

# Implications of Unregistered Polygamous Marriages For Children's Rights in Indonesia

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## ABSTRACT

Polygamous marriages have become the latest issue regarding complaints about the impact of the practice of polygamy, where many husbands remarry without their wives' permission, some even do it secretly. Polygamy is still a debate in society. As a solution, some couples choose to carry out "underhand" marriages which are not legally valid and have no legal force. Therefore, the author wants to examine the impact of unregistered polygamous marriages on children's rights. So, the aim of this research is to determine the implications of unregistered polygamous marriages on children's rights. This research method uses qualitative techniques with a normative approach. The results of this research include that unregistered polygamous marriages have an impact on children's rights because the state cannot protect the rights of unregistered children.

**Keywords:** child protection, marriage, polygamy

## Introduction

Marriage is to legitimize the relationship between a man and a woman who previously had a relationship that was not yet mahram so that it gives rise

to rights and obligations between the two that are expressed by words, in accordance with the regulations required by Islam. The wisdom of the implementation of marriage is to form a physical and spiritual bond that is manifested by men and women as husband and wife, marriage becomes a container to open the gate of life to have a family in the influence of offspring and community life, the purpose of marriage is to form a strong and good family so that it can form the welfare of society and the happiness of humanity in general in the future.<sup>1</sup>

A sacred marriage that has the meaning of a bond of life together between a husband and wife to build a relationship in the bonds of marriage, the purpose of marriage itself is not only limited to fulfilling biological needs where it is not only limited to legitimizing the relationship to carry out this biological relationship alone but marriage is an eternal bond until death separates the husband and wife.<sup>2</sup> But the problem with marriage today is that there are still those who play a marriage bond by doing polygamous marriages, where this polygamous marriage is still a pro and con in society, many people think that this polygamous marriage is a marriage that is an act that insults women. Because where there are women who are willing and willing to be honeymooned.<sup>3</sup>

The origin of polygamy is not known for certain, but it is thought to have appeared almost simultaneously with the birth of humans on this earth. It is not true if someone accuses Islam of being the first religion to introduce polygamous marriage. This is because long before Islam was revealed, the practice of polygamy was already known and quite institutionalized in various religions and cultures of society almost all over the world. Prophet Muhammad SAW. Allowed polygamy in the midst of Muslim society at that time because it was already widely practiced in society.<sup>4</sup>

One of the conditions for allowing polygamy is being fair to one wife and another, fair here means that a husband must be able to provide a sense of balance to his wife, this is what makes women afraid to give permission for their husbands to practice polygamy where in reality there are many husbands who cannot be fair between one wife and another, so that in the ratification of polygamous marriages, women assume that the provisions for the ratification of polygamous marriages cannot see the impact from the side of the wife who

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<sup>1</sup>Malisi, Ali Sibra. "Marriage in Islam". *Journal of Social, Political and Legal Sciences*, Volume 1 Number 1, (2022): 23-27. <https://doi.org/10.55681/seikat.v1i1.97>

<sup>2</sup>Said, Muhammad Fachri. "Legal Protection for Children in the Perspective of Human Rights". *Journal of Legal Scholars*, Volume 4, Number 1, (September 2018): 142. <http://doi.org/10.33760/jch.v4i1.97>

<sup>3</sup>Safitri. "Controversy over Economic Problems of Polygamists Causes Divorce". <file:///C:/Users/SONY/Downloads/98-Article%20Text-128-1-10-20190815.pdf>

<sup>4</sup>Trigiyatno, Ali. *Polygamy: Tightened or Loosened?*. Yogyakarta: CV. Bintang Semesta Media, 2021.

experiences polygamy.<sup>5</sup>

The latest conflict from complaints related to the impact of polygamy has resulted in husbands not asking for their wives' permission to remarry, husbands marry secretly from their wives, where the practice of polygamous marriages only looks at the religious side, as long as the pillars and requirements of marriage have been met, the marriage is considered valid according to religion, but ignores the provisions of state law. Basically, polygamous marriages, whether the second, third or fourth, carried out by a husband cannot be equated with the conditions of his first marriage, this is because there are additional main requirements that must be met by the husband when he wants to practice polygamy, namely the fulfillment of the wife's permission and court permission.<sup>6</sup>

