JCIC: Jurnal CIC Lembaga Riset dan Konsultan Sosial – ISSN: 2746-5160 (e)
Vol. 5, no. 2 (September 2023), pp. 67-78, doi: 10.51486/jbo.v5i2.91

Contemporary Family Law Issues: Analysis of Positive Law (Law No. 1 of 1974 and Government Regulation No. 9 of 1975)

Problematika Hukum Keluarga Kontemporer: Analisis Hukum Positif (UU No. 1 Tahun 1974 dan PP No. 9 Tahun 1975)

Eva Nur Hopipah[1], Abdullah Syafe'i[2]
[1,2]Universitas Islam Negeri (UIN) Sunan Gunung Djati Bandung, Indonesia
Email: evanurkhofifah@gmail.com

ABSTRACT

The contemporary family law issues in Indonesia are numerous, especially as we enter an era where everything unfolds rapidly, impacting the stability of the family as the smallest unit in society. Ten issues analyzed in this research include: (1) marriage via teleconference and divorce over the phone, as reviewed under Law No. 1 of 1974 and Government Regulation No. 9 of 1975; (2) legal consequences of interfaith marriages; (3) joint property (gono gini) post-divorce; (4) mut'ah payments for career women; (5) divorce decisions without marriage certificates; (6) domestic violence; (7) the legality of polygamy; (8) clandestine divorces; (9) post-divorce child custody rights; (10) age restrictions on marriage. All are examined in the context of Law No. 1 of 1974 and Government Regulation No. 9 of 1975. The research aims to comprehensively address family law issues within the framework of positive law (Law No. 1 of 1974 and Government Regulation No. 9 of 1975). The research methodology involves a literature review, utilizing primary sources such as Law No. 1 of 1974 and Government Regulation No. 9 of 1975, contemporary family law issues, and other sources serving as secondary references to ensure the research's comprehensiveness.

Keywords: *family law, contemporary family law issues, legislation, government regulation.*

ABSTRAK

Problematika hukum keluarga kontemporer di Indonesia sangatlah banyak, apalagi dewasa ini memasuki era dimana segala hal bergulir dengan cepat yang berpengaruh pula pada stabilitas keluarga sebagai organisasi terkecil di masyarakat. Sepuluh problematika yang dianalisis dalam penelitian ini, di antaranya, (1) perkawinan melalui teleconference dan perceraian melalui telepon ditinjau dari UU no. 1 tahun 1974 dan PP no. 9 tahun 1975; (2) akibat hukum perkawinan beda agama; (3) harta bersama (gono gini) pasca perceraian; (4) pemberian mut'ah wanita karir; (5) putusan perceraian tanpa akta perkawinan; (6) kekerasan rumah tangga; (7) bagiamana hukum poligami; (8) perceraian di bawah tangan; (9) hak asuh anak pasca perceraian; (10) pembatasan usia perkawinan. Semuanya ditinjau dari UU no. 1 tahun 1974 dan PP no. 9 tahun 1975. Hasil dari tujuan penelitian ini diharapkan mampu menyelesaikan problematika hukum keluarga secara komprehensif ditinjau dari hukum positif (UU No. 1 tahun 1974 dan PP no. 9 tahun 1975). Metode penelitian yang digunakan adalah studi kepustakaan dengan sumber primernya adalah UU no. 1 tahun 1974 dan PP no. 9 tahun 1975, problematika hukum keluarga kontemporer, dan sumber lain yang membantu penelitian ini agar komprehensif digunakan sebagai sumber sekunder.

Kata Kunci: Hukum Keluarga, Problematika Hukum Keluarga Kontemporer, Undang-Undang, Peraturan Pemerintah.

INTRODUCTION

Family law originates from marriage law. Marriage is part of civil law. Marriage is part of civil law that regulates personal rights. As related to marriage, it results in the rights and obligations of husband and wife, property, guardianship, child relationships, joint property, child custody, inheritance, and so on. (Hasan, 2011). Analysis of positive law, especially Law No. 1 of 1974 and Government Regulation No. 9 of 1975 can be used as a basis for options for how contemporary family law problems that occur in Indonesia in particular can be regulated and resolved. In addition to the Compilation of Islamic Law (KHI) which is often used by judges in deciding cases, positive law can be used as a legal reference to create justice and legal certainty.

Thus, contemporary family law problems today can be dissected on how disputes should be resolved in terms of positive law as the basis of the State. So far, studies that discuss contemporary family law issues have not comprehensively presented various problems as well as their resolution in terms of positive law. First, a study of the legal consequences of interfaith marriages according to Law No. 1 of 1974 concerning marriage. (Bahri dan Adama, 2011). Second, juridical analysis of joint property (gono gini) in marriage according to the views of Islamic law and positive law. (Rochaeti, 2013). Third, divorce under the hands of an Islamic legal study of Article 39 of Law No. 1 of 1974 concerning marriage and Article 34 of government regulation number 9 of 1975. (Syamsurijal, 2016). Thus, it appears that the analysis of positive law related to various problems in family law is still partially dissected, less comprehensively exploring various problems that are not small.

