

DISPUTES IN THE SECOND MARRIAGE WITHOUT THE PERMISSION WIFEFIRST

Fathimah Shalehah

UIN Sunan Kalijaga Yogyakarta
FatimahSholihah41@gmail.com



e-ISSN: 2964-0962

SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum

<https://ejournal.45mataram.ac.id/index.php/seikat>

Vol. 1 No. 1 Oktober 2022

Page: 16-21

Available at:

<https://ejournal.45mataram.ac.id/index.php/seikat/article/view/89>

DOI:

<https://doi.org/10.55681/seikat.v1i1.89>

Article History:

Received: 1-10-2022

Revised: 20-10-2022

Accepted: 28-10-2022

Abstract : Marriage according to Law Number 1 of 1974 concerning Marriage is an inner and outer bond between a man and a woman to form a happy household. The authority of polygamy is not absolute in the hands of the husband, but there are other conditions that must be met, namely getting permission from the judge (court). The purpose of this study is to analyze the regulation of criminal sanctions in a second marriage without the permission of the first wife and the legal consequences of a second marriage that does not meet the applicable legal provisions. This study uses a normative legal research method with an approach to legislation. Sources of legal materials used are primary and secondary sources of legal materials. Data collection techniques were carried out by examining existing library materials which were then analyzed systematically. The results of the study reveal that criminal sanctions are given in the second marriage without providing incorrect information based on the criminal provisions in PP No. 9 of 1975 which is a *lex specialis* of the Criminal Code. The legal consequence of the second marriage is that if the husband has remarried or has polygamy without the knowledge of the first wife, the first wife can sue by submitting a request for annulment of the marriage contained in Articles 22-29 of the Marriage Law.

Keywords : First Wife's Permission, Marriage, Dispute

Abstrak : Perkawinan menurut Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan antara laki-laki dan perempuan merupakan ikatan lahir dan batin yang membantu mereka menciptakan rumah tangga yang bahagia. Kekuasaan suami atas poligami tidak terbatas, tetapi ada syarat lain yang harus dipenuhi, seperti mendapat persetujuan hakim (pengadilan). Tujuan dari penelitian ini adalah untuk mengkaji undang-undang yang mengatur tentang perkawinan kedua tanpa persetujuan istri pertama serta akibat hukum dari perkawinan kedua yang tidak memenuhi syarat-syarat hukum yang bersangkutan. Dengan fokus pada perundang-undangan, penelitian ini menggunakan metodologi penelitian hukum normatif. Sumber informasi hukum primer dan sekunder adalah sumber yang digunakan. Metode Pengumpulan Data Melalui analisis metode dari item perpustakaan yang sudah ada. Berdasarkan ketentuan pidana dalam PP No. 9 Tahun 1975, a *lex specialis* KUHP, temuan penelitian menunjukkan bahwa hukuman pidana diterapkan dalam perkawinan kedua tanpa memberikan keterangan palsu. Akibat hukum dari perkawinan kedua antara lain adalah kesanggupan istri pertama untuk mengajukan gugatan dan bahwa perkawinan tersebut dibubarkan sesuai dengan Pasal 22 sampai dengan 29 UU Perkawinan jika suami telah kawin lagi atau berpoligami tanpa sepengetahuan istri pertama.

Kata Kunci : Izin Istri Pertama, Perkawinan, Sengketa

INTRODUCTION

Marriage according to Law Number 1 of 1974 concerning Marriage is an inner and outer bond between a man and a woman to form an eternal happy household based on the provisions of the Almighty. The essence of the article is that the purpose of marriage is to form a happy and eternal family based on the power of the Almighty or based on religious law (Setiono & Bahroni, 2018).

Based on the applicable positive law, marriage basically adheres to the principle of monogamy. This principle only gives a man the opportunity to have a wife, and vice versa. It has been regulated in a limited manner. A household life, to create a peaceful and happy family there must be a balance of duties between husband, wife and children. Peaceful living in the household is a goal that must be achieved in family life. To create peace in the household, there must be love, togetherness, fun and mutual trust. But not all marriages will run smoothly and without obstacles. Problems can arise along the way in a household. When a married life is filled with many lies and there is no sense of togetherness, affection and mutual respect, a quarrel will be created which can lead to the breakdown of a household, be it quarrels, divorce and even polygamy (Soimin, 2010).

