

The Role of Family Law in Confronting Polygamy Practices in Contemporary Society

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Article History:				
				DOI: 10.32332/syakhshiyah.v3i2.7614 Copyright © 2023 Author/s
Received: 24-08-2023	Revised: 07-09-2023	Accepted: 15-09-2023	Published: 09-11-2023	

Abstract: *Polygamy is a marital practice in which a man simultaneously has more than one wife. In contemporary society, this practice often poses various legal and social challenges. This study aims to analyze the role of family law in regulating polygamy, protecting individual rights, and maintaining a balance between religious freedom and women's rights. Family law plays a central role in ensuring that polygamy is conducted with the principles of justice, equality, and protection of the wives' rights. This research uses a qualitative method with a literature study approach. In contrast, this research's primary and secondary sources are journals published with national and international reputation indexes, as well as books, laws, and so on that support this research. Data analysis uses description analysis, data following the actual, and then the data is compiled, processed, and analyzed to provide an overview of the existing problems. The results show that polygamy remains a controversial issue in contemporary society. Family law is essential in regulating and dealing with this practice, significantly impacting individuals, families, and communities. This research provides a further understanding of the complexity of the role of family law in the context of polygamy. It can serve as a*

basis for further discussion on regulating and protecting individual rights in a changing society.

Keywords: Contemporary Society; The Practice of Polygamy; The Role of Family Law

Abstrak: Poligami merupakan praktik perkawinan di mana seorang pria memiliki lebih dari satu istri secara bersamaan. Dalam masyarakat kontemporer, praktik ini sering kali menimbulkan berbagai praktik hukum dan sosial. Penelitian ini bertujuan untuk menganalisis peran hukum keluarga dalam mengatur poligami, melindungi hak-hak individu, dan menjaga keseimbangan antara kebebasan beragama dan hak-hak perempuan. Hukum keluarga memainkan peran sentral dalam memastikan bahwa praktik poligami dilakukan dengan prinsip keadilan, kesetaraan dan perlindungan terhadap hak-hak istri-istri yang terlibat. Penelitian ini menggunakan metode kualitatif dengan pendekatan studi kepustakaan, adapun sumber primer dan sekunder dalam penelitian ini adalah jurnal-jurnal yang sudah diterbitkan dengan indeks reputasi nasional dan internasional, dan juga buku-buku, Undang-undang dan lain sebagainya yang mendukung penelitian ini. Analisis data menggunakan analisis deskripsi, data-data sesuai dengan yang sebenarnya kemudian data-data tersebut disusun, diolah dan dianalisis untuk dapat memberikan gambaran mengenai masalah yang ada. Hasil penelitian menunjukkan bahwa, Praktik poligami tetap menjadi isu kontroversial dalam masyarakat kontemporer. Hukum keluarga memainkan peran penting dalam mengatur dan menghadapi praktik ini, dengan dampak yang signifikan pada individu, keluarga, dan masyarakat. Penelitian ini memberikan pemahaman lebih lanjut tentang kompleksitas peran hukum keluarga dalam konteks poligami, dan dapat menjadi dasar bagi diskusi lebih lanjut tentang regulasi dan perlindungan hak-hak individu dalam masyarakat yang terus berubah.

Kata Kunci: Praktik Poligami; Peran Hukum Keluarga; Masyarakat Kontemporer

A. INTRODUCTION

The family is a social institution that is essential to human life. In contemporary society, the family not only serves as the forming unit of the individual but also as the center of social interaction and cultural values. However, in some societies, the development of the times has brought new practices that affect the family order. One issue that is often controversial is the practice of polygamy, where a man has more than one wife at the same time. Although it has roots in certain cultures and religions, this practice often raises legal and social problems in contemporary society.¹

¹ Kharlie, A. T. (2022). Indonesian family law. Ray Grafika.

In societies based on positive law, such as the majority of countries in the world today, polygamy is often considered illegal or at least strictly regulated by applicable family law. Some countries, such as Indonesia, have passed laws regulating the practice of polygamy, taking into account the principle of equality and protection of women's rights. Nonetheless, the issue remains controversial, and sparks debate about the boundaries between religious freedom, women's rights, and national law.² The practice of polygamy has its roots in particular histories and religions. In the Islamic tradition, polygamy is permitted under several conditions, such as fairness in treating wives and equal financial responsibility. However, interpretations of this practice vary throughout the Islamic world, from those that prohibit it entirely to those that allow it without restriction. In addition, other religions and particular cultures also hold views on polygamy, which can be a source of conflict in multicultural societies.³

In contemporary societies, polygamy is often confronted with complex legal and social rules. One of the leading practices is how to accommodate women's human rights in the context of polygamy. Criticisms of this practice often relate to the potential for inequality in treating wives with the same husband. Issues such as inheritance, child custody, and financial rights become more complicated in the context of polygamy.⁴ Family law has undergone significant developments in efforts to confront the practice of polygamy. Many countries have changed their family laws to reflect the principles of gender equality and protection of women.⁵ Such laws often restrict the practice of polygamy or set strict requirements that must be met before a man can take a second wife. For example, in Indonesia's family law, a man must obtain permission from his first wife and put forward a valid reason to be able

² Setiawan, E. (2014). Dynamics of Islamic Family Law Reform in Indonesia. *De Jure: Journal of Law and Shar'iah*, 6(2).

