

Polyandry in the Shadows: How Indonesian Judges Tackle Unregistered Marriages and Legal Uncertainty

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Abstract:

Polyandry, where a woman is married to multiple men simultaneously, is explicitly prohibited under Indonesian marriage law and Islamic legal principles. This study examines how judges at the Banjarbaru Religious Court resolve polyandry cases resulting from extrajudicial divorce, with a focus on the legal implications from the standpoint of positive law. Employing an empirical juridical method with a qualitative approach, the research draws on primary data from semi-structured interviews with judicial officers. Findings indicate that judges address such cases by summoning relevant parties and evaluating evidence in accordance with Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI). Judges view extrajudicial divorces as legally invalid, meaning the original marriage remains intact, and any subsequent marriage may result in de facto polyandry. Legally, such polyandrous marriages are annulled, and are treated as if they never existed. Consequently, any children born from these unions are only legally affiliated with the mother. This raises significant issues regarding paternal acknowledgment, inheritance, and other civil rights for the child. The study highlights how judges balance legal norms with sociological considerations, particularly the welfare of children. It further underscores the challenges arising from the public's limited understanding of marriage registration requirements, which contributes to legal uncertainty and facilitates unrecognized marital arrangements. The research contributes to the discourse on marriage law enforcement in Indonesia and offers insight into judicial reasoning in complex family law cases involving polyandry, legal identity, and child welfare.

Keywords: Judge's View, Polyandry, Out of Court Divorce

Polyandri dalam Bayang-Bayang: Cara Hakim Indonesia Menangani Perkawinan Tidak Tercatat dan Ketidakpastian Hukum

Abstrak:

Polyandri, di mana seorang perempuan menikah dengan lebih dari satu laki-laki secara bersamaan, secara eksplisit dilarang dalam hukum perkawinan Indonesia maupun prinsip hukum Islam. Studi ini mengkaji bagaimana hakim di Pengadilan Agama Banjarbaru menyelesaikan perkara polyandri yang timbul akibat perceraian di luar pengadilan, dengan fokus pada implikasi hukumnya dari perspektif hukum positif. Penelitian ini menggunakan metode yuridis empiris dengan pendekatan kualitatif, serta mengandalkan data primer yang diperoleh melalui wawancara semi-terstruktur dengan aparat peradilan. Temuan menunjukkan bahwa hakim menyelesaikan perkara ini dengan memanggil para pihak terkait dan menilai alat bukti berdasarkan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan Kompilasi Hukum Islam (KHI). Hakim memandang perceraian di luar pengadilan sebagai tidak sah secara hukum, sehingga perkawinan pertama tetap dianggap sah dan perkawinan berikutnya dapat dianggap sebagai polyandri de facto. Secara hukum, perkawinan polyandri dibatalkan dan dianggap tidak pernah terjadi. Akibatnya, anak yang lahir dari perkawinan tersebut hanya memiliki hubungan hukum dengan ibunya. Hal ini menimbulkan persoalan serius terkait pengakuan ayah, hak waris, dan hak-hak keperdataan anak. Studi ini menunjukkan bahwa hakim mempertimbangkan tidak hanya aspek yuridis normatif, tetapi juga faktor sosiologis, khususnya terkait kesejahteraan anak. Penelitian ini juga menyoroti masih rendahnya pemahaman masyarakat terhadap kewajiban pencatatan perkawinan, yang menyebabkan ketidakpastian hukum dan memungkinkan terjadinya hubungan perkawinan yang tidak diakui. Kajian ini memberikan kontribusi terhadap wacana penegakan hukum perkawinan di Indonesia serta menawarkan wawasan tentang pertimbangan yudisial dalam kasus hukum keluarga yang kompleks, terutama yang berkaitan dengan polyandri, identitas hukum, dan perlindungan anak.

Kata Kunci: Pandangan Hakim, Poliandri, Perceraian Luar Sidang



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Introduction

One of the essential prerequisites for entering into a valid marriage is that both prospective spouses must be free from any existing marital bonds. A person who is still legally married to someone else is prohibited from marrying again, except in the circumstances outlined in Article 3 paragraph (2) and Article 4 of Law Number 1 of 1974 concerning Marriage¹. Indonesian marriage law upholds the principle of monogamy,

¹ Robet Rifa'I, "Analisis Terhadap Praktik Poliandri (Studi Kasus di Desa Kerangkulon Kecamatan Wonosalam Kabupaten Demak)," (Skripsi, Universitas Islam Negeri Walisongo Semarang, 2017): 2 <https://eprints.walisongo.ac.id/id/eprint/8107>

permitting a husband to marry more than one wife² only under specific legal and religious conditions and with court approval. Essentially, a man may have only one wife, and a woman may have only one husband.

