



The Role of Family Law in Preventing Problematic Polygamy and Protecting Children's Rights in Indonesia

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ABSTRACT

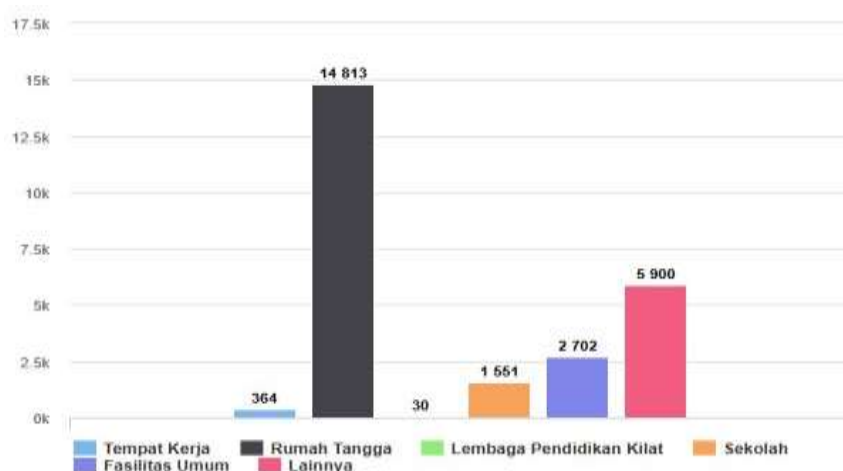
The issue of polygamy in Indonesia remains a sensitive matter that often causes legal, social, and psychological problems, especially when the practice is carried out without fulfilling the principles of justice and legal procedures. The impact not only causes vulnerability for wives, but also threatens the fulfillment of children's rights, such as the right to identity, education, and protection from discrimination. This study aims to analyze the role of family law in preventing problematic polygamy while strengthening the protection of children's rights in Indonesia. The research method used is normative legal research with a legislative and conceptual approach, supplemented by an analysis of religious court practices. The results show that family law plays an important role in preventing problematic polygamy for the sake of justice and welfare. Polygamy is permitted in Islam on the condition of fairness, but in practice it often harms women and children. Family law serves to regulate and protect vulnerable parties in the family for the sake of child-oriented social justice. Furthermore, family law in Indonesia plays an important role in protecting children's rights from the effects of problematic polygamy, divorce, and parental neglect. Protection is provided through the strengthening of marriage and birth registration regulations, the optimization of the role of religious courts by considering the interests of children, and the digitization of legal services to facilitate access and prevent unregistered marriages..

INTRODUCTION

Family law is one of the important pillars in the national legal system because it is directly related to the regulation of household life, relationships between family members, and the protection of the basic rights of children and women (Muhammad Husni Abdulah Pakarti et al., 2023). In the Indonesian context, family law receives serious attention given the pluralistic nature of society, both in terms of religion and culture. One issue that continues to spark debate is the practice of polygamy (Hoiriyah & Fida, 2023). Although regulated in Islamic law and permitted under certain conditions, the practice of polygamy in Indonesia often causes problems, especially when it does not comply with legal procedures and has a negative impact on wives and children.

Law No. 1 of 1974 on Marriage and its amendment in Law No. 16 of 2019 are considered insufficient to prevent problematic polygamy (Hartika et al., 2023). The 2022 report by the National Commission on Violence Against Women notes that cases related to the practice of polygamy often result in domestic violence, gender inequality, and violations of children's rights. In addition, research from various institutions shows that most polygamy is carried out without court permission, resulting in a weak legal status for children and wives. This is in line with data released by the Ministry of Women's Empowerment and Child Protection (KEMENPPPA) on January 1, 2025, regarding victims of child abuse by gender, namely 19.8% male, 80.2% female, and the percentage of perpetrators is dominated by males at 88.6% and females at 11.4%. This issue frequently occurs within households, as shown in the data below.

Figure 1. Number of Victims by Location



Source: kemenpppa.go.id 2025

The above issue is important to study further as an academic problem, and various previous studies have partially raised this issue. Among them are the results of research by Yasin & Sumanto(2024), which focuses on the study of Islamic law in overcoming domestic crises due to the proliferation of online gambling. In addition, the results of research by Ismiradi(2024) focus on the study of law in preventing inheritance conflicts and promoting the concept of a harmonious family. Furthermore, the research results of Kesuma et al.,(2024), focus on how the state should play an important role in sheltering abandoned children from an Islamic law perspective.

Although a number of previous studies have discussed polygamy from the perspective of Islamic law and positive law, studies that focus on the role of family law in the context of preventing problematic polygamy and protecting children's rights are still limited. Most studies highlight normative juridical aspects without linking them to social dynamics and the need for legal reform in the modern era. Therefore, there is a research gap in understanding how family law can be an effective instrument to prevent harmful polygamy practices and ensure comprehensive child protection.

Based on this description, this study has two main objectives. First, to analyze the urgency of the role of Indonesian family law in preventing problematic polygamy practices. Second, to examine strategies for the role of family law in strengthening the protection of children's rights within the family.

