

The Annulment of a Marriage Due to Death in a Polygamous Situation

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Abstract. *Marriage is a legal and religious bond between a man and a woman. In positive law in Indonesia, a marriage must be registered to gain legal recognition. However, there are many cases where marriages are carried out without being registered, especially polygamous marriages. This article examines the legal consequences of polygamous marriages when one of the partners dies. In the literature study conducted, it was found that many polygamous marriages red for various reasons, such as bureaucratic obstacles, not understanding the importance of registration, or deliberately avoiding registration to avoid legal consequences. However, when one of the partners dies, problems arise, especially regarding inheritance rights and the status of children from the marriage. Under existing law, unregistered marriages can be annulled. However, the annulment of marriages that have been broken up due to death has become a polemic. This is because the bereaved spouse often faces difficulties in accessing their rights, such as inheritance and child custody. This article recommends the importance of education regarding marriage registration and changes in regulations to protect the rights of surviving spouses in polygamous marriages.*

Keywords: *Consequences; Inheritance; Marriage; Polygamous; Registration.*

1. Introducing

God created two types of humans, namely men and women, with the purpose of forming complementary pairs for each other's lives. The effort to establish social relationships within the scope of the household is aimed at creating a happy and lasting family according to the Almighty. It is evident that in real life, men and

women live together in a marital union, referred to as husband and wife. The relationship between husband and wife arises through the process of marriage carried out by a man and a woman according to established legal principles.

Marriage is a right guaranteed to every citizen under Article 28 letter b of the 1945 Constitution of the Republic of Indonesia, which states that "everyone has the right to form a family and continue their descendants through a valid marriage, and the state guarantees the child's right to survival, growth, and development, as well as the right to protection from violence and discrimination."

The Indonesian Dictionary explains that marriage comes from the word "*kawin*," meaning forming a family with the opposite sex, engaging in sexual relations. Marriage can also be called a wedding, derived from the word "*nikah*," which means to gather, mutually enter, and is used to signify sexual intercourse¹. Article 1 of Law Number 1 of 1974 on Marriage defines marriage as a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family (household) based on the Almighty. Marriage itself is defined as a solemn ceremonial contract, and it is considered a form of worship with specific legal requirements.

In Indonesian society, marriage is not only seen as a commitment between two individuals but as a bond that has social, cultural, and legal dimensions. Marriage is considered a sacred ritual that unites two individuals who love each other, without any barriers². Marriage involves many aspects of life, from interpersonal relationships to economics and law. Article 2 of Law Number 1 of 1974 regulates valid marriages, if conducted according to the laws of their respective religions and beliefs and recorded according to regulations.

Both legal and religious considerations are crucial for the validity of marriage, especially in Indonesia, where legal regulations are also taken into account³. Chapter II of Law Number 1 of 1974 on Marriage regulates the valid requirements in marriage, including the consent of both prospective spouses and the consent of the parents for prospective spouses under 21 years of age. However, this has been amended in Law Number 16 of 2019, stating that marriage is only allowed if the prospective groom is at least 19 years old and the

¹ Ghozali, Abdul R. (2014). *Fiqh Muhakahat*, Jakarta: Kencana Prenamedia Group, p. 7.

² Tihami, M. A., & Sahrani, S. (2014). *Fikih Munakahat (Kajian Fikih Nikah Lengkap)*. Jakarta: PT. Raja Grafindo Persada, p. 8

³ Prof.Dr. Jamaluddin. (2016). *Buku Ajar Hukum Perkawinan*, Sulawesi: Unimal Press, p. 18

prospective bride is 16 years old, and they are not blood relatives or already in a marriage with someone else⁴. If any of these conditions are not met, the marriage can be considered invalid. Furthermore, the marriage should be based on the mutual consent of both parties.

As of the end of 2022, 48.46% of the Indonesian population is married, as seen from the number of people who have married, which is 134.6 million. Nearly half of the Indonesian population has entered into marriage, but this is also accompanied by a significant number of divorce cases, reaching 516,334 cases in 2022, an increase of 15.31% from the previous year's figure of 447,743 cases⁵. One of the reasons for divorce is influenced by third parties and family disharmony. The emergence of third-party factors is influenced by family disharmony, where when a couple is not harmonious, one of them seeks alternatives with someone else⁶.

