

## **Illegal Polygamy in the Era of the New Penal Code: Protection of Wives' Rights and the Enforcement Direction of Articles 402–403 of Law Number 1 of 2023 on the Criminal Code**

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### **ABSTRACT**

#### **KEYWORDS**

Illegal Polygamy; Legal Protection; Criminal Law; Marriage Law; Compilation of Islamic Law

**Background:** The practice of illegal polygamy, conducted without court permission or the wife's knowledge, remains a persistent issue in Indonesia, undermining the legal protection of women's rights in marriage. The enactment of Law Number 1 of 2023 concerning the National Criminal Code (*KUHP*) introduces new provisions that criminalize such actions, potentially shifting the paradigm from viewing polygamy violations as mere administrative or civil offenses. **Objective:** This research aims to analyze the legal protection afforded to wives involved in illegal polygamy under the current marriage law regime and to assess the relevance and direction of enforcing Articles 402 and 403 of the 2023 *KUHP* in strengthening this protection. **Methods:** This study employed a normative juridical approach with a legislative and conceptual focus. It examines primary legal materials, including the Marriage Law, the Compilation of Islamic Law (KHI), and the 2023 *KUHP*, alongside secondary legal materials such as scholarly articles and legal expert opinions. Data were analyzed qualitatively through interpretation of legal norms and assessment of normative synchronization. **Findings:** The research reveals that while the Marriage Law and KHI provide preventive and repressive civil mechanisms for wife protection, these instruments have structural limitations, particularly when polygamy is conducted secretly. Articles 402-403 of the 2023 *KUHP* introduce an additional layer of protection by criminalizing marriage conducted despite a lawful obstacle or concealment of marital status. However, the effectiveness of these criminal provisions depends on a synchronized interpretation with marriage law, particularly regarding the concept of "lawful obstacle."

### **INTRODUCTION**

Marriage is a social and legal institution that has a multidisciplinary dimension, covering moral, religious, social, and juridical aspects. In the Indonesian legal system, marriage is not only understood as a private bond between a man and a woman, but also as a legal event that causes legal consequences for the parties, children, and the wider community (Grijns & Horii, 2018; Platt, 2017; Schenk, 2019). The state through various laws and regulations seeks to ensure that marriage is carried out legally, orderly, and upholds the principles of justice and protection of vulnerable parties, especially women in their position as wives (Adekile, 2025; Chambers, 2017; Njogu et al., 2023). However, in social practice, various forms of deviation from the provisions of the marriage law are still found, one of which is the practice of polygamy carried out without the permission of the court or without the knowledge of the first wife, which is often called "wild polygamy".

The phenomenon of illegal polygamy is not a stand-alone problem, but is closely related to power relations in the household, partial religious understanding, and weak compliance with state laws (Broyde, 2017; Nashih, 2025; *Queer and Religious Alliances in Family Law Politics and Beyond*, 2022; Zalesne & Dexter, 2018). Polygamy that is practiced in secret often puts the first wife in a very vulnerable position, both legally and socially (Nyuykighan, 2025; Wirastri & van Huis, 2021). Wives lose certainty of marital status, do not get honest information about household conditions, and have the potential to suffer psychological, economic, and social losses. In many cases, newly married wives who are legally married also experience similar vulnerabilities due to the lack of registration of such marriages in the state's administrative system. This condition shows that illegal polygamy not only violates legal norms, but also has direct implications for the protection of women's human rights and dignity in marriage (Fulas, 2018; Holden, 2018; Janur, 2025; Tesfay, 2017).