Wife's consent is often a core issue in polygamy, where a husband marries a second or more time without the permission of his first (previous) wife. This marriage is usually carried out under the hands or commonly called "marriage-siri". Basically, article 56 has explained that a person who wants to have more than one wife must obtain permission from the court and the application for permission is carried out according to the procedure as regulated in chapter VIII PP No. 9 of 1975 (Arifah et al., 2016). Furthermore, if you look at the various positive laws in Indonesia that regulate illegal polygamy, it can be seen that illegal polygamy is seen as a criminal act, but the criminal sanctions that threaten illegal polygamy can vary depending on which regulations you look at. If viewed from Article 45 to Government Regulation No. 9 of 1975, it is seen that illegal polygamy acts only as a *wetsdeliktern* (administrative violation) which carries a penalty of a maximum fine of Rp. 7.500.- (seven thousand five hundred rupiah). The crime of remarrying without the permission of the previous wife is basically a criminal offense against a civil position. There are 4 (four) articles related to the criminal act of violating this civil position, namely as regulated in Articles 277, 278, 279 and Article 180 of the Criminal Code (Sekoh, CE). Meanwhile, if viewed from the point of view of Article 279 of the Criminal Code, illegal polygamy acts will be seen as *rechtsdeliktern* (criminal acts of light category) with a maximum imprisonment of 5 (five) years, but if the act is based on lies, the maximum penalty is 7 years. (seven) years in prison (Subekti, 1980).

Previous research revealed that the practice of polygamy by the husband without the permission of the first wife is a lie and betrayal of the husband against his wife, and can be categorized as a form of domestic violence in the context of psychological violence (Rizkal, 2019). Judging from positive law, it considers marriage without permission from the wife in a previous legal marriage as adultery because the marriage, although legal according to religious law, is not recognized by the State (Rochxy & Lesmana, 2013). Criminal sanctions against parties who carry out polygamous marriages without a court ruling are the threat of a five to seven year criminal sentence against men who marry (Siregar, 2017). From this phenomenon, a study was carried out which aims to analyze the regulation of criminal sanctions in a second marriage without the permission of the first wife and the legal consequences of a second marriage that does not meet the applicable legal provisions.

RESEARCH METHODS

In uncovering the problems that occur, researchers use the type of normative legal research used in legal research which is carried out by examining existing library materials by applying a statutory approach by reviewing legislation and related implementing regulations, especially those related to problems regarding disputes in the second marriage without the permission of the first wife. The data collection technique was carried out by examining existing library materials. The source of the legal materials used were primary legal materials obtained by analyzing laws and regulations, official minutes, and several decisions related to the title of this research. Secondary

legal materials are obtained from analyzing books, journals and the results of previous research which are then analyzed systematically.

RESULTS AND DISCUSSION

1. Regulation of Criminal Sanctions in Second Marriage without First Wife's Permission

Law no. 1 of 1974 concerning Marriage cannot be separated from the Criminal Code (KUH) for two reasons, namely first, based on the principle of *lex specialis derogate lex generalis*, in this case, the criminal provisions in Law no. 1 of 1974 jo. PP No. 9 of 1975 is a special provision of the Criminal Code. Second, based on the fact that governance law and criminal law are complementary, criminal law is used as a means to implement governance law. In this case, Law no. 1 of 1974 is one source of governance law, while the Criminal Code is one of the sources of criminal law in Indonesia. Therefore, in order to maintain Law no. 1 of 1974 in order to be obeyed, it needs to be supported by the Criminal Code. Based on the editorial of Article 145 of the Draft HMPA Bill, it can be seen that the act of polygamy is absolutely not prohibited as long as the husband who wants to do polygamy obtains permission from the court. Polygamy acts illegally (without court permission) can be subject to criminal sanctions in the form of criminal offenses with sanctions slightly higher than the provisions of Article 45 PP Number 9 of 1975, namely paying a maximum fine of Rp. 6,000,000,- (six million rupiah) or a maximum sentence of 6 (six) months (Bahari, 2012).

The criminal provisions in PP No. 9 of 1975 are *lex specialis* of the Criminal Code, if it turns out that a marriage registrar (PPN) violates the provisions of Article 44 of PP No. 9 of 1975, namely marrying a husband who has not obtained a polygamy permit from the court, then he is only threatened with punishment. in the form of imprisonment for a maximum of 3 months or a maximum fine of Rp. 7,500,- (Article 45 paragraph (1) letter b of PP Number 9 of 1975), no punishment can be imposed on him in the form of imprisonment for a maximum of two years and eight months or a fine of not more than Rp. 4.500,- as stated in Article 436 paragraph (2) of the Criminal Code, because the material regulated in Article 45 paragraph (1) letter b PP Number 9 of 1975 is the same as the material regulated in Article 436 (2) of the Criminal Code, therefore , the latter provision must be set aside on the basis of the principle of *lex specialis derogate lex generalis*. On the other hand, if a husband remarries without the court's permission, then the criminal provisions in Article 279 paragraph (1) to 1 of the Criminal Code, namely a sentence of five years imprisonment, cannot be punished according to the provisions of Article 45 paragraph (1) PP Number 9 of 1975, because what is specifically regulated in the PP is a violation of the provisions of marriage administration, it does not specifically regulate criminal threats for husbands who are married to other people even though their existing marriage is a legal obstacle for him to marry (Muhammad, 1990).