With this background, there are conditions for having more than one spouse, namely through polygamy. Law Number 1 of 1974 Article 3 paragraph 2 states that the court can grant permission to a husband to have more than one wife if desired by both parties. The court will assess the husband's ability, both mentally and physically, to support more than one wife. On the other hand, according to Article 4 paragraph (2) of Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 concerning Marriage, the court only grants polygamy permission for reasons such as the wife not fulfilling her obligations, having a physical disability or an incurable illness, and being unable to bear children. The obligation to apply for polygamy permission to the Religious Court is intended to ensure public order and guarantee rights in legal relationships.

The examination of polygamy requests conducted by the Religious Court certainly involves directly hearing statements and consent from the first wife. This becomes one of the judge's considerations in granting polygamy permission

⁴ Khairunisa, A., & Winanti, A. (2021). "Batasan Usia Dewasa Dalam Melaksanakan Perkawinan Studi Undang-Undang Nomor 16 Tahun 2019." *JUSTITIA: Jurnal Ilmu Hukum Dan Humaniora*, 8(8), <http://download.garuda.kemdikbud.go.id/article.php?article=2259161&val=15646&title=BATASAN%20USIA%20DEWASA%20DALAM%20MELAKSANAKAN%20PERKAWINAN%20STUDI%20UNDANG-UNDANG%20NOMOR%2016%20TAHUN%202019> ghz

⁵ Data Indonesia. (s.d.). *Sebanyak 48% Penduduk Indonesia Sudah Menikah pada 2022*. Retrieved September 29, [2023], from <https://dataindonesia.id/ragam/detail/sebanyak-48-penduduk-indonesia-sudah-menikah-pada-2022#>

⁶ Aulia. (2008). *Kompilasi Hukum Islam: Hukum Perkawinan, Kewarisan, dan Perwakafan*. Jakarta: Nuansa Aulia, p. 85.

to the husband. Without permission from the Religious Court, a person may engage in secret polygamy or not require marriage registration. Because marriage registration, which is a requirement of the Office of Religious Affairs for polygamous marriages, must meet the polygamy permission from the Religious Court according to Article 44 of Government Regulation Number 9 of 1974.

In addition to legal regulations, polygamy must also adhere to the rules of each religion and belief. The principle of marriage should ideally be monogamous, as adopted in the Indonesian legal system's marriage laws in line with standards and capabilities. This can be used as a reason for a wife not to approve of her husband's polygamy. This reason is a crucial consideration for the obligation to apply for polygamy permission to the Religious Court. If polygamy permission is not obtained from the Religious Court, it may prompt the husband to engage in illegal actions by marrying without the knowledge of the legal wife. Because without marriage registration, secret polygamy, as long as the religious requirements are met, is considered a valid marriage.

In 2022, polygamy permission increased by 850 applicants. Polygamy has become a new trend in the new year, but not all polygamous marriages are recorded in marriage records in Indonesia. For example, the Ministry of Religious Affairs in Mojokerto stated that seven out of nine husbands applying for polygamy were not recorded, citing a lack of socialization in managing marriage documents. One reason could also be the bad intentions of husbands performing marriage ceremonies without the knowledge of their legal wives.

Article 38 of Law Number 1 of 1974 regulates the conditions for the termination of marriage, namely death, divorce, and by the decision of the court. With the argument that when one partner dies, the writer is interested in discussing further how the law can address the issue of a husband who practices polygamy but is only discovered after his death, and the wife requests the annulment of the marriage. The writer explores this in a journal entitled "Annulment of Marriage Due to Death in Polygamous Circumstances."

Based on the background of writing about "Annulment of Marriage Due to Death in Polygamous Circumstances," further examination is needed to review the positive and negative aspects of annulment, as well as to educate people on the necessary steps to take in case of such disputes. This is to provide up-to-date information and regulations regarding annulment.

