

Research Article

Polygamous Marriages (Study of the Pringsewu Religious Court Number 525/Pdt.G/2020/PA.Prw)

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ORCIDAmartia Nuraini: <https://orcid.org/0009-0001-5029-9894>**Abstract.**

The decision of the Pringsewu Religious Court Number 525/Pdt.G/2020/PA.Prw is a case of an inheritance dispute between the first wife and her three children (plaintiff) and the second wife (defendant) in a polygamous marriage with a man (inheritor). The problem with this decision is that the two plots of land are under the second wife's name and were purchased when the heir married the second wife. Mediation had been carried out between the first wife and the second wife with their respective attorneys. However, they still could not come up with a definitive solution. The first wife insists she was still married to the inheritor until he died in 2017. Therefore, the list of heirs must still include the first wife and the three children from her marriage to the late inheritor. Meanwhile, the second wife insisted that the land in dispute was the result of her own efforts without any interference from the inheritor, which meant that the second wife assumed that the land in dispute belonged to her. Public understanding regarding the distribution of inheritance in polygamous marriages is still minimal. This research uses a qualitative approach, examining the state of scientific objects and emphasizing the meaning of an object of study. This means there are still many inheritance distribution practices that neither follow the rules stated in Islam nor the law practiced in Indonesia.

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1. Introduction

In terms of marriage and inheritance, several rules apply in Indonesia. For non-Muslim communities, the rules come from the Dutch civil code, *Burgerlijk Wetboek*. Meanwhile, for the Muslim people, the rules are compiled from the tellings found on *al-Qur'ān* and Hadith following the legal order in Indonesia in writing.

The Indonesian Law Number 1 of 1974 concerning Marriage states, "Marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family or household based on Belief in One Almighty God."^[1] Meanwhile, discussed in several different chapters of *the al-Quran*, but most notably *ar-Rūm* [30]: 21,

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“And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect” (Q.S with-Rūm [30]: 21).

In the case of marriage, inheritance is inherently significant. Because inheritance is applicable in human bonds formed by two conditions, marriage and reproduction. Inheritance from marital relations could present its set of problems for many reasons, one of which being the case of polygamous marriages. This refers to the distribution of inheritance in polygamous marriages as distinguished between the distribution of estate between the first and second marriage because the principle emphasized as the foundation in polygamous marriages is a sense of justice in all things.

In Indonesia, some polygamous marriages are not recorded for several reasons. One is recorded in case Number 525/Pdt.G/2020/PA.Prw at the Pringsewu Religious Court. In this polygamous marriage, the husband does not register his second marriage with the Office of Religious Affairs. This creates an inheritance problem.

Mediation was first carried out between the two parties, namely the first wife, who had not lived with the heir since 1998 and had three children with the inheritor, and a second wife who had been in an unregistered marriage with the inheritor from 2000 to 2017 and had two children with him. The mediation did not bear any success, so then they took this matter to a higher court, the Pringsewu Religious Court.

The second wife showed good faith to the first wife during the mediation by offering Rp. 250,000,000.00. However, the first wife refused this gesture and decided to appeal. The second wife provided witness evidence, and witness 2 testified that the second wife legally owned the land in dispute.

One previous research that is relevant to this writing is a thesis written by Ismail in 2020 with the title “Poligami Tanpa Izin Istri Kedua dan Implikasinya Terhadap Pembagian Hak Waris Istri Kedua (Studi Kasus di Desa Wayurang Kecamatan Kalianda Kabupaten Lampung Selatan)” was published at Raden Intan Lampung State Islamic University. However, the problem is that in the thesis above, the settlement regarding the distribution of inheritance was able to be carried out amicably due to the will left by the testator. In contrast, in this paper’s case, no last will was left behind, making it necessary for this inheritance dispute to be resolved in court.[2]

The problem that arose was that one of the two disputed objects claimed as inherited property by the second wife was decided to be joint property by the Judge handling this case, and one land could not be decided because it had transferred ownership to a third party. Then after the land that was decided to be joint property between the late husband and the second wife was divided with the shared property, the husband’s

share was then divided among the heirs with the distribution provisions according to religion and applicable regulations.