The purpose of this paper is to complete the shortcomings of previous studies that tend to analyze family law problems partially from the positive law side, making it less comprehensive. Given the many problems in contemporary family law, an integral (whole and comprehensive) approach is needed, especially in terms of Law No. 1 of 1974 and Government Regulation No. 9 of 1975. In line with that, there are several questions in this study, namely, (1) how marriage over the telephone is viewed from Law No. 1 of 1974 and Government Regulation No. 9 of 1975; (2) how marriage over the telephone is viewed from Law No. 1 of 1974 and Government Regulation No. 9 of 1975; (3) how marriage is viewed from Government Regulation No. 9 of 1975. 9 of 1975; (2) what are the legal consequences of interfaith marriage; (3) how is the post-divorce joint property (gono gini); (4) the provision of mut'ah for career women; (5) how is the divorce verdict without a marriage certificate; (6) how is domestic violence; (7) how is the law of polygamy; (8) how is underhand divorce; (9) how is post-divorce child custody; (10) how is the age restriction of marriage all viewed from Law No. 1 of 1974 and PP No. 9 of 1975. The results of the objectives of this research are expected to be able to solve family law problems comprehensively in terms of positive law (Law No. 1 of 1974 and Government Regulation No. 9 of 1975).

This paper argues that solving so many contemporary family law problems if discussed partially, is less effective. If it only refers to KHI, without heeding the positive law that is the basis of the State as well, then in reality other problems often arise. Therefore, this research will focus on solving problems in terms of comprehensive positive law in Indonesia. So that there can be scientific collaboration with Islamic Law which is of course also used in the State of Indonesia. The positive law discussed is not only from Law No. 1 of 1974 but also from PP No. 9 of 1975. Problems of contemporary family law will be presented one by one to be congruent with the problems that are indeed very much, not just one.

RESEARCH METHODS

This research uses a qualitative method. This interpretative method is used because the research data is more about how to interpret the field data. Finally, this approach is often referred to as a constructive method due to the discovery of scattered data and the subsequent construction of themes that are both more meaningful and more easily understood by the audience. (Sugiyono, 2017). Sugiyono (2017), and Cresswell (2009) list six types of qualitative methods, but the one used in this research based on its relevance focuses on desk research. This research uses inductive and deductive data analysis according to the issues that arise and is included in the category of literature research. In this literature review, primary sources include

books on family law in terms of positive law, contemporary family law problems, legislation in family law, and others. Meanwhile, secondary sources include other books related to this research.

RESULTS AND DISCUSSION

Marriage by Teleconference and Divorce by Telephone and the Like

During this time, weddings were usually held in one assembly or one place. However, along with the development of communication technology, there is the possibility of marriage not taking place in one place. However, this kind of marriage is still considered strange by most Indonesian people because it is considered unnatural. It can even lead to debates among experts or legal officials about determining the validity of marriages using telephone or teleconference media. However, even so, this kind of marriage has begun to be frequently performed by the Indonesian people (Nuroniyah, 2017).

Telephone marriages were performed by Aria Sutarto bin Drs. Suroso Darmoatmojo in the United States (USA) and Nurdiani binti Prof. Dr. Baharudin Harahap in Indonesia on May 13, 1989. The telephone wedding was connected to a loudspeaker and could be heard by people in the vicinity. It was also witnessed by approximately 100 invitees in Jakarta, including officials from the Kebayoran Baru District KUA who acted to supervise and witness the process, and 10-15 witnesses in America. However, the problem that arose was that when the marriage was requested to be recorded in the marriage book, the local KUA refused, because they thought that the ijab qabul process was carried out in a place far apart or other words, there was no direct meeting between the bride and groom was invalid. However, the obstacle to obtaining a marriage certificate was resolved when the case was submitted to the South Jakarta Religious Court to determine that it was valid and could be recorded and recorded in the marriage book, by the provisions stipulated in Article 2 paragraph (2) of PP No. 9/1975 concerning marriage registration (Nuroniyah, 2017).

Regarding the validity of marriage through online media based on Marriage Law No. 1 of 1974, it is valid as long as the marriage does have the intention or purpose in line with what is intended in this Marriage Law, namely building a harmonious and eternal family. In addition, as long as the marriage is not a marriage prohibited by the Marriage Law. Likewise, as long as both parties of the prospective bride and groom have reached the age of the minimum age limit set by this Law, namely 19 years, the marriage is valid (Luqyana, 2021).

The contents of Article 10 paragraph 3 of Government Regulation No. 9 of 1975 can still be interpreted variously. What if the marriage is performed in the presence of two people or two groups of witnesses, but separately? This means that one group attends the ijab only and the other attends the Kabul only. This practice can also be called being attended by two witnesses, but separately (Zein, 2004).

According to Law. No.1 of 1974, divorce can only be done in front of a court session. After the court tries to reconcile the two parties to the dispute and succeeds in trying to make peace. A divorce suit is filed with the Court with sufficient reasons that the husband and wife will no longer live together as husband and wife. These reasons can be seen in article 39 (2) of Law No. 1 of 1974, the explanation of the Marriage Law, and are repeated in article 19 of PP. 9 of 1975. Article 39 (3) jo article 40 (2) of Law. 1 Year 1974 states the method of divorce and its lawsuit before a court session. The court referred to in this case, according to Article 63 of Law No. 1 of 1974, is the Religious Court for those who are Muslims, and the General Court for those of other religions. Then what about those who adhere to a cult? Those who adhere to a cult of belief make their administration under the legal government structure. So they have their administrative system. However, the definition of divorce according to Law. No. 1 Year 1974 is the termination of marriage due to the termination of the Court (Yaqin, 2007).

