

Cancellation of Marriage Is Polygamy without Permission by Law Number 1 Year 1974 about Marriage

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Abstract: The purpose of this research is to know and explain the factors that affect the cancellation polygamy marriage conducted without permission, and to examine and analyze legal consequences the cancellation polygamy marriage without permission According to law number 1 Year 1974 about marriage. The type of research that is done is kind of kind of empirical legal research (legal research for non doctrinal) which is a method of legal research that focuses attention on the reality of the law within the community, or the function to see the law within the meaning of real and examines how environmental law society (law in action). The results of this study indicate that in the customary law in Indonesia is not known the existence of marriage cancellation institutions, because in essence adat law does not adhere to the requirements of marriage that requires the approval of both prospective bride, age limit, prohibition of polygamy, and also the waiting time for marriage. Marriage is not just a matter between a man and a woman who will carry out a marriage but also has legal consequences both to husband and wife, wealth, or the relationship between the couple and the child born of marriage.

Keyword: Cancellation, Marriage, Polygamy

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I. INTRODUCTION

Marriage according to the Law Number 1 Year 1974 marriage is a bond born of inner between a man and a woman as husband and wife with the aim of forming a family (household) are happy and remain upon the divinity of the one true God. The formation of human society starting from the relationship between two human types: berianan a man and woman who live together. The existence of a desire to live together encourages people to perform marriages. Marriage as a legal deed give rise to responsibilities between husband and wife, of whom therefore need for rules governing law of rights and obligations in a marriage. A marriage begins with the existence of mutual love and affection love between both parties are husband and wife, who has been expected to run well, eternal and immortal which is based to the divinity of the one true God. This marriage is already a human nature has the instinct to maintain generation or offspring. In this case the right of course to make it happen is to sustain a marriage. Marriage is the only way to form a family, because marriage is absolutely necessary as a condition of the formation of a family.

The valid marriage in society is inseparable from the cultural influences and community environment in which it is located. Indonesia which consists of various ethnic groups and religions needs a *suatuaturan* which is the realization of the ideals of the nation to have laws that are in accordance with the national and *falsafah Pancasila*. The regulation on marriage have been around since the simple community maintained religious leaders and community members. This progression regulations in accordance with developments in the community, among which are influenced by the religious beliefs and knowledge, rooted in the communities concerned. The unification of the law of marriage has existed with the enactment of law number 1 Year 1974 about marriage. The Act was formed with the goal of Marriage so that there is uniformity in organizing marriage and things related to it still accommodates the reality-the reality of life in the community.

Marriage is not for the moment but if possible just once in lifetime due to marriage contains the value of the sublime, with its inner bond born among men and women who built on sacred values because based on the deity The one true God who is the first sila of Pancasila. The point is that marriage is not enough with only the bonds of birth or spiritual bonds alone but should be both ways, spiritual birth is bond *terjadinnya* the foundations in shaping family happy and eternal. Article 1 of the ACT of marriage mentioned the "Marriage is a bond born and *batinantara* a man to a woman as husband and wife with the purpose of forming family (household) are happy and remain upon the divinity of the one true God". Marriage is an important event in the life of a human being who gives rise to legal consequences to the relations between the parties that make the marriage itself, or by other parties that have a specific interest. When the marriage of the children being born, then came to the legal relationship between a child with his parents. Article 45 of LAW based legal Marriage between the parents with

children gives rise to the obligation of parents, among others, the responsibility to maintain and educate his children until they are self-sufficient.

Marriage relationship can also break up not only because of death or divorce, but also because of the cancellation of the marriage has been obtained through the descent. However intense the scrutiny is likely to occur a marriage prohibited by law may have occurred, it is proper that the marriage may be cancelled due to no benefit. Interdiction a matter of cancellation may be filed through the courts, so that a particular marriage invalid or null and void. Annulment of marriage with the Court ruling that deemed as if nothing at all happens to the marriage, or marriage declared null and void it should be likened to a marriage which cut talaq. So the legal consequences which occur before the verdict was retained, such as if there is already a child of the marriage, the child remains a legitimate child of the husband and wife. Many factors behind their cancellation of marriage, one of which is the wish of the husband to have more than one wife or also called polygamy. Women perceive polygamy as something scary, because most women think when her husband perform marriages polygamy indicates that his household was a mess because of polygamy. Therefore, many who opposed the existence of polygamy in marriages or relationships his marriage.

Based on the above description it is clear that the national marriage law despite embracing the principle of monogamy but opened the opportunity for a man to polygamy if it can meet the applicable regulations. With the opportunity to do polygamy causes the husband to take action that does not meet the applicable requirements. The provision is clear that in the existing marriage law in Indonesia, namely Law Number 1 Year 1974 on Marriage, in principle in a marriage a man may only have a wife. The marriage law does not prohibit but restrict a husband to easily take more than one wife. One of the conditions is the consent of his wife. If the wife does not allow her husband to become a polygamist then her husband's marriage may be canceled.