³ Kharlie, A. T., & SH, M. (2020). Codification of contemporary Islamic family law: Renewal, approach, and elasticity of law application. *Pretone Media*.

⁴ Latief, M. N. H., & Wates, P. A. (2016). Reform of family law and its impact on limiting the minimum age of marriage and improving the status of women. *Novelty Law Journal*, 7(2), 196.

⁵ Pakarti, M. H. A., Farid, D., Banaesa, I., Nurdin, R., Abdurrohman, Y., & Basuni, I. (2023). The development of Ushul Fiqh in the contemporary world. *Al-Shakhsiyyah: Journal of Law & Family Studies*, 5(1).

to practice polygamy.⁶ The practice of polygamy also has a significant psychological and emotional impact on all parties involved, including husbands, wives, and children. Complex household dynamics and feelings of jealousy can often generate tension in relationships between family members. This dynamic can also affect Children's emotional well-being, with feelings of lack of attention and affection from parents.⁷

In an increasingly multicultural and pluralistic society, seeking a balance between individual human rights and cultural and religious values is essential.⁸ Countries with diverse cultural and religious backgrounds often struggle to find ways to accommodate all of these views within a just and inclusive legal framework.⁹ In contemporary society, the role of family law is significant in dealing with polygamy. Laws should reflect the principles of gender equality, protection of women, and individual human rights while recognizing the right of individuals to religion and practice their beliefs. Amid the complexity of this issue, family law reform must strike a delicate balance between cultural values and universal norms of human rights.

B. METHOD

This research uses qualitative methods with a literature study approach. In contrast, this study's primary and secondary sources are journals that have been published with national and international reputation indexes, as well as books, laws, and so on that support this research. Data analysis uses description analysis, data following the truth, then compiled, processed and analyzed to provide an overview of the existing problem.

⁶ Tohari, I., & Kholish, M. A. (2020). Ijtihad is based on maqashid shari'ah as a conceptual foothold in the renewal of Indonesian Islamic family law. *Journal of Law & Development*, 50(2), 462-475.

⁷ Setiyanto, D. A. (2017). Islamic law as social engineering and its implications in marriage law in Indonesia. in *Ijtihad: Journal of Islamic Legal Discourse and Humanity*, 17(2).

⁸ Ghofur, A., & Sulistiyono, S. (2014). Eclecticism in Taqnīn Family Law in the Islamic World. *ISLAMICA: Journal of Islamic Studies*, 8(2), 261-291.

⁹ Pakarti, M. H. A., Farid, D., Banaesa, I., Nurdin, R., Abdurrohman, Y., & Basuni, I. (2023). The development of Ushul Fiqh in the contemporary world. *Al-Shakhsiyyah: Journal of Law & Family Studies*, 5(1).

C. RESULT AND DISCUSSION

Polygamy, a marital practice in which a man has more than one wife simultaneously, has been a controversial topic in contemporary societies. The training and debate related to polygamy involve moral, religious, social, and legal aspects. In an increasingly complex society, family law plays a significant role in dealing with the practices that have arisen due to polygamy. The role of family law in confronting the practice of polygamy in contemporary society by detailing the social implications, protection of women's rights, and the balance between individual rights and societal interests.

Polygamy has a complex social impact in contemporary society. This practice can affect family stability and the happiness of women and children in polygamous families. These social implications need to be considered by family law in drafting regulations related to polygamy. Good code should consider the impact of polygamy on family stability and children and protect the rights of all family members.¹⁰ One crucial aspect that family law must pay attention to is the protection of women's rights in the context of polygamy. Polygamy often causes women to feel marginalized and deprived of fair treatment. Family law should protect women's rights in the context of marriage and family. These include the right to truthful information about polygamy, the right to give free and unforced consent, and the right to fair and equal treatment on the part of husbands and society.¹¹ In dealing with the practice of polygamy, family law must also seek a balance between the right of individuals to practice polygamy and the interests of society as a whole. This balance involves consideration of societal values and norms without neglecting individual human rights. Family law must limit the number of wives allowed, marriage requirements, and consent mechanisms involving all parties concerned.¹²

¹⁰ Al-Hibri, A. (2002). *Islamic family law in a changing world: A global resource book*. Zed Books.

¹¹ Mir-Hosseini, Z. (2013). *Gender and equality in Muslim family law: Justice and ethics in the Islamic legal tradition*. I.B. Tauris.