Previous research has extensively addressed polygamy regulation in Indonesia. For instance, studies by Budi & Miharja (2022) and Hyma Puspytasari et al. (2023) have analyzed the legal consequences of polygamy conducted through unregistered marriages (*nikah siri*) under the Marriage Law, concluding that such practices create legal uncertainty and weaken wives' positions in claiming their rights. These studies, however, primarily focused on the civil law implications within the framework of the Marriage Law and KHI. Similarly, Ahmad & Muala (2023) conducted a comparative analysis of polygamy law in Indonesia, examining the harmony between Islamic law and state law. Their research highlighted the normative provisions but did not delve into the potential interaction with criminal law sanctions. A critical gap remains in the literature: few studies have systematically analyzed the integration of the newly enacted criminal provisions in the 2023 *KUHP* with the existing marriage law regime, particularly concerning the protection of wives' rights in illegal polygamy cases. The question of how criminal law can complement, rather than complicate, the existing civil protection mechanisms remains underexplored (Hendry & King, 2017; Oktir Nebi, 2024; Ullah et al., 2025; Weiss, 2025).

Normatively, marriage law in Indonesia has actually strictly regulated the practice of polygamy. Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 affirms the principle of monogamy as a general principle, while polygamy is only allowed on a limited basis with strict conditions, including permission from the court and the consent of the wife. This provision is clarified in the Compilation of Islamic Law which regulates the procedures, reasons, and limits of polygamy in detail. However, the existence of these norms has not been fully able to prevent the occurrence of illegal polygamy, because violations of polygamy procedures have been more positioned as administrative violations or civil problems. The limitations of the civil approach in dealing with illegal polygamy raise questions about the effectiveness of legal protection for wives. The mechanism of polygamy permits in the Religious Court, although intended as an instrument of control, is often avoided by the husband in practice. When polygamy is practiced secretly, the first wife only realizes the existence of a second marriage after serious conflicts arise, such as maintenance disputes, divorce, or inheritance issues. At this point, recovery efforts through civil channels are often reactive and not fully able to recover the losses that the wife has experienced.

In this context, the renewal of the national criminal law through Law Number 1 of 2023 concerning the National Criminal Code (*KUHP Nasional*) presents a new dynamic in handling

marriage issues. The National Criminal Code contains provisions regarding the crime of obstructed marriage in Article 402 and Article 403, which in principle regulate the prohibition of marriage for a person who is still bound in a legal marriage. This provision opens the possibility that the practice of illegal polygamy is no longer solely seen as an administrative or civil offense, but can enter the criminal realm if it meets the elements specified by the law.

The inclusion of the criminal aspect in the issue of polygamy raises complex normative problems, especially related to the synchronization between criminal law and marriage law. Articles 402–403 of the National Criminal Code use the term "lawful obstacle", which requires further interpretation to be in harmony with the concept of marriage obstacle and the requirements for polygamy permits as stipulated in the Marriage Law and KHI. Without a clear and integrated interpretation, there is a risk of overlapping norms, inconsistency in the application of the law, and legal uncertainty for the parties, especially for wives who are supposed to be protected by the legal system. In addition to the issue of norms, the reform of the Criminal Code also raises questions about the direction and purpose of criminal law enforcement in the context of illegal polygamy. Criminal law enforcement should ideally not only be oriented towards criminalizing the perpetrator, but must also consider the interests of the victim, in this case the wife. There are concerns that the criminal process can actually increase the psychological and social burden for the wife, especially if the reporting, evidence, and judicial process mechanisms are not designed with the perspective of victim protection.

In the Indonesian judicial system, the Religious Court plays a strategic role in the issue of polygamy. The Religious Court is not only authorized to grant polygamy licenses, but also handles various derivative cases arising from polygamy, such as divorce, annulment of marriage, alimony, joint property, and children's rights. Therefore, the practice and legal considerations of the Religious Court greatly determine the effectiveness of the protection of the wife in polygamy cases, both carried out according to procedures and carried out illegally. However, until now there is still a gap between legal norms and judicial practice. Religious Courts are generally engaged in the realm of civil law, while the criminal implications of illegal polygamy as regulated in the National Criminal Code have not been fully integrated in the pattern of handling cases. This creates a gap in law enforcement, especially related to coordination between criminal law enforcement officials and religious justice institutions, as well as clarity on the position of wives as protected parties in both legal regimes.

