

Polyandry Marriage in Criminal Law Studies in Indonesia

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Abstract

This study discusses polyandry marriage in criminal law studies in Indonesia. In terms of marriage, there are still some Muslim women who violate Islamic law, either secretly who will carry out further marriages even though they are still married to other men (polyandry marriage), even though both are in the Qu'ran and Hadith which prohibits this act because it is an act of adultery with the threat of positive punishment as regulated in the Criminal Law Number 1 of 1946 and the Islamic Criminal Law. Because this polyandry marriage does not only involve the perpetrator but also other parties so that the marriage is carried out, the criminal arrangements in the Criminal Code related to polyandry marriage can be punishable with a sentence ranging from 9 months to 7 years in prison. In fact, polyandry marriage according to the Qoran and Hadith can be subject to death penalty, death penalty 100 times or imprisonment for 1 year.

Keywords

polyandry marriage; Criminal law; Indonesia



I. Introduction

Marriage is God's sustenance, not only aimed at humans as His form, but applies to all His creatures including animals and plants, no wonder God created His creatures in pairs as said in Surah Az-Zariyat verse 49, which reads "And We have made pairs of everything that you might reflect." In particular, the type of polyandry marriage is one that is compatible with The Islamic Guidelines for Poliandry exist, concluding that all known cases of what is called polyandry are really polcoitas or 'plural marriages', without the benefit of marriage for all participants.

Islamic perspective of Polyandry marriage is a forbidden act as stated in Surah An-Nisa 'verse 24, which reads "It is also forbidden" married women except for women "who are their prisoners. This is God's command to you. It is lawful for all of you more than that as long as you seek it with treasure in a legal marriage, not in adultery. Give it to the people you have finished with the dowry that is due. Allowed to feel sorry for each other regarding the dowry that is determined. Truly Allah is All-Knowing, All-Wise." This verse shows that one of the categories of women who should not be married by men is married women (Sheikh Taqiyuddin an-Nabhani, an-Nizham al-Ijtimai fi al-Islam, 2003). So a woman who is married and then marries another man while that woman is still married, that woman "This act is called polyandry marriage. Although polyandry marriage from the perspective of Islamic law cannot be justified and is haram, there are legal incidents related to this haram Islamic act.

Ironically, some of them even argued through the Constitutional Court ruling over a marriage annulment lawsuit. Because polyandry marriage is not allowed under Islamic law and the law is haram, then polyandry marriage that is carried out is haram, so that if it continues it will be classified as adultery, therefore in accordance with the provisions of violence in Indonesia, both adultery and related parties can be subject to it.

II. Research Methods

This research was conducted using sample survey. This research technique and tools are descriptive qualitative. The nature of this research is an explanatory study. This is related to the position of the variable under study and the influence between one variable and another. The focus is on studying the criminal law behind polyandry marriages in Indonesia. Data collection is used by reviewing case explanations and rules in daily life according to the instructions contained in the Qu'ran and Hadith, from prayer activities to the implementation of marriage, so it can be said that all activities of the Muslim community lead to the Qu'ran and Al-Hadith.

III. Discussion

3.1 Polyandry Marriage: Islamic Criminal Law Study

A polyandry marriage is a marriage of a woman with more than one husband, this kind of marriage is prohibited based on the Qu'ran and Sunnah. Thus, it can be ascertained that for women who are not legally married (M. Ali Ash-Shobuni, *Islamic Marriage*, 2008). In all societies that have adequate ethnographic data, polyandry is always found with polygyny. Needless to say, the front is not right: the majority of the polygynous community disapproves of polyandry.

The prohibition of polyandry marriage can make the perpetrator commit grave sins due to polyandry marriage. Adultery in Islamic law, apart from committing a major sin, is condemned and is a crime that is severely punishable. This opinion is shared by the scholars. However, some scholars also judge and regardless of the perpetrator, whether it is committed by an unmarried person or a married person, the act is called zina. And it is defined as an act against the law, which does not reduce the value of the crime, even if it is done voluntarily or like. Although no one feels harassed or even considered to be beneficial to the perpetrator, adultery is seen by Islam as a very despicable and cruel offense of sexuality.

Polyandry actors are classified as muhsan, so the punishment for those who commit adultery is stoning by sticking the body of the adulterer into the ground to the chest, then throwing stones to death (Narrated by Muslim Worshipers of Bin Syamith). The four witnesses actually saw and knew that the perpetrators of polyandry, especially women, were actually married legally and were still married, besides that the witness actually saw and knew:

1. The entry of a man's penis into the woman's vaginal opening determines how the penis is inserted.
2. Time for adultery.
3. Place of adultery.

Then what if there are not 4 witnesses, if 4 people are not contacted, then it is certain that the stoning sentence for adulterers cannot be carried out or stopped, except in the case of a husband / wife who accuses the husband / wife of adultery, then there is no witness except for himself not maybe he saw himself being sworn 4 times, and at the fifth oath he said that:

"The curse of Allah is on him, if he is the one who lies". So punishing people for adultery, especially in polyandry marriages, is not easy because the threat of punishment is the death penalty.