Legal Effects of Interfaith Marriage

According to the understanding of experts and legal practitioners in Law No. 1 of 1974, there are three views. First, interfaith marriage cannot be justified and is a violation of UUP Article 2 paragraph (1): Marriage is valid if performed according to the laws of each religion and belief; and Article 8 letter (f): that marriage is prohibited between two people who have a relationship that

is prohibited by their religion or other applicable regulations. So with this article, interfaith marriages are considered invalid and null and void by the official implementing the marriage. This article states that it is valid according to the laws of each religion and belief, while in Islam there are opinions that allow interfaith marriages (Amri, 2020).

Secondly, interfaith marriages are permissible, and valid and can take place because they are covered by mixed marriages. As written in Article 57 of the UUP, namely two people in Indonesia are subject to different laws. According to this second view, the article not only regulates marriage between two people who have different nationalities but also regulates marriage between two people of different religions. According to him, the implementation is carried out according to the procedures regulated by Article 6 of the PPC: (1) Mixed marriages are solemnized according to the law applicable to the husband, unless the permission of both parties of the prospective bride and groom, which should exist, concerning Article 66 of the UUP. Third, the UUP does not regulate the issue of inter-religious marriage. Therefore, when referring to Article 66 of the UUP which emphasizes that other regulations governing marriage, to the extent that they have been regulated in this law, are declared invalid. However, because the UUP has not regulated it, the old regulations can be re-enacted, so the issue of interfaith marriage must be guided by the mixed marriage regulations (PPC) (Berkatullah and Prasetyo, 2006: 147-148; Amri, 2020).

In addition to these three opinions, there is a group that believes that the UUP needs to be improved, given the legal vacuum on interfaith marriage. The arguments built by this group are based on four things, namely: 1) The UUP does not regulate interfaith marriages; 2) Indonesian society is a plural society, so interfaith marriages cannot be avoided; 3) religious issues are part of a person's human rights; and 4) the legal vacuum in the field of marriage cannot be left unchecked, because it will encourage covert adultery through the door of cohabitation (Amri, 2020).

When viewed in Article 2 paragraph 1 of the UUP, the validity of a marriage is according to the laws of their respective religions or beliefs. And in paragraph 2 reads that every marriage is recorded according to the applicable laws and regulations. So what is meant by according to their respective religious laws is that it depends on the validity of the laws of each religion concerned in carrying out interfaith marriages. With the problem of regulating marriage in Indonesia, the law gives full confidence to religion, and religion has an important role in marriages of different religions (Bahri & Adama, 2020).

Joint Property (Gono Gini) After Divorce

Marriage Law No. 1 of 1974 Article 35 paragraph (1), explains that what is meant by joint property is "Property obtained during the marriage period". This means that property obtained before marriage is not referred to as joint property. Article 35 paragraph 1 of Law No. 1 of 1974 has emphasized this. This means that the formation of joint property in marriage starts from the date of marriage until the marriage bond is dissolved. If so, what assets are obtained by both spouses from the time of the marriage contract until the marriage is broken by the death of one of the parties or by divorce? All of these assets automatically according to the law become joint property (Harimurti, 2021).

According to Manan (1997) joint property is property obtained during the marriage bond and without questioning registered in whose name. Types of joint ownership consist of four sources, namely: 1. Grant assets and inheritance from one of the spouses; 2. Assets from each party's business before marriage; 3. Assets obtained during marriage or as a result of marriage; 4. Assets obtained during marriage apart from special grants as inheritance from one of the spouses (Putri and Wahyumi, 2021).

Article 88 of the Compilation of Islamic Law regulates this, "If there is a dispute between husband Marriage by Teleconference and Divorce by Telephone and the Like and wife about joint property, then the settlement of the dispute shall be submitted to the religious court" settlement through the religious court is an option. If a married couple is separated due to divorce between them, the division of joint property is regulated based on their respective laws. This provision is regulated in Article 37 of the Marriage Law: "If the marriage breaks up due to divorce, the joint property is regulated according to their respective laws" What is meant by their respective laws includes religious law, customary law, and so on. For Muslims, the provisions of gono-gini

property are regulated in the Compilation of Islamic Law (Rochaeti, 2013). And finally, Article 97 stipulates that widows or widowers of divorce are each entitled to one-half (½) of the joint property as long as it is not specified otherwise in the marriage agreement (Putri and Wahyuni, 2021).

Mut'ah Granting for Career Women

After divorce, an ex-husband must fulfill several responsibilities and obligations along with all the consequences according to the rules of Shara'. The consequences of the divorce are as follows: (1) must pay off the unpaid or outstanding dowry. Mahar (maskawin) is an obligatory gift from the prospective husband to his prospective wife in the form of objects or services; (2) provide compulsory maintenance during the iddah period; (3) pay for breastfeeding children and their maintenance until they reach adulthood; (4) provide mut'ah divorce to the former wife.

Article 38 of Law Number 1 of 1974 jo. Article 113 KHI states that, marriage breaks up due to death, divorce, or by court decision. Marriage can break up due to divorce as explained in Article 114 which divides divorce into two parts, divorce caused by divorce and divorce caused by a divorce suit (Majana, 2018).