According to research written by Jaidun, if a husband remarries another woman without written or unwritten consent from the first wife, this will have legal implications for the perpetrator of polygamy without permission, because it is considered to have violated the law, potentially being punished with imprisonment as referred to in the formulation of Article 284, Article 279 of the Criminal Code (KUHP).<sup>7</sup> Meanwhile, according to Surjanti, the practice of polygamy in society has caused widespread and concerning social problems. The high number of cases of violence against women in the household, the high number of cases of violations of children's rights, and the neglect of wives and children, especially psychologically and economically.<sup>8</sup> Meanwhile, based on research written by Hijrah Lahaling and Kindom Makkulawuzar, it was revealed that the common impacts on wives whose husbands practice polygamy are psychological, economic, legal, health, and violence, both physical, economic, sexual and psychological. Meanwhile, the impact of polygamy on children is that children feel left out, unnoticed, lack affection, fathers like to lie and are educated in an atmosphere of hatred due to conflict.<sup>9</sup>

Based on the description above, the author found several problems in this research, including unregistered polygamous marriages that cause many negative impacts, especially on children's rights. Therefore, the author formulates the problem as follows:

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<sup>5</sup>Lahaling, Hijrah, et al. "The Impact of Polygamous Marriage on Women and Children". Al-Mujtahid: Journal of Islamic Family Law Volume 1, Number 2, (2021): 82.<http://dx.doi.org/10.30984/jifl.v1i2.1742>

<sup>6</sup>Rizkal. "Polygamy Without Wife's Permission in Legal Perspective: Form of Psychological Violence Against Wives". YUSTIKA Journal of Law and Media, Volume 22 Number 1, (2019): 28.<https://doi.org/10.24123/yustika.v22i01.2017>

<sup>7</sup>Jaidun. "Legal Implications of Unauthorized Polyamory in the Perspective of Islamic Law", Wara Sains Journal of Law and Human Rights Volume 2 Number 05, (2023): 338.<https://doi.org/10.58812/jhhws.v2i05.304>

<sup>8</sup>Surjanti. "Review of the Compilation of Islamic Law on Polygamy in Indonesia", Journal of Tulungagung University Bonorowo, Volume 1, Number 2, (2014): 15.<https://doi.org/10.36563/bonorowo.v1i2.18>

<sup>9</sup>Lahaling, Hijrah, et al. "The Impact of Polygamous Marriage on Women and Children". Al-Mujtahid: Journal of Islamic Family Law Volume 1, Number 2, (2021): 82.<http://dx.doi.org/10.30984/jifl.v1i2.1742>

1. Why do unregistered polygamous marriages cause problems for women and children?
2. How is the legal protection and status of children in unregistered polygamy?
3. What are the implications of unregistered polygamous marriages for children's rights in Indonesia?

## Research methods

This type of research is a library research using a normative approach. The data source for this research was obtained from a literature review through a literature search in the form of books, journals and scientific articles that are relevant to the author's research. The data analysis technique for this research uses a descriptive method with an interactive model.

## Results and Discussion

### Polygamy

Polygamy comes from the Greek word "polus" which means many and gamein which means to marry, while in Arabic the word polygamy is called *the conclusion of the az-zawjaat* (multiple pairs). Meanwhile, in Indonesian polygamy is called union. So polygamy is a marriage in which the husband marries more than one wife at the same time, while the meaning of polygamy according to Mrs Soemiyati is a marriage between onemen and women with women at the same time.<sup>10</sup>The legal basis for polygamy is that it is permitted, where the provisions are explained in the Al-Quran An-Nisa verse 3 as follows:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ  
قُلُوبٍ وَرُبْعًا فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ بَدَأَ قُلُوبًا  
أَلَّا تَعْوِلُوا

Meaning: "And if you fear that you shall not be able to deal justly with orphans, then marry (other) women of your choice, two, or three, or four. But if you fear that you shall not be able to deal justly, then only one, or whatever female slaves you have. That is nearer to prevent you from doing injustice."

