



Protection of Child Rights in Polygamy Family Around ASN in Asahan District Community (Analysis Study of Law No. 35 of 2014 about Child Protection)

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Abstract:

*Based on Article 2 of Law Number 23 of 2002 concerning Child Protection and Law Number 35 of 2014 concerning Child Protection, that the implementation of child protection is based on Pancasila and is based on the 1945 Constitution of the Republic of Indonesia, as well as the basic principles of the Convention on the Rights of the Republic of Indonesia. children include: 1) Non-discrimination; 2) The best interests of the child; 3) Right to life, survival and development, and 4) Respect for children's opinions, it can be analyzed and concluded that everything that is urgent for children is their right that is protected by law. Positive law or also called *ius constitutum* is a collection of written legal principles and rules that are currently applicable and binding in general or specifically and enforced by or through the government or courts in the Indonesian state. Civil Rights, Right to Education and Maintenance, Children's Rights To get Welfare, Children's Right to Take Care of Legal Affairs, it can be analyzed and concluded that children's rights are not only schooled. But civil, welfare, even if he stumbles into a legal case, he has the right to be protected. Protection of children's rights in Law no. 35 of 2014 which states that parents are obliged and responsible for: nurturing, nurturing, educating, and protecting children, developing children according to their abilities, talents, and interests and preventing marriage at the age of children. Children are a mandate and gift from God Almighty, in whom the dignity of being fully human is attached. When polygamy is unavoidable, one of the problems that often arises is that children often become victims. Both in terms of love, education and attention. Of all the rights of children, the most urgent for children is education. Children have the right to get education from an early age as contained in the juridical basis in the body of the Constitution Chapter XIII Article 31 paragraphs 1 and 2 of 1945 which reads: every citizen has the right to receive instruction (paragraph 1) the government seeks and organize a national teaching system regulated by law.*

Keywords:

law, Islam, polygamy, laws

I. Introduction

Children are a mandate and gift from God Almighty, in whom the dignity of being fully human is attached. When polygamy is unavoidable, one of the problems that often arises is that children often become victims. Both in terms of love, education and attention. Of all the rights of children, the most urgent for children is education. Children have the right to get education from an early age as contained in the juridical basis in the body of the Constitution Chapter XIII Article 31 paragraphs 1 and 2 of 1945 which reads: every citizen has the right to receive education (paragraph 1) the government seeks and organize a national teaching system regulated by law. So the government has an obligation to guarantee children's education. Moreover, parents who of course have more obligations to provide guarantees in children's education.

Law of the Republic of Indonesia Number 39 of 1999 Article 60 paragraphs 1 and 2: every child has the right to receive education and teaching in the context of his personal development in accordance with his interests, talents and intelligence level (1) every child has the right to seek, receive, provide information in accordance with intellectual level and age for the sake of self-development as long as it is in accordance with moral values and decisions. (2) Then when viewed from Law Number 35 of 2014 that child protection, the obligation of educators, education staff, state officials or the community to provide protection for children within and within the scope of the education unit from acts of physical, psychological, sexual violence and other crimes committed by the other party. Those who place, allow, commit, order, or participate in committing violence against children, causing serious injury, or death are also subject to imprisonment and/or fines.

From a religious point of view, children's education is very valuable and occupies the highest priority. The heart of a child who is still clean is like a priceless gem, if he is educated and accustomed to doing good, he will surely grow up to be good, on the other hand if he is educated and accustomed to bad deeds, then he will become a loser and be wretched in the hereafter. . According to the Islamic view, the rights of children in obtaining education are actually closely related to the responsibilities of parents towards their children. Parents are obliged to pay attention to their children and are required not to be negligent in educating them. If children are a mandate from Allah SWT, then automatically educating them is part of fulfilling His mandate. On the other hand, neglecting their rights is a betrayal of the trust of Allah SWT.

II. Review of Literature

It has become the nature of nature, since humans are born, they always live together with other humans in a social life. Living together between a man and a woman who meets certain conditions is called marriage. Article 1 of Law No. 1 of 1974 states that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty. Marriage is the process by which two people make their relationship public, official, and permanent. It is the joining of two people in a bond that putatively lasts until death, but in practice is increasingly cut short by divorce. Over the course of a relationship that can last as many as seven or eight decades, a lot happens. Personalities change, bodies age, and romantic love waxes and wanes. And no marriage is free of conflict (Jamaluddin, 2018).