2. Methods

This research uses a qualitative approach, examining the state of scientific objects and emphasizing the meaning of an object of study.[3] To study the corpus, we use a form of literature study (library research), which refers to a method of information-gathering from a collection of relevant literature. The findings of this research are then analyzed through normative analysis. The normative analysis method analyzes law based on applicable laws and regulations and is appropriate to the research's issues.[4]

3. Results and Discussion

3.1. Inheritance

Inheritance, also known as *faraḥ*, refers to the transfer of ownership from the inheritor (who gives) to the heir (who inherits). This concept of inheritance happens when the inheritor dies. So their ownership is transferred to the heir after the inheritor's dependents have first deducted the assets owned.[5] Individuals receive an inheritance if marital ties or blood ties exist between the testator and the heir.[6]

Before the coming of Islam, the Arab community during the era known as *Jāhiliyyah* did not consider children and women entitled to receive an inheritance because women were perceived to be useless in contributing to defending the honor of their families, not good at riding horses or lifting swords, and could not participate in wars. Thus, the Arabs during the *Jahiliyyah* period denied women and children any inheritance.[7] After the coming of Islam, the revelations delivered through *al-Qurʾān* regarding the rules of inheritance rights for women in an honorable manner based on provisions from Allah SWT, not as favor or mercy to women. The Arabs objected at that time because this was contrary to the customs they had been practicing, and thus they asked to abolish the inheritance law.[8]

This is a form of Islamic appreciation for women as well as erasing the notion of women as 'inheritance' that occurred in the *jāhiliyyah* era by regulating in detail women's share of the inheritance, although not in the same amount as the inheritance rights given to men, through their rights as children, as wives and as mothers.[9]

The rules regarding heirs are regulated in *al-Qurʾān* which in several verses that explain the law and distribution of inheritance is very clear in answering the problems of inheritance of Muslims, one of which is in Q.S *an-Nisā'* [4] : 11, *“From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large,-a determinate share”*.

In his book of interpretation, Imam Al-Qhurtubi wrote, “The inheritance verses are one of the pillars of religion, pillars of Islamic law, and the parent of verses *al-Qurʾān*. The science of inheritance is complex and covers much of Islamic law. Knowledge of *farāʿid* is a science studied by many of Rasulullah’s closest companions and even became their focus of study, yet many men, unfortunately, ignore it today.”[10]

The division of inheritance in Islamic law is crucial. As previously explained, Imam al-Qhurtubi expressed the opinion that knowledge that deals with matters of inheritance is one of the pillars of Islam. This opinion agrees with hadith, in which Muslim and Abu Dawud narrated that the Messenger of Allah ordered his people to divide the inheritance according to *al-Qurʾān*. [11]

It is not only the Compilation of Islamic Law that stipulates that the share of a son is equal to the share of two daughters; the Quran also prescribes this. Apart from the fact that the Compilation of Islamic Law is a rule for Indonesian Muslims specifically, thus was derived from the Quran, another reason behind this provision is explained in Q.S *al-Baqarah* [2]: 223, which reads, *“Your wives are like farmland for you, so approach them ‘consensually’ as you please. And send forth something good for yourself. Be mindful of Allah, and know that you will meet Him. And give good news to believers.”*

The verse clearly explains that the fulfillment of maintenance is obligatory for men in the household, while women are not obliged to provide for their families from their own private wealth. This means that men receive a more significant share because of their responsibility to use the resources to provide for the people he is responsible for.

The division of inheritance in Islamic law is crucial. As previously explained, Imam al-Qhurtubi expressed his view that knowledge that deals with matters of inheritance is one of the pillars of Islam. This opinion is in accordance with hadith narrated by Muslim and Abu Dawud which stated that the Rasulullah ordered his people to divide the inheritance according to *al-Qurʾān*. [11]

3.2. Polygamy

Etymologically, polygamy comes from the Greek word “poly/polus,” which means “many” and the word “gamein/gamos” which means marriage. Whereas in Arabic, *taʿaddud* is

a parable of the act of polygamy. So linguistically, polygamy refers to the act committed by a husband when he marries several women to be his wife simultaneously.

