



Legal Sanctions Civil State Apparatus Woman as Polygamous Wife

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ABSTRACT

The legal rules on marriage and divorce for civil servants are regulated in Government Regulation No. 45 of 1990 revised PP No.10 of 1983, the focus of attention in this revision is about the ability of female civil servants to become second, third and fourth wives. Article 4 paragraph 2 PP No. 45 of 1990 expressly does not allow female civil servants (PNS) to become polygamous wives which in the previous rules was allowed with the provision not with male civil servants. This rule is also confirmed by the provision of severe disciplinary sanctions in the morning of female civil servants who violate the dismissed.

INTRODUCTION

Especially for Muslims in Indonesia, marriage is regulated by the compilation of Islamic law (KHI) which gave birth to comprehensive rules in the field of marriage. In Indonesia, there are special laws such as Government Regulation No. 10 of 1990 amending Government Regulation No. 45 in 1983 which contains rules for permitting marriage and divorce to civil servants (PNS). It is very much a concern in Government Regulation No. 45 of 1990 concerning amendment of Government Regulation No. 10 of 1983 concerning marriage and divorce permits for civil servants where there are several regulations that are very different from the regulations in the general legislation governing marriage issues such as in the Marriage Law and even more so in Islamic law.

Marriage is based on monogamy as stated in Section 3. The article states that a man is only allowed to have one wife.¹ but the other part states that in certain circumstances it is justified, in the sense that it is not absolutely forbidden for a man to practice polygamy even though the principle established is Monogamy. Moreover, in Islamic law which does not prohibit a man to do polygamy, many verses as evidence against the ability of a man to do polygamy, including in the quran Surat An-Nisa verse 3.

Marriage was created by God, and it was created by God. In Indonesia, marriage is regulated in Law No. 1 which came out in 1974 which regulates marriage (hereinafter referred to as UUP), this law specifically regulates problems in marriage which previously all matters related to marriage law were regulated in general in the Civil Code.

In the verse explicitly describes the permissibility for a man to practice polygamy. In Government Regulation No. 45 of 1990 concerning amendment of Government Regulation No. 10 of 1983 concerning marriage and divorce permits for civil servants, it does not actually prohibit absolutely male civil servants from carrying out polygamy even with difficult conditions when male civil servants are to carry out polygamy, this shows strict restrictions so that polygamy does not occur by male civil servants.

Specifically in Government Regulation No. 45 of 1990 is located in Article 4 paragraph 2 where there is an absolute ban on female civil servants to be polygamous wives (second wife, three or even fourth), if violated then the sanction is dishonorably terminated from his status as a civil servant (PNS) by the agency concerned. However, if a civil servant (PNS) is a man who wants to get married for a second time and so on, then it is allowed by fulfilling the conditions and conditions that apply. Even if he forced himself to marry again even though he did

not get permission, his punishment was only one of severe disciplinary punishment, in the sense that he was not immediately terminated from his employment status.

The rule in Government Regulation No. 45 of 1990 article 4 paragraph 2 is seen as a form of restriction for female civil servants to be the second, third and fourth wives. Basically, in marriage, a woman's position is to wait and receive, so there is no guarantee that a female civil servant will be married by a man who is not married or single.

METHOD

The research method used in writing this law is a normative juridical approach. Normative juridical approach is a study that uses secondary sources obtained through library materials. This normative legal research usually includes: research on legal principles, research on legal Systematics, research on vertical and horizontal synchronization levels, Comparative Law and legal history. The method of this approach is carried out by studying the legal norms in legislation.

RESULTS AND DISCUSSION

A. The study of polygamy in Islam

The word polygamy, etymologically derived from the Greek, is *polus* which means many and *gamos* which means marriage. If the meaning of these two words is combined, then polygamy means a lot of marriage or more than one person. While in terminology, polygamy is a man married more than one but limited to a maximum of four wives. According to Indonesian polygamy is a marriage system in which one party has or marries several of the opposite sex at the same time. This means that the wives are still in the husband's *taggungan* not divorced and still legally become his wife. Experts distinguish the term for a man who has more than one wife, with the term polygyny derived from the word *polus* means many and *gone* means women.

While for a wife who has more than one husband is called polyandry which comes from the word *polus* which means a lot and *andros* means man. So the right word for a man who has more than one wife at the same time is polygyny not polygamy. The opposite of polygamy is monogamy, a system of marriage in which the husband has only one wife.

The provisions or legal basis regarding polygamy in Islam are explained in the Qur'an surat An-Nisa' verse 3 which means : "and if you fear that you will not be able to do justice to (the rights of) women who are orphans (when you marry them), then marry women (other) that you like : two, three

or four. But if you fear that you will not be able to do justice, then marry only one, or those whom your right hands possess. that is nearer to not being unjust."