Polyandry, defined as a woman being married to more than one man at the same time, is in direct contradiction to this principle. Unlike polygyny, which is more widely practiced and allows a man to have multiple wives, polyandry presents legal and religious complexities, especially in establishing the legal relationship between the child and the father when multiple men are married to the same woman. Although polyandry has been prohibited for centuries, its practice persists clandestinely³. For instance, the Banjarbaru Religious Court handled 24 polyandry-related cases from 2016 to 2022 resulting from divorce conducted outside the court. Among these, 17 petitions for marriage legalization (*isbat nikah*) were rejected, one was deemed inadmissible, and one was granted. Two child origin cases were rejected, while three were approved.⁴

The term "polyandry" in this context does not always refer to a woman concurrently married to two men, but often involves cases where a woman is divorced informally through religious procedures without legal recognition. For example, a husband may pronounce *talaq* (Islamic divorce) without officially registering it with the court, resulting in a legally recognized marriage that persists despite the religious separation. Other scenarios include women abandoned by their husbands for years or remarrying during the *iddah* period (waiting period), which legally or socially implies ongoing marriage, thus giving rise to de facto polyandry. According to Article 39 of Law Number 1 of 1974, divorce must be adjudicated in court after reconciliation attempts by the judge have failed. Although Islamic jurisprudence permits religious divorce declarations⁵, Indonesian law, being the positive law applicable to all citizens, requires formal legal procedures for divorce to be valid. Therefore, divorces conducted outside the Religious Court are not recognized under Indonesian law, regardless of their religious validity. Currently, no official data exists regarding the number of extrajudicial divorce cases.⁶

² Rosika, "Infertilitas Sebagai Alasan Dijinkan Poligami (Studi Kasus Putusan No 1427/Pdt.G/2016/PA.Jepr)", (Skripsi, Institut Agama Islam Negeri Kudus, 2022): 9 <http://repository.iainkudus.ac.id/id/eprint/8848>

³ Al Aqib, "Praktik Perkawinan Poliandri Menurut Undang-Undang No 1 Tahun 1974 Dan Kompilasi Hukum Islam (Studi Desa Mahang Sungai Hanyar Kabupaten Hulu Sungai Tengah Kalimantan Selatan)" (Skripsi, Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2024), 37 <https://repository.uinjkt.ac.id/dspace/handle/123456789/77203>

⁴ Data diolah oleh peneliti

⁵ Nurlia, "Hukum Perceraian Luar Pengadilan (Study Perbandingan Hukum Keluarga Di Indonesia & Malaysia)" (Tesis, Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2022): 3 <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/63302/1/NURLIA%20-%20FSH.pdf>

⁶ Nurlia, "Hukum Perceraian Luar Pengadilan (Study Perbandingan Hukum Keluarga Di Indonesia & Malaysia)", 4.

Previous studies on polyandry include works by Rizki Akbar⁷, Al Aqib⁸, Siti Munawarah⁹, Arie Kartika Rafiqi¹⁰, and Siti Nur Magfirah A. Hudodo et al¹¹., each examining polyandry from various perspectives. However, there remains a gap in the literature specifically addressing the judicial perspective on resolving polyandry-related cases, especially those caused by out-of-court divorces. This study aims to examine the perspectives of judges in handling polyandry marriage cases arising from extrajudicial divorces, and to analyze the legal implications of such cases from the standpoint of Indonesian positive law.

Method

This article employs an empirical juridical research method, grounded in fieldwork based on judicial decisions issued by the Banjarbaru Religious Court concerning polyandry-related marriage cases. The study adopts a qualitative approach, which involves interpreting and explaining data related to cases adjudicated by the Banjarbaru Religious Court, with a particular focus on understanding the judicial reasoning and perspectives of the judges involved. The research was conducted at the Banjarbaru Religious Court, located at Jl. Trikora No. 4, Kemuning Subdistrict, South Banjarbaru District, Banjarbaru City, South Kalimantan, Indonesia. The location was selected because it has handled several cases involving polyandrous marriages resulting from divorces conducted outside formal court proceedings—an issue that forms the central focus of this study.