The consequences of divorce are contained in article 149 KHI which reads as follows, when the marriage is broken up due to divorce, the former husband is obliged: (a) provide decent mut`ah to his former wife, in the form of money or objects, unless the former wife is *qobla al dukhul*; (b) provide nafkah, *maskan* and *kiswah* to the former wife during iddah, unless the former wife has been sentenced to divorce ba'in or nusyur and is not pregnant; (c) pay off the dowry that is still owed in full, and a half if *qobla al dukhul*; (d) provide *hadhanah* costs for children who have not reached the age of 21 years.

This provision is intended so that ex-wives who have been divorced by their husbands do not suffer because they are unable to meet their needs. In KHI, it is regulated regarding the terms of mut'ah in article 158 which reads: Mut'ah must be given by the former husband on the condition that: (a) no mahr has been determined for the wife *ba'da ad-dukhul*; (b) the divorce was at the will of the husband.

From the description above, three elements of propriety must be considered in giving mut'ah. First, propriety or appropriateness is based on the husband's ability. This means that it is not appropriate for a rich husband to give mut'ah in the same amount as a poor husband, and vice versa. Secondly, it is appropriate for the wife. This means that a wife who is accustomed to a lifestyle of moderation, let alone luxury, with the husband or his family beforehand, even if she works and has her income, does not deserve a small amount of mut'ah. Therefore, the wife's situation is the guideline in determining the mut'ah. Thirdly, it is appropriate according to the customs of the environment in which they live. This needs attention, at least, to avoid a social gap between the wife who is given mut'ah and the people around her and the concern that the cost of living for the children of the marriage will not be sufficient (Majana, 2018).

Divorce Decisions without a Marriage Certificate

Regarding divorces that are not carried out in front of a judge, on the one hand, the divorce is valid under Islamic law because, in Islamic legal literature, it is not required that the divorce be carried out in front of the court. Thus, divorce is valid in share, but if you look from the perspective of positive law or the legislative system in Indonesia, which refers to Law No. 1 of 1974 and the Compilation of Islamic Law, divorce is not legally valid, this can be seen in article 39 paragraph 1 of Law. No.1 of 1974 concerning marriage, "Divorce can only be carried out in front of a court session after the court concerned has tried and failed to reconcile the two parties" (Jannah, 2021).

Divorce outside of a religious court session is valid. The jurisprudence focused on by the Fuqaha is influenced by time and space. So it is possible, that if the opinion of a scholar in the past brought benefits, if applied in the current conditions it will cause harm. Therefore, it must be distinguished and not contradicted. It is not the Fikih that is irrelevant, but the mistake lies with the people who put the Fikih written for that time, for the benefit of now (Jannah, 2021).

According to the author, although it is valid according to religious law, not recording a marriage will have legal consequences in the form of, first, the marriage is considered invalid

according to state law. The marriage is considered invalid in the eyes of the state if it has not been recorded by the KUA or the Civil Registry Office (KCS). Second, the child only has a civil relationship with the mother and the mother's family (Articles 42 and 43 of the Marriage Law). Meanwhile, there is no civil relationship with the father. This means that the child cannot claim his rights from the father. Third, a further consequence of an unregistered marriage is that the wife and children born from the marriage have no right to claim maintenance or inheritance from their father (Jannah, 2021).

Regarding the marital status of widows who do not have a divorce certificate in the perspective of Islamic law, there is no correlation and relevance of whether or not there is a divorce certificate to carry out the next marriage. Meanwhile, according to positive law, a divorce certificate is proof of the legality of recognition by the state of the breakdown of marital relations between husband and wife. Without a divorce certificate, a person cannot perform the next marriage because they are considered still bound by the previous marriage (Jannah, 2021).

Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 is one of the references used by judges in carrying out the implementation of marriage and divorce in Indonesia. Judges in deciding divorce cases, apart from referring to the provisions of PP No. 9 of 1975 as a material consideration, are also supported by the provisions of Law Number 1 of 1974 concerning Marriage (Putrayasa, et al, 2022).

In this case, the provisions of Article 2 paragraph (2) of Government Regulation Number 9 of 1975 are one of the formal requirements that husband and wife have entered into a marriage, namely by registering their marriage with the Recording Officer at the civil registry so that a marriage certificate can be issued. Paragraph (2) of Article 2 of the UUP states that every marriage is recorded according to the applicable legislation (Rasjidi, 1991). Thus, when filing a divorce in court, a marriage certificate can be included as valid proof that the husband and wife's marriage has been registered at the civil registry so that the issuance of a divorce certificate can later be fulfilled. If the divorce is not registered at the civil registry, when issuing a divorce certificate, there is no data that the husband and wife have registered their marriage at the civil registry so that it will hinder the process of issuing a divorce certificate. In addition, speaking of civil law, proof in this law is formal so that a marriage certificate, which is a formal requirement for marriage in fulfilling administrative requirements in court when divorcing, can include a marriage certificate as valid proof that it is true and has been in a marriage (Putrayasa, et al, 2022).

Domestic Violence Protection

Domestic violence is one of the various forms of violent crime that has been identified in the international community. Domestic violence is defined as violence that occurs in the private sphere. It generally occurs between individuals who are connected through intimacy (intimate relationships, sexual relations, adultery), blood relations, or relationships regulated by law/role (Martha, 2013).

Domestic violence is now regulated as an offense and sanctions are set for perpetrators. Law No. 23/2004 on the Elimination of Domestic Violence (PKDRT Law) is a legal provision that regulates domestic violence, case handling procedures, protection of victims, and sanctions for perpetrators (Wahyuni, 2008).