To ensure a different focus for the proposed research, the writer refers to existing literature. One of them is a study conducted by Daromu Purwadi in

2019, titled "Annulment of Marriage Due to Husband's Identity Forgery." This literature provides information related to one of the reasons for the annulment of marriage, namely identity forgery, which can be related to polygamy if the marriage is unknown to the first wife⁷.

This violates polygamy requirements, thus allowing for the annulment of marriage. The study discusses the handling of identity forgery cases in Wanglu Village, where forgery is proven through marriage certificates showing that the husband's status is unmarried. Therefore, with this forgery, it can be concluded according to the provisions for the annulment of marriage. The difference lies in the resolution and general overview of the case.

The next reference used by the writer is a study by Marlina Yayu in 2019, titled "Annulment of Polygamous Marriages." In this literature, the researcher explains that annulment of marriage on the grounds of polygamy can occur, with evidence in the Decision of the Surabaya Religious High Court Number 0345/Pdt.G/2015/PTA.Sby, where the decision in the dispute can be accepted. This is one of the many annulment lawsuits where the decision is acceptable. According to the researcher's analysis, the evidence and requirements in the lawsuit are in accordance with the provisions in Law Number 1 of 1974 concerning Marriage. The difference with the writer's research is the substance of the discussion.

The third study used as a reference is a study by Rishki Salsabiel in 2023, titled "Annulment of Marriages in Cases of Unrecorded Polygamy Whose Marriages Have Ended Due to Death." In this study, the researcher reviews the annulment of marriages that have ended in unrecorded polygamy, in line with the title, not much different from the writer's title.

The literature explains that annulment of marriage should be possible if the marriage has ended. However, for now, there is a Circular Letter from the Supreme Court stating that the annulment of marriages that have ended cannot be annulled; therefore, the writer wants to further examine this material.

Therefore this research discusses on how the annulment of marriage could impact legally which could influence a major effect in the distribution of the

⁷ Purwadi, D. (2019). "Pembatalan Perkawinan Karena Adanya Pemalsuan Identitas Suami dalam Perkawinan Poligami (Studi kasus pada Desa Wanglu Kecamatan Krucuk Kabupaten Klaten)." *Jurnal Bedah Hukum*, Vol. 3, No. 2

legislative inheritance, this could spark a lot of disadvantages if the marriage isn't nullified so the writer is enthusiastic to research on how an annulment case plays out in court and what are also their legal standings.

Whilst the objectives of this research are explaining the steps in resolving disputes related to the annulment of marriages that have ended due to death but occurred in a polygamous context and to determine the legal implications of annulling marriages in polygamous situations, including legal rights, inheritance rights, child custody rights, and social recognition.

2. Research Methods

The research method employed in this study is normative legal research or literature review, utilizing both the Case Approach and the Statute Approach. The Statute Approach involves gathering data from legislation and regulations, understood based on a hierarchical system, and studying the principles contained in legal regulations related to the issue of unrecorded polygamous marriages.

Meanwhile, the Case Approach is used to examine the application of norms or legal principles in the practice of polygamous marriages in the field⁸. Empirical cases are chosen to yield legal analysis in the form of legal explanations. According to Robert K. Yin, it is an empirical investigation that identifies phenomena in the context of real-life situations. The investigation delves into the boundaries between phenomena and contexts that are not explicitly apparent, utilizing multiple sources of evidence⁹. As a case study, it does not necessarily have to be conducted over an extended period and does not depend solely on ethnographic data or participant observation¹⁰.

According to Peter Machmud, normative legal research with the Statute Approach involves the examination of various regulations such as the 1945 Constitution of the Republic of Indonesia, Laws/Government Regulations, Government Regulations, Presidential Regulations, and Regional Regulations¹¹. Interviews, as suggested by Sugiyono, are used as a data collection technique to

⁸ Hasibuan, Z. A. (2007). *Metodologi Penelitian Pada Bidang Ilmu Komputer Dan Teknologi Informasi*. Depok: Universitas Indonesia, p. 43.