Based on the description above, it can be concluded that people who practice polygamy without court permission are threatened with sanctions:

1. Civil sanctions in the form of threats of marriage cancellation
2. Criminal sanctions in the form of:
 - a. A maximum fine of Rp. 7,500,- (seven thousand five hundred rupiah) for violation of marriage administration (Article 45 paragraph (1) letter a PP No. 9 of 1975).
 - b. Imprisonment for a maximum of five years because of marriage, while he knows that his existing marriage is an obstacle for him to remarry (Article 279 paragraph (1) to 1 of the Criminal Code). This also applies to the second wife if she finds out that her husband is married.
 - c. Imprisonment for a maximum of 7 years for hiding to another party that he is married so that his marriage becomes an obstacle to remarrying (Article 279 paragraph (2) 2 of the Criminal Code).
 - d. Imprisonment for a maximum of 5 years for hiding to another party that there are obstacles for him to marry (Article 280 of the Criminal Code).

For PPN who marry a husband who has polygamy without court permission, he is subject to criminal sanctions in the form of imprisonment for a maximum of three months or a

maximum fine of Rp. 7.500, - (seven thousand five hundred rupiah). The offense as described above is a violation and includes a complaint offense, therefore its enforcement is determined by the proactive attitude of the partnered wife. Anyone who performs a polygamous marriage without going through the procedures established by law can be prosecuted according to Article 279 of the Criminal Code. However, polygamous marriages are not in accordance with the rules of the law or also called wild polygamy that occurs in the midst of people's lives that are not touched by law, but there are also criminal acts of marriage that are prosecuted under Article 279 of the Criminal Code.

When marriage becomes a crime, then there are several people who are the perpetrators of the act namely husband (male) and wife (female). Based on Article 279 of the Criminal Code, the sentence was handed down to the two perpetrators, but in practice there were many cases the crime of marriage (polygamy without the wife's and court's permission) whose punishment is only imposed on male perpetrators (husbands), while women (second wives) not all women who commit crimes are charged with the same act.

2. Legal consequences of a second marriage that does not meet the applicable legal provisions.

When the husband performs polygamy without fulfilling the requirements specified in the marriage law, such as permission from the wife, the wife can apply for an annulment of the marriage. If the husband has remarried or has polygamy without the knowledge of the first wife, the first wife can sue by submitting a request for annulment of the marriage contained in Articles 22-29 of the Marriage Law. The annulment of a marriage can only be done with a court decision, so that with a court decision a marriage that has already occurred is considered to have never existed. However, even though the marriage was deemed to have never existed, it does not necessarily eliminate the legal consequences of a marriage that has ever been done.

Marriage annulment can certainly be included in the area of procedural law or formal law so that a court decision is born. Because this court decision is a legal event as a result of legal actions against another person's marriage, not a divorce decision. The legal act in question is the submission of a marriage annulment application submitted by a party who has the rights as stipulated in Article 23 of the marriage law

- a. The families in the straight line of descent from husband and wife.
- b. Husband and wife.
- c. The official who is authorized only as long as the marriage has not been decided.
- d. The appointed official in paragraph (2) Article 16 of this Law and any person who has a direct legal interest in the marriage, but only after the marriage is terminated.

Marriage annulment can only be done if there is a violation as stipulated in the marriage law. As a bond, marriage is part of civil law (private law). Because marriage takes place from an agreement between the men and women which in this case is based on love and affection and an agreement to form a happy and eternal family. As for the consequences of the violation of unregistered marriage without the permission of the first wife in civil law, namely the right to property gono gini, if the situation is a man who is already married and has a young wife who is married in an unregistered manner, then if the young wife gives birth to a child, the child is according to state law. referred to as an adulterous child, the effect of which is that the child cannot be the heir of his biological father but has the right to be supported.

In the event of a divorce, the siri wife is not legally entitled to claim the right to share the property, because the siri marriage is considered to have never existed and never happened. In addition to not getting the rights to the property of a siri marriage, they also cannot make a second marriage certificate. A second marriage without the permission of the first wife or what is commonly called an unregistered marriage, is clearly against the law, because it is not possible to show valid evidence that the marriage has occurred or is taking place. before the State. Based on article 2 paragraph (2) of the marriage law, it is the obligation to register the marriage with the Office of Religious Affairs (KUA) and obtain a marriage book as proof of marriage registration. That as long as there is no word of divorce to the wife, of course the wife is still the legal wife of the husband. However, marriage is also part of criminal law (public law) which if in the process fulfills material elements as an act of crime and violation. Where

every crime and violation can be punished by a criminal for every perpetrator.