The verse is a continuation of the previous verse, namely Surah An-Nisa' verse 2, that Allah will not take and use the property of orphans in an unjust or false manner. So, the presence of Surah An-Nisa' verse 3 is intended to remind us not to commit injustice to the orphans themselves (individually).<sup>11</sup>Therefore,

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<sup>10</sup>Surjanti. "Review of the Compilation of Islamic Law on Polygamy in Indonesia", Journal of Tulungagung University Bonorowo, Volume 1, Number 2, (2014): 15. <https://doi.org/10.36563/bonorowo.v1i2.18>

<sup>11</sup>Shihab, M. Quraish. Tafsir Al-Misbah: Message, Impression and Harmony of the Qur'an.

someone who wants to practice polygamy should have considered carefully in terms of fairness to be more careful. Legislation has also explained the law of polygamous marriage, namely in Law No. 1 of 1974 Article 3 paragraph 2 as follows:

"The court may grant permission to a husband to have more than one wife if the parties concerned wish."

The basis for the legalization of polygamy in its provisions allows its implementation, of course, it must meet the conditions that determine the permissibility of carrying out polygamous marriages. If we look at the legal basis for allowing the implementation of polygamous marriages with standardization provisions in its ratification, there are various reasons that underlie a husband's legalization of a polygamous marriage, namely:

1. The reason for polygamy has been carried out by the Prophet Muhammad SAW so that society bases polygamy on the law of the Sunnah and also bases the law of polygamy on the letter An-Nisa verse 3.
2. The factor of the wife not being able to get pregnant is based on a doctor's examination, so this is the basis for the husband being allowed to practice polygamy.
3. A wife who has a dangerous illness.
4. The existence of an unbalanced growth of men and women has led to the need for a solution to handle it, namely by practicing polygamy.

The problems experienced by husband and wife in their marital relationship which are the background to the permission of polygamous marriages, do not necessarily mean that these problems can be easily submitted to the religious court for polygamous marriages, this is because there are requirements that must be fulfilled by the husband, the scholars and fuqaha have tried to determine restrictions in the form of requirements in submitting polygamous marriages, namely:

1. A man must have sufficient economic ability, this is beneficial for the husband to be able to finance various needs with the increase in the number of wives he marries.
2. A husband who will practice polygamy must treat all his wives fairly. Each wife must be treated equally in fulfilling marital rights and other rights. Therefore, based on the verse above, the strict requirement for polygamy is that he must be able to treat his wives fairly.
3. The number of women married cannot exceed four, as stated in the Qur'an, Surah An Nisa' verse 3.<sup>12</sup>

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Volume II. Jakarta: Lentera Hati, 2000.

<sup>12</sup>Surjanti. "Review of Compilation of Islamic Law on Polygamy in Indonesia", Journal of Tulungagung University Bonorowo, Volume 1, Number 2, (2014): 15-17. <https://doi.org/10.36563/bonorowo.v1i2.18>.

## Problematics Of Polygamy Marriage

Polygamous marriage basically means the marriage of a man with more than one woman or more, the provisions that allow the implementation of polygamy by marrying more than one wife are often the subject of debate among women, they consider that polygamy in its implementation is detrimental to women in the form of violence committed by the husband, or justice that is rarely created in the family caused by polygamous marriages. This problem is the background for a wife to be afraid of being polygamous, so that in practice many husbands carry out polygamous marriages without the consent of their wives, the problematic of polygamy without the consent of the wife is the concern, this violates the conditions for being allowed to carry out polygamous marriages. According to Djubaedah, explaining the problem of polygamy without the consent of the wife is based on the law that allows polygamy on the condition that the wife's consent is obtained, this can provide an opportunity for husbands to carry out polygamy not to degrade and torture their wives, in fact this polygamy aims to raise the dignity, honor and status of women. However, the problem of polygamy without the wife's consent can give rise to criminal law implications, where perpetrators of polygamy without the wife's permission are potentially subject to imprisonment.<sup>13</sup>