Based on this description, there appears to be a void and ambiguity in the regulation and application of laws related to illegal polygamy, especially after the enactment of the National Criminal Code. On the one hand, a civil mechanism through the Religious Court is available, but its effectiveness in preventing and recovering the loss of the wife is still questionable. On the other hand, newly introduced criminal instruments have the potential to be an additional tool of protection, but they also carry the risk of new complexities in law enforcement. Therefore, a comprehensive and systematic legal study is needed to analyze how the protection of wives' rights against illegal polygamy can be optimally realized within the new national legal framework. This study is increasingly important given the strategic position of the Religious Court in linking the norms of marriage law with criminal implications, as well as the need to ensure that criminal law reform does not directly ignore the interests and protection of victims.

This study aims to analyze the form of protection of wives' rights against illegal polygamy and assess the direction of enforcement of Articles 402–403 of the National Criminal Code within the framework of the Marriage Law and the Compilation of Islamic Law. The focus of the research is placed on normative construction, potential implementation problems, and its implications for the practice of wife protection in the Religious Court.

Based on the background description above, the problem formulation used is as follows: 1) What is the legal protection of the rights of wives against illegal polygamy in the perspective of marriage law and religious justice practice? 2) What is the relevance and direction of enforcement of Articles 402–403 of Law 1/2023 in strengthening the protection of wives against illegal polygamy?

## METHOD

This research used a normative juridical approach, which is a legal research approach that views law as a system of norms that apply and bind in society. The research specification used is descriptive research, which is research that aims to systematically describe, describe, and explain the legal provisions governing polygamy and its implications for the protection of wife's rights, especially after the enactment of the National Criminal Code. In normative legal research, the data used is secondary data, namely data obtained through literature studies by examining various literature and legal documents relevant to the object of research. The secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations related to marriage and polygamy, including the Marriage Law, the Compilation of Islamic Law, and the Criminal Code Law. Secondary legal materials are in the form of legal textbooks, scientific journals, research results, and opinions of legal experts. The tertiary legal materials are used as supporting materials, such as legal dictionaries, legal encyclopedias, and laws and regulations.

This research uses two types of approaches, namely the legislative and conceptual approaches. The legislative approach is carried out by examining in depth the provisions in the National Criminal Code, especially Articles 402–403, as well as their relationship with the Marriage Law and the Compilation of Islamic Law in order to assess the synchronization and consistency between regulations. Meanwhile, a conceptual approach is used by examining legal concepts as a basis for analysis in assessing the direction of law enforcement against illegal polygamous practices. The data collection technique in this study is carried out through literature studies or document studies. All data that has been collected is then analyzed using qualitative analysis methods, namely argumentative and prescriptive analysis. The analysis is carried out by interpreting legal norms, compiling relevant legal systematics, and assessing the level of synchronization between laws and regulations.

## RESULT AND DISCUSSION

### Limitations of terms and scope of research

In order to avoid differences in interpretation and maintain the focus of the study, this study sets clear term limits and scope for the main concepts used. The term illegal polygamy in this study is interpreted as the practice of polygamy carried out by a man who is still bound in a legal marriage, without fulfilling the legal procedures set by laws and regulations. Polygamy is carried out without permission from the court as required in the Marriage Law

and Compilation of Islamic Law, and without the consent of the wife as required by the applicable law. This illegal polygamy can occur both in the form of marriages that are administratively registered but not preceded by court permission, or in the form of marriages that are not registered at all, as long as they are carried out outside the legal mechanisms of the state.

Furthermore, the term protection of wife's rights in this study is understood as any form of legal remedy that aims to guarantee, protect, and restore the rights of wives who are violated due to illegal polygamous practices. This protection includes preventive protection, namely preventive efforts through legal regulation, licensing mechanisms, and supervision by judicial institutions, as well as repressive or remedial protection, which is law enforcement efforts and settlement of legal consequences that arise, either through civil mechanisms in Religious Courts or through criminal instruments as stipulated in the National Criminal Code. The scope of this research is limited to the study of normative law, so it does not directly examine court decisions or empirical practices. The main focus of the research is directed at the analysis of the synchronization of norms between the provisions in the National Criminal Code, especially Article 402 and Article 403, with the marriage law regime regulated in the Marriage Law and the Compilation of Islamic Law, as well as its implications for the protection of the rights of wives in the practice of illegal polygamy.