⁹ Soekanto, S. (1986). *Pengantar Penelitian Hukum*. Jakarta: UI-Press, p. 7.

¹⁰ Waluyo, B. (2002). *Penelitian Hukum dalam Praktek*. Jakarta: Sinar Grafika, p. 16.

¹¹ Marzuki, P. M. (2017). *Penelitian Hukum*. Jakarta: Kencana, p. 137.

identify research issues and to gain deeper insights into the perspectives of the respondents.¹²

In normative legal research, the author utilizes secondary data sources, referring to information obtained indirectly from official documents and reference sources related to the research subject. Secondary data is categorized into three categories:

a. Primary Legal Materials

Primary legal materials refer to high-authority legal sources, including legislation, official records, and other related documents related to the creation of legal regulations. In the scope of this research, primary legal materials used include:

1. Compilation of Islamic Law
2. Law Number 1 of 1974
3. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage
4. Circular Letter No. 2 of 2019 Regarding the Implementation of Formulation Results of the Supreme Court's Plenary Session in 2019

b. Secondary Legal Materials

Secondary legal materials refer to legal materials that analyze and interpret basic legal materials. This term also includes publications related to legal aspects, although not official documents. In the context of this research, secondary legal materials involve books, journal articles, theses, and other relevant research related to the examined issue

c. Tertiary Legal Materials

Tertiary legal materials refer to legal materials that provide guidance or explanations for primary and secondary legal materials. Examples of tertiary legal materials include legal dictionaries, encyclopedias, and bibliographies.¹³

¹² Fajar, M., & Achmad, Y. (2010). *Dualisme Penelitian Hukum Normatif dan Empiris*. Yogyakarta: Pustaka Pelajar, p. 321.

3. Results and Discussion

3.1. Annulment of Marriage

The annulment of a marriage signifies that the union did not meet the stipulated requirements outlined in the Marriage Law, devoid of motives obstructing the marriage. The annulment process, overseen by the Religious Court, adheres to a structured examination procedure, encompassing case submission, trial proceedings, and the issuance of a verdict¹⁴. The sequential stages of the examination procedure assume paramount importance in evaluating mandatory statements related to the practice of polygamous marriage that lacks the requisite conditions, such as formal registration with the authorized institution.

The legitimacy of the annulment process hinges on three primary articles within Law Number 1 of 1974, specifically Article 24, Article 27 paragraph (2), and Article 71 letter a of the Compilation of Islamic Law. The initiation of an annulment is entirely within the rights of the first wife, who acts as the plaintiff against the polygamous spouse in accordance with Article 23 of the Marriage Law¹⁵.

Firstly, under Article 24 of the Marriage Law, the second wife filing for an annulment with the Religious Court may involve the first wife to nullify her marriage with the deceased, particularly if the polygamous spouse is still legally married. Secondly, as per Article 27 paragraph (2) of the Marriage Law, the first wife possesses the right to petition for the annulment of the marriage if she discovers misconceptions about the deceased's identity within a six-month timeframe. Thirdly, according to Article 71 letter a of the Compilation of Islamic Law, the absence of recorded marriage performed by the deceased indicates that the polygamous marriage lacked approval from the Religious Court, rendering it invalid as a polygamous marriage without the first wife's consent.

The authorization for polygamous marriage, coupled with mandatory registration, carries legal ramifications, as outlined in Article 56 paragraph (3) of the Compilation of Islamic Law, which stipulates that "marriages conducted with

¹⁴ Puryani, & Wisnu, A. (2021). "Kajian Yuridis Terhadap Pembatalan Perkawinan Poligami di Pengadilan Agama Wates (Kajian Kasus No: 133/Pdt.G/2020/Pa.Wt)." *Seminar Nasional Diseminasi Hasil Penelitian 2021 Universitas Janabdra Yogyakarta*, p. 181-190, <https://core.ac.uk/download/pdf/539280619.pdf>