This is included in the form of illegal polygamy which can be influenced by several factors, including the lack of high legal awareness from the community, difficult procedures for polygamists who have official positions, and the absence of firm action against illegal polygamy. The forms of illegal polygamy that are often found in society include couples who live together without a legal marriage bond and are often known as kumpul kebo, concubinage or mistresses. In addition, there are those who are Muslim who practice polygamy without registering their marriage (nikah siri).<sup>14</sup>

The permit to carry out a polygamous marriage is intended to direct, control the rules and aims to prevent the dangers that arise, while the permit for polygamy is issued by the religious court by submitting an application for permission to practice polygamy which has been approved by the first wife by being submitted verbally or in writing, while the rules related to the permit for polygamy have been regulated in Government Regulation No. 9 of 1975 Article 43<sup>15</sup> reads:

If the Court is of the opinion that there are sufficient reasons for the applicant to have more than one wife, the Court will issue a decision in the form of permission to have more than one wife.

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<sup>13</sup>Jaidun. "Legal Implications of Unauthorized Polyamory in the Perspective of Islamic Law", Wara Sains Journal of Law and Human Rights Volume 2 Number 05, (2023): 338. <https://doi.org/10.58812/jhhws.v2i05.304>

<sup>14</sup>Prawirohamidjojo, S., Pohan, M. Law of Individuals and Families. Surabaya: Erlangga University Press, 2000.

<sup>15</sup>PP Number 9 of 1975, Article 43

The position of the wife's permission to allow her husband to practice polygamy is one of the mandatory requirements that must be met in the procedure so that when the husband tries to practice polygamy without the wife's consent, it is said that the marriage has no legal force, thus the marriage is invalid and is considered never to have occurred. A marriage that is carried out without the wife's consent is not usually determined by the religious court to practice polygamy. Someone who does not submit an application to the court to practice polygamy can have their marriage annulled. Polygamous marriages that are carried out underhand without the permission of the first wife in this case cannot be carried out considering that the marriage that is carried out is only an underhand marriage, so that the wife who is polygamous is not entitled to joint property in the marriage.<sup>16</sup>

Law No. 1 of 1974 explains that polygamy is permitted on condition that there is permission from the wife to enter into a polygamous marriage, where permission given by the wife to her husband to remarry with the fulfillment of the legal requirements for polygamy will receive approval from the religious court, however, if the polygamous marriage is not carried out as stipulated above, then the marriage is not permitted by law and is not based on marriage law in Indonesia.<sup>17</sup>

The impact on wives from unregistered polygamous marriages is very detrimental to wives and women in general, both legally and socially, namely not being considered a legitimate wife, not having the right to maintenance and inheritance from her husband if her husband dies, not having the right to marital property in the event of separation because legally unregistered polygamous marriages are considered never to have occurred, women from unregistered polygamy will find it difficult to socialize because these women are often considered to have lived in the same house with a man without an illegitimate marriage bond or are considered to be concubines.

## **Child Protection**

Child protection itself is part of human rights protection that protects the rights and obligations of children, where the formulation of child protection has been regulated in Indonesia regarding the rules on child protection which in reality these rules are regulated according to the needs of the community, such as child protection which has been regulated in the 1945 Constitution Article 34 explains that the poor and neglected children are cared for by the State.<sup>18</sup>The

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<sup>16</sup>Rizkal. "Polygamy Without Wife's Permission in Legal Perspective: Form of Psychological Violence Against Wives". YUSTIKA Journal of Law and Media, Volume 22 Number 1, (2019): 31. <https://doi.org/10.24123/yustika.v22i01.2017>.