According to Aisha r.a, quoted by Tihami in his book *Fiqh Munakahat Fiqh study Complete marriage* this verse came down because it answers the question Urwah bin Zubair to Aisha wife of the Prophet, about this verse. Then he answered her, "O my sister, orphan here means an orphan girl who is under the care of her guardian has wealth mixed with her wealth and her beauty makes the orphan nanny happy to him, then he wants to take her as a wife, but does not want to give her dowry fairly, therefore orphan caregivers like this are prohibited from marrying them, unless they want to be fair to them and give them dowry higher than usual, and if unable to do so, so they were ordered to marry other women whom they liked, i.e. marry women whom you like besides them; if one of You Likes It, marry two women and if you like it, marry four women.

The Hadith of Tirmidhi is one of the normative foundations of permitting a husband to practice polygamy with a maximum limit of only up to four wives. Because before Islam came a man who had many wives signified social status in society. The more wives the higher the status in society. And be able to be fair to the married women.

he restriction certainly has its own wisdom. One of them as said by Sheikh Ash-Syanqithi that 'restrictions may marry a wife only up to the number of four people is a provision of the essence of the wise and all-knowing". This is a balanced affair that is in a small amount that usually hinders some of the needs of men in large numbers which is a measure of inability to carry out the demands of marriage, Allah SWT is also all-knowing.

B. Polygamy In Indonesian Law

Basically the marriage law in Law No. 1 of 1974 on marriage adheres to the principle of monogamy, as mentioned in: Article 3 Paragraph (1) which reads, 'basically in a marriage a man can only have a wife, a woman can only have a husband'. The provision on the principle of monogamy does not mean that a person is not allowed to have more than one wife, but the rules for polygamy are tightened in the next articles, namely Article 3 Paragraph (2) to Article 5 Paragraph 2. In Article 3 Paragraph (2) of Law No. 1 of 1974 on marriage stated, "the court may give permission to a husband to marry more than one if desired by the parties concerned.

Article 4 (1) in the event that a husband shall have more than one wife, as stated in Article 3

Paragraph (2) of this law, he shall submit an application to the District Court of his residence. (2) The Court referred to in Paragraph 1 of this article only gives permission to a husband who will have more than one wife if:

- a. The wife cannot fulfill her duties as a wife;
- b. Wife gets disability or incurable disease;
- c. The wife cannot bear offspring;

In the presence of articles that allow polygamy, even for certain reasons. It is clear that the principle of monogamy adopted in the Marriage Law is not absolute. This means that it is only directional to the establishment of monogamous marriages. By way of complicating and narrowing polygamy and not abolishing the polygamy system altogether. The principle of monogamy is not just limited. Because in Article 3 Paragraph 2 of the Marriage Act mentioned where the court may give permission to a husband to marry more than one if desired by the parties concerned.

This is closely related to the various religions that are embraced by the people, especially Indonesia. Because there are religions that prohibit polygamy and there are religions that allow or allow a husband to practice polygamy. Especially Muslims must get permission from the religious court because if without permission from the court, then the marriage has no legal force. So this depends on the religion practiced and the competent court for it.

To obtain permission for polygamy from the Religious Court must meet certain conditions. As mentioned in the article accompanied by the reasons mentioned in Articles 4 and 5 of the Marriage Law Number 1 of 1974. The requirements that must be met are :

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

Regarding the terms of the consent of the wife who consents to her husband polygamy can be given in writing or orally. But even if there is written consent from the wife. This consent must be confirmed with the verbal consent of the wife at the Religious Court. As mentioned in Article 40 PP No. 9 of 1975 on polygamy procedures, namely "if a husband intends to marry more than one, then he is obliged to submit a written application to the court.

In linguistic studies, the origin of the word polygamy is two words, Poly which means many and gami which means wife. The word polygamy itself comes from the Greek Poli or Polos which means a lot and Gamein or Gamos which means marriage or marriage. In the study of terminology

(term), in the Big Indonesian dictionary the word polygamy means that it is customary for a man to marry more than one.

There is an opinion that says that polygamy is a marriage bond where one husband (man) is married to more than one wife at the same time, meaning that the same time is not during the aqad process (ijab qabul) but simultaneously in carrying out family life. While the meaning of polygamous wife is a wife from a marriage bond with a man (husband), where the man is still bound by a previous legal marriage or can be said to be a wife who is married to a married husband. This understanding is to clarify the study of this study.

Law No. 1 of 1974 which regulates marriage and its implementation regulations Government Regulation No. 9 of 1975 is a legal provision that applies to all people in Indonesia. Furthermore, in Article 3 Paragraph 1 of Law Number 1 of 1974 which contains marriage states that according to the principle a man can only have one wife and a woman can only have one husband. So it can be stated that the law upholds the principle of monogamy to limit the divorce rate.

Although the Marriage Law No. 1 of 1974 has the principle of monogamy, as contained in Article 3 which states "a man may only have a wife and a woman may only have a husband", but in Article 4 of the law even states that in certain circumstances permitted polygamy. The specific situation in question is that the wife is unable to carry out her obligations as a wife, the wife has a disability or disease that cannot be cured and the wife is unable to bear offspring.