¹⁵ Syarifah, M. (2018). "Implikasi Yuridis Poligami Bawah Tangan Pespektif UU No. 1 Tahun 1974 Tentang Perkawinan." *Jurnal Yustitia*, 19(1); 32, <http://ejournal.unira.ac.id/index.php/yustitia/article/view/404>

a second, third, or fourth spouse without the Religious Court's permission hold no legal validity." This underscores the prerequisite for obtaining permission from the Religious Court before engaging in polygamous marriage. Despite the recognition of the right to annul a marriage in Law No. 1 of 1974, the application of this right within the context of unregistered polygamous marriages posthumously remains an area marked by uncertainty, mainly due to the absence of official marriage documentation.

3.2. The Resolution of Disputes Regarding The Annulment Of a Marriage That Has Ended Due to Death but Occurred In a Polygamous Context

In the stage of filing a lawsuit, it must fulfill the material requirements as stipulated in Article 8 paragraph (3) of the Regulation of Civil Procedure, which includes the identities of the parties, the grounds for the lawsuit or *fundamentum petendi* or *posita*, and the *petitum* or demands. These three elements must be present and cannot be separated from each other. The fulfillment of formal requirements is equally important as material requirements. Formal requirements in a lawsuit involve ensuring compliance with both absolute and relative competence or jurisdiction.

The lawsuit must not contain errors in *persona* and must be clear and explicit. A lack of clarity or precision (*obscuur libel*) in the lawsuit can lead to rejection, especially if the *posita* contradicts the *petitum*. It must adhere to the principle of *ne bis in idem*, meaning the lawsuit cannot be filed a second time if the subject, object, and substance of the case are the same, and there is a final and positive verdict from the previous case, whether it dismissed or granted the case.

The lawsuit should not be premature or filed before the appropriate time. It should not raise issues that have been waived, such as those that have expired. Furthermore, what is being sued must still be in the judicial process (*aanhanging geding/rei judicata deductae*), for instance, when the case in question has already been filed and is currently in the process of appeal or cassation.¹⁶

In the context of marriage annulment, it differs from divorce petitions, which can only be filed by the married couple. According to Article 23 of the Marriage Law, annulment petitions can only be submitted by family members in the direct line of descent from the husband or wife, the husband or wife themselves (the

¹⁶ Wardah, Sri & Sutyoso, Bambang. (2007). *Hukum Acara Perdat dan Perkembangannya di Indonesia*. Yogyakarta: Game Media.

concerned couple), and authorized officials, as long as the marriage has not been terminated.

These three parties have the right to file an annulment suit if they meet the grounds for annulment as stipulated in Articles 26 and 27 of the Marriage Law, such as marriages registered in front of an unauthorized registry official, uncertainties regarding the validity of the appointed marriage officiant, the absence of two required witnesses, and marriages conducted under unlawful threats. Furthermore, there may be misunderstandings regarding the identity or conditions of the husband or wife during the marriage. All of these factors create doubts about the validity and legal effect of the marriage.

The relaas presented in court is conveyed formally and appropriately to the parties involved in a court case.¹⁷ Procedures for the annulment of marriage, as stipulated in Article 25 of Law Number 1 of 1974 concerning Marriage, state that "Anyone wishing to file for the annulment of marriage must submit a petition to the court in the jurisdiction where the marriage took place or at the residence of the husband and wife, husband, or wife." Regarding the procedure for filing for the annulment of marriage and the summons for the annulment of marriage examination, it is regulated in Chapter VI Article 38 of Government Regulation Number 9 of 1975, stating that the procedure for filing for the annulment of marriage is carried out following the divorce filing procedure¹⁸.

The steps for submitting an annulment request are the petitioner or legal representative goes to the Religious Court for Muslims and the District Court for Non-Muslims (Law No. 7/1989 Article 73). Then, the petitioner submits a written or oral request to the Chief Justice (HIR Article 118 paragraph (1)/Rbg Article 142 paragraph (1)), along with paying the advance case costs to the Special Treasury.

