

THE DILEMMA OF LEGAL PROTECTION FOR CHILDREN AND WOMEN IN POLIGAMIC CASE (STUDY OF RELIGIOUS COURT DECISIONS)

Baidhowi

ABSTRACT

The decision of polygamy because the second wife is pregnant creates confusion/ dilemma. Problem; First, how does the judge consider decisions about polygamy because of pregnancy and the dilemmas faced? Second, what are the strategies for children and women's legal protection on the application of rejected polygamy? This type of research is normative juridical with qualitative descriptive approach method. The results show, there are two categories of provisions on the application of polygamy on the grounds that the wife is pregnant. First, the petition of polygamy is "rejected" because it does not meet the formal and alternative requirements, as regulated in Article 4 paragraph (2) of Law Number 1 The year 1974 jo. Compilation of Islamic Law (KHI) Article 57. Secondly, the petition of polygamy is "granted" because the decision of the judge is based on Article 5 paragraph (2) of Law no. 1 the year 1974 about Marriage is "Another reason for trial". The application of polygamy "granted" or "rejected" creates a dilemma. Among the dilemmas, first, the psychic dilemma, that if the wife does not allow the husband of polygamy, then the husband is incarcerated for violating the law or his wife should accept a divorce. Secondly, the legal dilemma, which is a judge using the phrase of Article 5 paragraph (2) is the Law Number 1 The year 1974 Not Complete. Third, the dilemma of responsibility, the applicant is irresponsible and neglected his future wife, wife, and child. And the fourth, social dilemma, if polygamy is given for reasons the wife has been pregnant, it will increase adultery and illegal polygamy. A strategy of protection of a future wife, child, and wife. This can be found in Law Number 1 The year 1974 and Law Number 23 The year 2004 and KUHP article 284 (1) of the Criminal Code and SEMA No.8 in 1980. In addition to the applicable law, strict supervision is required.

Keywords: Protection, Children, Women, Poligamy, Dilemma

Introduction

Marriage is built and maintained in order to achieve eternal happiness based on the divinity of the One Supreme. But in wading the ark of life together often appear the dynamics of life that must be addressed. Especially if the goal of marriage has not been fully achieved among them, the absence of offspring, disharmony relationship, and other household problems.

Efforts of the state to protect its citizens, especially in its survival, the state of Indonesia gave birth to Act No. 1 of 1974 which regulates the marriage. Article 2 Paragraph (1) of the Marriage Law states that Marriage is lawful if done according to the law of each religion and its belief. The essential requirement is also affirmed in the Elucidation of Article by Article of Article 2 of the Marriage Law, that there is no marriage outside the law of each religion and its belief, in accordance with the 1945 Constitution. Whereas in Article 2 paragraph (2) -The Marriage Annunciation is explained that each marriage is recorded according to the prevailing laws and regulations.

The above rules should be interpreted in accordance with the General Elucidation of Law Number 1 The year 1974 which explains that a marriage is legal if done according to religious law and belief, and besides that marriage must be recorded which is a condition of whether or not a marriage is recognized by the state. Or in other words that the registration of marriage above is actually a legal requirement of a marriage. Because marriage can be considered valid if the law of religion and belief have been declared valid. The registration of marriage is an orderly legal effort that serves to protect and ensure legal certainty for the parties. Therefore, the registration of marriage is a must held.

Accordingly, the provisions of Article 5 and Article 6 of the Compilation of Islamic Law states that in order for the marriage order for the Islamic community, every marriage shall be performed by the Registrar. To comply with this matter, any marriage must be conducted in front of and under the supervision of the Registrar of the Marriage Officer, since marriages conducted outside the supervision of the Administrative Bureau Officer have no legal force. The issuance of a Marriage Act, each of which is owned by a husband and wife, may be used by each party in the event of loss of marriage bond to obtain the right.¹

There are 4 types of marriages that exist in the community. That is monogamous marriage, polygamy, polyandry and group marriage. Of the four types of marriage above, which is considered the most ideal and appropriate marriage is a monogamous marriage. Monogamy marriage is a marriage between a man and a woman where in principle that the husband has one wife only and vice versa. It is in accordance with the principle of monogamy contained in Article 3 paragraph (1) of the Marriage Law which prescribes that in a marriage a man may only have a wife and a woman may have only one husband. While in the

¹ Zainudin Ali, *Hukum Perdata Islam di Indonesia*, (Jakarta: Sinar Grafika, 2006), p.26

provisions of paragraph (2) it opens opportunities for a husband to polygamy. However, polygamy can be done by a husband to marry more than one if desired by the parties concerned and has obtained permission from the court.²

Although monogamous marriage is regarded as an ideal marriage, in practice today many polygamy practices are found in society. This can not be separated from the many examples of public figures that are polygamous so that many people who imitate to do the practice. Therefore, the term polygamy is now so sticking and made conversations in many circles. There are those who accept this practice with the various requirements put forward, but not a few also firmly reject it.