This indicates that the principle adopted by the Marriage Act is actually not the principle of absolute monogamy but open monogamy or monogamy is not absolute. Polygamy is therefore placed on a legal status of emergency or extraordinary circumstances (extra ordinary). Moreover, polygamy is not solely the full authority of the husband, but on the basis of permission and intervention of the court judge.²⁴ a husband who is to be polygamous first fulfills the conditions specified in Article 5 Paragraph 1, namely (1) the consent of the wife. (2) the assurance that husbands can provide for their wives and children. (3) the certainty that the husband will do justice to his wife and children.

Therefore, stated in the compilation of Islamic law(KHI), the issue of polygamy is regulated in Part IX with the title "married more than one person" Article 55 to Article 59. not unlike the Marriage Law above, KHI also basically adheres to the principle of monogamy, but the opportunities provided for polygamy are also wide open. the authority of the

court also plays a major role in permitting polygamy so that decisions can be appealed and cassated. Therefore legally positive in the sense of Marriage Act No. 1 of 1974 there is no prohibition for husbands to marry more than 1 wife and indirectly Marriage Act No. 1 of 1974 is also not prohibiting for every woman who wants to be a second wife, third or fourth.

However, for civil servants (PNS) in addition to the two provisions of the law, also subject to Government Regulation No. 10 of 1983 jo Government Regulation No. 45 of 1990 contains the marriage license and divorce for civil servants. In the section considering PP No. 45 of 1990 stated marriage is a bond of birth and mind between a man and a woman as husband and wife who aims to build a family full of happiness and eternal according to God Almighty, then married more than one person or divorce as much as possible should be avoided.

Before the enactment of PP No. 45 of 1990, in PP No. 10 year 1983 it is stated that: 27

1) civil servants men who will have more than one wife, shall obtain prior permission from the official.

2) female civil servants are not allowed to be the second, third and even fourth wives of a civil servant.

3) civil servants women who will serve as the wife of the second, the third and even the Fourth of the civil servants, shall obtain prior permission from the official.

4) the application for permission referred to in Paragraphs 1 and 3 shall be submitted in writing.

5) in the letter of application for permission as referred to in paragraph 4, there must be stated The Complete reason underlying the application for permission to have more than one wife or to be a second or third wife and even the fourth.

PP No. 10 of 1983 was then revised with PP No. 45 of 1990 which regulates the Prohibition of female civil servants as the second, third or even fourth wives of both men who are civil servants and non-civil servants. In Article 4 PP No. 45 of 1990 can be described that :28

1) male civil servants add more than one wife, must obtain permission from the official in advance.

2) civil servants women do not obtain permission to be the second wife, the third and even the fourth.

3) the submission of a request for permission as referred to in Paragraph 1 shall be made in writing.

4) in the letter of request for permission referred to in paragraph 3, must be stated complete

reasons on which the request for permission to have more than one wife.

In line with this, for civil servants who violate PP No. 45 of 1990 can fall sanctions. The application of these sanctions depends largely on the severity or lightness of the violations committed. As explained in Article 15 which explains that: 31

1) civil servants who violate one or more of the obligations or provisions of Article 2 Paragraph (1), Paragraph (2), Article 3 Paragraph (1), Article 4 paragraph (1), Article 14, who do not report their divorce within a period of at least one month counted from the onset of divorce, and do not report their second, third, or fourth marriage within a period of at least one year from the date the marriage was carried out, shall be subject to severe disciplinary punishment according to government regulation no. 30 of 1980 which contains civil servant discipline regulations.

2) female civil servants who violate the regulations contained in Article 4 paragraph (2), are sentenced to disciplinary dismissal not with respect as civil servants. (3) superiors who commit violations of the provisions of Article 5 Paragraph (2), and officials who commit violations of the provisions of Article 12, shall be subject to one of the severe disciplinary penalties according to government regulation number 30 of 1980 which regulates civil servant disciplinary regulations.

CONCLUSION

In this case PP No. 45 of 1990 article 4 paragraph 2 is contrary to the Marriage Law No. 1 of 1974 and the compilation of Islamic law. The marriage law and KHI which are the legal basis for Muslims in Indonesia in civil law cases state that there is no prohibition for polygamy or polygamy for every citizen even though the principle of marriage built by The Marriage Law and KHI is the principle of monogamy in accordance with Article 3 In Law No. 1 of 1974 and Chapter IX articles 55 to 59 in the compilation of Islamic law. PP No. 45 of 1990 is a derivative rule where the position is lower than the marriage law then it should be PP no. 45 of 1990 should not contradict the marriage law and KHI. Article 4 paragraph (2) PP No. 45 of 1990 is also considered to discriminate against women who have the status of civil servants, for male civil servants are given the freedom to be polygamous even with the conditions that have been set, while for female civil servants is prohibited absolutely. This rule is also considered contrary to the rules of islam, Islam has established the ability for men and women to polygamy or polygamy, these abilities are

clearly explained in islam through the arguments that are authentic..

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