The data used in this research comprise both primary and secondary sources. Primary data were obtained through semi-structured interviews with judges of the Banjarbaru Religious Court who were considered credible informants due to their expertise and direct involvement in adjudicating polyandry-related cases; secondary data were collected from official court rulings relevant to the subject matter, as well as from legal literature, statutory regulations, religious texts, academic journals, and previous theses addressing similar topics. All legal materials were collected through interview and documentation techniques and then analyzed through several stages, including editing, classification, verification, data analysis, and synthesis of conclusions.

Settlement of Polyandrous Marriage Cases Arising from Extrajudicial Divorce

⁷ Rizki Akbar, “Hukum Talak Raj’i Menurut Mazhab Syafi’i dalam Kasus Poliandri (Studi Kasus Putusan Mahkamah Syar’iyah Banda Aceh Nomor 383/Pdt.G/2020/MS.Bna)” (Skripsi, Universitas Islam Negeri Ar-Raniry Banda Aceh, 2022), <https://repository.ar-raniry.ac.id/id/eprint/28801/1/Rizki%20Akbar%2C%20170101025%2C%20FSH%2C%20HK%2C%20082164490517.pdf>

⁸ Al Aqib, “Praktik Perkawinan Poliandri Menurut Undang-Undang No 1 Tahun 1974 Dan Kompilasi Hukum Islam (Studi Desa Mahang Sungai Hanyar Kabupaten Hulu Sungai Tengah Kalimantan Selatan)”.

⁹ Siti Munawarah, “Perkawinan Poliandri (Studi Kasus di Desa Mahang Sungai Hanyar Kecamatan Pandawan Kabupaten Hulu Sungai Tengah)” (Skripsi, Universitas Islam Negeri Antasari Banjarmasin, 2021), <http://idr.uin-antasari.ac.id/id/eprint/17616>

¹⁰ Rafiqi dan Arie Kartika, “Kepastian Hukum Perkawinan Poliandri di Indonesia,” *Jurnal Hukum In Concreto*, no. 1(2023) <https://doi.org/10.35960/inconcreto.v2i1.1014>

¹¹ Siti Nur Magfirah A. Hudodo, Nur Mohamad Kasim dan Sri Nanang Meiske Kamba, “Akibat Hukum Dari Perkawinan Polandri Di Pengadilan Agama Gorontalo,” *Deposisi*, no.4(2023) <https://doi.org/10.33756/eslaj.v5i3.24033>

Law Number 1 of 1974 concerning Marriage adopts the principle of monogamy with conditional exceptions, commonly referred to as “open monogamy”, which means that although the legal norm promotes a one-spouse relationship, polygamy is permitted under specific conditions regulated by law. Fundamentally, the law stipulates that a man may only have one wife and a woman may only have one husband. If a woman is married to more than one man simultaneously, this constitutes polyandry, a practice that is strictly prohibited in both Indonesian law and Islamic teachings. According to Ali Husein Hakim, polyandry refers to a situation in which a woman enters into marriage with multiple men at the same time. Musfir al-Jahrani similarly notes that polyandry involves simultaneous marital relations with more than one husband¹². While such arrangements may appeal to certain individuals for personal reasons, Islamic law unequivocally declares polyandry as haram (forbidden), emphasizing that a woman still bound by a valid marriage contract cannot lawfully marry another man. Sociologically, polyandry may also create serious problems, such as the confusion of paternity and social stigma for families who engage in such arrangements.¹³

Based on statements from judges, several factors contribute to the occurrence of polyandrous marriages: (1) a lack of knowledge about marriage law; (2) low legal awareness; and (3) unclear marital status. First, many individuals who engage in polyandry are unaware of the legal framework governing marriage—both from the standpoint of positive law and religious law—leading them to make decisions that can result in legal harm to themselves and others¹⁴. Second, the lack of legal awareness in society compromises legal order and obstructs the implementation of justice and legal enforcement¹⁵. Third, when a marriage lacks clear legal status, any resulting legal actions are not recognized by the state or religion, jeopardizing the rights and obligations derived from such marital relationships, all of which demand legal certainty.¹⁶

According to Article 39 paragraph (1) of Law Number 1 of 1974 and Article 115 of the Compilation of Islamic Law (KHI), divorce can only be legally recognized if carried out before a religious court following an attempt at reconciliation¹⁷. A divorce must meet formal conditions: both parties must be present, and in cases of *talaq*, the husband must pronounce the divorce in front of the court¹⁸. Divorce proceedings held before a court ensure legal protection for both the ex-wife and any children, safeguarding

¹² Musfir al-Jahrani, *Poligami dari Berbagai Persepsi*, (Jakarta : Gema Insani Press, 1997), 32.

