

RIGHTS AND PROTECTION OF WIVES OVER JOINT PROPERTY UNDER POLYGAMY IN INDONESIA

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Abstract

This research aims to analyse the legal protection of the first wife's rights in the division of joint property in polygamous marriages in Indonesia. Through a normative juridical approach, this research examines the legal provisions governing the division of joint property as well as the challenges in practice. The results show that despite clear arrangements in the Marriage Law and the Compilation of Islamic Law, in practice injustice often occurs to the first wife, both from formal legal aspects and socio-psychological factors. Therefore, legal policy reform and strengthening of legal protection mechanisms are needed to ensure justice for the first wife in the division of joint property in polygamous marriages.

Keywords: *polygamy, joint property, wife's rights.*

INTRODUCTION

Polygamy, although permitted under Indonesian law, remains a controversial issue in practice. Under Law No. 1/1974 on Marriage (Marriage Law), a man can have more than one wife with the approval of the court, if he fulfils the conditions stipulated in the law. Article 3 paragraph (2) of the Marriage Law states that the court may grant a polygamy licence with valid reasons, such as the wife cannot perform her obligations, the wife has an incurable disability or disease, or the wife cannot bear offspring. However, polygamy in Indonesian law remains within the corridor of open monogamy (Khoiriyah, 2017; Pawitasari, 2019; Harahap, 2019; Pua, et al., 2022), which means that polygamy can only be carried out with the supervision and permission of the court.

Although polygamy is legally possible, in reality it causes many problems, both for the first wife and the second wife and so on, especially related to the arrangement of joint property. This is the main issue behind this research. Article 35 of the Marriage Law stipulates that property obtained during marriage is joint property (Safithri, 2020; Rahman, et al., 2020), while the assets of each party remain private property. However, in the practice of polygamy, disagreements often occur regarding the division of joint property between the first wife and the second or more wives, which ultimately lead to legal disputes (Risnalisah & Bahri, 2023).

One of the main problems that often arise in polygamous marriages is the control of joint property (Swandana & Mariadi, 2021; Sukrina & Rahayu, 2018). Based on the provisions in Article 94 of the Compilation of Islamic Law (KHI), the separation of joint property in polygamy must be carried out from the marriage contract between the husband and the second wife onwards. This aims to avoid mixing assets that can trigger disputes in the future. However, in reality, there are not a few cases where the second or subsequent wife controls joint property that should be the right of the first wife. This problem becomes

more complicated when there is no clear arrangement regarding the division of property in the marriage agreement, which should provide legal protection for each party.

Legal protection for the first wife is particularly important in this context. Although there are legal provisions governing the separation of joint property, in many cases, the first wife often feels disadvantaged because the division of property does not always reflect her contribution to building the family. For this reason, it is very important to regulate the rights to joint property, both in the form of a marriage agreement and a fair court decision. With a clear marriage agreement, it is hoped that it can prevent conflicts regarding the division of joint property, as well as provide legal certainty for the first wife as well as the second wife and so on.

The issue of the division of joint property in polygamy also often ends up in court, where the religious court acts as an arbiter. In practice, some court decisions take into account factors such as the length of the marriage, the contribution of each party, and the available evidence in determining the division of joint property. Therefore, it is important for every couple in a polygamous marriage to ensure that there is a clear arrangement regarding the division of property, both before and after marriage, through a valid marriage agreement.

This research aims to analyse the legal protection of the first wife's rights in the division of common property in polygamous marriages in Indonesia. The main focus of this research is to understand how the regulation of the division of common property is applied in the practice of polygamous marriage and how legal protection for the first wife can be implemented fairly. This research will also explore the factors that influence injustice in the division of property, as well as assess the extent to which existing legal mechanisms can provide justice for first wives in the context of polygamy.

The hypothesis proposed in this study is that although there are legal provisions governing the division of common property in polygamous marriages, in practice the first wife often experiences injustice in the division of property. This is due to the lack of clear arrangements regarding the rights of the first wife in the marriage agreement, as well as the inequality in the application of court decisions governing the separation of joint property between the first wife and subsequent wives.

This research is expected to make a significant contribution to the development of family law studies, especially related to the protection of the first wife's rights in polygamous marriages. By analysing the regulation and practice of joint property distribution, this research can provide recommendations for reforming legal policies that are fairer and more transparent, as well as providing insight for legal practitioners in handling cases of joint property disputes in polygamous marriages. In addition, this research also aims to increase public awareness of the importance of a clear marital agreement as a preventive measure against property conflicts.