In Das Sollen according to Article 1 & Article 33 of Law No. 1 of 1974 concerning marriage, the family institution should be a place where women (wives) and also men (husbands) get happiness and love, but in das sein level it often applies otherwise, many households become a place of abuse for women. From several research results, it is stated that Domestic Violence (hereinafter abbreviated as KDRT), the most common is violence committed by husbands against wives. Even from the results of the research revealed by Farha Ciciek in Muhyiddid Abdusshomad, one in three wives has experienced domestic violence. This fact is quite shocking. How could it not be, cases of domestic violence account for almost half of the lives of married couples (Arief, 2015).

In cases of domestic violence, many wives choose to reconcile with their husbands' actions despite being repeatedly abused, even raped (forced to have sex) in a grievous way, such as inserting an object into the wife's vagina. However, in cases where the wife can no longer stand her husband's treatment, she prefers to immediately break away from their marriage. This was considered the safest and quickest way to proceed to criminal proceedings. This is also due to the

fear of retaliation from the husband's extended family. It can be said that most domestic violence cases are settled civilly (Hadidjah & Jamaa, 2017).

A household with a sense of security and happiness in it is certainly a family's dream household. However, if deciding on marriage does not begin with choosing various considerations on prospective partners, then incidents of domestic violence even at the beginning of marriage often occur. Although many couples still choose to stay with toxic partners, in essence, the spirit of marriage is lost if one person continues to force themselves to survive in a physically and psychologically abused condition.

Regarding domestic violence, most of the cases and literature are against women by their husbands. However, there are cases where the husband is the victim of violence. For example, many wives in this era suddenly sued their husbands who were working outside the island or abroad without the husband's knowledge, even though birth support flows every month. There are various reasons for these women's actions. However, wife violence against husbands that does not take physical form must still be of concern to contemporary family law experts and practitioners.

The Law of Polygamy

The definition of polygamy according to Marriage Law Number 1 of 1974 is not clearly stated but in essence, polygamy is a husband who has more than one wife. The issue of polygamy is quite controversial, causing pros and cons in society. Those who support polygamy are based on the rules of religious provisions. Meanwhile, those who oppose polygamy view it as an arbitrary act and a form of male superiority (Darmawijaya, 2015).

From the article above, it is known that the Law on Marriage in principle adheres to the principle of open monogamy. However, if the party concerned or in this case the husband, due to certain factors and the law and religion do not prohibit it, then a husband can have more than one wife. However, the party concerned must fulfill various predetermined conditions and must go through a Religious Court decision (Anwar, 2022).

The Marriage Law was established with the aim that there would be uniformity in the administration of marriage. As an implementer of the Marriage Law, Government Regulation Number 9 of 1975 (PP Number 9 of 1975) was issued. This Government Regulation was formed to facilitate the proper implementation of the Marriage Law. This Government Regulation is also a further regulation that elaborates on the implementation of the Marriage Law so that it is very technical, and the implementation of the Marriage Law should heed the further rules contained in Government Regulation Number 9 of 1975. With the birth of the Marriage Law and PP Number 9 of 1975, it is hoped that it can create legal certainty in the field of marriage for all Indonesian people (Yusrizal, 2016).

The reasons and conditions for polygamy determined by the Law can be found in Article 4 paragraph (2) and Article 5 paragraph (1) of Law Number 1 the Year 1974, namely: Article 4 paragraph (2) - The court referred to in paragraph (1) of this article only gives permission to a husband who will have more than one wife if: (1) the wife cannot fulfill her obligations as a wife; (2) the wife gets a disability or illness that cannot be cured; (3) the wife cannot give birth to offspring (Ardhian, et al, 2015).

Law No. 1/1974 explicitly states that the basis/principle of marriage is monogyny/ monogamy. However, there is still the possibility of polygamy, a maximum of four people. The possibility of polygamy requires permission from the court. Conversely, without court permission, polygamy has no legal force (Nasution, 2009).

The provisions contained in the Marriage Law and the rules of implementation are based on the principle of monogamy. In certain cases or reasons, a husband is permitted to have more than one wife. This is reflected in very heavy requirements. Whether or not a person is polygamous is determined by the PA based on whether or not the requirements are met (Abdullah and Saebani, 2013).

To obtain a polygamy permit from the Court, certain conditions must be met along with justified reasons. This is further regulated in Article 5 of Marriage Law No. 1/1974 and Government Regulation No. 9/1975 and must also heed the special provisions contained in

Government Regulation No. 10/1983 concerning marriage and divorce permits for civil servants. The requirements that must be met are (1) the consent of the wife/wives; (2) the certainty that the husband can fulfill the living needs of the wives and their children; (3) the guarantee that the husband will be fair to the wives and their children (Darmawijaya, 2015).
If you analyze the above conditions, it is certainly not easy to be polygamous if you want to be recognized by the state. However, in practice, many polygamists continue to circulate and even exist in the real and virtual world without legality from the state.

Underhand Divorce

Marriage is seen as a public good because if there is no marriage, humans will follow their lusts like animals. This would lead to disputes, disasters, and enmity between people, which could also lead to murder. The true purpose of marriage is the development of human morals and humanizing humans so that the relationship that occurs between two different genders can build a new life socially and culturally (Saebani, 2018).