The arrangement of marriage and its settlement is contained in Law no. 1 The year 1974 jo PP No.9 The year 1975 on marriage of article 3, 4 Jo Compilation of Islamic Law article 56 and Law no 3 of 2006 with the amendment of Law No. 49 of 2009 on Religious Courts, authorized to receive, examine and resolve such marriage cases Permit polygamy. The problem is what if a person has been engaged in a marital relationship and has become pregnant, then applying for a polygamy permit to a religious court. It is this condition that can create a legal dilemma for both the Religious Court Judges or the parties. If the petition is refused, what will happen to the children and women of the future wife. As well as to grant what is the basis of their judgment, and how the legal status of the deeds they are doing.³ This is certainly a problem in the field of law. It is said to be a problem because of differences or gaps between legal provisions and executions that occur in practice, or the existence of differences between *dassain* and *das sollen*.⁴

From this background, the author tries to dissect the determination of religious court related to the request for polygamy permit filed by the applicant for the reason that the wife has been pregnant. Among the determination is the decision Number: 1039 / Pdt.G / 2016 PA. SMG and Decision Number 1584 / Pdt.G / 2014 / PA.Smg.

The problems;

- 1) How does the judge consider the decision on polygamy because of pregnancy and the dilemma faced?
- 2) How is the legal protection strategy for children and women on the rejected application of polygamy?

Polygamy

Etymologically polygamy comes from Greek, ie *polu* and *gamein*. *Polu* means a lot and *gamein* means mating. Polygamy is a lot of marriage⁵. In other terms polygamy is called plural marriage or marriage group. Big Indonesian Dictionary: a marriage system that either party owns or marries several of the opposite sex at the same time⁶. In Webster's belief Polygamy is a person who has two or more partners in the same time (having two or more partners at the same time)⁷. In Arabic, polygamy is called *ta'addud al-Zaujāt* **تعدد الزوجات**⁸. In terminology, polygamy means the form of marriage of common ownership of a wife or husband.⁹

According to Musdah Mulia, polygamy is a marriage bond that one party (husband) marries several (more than one) wives at the same time. In addition to polygamy, polyandry also known that a wife has several husbands at the same time¹⁰. Among the above definitions, a polygamy is a form of marriage in which a man marries several women because it lights up at the same time.

Polygamy in an Islamic perspective

The religion of Islam which comes from the Qur'an and hadith, there is actually no prohibition of polygamy and not encourage it. Polygamy is only allowed under certain conditions. Disyari'atkan Islamic law to humankind for the benefit of humanity itself. Although Allah SWT provides an opportunity to marry up to four people. but, the opportunity is accompanied by conditions that are heavy enough to be fulfilled except by certain people.

According to Al-Maraghi in his tafsir, known as Al-Maraghi tafsir the so-called polygamy permissibility mentioned in the letter of An-Nisa verse 3, is a complicated skill and tightened. According to him, polygamy is only allowed in an emergency, which can only be done by people who really need, so he recorded the rules of fiqhiah, *dar'u al mafāsīd muqaddamun 'alā jalbi al-maṣ ālih*. This recording is an emergency, perhaps, to show how important the heart is in carrying out polygamy. So from this explanation, when a man is afraid to do the action that violates the religious shari'a, then he is haram to do polygamy.¹¹

² R.Soetojo Prawirohamidjojo, *Pluralisme dalam Perundang-undangan Perkawinan di Indonesia*, (Surabaya: Airlangga University Press, 1988), p. 3

³ Salinan Penetapan PA Semarang Nomor: 1039/Pdt.G/2016/PA.SMG. p. 9

⁴ Saleh K. Wantjik, *Hukum Perkawinan Indonesia*, Ghalia Indonesia, Jakarta, 1976, p.14

⁵ Eprints.Iny.ac.id/2607/1/4 Poligami Dalam Hukum Islam pdf

⁶ Kamus Besar Bahasa Indonesia (KBBI) *Kamus versi online/daring (dalam jaringan)*

⁷ Peter Salim, Yenny Salim, *Kamus bahasa Indonesia Kontemporer*, Jakarta, Modern English Press, 2002, p. 1178

⁸ Ali Ahmad Zuhdi Muhdlor, *Qamus Arabik 'Ashri*, Yogyakarta: Multi Karya Grafika, 1996, p. 513

⁹ Murtadha Muthahhari, *The Rights Of Women in Islam*, terj.M. Hashem, Jakarta: Serambi Ilmu Semesta, 2007, p. 9

¹⁰ Siti Musdah Mulia, *Islam Menggugat Poligami*, (Jakarta: PT Gramedia Pustaka Utama, 2007), p. 83