3.2 The Criminal Sanctions of Criminal Code for Police Actors

Women who are married to a polyandry must have committed adultery from a criminal law perspective. As for the prosecution of the perpetrator, there must be a report that the victim is threatened with a prison sentence of only 9 months. Then Article 280 of the Criminal Code states: "Whoever marries another party, who is legally prevented from marrying, will be punished with imprisonment for 5 (five) years, if the marriage is canceled on the basis of that obstacle". So to be punished according to this article it must be proven:

1. The person is really married as evidenced by a marriage certificate.
2. Although there are legal obstacles (according to law) to remarrying, for example it can be proven that the person has married another man, meaning that the person has a legal husband.
4. Although he deliberately hid the obstacle from other parties, for example he said he was not married and was still a woman / single.
5. Whereas the marriage was canceled on the basis of these constraints, for example by canceling the marriage based on the decision of the Religious Court.

Polyandry studies in South Asia often try to expose the existence of this form of marriage with reference to the economic reasons it is based on. In a polyandry case, the perpetrator can be declared violating Article 280 of the Criminal Code if the polyandry actor not only knows that there is a problem in the marriage.

Offenders can also be subject to criminal falsification of polyandry marriage certificates as regulated in Article 263 of the Criminal Code. He and the people involved are suspected of having committed criminal acts that violate Article 263 of the Criminal Code. Where, in the article it is stated:

- 1) Anyone who creates false documents or falsifies documents that can give rise to rights, bonds or debt free or which are intended as evidence of something with the intention of using or ordering others to use the document as if the contents are true and not forged, will be threatened if used. This can result in losses due to document falsification with a maximum imprisonment of six years.
- 2) Threatened with the same crime, whoever deliberately uses a fake or fake letter as if the letter is true if the use of the letter may cause harm. This article shows that there are sanctions that can be imposed on the perpetrators of letter forgery to launch a desire to take polyandry action.

The element of fraud is the act of obtaining goods or money belonging to someone else and seeking profit in an unkind manner. To use fake identities such as fake names and titles, with a series of lies, or use hoaxes. In fraud, there must be a causality between fraud and the provision of certain goods, if there is no trickery, there is no giving of goods (Dudung Mulyadi, Fraud Elements in Article 378 of the Criminal Code Related to Buying and Selling Goods? Land? 2017).

The implementation of polyandry marriage will not be possible without an element of deception because polyandry marriage in Islam is haram and prohibited. This fraud is in the form of identity or status fraud by committing fraud aimed at breaking the law of marriage even though there are still obstacles in marriages that are still tied to previous marriages with other spouses. The existence of a criminal offense for perpetrators of polyandry marriage apparently also involves other parties who are subject to criminal sanctions as stipulated in Article 436 of the Criminal Code which is included in the classification of occupational

crimes, to be precise concerning the Marriage of Obstacles to Person. Remarriage reads as follows:

Article 436 paragraph 1 and 2 reads:

"Whoever has the right to marry someone in accordance with the law applicable to both parties, to marry someone, it is known that his existing marriage becomes a legal obstacle for him to remarry, with a maximum imprisonment of seven years".

"Whoever has the right to marry someone in accordance with the law applicable to both parties, to marry someone, she knows that because of this there are other legal obstacles, namely imprisonment of two years and eight months or a maximum fine of Rp. 4,500 ".

If paying attention to some of the elements contained in this article is addressed to officials who have the obligation to marry or legalize public marriage, in Indonesia the official is the Head of the Office of Religious Affairs. This article refers to office crimes committed by officials in marrying couples who are still having marital relationships with other couples. This error can be a negligence in the examination of marriage data files or intentionally turn a blind eye to mistakes that were intentionally made by the perpetrator.

IV. Conclusion

A polyandry marriage that is carried out by a woman who is still married to another man is a type of marriage that is prohibited according to Islamic law as regulated in the Qur'an and Al-Hadith. The threat of punishment for polyandry actors is very severe, polyandry offenders who are muhsan (married) face the death penalty (stoning to death), while those who are still Ghairu muhsan (unmarried) are subject to 100 lashes and exiled for one year. Provisions regarding polyandry marriage according to positive law in effect in Indonesia as regulated in Law Number 1 of 1946 concerning Criminal Law do not yet exist, however, because polyandry marriage is an illegal marriage which is considered adultery according to Islamic law, the criminal act of adultery is regulated in the Criminal Code as referred to in Article 284.

Polyandry marriage is a forbidden marriage which is classified as adultery according to Islamic law, so that the violation of adultery is regulated in the Criminal Code as referred to in Article 284. Polyandry marriage in a positive legal perspective does not only involve the perpetrator but also involves other parties so that in positive criminal law related to polyandry marriage other than Article 284 of the Criminal Code also contains Articles 279, 280, 263, 378 and 436 of the Criminal Code which threaten imprisonment of between nine months and seven years.

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