


Legal Protection of Unmarried Wives

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Abstract

Article 34 paragraph (1) of the Marriage Law states that the husband is obliged to protect his wife and provide all the necessities of household life according to his ability. Furthermore, for a man who has more than one wife, according to Article 82 KHI is obliged to provide housing and living expenses to each wife in balance according to the size of the family borne by each wife, unless there is a marriage agreement. If the wives are willing and willing, the husband can place his wives in one place of residence. However, in reality, men who marry more than one woman fail to fulfill their obligations and protect their wives and children as happened in Adar Village, East Gorom Subdistrict, East Seram Regency, where they marry more than one woman and then neglect their obligations towards the first wife. The research method used is a type of normative research conducted by examining legal materials or secondary data, legal materials consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The procedure for collecting legal materials is carried out by examining legal materials, compiling legal materials, and finally processing and analyzing legal materials. The results of the study indicate that the form of maintenance obligations for a husband who has more than one wife provides housing and living expenses to each wife in proportion to the size of the family borne by each wife, unless there is a marriage agreement. If the wives are willing and ihlas, then the husband can place his wife in one place. While the form of legal protection for wives who are not supported by their husbands such as protection for the provision of physical and mental sustenance, protection of the fulfillment of their rights in the form of good treatment and the right to obtain useful knowledge is regulated under Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

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INTRODUCTION

Law Number 1 of 1974 Juncto 16 of 2019 concerning Marriage, (hereinafter referred to as the Marriage Law), provides a definition of marriage as the inner birth bond between a man and a woman as husband and wife with the aim of forming a happy family, both born and inwardly aware of the One Godhead, in the literature of marriage is a contract that legalizes association and limits the rights and obligations and help between a person a man and a woman who are not strangers between them. Business is any activity carried out by a person or group with the intent to produce, sell, buy, or exchange products or services for profit.¹ Marriage has a very

¹ Martiman Prodjohamidjojo, *Hukum Perkawinan Indonesia*, (Jakarta:Indonesia Legal Center Publishing, 2007), hlm.8.

important value for human survival because with marriage, the position of human beings will be more respectable and in addition by carrying out marriage life becomes calm and happy and causes love between the two. Judging from the aspect of the rules about marriage, marriage is the cohabitation of a man and a woman who meet the conditions included in the regulations, namely the rules of cohabitation.²

The conditions for the legality of marriage according to Law Number 1 of 1974 Juncto 16 of 2019 concerning Marriage In Article 4 paragraph (1) in this case a husband will have more than one wife, as stated in Article 3 paragraph (2) of the Marriage Law, then he is obliged to submit an application to the court in the area where he lives. The Court intends in paragraph (1) of this Article to only give permission to a husband who will marry more than one if: a. the wife is unable to carry out her obligations as a wife b. the wife has a physical disability or disease that cannot be cured c. there is a guarantee that the husband will act fairly towards his wives and their children

This happened in one of the villages, namely Adar Traditional Village, East Gorom District, Eastern Seram Regency, where it happened by one of the parties in this case the husband committed an affair then the affair was known by the party who felt aggrieved in this case the wife, children and also the family of the woman, and therefore this case was reported to the local village government, So that the issue is discussed customarily, and the result of the meeting or mediation of the village government with the two parties comes to a decision or agreement that the man continues the marriage with the woman who is the result of the affair because indeed the person concerned is pregnant. After the marriage took place and the two lived as husband and wife, it turned out that the husband had forgotten the obligation to provide for his first wife.

METHODS OF THE RESEARCH

The method used to study this research uses a type of normative juridical research, which is research conducted by examining legal principles, legal concepts, and laws and regulations related to the problem being researched.³ To carry out this research, the problem approach used

² Wiryono prodjodikoro, *Hukum Perkawinan Indonesia*, (bandung: Alumni, 1991), hlm.7.

³ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Pranada Media, 2005), hal. 237.

is a statute *approach*, a conceptual *approach* and then a qualitatively discritical analysis of legal materials.

RESULTS AND DISCUSSION

A. Rights and Obligations of Alimony

Etymologically, the word *nafkah* means expenses, spending, spending money. The word *alimony* is associated with marriage meaning "Something that a husband must spend for the benefit and needs of his wife and children so as to cause his property to decrease". From some of the definitions of *alimony* with some of its characteristics, *alimony* can be formulated in the sense of a husband's obligations that arise as a result of a marriage contract that makes him have a burden of responsibility, in the form of meeting primary and secondary needs for the continuity of the household and in achieving a happy family.

Alimony is a gift that is an obligation of the husband to his wife in the form of a stamp or non-material, because basically the word *alimony* itself means material. While the obligation itself also has a non-material meaning, such as satisfying the wife's sexual desires, including in the sense of non-material or mental support.

However, on the other hand, if the husband provides support according to his ability by being guided by the instructions of the Quran and Hadith, this can create a peaceful and harmonious home life. Among the goals of marriage are to get calm in domestic life, the existence of affection, and good association in the household. All of this will be achieved well when supported by the fulfillment of the needs of life in the household. The purpose of the obligation of *alimony* is to realize the purpose of the marriage, which is to become a family that is *sakinah*, *mawadah*, *warahma*, and *barokah*.

1. Mazhab Hanafiyah
2. Mazhab Maliki
3. Madhhab Shafi'i
4. Madzhab Hambali

If the *shari'iyah* of the *nafkah* is limited to food needs only, then the opposite is in the *hanbali madzhab*. Therefore, the livelihood of the needs of life in general, from food, clothing

to boards and other supplementary needs. The giving is not only for *zaujiyyah* maintenance but also includes *al-qorobah* and *al-mulk* maintenance.

B. Having more than one wife according to the Marriage Law

Having more than one wife in Indonesia is also legalized in accordance with the provisions of Article 3 paragraph (1) of Law Number 1 of 1974 concerning marriage, namely: Paragraph (1) in principle in a marriage a man may only have one wife. A woman can only have one husband. The provisions of Article 3 paragraph (2) of Law Number 1 of 1974 regarding marriage above open the possibility that a husband can have more than one wife if desired by the first wife, of course, with the permission of the Court. Paragraph 2a The Court can give permission to a husband to have more than one wife when desired by the parties concerned. Verse 2b. The consent referred to in paragraph (1) letter a of this article is not necessary for a husband if his wife/wives cannot be asked for his consent and cannot be a 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 assessed by the Court Judge.

1. Procedures and conditions for having more than one wife according to the Marriage Law

The main condition that must be met is that the husband is able to act fairly with his wife and children, but if the husband cannot fulfill it, the husband is prohibited from having more than one wife. In addition, the husband must first get permission from the Religious Court, if without permission from the Religious Court, the marriage does not have legal force. If a husband intends to marry more than one wife, he is obliged to submit a written application to the Court, as stated in Article 4 paragraph (1) of Law Number 1 of 1974 concerning Marriage, namely:

Paragraph 1: In the event that a husband will marry more than one wife, as stated in Article 3 paragraph (2) of this Law, then he is obliged to submit an application to the Religious Court in the area where he lives. The Religious Court can only give permission to the husband to practice polygamy if there are reasons listed in accordance with the requirements in Article 4 paragraph (2) of Law Number 1 of 1974 concerning Marriage, namely: Paragraph 2: The court referred to in paragraph (1) of this article only gives permission to a husband who will marry more than one if:

- a. The wife is unable to carry out her duties as a wife
- b. The wife gets a physical disability or an incurable disease.
- c. The wife is unable to bear offspring.

These three reasons exist only in the normative rules. Because, in reality, in society, having more than one wife is generally done not for these three reasons, but only for orgasmic reasons. The provisions of the law that allow husbands to have more than one wife are only state administrative, they do not need a marriage certificate. Article 55 of the Compilation of Islamic Law: paragraph (1) Having more than one wife at the same time, limited to only four wives.