The petitioner and the spouse (or with the new spouse) as the Respondent must attend the court hearing based on the Court Summons or may be represented by the appointed legal representative (Law No. 7/1989 Article 82 paragraph (2), PP No. 9/1975 Article 26, 27, and 28 Jo HIR Article 121, 124, and 125).

¹⁷ Setiawan, H. (2019). "Perlindungan Hukum Terhadap Tergugat Atau pun Termohon Yang Tidak Menerima Relaas Pemberitahuan Secara Langsung." *Jurnal Ilmiah Dunia Hukum*, 4(1): 19-24, <https://www.neliti.com/publications/557746/perlindungan-hukum-terhadap-tergugat-ataupun-termohon-yang-tidak-menerima-relaas>

¹⁸ Awaliyah, V. N. Q., Allang, A., & Achmad, A. N. I. A. (2022). "Akibat Hukum Pernikahan Siri." *Maleo Law Journal*, Vol. 6, Issue 1, hlm. 30-41.

The petitioner and the respondent personally or through their representatives must prove the truth of the content (grounds) of the annulment request/claims in the court session based on evidence such as documents, witnesses, confessions of one party, judicial presumptions, or oaths by one party (HIR Article 164/Rbg Article 268). The judge then examines and decides on the case.

The petitioner or Respondent personally receives a copy of the District Court or Religious Court decision that has not yet obtained legal force. The petitioner and Respondent receive the Marriage Annulment Deed from the Court. After receiving the annulment deed, the petitioner requests the removal of marriage registration in the register book of the Office of Religious Affairs (KUA) or Civil Registry Office (KCS).¹⁹

One of the cases that accepted the annulment whilst the presumed defendant were already dead was verdict number 2490/Pdt.G/2016/PA Mks. The plaintiff's lawsuit has been accepted, resulting in the annulment of the marriage between the deceased (ALMARHUM) and the defendant (Tergugat), conducted on Thursday, September 3, 1992 AD/06 Rabiul Awal 1413 H, based on Extract of Marriage Certificate No. 176/11/IX/92 dated September 3, 1992, issued by the Office of Religious Affairs of Ujung Pandang District, Makassar City.

The court decision further declares that Marriage Certificate No. 176/11/IX/92 dated September 3, 1992, lacks legally binding force. This conclusion is grounded in the marriage being conducted without the plaintiff's consent and without the approval of the Religious Court, rendering it invalid. The imposition of court costs amounting to IDR 1,091,000.00 on the plaintiff reflects the financial obligations associated with the legal process, covering administrative expenses, lawsuit filing, and other legal proceedings.

In 2019, a pivotal legal transformation occurred with the introduction of Circular Letter No. 2 of 2019, addressing the Implementation of the Formulation of the Results of the 2019 Supreme Court Chamber Plenary Meeting. This groundbreaking regulation signifies a significant shift in perspective, particularly impacting couples whose marriages were terminated due to the death of one partner.

¹⁹ Anam, K. (2017). "Pembatalan Perkawinan Karena Adanya Pemalsuan Identitas Suami Dalam Berpoligami". *Yustitiabelen*, 3(1), 60-88.
<https://journal.unita.ac.id/index.php/yustitia/article/view/134>

The noteworthy aspect of this regulatory change is that it now leads to a negative verdict ("NO") for couples seeking nullification of their marriage through legal proceedings. This alteration carries profound implications, reshaping the legal landscape for individuals navigating the complexities of marriage dissolution in cases involving the demise of a spouse. So for now it will always be a NO until the circular letter is diminished.

3.3 The Legal Implications of The Annulment of Marriages in a Polygamous State

The series of marriage processes regulated by each religious institution indicates the legal facts regarding the state's recognition of the pluralism of marriage rules, which cannot be ignored. The issue of annulling marriages that have ended due to death in unregistered polygamous situations in Indonesia is indeed a complex and multidimensional matter. It is not only a legal problem but also involves social, cultural, and moral values that give rise to social ills that disrupt societal order²⁰.

