

POLYGAMOUS MARRIAGES IN INDONESIA AND THEIR IMPACTS ON WOMEN'S ACCESS TO INCOME AND PROPERTY

Nina Nurmila

Sunan Gunung Djati State Islamic University (UIN) Bandung,
Indonesia

email: ninanurmila@yahoo.com

Abstract

Most studies on polygamy mainly focus on the male normative interpretation of the Quran. This paper, however, will focus on the practices of polygamy. It will mainly explore whether the practices of polygamy are legal or illegal (unregistered for not following the procedure and requirements stated in the 1974 Marriage Law). This paper argues that most polygamous marriages in Indonesia are illegal. This practice can be considered a form of resistance to the Law which requires a husband to ask the permission from the Religious Court before entering polygamous marriages. This paper will also elaborate various living arrangements of legal and illegal polygamous marriages with various consequences on maintenance and property ownership among wives.

[Kebanyakan studi tentang poligami berfokus pada interpretasi laki-laki terhadap al-Quran yang bersifat normatif. Akan tetapi, artikel ini akan berfokus pada praktik poligami. Artikel ini terutama akan menerangkan apakah praktik poligami itu legal atau tidak legal (tidak dicatatkan karena tidak mengikuti aturan yang ditetapkan dalam Undang-Undang Perkawinan/UUP 1974). Artikel ini berargumen bahwa kebanyakan perkawinan poligami itu dipraktikkan secara illegal. Praktik ini merupakan bentuk dari penentangan terhadap UUP yang mengharuskan seorang suami memohon izin terlebih dahulu kepada Pengadilan Agama sebelum berpoligami. Makalah ini juga akan menjelaskan berbagai pengaturan hidup dalam

perkawinan poligami baik yang legal ataupun yang tidak legal dengan berbagai konsekuensinya terhadap nafkah dan kepemilikan harta di antara para istri.]

Keywords: legal and illegal polygamy, access to income, access to property

A. Introduction

The Indonesian government regulates the practice of polygamy through the 1974 Marriage Law. This Law was the result of a prolonged campaign that was initiated in the 1920s by many Indonesian women's organizations. Along the way they faced many challenges, mainly resistance from the Islamist "religious" groups.¹ For example, on the issue of polygamy, secular women's organizations such as Istri Sedar² and Putri Mardika,³ argued for the abolition of polygamy, while Islamist "religious" groups and Muslim women's organizations, such as Aisyiyah⁴ and Muslimat,⁵ believed that Islam allows polygamy and therefore it should not be prohibited, despite its negative impact on many women and children. The belief that Islam supports polygamy is based on the popular literal understanding of the Quran 4:3,⁶ whilst contextualist and progressive Muslims, such as Egyptian reformist Muhammad Abduh (1849-1905), understand the verse to discourage and even prohibit polygamous marriage.⁷

¹ "Religious" group here means those who have studied or taught in Islamic institutions such as *pesantren* (Islamic boarding school), otherwise known as *madrasah*.

² Istri Sedar [aware women] was founded in Bandung in 1930, which aims for equal rights between men and women, especially in gaining education. Most of its members are elite educated women.

³ Putri Mardika [liberated women] was founded in Jakarta in 1912, which aims to educate women, to train them how to speak in public and to improve their lives.

⁴ Aisyiyah is the women's wing organisation of Muhammadiyah, the second largest moderate Muslim organisation. It was founded in 1917 in Yogyakarta, which aims to improve the society welfare by providing health and educational services.

⁵ Muslimat is the women's wing organisation of Nahdlatul Ulama (NU), the largest moderate Muslim organisation in Indonesia. It was founded in 1946.

⁶ If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice (Yusuf 'Ali translation).

⁷ Muḥammad Rashīd Riḍā (ed.), *Tafsīr al-Qur'ān al-Ḥakīm al-Shahīr bi-Tafsīr al-Manār* (Beirut: Dār al-Ma'rifa, 1973), p. 350.