In Arab societies before the spread of Islam, polygamy was a form of tradition. The form of polygamy practiced here was unrestricted; thus, there was no requirement for justice to be implemented in practice. The husband is free to determine who he likes best and who he can fully possess. The wives accept this and do not try to appeal for justice for themselves.[12]

After the arrival of Islam, Islam limited polygamy to only four wives, along with conditions that tightened the practice of polygamy.[13] One of them in Q.S an-Nisā' [4] : 3, "*If you fear that you might not treat the orphans justly, then marry the women that seem good to you: two, or three, or four. If you fear that you will not be able to treat them justly, then marry (only) one, or marry from among those whom your right hands possess. This will make it more likely that you will avoid injustice.*"

Islam is actually adherents of the principle of monogamy. The polygamous marriage carried out by the Prophet occurred after the death of his wife, Khadijah was still alive. Imam Az-Zamaskhari is a classical scholar who firmly resounds to principles that govern polygamous marriages.[14]

Narrated by *arba'ah* (the four narrators) and confirmed by Ibnu Hibban and al-Hakim yet which *mursala* was *tarjih*-ed by Tirmidhi, Rasulullah's wife, Aisyah r.a mentioned that Rasulullah SAW was firm in his application of the principle of fairness in dividing his attention among his wives and he said;

"O Allah, this is my division in what I have, so do not blame me for what I do not have but You have it." (History of the four Imams and was confirmed by Ibnu Hibban and Hakim, but whose *mursala* was *rajih*-ed by Turmuzdi).[15]

The emphasis on justice as a requirement for someone to practice polygamy is a necessary consequence of marriage. As mentioned by Ibn Rushd, one form of the husband's responsibility is to divide his attention among his wives: "Experts on fiqh agree that husbands must be fair to wives in taking turns between them. This is based on the words of the Prophet Muhammad:

"If a man has two wives, and then he has the tendency to favor one over the other, then he will come on the Day of Resurrection with one side of his body drooping". (Narrative of An-Nasa'i from Abu Dawud).[15]

Because fair conditions are crucial, if a husband cannot be fair, then he must suffice himself with only one wife, as was told in Q.S *an-Nisā'* [4] : 3. In Indonesian civil law, the rules regarding polygamy are stated in Law Number 1 of 1974 concerning Marriage in

Article 3 paragraph 2, which explains, “The court can give permission to a husband to have more than one wife if desired by the parties concerned”.[1])

The permission given to a husband to practice polygamy as contained in Article 4 paragraph 2 include cases such as when the wife could not carry out her obligations; for example when the wife has a disability or suffers from an incurable disease, and thus cannot bear children.

Islamic law is flexible for its followers. One proof of the flexibility of Islamic law is that polygamy is permissible if the polygamy that is carried out leads to *maslahah*. As well as polygamy is also prohibited when introducing to *muāraāin* which is much greater for the perpetrator.[16]) Husein Muhammad himself explained that polygamy is permissible, but in terms of practice it is more stringent by conditions that must be met. This condition is a requirement regarding justice to all his wives.[17])

Someone’s position and status as a legal heir in a polygamous marriage must be supported by the following factors;

1. The marriage must be in accordance with the applicable Law on Marriage and must obtain permission to practice polygamy from the court
2. Must include permission from the first wife to be able to apply for polygamy to the court
3. The marriage must be registered through the Marriage Registration Office.[18])

In a polygamous marriage, the husband is obliged to separate assets between the first wife, second wife, third wife and fourth wife. In the previous section, it was explained that inheritance is the transfer of property from someone who dies to his heirs who are still alive. Inheritance is property that has previously been deducted by joint assets, debts and wills if the heir has a will.[18])

3.3. Common Property

The position of assets in a marriage is a critical aspect affecting family harmony. This is observable from the correlation between Article 1 of Law Number 1 of 1974 concerning Marriage and Article 7 of Law Number 19 of 1992 concerning Population Development and the Development of a Prosperous Family, inseparable from the needs that require wealth to form a prosperous family.

Joint property is a property that the husband and wife produce during the time of their Marriage. The concept of joint property is also explained in Indonesian civil law in 35-37

of Law Number 1 of 1974 concerning Marriage and Articles 85-97 of the Compilation of Islamic Law.