Unregistered polygamous marriages impact the legal recognition of all legal events related to the binding relationship in the marriage contract. The legal certainty of polygamous marriages does not provide legal guarantees for polygamous wives and their offspring, affecting their future well-being. Children born from unregistered polygamous marriages are considered illegitimate according to the Marriage Law if not recorded in the Marriage Registration Office.

The legal status of children born from polygamous marriages, according to the Marriage Law, is limited to their relationship with the mother and her family. Legitimate children, according to Article 42 and 43 of the Marriage Law, are those born from legally registered marriages, meaning marriages recorded in the Marriage Registration Office²¹.

In the legal context of Indonesia, a valid marriage is one conducted in accordance with the respective laws of each religion and belief and recorded according to the applicable legislation. Ideally, the implementation of marriage should adhere to the requirements of both religious and legal aspects. A valid marriage

²⁰ Hayatunnisa, E., & Hafidzi, A. (2017). "Kriteria Poligami Serta Dampaknya Melalui Pendekatan Alla Tuqsitu Fi al-yatama dalam Kitab Fikih Islam Wa Adillatuhu." *Jurnal Syariah: Jurnal Ilmu Hukum dan Pemikiran*, Vol. 17, No. 1, hlm. 1-23.

²¹ Tobroni, F. (2015). "Hak Anak Sebagai Ahli Waris dalam Perkawinan Siri." *Jurnal Yudisial*, Vol. 8, No. 1, hlm. 85-102.

significantly supports a prosperous household, including seeking sustenance from God. A registered marriage ensures the harmony of the household, contributing to the formation of a generation devoted to civilization.

Thus, unregistered marriages, including polygamous marriages, are susceptible to various legal issues. This becomes more complicated when one of the spouses passes away, causing complexities in the annulment process. One of the most profound consequences of unregistered polygamous marriages is the position of the abandoned partner after the death of one spouse.

While an informal marriage is valid according to Islamic law, it lacks formal legal validity under positive law as it lacks official recognition from government institutions. Unregistered marriages are deemed to disregard Article 2 paragraph (1) of the Marriage Law, which states that "every marriage must be recorded according to the prevailing legislation."

Additionally, Article 5 paragraph (1) of the Compilation of Islamic Law directs that marriages should be recorded, stating "to ensure the order of marriage for the Muslim community, every marriage must be recorded." The phrase "ensuring order" represents the binding force of marriage rights and obligations recognized by the legal effect through official marriage proof.

Without official marriage proof, the abandoned partner often finds themselves in a weak position to access their rights, whether it be inheritance, child custody, or even the right to social recognition. This becomes an irony, considering that in many cases, the abandoned partner may have lived with the deceased for a long time and had children together²².

Children with this status are equated with children born out of wedlock according to Constitutional Court Decision No. 46/PUU-VIII/2010. Although legitimate according to religion, they are considered illegitimate according to the Marriage Law, thus treated as children born out of wedlock. Legitimate children born from unregistered polygamous marriages find it challenging to access public services that should be available through authorized institutions²³.

²² Puryani, A. W. (2021). "Kajian Yuridis Terhadap Pembatalan Perkawinan Poligami di Pengadilan Agama Wates (Kajian Kasus No: 133/Pdt.G/2020/Pa.Wt)." *Seminar Nasional Diseminasi Hasil Penelitian 2021 Universitas Janabadra Yogyakarta*.

²³ Ilyas, A., Yunus, A., & Zainuddin. (2020). "Pelaksanaan Nikah Siri dan Akibat Hukumnya Terhadap Hak Waris Istri dan Anak: Studi Kota Makassar." *Journal of Lex Generalis*, 1(1), <https://pasca-umi.ac.id/index.php/jlg/article/view/62>

The status of out-of-wedlock children hinders their legal protection and legal service in the population registry, resulting in the absence of birth certificates. Furthermore, children born from unregistered polygamous marriages also find themselves in a vulnerable position²⁴. Without legal proof of their parents' marriage, their status as legitimate children can be questioned. This not only affects their legal rights, such as inheritance rights but also their identity and how society perceives them.