Paragraph (2) The main condition for having more than one wife, the husband must be fair to his wife and children. Paragraph (3) If the main conditions mentioned in paragraph (2) cannot be met, the husband is prohibited from having more than one wife. Article 56 of the KHI: (1) A husband who wants to marry more than one wife must obtain permission from the Religious Court. (2) The submission of an application for permission intended in paragraph (1) is carried out according to the procedure as stipulated in Chapter VIII of Government Regulation Number: 9 of 1975 (3) Marriage carried out with the second, third or fourth wife without permission from the Religious Court, does not have legal force. In Article 57 of the Compilation of Islamic Law, the Religious Court only gives permission to a husband who will marry more than one wife if there are reasons as mentioned in Article 4 of the Law on marriage. So basically the Court can give permission to a husband to have more than one wife if desired by the parties concerned. Furthermore, Article 59 also describes how great the authority of the Religious Court is in granting permits. So that for wives who do not give consent to their husbands to have more than one wife, the consent can be taken over by the Religious Court. The court may order the granting of permission after examining and hearing the wife concerned at the Religious Court trial and against this determination the wife or husband may file an appeal or cassation.

Deviating from the provisions of this article, a husband can only be considered to be allowed to have more than one wife if it does not conflict with the provisions of the religion he adheres to and in the event that the wife cannot give birth to children with a doctor's certificate. In

relation to the paragraph of this article, the application letter must be completed in addition to the attachment in Article 14 of this decree also by including:

- a. Personal Certificate from the prospective wife stating that she does not object and is able to be honeyed;
- b. Statement / consent letter from the first wife;
- c. A statement from the husband stating that there is certainty that he is able to guarantee the physical and spiritual needs of his wives.

Having more than one wife is interpreted as a marriage institution that allows the realization of a family where the husband has more than one wife¹ and according to Mrs. ⁴

A husband who will marry more than one wife must obtain permission from the Court, especially for Muslims, the permission must be submitted to the Religious Court. To get permission from the court, certain conditions must be met and accompanied by justified reasons. This matter is further regulated in Article 4 and Article 5 of the Marriage Law. So the implementation of polygamy is an exception that is only allowed for a man who really meets the requirements that must be fulfilled and not every man is allowed to practice polygamy.

According to Al-Athar in his book *Ta'addud al-Zawzat* as quoted by Khoirudin Nasution recorded four negative effects of polygamy, namely:⁵

1. Polygamy can cause jealousy among wives.
2. Causing the wife's concern if the husband cannot be wise and fair.
3. Children born to different mothers are very prone to fights, hostility, and mutual jealousy.
4. Chaos in the economic field. It is possible that at first a husband has the ability to polygamy, but it is not impossible that one day he will experience bankruptcy, so there will be more victims.

Regulations on Polygamy in Indonesia Basically in the Marriage Law Number. 1 Year 1974 adheres to the principle of monogamy in marriage. This is stated expressly in Article 3 paragraph (1) which states "Basically, a man can only have one wife and a woman can only have one husband".

⁴ Hoeve Van 1990. *Ensiklopedia Nasional Indonesia*, PT Cipta Adi pustaka, jakarta

⁵ Khairuddin Nasution, *Riba and Polygamy: A Study of the Thought of Muhammad Abduh*, (Yogyakarta: Pustaka Siswa, 1996), p. 100

However, the principle of monogamy in the Marriage Law is not absolute, meaning that it is only a direction to the establishment of monogamous marriage by making it difficult to use polygamous institutions and not completely abolishing the polygamy system. This can be an argument that if polygamy marriage is made easier, then every man who is married or who is not necessarily will congregate to commit polygamy and this will certainly be very detrimental to the woman as well as the children she will give birth to later in the future.

