

CRIMINAL LAW STUDY BEHIND THE POLYANDRI MARRIAGE IN INDONESIA

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Abstract: *In Indonesia, which has a population of around 270,000,000 (two hundred seventy million) inhabitants in 2020, with a Muslim majority of about 85%, is a society that includes the largest population in the world above India. As the largest Muslim community, they also carry out Sharia religion in all aspects of daily life in accordance with the instructions specified in the Qur'an and Hadith, from prayer activities to the implementation of marriage, so that it may be said that all activities of Muslim communities lead to the Qur'an and Al-Hadith. In terms of marriages, there are still some Muslim women who violate Islamic sharia, both secretly and legally, who are engaged in further marriages even though they are still in marriages with other men (polyandri marriages), when in fact both the Qur'an and the Hadith forbidding and prohibiting the act because it includes an act of adultery with a criminal threat both positive criminal as regulated in the Criminal Code (KUHP) or Law No. 1 of 1946 as well as Islamic Criminal Law. Since this polyandri marriage involves not only the perpetrators but also other parties so that the marriage is carried out, the criminal arrangements in the Criminal Code relating to polyandri marriages can be threatened with sentences ranging from 9 months to 7 years in prison. Whereas polyandri marriages according to the Qur'an and Hadith for the perpetrators can be threatened with death penalty, flagging 100 times or confinement for 1 year.*

Key Words: *Criminal Law, Poliandri Marriage.*

1. INTRODUCTION:

Marriage is a sunnatullah (Allah's decree), not only aimed at humans as His creatures, but applies to all of His creatures including animals and vegetation, no wonder if God created His creatures in pairs as the Word His in Surah Az-Zuriyat verse 49, which says "And We created everything in pairs so that you will remember (the greatness of Allah)". Specifically human marriage is certainly not the same as other creatures because marriage to humans is best governed in its implementation according to the guidance of the Qur'an and Al-Hadith, so that the type of polyandri marriage is a marriage that is in accordance with Islamic guidance. Polyandri marriage from an Islamic perspective is a prohibited act as mentioned in the Qur'an Surah An-Nisa 'verse 24, which states "and (you are forbidden to marry) a married woman, except for slaves that you have". This verse shows that one of the categories of women who are not allowed to be married by men is a married woman (Shaykh Taqiyuddin an-Nabhani, an-Nizham al-Ijtimai fi al-Islam, 2003). So a woman who has a husband and then married another man while the woman is still in marriage, then the woman's actions are called polyandri marriages.

Although polyandry marriages in the perspective of Islamic law are not justified and unlawful, there are still many legal events relating to this forbidden act of Islam, for example in the Himalayas of the Tibetan city, Nepal, Upper Dolpa, in this area a woman married to a man at the same time with his other brothers. Then in India there is a woman married to 5 men as her husband at the same time, then in the countries of Kenya and Tanzania where a wife is a sexual servant for guests of her husband while the guest is in their home.

Likewise in Indonesia, there are still many polyandri deeds done by these women either by clandestine (syiri) or by legal means (marriage), in syiri for example in Madura a woman named Kamariyah who has a husband and then marries another man In Tangerang, a woman named Uslihah married another man at the Cikupa Office of Religious Affairs. Then in Situbondo, Pekan Baru, Pematang Siantar, and others. Ironically, some of them ultimately disputed through the Court's Decision due to a lawsuit for canceling a marriage. The actions of polyandri marriages in Indonesia not only involve women and men (their partners) as parties in civil relations, but will also involve other parties who support the implementation of such marriages, for example the village, sub-district and the Office of Religious Affairs (KUA) which has issued letters supporting the legality of the marriage, so that the parties concerned are legally liable for criminal liability. Considering that polyandri marriages are not justified in Islamic law and the laws are haram, then the polyandri marriages that are committed are illegal, so that illegitimate marriages if they continue to be carried out would certainly be classified as adultery, thus according to the provisions in force in Indonesia both for perpetrators of adultery and related parties may be subject to criminal sanctions as stipulated in the Criminal Code (KUHP) or Law No. 1 of 1946 or according to Islamic Criminal Law as determined in the Qur'an and

Al- Hadith. Then how is the regulation and study of criminal law in force in Indonesia related to this polyandri marriage, both from the study of Islamic criminal law and positive criminal law aimed not only at polyandri perpetrators and their partners, as well as other parties so that the marriage is held.