¹¹ Al-Maraghi, Tafsir Al-Maraghi, (Mesir: Musthafa Al-Babi Al-Halabi, 1963), p.181

The opinion of Quraish Shihab, that the letter an-Nisa verse 3 does not oblige polygamy or advocate it, it only speaks of polygamy, it is also a small door that only people who need it most and in mild conditions can not. Thus, the discussion of polygamy in the Qur'anic view should not be seen in terms of ideal, or good and bad, but must be viewed from a legal point of view under various conditions that may occur.¹²

Thus it can be concluded that Islam does not create polygamy laws, but only limits polygamy to certain terms and amounts. The Quran does not oblige polygamy, but it is only allowed. But the loading here is still threatened by the condition of not being able to do justice, as mentioned in An-Nisa 'verse 129.

Polygamy in the perspective of Indonesian positive law

Article 49 of Law No. 7 of 1989 which has been amended by Law No. 3 of 2006 and the second amendment with Law No. 50 of 2009 states that "Religious courts are on duty and authorized to examine, decide upon and settle cases at the first level among persons who are Muslims in the field Marriage, inheritance, will, grant, wakaf, zakat, infaq, shadaqah and shari'a economy.

In the explanation of article 49 of the second paragraph it is explained that what is meant by "between persons of Islam" is including persons or legal entities who themselves voluntarily submit themselves to Islamic law on matters which make the authority of the Religious Courts in accordance with the provisions of the article this. And in the explanation an of clause a of this article states that what is meant by "marriage" shall be "matters governed in or based on applicable marriage laws which are conducted according to shari'a". Among other things are "permit more than one" or known as polygamy permit. Thus the religious court has the absolute authority to examine and decide upon the petition for the permission of polygamy submitted to it.

Marriage Law no. 1 of 1974. regulates the application for polygamy permits. A husband wishing to have polygamy must apply to the Court (Art. 4: 1). He may grant permission to remarry if one of his alternative terms (Article 4: 2): Reasons for the Reason of the Polygamy Religious Courts are: 1. The wife can not perform her duties as a wife. 2. Wife exposed to body defects or diseases that can not be cured. 3. The wife can not bear offspring. In particular, the compilation of Islamic Law in Chapter IX chapters 55, 56, 57, 58 and 59. Section 55 explains that justice to wives and children is a necessary condition for more than one wife.

Furthermore, application procedures for polygamy permits are listed in Chapter VIII PP. 9 In 1975. In addition to going through the procedure of applying to a religious court, the person wishing to have polygamy must obtain a wife's permit pursuant to Government Regulation No. 10 of 1983.¹³

Results of research and discussion

Results of research

In principle, the decision of the Religious Courts regarding the request for polygamy permit is granted and rejected. The reason for filing polygamy is quite diverse, starting with the formal requirements fulfilled as set forth in Articles 3 and 4 of Law Number 1 the year 1974 as well as requests for reasons that do not comply with formal and alternative requirements. So the judge is expected to actually find the correct law (rech finding).

This study attempts to dissect the determination of the Religious Courts of Semarang City related to the application for polygamy permit, as follows:

A. Case Number: 1039 / Pdt.G / 2016 PA. Smg, Majelis Hakim with the chairman Dra. Hj. N, Sh., MH and members of Drs. M, SH, MA and Drs. S, MH adjudicates the determination of 1. to grant the Petitioner's petition 2. Permits the Petitioner (IP) to remarry another woman DM 3. To establish joint treasury of the Petitioner and the Respondent in the form of one unit of Yamaha motorcycle No. Police H 2179 AWG 4. Charges the Petitioner to pay the cost of this case of 291,000 (two hundred and ninety-one thousand rupiah).

The basic considerations used by Judges in granting polygamy permits are as follows.

1. The Basic of juridical considerations
 - a. The applicant and the requested are married couples with marriage certificate issued by KUA of Gajahmungkur Subdistrict. 0301/51 / X / 2013
 - b. The life of the applicant and the requested home runs harmoniously. This proves the facultative condition of Article 4 paragraph (2) letter an of Law Number 1 the year 1974 can not be fulfilled by the Petitioner.
 - c. Respondent agrees and does not mind the Petitioner Married with DM
 - d. The applicant is ready to be fair to his wives
 - e. IP and DM no marriage barriers and not in the other men proposal and DM parents want to be a guardian
 - f. An applicant and prospective wife there is no prohibition to marry access in Article 8 letter a to f Law No 1 the year 1974 regarding Marriage jo article 39 to article 44 Compilation of Islamic Law inpres No 1 the year 1991
 - g. An applicant intending to remarry (polygamy) with the second wife of the Petitioner, because the prospective wife is requested to be married by the Petitioner because he has had a husband and wife relationship with the Petitioner and now has been pregnant for 4 (four) months. This does not include Article 4 paragraph (2) (a) and 5 (1 and 2) as well as the Compilation of Islamic Law article 57, but the Petitioner remains in principle to engage in polygamy for that reason, then Majelis Hakim Argued that the condition could be interpreted as