RESEARCH METHOD

This study uses a normative legal method with a legislative and conceptual approach. Legal materials were collected through literature study, then analyzed using a descriptive-analytical method to interpret legal provisions, compare them with empirical data, and relate them to family law theory. The results of the analysis were drawn deductively from general to specific principles to formulate the urgency and role of family law in preventing problematic polygamy while strengthening the protection of children's rights in Indonesia.

RESULTS AND DISCUSSION

The Role of Indonesian Family Law in Preventing Problematic Polygamy Practices

Family law in Indonesia has a very strategic position because it concerns the regulation of household life, the position of husband and wife, and the fulfillment of the rights of children as the nation's future generation (Riadi, 2021). In Indonesia, where the majority of the population is Muslim, the issue of polygamy is a sensitive and problematic topic. Normatively, Islam allows polygamy with a maximum limit of four wives, but imposes strict conditions of fairness. As stated in the Qur'an, Surah An-Nisa verse 3:

وَأِنْ خِفْتُمْ أَلَّا تَقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثَلَىٰ ثَلَاثٍ وَرُبْعٍ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ

أَدْنَىٰ أَلَّا تَعْدِلُوا

Meaning: "And if you fear that you will not be able to treat orphan girls fairly (if you marry them), then marry women of your choice, two or three or four. Then if you fear that you will not be able to treat them fairly, then (marry) only one, or what your right hands possess. That is more likely to prevent you from doing injustice."

This verse is often used as the legal basis for the permissibility of polygamy in Islam, but with one main condition: fairness. This means that polygamy is not a command, but rather a *rukhsah* (concession) granted under certain conditions, such as to protect orphaned women or in situations where social circumstances demand it.

Fairness in matters of polygamy is also emphasized in a hadith of the Prophet Muhammad SAW narrated by Abu Dawud, Nasa'i, Tirmidhi:

قال رسول الله صلى الله عليه وسلم: مَنْ كَانَ لَهُ امْرَأَتَانِ فَمَالَ إِلَىٰ إِحْدَاهُمَا جَاءَ يَوْمَ الْقِيَامَةِ وَشِقَاقُهُ مَائِلٌ

Meaning: The Messenger of Allah said: "Whoever has two wives and favors one of them over the other and does not treat them fairly will come on the Day of Resurrection with one side of his body leaning." This means that fairness is an absolute requirement in polygamy. Injustice will be a grave sin that will be accounted for in the hereafter.

The problem is that the practice of polygamy in reality is often far from the principle of justice and instead causes vulnerability to wives and children. Law Number 16 of 2019 explicitly stipulates monogamy as the basic principle of marriage in Indonesia. Polygamy is only permitted under certain conditions, such as when the wife is unable to fulfill her obligations, has a physical disability, or is unable to bear children (Nur Fauziah & Amanita, 2020). In addition, polygamy requires permission from the court and the consent of the first wife. This regulation emphasizes that the state views polygamy as an exception, not as an absolute freedom. Thus, the role of family law here is to ensure that the practice of polygamy is carried out in accordance with legal procedures to minimize the risk of conflict and discriminatory treatment against women and children.

Despite strict regulations, empirical evidence shows that many polygamous practices still occur without following legal procedures. Problematic polygamous practices also often cause economic losses for wives and children, especially when husbands are unable to provide fair financial support. This shows that existing regulations still face serious challenges in implementation. Low public awareness of the law, weak supervision, and limited sanctions for violations of polygamy procedures allow this practice to continue outside of legal mechanisms.

The urgency of the role of family law is becoming increasingly clear. The modernization of family law does not mean eliminating religious values, but rather adjusting legal norms to be more relevant to social dynamics, the protection of human rights, and the principle of gender equality. For example, strengthening regulations on polygamy can be done by emphasizing the legal consequences of practices that do not comply with procedures, clarifying the status of children born out of unregistered marriages, and expanding socio-economic protection for women who are harmed by illegal polygamy. This step is in line with the spirit of the Indonesian constitution, which places the protection of children as an obligation of the state, as stipulated in Article 28B paragraph (2) of the 1945 Constitution. Since 2024, there have been 849 cases of divorce due to polygamy. Below are various data on divorce cases according to provincial percentages.

Figure 2. Data on Divorces Due to Polygamy



Source: BPS 2024

The above data is important to consider in terms of regulation, meaning that family law can play a role in building public awareness that polygamy is not merely a personal choice, but a legal act with broad social implications (Munawir, 2024). Strengthening family law must be accompanied by legal education for the public, so that they understand that polygamy without court permission not only violates administrative rules, but also impacts the rights of children and women. For example, children from unregistered marriages often face administrative difficulties in obtaining birth certificates, access to education, and health services. This condition clearly contradicts the principle of child protection as stipulated in Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014.