2. RESEARCH METHODS:

This study used a sample survey approach, namely data collection was only carried out on a part of the population. Based on the type of problem studied, the techniques and tools used in this study are descriptive qualitative and the type of research is supported by a fact sample survey that collects data on factors related to the research variables. The nature of the research is explanatory research which relates to the position of the variables studied and the influence between one variable and another. The research is focused on studying the criminal law behind polyandry marriage in Indonesia. The data collection method in this study was carried out by means of explanatory research on cases and rules in daily life according to the instructions specified in the Qur'an and Hadith, from prayer activities to the implementation of marriage, so it can be said that all activities of the Muslim community lead to Al-Qur'an and Al-Hadith. Interviews (interviews) conducted directly to obtain data and information related to research. Types of data collected in this study are sourced from primary data, namely: data obtained directly from interviews, courts and other data and secondary data, namely data obtained from written documents by studying various writings from text books, journals, the internet and The Criminal Code relating to polyandry marriage and supporting this research.

3. DISCUSSION:

3.1 Poliandri Marriage in the Study of Islamic Criminal Law:

Poliandri marriage is a marriage or marriage of a woman with more than one husband, this kind of marriage is forbidden based on the Qur'an and Sunnah. Thus it can be ascertained that for women who are unlawful to be married, then it is also illegitimate for their marriage to be contested, meaning that proposals for women are included in a series of marriages (M. Ali Ash-Shobuni, Islamic Marriage, 2008). having a husband is forbidden to be married because because the woman who has a husband is still under the protection and responsibility of others as her husband, so it is not lawful to marry a woman who is still under the responsibility of another person, not every marriage bond will cause a transfer of responsibilities from the responsibility of the woman's parents to be the responsibility of her husband, so of course it is forbidden to marry a woman who has been responsible for her husband (M. Ali Ash-Shobuni, Islamic Marriage, 2001). The existence of a ban on polyandri marriages can make the perpetrators have committed grave sins due to polyandri marriages including adultery. Adultery in Islamic law in addition to committing major sins, is highly condemned and as an act of Jarimah (a crime that is severely punished). This opinion was agreed upon by ulama scholars. But some scholars also assess and regardless of the culprit, whether done by people who are not married (ghairu muhsan) or people who are married (muhsan), as long as the intercourse is outside the legal marital ties, then the act is called adultery and determined as an act against the law, which does not reduce the value of a criminal offense, even if it is done voluntarily or like it. Although no one feels harmed or even considered beneficial for the perpetrators, adultery is seen by Islam as a violation of sexuality that is highly despicable and heinous, without knowing priorities and forbidden in all circumstances (Rahmat Hakim, Islamic Criminal Law (Fiqh Jinayah, 2000).

Islamic criminal law or also known as jinayah fiqh is all legal provisions regarding criminal acts or criminal acts committed by people of mukallaf (people who can be burdened with obligations) as a result of understanding the legal arguments of both the Qur'an and hadith (Teguh Prasetyo , Criminal Law, (2015) The concept of Jinayah comes from the word Jana, Yajni which means crime, criminal or criminal. Jinayah is an act that is forbidden or prohibited because it can cause harm or damage to 5 things namely religion, life, reason, descent, offspring and assets, even though those five things must be protected and preserved (Mustofa Hasan and Beni Ahmad Saebani, Islamic Criminal Law, Fiqh Jinayah, 2013). Islamic criminal law covers three main areas, namely the criminal acts of Qisas, Hudud, and Ta'zir. The meaning of hudud is all types of criminal acts whose punishment is expressly regulated in the Al-Quran and Hadith, both the nature of the criminal act and the legal sanctions, so that the crime of Qisas enters the realm of Hudud. Meanwhile, all types of criminal offenses that do not enter the realm of hudud means entering ta'zir territory. Ta'zir punishment itself is a punishment applied by a government to uphold justice in the society. Ta'zir is one of the penalties in Islamic criminal law or retaliation against an Jarimah (criminal) in the form of immorality which has been committed by a criminal. Ta'zir is a predetermined punishment for jarimah ta'zir. The forms vary, but the determination of the determination is left to the government or the authorities, namely the legislative body or judge (waliyul amri or imam). According to Al-Mawardi: "ta'zir is an educational punishment for sin (immorality) whose sentence has not been determined by syara" (Ahmad Hanafi, Principles of Islamic Criminal Law, 2005).