¹³ A. Ja'far, “Larangan Muslimah Poliandri: Kajian Filosofis, Normatif Yuridis, Psikologis, Dan Sosiologis,” *Al-Adalah*, no.3(2012): 328 <https://media.neliti.com/media/publications/57243-ID-larangan-muslimah-poliandri-kajian-filos.pdf>

¹⁴ Harminto, “Praktik Poliandri dan Faktor-Faktor Yang Mempengaruhinya Di Kecamatan Pulau Laut Barat” (Skripsi, Universitas Islam Negeri Antasari, 2020), 118 <http://idr.uin-antasari.ac.id/id/eprint/14923>

¹⁵ Andi Ainul mardiah Suwandi, “Penolakan Pelaksanaan Perkawinan Poliandri Dalam Hukum Nasional Dan Hukum Islam: Studi Di Mattiro Bulu Kabupaten Pinrang” (Skripsi, Institut Agama Islam Negeri Parepare, 2024), 54 <https://repository.iainpare.ac.id/id/eprint/8884/1/2020203874230050.pdf>

¹⁶ Harminto, “Praktik Poliandri dan Faktor-Faktor Yang Mempengaruhinya Di Kecamatan Pulau Laut Barat”, 120.

¹⁷ Mohammad Ali Haidar, “Ketentuan Perceraian Di Indonesia dan Mala dewa” (Skripsi, Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2020), 67 <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/51191/1/MOHAMMAD%20ALI%20HAIDA R%20-%20FSH%20%28Covid-19%29.pdf>

¹⁸ Muhamad Fajri dan Muhammad Silahuddin, “Tinjauan Undang-Undang dalam Perceraian di Luar Pengadilan Agama (Studi Kasus di Desa Rancagong Kecamatan Legok),” *An Nawawi*, no.1(2022): 5 <http://dx.doi.org/10.55252/annawawi.v2i1.16>

their civil rights¹⁹. Conversely, divorces conducted outside the court have no legal validity and afford no such protections. Religious divorces not formalized by court proceedings are therefore invalid under Indonesian positive law.²⁰

The resolution of polyandry cases caused by out-of-court divorces can be examined from two perspectives: normative and sociological (empirical). Normatively, a valid judgment must be grounded in applicable legal provisions, present clear legal reasoning, outline relevant facts, and apply appropriate legal norms. Sociologically, judges must assess the broader societal impact of their decisions. Based on judicial observations, polyandry cases often intersect with issues surrounding the legitimacy of a child's status, which typically hinges on the validity of the parents' marriage. Article 42 of Law No. 1/1974 stipulates that a legitimate child is one born within or as a result of a lawful marriage. However, Article 43 paragraph (1) further states that a child born outside of marriage has a civil relationship only with the mother and her family. Thus, even if the child is socially accepted as having two parents, legally, the child is only recognized through the mother.

Judicial decisions in such cases are also guided by the requirements for a valid marriage, as regulated by Law No. 1/1974, the Compilation of Islamic Law, and other relevant statutes. The validity of a marriage depends on meeting both legal requirements and essential elements (*rukun*)²¹. According to Article 2 of the Marriage Law, a marriage is valid if it is conducted in accordance with the religious laws of the parties involved and is officially registered. Article 6 adds that the marriage must be based on the mutual consent of both parties. For those under 21, parental or guardian consent is required. Article 14 of the Compilation of Islamic Law defines the essential elements (*rukun*) of a marriage: (1) the prospective groom, (2) the prospective bride, (3) the marriage guardian (*wali*), (4) two witnesses, and (5) the *ijab-qabul* (marriage offer and acceptance).