<sup>17</sup>Annisa, et al. "Legal Study of Unregistered Polygamous Marriages (Research Study in Kota Pantan Labu Village, Tanah Jambo Aye District, North Aceh Regency)". Scientific Journal of Law Faculty Students, Volume 4 Number 2, (2021): 227. <https://doi.org/10.29103/jimfh.v4i2.4067>

<sup>18</sup>Elanora, Fransiska Novita, et al. Child and Women Protection Law. Malang: Madza Media, 2020.

National Commission for Child Protection explains several formulations regarding child protection efforts, namely as follows:

1. All efforts that are carried out consciously by every person, government and private sector, are aimed at promoting children's rights.
2. All actions taken consciously by every person, government and private institution in an effort to fulfill the rights of children aged 0-18 years who are not yet married are adjusted to human rights and based on their interests in order to improve their self-development optimally.
3. All efforts to guarantee and protect children and their rights to grow and develop well based on children's rights

Fulfillment of children's rights in protection efforts requires the implementation of good protection. To achieve the fulfillment of children's rights, it is necessary to comply with the principles of the 1945 Constitution as well as the principles of the Convention on Children's Rights as well as the principles of child protection as following:

1. Non-Discrimination, where this principle provides the understanding that every child has the same right to receive protection as stated in the Convention on the Rights of the Child without discrimination.
2. The best interests of the child, which include children, are carried out by parties who are obliged to provide protection to children, where in providing 44 Nursariani Simatupang.
3. The right to life, survival and development explains that in this principle in efforts to protect children, namely explaining the rights of children that must be protected.
4. Respect for children's opinions explains respect for children's rights to take part and express judgment in making decisions, especially those relating to issues that concern the child's life.
5. Protection includes fast-paced activities that are different from those that cause physical and non-physical harm to children.
6. The survival and development of children is the most basic human right that must be protected.
7. The aim of coaching is to improve professionalism, spirituality, intellect and attitudes, skills development and devotion to the Almighty.<sup>19</sup>

### **The Position Of Children In Polygamous Marriages Is Not Recorded**

The impact of polygamy is not only felt by the wife, but the children will also feel it. Being fair in material terms is very easy for a husband or a father, but being fair in spiritual terms is not possible. who can know it. In psychology, the role of the father is also very much needed in the development of the child. In a marriage that is legally registered by religion or the state, usually a child (descendant) will be desired. In a marriage that is legally registered by the state,

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<sup>19</sup>Wiyono, E. Juvenile Criminal Justice System in Indonesia. Jakarta: Sinar Grafik, 2016.

a child will be registered in state documents, while in a marriage that is only legally registered by religion, a child usually has a less strong position, because the child is not legally registered in state documents, the position of a child born from a polygamous marriage without permission from the first wife where the marriage is based on an underhand marriage is considered to have no legal force.

Administratively, children resulting from polygamy through secret marriages are not recognized by the state and do not receive legal protection before their parents submit a new application regarding the determination of the child's origin. However, in Constitutional Court Number 46/PUU-VIII/2010, the status of a child has been clarified that a child born from a secret marriage has a legal relationship with his biological mother and father, provided that both parents have not been registered in the civil registry. Polygamy has the potential to cause social, economic, and even psychological problems for a person. Polygamy greatly affects the relationship between father and child. Some of the impacts of polygamy on children are:

1. Lack of affection towards children, usually the behavior of these children seeks affection in other forms such as the child assuming that people outside are more likely to provide the affection they need.
2. Decreased enthusiasm for learning.
3. Excessive worry will occur that the father is not being fair to the child's mother.
4. Weakened interpersonal skills mean that the child has difficulty making commitments, such as agreements or marriage.
5. There is a feeling of shame in the couple because of the experience of being involved in a polygamous family. However, there are also those who think that polygamy is legitimate because the child makes his father his role model.<sup>20</sup>