Based on the above understanding, that marriage contains aspects of legal consequences, namely mutual rights and obligations, and aims to establish a relationship based on mutual help. Because marriage is included in the implementation of religious law, it contains goals and objectives. Thus the word marriage or *zawaj* or *tazwij* has the meaning "marriage or marriage". In the opinion of Tengku M. Hasbi Ash Shiddiqi, marriage is to carry out a contract between a man and a woman upon the willingness and preference of both parties, by a guardian from the woman's side, according to the nature that has been determined by *syara'* to justify the mixing between the two and to make one inclined to the other and make each of them a partner (for life) to the other.

Article 4 of the Compilation of Islamic Law (KHI) states that marriage is legal, if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage. It is called "Marriage is legal, if it is carried out according to the law of each religion and belief". The problem of marriage, as described above, cannot be separated from the problem of sex and sexual relations between men and women, because

marriage is an institution that regulates sexual relations so that they are legal and lawful. Normal humans, of course, think that the marriage they carry out is to legitimize and justify their biological relationship and to obtain legal offspring.

Allah SWT has prescribed marriage with high wisdom and noble goals, and is a clean way to continue offspring and prosper the earth. Marriage is a means to realize peace of mind and peace of mind, to maintain self-purity from heinous acts as well as to become enjoyment, happiness in life, a means to fortify oneself so as not to fall into the abyss of humiliation, as well as the cause of acquiring pious offspring and which will bring people to their lives in this world and after death.

III. Research Methods

The research method is a way of doing something by using the mind carefully to achieve a goal by searching, recording, formulating, and analyzing to compile a report. The term methodology comes from the word method which means a way, however, according to custom the method is formulated with the possibilities of a type used in research and assessment. This type of research is descriptive qualitative research, because this research accommodates the form of ideas and ideas in data processing. Descriptive Research (Descriptive Research) is a research method used to describe existing phenomena, which took place at present or in the past and is also supported by the results of interviews with direct practitioners. Research or research is a systematic, directed and purposeful scientific activity. So, the data or information collected in the research must be relevant to the problem at hand. That is, the data is related, familiar and accurate. So research is a very unique thing that researchers do in conducting research.

IV. Result and Discussion

The word "fair" comes from the Arabic word bahada which means "convinced" or "convincing" which means a good and righteous soul. In French the word "fair" is "justices", in Latin the word "fair" is "justica". So what is called "fair" is putting something in its place, or receiving rights without more and giving rights to others without less. Therefore, "fairness" is to give the rights of everyone who is entitled completely, without more and without less between those who are entitled, under the same circumstances, and punish bad people or those who violate the law, according to their mistakes and violations.

Justice is fulfilling one's rights as they should, without discriminating who should receive those rights, and acting on those who are just wrong without being excessive or indiscriminate. Therefore, human justice is a practical understanding that relates to the rights of individuals in society and fulfills the needs and all that is beneficial to him, such as matters concerning his material and spiritual. In other words, justice is respect for property rights and what goes with it, respect for freedom and beliefs.

For each aspect of justice there are several words and the most commonly used is the word 'adl. The antonym of the word 'adl is not an utterance of the word 'adl which is modified in its negative sense, as opposed to injustice for justice in English. Literally, the word 'adl is an abstract noun, derived from the verb adala which means: First, straighten or submit straight, amend or change; Second, running away, departing or evading from one (wrong) path to another (right); Third, equal or equal or equal; Fourth, balance or offset, comparable or in a state of balance (state of equilibrium). Finally, the word 'adl or 'idl may also mean an example or the like (Surah Al-Maidah: 59), a literal expression indirectly related to justice.

4.1 Protection of Children's Rights in Law

Children's rights in the international world were first discussed in 1924. The discussion gave birth to a consensus called the Geneva Conventions. The Geneva Conventions classify human rights in the field of welfare, where this convention also contains the rights of children. On December 10, 1948, The Universal Declaration of Human Rights was born or more popularly known as the General Declaration of Human Rights issued by the United Nations; Children's rights are grouped into general human rights.

Meanwhile, the new Indonesian Government On August 25, 1990 officially issued the Decree of the President of the Republic of Indonesia No. 36 of 1990 concerning Ratification of the Convention on the Rights of the Child. Immediately after the signing of the declaration on the right of the child, it cannot be seen as a positive legal provision in the socialization of community association with children. Subsequently, the government together with the DPR enacted the convention into Law Number 23 of 2002 concerning Child Protection.