The conceptual framework of this research focuses on two main concepts, namely joint property and legal protection for the first wife. Joint property is understood as property acquired during marriage, which according to Article 35 of the Marriage Law and Article 94 of the Compilation of Islamic Law (KHI) must be separated in the case of polygamy. Legal

protection for the first wife includes legal efforts to ensure that the first wife's right to joint property is fairly recognised and protected in the practice of polygamous marriage. This research will analyse the relationship between the two concepts, focusing on the regulation of the division of joint property and legal protection in the context of Indonesian marriage law.

LITERATURE REVIEW

The concept of an agreement as an agreement between two or more parties who agree to comply with the contents of the agreement, either orally or in writing. Subekti (1987). explains that an agreement is an event in which two parties promise each other to carry out an agreed thing, either orally or in writing. In Article 1313 of the Civil Code (KUHPerdata), an agreement is defined as a legal act that binds one party to another. Therefore, in the context of marriage, this agreement is very relevant to regulate the rights and obligations of both parties, including the arrangement of joint property and assets of each party.

In the context of marriage, agreements regarding joint and inherited property have been regulated in Article 47 of the Compilation of Islamic Law (KHI), which states that joint property is property obtained during marriage. This marital agreement is important to avoid uncertainty regarding property ownership and prevent disputes, especially in polygamous marriages, where property division can be a complicated issue. A valid and clear marital agreement, which is usually set out in an authentic deed, provides stronger legal certainty for both parties (Hasibuan, 2023). Therefore, it is important for the parties involved to make this agreement by considering the rights of each party, including in the context of polygamy, where the division of property between the first wife and subsequent wives is often a source of dispute.

When looking at the role of legal protection in ensuring that the rights in the marriage agreement can be implemented fairly and in accordance with the applicable provisions. Hadjon suggests that the nature of legal protection can be preventive and repressive (Bagus & Subawa, 2021). Preventive protection aims to prevent disputes by ensuring that every marital agreement has been clearly regulated, while repressive protection aims to resolve disputes that have occurred, including through judicial channels. In this case, for couples involved in polygamy, a clear and legal arrangement of joint property through a marriage agreement can reduce potential disputes, but if disputes still occur, the judiciary has a role to provide a fair decision.

Meanwhile, Soekanto's (1977) opinion is that the law functions to regulate the relationship between the state, society, and fellow members of society, in order to create order and legal certainty. In this case, legal protection aims to ensure that the rights and obligations (Lubis & Harahap, 2023) arising from an agreement, such as a marriage agreement, can be implemented fairly. With clear provisions regarding joint property in polygamy, it is hoped that each party can feel protected and obtain justice. Legal certainty is crucial, because only with legal certainty, the rights of each individual, including the first wife's right to joint property, can be guaranteed.

So that the law functions to realise justice, benefit, and legal certainty (Orlando, 2022), all of which become an integral part of a fair legal system. In addition, Raharjo (2010) revealed that the law provides protection for individuals by allocating balanced and measured power. In this case, the first wife's right to joint property in a polygamous marriage must be firmly protected to avoid injustice. Therefore, a clear and valid marriage agreement is an important tool to realise maximum legal protection for each party involved in the marriage, especially in terms of the division of joint property in polygamy.

METHOD

The type of research used in this study is the normative juridical method, which is a scientific research procedure that aims to find the truth through the study of applicable legal norms (Suganda, 2022). This research adopts three main approaches, first, the Legislative Approach, which is carried out by examining the laws and regulations relevant to the topic under study, as well as understanding the hierarchy and principles in these regulations. Second, the Conceptual Approach, which focuses on the legal concepts underlying the regulations as well as the values contained in the relevant legal norms. Third, Analytical Approach, which is used to conceptually analyse the terms in the laws and regulations and see their application in practice and legal decisions. The data sources used in this research are primary and secondary legal materials, which are collected through literature study techniques, focusing on documents and references relevant to the formulation of the problem. The legal materials collected were analysed using legal interpretation techniques, including grammatical interpretation, which prioritises the meaning of words based on grammar; historical interpretation, which looks at the historical context of the formation of regulations; and systematic interpretation, which examines the relationship between concepts in the existing legal system. Through this approach, the research aims to provide an in-depth understanding of the legal protection of the first wife's rights in the division of joint property in a polygamous marriage.

RESULT AND DISCUSSION

Legal protection of the first wife's rights in the division of joint property in polygamous marriages in Indonesia is a very relevant topic given the complexity of the laws governing polygamy and the division of joint property in such marriages. Theoretically, polygamy is allowed in Indonesia, but with various strict requirements stipulated in Law Number 1 Year 1974 on Marriage and the Compilation of Islamic Law (KHI). Basically, Indonesian law prioritises equality in rights and obligations between husbands and wives, including in terms of joint property arrangements, however, the practice of polygamy adds a layer of complexity related to the division of property acquired during marriage.