In Islamic law, there is no joint property between husband and wife because this is not explicitly discussed in the book of fiqh. This is in line with individual (personal) ownership of assets. Which means there is a sharing of energy and an unlimited sharing. Even though its existence is not clearly regulated in fiqh, some Indonesian scholars accept at least its fact. Because in reality, many husbands and wives work together and earn a living for everyday family life and savings for their old age in Indonesia.[19]

The joint property acquired by the husband and wife during the marriage period remains under the control of each. In contrast to inherited assets, in using shared assets, the husband or wife requires the consent of both parties.[20]

If in a polygamous marriage, the joint property of each wife's Marriage is separate and independent. Article 94 of the Compilation of Islamic Law states, "Owning joint property from the Marriage of a husband who has more than one wife, as referred to in paragraph (1), is calculated at the time the second, third or fourth marriage contract takes place.[21] In the cases of men who marry more than once, each joint property is separate and independent. The limitation in the ownership of inheritance property in the case of polygamous marriage is to be determined during the wedding ceremony.[22]

The division of joint property in a polygamous marriage is not as easy as it would be in a monogamous marriage. Essentially, the division of shared assets in polygamous marriages is the same as the division of shared assets (community property) in monogamous marriages, both parties are entitled to half the wealth.[23]

J. Satrio is of the opinion that "The law of marital property is a legal regulation that regulates the consequences of marriage on the assets of husband and wife who have entered into a marriage," he continued that the law regarding marital property is a translation of the word "*huwelijksvermogensrecht*" and the law regarding marital property is a translation of the word "*huwelijksgodereenrecht*." Whereas in customary law, the notion of marital property is a property that is controlled by husband and wife as long as they are bound in a marital relationship, its position as capital wealth to finance the daily life of husband and wife.[24]

If the union between a husband and a wife is broken up by death, then half of the joint property belongs to the spouse who has lived longer.[25]

3.4. Analysis of Court Decisions Regarding Olinheritance Distribution in Polygamous Marriages in the Pringsewu Religious COyrt Decision Number 525/Pdt.G/2020/PA.Prw

The panel of judges has partially issued a decision regarding case number 525/Pdt.G/2020/PA.Pro. Therefore, the legal status of one of the disputed objects is a land area of 478 m², along with the building that stands on it, which is on Jalan Satria, which becomes joint property between the husband and the second wife.

The background to the decision being dropped was that the land was acquired when there was a marriage bond between the heir or the husband and the second wife. This aligns with the notion of joint property, namely property acquired by husband and wife in marriage. The reason regarding the ownership status of the land given by the second wife that the second wife purchased the land and is in the second wife's name cannot be used as an excuse that the land status is not joint property between the husband and the second wife.

This is because there is no legal statement regarding the separation of assets between the husband and the second wife. The statement in question is a pre-nuptial agreement whose contents state that there is a separation of assets acquired during the marriage between the husband and the second wife during the marriage. This leads to the conclusion that one of the land objects in dispute between the first wife and the second wife, half of the share after deducting the joint property between the heir or the husband and the second wife, is divided into inheritance rights among the heirs.

Inheritors who leave more than one wife might cause legal consequences when the status of land reduced by mutual assets with the second wife. The legal result is that the assets left behind are divided according to the inheritance rights of the heirs following the provisions of Islamic law because the heir and all of his heirs are both Muslim.

TABLE 1:

Heirs	Property Section
Plaintiff I binti Mulyantono (first wife)	4/64
Son I bin HERITAGE (biological son)	14/64
Child II bin HERITAGE (biological son)	14/64
Child III bin HERITAGE (biological son)	14/64
Defendant I (second wife)	4/64
Anak I binti PEWARIS (biological daughter)	7/64
Child II binti PEWARIS (biological daughter)	7/64

The first wife does not get a share of the marital assets because the husband or heir has not lived with the second wife since 1998. The principle of polygamous marriages,

which must emphasize fairness, influences the distribution of joint assets in polygamy. Which joint property between the first wife, second wife, and so on is, of course, different. Additionally, because the land was purchased during the period of marriage between the husband and the second wife and the husband had not lived with the first wife since 1998, the land only became part of the joint property between the husband and the second wife.