Based on Article 2 of Law Number 23 of 2002 concerning Child Protection and Law Number 35 of 2014 concerning Child Protection, that the implementation of child protection is based on Pancasila and is based on the 1945 Constitution of the Republic of Indonesia, as well as the basic principles of the Convention on the Rights of the Republic of Indonesia. children include: 1) Non-discrimination; 2) The best interests of the child; 3) The right to life, survival and development, and 4) Respect for children's opinions .

Positive law or also called *ius constitutum* is a collection of written legal principles and rules which are currently applicable and binding in general or specifically and enforced by or through the government or courts in the State of Indonesia.

a. Civil Rights

Some of civil rights, namely rights that rely on Civil Law in an objective sense, for example are: 1) Personal rights (*persoonlijkheidsrechten*), are human rights over themselves, such as human rights over their souls, his body, honour, surname, and surname; 2) Family rights (*familierechten*), are rights that arise from family relationships. Included in family rights are marital rights, namely the power of the husband over his wife, the power of parents over their children, and the power of guardians over their children, the rights of guardians over those in charge; 3) Property rights (*vermogensrechten*), are rights that have monetary value; 4) Material rights (*zakelijkerechten*), are property rights that give direct power over an object. Direct power means, that there is a direct relationship between the people who are entitled to the object; 5) Rights to intangible goods (*rechten op immateriele goederen*), are rights regarding the results of human thought such as Copyrights and Oktroi Rights”

Based on the description above, it can be concluded that the civil rights of children include: personality rights; family rights (*familierechten*) arising from family relationships; property rights (*vermogensrechten*) which have monetary value; material rights (*zakelijkerechten*) which give direct power over an object; rights to intangible goods (*rechten op immateriele goederen*) in the form of human thought such as Copyrights and Oktroi Rights”.

b. Right to Education and Maintenance

Law number 1 of 1974 also provides protection for minors from the actions of parents that harm them. Article 48 states that "Parents are not allowed to transfer rights or pawn permanent assets owned by their children who are not yet 18 years old or have not married, unless the interests of the child so require". The purpose of these provisions is to maintain the survival and security of children's property, which is their foundation in the future.

The obligation to care for and educate children lasts from the time the child is born until the child can stand alone or grow up, even though the marriage of both parents is broken. In order for children to become good children as the dream of both parents, society and nation, both parents are required to provide the best supervision and service to children. To meet the needs of the child's life that is sufficient, it must not stop, but must be carried out continuously and regularly until the child is an adult or can stand alone.

c. Children's Right to Welfare

Article 9 of Law Number 4 of 1979 states that the person who is first responsible for the realization of the child's welfare both physically, physically and socially. Whereas in the explanation of Article 9, that parents are responsible and obliged to maintain and educate children in such a way that children can grow and develop into children who are intelligent, healthy, devoted to their parents, virtuous of noble character, devoted to God Almighty and willing and the ability to carry on the ideals of the Nation based on Pancasila.

The obligation to provide for children continues even though the parents' marriage is broken. Vice versa, the wife's role is very large in the household to guide and direct her children so that they can do good and not be suspicious of each other among brothers and sisters. To be able to realize a harmonious relationship between fellow children born to different wives, a husband is obliged to give the same affection to these children.

Based on Article 298 of the Civil Code it is also determined that fathers and mothers are obliged to maintain and educate their children who are not yet mature, even though the right to assume parental authority or the right to become a guardian is lost, they are not free from the obligation to provide allowances that are balanced with income. them to pay for the care and education of children. This provision emphasizes that both parents are required to maintain and educate minors.

This obligation cannot be lost, although the right to assume parental authority cannot ignore its obligations to the child until the child is an adult. According to the provisions of civil law, a child is declared an adult when he reaches the age of 21 years, this means that under 21 years old he is not yet an adult and is still the responsibility of his parents in carrying out maintenance and education.

d. Children's Rights to Take Care of Legal Affairs

The next child's rights obtained in a polygamous family are represented by their legal interests inside and outside the court. Article 47 paragraph (1) of Law no. 1 of 1974 stipulates that children who have not reached the age of 18 years or have never been married are under the control of their parents as long as they are not revoked from their power. In paragraph (2) it is emphasized that parents represent the child covering all legal actions inside and outside the court.

4.2 Protection of Children's Rights in Islamic Law

Basically, children are entrusted by Allah SWT to their parents, society, nation and state as heirs of the teachings of Islam (Wahyu Allah SWT) which will prosper the world as rahmatan lilalamin. This understanding gives rights or gives birth to children's rights that must be recognized, believed, and secured as the implementation of practices accepted by children from parents, society, nation and state.