From the researcher's perspective, the determination of a child's legal status must begin with assessing whether the parents' marriage met the legal and religious requirements, including the absence of any prohibitions. This aligns with Surah An-Nisa' (4):24²², which prohibits men from marrying women who are still lawfully married to other men, except in the case of female war captives. This Qur'anic injunction upholds the integrity of lineage (*nasab*) and family honor. Hence, marriages involving a woman who is still bound by a previous marriage contract are considered invalid and fall within the category of prohibited marriages (*haram*) under Islamic and Indonesian law, qualifying as *de facto* polyandry²³. Furthermore, religious texts and prophetic traditions clearly prohibit polyandry. A hadith narrated by Al-Tirmidhi states²⁴

¹⁹ Muhamad Fajri dan Muhammad Silahuddin, "Tinjauan Undang-Undang dalam Perceraian di Luar Pengadilan Agama (Studi Kasus di Desa Rancagong Kecamatan Legok)," *An Nawawi*, no.1(2022): 5 <http://dx.doi.org/10.55252/annawawi.v2i1.16>

²⁰ Siti Sri Rezeki, "Analisis Yuridis Terhadap Perceraian Diluar Pengadilan Menurut Kompilasi Hukum Islam Dan Fiqih Islam,"⁹ <https://media.neliti.com/media/publications/14143-ID-analisis-yuridis-terhadap-perceraian-diluar-pengadilan-menurut-kompilasi-hukum-i.pdf>

²¹ Tarmizi M. Jakfar, *Poligami dan Talak Liar dalam Perspektif Hakim Agama di Indonesia* (Banda Aceh: Ar-Rainiry Press, 2019), 19.

²² Tim Penerjemah, *Al-Qur'an dan Terjemahannya* (Jakarta: Badan Litbang dan Diklat Kementerian Agama RI, 2019), 120.

²³ Tim Penerjemah, *Al-Qur'an dan Terjemahannya* (Jakarta: Badan Litbang dan Diklat Kementerian Agama RI, 2019), 120.

²⁴ Az-Zuhaili, *Fiqh Islam wa Adilatuhi; Pernikahan Talak, Khulu', Mengila' Istri, Zihar dan Masa Iddah*, 142.

"If a woman is married to two men simultaneously, her lawful husband is the one who married her first." This hadith confirms that marriage to a second man while still married to the first is invalid. It also illustrates the potential consequences of polyandry, particularly regarding the legitimacy of offspring and the inheritance structure within the family. In Islamic jurisprudence (*fiqh*), lineage determines rights and obligations, including inheritance²⁵. Polyandry undermines this structure by creating uncertainty around paternity.

In adjudicating such cases, judges often invoke the principle of *maslahah* (public interest), particularly in protecting the welfare of children and preserving social harmony. Key judicial considerations include²⁶: 1) Legal compliance: Whether the polyandrous marriage violates applicable legal norms in both Islamic and national law; 2) Child welfare. If the marriage results in children, judges must assess the child's legal status, especially in terms of lineage (*nasab*), inheritance rights, and financial support (*nafaqah*)²⁷. In Islamic law, a child born within a valid marriage is considered legitimate and enjoys full rights. Otherwise, the child has legal ties only to the mother, as stipulated by Article 43 of Law No. 1/1974. Thus, determining a child's legal status depends on the legality of the parents' marriage, which in turn hinges on fulfilling both religious and civil requirements²⁸.

Legal Implications of Polyandrous Marriage Due to Extrajudicial Divorce from the Perspective of Positive Law

According to Jazim Hamidi, *legal consequences* refer to the direct, explicit, and concrete impact or legal effect that arises from a legal event. Legal consequences are the outcomes resulting from the occurrence of a legal action or event²⁹. In legal theory, there are three recognized types of legal consequences: 1) the emergence, alteration, or termination of a legal status. For example, a legal consequence occurs when a person previously deemed legally incompetent becomes competent upon reaching the age of 21; 2) the emergence, alteration, or termination of a legal relationship between two or more legal subjects, wherein the rights and obligations of each party are interrelated. For instance, when person X rents a house from person Y, a legal relationship is formed between them. Once the rental term ends and all contractual obligations have been fulfilled, the legal relationship also terminates; 3) the imposition of a sanction, which arises when an unlawful act is committed. For example, a thief being punished constitutes a legal consequence of the unlawful act of taking someone else's property without permission, in violation of existing legal norms³⁰.

Article 9 of Law Number 1 of 1974 on Marriage stipulates that a person who is still bound by a valid marriage with another individual is prohibited from entering into a new marriage. This provision is also reaffirmed in Article 40 of the Compilation of

²⁵ Sayyid Qutub, *Fi Zhilail Qur'an*, ter. As'AD Yasin dkk (Jakarta: Gema Insani Press, 2001), 322.