The controversy prior to the enactment of the 1974 Marriage seems to be reflected in the Indonesian's people willingness or not to obey the 1974 Marriage Law. My research shows that people from a "secular" background tend to obey the 1974 Marriage in relation to polygamy, marriage registration and the minimum age of marriage. On the other hand, people from a "religious" background, who prefer to follow the opinions of the classical Middle Eastern jurists (classical fiqh), tend to disobey the provisions of the Marriage Law which do not appear in the classical fiqh, such as the requirement to seek court permission before practicing polygamy and marriage registration.⁸ This disobedience of the Law affects negatively on women's access to joint marital property and access to income (maintenance), especially if they were married in an unregistered polygamous marriage. In a legal, registered marriage a wife is entitled to receive maintenance from her husband and joint marital property and she can sue the husband if the husband does not provide these rights.⁹ In contrast, in an illegal, unregistered marriage, there is no legal protection for the wife whose rights for maintenance or joint marital property can be easily violated by her husband. However, despite the common assumption that women are the passive victim of polygamy and only live off the maintenance from their husband, my research findings show that some women are active agents and make significant economic contributions to their family. This paper will demonstrate how women strategically employ their economic interests, given the possibility of legal and illegal polygamy.

This paper is based on the fieldwork I undertook in three cities in West Java (Bandung, Bogor, and Depok) and Jakarta from December 2003 through April 2004. I updated some data by undertaking further fieldwork in Bandung in 2012. I also visited the Bandung municipal Religious Court in 2004, 2012 and 2014 to discover the number of polygamous cases registered in the court. In the first fieldwork, I conducted in-depth interviews with 74 informants, male and female, from a total of 39 marriages. I also interviewed 11 children from polygamous families and

⁸ Nina Nurmila, *Women, Islam and Everyday Life: Renegotiating Polygamy in Indonesia* (London: Routledge, 2011).

⁹ Marriage Law 1974, Articles 34 and 35.

two committee members of the Polygamy Award,¹⁰ one of whom had two wives.

This research is a feminist research. It does not merely present the cases of women who were involved in polygamous marriage. It raises women's voices to the surface, to challenge injustice against women. This research also challenges the patriarchal nature of the 1974 Marriage Law, which tends to focus on the interests of adult males, while subordinating the interests of women and children. For example, the 1974 Marriage Law provision on polygamy only considers male interests should the husband fall ill and/or have a barren wife, but it does not address the opposite situation where a healthy wife has a sick and/or infertile husband. Women also tend to be positioned as sexual beings and servants for the fulfilment of their husband's needs, not as equal partners, who need love and care if they are sick.

B. Polygamy in Indonesia Prior to the 1974 Marriage Law

Prior to the enactment of the 1974 Marriage Law, Indonesian women had no legal protection of their rights within marriage. Many of them had become victims of under-age marriage, unilateral divorce and arbitrary polygamy. Indonesian Muslims mainly refer to the classical *fiqh* to decide what to do in relation to marriage, divorce and polygamy. In classical *fiqh*, registration is not required for a marriage to be valid and court intervention is not required for divorce and polygamy. This is understandable because in the eighth and the ninth centuries when this *fiqh* was written, people were less mobile and tended to know who had married whom, and registration was therefore not considered important. However, by the twentieth century many female activists were concerned at the vulnerable position in which women had been placed due to the reliance on this classical *fiqh*. Women's organizations were concerned

¹⁰ The Award was given by Puspo Wardoyo, a rich restaurateur who had four wives, to polygamous husbands who were considered "successful" in their polygamous marriage. The Polygamy Award committee, however, claimed that due to the short award application time, they allowed any polygamous husbands to attend the Award night regardless of whether they met the criteria of successful polygamous husbands. For further detail about the Award Night, see Nina Nurmila, "Polygamy and Chickens", *Inside Indonesia*, No. 83, Jul-Sep (2005), <http://www.insideindonesia.org/polygamy-and-chickens>, accessed 2 Mar 2016; Nurmila, *Women, Islam and Everyday Life*, pp. 64–77.

over the vulnerable position of married women because there were many cases of polygamy, child marriage and easy divorce.¹¹ Vreede-de Stuers termed arbitrary divorce and polygamy the “two-headed monster” which caused insecurity of women, family disintegration and the neglect of the children.¹² Dewi Sartika, one of the advocates for women’s education in West Java, referred to polygamy as “a gangrene on society”.¹³ Therefore, the women’s organizations campaigned for five decades from the 1920s to have codified marriage law that could protect women’s position within marriage.

The Marriage Law was finally passed by the Parliament on 22 December 1973 and was signed by President Soeharto on 2 January 1974. Not all parties were fully satisfied with the Law, especially the secular women’s organizations who opposed polygamy. However, it was appreciated that the Law requires court permission before obtaining divorce and practicing polygamy, a measure aimed at reducing the incidence of divorce and polygamy. In addition, the Law has provided protection for the property rights of both husband and wife. Article 35 (1) states that any property gained within the period of marriage becomes joint property and Article 36 (1) states that the husband and wife can act or deal with the joint property based on the agreement of each party. However, Articles 31 (3) and Article 34 construct the man as the head of the family who should financially provide for the family, whilst the woman is positioned as a housewife who takes care of the family’s domestic affairs. This can make women’s economic contributions to the family invisible and create the stereotype that all men are family breadwinners.