Polyandri is immoral acts committed by this woman classified as an act of adultery. While for those who commit adultery can be divided into 2 (two) parts, namely muhsan (already married) and ghairu muhsan (unmarried),

while polyandri practitioners are classified as muhsan so that the punishment for muhsan adulterers is stoning which is carried out by planting adulterers' bodies into the ground limited to the chest, then thrown with stones to death (HR. Muslim of Ibadah Bin Shamith).

But for a polyandri couple or a man who married a polyandri woman, the status of muhsan and ghairu muhsan, for those who are ghairu muhsan, the punishment that has been set is 100 (one hundred) times whipped and exiled for one year, this is in line with the words of the Prophet Muhammad SAW narrated Muslim from Ubadah bin Shamit who said: "Two adulterers who have never been married were sentenced to whipping one hundred times and exiled for one year". Judging from the implementation of the sentence both for polyandri women and their partners, there are 3 (three) types of punishment, namely: stoning, detention and exile (prison). Stoning is the most severe law among other sentences threatened in polyandri marriages as long as it can be proven that the act is classified as adultery, including evidence of the existence of the perpetrators of the polyandri partner, then their actions were witnessed at least 4 people as mentioned in the Qur'an Surah An-Nisa 'verse 15: "And (against) the women who commit abominable acts there should be four witnesses among you (who witnessed them)" (Noerwahidah, Death Penalty in Islamic Crimes, 1994).

These 4 witnesses really did see and know that the polyandri perpetrators especially the woman really had a legitimate husband and were still in marriage, apart from that the witness really saw and knew:

- The entrance of the male penis into the female vaginal opening by mentioning the ways in which the penis is inserted.
- Time to commit adultery, and
- The place of adultery.

Then what if the witnesses do not reach 4 people, if no 4 people are reached, then it is certain that the punishment of stoning for the adulterer cannot be done or terminated, except in the case of husband / wife accusing his husband / wife of adultery, then there are no witnesses except himself, then it is impossible he witnessed himself by being sworn 4 times, and at the fifth oath he said that: "Allah's curse is upon him, if he is a lying person". So to punish those who commit adultery, especially in polyandri marriages, it is not easy because the threat of punishment is capital punishment.

3.2 Criminal Sanctions in the Criminal Code for Police Actors:

Polyandri acts are clearly forbidden both based on Islamic law and also included as part of the criminal act of adultery as stipulated in Article 284 of the Criminal Code as a form of responsibility as perpetrators and various other criminal acts such as marital obstruction, fraud, letter forgery and others. So the status of forbiddenness is clearly based on the teachings of Islam for every Muslim and this marriage is not in accordance with one of the objectives of the Shari'ah being revealed by Allah, namely guarding offspring (hifz nasl). Criminal law in force in Indonesia is a legacy of the Dutch colonial legalized by Law No. 1 of 1946 with several changes to the Criminal Code (Moerdani, Islamic Law, 2010) The national law of the Criminal Code is a law established by the Indonesian people, after Indonesia gained its independence in 1945 and applies to the Indonesian population, especially for citizens the Republic of Indonesia as a substitute for colonial law (Topo Santoso, Principles of Islamic Criminal Law, 2016).

Article 284 of the Criminal Code relating to adultery, states:

(1) Threatened with a maximum imprisonment of nine months:

- A married man who does an overspell when it is known that article 27 Burgelijke Wetboek (BW) applies to him;
- A married woman who does or does not.
- A man who participated in the act, even though he knew that the guilty was married.
- A married woman who participated in the act, even though it was known to him that those who were guilty had married and article 27 BW applies to him.