²⁶ Syahrizal Abbas dan Datul Mutia, "Putusan Talak Raj'i pada Kasus Poliandri: Analisis Hukum Islam terhadap Putusan Hakim Mahkamah Syar'iyah Jantho Nomor 216/Pdt.G/2015/MS-JTH," *Samarah*, no 1(2019): 7, <http://dx.doi.org/10.22373/sjhk.v3i1.4865>

²⁷ Al-Tirmidzi, *Sunan Tirmidzi*, (Dar al-Fikr, Juz. 2, t.th), 359.

²⁸ Hudodo, "Akibat Hukum Dari Perkawinan Polandri Di Pengadilan Agama Gorontalo," 321.

²⁹ Jazim Hamidi, *Revolusi Hukum Indonesia; Makna Kedudukan dan Implikasi Hukum Naskah Proklamasi 17 Agustus 1945 dalam Sistem Ketatanegaraan RI* (Yogyakarta: Konstitusi Press & Citra Media, 2006), 200.

³⁰ Hamidi, *Revolusi Hukum Indonesia; Makna Kedudukan dan Implikasi Hukum Naskah Proklamasi 17 Agustus 1945 dalam Sistem Ketatanegaraan RI*, 295.

Islamic Law, which prohibits a marriage between a man and a woman under certain conditions: a) if the woman is still legally bound in a marriage with another man; b) if the woman is still within the *iddah* period following the dissolution of her previous marriage. Accordingly, in this case, the marriage between Petitioner I and Petitioner II violates Article 40 of the Compilation of Islamic Law, as Petitioner II was still legally married to her first husband, and their marriage had not yet been formally dissolved or legally annulled. Furthermore, there are instances in which Petitioner II, despite still being within the *iddah* period after her divorce, proceeded to enter into another marriage.

The legal implications for marital status in Indonesia can be addressed through the mechanism of *itsbat* marriage, as regulated under Law Number 1 of 1974 on Marriage. This legal instrument allows spouses to obtain formal legal recognition of a marriage that was performed according to religious rites but was not officially registered³¹. In accordance with this law, such a marriage must be recorded with the Office of Marriage Registration to fulfill one of the formal requirements for legal validity. A relevant case is Decision Number 222/Pdt.P/2021/PA.Bjb at the Banjarbaru Religious Court, in which the petitioners acknowledged that Petitioner II entered into an unregistered (*siri*) marriage with Petitioner I on 29 October 2017. The couple had one child from this union. The primary aim of the *itsbat* petition was to obtain legal proof of the marriage in order to facilitate the issuance of a marriage certificate and the child's birth certificate. Since the child had not yet been issued a birth certificate, the registration of the marriage was necessary to satisfy this legal requirement. At the time of the marriage, Petitioner I was a divorced widower, while Petitioner II was also divorced but still within the mandatory *iddah* period following the previous divorce. Consequently, the marriage constituted a prohibited act under Islamic law, amounting to polyandry. As such, the court rejected the petition on the grounds that the marriage violated the principle of monogamy enshrined in Law Number 1 of 1974, as amended by Law Number 16 of 2019. Article 9 of the amended law explicitly states that a person who is still legally bound to another marriage may not remarry. Therefore, the court ruled that the marriage was impermissible and could not be legalized.

Polyandrous marriages have significant legal implications for both the spouses involved and any children born from such unions. For the wife, an undefined marital status resulting from an invalid polyandrous marriage leads to several legal disadvantages: (1) no entitlement to joint marital property; (2) no inheritance rights from the husband; and (3) no right to claim post-divorce entitlements such as *iddah*, *mut'ah*, and *madiyah* allowances, particularly in cases involving abandonment and divorce outside the court. Since extrajudicial divorces are not legally recognized, they render subsequent marriages invalid and trigger adverse legal consequences under Indonesian positive law. The implications for children are equally severe: (1) such children may only receive a birth certificate naming the mother, as proof of a valid marriage (such as a marriage book) is required; (2) the child has no legal right to inherit from the biological father due to the absence of legal paternity; (3) civil relations are limited exclusively to