¹¹ Saskia E. Wieringa, “The Politicization of Gender Relations in Indonesia: The Indonesian Women’s Movement and Gerwani Until the New Order State”, Ph.D. Dissertation, (Amsterdam: Universiteit van Amsterdam, 1995), p. 60.

¹² Cora Vreede de Stuers, *The Indonesian Woman: Struggles and Achievements* (The Netherlands: Mouton, 1960), pp. 136–40.

¹³ *Ibid.*, p. 175; Wieringa, “The Politicization of Gender Relations in Indonesia”, p. 58.

C. Polygamy in Indonesia after the 1974 Marriage Law

According to Azra¹⁴ and Katz and Katz,¹⁵ many scholars were pessimistic about the possible outcomes of the enactment of 1974 Marriage Law, but they saw that the Law, together with other factors, such as the rising standard of education and the family planning campaign, had successfully reduced the incidence of divorce and polygamy and helped enforce the minimum age of marriage. Even though there were no actual figures on the decreased incidence of polygamy, Azra assumes that the 1974 Marriage Law could reduce the incidence of polygamy due to the difficult requirements for registering polygamous marriages.¹⁶ To register a polygamous marriage, the Law requires the husband to apply for permission from the Religious Court. The court can permit the husband to practice polygamy if (1) his wife cannot fulfil her duties as a wife; (2) his wife has physical defects and/or an incurable disease; and (3) his wife cannot bear children. The husband must also (1) have the consent of his existing wife/wives; (2) be able to financially support all his existing wives and children; (3) ensure that he treats all his wives and children justly. Only court-permitted polygamous marriages can be registered and therefore considered legal, while polygamous marriages without court permission cannot be registered and are therefore illegal.

My fieldwork and interaction with my undergraduate students during teaching and learning fiqh, does not reveal much change among Muslims in relation to adherence to the classical fiqh. Most Muslims tend to obey what is stated in the classical fiqh as if they live in the same place and time with its writers and tend to disobey and even undermine some of the Marriage Law articles. Most of my research participants from a religious education background and my students at UIN (Universitas Islam Negeri, Bandung) adhere strongly to classical fiqh in dealing

¹⁴ Azyumardi Azra, "The Indonesian Marriage Law of 1974: An Institutionalization of the Shari'a for Social Changes", in Arskal Salim and Azyumardi Azra (eds), *Shari'a and Politics in Modern Indonesia*. (Singapore: Institute of Southeast Asian Studies, 2003), pp. 76–95.

¹⁵ June S. Katz and Ronald S. Katz, "Legislating Social Change in a Developing Country: The New Indonesian Marriage Law Revisited", *The American Journal of Comparative Law*, vol. 26, no. 2 (1978), pp. 309–20.

¹⁶ Azra, "The Indonesian Marriage Law of 1974: An Institutionalization of the Shari'a for Social Changes", pp. 88–9

with issues of marriage, divorce and polygamy. For them, this classical Islamic jurisprudence applies to all Muslims, anytime anywhere and is therefore not subject to change. Since *fiqh* does not require registration for a marriage to be valid and does not require court permission before obtaining divorce and practicing polygamy, many Indonesian Muslims disobey these provisions of the Marriage Law. The state is viewed as only having authority over administrative matters, which did not include marriage, divorce and polygamy.

My fieldwork revealed most polygamous marriages among my research participants were unregistered. Only a few applications for permission of polygamous marriage were received: Bandung Religious Court receiving only 13 applications in 2013 and six applications per year in 2011 and 2012. However, unhealthy polygamous marriages were a common ground for divorce. For example, Bandung Religious Court did not receive any applications for polygamy in 2003, but unhealthy polygamy was listed as a cause in 47 cases of divorce that year of the 32 cases of polygamous marriage among my research participants: 18 polygamous marriages were unregistered; eight cases had marriage certificates without following court procedures, such as by claiming that the husband was single; two marriages were first unregistered and then followed court procedures after their polygamous marriages; only four cases legally followed court procedures but of these four cases, only one truly followed court requirements without any manipulation. This manipulation and disobedience to the law can be construed as Muslim resistance to the secular Law.