(2) Prosecution is not carried out but on complaints of spoiled husband / wife, and if for them applies article 27 BW (Civil Code), within a period of three months followed by a request for divorce or a table or bed for a reason also.

(3) Article 72, article 73, article 75 of the Indonesian Criminal Code does not apply.

(4) Complaints can be withdrawn as long as the examination in a court hearing has not begun.

(5) If the husband and wife applies to article 27 BW, the complaint is not heeded during the marriage has not been decided because of divorce or before the decision stating the separation of the table or bed into a decision.

Article 284 shows that prosecution of adulterers can only be carried out on a complaint from one of the spouses involved in this case or those who feel tainted by the act. Therefore, if all of them are silent, and no one feels polluted or does not feel disadvantaged, they are considered to do so voluntarily and certainly the culprit cannot be punished. The positive law regards adultery cases as a complaint offense, meaning that prosecution is only carried out when there is a complaint from a party that feels disadvantaged. Even that complaint can still be withdrawn as long as

it hasn't been tried. Women who are polyandri marriages, of course, have committed adultery in the perspective of the Criminal Code, because they are still bound by previous marriages and there is no decision that states that they have ended the marriage. As for the prosecution of the perpetrators required reporting from the victim with the threat of only 9 months in prison, this is certainly different in Islamic law with the threat of stoning to death. Apart from the threat of adultery in the Criminal Code for this polyandri marriage, on the other hand, there are several articles in the Criminal Code which can be related to criminal sanctions for this polyandri marriage as mentioned in Articles 279, 280, 284, 263, 378 and 436 of the Criminal Code, for example Article 279 of the Criminal Code which is called a marriage is hindered because of other marriages, which can occur due to polygamy and polyandry. Regarding the explanation of various Articles in this Criminal Code will be explained as follows:

Article 279 of the Criminal Code states:

(1) Threatened with a maximum imprisonment of five years:

1. whoever makes a marriage knowing that his existing marriage or marriage is a legal barrier to it;
2. whoever conducts a marriage knowing that the marriage or marriage of another party is a barrier to that.

(2) If those who commit acts based on paragraph 1 point 1 hide to other parties that existing marriages constitute a valid barrier for that, they are threatened with imprisonment for a maximum of seven years.

(3) Revocation of rights based on article No. 1 - 5 can be stated.

Then In Article 280 of the Criminal Code states: "Whoever marries deliberately conceal to other parties, that there is a legal obstacle for him to marry, sentenced to prison for 5 (five) years, if the marriage is canceled on the basis of these obstacles". so to be punished according to this article must be proven:

- That the person has really been married (married) which can be proven by the existence of a marriage certificate.
- That there is a legal obstacle (according to law) to remarry, for example it can be proven that the person has already married to another man, meaning that this person has a legitimate husband.
- That he deliberately hid the obstacle to other parties, for example he said he was not married and was still a girl / single status.
- That marriage has been canceled on the basis of these obstacles, for example by the cancellation of the marriage based on the decision of the Religious Court.

There is a difference with Article 279 of the Criminal Code which only sufficiently fulfills the objective element of being married by hiding it to the existing marriage partner which is an obstacle for him to remarry. In a polyandri case the offender can be stated to have violated Article 280 of the Criminal Code when the polyandri offender is not only aware of an obstacle in the marriage that is the perpetrator may not remarry because there is still a marriage bond, it turns out that the marriage has also been canceled by a court decision, if there is no marriage cancellation, the offender is subject to Article 279, but if the marriage has been canceled by a court ruling (Marriage Cancellation), then the criminal matter has been completed, the perpetrator will still be subject to Article 280 of the Criminal Code (R. Soesilo, Elucidation of Article 280 of the Criminal Code. 1994). For the offender can also be subject to the offense of forgery of a letter on a polyandri marriage as stipulated in Article 263 of the Criminal Code, for example the woman mentions with a written letter issued by the local government regarding the status of her husband who died, even though the husband is still alive, so he is married to another man. It was alleged that he and the person involved had committed a criminal offense in violation of Article 263 of the Criminal Code. Where, in the article stated:

1) Anyone who makes a fake letter or falsifies a letter that can give rise to a right, a bond or a debt free or that is intended as evidence of something with the intention to use or order others to use the letter as if the contents are true and not falsified, threatened if the usage This can result in losses, due to falsification of the letter, with a maximum imprisonment of six years.