³¹ Lily Triyana, Rika Erawaty, Emilda Kuspraningrum dan Ardhiayu Ambaliko Pramesti, "Perlindungan Hukum Terhadap Anak Yang Lahir Atas Perkawinan Poliandri (Studi Kasus Pada Putusan Nomor 434/Pdt.P/2020/PA.Smd)," *Majmuah Enterprise*, (2023):295 <https://www.bing.com/ck/a?!&&p=6391790b5f65a9ed69c9ad2d339f095e00d5fcf28e95a0194d77dc6ba3a41b0dJmItdHM9MTc0MDc4NzIwMA&ptn=3&ver=2&hsh=4&fclid=380a5be3-ade8-68d2-0a33-4859ac88693b&psq=akibat+perkawinan+poliandri+jurnal&u=a1aHR0cHM6Ly9tYWptdWFoLmNvbS9qb3VybWFsL2luZGV4LnBocC9rYWliMS9henRpY2xIL2Rvd25sb2FkLzUwMi8vODYv&ntb=1>

the mother, as stipulated by Articles 42 and 43 of Law Number 1 of 1974 on Marriage. Despite their illegitimacy, these children retain certain rights, including: (1) Right to Maintenance – borne solely by the mother and her family, as confirmed in Article 100 of the Compilation of Islamic Law (KHI); the father holds no legal obligation, although he may offer support out of moral responsibility; (2) Right to Guardianship, in the case of a daughter's marriage, the biological father cannot act as the legal guardian (*wali nikah*), which must be fulfilled by a court-appointed guardian; (3) Right to Inheritance, since no legal lineage (*nasab*) exists with the father, mutual inheritance rights are absent³².

In such cases, children born out of wedlock are legally affiliated only with their mother. The father's name does not appear on the birth certificate, even if he acknowledges the child. Should he seek legal recognition through the religious court, the request would most likely be denied. However, according to Fatwa No. 11 of 2012 issued by the Indonesian Council of Ulama (MUI), the state may impose *ta'zir* sanctions on a man who commits *zina* (illicit intercourse) resulting in childbirth. This includes: (1) fulfilling the child's needs; and (2) providing property via *wasiat wajibah* (obligatory testament) upon his death³³.

Under Indonesian positive law, polyandrous marriages are deemed invalid and may be annulled by operation of law, as stipulated in Article 22 of Law No. 1 of 1974³⁴. This article asserts that marriages may be annulled if the legal conditions are not met. Jurisdiction for annulment lies with the court where the marriage took place or where the spouses reside. Such annulments significantly affect the legal standing of any children born from the marriage, ultimately placing the child at a disadvantage. According to Articles 42–47 of the Marriage Law, only children born within a legally valid marriage are considered legitimate and are thus entitled to inherit from both parents. Conversely, children born of an invalid marriage have inheritance rights solely through their mother³⁵.

If the annulment of a marriage results in it being declared null and void *ab initio* (by operation of law), the marriage is deemed never to have existed. However, such a ruling does not apply retroactively in certain circumstances: 1) in cases where the annulment is due to one party committing apostasy (*murtad*); 2) children born within the annulled marriage are still legally recognized as having both a father and a mother. While decisions regarding custody rest with the court, minor children are typically placed under the care of their mother; 3) any third party who acquired rights in good faith prior to the annulment retains valid legal claims; 4) the annulment does not terminate the legal relationship between the child and their parents³⁶. Therefore, children born from annulled marriages remain legitimate in the eyes of the law. Consequently, the responsibility for their upbringing continues to rest equally on both parents. Both the mother and the father are legally obligated to provide care, guidance, and support in accordance with the best interests of the child³⁷. This aligns with Article 4 of Law Number 23 of 2002 on Child Protection, which affirms that every child has the right to parental care and education.

³² Iyan Kasim, Nirwan Junus, Sri Nanang Meiske Kamba dll, "Implikasi Perkawinan Poliandri Terhadap Upaya Pemenuhan Hak Anak Di Kecamatan Botupingge," *Ganec Swara*, no.2(2024): 719 <https://doi.org/10.35327/gara.v18i2.851>

³³ Fatwa Majelis Ulama Indonesia Nomor 11 Tahun 2012

³⁴ Kartika, "Kepastian Hukum Perkawinan Poliandri di Indonesia," 53.

³⁵ Hudodo, "Akibat Hukum Dari Perkawinan Polandri Di Pengadilan Agama Gorontalo," 321.

³⁶ Rafiqi, "Kepastian Hukum Perkawinan Poliandri di Indonesia," 52.