Children's rights are everything that must be obtained or received by the child and if it is not obtained, the child has the right to claim these rights. In this case, parents, family, community and government are obliged to fulfill, guarantee and protect. In a family, things that need to be considered by parents in paying attention to children's rights for their future are the right to breastfeed, the right to get care, the right to get a good name and citizenship, the right to live or property, the right to teach, as well as the right to education, morals and religion. In addition, in Islam children have the right to lineage, radha', hadhanah, guardianship and maintenance. In terms of livelihood, parents are obliged to fulfill the child's living rights as stated in the letter Al-Baqarah verse 233.

Based on the verse above, that a father must bear a living for his child because of the cause of birth, as is obligatory for the wife because she gave birth to the child. Because living is one of the rights of the child that must be fulfilled by parents where it is the father's obligation to fulfill it. In the case of guardianship of a person, the authority of the guardian over that person is to educate and teach, maintain health, supervise physical development, send him to school, and take care of his marriage. In the case of guardianship of property, if the guardian of the child has property, the father has the right to manage and develop his property, according to the agreement of the four madhhab scholars. Therefore, children who are not yet mature and have not been able to carry out legal actions really need a guardian to take care of themselves and their property. So that guardianship is a child's right that should not be neglected because it is something that affects the development of his life later. Guardianship and hadhanah cannot be separated if they are the parents of the child. The quantity of meetings between parents and early childhood takes precedence over the quality. If the child has grown into a teenager, it is the quality of the meeting that has an important role.

4.3 Sanctions for Violations of Children's Rights Polygamy from the Perspective of Islamic Law

The first form of protection given in the traditions of the Prophet SAW, in the aspect of min jānib al-`adam, is the existence of legal provisions that prohibit all actions that can harm and violate children's rights. This is often found in the hadiths of the Prophet Muhammad. In general, the Prophet SAW forbade parents to commit crimes or violence against their children, and vice versa.

The prohibition of committing this crime includes all forms of actions that violate the rights of children. As the Prophet SAW said: "O mankind. Remember, which day is more holy?" The crowd replied: "Day of the Great Hajj." The Prophet SAW said: "Verily, your blood, your wealth and your wealth are sacred among you as is your day, this month of yours, in your land. Remember, it is never someone who commits a crime but the consequences will befall himself. Parents cannot do evil to their children and a child cannot do evil to their parents. (Narrated by Ibn Majah).

The sanctions for parents who violate the rights of children will be given moral sanctions and legal sanctions. Islam also recognizes the existence of legal sanctions for perpetrators of criminal acts so that they do not continue their criminal acts while simultaneously giving the effect of fear to others so that they do not commit the same crime. Thus, the purpose of Islamic law to guarantee and maintain the benefit of the five main pillars of human life, namely the maintenance of the rights of religion, soul, mind, lineage, and property, can be achieved properly.

In addition to providing legal sanctions as worldly punishments for perpetrators of violations of children's rights, the Prophet SAW also threatened them with moral sanctions and hereafter sanctions. This aims to strengthen the protection of children's rights, raise awareness of the protection of children's rights, and fear news for violators of child rights. In a history, giving warnings and threats of sin against people who are negligent or do not want to provide for their families. In addition, Islam also threatens the afterlife sanctions in the form of prohibition of entering heaven for people who try to hide, obscure, and falsify lineage. This harsh sanction was given because the act was very dangerous for heredity and honor.

4.4 Sanctions for Violations of Children's Rights Polygamy Positive Legal Perspective

Parents who are proven to have neglected their responsibilities as referred to in Article 9 of Law Number 4 of 1979, resulting in obstacles to the growth and development of children, can have their guardianship rights revoked as parents for their children. In this case, the parent or body is appointed as the guardian. The revocation of the guardianship above does not abolish the obligation of the parents concerned to pay according to the ability, livelihood, maintenance and education of their children.

The revocation and return of parental guardianship is stipulated by a legal decision based on Article 10 of Law Number 4 of 1979. Furthermore, this provision is also in Article 49 of Law Number 1 of 1974, namely: 1) One or both parents may revoke their power over a child or more for a certain time at the request of the other parent, the child's family in a straight line to above and siblings who have grown up or are authorized officials, with a court decision in matters: First, he has completely neglected his obligations to his children; Second, He behaved very badly; Third, even though parents are deprived of their power over a child, they are still obliged to provide maintenance costs for the child. In Article 41 of Law Number 1 of 1974 it is stated that the father must be responsible for all maintenance and education costs needed by the child. Therefore, a child can demand the fulfillment of the father's obligations that must be fulfilled as long as the child is not yet an adult. This is known as a living owed. Therefore, it can still be demanded to pay off debts to people who owe or to those who do not fulfill their legal obligations.