In Law No. 1/1974 which regulates the issue of divorce is contained in article 39 paragraph (1): "Divorce can only be carried out in front of a Court Session after the Court concerned has tried and failed to reconcile the two parties" In Government Regulation No. 9/1975 which regulates divorce issues as follows: (1) Article 14 (for a husband who wishes to divorce his wife) states that: "A husband who has entered into a marriage according to the Islamic religion, who wishes to divorce his wife, shall file a letter with the Court at his place of residence, giving notice that he intends to divorce his wife with the reasons therefor, and requesting the Court to be convened for that purpose". (2) Article 34 (for a wife suing her husband): Paragraph (1): "The decision on the divorce suit shall be pronounced in open court". Paragraph (2): "A divorce is considered to have occurred with its consequences as of the time of its registration in the register at the registry office by the Recording Officer, except for those who are Muslims as of the date of the decision of the Religious Court which has permanent legal force" (Syamsurrizal, 2016).

Underhand divorce according to fiqh or Islamic Law is legal. In fiqh, the pledge of divorce by the husband does not require a court hearing. In contrast, according to Article 39 of Law Number 1 of 1974 concerning Marriage and Article 34 of Government Regulation Number 9 of 1975, divorce under the hand is invalid, because the pledge of divorce is not made in front of a court hearing (Syamsurrizal, 2016).
In society, underhand divorce is prevalent normalized, and justified not because they do not want it to be legal, but because of ignorance. So people only realize it when they want to remarry, that it turns out that the divorce recognized by the state is the one through a court decision.

Child Custody Post-Divorce

Law No. 1 of 1974 concerning Marriage has mentioned the law of child control explicitly which is a series of marriage laws in Indonesia, but the law of child control has not been regulated in Government Regulation No. 9 of 1975 in a broad and detailed manner. Because of this, the issue of hadhanah could not be effectively enforced so the court process in the Religious Courts at that time still referred to the law of hadhanah in the fiqh books. Only after the enactment of Law Number 7 of 1989 concerning religious courts, and Presidential Instruction Number 1 of 1991 concerning the dissemination of the Compilation of Islamic Law, did the issue of hadhanah become positive law in Indonesia, and the Religious Courts were authorized to resolve it (Hifni and Asnawi, 2021).

Law Number 1 of 1974 concerning Marriage regulates some of the obligations of parents after divorce. According to Article 41 of the Marriage Law, as a result of the breakdown of marriage due to divorce, the mother or father is still obliged to maintain and educate their children, based solely on the interests of the child, if there is a dispute regarding the control of the children, the court gives its decision. The father is responsible for all maintenance and education costs required by the child. If the father is unable to fulfill this obligation, the court may determine that the mother shares in the costs. The court can oblige the former husband to provide livelihood costs and or determine some obligations for the former wife (Pangestu, 2020).

According to Article 41 of Law No. 1 of 1974 concerning marriage, it is stated that if the breakdown of marriage due to divorce has legal consequences for children, the father or mother

is still obliged to maintain and educate their children, based solely on the interests of the child. If there is a dispute over the control of the children, the court gives its decision. The court usually gives the right of guardianship and maintenance of minors to the mother. This is based on Article 105 of the Compilation of Islamic Law, which states that children who are not yet 12 years old have the right of their mother. This is supported by the jurisprudence of the Supreme Court which states that the child is under the care of the mother. If the child can choose, he is invited to choose between his father or mother as the holder of his maintenance rights. The father is responsible for all maintenance and education costs required by the child. If the father is unable to provide these obligations, the court can determine that the mother shares in these costs (Pangestu, 2020).
Judicial decisions related to hadhanah are mostly given to the mother if the child is not yet mumayyiz. However, there is currently a trend of judicial decisions related to shared parenting that can be used as a reference for this child custody dispute. Share parenting means that children who are not yet mumayyiz are cared for by their father and mother first before they can choose later. The method of shared parenting is certainly tailored to the situation and conditions of the child and parents. Parenting time can be scheduled so that minors still feel the care of both parents, not just one of them.

Marriage Age Restriction

In psychology, the term adolescence means growing up or growing into an adult, the term adolescence as used today has a broader meaning, including mental, emotional, social, and physical maturity. Defining the limits of adolescence is widely used to indicate a stage of development between childhood and adulthood. The determination of adolescence is difficult to determine, but in general, experts use the age between 12 to 21 years. This adolescent age range is usually divided into three, namely 12-15 years is early adolescence, 15-18 years is middle adolescence, and 18-21 years is late adolescence (Pitrotussaadah, 2020).

In Article 7 (1) of Law No. 16 of 2019 marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years. This provision has just been revised, whereas previously according to the same article of Law No. 1 of 1974 marriage was only permitted if the male party had reached the age of 19 (nineteen) years and the female party had reached the age of 16 (sixteen) years. Basically, in general, maturity is used as an important principle by the government in establishing the marriage law as a positive law that must be obeyed by all citizens. In addition, it took a long time to revise the age limit for marriage, which was around 45 years. This is done with several considerations, one of which is stated in the consideration of Law No. 16 of 2019, namely that marriage at the age of a child hurts the growth and development of children and will cause the fulfillment of children's basic rights such as the right to protection from violence and discrimination, children's civil rights, health rights, education rights, and children's social rights (Pitrotussaadah, 2020).