When I asked one of my research participants, Atikah, why there was manipulation involved, Atikah¹⁷ told me:

“In order for the application for permission to be granted, we needed just to follow what the court staff told us. For example, my husband’s income was only Rp400.000 per month, which was not even enough to support one household. The court staff told us that if we stated my husband’s true income, the court would not give my husband permission to take another wife, so my husband changed his income to Rp5.000.000”.

A Bandung municipal court staff member confirmed this, when I asked whether they helped or suggested the applicants to manipulate

¹⁷ Interview with Atikah, 23 Feb 2004.

data in the application for polygamy. The staff member said that:¹⁸

“Basically, those person who come here want their application for polygamy to be granted by the court, so we tell them administratively what to do in order for the application to be granted, even though it will be the judge who decides whether the application can be granted or not. We know that the judge will usually grant permission when all the required documents are available and reasonable.”

This paper will summarize three cases of polygamous marriages: one case of legal polygamy (Atikah-Ikin-Nuni) and two cases of illegal polygamy: Hanny-Asep-Nuning and Dahlia-Dadi-Titin-Nita. Other cases will only mentioned when relevant to the discussion of income and property distribution among wives in polygamous marriages.

D. Case Studies on Polygamy

1. Case 1: Legal Polygamy, the Marriage of Atikah-Ikin-Nuni¹⁹

Atikah (37)²⁰ and Ikin (39) had no religious education background. Both graduated from the same Arts Institution, Atikah with a Diploma in Dance and Ikin, her classmate, after completing his undergraduate studies, continued his study to a master’s level. Atikah and Ikin founded and managed an art gallery. In addition, Atikah founded and ran a kindergarten in her mother’s town, Karawang (about three hours drive from Bandung), while Ikin taught part-time in one of the private higher education institutions. Atikah had been married to Ikin for 12 years with three children, aged 11, 7 and 1 when Ikin asked her permission to take another wife in 2002.

Atikah told me that she was reluctant to give her husband permission to take Nuni, one of his students, as his second wife. However, Atikah eventually relented only to avoid the accusation that she was “allowing” her husband to continue his illicit relationship with Nuni. Therefore, she finally granted permission, on condition that Ikin must

¹⁸ Interview with Bandung Municipal Religious Court staff member on 7 Feb 2004.

¹⁹ Interview with Atikah, 23 Feb 2004.

²⁰ The number in the bracket indicates the participant’s age at the time of interview. All participant names are pseudonyms.

choose to divorce either Nuni or Atikah should his second marriage negatively affect the first.

Before going to court to apply for permission to take a second wife, Ikin introduced Nuni to Atikah in their art gallery, not in their house. Neither Ikin nor Atikah wanted other members of their family to know about this second marriage because it was shameful. Attempting to prevent Nuni from marrying Ikin, Atikah reminded Nuni that Ikin was already married with three children, and that his income was very low. Nuni did not object to Ikin's marital and economic status. Failing to prevent her from marrying Ikin, Atikah requested that Nuni let her arrange everything for the second marriage, such as that Ikin was only allowed to visit Nuni one day a week, namely Tuesday. Nuni agreed to obey Ikin and Atikah. This shows Atikah's agency in accommodating her husband's willingness to practise polygamy and negotiating the best possible arrangement in the situation of polygamous marriage.

Atikah told me that during the court hearing, the judges seemed surprised at her consent to her husband's intention to take another wife, which was a rare and difficult requirement for a husband to achieve:

“The judges seemed to be surprised that I could give permission to my husband to marry another woman. Because I have given my approval to my husband and all administrative requirements look OK, then the judges approved the application”.

Atikah did not only involve herself in the arrangements of her husband's second marriage, but she also successfully ended this marriage four months later. Atikah had decided to ask her husband to divorce Nuni due to their family's economic deterioration. After his second marriage, Ikin had less time to work and had difficulties supporting two households from his small income, which was not even enough to support one household. As a result, Ikin had accumulated a large amount of debt and her children's tuition was unpaid. In addition, Nuni had become increasingly more demanding. Nuni often called Ikin and asked him to accompany her shopping when Ikin was with Atikah. She also demanded an extra day's visit, from one to two then three days a week. She also wanted Ikin to give her Rp300.000 per month (in 2002), but Atikah told Nuni that Atikah only received Rp20.000 per day to support herself, three children and one domestic servant. Initially, Ikin

rejected the idea of divorcing Nuni because, according to Atikah, he seemed to be seduced by her. Nuni also did not want to be divorced. However, Atikah insisted that Ikin keep his promise. Finally, Ikin made the decision to divorce Nuni.