According to Article 35 of Law Number 1 Year 1974, property acquired during marriage is joint property owned by the husband and wife. However, in the practice of polygamy, the division of joint property becomes more complicated, because there are other wives who are also entitled to the property obtained after their marriage began. This is regulated in sufficient detail in Article 65 paragraph (1) of Law Number 1 Year 1974, which

states that the division of joint property must take into account the time of marriage of each wife. Therefore, the division of property in a polygamous marriage requires clearer protection of the first wife's rights, especially in regulating the division of joint property that can potentially be affected by a husband who marries more than once.

One important legal instrument to protect the rights of the first wife is a marriage agreement. As stipulated in Article 29 of the Marriage Law, a valid marriage agreement can regulate the management of joint property and the rights of each party. In this case, a marriage agreement can be the basis for avoiding disputes related to the division of joint property in polygamy. However, it should be emphasised that the marriage agreement must be valid and in accordance with the applicable legal provisions, i.e. not contrary to public order and decency, as stipulated in Article 139 of the Civil Code (Kitab Undang-Undang Hukum Perdata). Therefore, any changes in the marital agreement relating to the division of joint property must obtain the consent of all parties involved, including third parties related to the agreement, such as creditors or parties with an interest in joint property.

However, in practice, although a marital agreement can provide legal protection for the first wife, various challenges often arise. One of the biggest challenges is the bad faith of the husband, which can be detrimental to the first wife's rights, such as in terms of avoidance of debt obligations or unfair division of property. This can happen if the marriage agreement is not notified to third parties, which causes the agreement to be misused (Article 139 of the Civil Code). In addition, Indonesian law provides room for the first wife to file a lawsuit or request the cancellation of the marriage if the marriage agreement is violated, as stipulated in Article 51 of the Compilation of Islamic Law (KHI). If the *taklik talak* is violated, the wife also has the right to file for divorce. Thus, although legal protection for first wives in polygamous marriages is clearly regulated in Indonesian law, the implementation of these rights is highly dependent on the good faith of both husband and wife as well as effective supervision from the authorities, including the courts.

In addition, social and psychological factors also play an important role in the implementation of legal protection for first wives. The phenomenon of *First Wife Syndrome*, which often occurs in polygamous marriages, shows that first wives often face psychological pressure related to competition with subsequent wives. This can affect the emotional well-being of the first wife, so an unfair division of joint property can exacerbate the inequality that exists within the marriage. Research by Al-Krenawi (2010) and Al-Krenawi & Kanat-Maymon (2016) revealed that unfairness in property division can exacerbate first wives' feelings of jealousy and insecurity, further adding to their psychological burden.

Therefore, although Indonesian law provides for the protection of the first wife's rights in the division of common property in polygamous marriages, it is important to continue to pay attention to the social and psychological factors that affect the exercise of these rights. The existence of a valid marriage agreement can be a strong instrument to provide legal certainty, but this must be accompanied by adequate legal awareness and education for the couples involved in polygamous marriages, so that the rights of each party, especially the first wife, can be best protected.

In this context, the division of common property in polygamous marriages must be based on the principle of justice, which not only considers the formal legal aspects, but also considers the emotional and psychological well-being of the first wife. Thus, a fairer and more transparent marital agreement and legal arrangements will provide optimal protection for first wives in managing their rights to joint property in polygamous marriages.

CLOSING

Conclusion

This study concludes that although Indonesian law, both through Law Number 1 Year 1974 on Marriage and the Compilation of Islamic Law (KHI), provides legal protection for the rights of the first wife in the division of joint property in polygamous marriages, in practice injustice often occurs. This is caused by various factors, including the lack of clear arrangements in the marriage agreement, as well as inequality in the application of court decisions governing the division of property. The existence of psychological factors such as First Wife Syndrome also exacerbates the injustice, as first wives are often subjected to emotional distress and jealousy that worsen their social conditions. Therefore, while legal instruments such as marital agreements can provide protection, their implementation is highly dependent on the goodwill of the husband as well as stricter supervision from the authorities.

Suggestion and Recommendation

Based on the results of the research, it is suggested that legal policy reform regarding the division of common property in polygamous marriages in Indonesia needs to be carried out to provide clearer and fairer protection for the first wife. One important step is to strengthen the application of a legal marriage agreement as a preventive instrument to avoid property disputes. In addition, there is a need to increase legal awareness in the community regarding the importance of making marital agreements that are transparent and in accordance with applicable legal provisions. The court should also have a more effective supervisory mechanism in handling cases of joint property division, taking into account the psychological factors that often affect first wives in polygamous marriages, such as First Wife Syndrome. Further research on social and psychological aspects is also recommended to provide a more comprehensive picture of the impact of polygamy on the welfare of first wives and ways to address the injustice.

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