#### **Normative Framework Analyzed**

The normative framework analyzed is the following Law:

- 1. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage jo. Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage**

The Marriage Law expressly places the principle of monogamy as a basic principle in the marriage legal system in Indonesia. This is reflected in Article 3 paragraph (1) which states that basically a man can only have one wife and a woman can only have one husband. This provision shows that polygamy is not a form of marriage that is generally required by law, but rather a strictly limited exception. Thus, polygamy in the perspective of the law is positioned as an act that is limitative and not free to be carried out by every husband who is still bound in a legal marriage. Furthermore, the existence of Article 3 paragraph (2) of the Marriage Law gives the authority to the court to give permission to a husband to marry more than one person, as long as desired by the parties concerned. This provision emphasizes that court permission is an absolute requirement for the legality of the practice of polygamy according to state law.

Without such permission, polygamy is not only contrary to the principle of monogamy, but also violates the applicable positive legal provisions. Therefore, the practice of polygamy carried out without the permission of the court can be seen as a form of deviation from the national marriage legal system. Articles 4 and 5 of the Marriage Law further detail the substantive and procedural requirements that must be met in order to obtain a polygamy license. The reasons that are justified by the law are strictly limited, including if the wife is unable to carry out her obligations, suffers from an incurable disability or illness, or is unable to bear children. In addition, the husband must obtain the approval of his wife, be able to guarantee the living needs of all wives and children, and provide guarantees that they will be fair. This provision shows that polygamy in the law is

not solely the right of the husband, but a legal act that must seriously consider the interests and protection of the wife. Furthermore, Article 9 of the Marriage Law affirms the prohibition for a person who is still bound by marriage to remarry, except in cases expressly regulated in Article 3 and Article 4. This norm strengthens the legal construction that polygamy outside of court procedures is a marriage that is legally prohibited, thus opening up space for the prevention and annulment of marriage.

## **2. Law Number 1 of 2023 concerning the Criminal Code**

The provisions of Article 402 and Article 403 of the National Criminal Code mark an important change in the way the state views violations of marriage laws, including the practice of polygamy carried out outside the provisions of the law. Article 402 paragraph (1) basically criminalizes the act of holding a marriage even though it is known that there is still a valid barrier in the form of marriage that is still valid. In the context of polygamy, this provision is relevant when a husband who is still legally married performs another marriage without meeting the legal requirements set, especially without the court's permission as stipulated in the Marriage Law. Thus, polygamy carried out without the court's permission can be qualified as a marriage that is legally obstructed, so that it has the potential to be included in the formulation of Article 402 deliction. Furthermore, Article 402 paragraph (2) aggravates the criminal threat if the perpetrator actively hides the existing marital status from other parties. This element of "concealment" is particularly relevant to the practice of illegal polygamy, where husbands often do not inform the second or first wife-to-be about the true marital status.

Article 403 complements the regulation by emphasizing the obligation to notify of the existence of a legal obstacle to marriage. This article affirms that any person who enters into a marriage without notifying the existence of a valid barrier, and then the marriage is declared invalid, can be punished. In the context of polygamy, this provision expands the scope of legal protection for the wife, because it focuses not only on the status of the perpetrator, but also on the legal consequences of the invalidity of the marriage that harm the other party. Normatively, Article 402 and Article 403 of the National Criminal Code shift illegal polygamy from just an administrative or civil problem into the criminal realm. Nevertheless, the application of these articles to polygamy requires a careful and synchronous interpretation of the Marriage Law and the Compilation of Islamic Law, particularly with regard to the meaning of "lawful barrier".