2) Threatened with the same crime, whoever intentionally uses fake or forged letters as if it were true if the use of the letter could incur losses. This article shows that there are penalties that can be imposed on the perpetrators of counterfeiting letters to smooth the desire to carry out polyandry actions. One object of the letter referred to in article 263 (1), is a letter intended as evidence of something. Apart from that, in a marriage the law will also be related to Article 378 of the Criminal Code on Fraud, namely with the intention to benefit oneself or others illegally, using a false name or false dignity, with deception, or a series of lies, moving others to hand over something to him. Fraud comes from the word deception which means that according to the big Indonesian dictionary is an act or words that are not honest (lying, fake, etc.) with the intention to mislead, outsmart, or seek profit. Fraud itself means the process, method, deception. The crime of fraud includes material delict which means that its perfection must occur as a result. The elements of fraud are acts committed to obtain goods or money belonging to others and profits in a bad way. Because using false identities such as fake names and fake positions, by a series of lies, or using deception. In a fraud

there must be causality between the ruse and the giving of certain goods which if there were no such ruse, there would be no giving of the goods (Dudung Mulyadi, Elements of Fraud in Article 378 of the Criminal Code Attributed to the Sale and Purchase of Land, 2017). The implementation of polyandri marriages certainly would not be possible without the element of fraud because polyandri marriages in Islam are forbidden and prohibited. The deception is in the form of falsification of identity or status by engaging in deception aiming to break the law of getting married even though there are still obstacles in the marriage that are still tied to a previous marriage with another partner. The existence of a criminal offense for the perpetrators of polyandri marriages turns out to also involve other parties that can be subject to punishment as stipulated in Article 436 of the Criminal Code is in the classification of occupational crimes, precisely regarding Marrying People Who Obstruct Against Marriage Again. The bunyipasal are as follows:

Article 436 paragraph 1, reads:

"Whoever has the right to marry a person according to the law applicable to both parties, to marry a person, is known that his existing marriage at that time became a legal obstacle for him to remarry, to be sentenced to prison for up to seven years".

Article 436 paragraph 2, reads

"Whoever has the right to marry a person according to the law applicable to both parties, to marry a person, he is aware, that for this reason there is another legal obstacle that is sentenced to imprisonment for two years and eight months or a maximum fine of Rp 4,500".

If you pay attention to some elements contained in this article are addressed to officials who have the obligation to marry or legalize community marriages, in Indonesia the official is the Head of the Office of Religious Affairs. This article refers to office crimes committed by officials in marrying a couple who apparently still has a marriage relationship with another couple. This error can be manifested either in the form of negligence in the examination of the data file of the marriage or deliberately turning a blind eye to the mistakes made intentionally by the perpetrator.

4. CONCLUSIONS:

Polyandri marriages committed by a woman who is still married to another man is a type of marriage that is forbidden and prohibited according to Islamic law as specified in the Qur'an and Al-Hadith. The threat of punishment for polyandri perpetrators is very severe, polyandri perpetrators who have the status of muhsan (already married) are threatened with death penalty (stoning to death), while those who are still in the status of Ghairu muhsan (not yet married) are threatened with the law of flagging (flogging) 100 times and exiled (incarcerated) for 1 (one) year. Regulations regarding polyandri marriages according to positive law in force in Indonesia as contained in Law No. 1 of 1946 concerning the Criminal Code does not yet exist, but since polyandri marriages are forbidden marriages that include zina according to Islamic law, then adultery offenses are regulated in the Penal Code as mentioned in Article 284. Polyandri marriages are in a prohibited marriage which includes zina according to Islamic law, then adultery offenses are regulated in the Penal Code as mentioned in Article 284. Polyandri marriages are in a legal perspective positive not only involving the perpetrators but also involved other parties, so that the positive criminal law related to polyandri marriages other than Article 284 of the Criminal Code there are also Article 279, 280, 263, 378 and 436 of the Criminal Code which threatens penalties between 9 (nine) months until with 7 years in prison.

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