¹² M. Quraish Shihab, *Tafsir Al-Mishbah*, (Jakarta: Lentera Hati, 2002), p. 410

¹³ Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam*, (Bandung: CV Nuansa Aulia, 2015), Edisi Revisi, p. 16-17

"the reason for other causes that need to be assessed by the Religious Court Judges" as required by article 5, paragraph 2 of Law No. 1 of 1974 on Marriage.¹⁴

- h. There were two witnesses who claimed to know the Petitioners and the Petitionees
 - i. In accordance with Article 89 paragraph, 1 of Law No. 50 of 2009 concerning the second amendment to Law No. 7 of 1989 on Religious Courts, all expenses incurred in this procedure shall be borne by the applicant.
 - j. During the marriage of the Petitioner and the requested party has joint property in the form of 1 unit of motorcycle brand Yamaha No H 2179 AWG
2. Basic consideration Nonjuridical, namely the provisions of Islamic law (sharia) is looking at the Qur'an. The consideration of the provisions of Islamic law used by the Judge in relation to the petition for polygamy permit, in this case, is An-Nisa's verse 3: "... .. then marry women you like, three, or four, then if you are not afraid of Just, Then marry someone ... "

B. Decision Number 1584 / Pdt.G / 2014 / PA.Smg. Dated 19 August 2014, decided to reject the petitioner's petition (polygamy) and charged the case to the applicant for Rp. 251.000, -. Majelis judge with the chairman of H. K, SH and judge member of Drs. WA, and Drs. H. H.I, SH, M.Sc. Have considerations of the following rights:

1. The applicant and requested are married couples with marriage certificate issued by KUA West Semarang District. 0389/060 / V / 2014
 2. Reason of Petitioner to ask Polygamy is the second wife of the Petitioner has been pregnant 3 months result of an illicit relationship with the Petitioners so that the Petitioner is required to marry him
 3. In the hearing of the Respondent did not object to the concert, but the judge found that the applicant had recently married the applicant in May 2014. The healthy Respondent did not have any illness that impeded sexual intercourse with the Petitioner and the Respondent still able to serve the Petitioner in a sexual relationship.
 4. The Religious Courts may grant permission to the applicant for polygamy if the applicant has one of the alternative reasons for the petitioner's self, not of the second wife of the Petitioner's second wife.
 5. In reality, the reason filed by the applicant is the matter of the second wife candidate has been pregnant 6 months result of an illicit relationship with the Applicant.
- The conclusion of the panel of judges that the Petitioners' petition is considered unwarranted by law and is deemed to be formally flawed so it deserves to be declared unacceptable.¹⁵

Discussion

1. How does the judge consider the decision on polygamy because of pregnancy and the dilemma faced?

Discussions on law enforcement and the role of judges in the Religious Courts are not like discussing them in the context of a full-fledged General Court, attracting public attention, and often associated with the decline of public confidence in the rule of law in Indonesia. However, according to the authors, the issue of public scrutiny regarding law enforcement and the performance of law enforcement may occur in all institutions, whether in the Religious Courts, the police, prosecutors or other law enforcement agencies.

If it is said that the independence of the court institution becomes an important part of the effort to uphold and restore the authority of law in Indonesia, the institution of the Religious Courts is included¹⁶. Likewise, if it is mentioned that the judge should uphold moral and justice, then the judges in the Religious Courts, can not help it, must uphold moral and justice. One fundamental thing that concerns the justice seekers in Indonesia is that judges in the Court Institution are still caught up in technical (technological) mechanisms, created by the rule of law itself, rather than fighting for justice. In this case, the effort to win or decide a case by concentrating on technical matters becomes its main priority. Meanwhile, the rights of justice seekers tend to be neglected.¹⁷

The concept of the rule of law has been widely misunderstood as the rule of procedure. This is unfortunate because many people are disappointed with the system and performance of the existing law enforcement. Therefore, alongside the concept of rule of law is restored to its original form, law enforcers also need to consider the principle of rule of law such as the rule of law or rule of justice in taking the rule of law.

The hope is that it does not happen as the phrase that says "the duty of the judge finishes on the court table". This statement does not mean that a judge should be caught in a circle of pragmatism that tends to see the judge's advantage side rather than the sense of justice he endures. For that reason, judges should not close themselves only to the normative doctrines of legislation used, but they must also be sensitive to read the dynamics that develop in the society, the psychological condition of the parties in the court and continue to gain insight and be open by studying the results of research Legal practice in the field.