Children born of polygamous marriages often find themselves in vulnerable positions. In the legal context, their status as legitimate children can be questioned, especially when one parent passes away. This can lead to them losing inheritance rights or even the right to social recognition. On the other hand, the legal consequence of being born from an unregistered marriage is that they lack official identity, as per the requirements of Law Number 23 of 2006 concerning Population Administration, which mandates marriage documents as part of the birth certificate application process.

If parents fail to register their marriage, no marriage document can be provided, resulting in difficulties in obtaining a birth certificate. Without a birth certificate, children face challenges in enrolling in schools, obtaining an Identity Card (KTP), and claiming inheritance rights. Unregistered marriages render children victims of legal uncertainty as their identities are not acknowledged by the state.

However, Law Number 23 of 2002 concerning Child Protection ensures the welfare of children as part of their human rights, including legal protection as stipulated by regulations. This legal protection is related to various legal events involving children born from polygamous marriages.

Apart from legal aspects, there are also important social and cultural considerations. In many communities in Indonesia, polygamous marriages, while controversial, are still accepted as part of tradition or the interpretation of certain religions. However, there is also a societal view that tends to see polygamous marriages, especially those unregistered, as a form of injustice to women²⁵.

²⁴ Nawawie, A. H. (2015). "Perlindungan Hukum dan Akibat Hukum Anak dari Perkawinan Tercatat (Studi di Pengadilan Agama Tulungagung)." *Ahkam*, 3(1): 113-138, <https://ejournal.uinsatu.ac.id/index.php/ahkam/article/view/416/347>

²⁵ Latupono, B. (2020). "Kajian Yuridis Dampak Poligami Terhadap Kehidupan Keluarga." *Bacarita Law Journal*, Volume 1, Nomor 1, hlm. 55-71.

In this context, partners left behind, after the death of one spouse, often face rejection or even discrimination from society. One clear conclusion from this discussion is the need for reform in how we understand and regulate polygamous marriages in Indonesia. While religion and tradition play a role in defining marriage, the state has a responsibility to ensure that the rights of all its citizens are protected, especially in vulnerable contexts such as the death of one spouse in an unregistered polygamous marriage.

One progressive step that can be taken is to reform the marriage registration system in Indonesia to be more inclusive, easily accessible, and provide protection for all involved parties. Additionally, public education about the importance of marriage registration and the legal consequences of unregistered marriages is crucial.

In conclusion, addressing the annulment of marriages in the context of unregistered polygamous marriages when one party dies requires a comprehensive approach. Understanding not only its legal consequences but also the social and cultural dynamics behind it. Thus, we can seek fair and humane solutions for all parties involved²⁶.

4. Conclusion

The issue of "Annulment of Marriages Whose Union has Ended Due to Death in a Polygamous Setting without Official Record" in the context of Indonesia has become a complex and profound subject of discussion. Tracing the roots of this problem through various literature and legal perspectives reveals that marriage, as a social and legal institution, encompasses diverse and dynamic nuances, particularly when associated with polygamy and the absence of official documentation. Unregistered polygamous marriages in Indonesia, despite being part of the social and cultural landscape in certain communities, pose significant legal challenges. The fact that many polygamous marriages go unregistered indicates a need to update and reform Indonesia's marriage legal system. It can be argued that unregistered polygamous marriages in Indonesia are not only a legal issue but also a social and cultural matter that requires deep understanding and a comprehensive approach. There is a necessity for a combination of legal

²⁶ Ardhan, R. F., Anugrah, S., & Bima, S. (2015). "Poligami Dalam Hukum Islam dan Hukum Positif Indonesia Serta Urgensi Pemberian Izin Poligami di Pengadilan AGAMA" *Private Law*, 3(2): 105, <https://media.neliti.com/media/publications/164461-ID-poligami-dalam-hukum-islam-dan-hukum-pos.pdf>



reforms, public education, and collaborative efforts among various stakeholders to find fair, humane solutions that respect the fundamental rights of every individual. Only through such measures can we ensure that every citizen, regardless of their marital status, receives the protection and recognition they deserve.

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