Based on Law Number 23 of 2002 and Law Number 35 of 2014 concerning Child Protection, criminal sanctions imposed on perpetrators of sexual violence against children have not provided a deterrent effect and have not been able to comprehensively prevent the occurrence of sexual violence against children. So the government took the initiative to make a new regulation on Child Protection that focuses on sanctions for perpetrators of sexual violence against children, namely Perpu No. 1 of 2016 concerning the Second Amendment to Law Number 23 of 2003 concerning Child Protection.

In one of the articles of the Government Regulation in Lieu of Law, it is stated that in the event that a criminal act is committed by parents, guardians, people who have family relations, child caretakers, educators, educational staff, officers who handle child protection, or are committed by more from one person together, the punishment is added 1/3 (one third) of the criminal penalty, namely imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of a maximum of Rp. 5,000,000,000.00 (five billion rupiah).

From all the explanations of the article above, we can see that someone who is responsible for child care must pay attention to the points contained in the article. No one should be negligent and treat the child as he pleases without paying attention to the article so as to cause physical and psychological harm to the child. If you violate just one of the points, you will be penalized according to applicable law. A husband who is polygamous for reasons of child protection, he is also required to treat children as contained in Article 13 paragraphs (1) and (2) of Law Number 23 of 2002 concerning Child Protection. If he can't afford it, then maybe he considers continuing to practice polygamy or being content with one wife and the children of that wife.

But if a husband who is going to polygamy is really able to protect, care for and treat children as well as possible in accordance with the contents of Article 13 paragraphs (1) and (2) of Law Number 23 of 2002 concerning Child Protection, then he will be supervised big responsibilities as contained in Article 26 paragraph (1) of Law Number 23 of 2002 concerning Child Protection, namely: "a) nurturing, nurturing, educating, and protecting children; b) develop children according to their abilities, talents and interests; and c) prevent marriage at the age of children".

The provisions of Article 26 paragraph (1) in Law Number 23 of 2002 are added by 1 (one) letter, namely letter d in Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 which reads: "providing character education and inculcating character values in children". In principle, child care has the right to be cared for by parents, because parents are the ones who are most responsible for the growth and development of children. In addition, parents also have a strong and distinctive inner bond, which cannot be replaced by anything and anyone. A distinctive bond and a strong bond which then greatly affects the growth and development of children. If this strong and distinctive bond acquires a positive color for the growth and development of children, children will be able to develop their potential optimally. And conversely, if the peculiarity of the relationship with parents is incised a negative color, then it will greatly affect the future of the child optimally.

In Law Number 23 of 2002 Article 37 it is stated that: (1) Child care is aimed at children whose parents cannot guarantee their child's growth and development properly, physically, mentally, spiritually, and socially. (2) Child care as referred to in paragraph (1) is carried out by an institution that has the authority to do so. (3) In the event that the institution as referred to in paragraph (2) is based on religion, the child being cared for must be of the same religion as the religion on which the institution is based.

From the article it is explained that when parents cannot guarantee the growth and development of a child properly, physically, mentally, spiritually and socially, the government seeks to take care of children in social institutions as a last resort. This is as contained in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 Article 55 paragraph (1) concerning Child Protection that the Government and Regional Governments are obliged to carry out maintenance, care, and social rehabilitation of neglected children, both inside and outside the institution.

V. Conclusion

From the explanation above, it can be concluded by the author that:

1. The provisions for a person to be included in the category of children are children who are not yet 18 (eighteen) years old, including children who are still in the womb. Child is every human being under 18 (eighteen) years of age and unmarried, including children in the womb. A child is a person who, in the case of a naughty child, has reached the age of 8 (eight) years but has not yet reached 18 (eighteen) years and has never been married.
2. The forms of protection of children's rights in the perspective of the Child Protection Act are:
 - a. discrimination;
 - b. exploitation, whether economic or sexual;
 - c. neglect;
 - d. cruelty, violence, and persecution;
 - e. injustice; and
 - f. other mistreatment.

Protection of children's rights in polygamous families among ASN in the people of Asahan Regency according to Law no. 35 of 2014 which states that parents are obliged and responsible for: nurturing, nurturing, educating, and protecting children, developing children according to their abilities, talents and interests and preventing marriage at the age of children.

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