Speaking of polygamy permits, in the Religious Courts, there are several clauses that need to be observed: First, based on data on the ground, polygamy is proving to be a lot of harmful effects on family survival, especially for wives and their

¹⁴ Salinan penetapan Nomor 1039/Pdt.G/2016/PA.Smg, p. 8

¹⁵ Salinan penetapan Nomor 1584/Pdt.G/2014/PA.Smg . p. 6-8

¹⁶ View UU No. 4 tahun 1970 pasal 1. View: Malik Ibrahim "Penegakan Supremasi Hukum di Indonesia Pemikiran Reflektif tentang Merosotnya Wibawa Hukum" dalam Jurnal asi-Syir'ah, No. 8 tahun 2001 (Yogyakarta: Fakultas Syariah IAIN Sunan Kalijaga, 2001), p. 24

¹⁷ View: Karolus Kopong Medan dan Frans J. Rengka, *Sisi Lain dari Hukum di Indonesia*; Prof. Dr. Satjipto Raharjo, (Jakarta: Kompas, 2006), p. 56-57

children. Secondly, polygamy discussions exist that support and oppose its existence. Third, there are some cases where the reasons for the petition for polygamy permit are not listed in the legislation. Fourth, many polygamy permit applicants come from the lower middle-class economic community. Fifth, many people practice outside the Religious Courts (illegal). Based on the above five issues, the judge should be able to decide the case of polygamy submitted with full consideration, caution and encouraged by a strong conscience to provide fairness to the applicant and the wife.

Therefore on this occasion, the author tries to criticize the stipulation of polygamy as follows:

- A. Noting the determination of the granting of the Petitioner's petition for further marriage (polygamy) in the case Number 1039 / Pdt.G / 2016 PA. Smg, in this case, there are some things to note:

First, observing, the facts of the trial show evidence and the power proposed by the Petitioner can not fulfill Article 4 of Law Number 1 of 1974. Thus the formal requirement of polygamy is not fulfilled. The complete sound of the article as follows:

Article 4 (1) In the event that a husband will have more than one wife as referred to in Article 3 paragraph (2) of this Law, he shall apply to the Court in his area of residence. (2) The court referred to in paragraph (1) of this article shall only grant permission to a husband who will have more than one wife if
a. A wife can not perform her duties as a wife; B. A wife gets a body defect or a disease that can not be cured; C. The wife can not bear offspring.

Based on the aforementioned article, the judges' counsel in this case only specifies in the consideration that the petition for polygamy on the grounds of pregnancy is not included in Article 4 paragraph (2) letter (a) and Article 5 paragraph (1) of Law Number 1 the Year 1974. However, this consideration is ultimately not an excuse for rejecting polygamous applications. Yet it is clear that in formal juridical terms, the facultative terms of polygamy are not met. On the contrary, the judges' council used the argument of Article 5 paragraph 2 of Law No. 1 of 1974 that the reason for the petition was categorized as "the reason for other reasons that need to get the judgment from Religious Court Judges." And the determination is to grant the petition.

Secondly, the judges' consideration based on Article 5 paragraph (2) is "other reasons that need to be judged by Religious Court judges". This consideration is based on the fact that the applicant "remains adamant for polygamy for reasons of pregnancy". So the author's opinion, the use of this article seems to judge take some "phrase" only from Article 5 paragraph (2). Whereas in fact Article 5 paragraph (2), explains the rule of Article 5 paragraph (1) letter (a) that is regarding the approval of the wife. Complete section 5 paragraph (2) as follows.

(2) The Agreement referred to in paragraph (1) letter an of this article is not required for a husband if his wife/wife can not be asked for his consent and can not be party to the agreement, or if there is no news from his wife for at least 2 (two) years, or for other reasons that need to be judged by the Court Judge. "

Thus the determination of No 1039 / Pdt.G / 2016 / PA, legal standing is weak. Since the meaning of Article 5 paragraph 2 of Law No. 1 of 1974 is not whole or the phrase used is only a part "for other reasons that need to be judged by the Judge of the Court"

Third, the judge's judgment with the argument of paragraph 3 of the letter an-Nisa allowing a person to have more than one with fair terms. This provision is still common, while the intent of polygamy verse is allowed under the conditions of justice. While in this case the author, still sees some things that need to get assessment. First, attitudes and behaviors of husbands who have dared to engage in a dark relationship with women who are not wives. Second, the husband who puts his wife in a dilemmatic situation, ie between polygamous permission sincerely based on the will and permission that impressed imposed because of the circumstances of the husband who will be imprisoned. In situations like this, the wife in two options, namely between let or Wife wants to be divorced by the husband. Third, the applicant is also impressed imposing the will of the council, allowing polygamy to be allowed. Actually, he has committed a crime that is not justified by religion. All this shows that the husband does not have a fair nature in carrying out his obligations.