Article 40 of Government Regulation Number 9 of 1975 states "If a husband intends to marry more than one wife, then he is obliged to submit in writing to the court", as stated in Article 3 paragraph (2) of the Marriage Law. In addition to this Article, a husband who will practice polygamy must also comply with Articles 4 and 5 of the Marriage Law,

Article 4 of the Marriage Law:

(1) In the event that a husband will marry more than one person, as stated in Article 3 paragraph (2) of this Law, then he shall submit an application to the Court in the area where he lives.

(2) The court referred to in paragraph (1) of this Article only grants permission to a husband who will marry more than one if:

- (3) The wife is unable to carry out her duties as a wife;
- (4) The wife has a physical disability or disease that cannot be cured;
- (5) The wife is unable to bear children.

Article 5 of the Marriage Law:

(1) To be able to submit an application to the Court as intended in Article 4 paragraph (1) of this Law, the following conditions must be met:

- a. The consent of the wife/wife;
- b. There is certainty that the husband is able to guarantee the living needs of his wives and their children;
- c. There is a guarantee that the husband will be fair to his wives and their children.

(2) The consent referred to in paragraph (1) letter a of this article is not necessary for a husband if his wife/wife cannot be asked for his consent and cannot be a 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 assessed by the Court Judge. With the sound of articles that allow polygamy even for certain reasons, it is clear that the principle adopted by the marriage law is actually not the principle of absolute monogamy but open monogamy. Polygamy is placed in the status of emergency law (emergency law), or in extraordinary circumstances (*extra ordinary circumstance*). In addition, the institution of polygamy is not solely the full authority of the husband but on the basis of permission from the judge (court), as stated in Article 3 paragraph (2).

With this verse, it is clear that the Marriage Law has involved the Religious Court as an institution that is quite important to legalize the ability of polygamy for a husband, It seems that the reason used as the basis for proposing polygamy is physical nuanced except for the third reason. However, it turns out that the Marriage Law also contains conditions for the ability to polygamy, as contained in Article 5 paragraph (1) To distinguish the requirements in Articles 4 and 5 are, in Article 4 it is called alternative requirements which means that one must exist to be able to apply for polygamy. While Article 5 is a cumulative requirement that must be fully fulfilled by the husband who commits polygamy.

The permission of the Religious Court seems to be very decisive. If a legal decision that has permanent legal force does not obtain court permission, then according to the provisions of Article 44 PP No. 9 of 1975 it is explained that the Registrar is prohibited from registering the marriage of a husband who will be married to more than one wife before the Court's permission as referred to in Article 43 (PP No. 9 of 1975)

The legal provisions that regulate the implementation of polygamy as described above are binding on all parties, the party who carries out polygamy and marriage registrars. If they violate the provisions of the above articles, they are subject to criminal sanctions, this matter is regulated in Government Regulation No. 9 of 1975 Article 45:

Unless otherwise specified in the applicable laws and regulations, then: Whoever violates the provisions stipulated in article 3,10 paragraph (3), 40 of this Government Regulation shall be punished with a fine of up to Rp. 7500,- (seven thousand five hundred rupiah) This Government Regulation shall be punished with imprisonment for a period of 3 (three) months

or a fine of up to Rp. 7500, (Seven thousand five hundred rupiah). The criminal act referred to in paragraph (1) above is a violation.

KHI as seen is no different from the Marriage Law in this polygamy issue. Especially for Muslims, the practice of polygamy is regulated in the Compilation of Islamic Law Book I on Marriage Law Chapter IX Article 55 to 59.

Article 55: KHI:

Wives more than one person at the same time is limited to four wives. The main requirement to have more than one wife, the husband must be fair to his wife and children. If the main conditions mentioned in paragraph (2) cannot be met, the husband is prohibited from having more than one wife.