When the divorce took place, it was Atikah who took care of the divorce papers and paid all the administrative expenses, including the divorce settlement demanded by Nuni. Nuni had demanded a Rp15.000.000 divorce settlement, but Ikin only agreed to pay Rp2.000.000. Initially, the court agreed to the divorce settlement amount Nuni had proposed because the judges assumed that Ikin had treated Nuni unfairly by only marrying her for four months. However, Atikah explained to them that Nuni's marriage to Ikin had negatively affected her own marriage and in fact Atikah had financially supported Nuni's household due to Ikin's very low income. Understanding Atikah's suffering, the judges decided that Ikin should pay Nuni Rp5.000.000 for the divorce settlement. Atikah initially objected to such a large amount of money, but then she agreed because she wanted to the case settled. Her husband's polygamous marriage had cost her a lot of money and left her family with a large debt. She showed me the proof of bank transfer she had made to Nuni for the divorce settlement and at the time of interview she said that she still needed to repay Rp7.000.000 of the remaining debt her husband had incurred during his polygamous marriage.

The 1974 Marriage Law was drafted on the assumption that all men are capable of being the head of the family, providing the economic support of the family (Articles 31 and 34). The Law was also drafted based on the patriarchal assumption that men are by nature polygamous (Articles 3-5). The case of Atikah-Ikin-Nuni, however, shows that not all men are capable of providing sufficient economic support for the family. In fact, it was Atikah, the first wife who was the main economic support of the family. It is possible that Ikin felt inferior to Atikah due to his inability to provide sufficient economic support for the family and wanted to show his "superiority" as a male by doing something "legal and acceptable" which could not be done by Atikah as a woman, namely to practice polygamy. As a consequence, Atikah had to work more to increase her income to meet her expenditure, not only to support her family but also to support the economic needs of her husband's second wife.

Atikah told me that she and her husband had founded and run an art gallery but when they were about to enjoy the results of their hard work, Nuni entered their married life. Therefore, it was for this economic reason, and because she loved her husband and her children, that Atikah was determined to save her marriage. Atikah's willingness to save her household from economic deterioration fits very well with Brenner's assumption that women's real concern with their spouses' extramarital affairs is the "draining of family resources" to support the affairs.²¹

2. *Case 2: Illegal Polygamy, the Marriage of Dahlia-Dadi-Titin-Nita*²²

This case shows the agency of Titin and Nita, Dadi's second and third wives, in taking economic advantage from their illegal marriage and the passivity of Dahlia, Dadi's legal first wife, who never demanded fair maintenance and equal time with her husband even though she felt that she had been treated unfairly.

Dahlia (52) claimed to have an unhappy marriage. She told me that her husband, Dadi (55), an Islamic law professor in one of the Islamic higher educational institutions, was often involved in affairs with other women. In 2001, after they had been married for about 23 years and had four children, Dadi secretly took Titin as a second wife. Dahlia was shocked to discover this when she was phoned by an anonymous person who told her that Dadi had taken another wife. After checking the validity of the news, Dahlia was hospitalized with emotional distress for three days.

Because her husband never mentioned his other wife, Dahlia could not be involved in "managing" Dadi's arrangement of income and time spent with Titin. However, Dahlia easily observed the changes in Dadi's economic management. Before taking an extra wife, Dadi usually gave Dahlia all his income, of at least Rp10.000.000 per month for her to manage. This economic management, in Pahl's term,²³ is called a whole wage system. After the second marriage, however, Dadi gradually reduced the income he gave to Dahlia until she finally received only

²¹ Suzanne April Brenner, *The Domestication of Desire Women, Wealth, and Modernity in Java* (Princeton: Princeton University Press, 1998), p. 151.

²² Based on interviews with Dahlia, 27 Feb 2004; 20 Jul 2012; 3 Jan 2004.

²³ Jan Pahl, "Patterns of Money Management within Marriage", *Journal of Social Policy*, vol. 9, no. 3 (1980), pp. 313–35.

Rp1.500.000 to Rp2.000.000 per month, which was far from enough to cover her household expenses. In Pahl's term, Dadi changed his economic management, from a whole wage system to an allowance system.²⁴

To cover the income gap, Dahlia, who worked as a part time lecturer at one of the private Islamic higher institutions, used her personal savings, which soon ran out. Because Dadi no longer gave Dahlia all his income, Dahlia let Dadi pay all the bills and all their children's educational tuition fees. She was very sad at this change of economic arrangements, which impacted negatively on the economic wellbeing of herself and especially her children. She could usually meet their children's demands for money immediately when they needed it, but after Dadi's polygamous marriage, Dahlia had to tell her children to ask themselves for money from Dadi. As her husband was rarely at home, it was difficult for her children to obtain the money they needed. Even when they could meet their father, sometimes Dadi was angry with his children when they asked for money to pay their tuition fees, saying: "If you need such a large amount of money, you need to tell me earlier so I can have the money ready". Dahlia was very sad at this situation because she knew it was not easy for her children to even meet Dadi.