Formulation of the problem

What is the effect of the law on the annulment of polygamy marriage without permission under Law No. 1 of 1974 on Marriage? and What factors affect the unlicensed polygamous marriage cancellation?

II. THEORETICAL FRAMEWORK

According Soerjono Soekanto, law enforcement is an activity of harmonizing the values of values that are outlined in steadfast rules and acts of conduct as a series of final value translation. to create, maintain and maintain peace of life. Criminal law enforcement is the application of criminal law in concrete by law enforcement officers. In other words, criminal law enforcement is the imposition of criminal regulations. Thus, law enforcement is a system that involves harmonizing values with rules and real human behavior. These rules then become guidelines or benchmarks for behavior or actions that are considered appropriate or appropriate. The behavior or attitude of the act is aimed at creating, maintaining, and maintaining peace.

In addition, Soerjono Soekanto (1989: 57) argues that in order for the law or regulation (written) to be fully functional, it is always returned to at least 5 (five) factors:

- a) The legal factor itself or the regulation itself Can be seen from the rule of law, made by the government with expecting positive impacts that will be obtained from law enforcement. It is enforced under the law, so as to achieve effective goals.
- b) Law enforcement factors, ie those establishing and enforcing the law The term of law enforcement includes those directly or indirectly engaged in law enforcement, such as in the field of justice, prosecutors, police, welfare and prisons. Law enforcement is a role model in society, which should have certain capabilities to accommodate the aspirations of the people. Law enforcement must be sensitive to the problems surrounding it, based on an awareness that the issue has to do with law enforcement itself.
- c) Facilities or facilities that support law enforcement Certainty of handling a case always depends on input resources provided in programs prevention and eradication of crime. In the prevention and handling of prostitution crimes that occur through the means of communication, it is necessary that the name of criminal detection technology to provide certainty and speed in the handling of the perpetrators of prostitution. It is impossible for law enforcement to proceed smoothly without any facilities or facilities that support the implementation.
- d) Community Factor, ie environmental factors where the law is applicable and applied. Law enforcement comes from society and aims to achieve peace within the community itself. People can directly influence law enforcement. This can be seen from the public opinion about the law. So there is a great tendency for the public to interpret the law as an officer, in this case the law enforcer itself.
- e) Factor Culture, namely as a work, creativity and sense that is based on human initiative in the social life. The culture or legal system basically includes the values that underlie the law that applies to both law enforcement and justice seekers. Values that are abstract conceptions of what is considered good should be followed and what is considered bad should be avoided.

In law enforcement Soerjono Soekanto (1982: 243) asserted that at least two important factors in law enforcement

are the example of the legal officer and the level of perfection of the supervisory mechanism for the implementation of regulations covering the means of legal communication and institutionalization of regulation. The importance factor of the officer's example can be restored on traditional patterns of informal education in Indonesia where children are generally taught to obey parents and older people because of more mature authority and experiences.

III. DISCUSSION

Marriage legal Nationwide although the reciprocity monogamy but opened opportunities for a man to berpoligami if can meet the conditions. By having the opportunity to do the polygamy causes husband perform actions that do not meet the conditions. That provision it is clear that in the law of marriage that existed in Indonesia, namely law No. 1 Year 1974 about marriage, essentially in a marriage a man can only have one wife. The legislation does not prohibit marriage but limiting a husband for easy married more than one. One requirement is the consent of his wife. If the wife does not allow her husband to berpoligami then her husband committed marriage can be annulled.

In the positive law of Indonesia persfektif annulment of a marriage can be conducted on the basis of the provisions of article 22 of the ACT specifies that marriage "marriage can be annulled if it does not meet the requirements to establish a marriage". Annulment of marriage may be filed by one of the husband and wife are concerned, between other family members because of the blood in a straight line to the top of the husband or the wife. In addition, it may also be filed by an authorized officer or a designated officer or other person concerned the law directly against the marriage. When the marriage is marriage a second time from the husband and wife, then the cancellation may be filed by those who are still bound to the marriage by one of the spouses.