Indeed, the issue of child marriage on the one hand is considered not to conflict with Law No. 1 of 1974 concerning Marriage. Likewise in Fikih or Islamic Law, there are still differences as previously described. In The Marriage Law Article 7 paragraph (1), allows marriage for men aged 19 years and women aged 16 years. On the other hand, the Child Protection Law has changed into Law. No. 35 of 201, Article 26 paragraph (1) point (c), very explicitly states that parents are obliged and responsible for preventing child marriage (Natsif, 2018).

The age limit contained in the marriage law is still not too high compared to some other countries in the world. Al-Jazair, for example, limits the age of marriage to 21 years for men and 18 years for women. Likewise with Bangladesh 21 years for men and 18 years for women. Some countries set the age very low. North Yemen, for example, limits the age of marriage to 15 years old for both men and women. Malaysia limits the age of marriage to 18 years old for males and 16 years old for females. The average country in the world limits the age of marriage to 18 years old men and women around 15 and 16 years old (Nurcholis, 2014).

"Minimum Marriage Age Limit According to Law Number 1 of 1974 concerning marriage in the perspective of Islamic Law and Reproductive Health" the conclusion is that the physical maturity of a child is not the same as his psychological maturity even though the child has menstruated, mentally he is not ready to have sex. Pregnancy can occur in children aged 12-15

years, but their psychology is not ready to conceive and give birth. Children under the age of 18 are immature and vulnerable to reproductive conditions and are still unstable in their psychological condition. Seeing the many harms that occur due to marriages that are held when the bride is under 18 years of age, the concept of sad adz-dzari'ah is the right solution to apply. Marriage in Islam is oriented towards the capacity of the prospective bride and groom, with the statement of baligh as a reference. Baligh means adulthood, then adjusted to the legislation in Indonesia which pegs the age of 18 as the age of children, then the laws related to the age of marriage should be reviewed and adjusted to current conditions (Pitrotussaadah, 2020).

It's like a child wanting to enter elementary school is advised to be 7 years old for the reason that they are psychologically ready, not just physically. This is also the marriage case. As the era develops, and many of them are unable to take advantage of the positive side of this era, in the end, the physical and mental development of children does not develop optimally. Limiting the age of marriage from 16, then, 17, 18, and now 19 is certainly based on the times, which means that couples who marry must be truly physically and mentally ready, not just physically.

CONCLUSIONS

The conclusion of the literature research aligns with the objectives of this study, emphasizing that the myriad issues within contemporary family law necessitate a thorough analysis, rather than addressing them piecemeal. Examining all 10 identified problems in light of both Law No. 1 of 1974 and PP No. 9 of 1975 would offer a more comprehensive understanding of the current challenges in contemporary family law. The anticipated outcome of this research is the comprehensive resolution of family law issues within the framework of positive law (Law No. 1 of 1974 and Government Regulation No. 9 of 1975). Although the practical resolution of contemporary family law problems proves intricate, it requires a multifaceted approach. By grounding solutions in positive law as the state's foundation, the dataset becomes more extensive, prompting experts and practitioners to approach societal issues with greater care and wisdom.

REFERENCES

Abdullah, H.B.A. dan Saebani, B.A. (2013). Perkawinan dan Perceraian Keluarga Muslim. Bandung: Pustaka Setia.

Anwar, AH. (2022). Pelaksanaan Poligami Dalam Hukum Perkawinan Sebagai Hukum Positif Di Indonesia. *Ensiklopedia Education Review,* Vol. 4 No 3, hal, 283.

Amri, A. (2020). Perkawinan Beda Agama Menurut Hukum Positif dan Hukum Islam. *Media Syari'ah*, Vol. 22, No. 1. hal, 50.

Ardhian, dkk (2015). Poligami Dalam Hukum Islam Dan Hukum Positif Indonesia Serta Urgensi Pemberian Izin Poligam Di Pengadilan Agama. *Privat Law Vol. III No 2*. hal, 100.

Arief, MZ. (2015). Perlindungan Korban Kekerasan Dalam Rumah Tangga Menurut Hukum Islam Dan Hukum Positif Di Indonesia. *Preceding Call for Paper* ISBN: 978-602-19681-6-1.

Bahri, S dan Adama. (2011). Akibat hukum perkawinan beda agama menurut undang-undang no. 1 tahun 1974 tentang perkawinan. *AL-SYAKHSHIYYAH: Jurnal Hukum Keluarga Islam dan Kemanusiaan Vol. 2*; No. 1. hal, 75.

Darmawijaya, E. (2015). Poligami Dalam Hukum Islam Dan Hukum Positif (Tinjauan Hukum Keluarga Turki, Tunisia dan Indonesia). *Gender Equality: Internasional Journal of Child and Gender Studies Vol. 1, No. 1*, hal 27.

Hadidjah & Jamaa, L. (2017). *Hukum Islam & Undang-Undang Anti Kekerasan dalam Rumah Tangga*. Banten: STAIN Ambon Press.

Hasan, M. (2011). Pengantar Hukum Keluarga. Bandung: CV. Pustaka Setia.

Harimurti, DA. (2021). Perbandingan Pembagian Harta Bersama Menurut Hukum Positif

Hifni, M. dan Asnawi. (2021). Problematika Hak Asuh Anak Dalam Perspektif Hukum Islam Dan Hukum Positif. Jurnal Res Justitia: *Jurnal Ilmu Hukum Program Studi Hukum Fakultas Hukum Universitas Bina Bangsa Volume 1 Nomor 1*. Hal, 39.