In 2006, Dadi married his third wife, Nita, illegally. Nita, former Dadi's master's student, became the most dominant wife, demanding Dadi spend most his time with her. Titin, who had one son with Dadi, also demanded Dadi deal with marriage registration so her son could obtain his birth certificate. However, Dadi ignored Titin's demands for marriage registration and asked Titin to deal with it herself. Dadi told me that he did not want to obey the Marriage Law because it was enforced on Indonesian Muslims as a way of secularization. This shows Dadi's awareness of the history prior to the enactment of the Marriage Law, where many Muslims suspected the government of attempts at secularization and Christianisation through the enactment of the Marriage Law.

Titin was a village woman who saw the economic and social benefits of marrying Dadi because Dadi is a respected "religious" professor, even though she knew that he was married. However, after

²⁴ Allowance system is when a husband only gives certain amount of his income to his wife, which is different from the whole wage system in which the husband give all his wages to his wife to manage; *bid.*

Dadi's third marriage, Titin apparently did not see any future in her marriage and seemed to suffer from Dadi's economic and emotional neglect. Therefore, in 2008, Titin asked for divorce and surrendered the custody of her son to Dadi, needing to earn a living. She decided to work in Saudi Arabia. This shows Titin's agency in deciding what is best for her future: to be out of an illegal polygamous marriage which no longer provided her with the economic and social benefits that she had expected. She thought that after the marriage, Dadi would provide her with a marriage certificate that would secure her rights to marital joint property, maintenance and inheritance. However, unexpectedly, Dadi took another wife and neglected Titin, just as he had done earlier to Dahlia after his secret marriage with Titin.

Nita was then also in the same position that Titin had occupied, merely Dadi's illegal otherwife. Being aware of her disadvantageous position, she seemed to strategize the situation by demanding Dadi spend most of his time with her and income on her. Knowing Nita's agency in securing her access to Dadi's income to accumulate property under her name on the one hand and Dahlia's "acceptance" of her husband's illegal polygamous marriage, it might be easy to conclude that Dahlia is a passive victim of polygamy, especially as she did not dare to ask for maintenance from Dadi. However, Dahlia can also be seen as an active agent by maintaining her status as Dadi's legal wife. Dahlia told me that she was aware of her rights for joint marital property if she asked for divorce but she had not asked for divorce even though she felt that she had been treated unjustly because this would only make Nita happy and facilitate her becoming the sole, legal wife of Dadi, "If I ask for divorce, it is easier for Nita to be the only wife of Bapak [Dadi] and this would make her happier".

3. *Case 3: Illegal Polygamy, the Marriage of Sumi-Asep-Nuning*²⁵

This case shows the agency of Sumi, who planned and prepared her divorce for about fifteen years by preparing herself to be economically independent while waiting for her children to grow up. Sumi (42) had married Asep (46) in 1980, when Sumi was in the final year of secondary school, at the age of 19, and Asep was a student at the state Islamic

²⁵ Interview with Sumi, 23 Dec 2003.

university, at the age of 23. Asep was a good-looking man with a great talent of preaching Islam. When she married him, Sumi did not know that Asep was already married with two children. Sumi was shocked and disappointed when she discovered this fact during her visit to Asep's parents, in her seventh year of marriage, when she was in her third pregnancy. Since that time, although Asep finally divorced his first wife, Sumi claimed to have an unhappy marriage and felt that her marriage would end with divorce. In addition, she had also discovered that her husband had had an affair with his student, Yani, since the first year of her marriage to Asep.