## **3. Compilation of Islamic Law**

In the Islamic marriage legal system in Indonesia, the Compilation of Islamic Law (KHI) provides more specific and operational arrangements regarding polygamy, especially in relation to the authority and role of the Religious Court. The provisions on polygamy are explicitly regulated in Chapter IX on Having More Than One Wife, which affirms that polygamy is not the absolute right of the husband, but a legal act that is strictly limited by substantive and procedural requirements. Article 55 paragraph (1) of the KHI limits the number of wives to a maximum of four, while paragraphs (2) and (3) affirm that the main condition of polygamy is the ability of the husband to act fairly towards his wives and children, and if the condition of justice cannot be met, then the husband is prohibited from having more than one wife.

KHI further placed the permission of the Religious Court as an absolute condition in the implementation of polygamy. This is emphasized in Article 56 paragraph (1) which states that a husband who wants to marry more than one wife must get permission from the Religious Court. In fact, Article 56 paragraph (3) expressly states that marriage with a second, third, or fourth wife that is carried out without the permission of the Religious Court has no legal force. This provision shows that the KHI not only regulates the moral and religious aspects of polygamy, but also provides clear juridical consequences for polygamy carried out outside the country's legal procedures.

The reasons that can be used as a basis for granting polygamy permits are regulated in Article 57 of the KHI, namely if the wife is unable to carry out her obligations as a wife, suffers from a physical disability or disease that cannot be cured, or is unable to bear children. In addition to these reasons, Article 58 of the KHI emphasizes the existence of additional requirements in the form of the wife's consent and the certainty of the husband's ability to ensure the living needs of his wives and children. Even if it is given in writing, it must still be emphasized orally in front of the Religious Court hearing, which shows the strong role of the court as an instrument of protection for wives.

Furthermore, KHI also regulates the legal consequences of family if polygamy is carried out without court permission. Article 71 letter a of the KHI states that a marriage can be annulled if a husband commits polygamy without the permission of the Religious Court. This provision emphasizes that polygamy without permission not only has an impact on marital status, but also opens up space for wives to pursue legal remedies for annulment to protect their rights. KHI systematically places the Religious Court as a central actor in controlling polygamy and protecting the rights of wives, while strengthening the legal position of wives in dealing with illegal polygamous practices.

## **Legal Protection of Wives Rights Against Illegal Polygamy in the Perspective of Marriage Law and Religious Justice Practice**

### **1. Legal Protection in the Marriage Law Regime (Non-Criminal)**

In the national marriage legal regime, legal protection of wives in the context of illegal polygamy is built mainly through civil and administrative legal mechanisms that are both preventive and remedial. The main instrument of preventive protection is the obligation to obtain court permission and the wife's consent before polygamy is carried out. This provision shows that Indonesian marriage law does not view polygamy as a subjective right of the husband, but as a legal act that must go through a strict selection process by the judiciary. Court permission functions as a tool of state control to objectively assess the feasibility of polygamy, while the wife's consent serves as recognition of the wife's position as a legal subject who has a will and interests that must be protected.

Normatively, the existence of court permission and the wife's consent is intended to prevent the occurrence of polygamy that is exploitative and detrimental to the wife. The court not only assesses the grounds for polygamy, but also considers the economic capabilities of the husband as well as the guarantee of justice for the wife and children. In this construction, legal protection is *ex ante*, which is to prevent violations of the wife's rights before the second marriage takes place. Nevertheless, the effectiveness of this preventive protection is highly dependent on the compliance of the legal subject with the established procedures. When the husband deliberately avoids the mechanism of court

permission and practices polygamy secretly, the preventive function of the marriage law becomes suboptimal.

In the situation of a violation, the marriage law still provides repressive or remedial legal protection for the wife. Normatively, wives have the right to submit various legal remedies to the Religious Court, including divorce lawsuits, applications for annulment of marriage, or demands for the fulfillment of certain civil rights. The right to apply for annulment of marriage becomes relevant when polygamy is carried out without the permission of the court, since the act is contrary to the legal requirements of marriage. In addition, wives can also file a divorce lawsuit on the grounds of violation of their husband's obligations or damage to the purpose of marriage due to illegal polygamous practices.