This is in line with Article 94 of the Compilation of Islamic Law which states, "Owning joint property from the marriage of a husband who has more than one wife, as referred to in paragraph (1), is calculated at the time the second, third or fourth marriage contract takes place. Q.S *an-Nisā'* [4] : 3, "If you fear that you might not treat the orphans justly, then marry the women that seem good to you: two, or three, or four. If you fear that you will not be able to treat them justly, then marry (only) one, or marry from among those whom your right hands possess. This will make it more likely that you will avoid injustice." (Q.S *an-Nisā'* [4] : 3).

The settlement given by the panel of judges was to sell the land and the buildings that stood on it, then reduce the assets, and the remainder was divided to the heirs who were entitled according to the provisions of Islamic law in Q.S *an-Nisā'* [4] : 11 and positive law in Articles 176-191 Compilation of Islamic Law in force in Indonesia. Heirs who leave behind two wives, three sons, and two daughters produce a division with a number of origins of 64, as follows;

The rules regarding the distribution of inheritance have been explained in Q.S *an-Nisā'* [4] : 11. The share of a boy is twice that of a girl.

While the legal status of the land area is 961m², which was on Jalan Ahmad Dahlan, it was rejected by the panel of judges. The Panel of Judges refused the object to become joint property in the marriage between Defendant 1 and the Heir and the inheritance from the Heir because the Plaintiff could not provide actual evidence of the SHM Land certificate Number 395 issued by the Head of the Defense Office of the Tanggamus Regency, this is in line with Article 1888 of the Civil Code "The power of proof in writing lies in the original deed. If the original deed exists, copies and quotations can only be trusted as long as the copies and quotations are in accordance with the original, which can always be ordered to be shown. According to the author, based on Article 1888 of the Civil Code, makes the reason that the letter evidence provided by the Plaintiff cannot be accepted by the Judge is that the claim regarding the object of dispute, in this case, is rejected. In terms of proof, written evidence can be used as evidence if it fulfills several requirements, one of which is the authenticity of a deed used as evidence.

As the first wife, the Plaintiff, cannot show a piece of actual evidence to the panel of judges regarding the transfer of land ownership to a third party. This evidence is commonly referred to as an authentic deed made in front of an authorized public official. This evidence is intended so that the alleged allegations occurred.

So, because the first wife can only provide evidence in the form of copies and cannot provide actual proof, this evidence can only be included in the category of preliminary evidence. This is the reason why the panel of judges only partially granted the lawsuit from the first wife because the majlis judge was of the opinion that the land had transferred its ownership rights to a third party and could not be categorized as joint property between the husband and the second wife.

The amount of joint property acquired by the wives from their husbands in a polygamous marriage is influenced by how long the marriage was carried out and other considerations, such as the number of assets obtained from the union of each different wife. This is why the assets earned by each wife are different from one another. The principle of justice, a requirement of polygamy, is one of the most important requirements that are quite challenging to fulfill. Therefore, this condition is considered material for husbands who wish to practice polygamy in their marriages.

Before distributing the inheritance to the heirs, the heirs must first complete the dependents owned by the heir who has died. The dependents in question include sharing joint assets with his wives, paying debts if the heir has debts, completing a will belonging to the heir while alive, and managing the body. After these dependents have been settled, the remaining assets are the rights of the heirs.

4. Closing

The basis for the considerations carried out by the panel of judges in the case of inheritance distribution in polygamous marriages in decision number 525/Pdt.G/2020/PA.Prw is in accordance with inheritance law and polygamous marriage law, which are regulated in Islamic law and positive law in Indonesia. The considerations carried out by the panel of judges focused on the evidence that had been submitted. The basis for these considerations is contained in Article 94 of the Compilation of Islamic Law regarding joint assets and Q.S *an-Nisā'* [4]: 3 discusses justice in polygamous marriages. So, it is very appropriate if one of the objects of dispute on Jalan Satria is a joint property between the heir and the second wife.

In making a decision, the panel of judges must focus on fairness and *maslahah* on both sides of the dispute. In the distribution of inheritance in polygamous marriages,

the assets left by the heirs must first be deducted from the joint assets, debts, costs for handling the remains, and wills left by the heirs; only after that, the remaining assets can be distributed to the heirs as an inheritance in accordance with their respective portions. -respectively. The decision was made based on legal facts found in the evidence presented to the panel of judges.

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