law is a very strong contract or *mitsaqan gholiidhan*, which aims to follow the command of Allah and its implementation is considered as worship." From the explanation in the KHI, it can be concluded that there are three important components in marriage according to Islamic Law, namely: a strong contract or *mitsaqan gholiidhan*, obedience to the command of Allah, and the implementation of marriage as worship. A strong contract or *mitsaqan gholiidhan* emphasizes that marriage is not the same as other contracts, such as buying and selling, renting, and others. Although basically there are some similarities with the contract of buying and selling, renting, and so on regarding the agreement between the two parties, the marriage relationship is built with deep awareness, so that the contract in marriage creates a physical and emotional bond.

Legal protection for women in the context of siri polygamy is taken from two previous studies. First, there is a study by Muliadi Nur (2016) on Polygamy Without Court Permission which focuses on the Manado Religious Court. This study shows that the legal understanding of the Manado community regarding polygamy that does not receive permission from the court is still very minimal. Manadonese people tend to view marriage as a personal matter related to their respective religious beliefs, so they assume that as long as the marriage is in accordance with religious teachings, it is considered valid. This has an impact on a number of practices among the Muslim community in Manado who choose to practice polygamy without permission from the local religious court (Hikmah & Subagyo, 2020).

There is no special legal protection for wives in secret polygamy in Lombok, because in the household structure, the wife of secret polygamy usually acts directly as the Head of the Family. However, children from the marriage have received legal protection, namely the ease of obtaining a birth certificate from the local Civil Registry and Population Service, simply by including a certificate of marriage from the parents from the relevant village. The clerics play an important role in the social life of the Lombok community, so that their teachings, views, and behavior are generally followed by the community. In Lombok, Islamic law is the main reference, while positive law implemented by the government still requires a gradual process of counseling. For example, people only realize the importance of legal identity and documents such as marriage certificates and birth certificates, and they insist on looking for these documents when it is urgent, for example when going to perform the Hajj or making a passport, which requires a marriage certificate, and when children go to school which requires a birth

certificate. The weakness that exists until now is that when asked to those involved in unregistered marriages or secret polygamy, they consider it not a disgrace that violates norms. As a result, legal protection for wives and children from secret polygamy remains weak (Muhlas, 2017).

Impact of Lack of Social Support on Women's Legal Rights in the Context of Secret Polygamy

Social support plays an important role in protecting and improving women's legal rights in society. When social support is minimal, women are vulnerable to various forms of discrimination and have difficulty in accessing legal protection which is a right. In Indonesia, secret polygamy is a practice that often places women in vulnerable and marginalized positions. The lack of social support for them not only threatens their legal rights, but also impacts their mental and physical well-being. In an environment that is less supportive, many women feel isolated and helpless, making it difficult to seek justice. The explanation regarding the impact of the lack of social support on women's legal rights in the context of unregistered polygamy is:

1. Injustice in Access to Legal Rights

The lack of social support for women in the context of unregistered polygamy in Indonesia causes injustice in access to their legal rights. Women involved in unregistered polygamy often do not receive adequate legal recognition, so their rights as wives are not protected. In many cases, they do not have access to legal institutions or legal aid that can help them fight for their rights. The community's lack of understanding of polygamy law and women's rights also contributes to this situation, where many women feel they have no choice to fight the injustice they experience (Utama, 2017). As a result, they are forced to accept disadvantageous conditions without support from their surroundings. This creates a cycle of injustice that is difficult to break, where women are continuously marginalized in the legal process.

Many women in unregistered polygamy are unaware of their legal rights, so they cannot access the protection they should receive. The study found that the lack of information and support from the community makes women feel trapped in an unfavorable situation. This shows that education and socialization regarding legal rights are very important to empower women in fighting for their rights.

2. Decreased Self-Confidence and Self-Esteem

Minimal social support also has an impact on the decreased self-confidence and self-esteem of women involved in unregistered polygamy. When women do not get support from family, friends, or society, they tend to feel isolated and helpless. This feeling can be exacerbated by the social stigma attached to the practice of polygamy, where women are often considered the guilty or worthless party. As a result, they may feel unworthy to fight for their rights or demand justice. This decreased self-confidence can hinder their ability to take the necessary steps to protect themselves and their rights (Alfarisi, 2018). In the long term, this can affect their mental and emotional health, which in turn can impact their overall quality of life.

Women in unregistered polygamy often experience decreased self-esteem due to lack of social support. It was found that women who have strong social networks tend to have higher self-confidence and are better able to fight for their rights. This suggests that social support can serve as a shield for women from feelings of inferiority and helplessness.

3. Social Stigma and Isolation

Lack of social support also contributes to the social stigma experienced by women in unregistered polygamy. This stigma often arises from society's negative views of the practice of polygamy, where women are considered helpless or even guilty. As a result, many women feel alienated and isolated from their social environment. This isolation can worsen their psychological condition, causing feelings of anxiety, depression, and low self-esteem (Andriati & Lubis, 2017). In situations like this, women may feel they have no place to share their experiences or seek help, which further reinforces feelings of disconnection from society. This social stigma can also prevent them from accessing the health services, education, and legal support they need.