Sumi wanted to divorce her husband but she had three small children. She did not want to neglect or hurt her children by leaving her marriage. Therefore, she decided to stay in her unhappy marriage whilst she prepared herself to be economically independent after the divorce. She participated in a special education program to obtain her senior high school certificate. After that, she asked for her husband's permission to take a bridal make-up and stylist course because she wanted to make a living as a bridal stylist. However, her husband objected and suggested instead that she study in the Islamic institution, where he works as a lecturer. Sumi told me that Asep was afraid she would be involved in an extramarital affair if she worked as a bridal stylist. In 1988, Sumi enrolled herself in the Islamic institution to obtain a bachelor degree in teaching English. She also saved the money she received from her husband, who was a famous religious preacher and received high fees from his preaching. From these savings, she bought some land in her mother's village and had someone run her clothing business. In addition, she renovated her house, which was built on her mother's land, into a big luxurious house. In 2003, when she discovered that her husband had secretly married Nuning (46), she asked her son to ask his father to divorce her. At that time, all her children had grown up (23, 21, 16 and 13). Even though her children were sad at her decision to seek a divorce, her children understood there was another woman in their parents' marriage. In October 2003, even though he was ashamed of divorcing his wife, Asep accepted his son's request to divorce Sumi. At that time, Asep assumed that Sumi could not live without him and his economic support, so he predicted that Sumi would soon regret her decision and return to him. Based on this assumption,

he just left the house after the divorce without disputing or dividing their joint marital property. He did not know that Sumi had prepared for this divorce for about fifteen years and did not want to remarry him, even though Asep still wanted to remarry her. Sumi explained the economic arrangement during her marriage. In the first four years of her marriage, Sumi received financial support from her mother, in addition to receiving Asep's entire salary, which was very low, and his additional fees from preaching and attending meetings. In 1984, she noticed that Asep had reduced the money he usually gave her from his additional income. Sumi assumed that someone had reminded Asep to give some of his income to support his first wife and two children. She knew that her husband did not give her all the fees from his preaching because she noted her husband's fees, usually given directly to her when she accompanied him, ranged from Rp1.000.000 to Rp2.500.000 while her husband only gave her about Rp300.000 when she did not accompany him preaching. From this, she could calculate how much money her husband gave his other wife and two children.

Sumi also just realized that Asep no longer gave her the whole of his salary in the last stage of their marriage in 2003. She accidentally saw the receipt of his monthly salary of Rp4.500.000 but Asep only gave her Rp3.300.000. She was quiet about this and did not dare to ask for more money because once she had asked for more money and was answered rudely by Asep:

“I have given you all the money, what extra money should I give you?” Sumi was quiet, even though she knew that her husband had changed his financial arrangements. She used to receive all his income to manage to cover all daily expenses and pay for the children's school fees, but once he married another woman, Asep reduced the money he usually gave to Sumi.

E. Women's Agency in Accessing Income and Property in Legal and Illegal Polygamous Marriages

The case studies described in this chapter show that the husband's practice of polygamy has a negative effect on the first wife's access to income, causing a drain on the family resources to support the husband's additional wife/ves as noted by Brenner.²⁶ This support, in the case of

²⁶ Brenner, *The Domestication of Desire Women*.

Ikin and Nuni, was provided by Atikah, the first wife, due to Ikin's low income, which made him unable even to support one household. This case also challenges the patriarchal belief that men are by nature leaders of the family who can economically support the family, like what is done by Pemberdayaan Perempuan Kepala Keluarga/Pekka [Women Headed Household Empowerment].²⁷

None of the existing wives, in legal or illegal polygamous marriages, could accept their husband's polygamous marriage/s but legal polygamy provided better conditions for all the parties in this type of situation. For example, Atikah could control and intervene in her husband's relationship with his second wife, Nuni, by limiting his visit to her to 1-2 days a week and limiting the amount of maintenance her husband provided her. However, unknown to Atikah, Ikin apparently increased Nuni's maintenance in response to Nuni's increasing demands, by borrowing money from other sources, which finally had to be repaid by Atikah.

Atikah's case is different from Dahlia, whose husband secretly and illegally took another wife. This left Dahlia with little ability to "control" her husband's visits and maintenance to his other wife. Unlike Atikah, who exercised her agency to restore the economic welfare of her family, by asking her husband to divorce his other wife, Dahlia did not seem to seek reasonable maintenance and time with her husband, even though she felt that she was unfairly treated. Dahlia understood her rights to half of the joint marital property should she decide to ask for divorce, stating: "If I ask for divorce, I will get half of our joint marital property, but I love Bapak [Dadi] and I want to stay in my marriage". She seemed to find it difficult to leave her "comfort zone" of being "Mrs Dadi," despite her economic and emotional suffering. Dahlia's determination to stay in her unhappy marriage, however, can also be interpreted as her exercising agency to preserve her right and access to joint marital property and block any opportunity for Nita to be Dadi's sole legal wife.