According to Hilman Hadikusumo (1990:27) that: the purpose of marriage to the general customary law which are kinship, is to maintain and continue the descent according to the line of fatherly or ibuan or keibubapakan, for the happiness of the household family/relatives, to obtain the values of indigenous culture and peace, and to maintain the inheritance. Because of ethnic kinship systems between one and the other Indonesia vary, including environmental and religious beliefs vary among ethnic groups are one and the berlainan, the one and the other are different, as well as the legal consequences and the efforts of his marriage is different "

A second marriage to a husband can only take place with the consent of the wife. If not obtained permission, the husband has the right to apply for a marriage to the Court, as defined in Chapter 4ayat (1) that "in the event of a husband will marry more than one, as mentioned in article 3 paragraph (2) of the Act This, then he is obliged to apply to the Court in the area of his residence. " But in the case of a husband to apply to the Court, must meet the requirements as defined in article 5 paragraph (1), i.e. the existence of consent of the wife, existence of the assurance that the husband is able to guarantee purposes-keperluan live the wives and their children and any warranty that the husband will do justice to the wives and their children. Marriages performed without the express permission of the wife may be cancelled.

He breakdown in the marriage because of the cancellation, not just be against a relationship between husband and wife or possessions in marriage, but also on the status of the child and the parent's relationship with the child. If one parent refuses to take responsibility in the maintenance of the child, both in meeting the needs of economic, social, education and so on, then penyelesaiannya should be through the courts.

The termination of a marriage is not as simple as in the termination of the agreement that set forth earlier in the contents of his Covenant. How to cause the breakdown in the marriage bond, nor the procedure as a result pemutusannya is not specified by the parties, but rather a determined hukumlah. The agreement in the marriage having special characters, among others, that both parties (male and female) are binding upon the approval of the marriage that has the right to decide on mutual agreement based on existing provisions his laws. To achieve the terms of the marriage, it must comply with the terms of marriage. According to Article 6 of the Marriage Act, the terms (Terms of Material) are as follows

1. Marriage should be based on the agreement of the two bride-to-be;
2. To marry a person who has not reached the age of 21 (twenty one) years must get permission from both parents.
3. In the case that either of the two parents has died or is in a state incapable of declaring his will, then the consent is sufficient to be obtained from a living parent or from a parent capable of declaring his will.
4. In the event that both parents have died or are in a state incapable of expressing their will, the consent shall be obtained from the guardian, the carer or family having blood relations in straight lineage as long as they are alive and in a state of declaring their will.
5. In the case of disagreements or any one or more of them not expressing their opinion, the Court within the jurisdiction of the person who will marry upon the request of that person may grant permission after first hearing of the persons granting permission.
6. Such provisions apply as long as the law of each religion and its beliefs from the other does not specify otherwise.

In addition to the above mentioned material requirements, to have a marriage also must meet formal requirements, as for the formal conditions are:

1. The notification of the will will marry the Employee of the Marriage Registerer;
2. Announcement by the Employee of the Marriage Registerer;
3. The conduct of marriage according to their religion and their respective beliefs;
4. Recording of marriage by the Employee of Marriage Recorders.

Regarding the notice of will to marry shall be made at least 10 working days before the marriage takes place. Conducted verbally by the prospective bride or proprietary name, religion / belief, occupation, residence of the prospective bride and the name of the former wife / husband if one or both have ever married. This is as regulated in Articles 3, 4 and 5 of Government Regulation No. 9 Year 1975, namely:

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| Article 3: | (1) Every person who will hold a registrar Officer at the marriage will be held. (2) The notice referred to in paragraph (1) shall be made at least 10 (ten) working days before the marriage takes place. (3) The exceptions to the period referred to in paragraph (2) are Camat on behalf of the Regent of the Regional Head. |
| Article 4 | Notice shall be made verbally or in writing by the prospective bridegroom, or by a parent or representative. |
| Article 5 | The notice contains the name, age, religion / belief, occupation, place of residence of the prospective bridegroom and if both have been married, the name of his wife or her previous husband is also mentioned. |

Amir Syarifuddin (K. Wantjik Saleh, 1996: 15) also explains that marriage is not for immediate use but if possible only once in a lifetime because marriage contains noble value, with the inner birth bond between man and woman built on sacred values because based on Belief in the One Supreme. The point is that marriage is not enough just by birth bonds or inner bonds but both, the bonding of the innate birth is the foundation in forming a happy and eternal family.

Marriage is an important event in human life that gives rise to legal consequences both to the relationship between the parties that make the marriage itself, as well as with other parties who have a particular interest. If the marriage is born children, then the legal relationship arises between the child with his parents. Article 45 of the Marriage Law determines that legal relationships between parents and children result in parental obligations, including the responsibility to maintain and educate their children until they are self-reliant.

IV. CONCLUSION

1. The cancellation of marriage is not as simple as in the breaking of the ordinary covenant because of the breaking of the marriage bond, its procedure and consequently its termination is not established by the parties, but rather the determination of the punishment. The agreement in marriage has a special character, such that both parties (men and women) who bind the marriage agreement have mutual rights to break the treaty under the existing provisions of its laws.
2. Factors affecting unauthorized marriage cancellation are obeyed by law sub-sections and legal culture of society and the substitution of law develops according to developments in society,

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