Social stigma can have a significant negative impact on the mental health of women in unregistered polygamy. The study found that women who experience social stigma tend to have higher levels of anxiety and depression. This suggests that social stigma not only affects their social lives, but also their mental and emotional health.

Efforts That Can Be Made to Improve Legal Protection and Gender Justice for Women in the Practice of Siri Polygamy

In Islamic teachings, the practice of undocumented polygamy does not actually contradict the principles contained in the Qur'an and reliable hadiths. However, the decisions of the Indonesian Ulema Council and the Aceh Ulema Consultative Assembly, together with regulations in the Marriage Law and the KHI, emphasize the importance of registration for this unofficial polygamous marriage status. Registration of unrecorded polygamous marriage status needs to be considered because women are often considered the less powerful party when polygamy is carried out without registration.

Therefore, although there is no prohibition in Islamic law, the practice of undocumented polygamy must consider legal protection for women by allowing registration of marriages of couples who are married in siri (including polygamy) without any specific time limit to document the marital status after the implementation, of course with a deeper social and religious approach and more effective participation and counseling efforts from marriage registration officers. In addition, women who are bound in polygamous marriages without official registration do not receive legal protection, even though it should be a basic right that every individual has.

Generally, in cases of unregistered marriages, a wife cannot file a lawsuit regarding the husband's behavior or actions if the husband violates the wife's rights in the marriage bond (Hikmah & Subagyo, 2020). For this reason, it is necessary to increase legal protection and gender justice for women in the practice of unregistered polygamy, namely:

- 1) Recognition and Registration of Siri Polygamous Marriages: Although the Compilation of Islamic Law (KHI) regulates polygamy, the implementation of siri polygamy is often not recognized by state law. Article 56 paragraph 3 of the KHI states that siri polygamy has no legal status. However, Article 3 letter c of PERMA No. 3 of 2017 ensures that women have access to justice (Hikmah & Subagyo, 2020). In addition, optimizing the decisions of the Indonesian Ulema Council and the Aceh Ulema Consultative Assembly which allow the registration of siri marriages without a certain time limit can be used as a basis for facilitating the registration process with a socio-religious approach and proactive efforts from officers who register marriages (Indrawati & Faisol, 2024).
- 2) Strengthening and Enforcement of Legal Regulations: Regulations regarding unregistered polygamy need to be strengthened in order to provide better legal support for women, for example by explaining the legal basis and steps to apply for permission for polygamy through religious courts as stipulated in Article 56 of the Compilation of Islamic Law and Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law. To provide legal protection, procedural steps can be taken through itsbat nikah (legal recognition of unregistered marriages) which is carried out selectively and refers to applicable regulations, as well as through a judge's decision in court (Supraptiningsih, 2017).
- 3) Assistance and Access to Justice for Women: Providing convenience for women to obtain legal assistance and protection from related agencies such as the KUA, religious courts, police, and women's protection institutions so that they can fight for their rights fairly. The state needs to play a role as a protector of women's rights in the practice of unregistered polygamy in accordance with the mandate of Article 29 of the 1945 Constitution which guarantees the right to practice religion and belief, and ensures that women's rights are still considered.
- 4) Education and Socialization: Increasing public understanding, especially women, regarding their rights in unregistered polygamous marriages through legal education and counseling based on religion and society, so that women can more clearly understand their position and rights to demand appropriate legal protection.

In these ways, guarantees of law and gender justice for women in the practice of unregistered polygamy can be more assured, avoiding injustice, and ensuring that women's rights are fulfilled fairly within the framework of Islamic law and state law (Hikmah & Subagyo, 2020).

4. CONCLUSION

The practice of Siri polygamy in Indonesia reflects significant legal injustice for women. Despite the principles of Islamic civil law that should guarantee protection and justice, many women involved in Siri polygamy do not receive their rights properly. This situation is exacerbated by social stigma, lack of public understanding of legal rights, and minimal social support, which further marginalizes women. The gap between reality (*das Sein*) and what should exist (*das Sollen*) in the context of legal protection creates major challenges in achieving gender justice. Therefore, more structured efforts are needed to improve legal protection and gender justice for women involved in the practice of Siri polygamy.

Suggestions

In an effort to improve legal protection and gender justice for women in the practice of Siri polygamy, it is important to facilitate official registration for polygamous marriages. This policy will provide clear legal status and protect women's rights. In addition, regulations regarding Siri polygamy must be strengthened in order to provide better protection, including counseling on the legal steps to obtain permission for polygamy through religious courts. Access to justice for women must also be improved by providing ease in obtaining legal assistance from related institutions. This will enable them to fight for their rights more effectively. Finally, education and socialization regarding legal rights in the context of polygamy need to be improved, so that women can understand their position and dare to demand justice. Through these steps, it is hoped that legal protection and gender justice for women in the practice of Siri polygamy can be improved, so that their rights can be fulfilled fairly and equally.

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