Children's rights have been mentioned in articles 4 to 18 of Law No. 23 of 2022 concerning child protection which was later amended by Law No. 35 of 2004, one of which is the right to know their parents. This is stated in article 7 of the Law which states that "every child has the right to know their parents, to be raised and cared for by their own parents" children born from receive the same justice as children from the first wife by getting the rights and obligations from their parents and children need to know their origins. One solution is to provide legal protection for the child by granting the parents' request regarding the Isbat of Polygamy Marriage, so that their marital status becomes valid, as well as children born from unregistered marriages change status to legitimate children, no longer children out of wedlock. Which ultimately has an impact on the rights of children that must be fulfilled by parents, especially fathers, will be

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<sup>20</sup>Nisa, Nur Fitriyatun. "The Position of Children from Polygamous Siri Marriages Regarding Inheritance and Guardianship Reviewed by the Compilation of Islamic Law and Burgerlijk Wetbook". *Celestial Law Journal*, Volume 1, Number 1, (April, 2023): 18-22. <https://journal.unjungi.ac.id/index.php/clj/article/view/286>

realized and receive protection from state law. Children can have a birth certificate because their parents have a marriage certificate. Children have inheritance rights if their father dies. Children have the right to a prosperous life physically and mentally and deserve an education.<sup>21</sup>

## **Implications Of Unregistered Polygamous Marriages On Children's Rights**

Unregistered polygamous marriages have significant impacts on the rights of children born from such marriages. Some of the implications that may occur include:

### **1. Legal Status of Children**

Children born from unregistered polygamous marriages do not have clear legal status. In this case, the child is not registered as a legitimate child, resulting in the loss of their right to receive the same legal protection as children born from legitimate marriages.

### **2. Inheritance Rights**

Children from unregistered marriages may lose their inheritance rights from their biological father, as they are not legally recognized as children under state law. This can lead to injustice in terms of the distribution of inheritance and other rights.

### **3. Access to Education and Health**

Unregistered children may experience difficulties in accessing education and health services, as the uncertainty of their legal status can hamper administrative processes at schools or health facilities.

### **4. Legal Protection**

The state does not provide sufficient legal protection for children from unregistered marriages. These children are at higher risk of experiencing the neglect of their rights, such as the right to adequate care, protection from violence, and other rights.

### **5. Difficulties in Recognizing Rights**

Children born from unregistered marriages may face difficulties in having their rights recognized by both their families and society. This can lead to social and psychological problems for children who feel neglected.

One solution to protect children's rights in unregistered polygamous

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<sup>21</sup>Annisa, et al. "Legal Study of Unregistered Polygamous Marriages (Research Study in Kota Panton Labu Village, Tanah Jambo Aye District, North Aceh Regency)". *Scientific Journal of Law Faculty Students*, Volume 4 Number 2, (2021): 227. <https://doi.org/10.29103/jimfh.v4i2.4067>.

marriages is to conduct a marriage confirmation. Marriage confirmation is a marriage legalization process that can change the status of the marriage and provide legal recognition to children born from the marriage. By conducting a marriage confirmation, children's rights to inheritance, education, health, and legal protection can be guaranteed in accordance with applicable regulations.

## Conclusion

Based on the author's research, it can be concluded that unregistered polygamous marriages have a very detrimental impact on wives and women in general, both legally and socially. A wife is not considered a legitimate wife, is not entitled to maintenance and inheritance from her husband if her husband dies, is not entitled to marital property in the event of a separation. This happens because legally unregistered polygamous marriages are considered to have never happened and women from unregistered polygamy will find it difficult to socialize because these women are often considered to have lived in the same house with a man without an illegitimate marriage or are considered to be concubines. Polygamous marriages also have an impact on children's rights because there is no legal certainty between husband and wife legally by the State. Children will have difficulty obtaining their rights as children of the polygamous couple, such as the legal status of children, inability to obtain inheritance, difficulty in accessing education, and unclear recognition of children's rights.

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