²⁷ The name of Pekka itself has shown its challenge to patriarchal belief that only men can be family leader and breadwinner. See "Nani Zulminarni: Dare to be a woman", Pekka.or.id (16 Sep 2010), <http://www.pekka.or.id/index.php/id/laporan/118-news/pekka-in-the-news/168-nani-zulminarni-dare-to-be-a-woman.html>, accessed 2 Mar 2016. Also See "Nani Zulminarni: Dare to be a woman", *The Jakarta Post* (13 Sep 2010), <http://www.thejakartapost.com/news/2010/09/13/nani-zulminarni-dare-be-a-woman.html>, accessed 2 Mar 2016.

The practice of polygamy indeed tends to diminish the economic wellbeing of the existing wife by depriving her of access to the full income of her husband. In the case of Atikah, the husband's polygamous marriage increased her economic burden by requiring her to support her husband's other wife.

Unlike Atikah who successfully made her husband divorce his other wife, Sumi could no longer endure her husband's infidelity and determined to end her marriage. Being aware of the threat of economic insecurity living without financial support, she prepared herself over a long period of time to be economically independent after her divorce. Although Asep assumed that she would soon return to him because he believed that she could not live without him, in fact Sumi felt relieved after the divorce. Asep's assumption led him to leave the house after the divorce without disputing their marital joint property, such as land and house, some of which were under Sumi's name, which was all to Sumi's economic advantage post-divorce.

The above three case studies have shown that in the legal polygamous marriages, time spent with husband and income distribution was decided before the polygamous marriage took place, yet after marriage, Nuni demanded a greater share than what had been agreed upon. This shows that justice cannot easily be achieved even in legal polygamy. In illegal polygamy, Dadi, who seemed to command the authority in the marriage, decided his own roster and income distribution as he wished. He visited his wives as he wished and gave an indefinite amount of money to Dahlia, his first wife. Dadi changed his income management, from a whole wage system when he was monogamous where he gave all his income to Dahlia, to an allowance system when he was polygamous where he only gave Dahlia a small amount of money, which was far from enough to cover her family expenses.²⁸ Similar to Dadi, Asep also changed his economic management, from a whole wage system to an allowance system after he took another wife. However, compared to Dadi, Asep still tended to give more money to Sumi, who had given him four children, even though their marriage finally ended in divorce. This shows that the whole wage system, which provided more opportunity for the wife Sumi to manoeuvre from her unhappy marriage, was only suitable

²⁸ Pahl, "Patterns of Money".

for monogamous marriage. Therefore, polygamous husbands tend to change their economic management from the whole wage system to an allowance system to enable them to more easily distribute their income to more than one wife. This system, however, as the above case studies have shown, negatively affected the economic wellbeing of the existing wife and children. All of these findings negate the idealised polygamous marriage promoted by Puspo Wardoyo in 2003.²⁹

F. Concluding Remarks

Prior to the 1974 Marriage Law, Indonesian women had no legal protection for their rights within marriage. There were frequent cases of forced marriage, child marriage, easy and unilateral divorce as well as arbitrary polygamy. After the enactment of the Marriage Law in 1974, after a five decade campaign, polygamy is still permitted but permission from the Religious Court³ must first be sought before entering a polygamous marriage. However, many members of “religious” groups tend to ignore this provision because they view it as conflicting with fiqh. Consequently, there are many cases of unregistered marriage, divorce and polygamy, in which the persons involved have no legal protection, so that the children born of such marriages lack the birth certificate they need to attend school and their mothers cannot claim their rightful joint marital property and inheritance.

The economic welfare of women and their children tends to be negatively impacted by polygamy. In a monogamous marriage where all the man’s whole wage is largely devoted to supporting the household, when a man has several households his economic support shifts to an allowance system so that support for the household of the first wife is much reduced. This can be clearly seen in the above three case studies, although the fallacy of assuming the male is always the key income earner has also been highlighted in the case of Atikah and Ikin. It is clear that from this case and that of Sumi and Asep that women can display agency in dealing with their husband’s polygamous marriages in order to preserve their rights and access to marital property.

The economic motives of becoming an additional wife are evident

²⁹ Eko Suryono, *Kiat Sukses Beristri Banyak: Pengalaman Puspo Wardoyo Bersama 4 Istri* (Solo: Bumi Wacana, 2003).

in the case of Titin and Nita. Titin asked for divorce when she no longer received economic benefits from her marriage whereas Nita, who actively dominated Dadi's time and income at the expense of the first wife, Dahlia, perhaps because she realised as an illegal wife, she could not access joint marital property should Dadi divorce her or obtain an inheritance should he pass away. Further research would be valuable on the economic motives of such additional wives and the disadvantages of being in a secret/unregistered marriage because many polygamous marriages involve young women marrying much older and well-to-do men.

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