It should be remembered that the question of polygamy is not merely a theological issue, it also includes a very important and crucial social issue in the marriage of polygamy, namely the spirit of justice, non-harassment or tyranny to wives and children of polygamous marriages. When the spirit of justice is not enforced, it is likely that there will be forms of domestic violence. Therefore, based on the reasons mentioned above, the authors argue, the determination of relevant, in this case is the rejection of polygamous applications. Since there is no sufficient reason to grant polygamy or normative permits, it is contrary to the rules set forth in Article 4 of Law Number 1 of 1974. In other words, this determination exceeds juridical authority and may be declared null and void.

But on the other hand, the author also tried to understand the judges' determination that allows polygamy. As follows; First, the condition of women becoming polygamy is already pregnant; Secondly, there has been a wife permission for the third polygamy is the ability of the applicant to do justice. From this situation, the judge is of the opinion that by "the formal requirements of the application of polygamy permit are not fulfilled as stipulated in Article 4 paragraph (2) of Law Number 1 the year 1974 jo The compilation of the Law of Islamic Law (KHI) 57. Therefore, Facing the fact that there are women who have become pregnant should be protected their rights, then the assembly should take the best legal saving action, namely the provision of polygamy, with the aim that the status of women and children become Born legal protection. This is in accordance with ushuliyah regulations:

It means: If there are two mafsadats, then consider a larger mafsadat with a lighter mafsadat. "The purpose of this rule, if at one time gathered together with two or more mafsadat, it should be chosen, where mafsadat smaller or lighter, as long as mafsadat bigger or heavier should be abandoned, but mafsadat mild or heavy should be avoided.

- B. Noting the Decision Number 1584 / Pdt.G / 2014 / PA.Smg. Dated August 19, 2014, which rejected the petition of the petitioner (polygamy) with some consideration. According to the author of the judge's consideration is sufficient, namely the petition for polygamy petition filed by the applicant. Consideration of the majlis is, The reason of the applicant to ride polygamy is the pregnant wife candidate from their relationship. It is no longer the case that a person may file a petition in Article 4 paragraph (1) of Law Number 1 of 1974. In the event that a husband will marry more than a provisioner in paragraph 3 paragraph (2) of this law, Court in the area where he lives. (2) The religious courts in paragraph (1) of this article shall only grant permission to a husband who will marry more than an a. The wife can not fulfill her duties as a wife; B. Wife gets a body defect or disease that can not be cured; C. Wife can not produce offspring.

In addition to rejecting polygamous applications for reasons of pregnancy, the judges' council reinforced his opinion whether the applicant and the requested party were married couples in May 2014 and upgraded polygamy on June 30, 2014, and entered on 2 July 2014. This condition is socially and very Far from Philosophy of polygamy permit arrangement contained in Article 4 paragraph (2) of law no 1 year 1974. Thus the stipulation of rejected polygamy filed by the applicant is very appropriate. Because legally the formal application of polygamy is not fulfilled.

Although in this case, the fact indicates that the applicant is willing to grant his request, the wishes of the honey applicant are financially feasible. But the condition of "pregnancy is not a requirement of polygamy". Since the conditions allowed to file polygamy are "requested conditions" of the provisions referred to in Article 4 paragraph (2) of law number 1974 concerning marriage, not the requirement of a future wife to become polygamy.

The rejection of polygamy petition, the legal dilemma faced, at least by the applicant and the prospective wife to be polygamous. Moreover, the child is still in the womb of the prospective wife. The first dilemma, the status of the applicant's relationship/ behavior with the prospective wife who will be polygamous. If the petition of his polygamy is rejected, it can be interpreted that the couple has committed an act of adultery as set forth in KUHP article 284 (1) of the Criminal Code and SEMA No.8 in 1980. Secondly, if this first dilemma is true, then the status of the child born is a child of adultery or child Beyond marriage. According to Article 43 paragraph (1) of law number 1 of 1974 that "a child born outside marriage has only a civil relationship with his mother and his mother's family"

2. What is the legal protection strategy for children and women on the rejected application of polygamy?
The negative effect of polygamous marriage is not only by the first wife alone but also by the second wife. So far there are views of wives who benefit from polygamous marriages. For example, the second wife benefits always, not only in terms of psychological because of more beloved husband but also in terms of economic. This may be compatible with the slogan being in the community as "the young wife more dear to the content of the old wife". In addition, his second wife felt more satisfaction in her marriage than the first wife.

However, in the view of society being the second wife is a problem that is considered a disgrace. And get the label "seductive woman" and much more also labeled "binal woman or itch." The Arabic term mentions the second wife as "blood", troublemakers in the household. And in reality, many of his wives are both younger than first wives. This strengthens the second wife-by trying to catch someone else's husband.