Article 56 of the KHI :

Husbands who want to marry more than one person must obtain permission from the Religious Court. The submission of the application for permission intended in paragraph (1) is carried out according to the procedure as stipulated in Chapter VIII PP No.9 of 1975 Marriage carried out with the second, third or fourth wife without permission from the Religious Court, does not have legal force.

Marriage is one of the most important events in the life of the Indonesian people. The consequence of marriage concerns not only the legal relationship between the prospective husband and wife, but also with the parents of both parties, siblings, and even the families of both parties. According to Article 1 of Law Number 1 of 1974, marriage is an innate 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 One Godhead. Article 2 Paragraph (1) of the Law states that marriage is valid if it is carried out according to the law of each religion and belief, while Article 2 paragraph (2) of the Marriage Law states that each marriage is recorded in accordance with the applicable laws and regulations.

Based on the provisions of Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage mentioned above, each marriage is required to have a marriage registration in accordance with the provisions of the applicable laws and regulations. The registration of marriages of those who carry out their marriages according to Islam is carried out by registrars

as referred to in Law Number 32 of 1954 concerning Marriage Registration, Talak and Referral, while the marriage registration of those whose marriages according to their religion and beliefs are Islamic is carried out by marriage registrars at the Civil Registration Office as referred to in various laws regarding marriage registration.

The registration of this marriage is also expressly regulated in Article 2 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, which states that:

a. The registration of marriages of those who carry out their marriages according to Islam is carried out by the Registrar as referred to in Law Number 32 of 1954 concerning Marriage Registration, Talak and Referral.

b. The registration of marriages of those who carry out their marriages according to their religion and beliefs, other than Islam, is carried out by the Marriage Registrar at the Civil Registry Office as referred to in various laws regarding marriage registration.

c. Without prejudice to the special provisions applicable to marriage registration procedures based on various applicable regulations, marriage registration procedures are carried out as determined in Articles 3 to 9 of this Government Regulation.

This marriage registration is useful as a recognition of the validity of the marriage by the State, and the institutions authorized to register this marriage are the Office of Religious Affairs and the Civil Registry Office. This marriage registry institution has 4 (four) purposes, namely:

1. To create legal certainty
2. To establish legal order
3. For proof
4. To facilitate Government activities in the field of population or population administration.⁶

C. Overview of Legal Protection

Legal protection consists of two words, namely protection and law. The word protection according to the Great Dictionary of the Indonesian Language is interpreted as a place of

⁶ Victor M. Situmorang dan Cormentya Sitanggang, *Aspek Hukum Akta Catatan Sipil di Indonesia*, (Jakarta, Sinar Grafika, 1996), hal. 13

refuge, things (deeds and so on) that protect.⁷ Meanwhile, the term law, according to Soedikno Mertokusumo, is the entire regulation of behavior that applies in a life together, which can be enforced by a sanction.⁸ Legal protection is to provide protection to human rights that are harmed by others and such protection is given to the community so that they can enjoy all the rights granted by the law.⁹ Legal protection is the protection of dignity and dignity, as well as the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will be able to protect one thing from another.¹⁰ According to *CST Kansil*, legal protection is a variety of legal remedies provided by law enforcement officials to provide a sense of security, both mentally and physically, from disturbances and various kinds of threats from any party.¹¹

D. Legal Protection of Wives

Violence against women, especially in the domestic sphere and more specifically against wives, is a form of crime against humanity. The increase in this type of violence in Indonesia has encouraged various groups to overcome it in various applicable laws and regulations. Prior to the issuance of Law Number 23 of 2004 concerning the elimination of domestic violence, there were no provisions in the positive law that explicitly regulated the act of husband's violence against the wife.¹² The Criminal Code can be used as a legal basis to complain to husbands to the police. In addition, wives who are victims of domestic/family violence can also use other legal instruments, such as Islamic family law. The form of wife protection in Islamic family law instruments can be found in various Islamic family law rules, including the following:

1. Alimony Protection

The wife as a housewife, of course, has a form of protection in terms of providing alimony. The wife has the right to sue her husband for her birth support, because in the constitution it is strictly given a portion of alimony to the wife as a form of husband's obligation. This is

⁷ <http://www.prasko.com/2011/02/pengertian-perlindungan-hukum> diunduh pada 10 Januari 2018

⁸ Sudikno Mertokusumo, 2005, *Mengenal Hukum*, Yogyakarta: Liberty. Hlm. 40.