Legal protection in a non-criminal regime also includes the protection of the economic rights of the wife. Marriage law normatively guarantees the wife's right to maintenance, protection of residence, and the right to joint property. In the context of polygamy, provisions regarding justice and separation of common property are very important to prevent disproportionate economic losses to the first wife. In addition, in certain circumstances, the law also recognizes the wife's right to *mut'ah*, *iddah* maintenance, and child maintenance as a form of remedy for losses due to the breakdown of marriage. Nonetheless, there are structural vulnerabilities in the protection of non-criminal laws against illegal polygamy. When the second marriage is not recorded or performed secretly, the wife's position becomes very weak due to evidentiary and administrative barriers. The lack of registration of the marriage causes difficulties in proving the existence of a violation, so that the wife's access to the legal redress mechanism becomes late or even hampered.

## **2. Legal Protection through the National Criminal Code as an Additional Layer**

The enactment of the National Criminal Code expands the spectrum of legal protection for wives in cases of illegal polygamy by introducing criminal consequences for the act of carrying out a marriage that is legally obstructed or concealing marital status. The relevance of the National Criminal Code in this context lies in its ability to reach behavior that was previously only positioned as administrative or civil offenses. By criminalizing these acts, the state provides a normative signal that illegal polygamy is not just a procedural violation, but an act that harms the legal and social interests of other parties, especially wives. From the perspective of victim protection, criminal law serves as an additional layer that complements family law. Criminal law is not intended to replace the civil mechanism in marriage law, but rather to provide a deterrent effect and increase compliance with marital norms. Criminal threats against the act of concealing marital status demonstrate the National Criminal Code's special attention to the protection of the deceived or aggrieved party, who in many cases are women.

However, the application of criminal law in the context of illegal polygamy also contains risks that need to be critically examined. Criminalization of husbands can have a direct impact on family relations and the fulfillment of maintenance for wives and children. If not carefully designed, the criminal process has the potential to worsen the economic and social conditions of the wife as a victim. Therefore, legal protection through the National Criminal Code must be understood within the framework of a victim-oriented criminal policy, not solely on the punishment of the perpetrator. Normative analysis shows that the use of criminal law in cases of illegal polygamy should be selective and proportionate.

Criminal law is ideally used when non-criminal mechanisms are ineffective or when there are obvious elements of intentionality and deception.

### **3. Synthesis of Legal Protection for Wives in Cases of Illegal Polygamy**

Based on an analysis of the marriage law regime and the National Criminal Code, legal protection of wives in cases of illegal polygamy can be understood as a layered system that includes preventive and repressive protection. Preventive protection is realized through the requirement of court permission and the wife's consent as an initial control mechanism to prevent the occurrence of unfair polygamy. This mechanism places the Religious Court as a key institution in assessing the feasibility of polygamy while protecting the interests of the wife from the beginning. Repressive protection or restoration is realized through the wife's access to judicial mechanisms to obtain certainty of legal status, protection of economic rights, and recovery from violations. In this context, marriage law provides the main instruments in the form of divorce lawsuits, annulment of marriages, and claims of economic rights. Meanwhile, the National Criminal Code strengthens this protection by providing criminal sanctions for the act of concealing marital status or carrying out an annulment marriage, which directly protects wives from fraud and exploitation.

The position of the National Criminal Code in this protection model is complementary. Criminal law becomes relevant when there is a failure of preventive mechanisms and when the violations that occur contain elements of intentionality and seriously harm the rights of the wife. Within this framework, the National Criminal Code expands the instruments of legal protection, but at the same time adds to the complexity of enforcement that requires careful regulation and coordination so as not to conflict with the goal of restoration in family law. Thus, the map of legal protection of wives in cases of illegal polygamy shows that effective protection can only be achieved through integration between the legal regime of marriage and criminal law. The National Criminal Code in principle expands protection instruments, but its effectiveness depends heavily on enforcement designs oriented towards the protection and restoration of wife's rights. Without a victim-sensitive approach, the criminalization of illegal polygamy has the potential to add complexity without providing the expected substantive protections.