¹² Sari, T. Y. (2023). *Between Religious Controversy and Commodification: A Study of Dauroh Poligami Indonesia*. *Indonesian Journal of Religion and Society*, 5(1), 47-57. DOI: <https://doi.org/10.36256/ijrs.v5i1.316>

In developing regulations related to polygamy, family law can refer to legal and comparative references. The experience of other countries that have confronted the issue of polygamy can provide valuable insight in designing effective regulations. For example, some countries have set limits on the number of wives allowed, require the consent of all parties concerned, and provide legal protection for wives in polygamy.¹³ Family law can also play a role in facilitating mediation and dispute resolution in polygamy cases. Conflicts between wives in polygamy or conflicts regarding rights and responsibilities can be resolved through a mediation process supervised by the authorities. This can help reduce the potential for competition to the detriment of all parties involved.¹⁴ In addition to legal regulation, family law can contribute to education and increase public awareness of the implications of polygamy. Educating the public about individual rights, women's protection and the social impact of polygamy can help reduce unfair or harmful practices of polygamy.¹⁵

In contemporary society, polygamy requires an active role of family law in regulating and dealing with the effects of this practice. This role includes protecting women's rights, seeking a balance between individual rights and societal interests, and referring to legal and comparative references. In addition, family law can also play a role in facilitating mediation, dispute resolution, and public education. Thus, family law is vital in maintaining a balance between individual freedom and the protection of rights in the face of polygamous practices in contemporary society.

In addition, there are family law roles that must contribute to this, including:

1. Protection of Individual Rights: One of the primary roles of family law is to protect individual rights in the context of marriage and family. Polygamy can lead to inequality between wives in terms of rights and protections. Family law

¹³ Cott, N. F. (2000). *Public vows: A history of marriage and the nation*. Harvard University Press.

¹⁴ Goodhart, S. (2007). *The principles of the law of family, dissolution of marriage and nullity*. Cambridge University Press.

¹⁵ Stybnarova, N. (2020). Teleology behind the prohibition of recognition of polygamous marriages under the EU family reunification directive: A critique of rule effectiveness. *Journal of Muslim Minority Affairs*, 40(1), 104-116.

must ensure that every family member's rights and protections, especially women and children, are guaranteed relatively and equally.¹⁶

2. Legal Arrangements and Marriage Registration: Family law should regulate the marriage process, including polygamy. Transparent and accurate marriage registration is essential to avoid the practice of legally unauthorized polygamy. It also helps prevent the abuse of polygamy for unethical purposes.¹⁷
3. Addressing Children's Issues: Polygamy can severely impact children's well-being in a family. Family law should have mechanisms to address children's rights, including the right to maintenance, education, and a stable environment. If polygamy can harm children's development, the law must have a foundation to protect their rights.¹⁸
4. Mediation and Conflict Resolution: The practice in polygamous relationships often involves conflict between spouses or wives. Family law should support effective mediation mechanisms to resolve disputes and maintain harmony within the family. Mediation can help prevent divorce that harms all parties involved.¹⁹
5. Economic and Inheritance Arrangements: Polygamy can raise questions about wives' and children's financial division and inheritance. Family law must reasonably regulate economic and legacy rights, ensuring all family members have equal access to inherited resources and property.²⁰
6. Prevention of Polygamy Abuse: Some cases of polygamy can be used as a cover for the exploitation of women and children, as well as human rights violations. Family law must have provisions that punish abusive acts in polygamy, including actions that harm family members.
7. Education and Awareness: Family law should also provide space for education and awareness regarding polygamy. Educating people about polygamy's rights,

¹⁶ Ramadan, T. (2009). *Islam, the West and the Challenges of Modernity*. Kube Publishing Ltd.

¹⁷ Nasution, K. (2008). Polygamy in Indonesian Islamic Family Law. *Jurnal Syariah*, 16(2), 25-40.

¹⁸ An-Na'im, A. A. (2002). *Islamic family law in a changing world: A global resource book* (p. 159). London: Zed Books.

¹⁹ Bowen, J. R. (2003). *Islam, law, and equality in Indonesia: An anthropology of public reasoning*. Cambridge University Press.

²⁰ DeVries, A. J. (2016). *Modernizing Marriage: Family, Ideology, and Law in Nineteenth-and Early Twentieth-Century Egypt*. By Kenneth M. Cuno.

responsibilities, and impacts can help reduce stigmatization and conflict in society.

8. Adoption of Technology and Social Media: Contemporary society faces significant social and technological changes, including the use of social media. Polygamy can occur through online platforms, thus raising questions about legality and legal protection in a virtual context. Family law needs to adapt to these technological developments to remain effective in regulating the practice of polygamy.²¹
9. Legal Recognition and Non-Official Practices: In some places, there is a practice of polygamy that is not legally recognized but still exists in society. Family law should consider how to deal with this practice and whether there is a possibility of better recognition or regulation of such practices.

D. CONCLUSION

In contemporary society, the role of family law in dealing with polygamy is essential to maintain balance and protection of individual rights. Family law must adapt to social, cultural, and technological changes to ensure that polygamy does not come at the expense of equity, equality, and family welfare. By formulating policies that consider these aspects, family law can contribute to creating a harmonious family and protecting the rights of all family members by the principles of human rights and gender justice.

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²¹ Welchman, L. (2007). *Women and Muslim family laws in Arab states: A comparative overview of textual development and advocacy* (p. 256). Amsterdam University Press.

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