More ironically, not all polygamy petitions are granted, especially polygamous appeals on the grounds that the prospective wife has been pregnant, as the case above. Paying attention to the polygamy calling stipulation of the petition, then there are some things we can say.

1. Polygamy licensing on the grounds of avoiding evil / adultery.

Marriage issues are divided into trivial matters. The institution of marriage is a family building that becomes the main base of the social order and is a cultural and civilization milestone. Good and bad social order depends on whether the household or family life is built by every member of society. Therefore, the social order required is an arrangement that can foster a sense of community law, and not regulatory distortion, let alone under the guise of religious rules interpreted partially.

The government's move regulates special marriage issues for Muslims, of course, there is a goal to be achieved, because of the legal provisions applicable to the welfare of the general public, not because of political interests, power or other interests. In this case it is very important for the people who set the provisions to know what is conceived and the goals that have been achieved. It will raise awareness and interest voluntarily as it is.

Therefore, the granting of polygamy permits on the grounds of avoiding adultery is not entirely true. Since there is no guarantee after polygamy, the husband does not commit adultery or infidelity. The proof, in Saudi Arabia, the country that diligently do polygamy, is the number of rape and sexual abuse of women is very high. There is no

accurate data that states that the acquisition of polygamy will keep the amount of adultery and fraud because the article of adultery is related to morals and opportunities. The proof, the Arabs who come to Indonesia on average they have married more than one, but in Indonesia, they still visit the nasty place. Another thing that can be very clear is the act of rape experienced by TKW, more TKW working in Saudi Arabia.¹⁸

In addition to the above motif, from the case of polygamy, the petition was filed partly because the prospective wife to be polygamous was already pregnant. Addressing such a case then what is required is the caution in granting polygamy permits to avoid injustice for the wife and children later. Optimizing the role of authorized officers, in order to minimize polygamy irregularities. It is still necessary for the birth of a law containing criminal or civil law for polygamy that leaves their wives and children.

Because, it could be in such a case, allowing polygamy is tantamount to allowing for an affair because in practice it begins with a husband's infidelity with another woman who has been running long before they decide to marry. In addition, the Petitioner unilaterally betrays the marriage that has been built. Psychologically, the original proof of the Question Letter (willing to be polygamy) made by the Respondent can be understood as a form of coercion in a veiled or forced manner. Because the defendant faces a dilemma that between the husband is incarcerated or he will divorce, or there are more complicated considerations faced by the Respondent. So socially, the Respondent in social relations may also experience a dilemma, if not allow a polygamous husband, then society will mock and laugh at it.

Therefore, in the framework of law enforcement, which protects all parties. If there is a request for polygamy for pregnancy, a judge's assessment should be made: rejecting polygamy and sanctioning applicants who have committed criminal offenses and deny legal marriages and violate legislation. It is expected that this action can give a deterrent effect for the perpetrators and the opponents.

2. Legal Protection Strategies for Children and Women

The practice of polygamy tends to open up the offense, as required by the letter of al-Nisa verse 3 " And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice].(Surah al-Nisa ': 3

Polygamy permission process on the grounds of pregnancy by the court leaves a dilemma. If permission is granted there is no guaranteed justice for their wives and children. (The story of an old wife can be tried by children). But if not permitted will encourage the practice of polygamist liars which will harm their wives and children (both old and young wives). In this context women are always victimized.

It is, therefore, necessary to consider preventive efforts and to impose strict sanctions on violations that occur in relation to the protection of the rights of the parties in the marriage. For example, a mode of marriage by way of falsifying identity, or marriage by forcibly seeking permission from the first wife would be contrary to the Criminal Code. Perpetrators may be categorized as having committed felony or fraud. Counterfeiting and fraud committed by husband against wife is a violation of Law no. 23 of 2004 on Anti Domestic Violence (KDRT). Because the meaning of the form of domestic violence in Article 6 covers not only physical violence, but also psychological, one of which is fraud or manipulation that resulted in misery.

Optimize the role of marriage registrants, marriage/polygamy/farming siri. Officers are required to report to the police for interrogation and then submitted to the prosecutor at the District Court. The judge will punish the perpetrators of criminal acts in siri marriage / illegal polygamy. This penalty is intended for the provisions of formal law and marriage administration that must be met by those who will make the marriage. According to Article 3 paragraph (1) of Law no. 22 years 1946, anyone who signed a marriage contract with a woman not under the supervision of a marriage officer or his deputy, will be fined up to Rp. 50, - (fifty rupiah). In paragraph (2), any person who does the job as an unauthorized Marriage Records shall be punished with imprisonment of no more than 3 (three) months or a fine of up to Rp. 100, - (one hundred rupiah).