### **The Relevance and Direction of Enforcement of Articles 402-403 of Law 1/2023 in Strengthening the Protection of Wives Against Illegal Polygamy**

#### **1. Basic Principles of Enforcement Direction Oriented to the Protection of Wives**

The enforcement of Article 402 and Article 403 of Law Number 1 of 2023 concerning the Criminal Code cannot be separated from the basic principles that must direct its use, especially when the criminal norms are applied in the context of family law. The first principle that must be affirmed is the principle of legal certainty. The formulation of the element of "lawful barrier" in Articles 402–403 has the potential to give rise to multiple interpretations if it is not expressly associated with the legal regime of marriage. In the context of illegal polygamy, a legal barrier must be interpreted systematically as the existence of a legal marriage bond without the court's permission as required by the Marriage Law and the Compilation of Islamic Law. This interpretation is important so that criminal law enforcement does not stand alone, but is in harmony with the existing construction of family law.

The second principle is the principle of victim protection, which in this context focuses on the wife as the most vulnerable party to the practice of illegal polygamy. Criminal law enforcement should not be placed as an end in itself, but rather as a means to protect and restore the rights of wives. Therefore, the criminal process must be designed in such a way as not to hinder the wife's access to the recovery mechanism in family law, such as divorce lawsuits, annulment of marriage, and the fulfillment of economic rights and children's rights.

The third principle is the principle of proportionality. Not every violation of marriage procedures must be immediately processed through criminal law. Enforcement of Articles 402–403 should be prioritized in situations where there is malicious intent or a serious impact on the rights of the wife, such as concealment of marital status, fraud against the prospective wife, or deliberate evasion of the court's permission mechanism. With this proportional approach, criminal law functions as a selective and fair corrective instrument.

## **2. Design of Normative Proof for the Application of Articles 402–403 of the National Criminal Code**

Within the normative legal framework, the enforcement of Articles 402–403 requires a clear evidentiary design so as not to create legal uncertainty and abuse of authority. The first element that must be proven is the element of status, namely the existence of a first marriage that is legal according to the law. Normatively, this proof can be done through a marriage certificate, marriage administration record, or other official documents that show the existence of a valid marriage bond. This element is the main foundation in determining whether or not there is a legal barrier. The second element is the element of knowledge, namely that the perpetrator knows that there is a marriage that is an obstacle. From a normative perspective, knowledge can be inferred from indicators such as the existence of marriage documents in the name of the perpetrator, the statement or confession of the perpetrator, as well as a series of acts that show legal awareness, such as evasion of the licensing process in court. This element of knowledge is important to distinguish between negligent violations and intentional acts.

The third element is the element of "lawful barrier", which must be explained logically and systematically in relation to the absence of court permission. In the context of polygamy, a legal barrier does not simply mean the existence of a first marriage, but also the non-fulfillment of the legal requirements for polygamy. The absence of court permission is a key normative indicator that the barrier is still legally in effect. The fourth element is the element of "not disclosed" or concealment of status, as explicitly formulated in Article 402 paragraph (2) and Article 403. This element can be understood as an active or passive action that causes the other party to not know the existence of a legitimate barrier. Concealment can be shown through non-disclosure in marriage documents, false statements, or acts of evading recordkeeping.

However, it should be noted that there is a risk of difficulty in proving in cases of unrecorded marriages. In this condition, proving the elements of status and knowledge becomes more complex. Therefore, normatively it is necessary to make policy recommendations in the form of strengthening the marriage registration mechanism and harmonizing population administration as structural mitigation measures, without making them empirical practical claims.