Furthermore, family law in Indonesia must be able to integrate a child rights perspective into every policy related to polygamy. Child protection must be placed as a top priority, because children are the most vulnerable to the negative impacts of problematic polygamy practices. In many cases, conflicts between the first wife and the second or subsequent wives often cause children to become psychological and social victims. Therefore, the modernization of family law must be directed not only at regulating polygamy procedures, but also at ensuring clear child protection mechanisms, ranging from the right to identity to the right to proper care.

The urgency of the role of family law is also evident in efforts to create harmony between national law and international legal instruments. Indonesia has ratified *the Convention on the Rights of the Child (CRC)* through Presidential Decree No. 36 of 1990, which affirms the state's obligation to guarantee the protection of children from all forms of discrimination. Thus, preventing problematic polygamy is not only a domestic issue, but also Indonesia's international commitment to meeting child protection standards (Annashy, 2018). The role of family law here is to bridge religious norms, national law, and international instruments so that there is no conflict, but rather harmonization in the best interests of the child.

This means that the role of Indonesian family law is very urgent in preventing problematic polygamy practices. This urgency can be seen from at least three main aspects. First, family law functions as a normative instrument that regulates the limits and procedures of polygamy so as not to harm the parties involved. Second, family law is a mechanism for protecting women and children who are often harmed by illegal polygamy. Third, family law is a manifestation of the state's commitment to adapting regulations to the times, making legal modernization a strategic step towards achieving justice, gender equality, and the protection of children's rights in Indonesia.

Strategies for the Role of Family Law in Strengthening the Protection of Children's Rights in the Family

Family law in Indonesia not only regulates the relationship between husband and wife, but also contains fundamental obligations in guaranteeing the protection of children's rights. Children are the most vulnerable parties when conflicts arise in the household, including as a result of problematic polygamy practices, divorce, or neglect of parental obligations (Warman, 2020). Therefore, the role of family law in strengthening the protection of children's rights is very important, not only in terms of written norms, but also in terms of concrete implementation strategies. These strategies include strengthening regulations, consistent law enforcement, and integration with social and educational policies.

The first strategy is to strengthen family law regulations that are more responsive to children's needs. Law Number 35 of 2014 concerning Child Protection emphasizes that every child has the right to identity, education, health, and protection from violence. However, in practice, many children from illegal or unregistered polygamous marriages face administrative obstacles, such as difficulties in obtaining birth certificates. Therefore, family law must clarify the mechanisms for registering marriages and births so that children do not lose their civil rights. The role of family law needs to be directed towards synchronizing

marriage regulations with child protection regulations so that there are no legal loopholes that sacrifice the best interests of children.

The second strategy is to strengthen the function of religious courts and other judicial institutions as the front line of child protection in family disputes. In cases of polygamy or divorce, the court should not only focus on the legality of the marriage, but also on the consequences for the rights of the child. For example, in granting permission for polygamy, the court must consider the psychological and social aspects of the child, not just the formal requirements submitted by the applicant. Thus, the court can act as the guardian of substantive justice, not just legal formalities. The above is in line with the results of the research " , which states that family law plays an important role in producing professional human resources as law enforcers in the religious court environment.

The third strategy is the role of family law through the digitization of legal services. In this technological era, the recording of marriages and births can be strengthened through a digital system that integrates religious courts, civil registry offices, and child protection agencies. With this system, it will be easier for every child to obtain valid legal identity documents, while also preventing unregistered marriages. Digitalization also enables more effective supervision of the implementation of family law regulations. In line with the results of Nurnazli's research,(2019) , legal regulations can be applied using an integration-interconnection approach. This means that the role of family law can create digital laws that are more easily accessible to the public.

From these various strategies, it can be concluded that the role of family law in strengthening the protection of children's rights must be carried out comprehensively. Family law is not only a regulatory norm, but also an instrument for prevention, protection, and empowerment of children in facing the challenges of modern life. If these strategies can be implemented consistently, Indonesian family law will be able to guarantee justice and welfare for children, while preventing problematic marriage practices that have the potential to harm future generations.

CONCLUSION

The role of Indonesian family law in preventing problematic polygamy is very important because it concerns family justice and welfare. Polygamy is recognized in Islam on the condition of justice, but in practice it is often far from this principle, causing social, economic, and psychological vulnerability for women and children. Family law not only regulates the procedure for polygamy, but also functions as an instrument of protection. Through legal modernization and consistent enforcement of regulations, the protection of children's and women's rights can be strengthened, enabling family law to achieve social justice oriented toward the best interests of children.

Family law in Indonesia has a strategic role in strengthening the protection of the rights of vulnerable children in cases of domestic conflict, whether due to problematic polygamy, divorce, or parental neglect. These protection efforts require targeted implementation strategies. First, regulations must be strengthened to be more responsive to children's needs by emphasizing the registration of marriages and births so that children do not lose their civil rights. second, strengthening the role of religious courts so that they not only assess the legality of marriages but also consider the best interests of children in every polygamy permit and divorce decision; and third, digitizing family law services to facilitate access to registration, increase transparency, and prevent unregistered marriages.

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