Then according to Article 45 PP. 9 (1975) states (a) Anyone not reporting his / her marriage plan within a minimum of ten days until the Registrar, performing marriage not in the face of the officer or committing polygamy without court permission shall be punished with a fine of not more than Rp. 7.500, - (seven thousand five hundred rupiah); (B) Any registration in violation of the provisions of Articles 6, 7, 8.9, 10 paragraph (1), 11, 13, 44 of this government regulation shall be punished by imprisonment of no more than 3 (three) months or a maximum fine - High Rp. 7.500, - (seven thousand five hundred rupiah).

The firmness and courage of the judge in carrying out the mandate of Law no. 1 the year 1974 relates to the status of the child. The judges, in addition to rejecting Polygamy Petition for the reason that the candidate is already pregnant, may impose sanctions/penalties on the applicant to grant the child rights. This is stipulated in Article 43 paragraph (1) of Law Number 1 the Year 1974 which has been amended by Decree No. M. MK / PUU.46 / VIII / 2010. Article 43 paragraph (1) of Law Number 1 the Year 1974 which states , "A child born outside of marriage has only a civil relationship with the mother and the mother's family" to read, "The child who has risen out of wedlock has a civil relationship with the mother and the family with the man as proved. In the science of Basic and / Or other evidence according to the Law Has a blood relationship, including its relationship to the integrity of the family"

¹⁸ Anik Farida, *Menimbang Dalil Poligami: Antara Teks, Konteks dan Praktek*, (Jakarta: Balai Penelitian Dan Pengembangan Agama, 2008), p. 78-84

Conclusion

Based on the above description, it can be concluded that

1. Judges must be professional in granting polygamy permits, especially polygamy on the grounds that the prospective wife has been pregnant. If given then it must be clearly beneficial to all parties. The law must be upheld for everyone. Polygamy was granted and was rejected create psychic, social, legal and responsibility dilemmas for children and women.
2. Legal protection strategies for children and women in polygamy can be done preventively and repressively. An indispensable rule governing the protection of children and women. Give strict sanctions against illegal polygamy. Optimize the role of the officer. The firmness and courage of judges in establishing the application of polygamy and the protection of the rights of children and women.

REFERENCES

- Ali, Zainudin, (2006), *Hukum Perdata Islam di Indonesia*, Jakarta: Sinar Grafika.
- Al-Maraghi, (1963), *Tafsir Al-Maraghi*, Mesir: Musthafa Al-Babi Al-Halabi
- Farida, Anik, (2008), *Menimbang Dalil Poligami: Antara Teks, Konteks dan Praktek*, Jakarta: Balai Penelitian Dan Pengembangan Agama.
- Ibrahim, Malik (2001), "Penegakan Supremasi Hukum di Indonesia Pemikiran Reflektif tentang Merosotnya Wibawa Hukum" dalam Jurnal *asi-Syir'ah*, No. 8 tahun, Yogyakarta: Fakultas Syariah IAIN Sunan Kalijaga.
- K.Wantjik, Saleh, (1976), *Hukum Perkawinan Indonesia*, Jakarta, Ghalia Indonesia.
- Kamus Besar Bahasa Indonesia (KBBI) *Kamus versi online/daring (dalam jaringan)*
- Muhdlor, Ali Ahmad Zuhdi, (1996), *Qamus Arabik 'Ashri*, Yogyakarta: Multi Karya Grafika,
- Mulia, Musdah, Siti, (2007), *Islam Menggugat Poligami*, Jakarta: PT Gramedia Pustaka Utama
- Muthahhari, Murtadha, 2007, *The Rights Of Women in Islam*, terj.M. Hashem, Jakarta: Serambi Ilmu Semesta.
- Peter Salim, Yenny Salim, (2002), *Kamus Bahasa Indonesia Kontemporer*, Jakarta, Modern English Press.
- Prawirohamidjojo, R.Soetojo, (1988,) *Pluralisme dalam Perundang-undangan Perkawinan di Indonesia*, Surabaya: Airlangga University Press,
- Shihab, M. Quraish, (2002), *Tafsir Al-Mishbah*, Jakarta: Lentera Hati.
- Undang-undang No 1 tahun 1974 tentang perkawinan
- Undang-undang No 3 tahun 2006 dan perubahannya Undang-undang No 49 tahun 2009
- Undang-Undang No 23 tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga
- Tim Redaksi Nuansa Aulia, 2015, *Kompilasi Hukum Islam*, Bandung: CV Nuansa Aulia.
- Surat-Edaran Mahkamah Agung No.8 tahun 1980 tentang Pasal 284 (1) 1a KUHP
- Salinan penetapan Nomor 1039/Pdt.G/2016/PA.Smg,
- Salinan penetapan Nomor 1584/Pdt.G/2014/PA.Smg

Baidhowi

Lecturer at Law Faculty of Semarang State University

Email: baidhowi.3579@gmail.com