### **3. Synchronization of Criminal Enforcement with Protection Mechanisms in Religious Courts**

The enforcement of Articles 402–403 cannot be separated from the existence of a protection mechanism in religious courts, because these two legal regimes have the potential to run in parallel and intersect. In normative practice, one wild polygamy event can have two legal consequences at once, namely criminal consequences and civil consequences in family law. This slice requires synchronization so that the wife does not suffer double losses. The ideal direction of synchronization is to prioritize the restoration of the rights of wives in family law. The criminal process should not hinder or delay the fulfillment of alimony, children's rights, and the certainty of the wife's legal status. In this context, family law should remain the main path of recovery, while criminal law serves as a norm reinforcer and a tool to prevent repeat offendings. In addition, normative coordination is needed between the criminal regime and the family law regime. This coordination is not intended as technical coordination in the field, but as an alignment of legal norms and policies so that there is no "double victimization" of wives, which is a condition in which wives are not only harmed by illegal polygamy, but also burdened by long and complex legal processes.

### **4. The Impact of Enforcement of Articles 402–403 on the Restoration of Wives Rights**

Conceptually, the enforcement of Articles 402–403 has the potential to have a significant positive impact on the protection of the rights of wives. Criminal threats can serve as a deterrence against the practice of illegal polygamy, prevent marital status fraud, and strengthen a wife's bargaining position in demanding her rights. With criminal consequences, husbands are expected to be more obedient to marriage legal procedures and more careful in carrying out polygamy. However, criminal enforcement also has the potential for negative impacts that cannot be ignored. Criminal proceedings can exacerbate family conflicts, cause social stigma, and risk interfering with the fulfillment of alimony if the husband is sentenced. These impacts suggest that enforcement of Articles 402–403 should be designed with a victim-sensitive approach, rather than solely sentencing oriented. Ideal enforcement is enforcement that is able to balance legal certainty, protection of the rights of the wife, and marital order. Criminal law must be used selectively, proportionately, and integrated with the recovery mechanism in family law.

### **5. Normative Recommendations**

Based on the above analysis, several normative recommendations can be formulated. First, there is a need for a firm and consistent interpretation of the term "lawful barrier" in Articles 402–403, by linking it explicitly to the court's consent provisions in the marriage law. Second, it is necessary to affirm the limits of the application of Article 402 and Article 403, where Article 402 is prioritized for the act of carrying out a marriage with knowledge and concealment of status, while Article 403 is used when the invalidity of the marriage is only known later and has an impact on other parties. Third, it is necessary to harmonize norms through guidelines or implementing rules that affirm the relationship between the National Criminal Code and marriage law so that there are no multiple interpretations in enforcement. Fourth, the design of the enforcement of Articles 402–403 must ensure that the restoration of the economic rights of wives and children's rights remains a top priority. Fifth, the victim protection approach must be used as the main principle in criminal law enforcement policies against illegal polygamy.

## CONCLUSION

Based on the discussion of the legal protection of wives' rights against illegal polygamy from the perspective of marriage law and religious justice practices, it can be concluded that normatively the Indonesian legal system has provided relatively comprehensive protection instruments, especially through the mechanism of court permission, spousal consent, and access to civil legal remedies in Religious Courts. The instrument is designed to carry out a preventive function to prevent the occurrence of polygamy that harms the wife, as well as a repressive or remedial function through divorce lawsuits, marriage annulment, and the fulfillment of economic and children's rights. However, such protections show structural limitations when polygamy is carried out secretly or unrecorded, as administrative and evidentiary barriers cause legal protection to often be late and ineffective in reaching the wife's losses in the first place.

In line with that, the enactment of Articles 402–403 of Law Number 1 of 2023 presents an additional layer of protection through criminal law against illegal polygamous practices, especially those carried out by concealing marital status or violating legal barriers. The normative findings suggest that the relevance of these articles lies in their ability to strengthen legal certainty and provide a deterrent effect, but their effectiveness is highly dependent on the direction of enforcement that is in line with the law of marriage and oriented towards the protection of victims. Therefore, enforcement of Articles 402–403 should be placed proportionately and complementarily, not as a substitute for family law, by ensuring that the restoration of the rights of wives and children's rights remains a top priority. The direction of the normative recommendations emphasizes the importance of a consistent interpretation of the concept of legal barriers, harmonization between the criminal regime and marriage law, and a sensitive enforcement design for the protection and restoration of the rights of wives so that the criminalization of illegal polygamy truly functions as an instrument of substantive justice.

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