³⁷ K. Anik, A., dan Karyoto, "Akibat Hukum Pembatalan Perkawinan Di Pengadilan Agama Kabupaten Tulungagung (Studi Kasus Pada Perkara Nomor: 0554/Pdt. G/2009/Pa. Ta Dan Perkara Nomor 0845/Pdt. G/2010/Pa. Ta)," *Mizan*, no. 1(2018): 13–23 <https://core.ac.uk/download/pdf/288194843.pdf>

Furthermore, children have the right to survival, growth, and development, and must be protected from violence and discrimination.

The criminal implications of polyandrous acts are governed under Article 279 (1) of the Indonesian Criminal Code (KUHP), which stipulates that any individual who enters into a marriage while being aware that their existing marriage constitutes a legal impediment may be sentenced to a maximum of seven years' imprisonment. Furthermore, Article 280 (1) of the Criminal Code provides that anyone who intentionally conceals a lawful impediment to marriage from their prospective spouse may be subject to a prison term of up to five years, should the marriage be annulled on such grounds. Judicial perspectives on polyandry vary, especially regarding its classification either as adultery (*zina*) or as a voidable (*fasid*) marriage. Polyandry may be categorized as adultery if a woman maintains marital relationships with more than one man simultaneously and an affected party formally objects to such a union. In such cases, all conjugal acts within the polyandrous relationship are considered illicit and punishable under Article 284 (1) of the Criminal Code, which prescribes a prison term of up to nine months for either: (1) a married man committing adultery, or (2) a married woman doing the same, pursuant to Article 27 of the Indonesian Civil Code (Burgerlijk Wetboek/BW)³⁸. Notably, the penal provision applies regardless of whether both parties are legally married to others. Adultery (*zina*) in this context is defined as a conscious and deliberate act of engaging in sexual intercourse with a person who is not a lawful spouse, and it is viewed as a grave violation of moral and legal norms.

Conversely, a polyandrous marriage may be classified as a *fasid* (defective) marriage if one or more parties involved are unaware of the legal invalidity of the union. In Islamic legal terminology, *fasid* denotes a marriage that, while appearing valid in form, fails to meet essential legal or religious conditions. This classification recognizes the absence of intent to commit adultery and acknowledges the possibility that parties genuinely believed their marriage was lawful. For instance, a woman may enter a new marriage believing she is no longer bound to her previous husband due to separation or an unregistered religious divorce, despite still being legally married under state law. According to the Hanafite school of Islamic jurisprudence, a child born from a *fasid* marriage may still be legally affiliated (*nasab*) with the biological father. As such, the child is entitled to civil rights including financial support (*nafkah*) and inheritance from the father, provided paternity is acknowledged.

Conclusion

Public understanding of Indonesian marriage law remains limited, particularly regarding the legal requirement for marriage registration and the consequences of unregistered (or *siri*) marriages. Such marriages often result in legal ambiguity concerning marital status and may inadvertently facilitate the occurrence of polyandry. In adjudicating polyandry cases, judges assess the validity of the marriage based on the fulfillment of the essential elements and legal requirements stipulated in Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI). Judges do not rely solely on normative legal considerations but also incorporate sociological factors. According to the perspective of the Banjarbaru Religious Court, polyandry arising from extrajudicial divorce is generally resolved based on the prevailing legal framework. Judges consistently affirm that Law No. 1 of 1974 adopts the principle of monogamy, and thus,

³⁸ Misran dan Muza Agustina, "Faktor-Faktor terjadinya Poliandri di Masyarakat," *Samarah*, no. 1(2017): 269 <http://jurnal.arraniry.ac.id/index.php/samarah>

polyandrous marriages are in direct conflict with both legal norms and societal values, rendering such unions legally and socially unacceptable. In reaching a verdict, judges consider not only legal validity but also the broader welfare of all parties involved, particularly the welfare of children in terms of lineage (*nasab*), inheritance, and financial support.

Unlawful divorces, those conducted outside court proceedings, do not terminate the legal bond of marriage, and therefore, if a woman remarries, she may be engaging in de facto polyandry. The legal consequences for the couple include unclear financial responsibilities and the uncertain paternity of any children. A child born under such circumstances may face challenges in legally identifying the father and may be ineligible for inheritance from the paternal line. When a polyandrous marriage is annulled by operation of law, the child's lineage is recognized only through the mother. Although such children retain legal affiliation with the mother, the lack of formal recognition of the marriage complicates paternal acknowledgment. As a result, these children may lose access to civil rights such as inheritance and legal identity through the father. The annulment of polyandrous marriages therefore has profound legal implications for the civil status and rights of the children involved.

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