⁹ Satjipto Rahardjo, 2014, *Ilmu Hukum*, Bandung: Citra Aditya. Hlm.74.

¹⁰ Philipus M. Hadjon, 1987, *Perlindungan Hukum bagi Rakyat di Indonesia*, Surabaya: Bina Ilmu. Hlm. 25.

¹¹ CST Kansil, 1989, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Jakarta: Balai Pustaka. Hlm. 102.

¹² Law Number 23 of 2004 concerning PKDRT

illustrated in the Presidential Regulation of the Republic of Indonesia No. 1 of 1991 concerning the Compilation of Islamic Law: In accordance with the income of the husband bears:

- a. Alimony, kiswah and place of residence for the wife
- b. Household expenses, maintenance costs and medical expenses for wives and children.

2. Protection of Rights

The protection of the rights of the wife is included in Islamic family law, this indicates a form of protection for the wife. In Law No. 1 of 1974 concerning marriage, it is stated that:

Article 31

1. The rights and position of the wife are balanced with the rights and position of the husband in domestic life and social life in society.

2. Each party has the right to take legal action.¹³

3. Hardness Protection

A form of protection of the wife from violence that can hurt her physically and psychologically. The form of marriage as in the Compilation of Islamic Law (KHI) is a form of affection in building a household. in Article 77 of the KHI is explained. Article 77

1) Husband and wife bear a noble obligation to uphold a household that is *sakinah*, *mawaddah* and *rahmah* which is the basic joint of the structure of society.

E. Legal Protection Against A Wife Who Is Not Supported By Her Husband

Alimony is mandatory for a wife as long as she fulfills all her dependents. A wife fulfills her various natures. If the wife deviates from the existing rules, exceeding the husband in married life, then the wife does not get maintenance. Legal consequences are consequences caused by legal events. ¹⁴ Meanwhile, the definition of legal events is a social event that brings consequences regulated by law.¹⁵ Just like marriage which is a legal event so that it has legal consequences as well. In the marriage relationship, there are indeed many consequences as a result of a new alliance (*Aqad*) that is established, and one of them is the establishment of a family bond between the two.

¹³ Law Number 1 of 1974 Article 31

¹⁴ J.B Daliyo, *pengantar ilmu hukum*, (Jakarta: gremedia pustaka ulama 1992), hal. 104.

¹⁵ *Ibid.*, Hal.101

The Marriage Law does not regulate the issue of alimony specifically and in detail. However, the same meaning as alimony itself is implicitly mentioned in Article 34 paragraph (1) of Law No. 1 of 1974 concerning Marriage which reads: "The husband is obliged to protect his wife and provide everything necessary for domestic life according to his ability".¹⁶ This means that the husband has an obligation to meet the family's economic demands. To form an ideal family, full of happiness and welfare must be supported by the fulfillment of the needs of each party in a family. The needs of food, clothing, shelter and daily needs of a wife, children and husband himself must be considered.

CONCLUSION

The form of maintenance obligation for a husband who has more than one wife based on article 34 paragraph (1) of the Marriage Law states that the husband is obliged to provide everything necessary for domestic life according to his ability. If the husband wants to marry more than one, then the husband is said to be able to provide for his wives fairly. Forms of legal protection for wives who are not provided for by the husband, such as protection for the provision of child support, protection for the fulfillment of their rights in the form of good treatment and the right to obtain useful knowledge are regulated based on Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

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¹⁶ Undang-Undang Republic Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam, (Bandung : Citra Umbara, 2007), Hlm. 14

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