Hukum Islam. *Jurnal Gagasan Hukum Vol. 03 | No.02*. hal, 149.

Jannah, M. (2021). Tinjauan Hukum Islam Dan Hukum Positif Terhadap Cerai Tanpa Putusan Pengadilan Agama. *ISTI'DAL: Jurnal Studi Hukum Islam*, Vol. 8 No.2. hal, 178.

Kompilasi Hukum Islam. (2000). Yogyakarta: Pustaka Widyatama.

Luqyana, N. (2021). *Keabsahan Perkawinan Melalui Media Online Menurut Hukum Hindu Dan Hukum Positif*. Fakultas Hukum, Fakultas Hukum Universitas Pembangunan Nasional Veteran Jakarta.

Majana, S. (2018). Penentuan Mut'ah Wanita Karir dalam Pandangan Hukum Positif Indonesia. *Al Istinbath: Jurnal Hukum Islam Vol. 3, no. 1*. hal, 68.

Martha, AE. (2013). *Proses Pembentukan Hukum Kekerasan terhadap Perempuan di Indonesia dan Malaysia*. Yogyakarta: Aswaja Pressindo.

Nasution, K. (2009). *Hukum Perdata (Keluarga) Islam Indonesia dan Perbandingan Hukum Perkawinan di Dunia Muslim*. Yohyakarta: Academia.

Natsif, FA. (2018). Problematika Perkawinan Anak (Perspektif Hukum Islam dan Hukum Positif). *Al-Qadau Volume 5 Nomor 2*. Hal, 176.

Nurcholis. (2014). Refleksi Pembatasan Usia Perkawinan Dalam Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Menurut Filsafat Hukum Keluarga Islam. *Tafaqquh; Vol. 2 No. 1*. hal, 61.

Nuroniyah, Wardah. (2017). Analisis Akad Nikah Via Teleconference Menurut Fiqih Mazhab Dan Hukum Positif Indonesia. *Mahkamah: Jurnal Kajian Hukum Islam 131 Vol.2, No.1*, hal. 131.

Pangestu, RD. (2020). Tinjauan Yuridis Dalam Penentuan Hak Asuh Anak Di Bawah Umur Pasca Perceraian Berdasarkan Hukum Positif Perkawinan Di Indonesia. *Jurnal Actual Volume 10 Nomor 1*. hal, 26.

Pitrotussaadah, dan Mintarsih, M. (2020). Batas Usia Minimal Perkawinan Menurut Perspektif Hukum Positif di Indonesia dan Hukum Islam. *Jurnal Muttaqien, Vol. 1. No. 1 Juli 2020, 74 – 84.*

Putrayasa, dkk. (2022). Implementasi Peraturan Pemerintah Nomor 9 Tahun 1975 Tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 Terkait Putusan Perceraian Tanpa Akta Perkawinan Di Pengadilan Negeri Singaraja (Studi Putusan Nomor: 232/Pdt.G/2020/Pn.Sgr). *e-Journal Komunikasi Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum Volume 5 Nomor 1*. hal, 197.

Putri, EA. dan Wahyuni, WS. (2021). Penyelesaian Sengketa Harta Bersama setelah Perceraian dalam Hukum Positif di Indonesia*. Jurnal Mercatoria, 14 (2)* Desember 2021: 94-106.

Rasjidi, L. (1991). *Hukum Perkawinan dan Perceraian di Malaysia dan Indonesia*. Bandung: Rosdakarya.

Rochaeti, E. (2013). Analisis Yuridis Tentang Harta Bersama (Gono Gini) Dalam Perkawinan Menurut Pandangan Hukum Islam Dan Hukum Positif. *Jurnal Wawasan Hukum, Vol. 28 No. 01*. hal, 650.

Saebani, BA. (2018). Fiqh Munakahat. Bandung: Pustaka Setia.

Sugiyono. (2017). Metode Penelitian Kombinasi: (Mixed Methods). Bandung: Alfabeta.

Syamsurrizal, E. (2016). *Perceraian Di Bawah Tangan Telaah Hukum Islam terhadap Pasal 39 Undang-undang No 1 Tahun 1974 tentang Perkawinan dan Pasal 34 Peraturan Pemerintah Nomor 9 tahun 1975 (Studi di Kecamatan Carenang Kabupaten Serang Provinsi Banten)*. Tesis. Program Pascasarjana IAIN Sultan Maulana Hasanuddin Banten.

Wahyuni, S. (2008). Konsep Nusyuz Dan Kekerasan Terhadap Istri Perbandingan Hukum Positif dan Fiqh. *Al-Ahwal, Vol. 1, No. 1*. hal, 18.

Yaqin, Husnul. (2007). Keabsahan Perceraian Yang Dilakukan Dengan Pesan Melalui Media Telepon.

Yusrizal, dkk. (2016). Penggunaan Instrumen Hukum Poligami Di Lingkungan Peradilan Umum Dan Kaitannya Dengan Asas Monogami Dalam Peraturan Pemerintah Nomor 9 Tahun 1975. *Jurnal Ilmu Hukum Pascasarjana Universitas Syiah Kuala Volume 4, No. 2.* hal, 25.

Zein, SE. (2004). *Problematika Hukum Keluarga Islam Kontemporer: Analisis Yurispridensi dengan Pendekatan Ushuliyah*. Jakarta: Kencana Prenada Media Group.

[This page is intentionally left blank]