Then in Article 279 of the Criminal Code paragraph (1) stipulates that a crime against marriage is for anyone who holds a marriage that already exists as a barrier to the validity of the marriage. a man even though he is still bound by marriage to another woman and the marriage is carried out in a way that is contrary to the provisions of the marriage law (more than four wives), then the marriage is a criminal act which is punishable by a maximum sentence of five years. This article explains that marriages that are held not before a marriage registrar are categorized as violations, or acts that deviate from applicable legal norms, this is also regulated in the marriage law, that marriages must be registered according to applicable laws and in complications. Islamic law article 6 paragraph (2). The process of annulment of marriage is the same as the procedure for a divorce suit, whether it be summons, examination and decision on the annulment of polygamous marriages, as regulated in Articles 20 to 306 of PP No. 9 of 1975. The annulment of a marriage carried out by a wife against a husband who remarries without the wife's permission, there is no time limit in carrying out the marriage annulment process and at any time the wife can apply for an annulment of marriage.

CONCLUSIONS AND RECOMMENDATIONS

1. Conclusion

Criminal sanctions given in the second marriage without providing incorrect information based on the criminal provisions in PP Number 9 of 1975 are *lex specialis* of the Criminal Code, if it turns out that a marriage registrar (PPN) violates the provisions of Article 44 PP Number 9 of 1975, namely marrying a husband who has not obtained a polygamy permit from the court, then he is only threatened with imprisonment for a maximum of 3 months or a maximum fine of Rp. 7.500,-. Based on Article 279 of the Criminal Code which reads "anyone who holds a marriage knowing that his existing marriage or marriages are a legal barrier to that. Whoever enters into a marriage knowing that the marriage or marriages of another party are an obstacle to that, shall be punished by a maximum imprisonment of five years. As for the legal consequences of the second marriage, namely if the husband has remarried or has polygamous without the knowledge of the first wife, the first wife can sue by submitting a request for annulment of marriage in the provisions of Article 279 of the Criminal Code in conjunction with Articles 22-29 of the Marriage Law regarding marriage annulment.

2. Suggestion

It is hoped that the government of course Indonesia can provide legal reforms and legal considerations in deviant marriages, especially regarding the very small sanctions for polygamy in Indonesia. It is hoped that lawmakers or regulations can evaluate the deviant marriage rules that occur in Indonesia which result in disputes between the two parties. For husbands who want to practice polygamy, they should think about it first, because in general polygamy has more negative effects on family harmony. In addition, polygamy also results in the neglect of the rights of wives and children.

REFERENCES

- Arifah, A. N., Sholehah, R., & Hardianto, T. (2016). Poligami Kiai: Praktek Poligami Kiai di Kota Jember dalam Pandangan Khi dan Gender. *Yudisia*, 7(1), 120–145.
- Bahari, A. (2012). *Prosedur Gugatan Cerai, Pembagian Harta Gono-Gini, Hak Asuh Anak*. Pustaka Yustisia, Yogyakarta.
- Muhammad, A. (1990). *Hukum Perdata Indonesia*. Citra Aditya Bakti, Bandung.
- Rizkal. (2019). Poligami Tanpa Izin Isteri dalam Perspektif Hukum: Bentuk Kekerasan Psikis Terhadap Isteri. *Jurnal Yustisia*, 22(1), 26–36.
- Rochxy, & Lesmana, B. (2013). Pemidanaan Terhadap Pelaku Perkawinan di Bawah Tangan Tanpa Izin Istri Pertama. *Jurnal Yudisial*, 6(3), 250–266.
- Sekoh, C. H. (21 C.E.). Kajian Yuridis Terhadap Suami Menikah Kembali (Poligami) Tanpa Izin Istri Pertama ditinjau dari Undang-undang Nomor. 1 Tahun 1974 Tentang Perkawinan. *Lex Privatum*, 2, 9(2), 129–139.

- Setiono, G. C., & Bahroni, A. (2018). Tinjauan Yuridis Tentang Poligami Tanpa Izin Isteri Menurut Kompilasi Hukum Islam (KHI). *Dinamika Hukum & Masyarakat*, 1(1), 1–25.
- Siregar, M. Y. (2017). Sanksi Pidana Terhadap Perkawinan Poligami Tanpa Adanya Persetujuan Istri. *Jurnal Ilmiah Advokasi*, 5(1), 52–73.
- Soimin, S. (2010). *Hukum Orang dan Keluarga: Perspektif Hukum perdata Barat/BW, Hukum Islam, dan Hukum Adat*. Sinar Grafika, Jakarta.
- Subekti. (1980). *Pokok-Pokok Hukum Perdata*. Intermasa, Jakarta.