

The Practice of Inbreeding in a Positive Legal Perspective of the Polahi Tribe, Boliyohuto District, Gorontalo Province

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ABSTRACT

The phenomenon of inbreeding that occurs in the Polahi Tribe, Gorontalo Province, is a taboo thing, because it will have a negative impact both in terms of religion, health and continuity of descent, this marriage is still commonly found, especially in remote areas where people are primitive. and the majority of their educational awareness levels are still relatively low.

Based on the things described above, the authors are interested in criticizing the inbreeding carried out by the Polahi tribe in Boliyohuto District. So the author raises the problem, namely How is the role of the Government in handling inbreeding carried out by the Polahi tribe in Boliyohuto District, Gorontalo Province.

This type of research used in this research is a type of normative legal research, namely a form of legal research carried out by examining legal materials of literature and / or secondary data. Polahi is one of the isolated tribes who still live in the interior of the forests of Sulawesi Island. around Mount Boliyohuto, Gorontalo Province. Their lives are far from the values of social ethics, education and religion, so that their descendants become citizens who are very marginalized and do not know the social order.

It takes a more role from the local government in handling the Polahi people, for example through a massive socialization movement.

Keywords: *Inbreeding, Positive Law, Socialization*

1. Introduction

Marriage is an important phase in human life that aims to form an eternal and eternal happy family based on the One Godhead. And when he married a servant, he perfected half of his religion. Through the marriage he will gain peace and quiet (Muhammad Makmun Abha, 2015, p. 14) and is also a legitimate way to obtain offspring. As He Says:

O people, fear your Lord, who created you from one self, and He created his partner from him. And of them He has bred many men and women. And fear Allah, with which you ask one another, and guard your kinship. Verily, Allah is ever watchful over you. (QS.An-Nisa ayat :1).

The essence is that marriage is an agreement between a man and a woman that is legally recognized by society, law and religion and contains a set of rights and obligations of the husband and wife in a commitment that he or she carries out, and aims to form a family. (Suparyanto, 2012)

Furthermore, in order to realize the purpose of marriage, the conditions and pillars must be fulfilled meaning that there is no prohibition that is a barrier to the practice of marriage aqad (Khafizoh, 2017, p. 62). As for the barrier to the implementation of

marriage, as affirmed in Law of the Republic of Indonesia No. 1 of 1974 on Marriage, Article 8,

- a. blood in the lineage is straight down or upwards;
- b. the blood in the sideways lineage that is between a brother, between one and a parent's brother and between one and his grandmother's brother;
- c. related to semenda, namely in-laws, stepchildren-in-law and mother/stepfather;
- d. related susuan, namely susuan parents, susuan children, susuan brothers and uncles;
- e. having a brother with a wife or as an aunt or niece of a wife, in the case of a husband with more than one;
- f. have a relationship that by its religion or other applicable regulations, is forbidden to marry.

A bloody marriage is one of the reasons for the annulled of a marriage. A blood marriage or incest is defined as a sexual relationship between each other in an upward or downward line, either due to a lawful or unauthorized birth, or because of a marriage; and in a deviant line, between brother and sister, valid or invalid. (Hilman Hadikusuma, 1990, p. 61)

The issue of marriage has already occurred to some married couples in the Polahi tribe. So it is not surprising that we find children who have been born with disabilities from infant to adult or have other congenital diseases. Then after being traced the cause it turned out that his parents had a blood connection (close relatives). This is based on public ignorance that marriage between close family members will have risks to health, because the public sees the marriage as legal.

Marriage between close family members has a positive side and also has a negative side. When it comes to the wedding, the marriage is returned to the prospective spouse and must be notified to all family members. In fact, a family should connect the silaturrahmi cord with the family of another person who is not from the family group itself. Thus, there is a broader and stronger social and societal relationship. Not only is it a matter of expanding social relationships, the negative side of the most concern in the implementation of marriages between close family members is that it can trigger hereditary diseases. Science modern states that inter kinship marriage will result in offspring that are deformed and susceptible to various diseases, decreasing the rate of sexual reproduction to infertility. And marriage between distant relatives will produce better offspring than their parents. (Muhammad Kamil Abdushsharmad, 2004.p.222).

The phenomenon of blood marriage that occurs in Polahi, Gorontalo Province, is taboo, because it will have a negative impact both in terms of religion, health and continuation of offspring, the marriage is still found especially in rural areas whose communities are primitive and the majority of the level of educational awareness is still relatively low. Based on the things described above, the author is interested in criticizing the blood marriage performed by polahi people in Boliyohuto sub-district. Sehigga the author raised the issue of how the government's role in handling blood marriages performed by polahi people in Boliyohuto Sub-district of Gorontalo Province.

2. Methods

A) Types and Research Approaches This type of research used in this thesis is normative law research whose data source is secondary data primary legal materials, secondary law (Soekanto, 2012, p. 9) and non-legal materials (Mukti Fajar Nur Dewata

dan Yulianto Achmad, 2013, p. 43), This study uses a type legal approach (statute approach) and conceptual approach.

B) Data Collection and Analysis Techniques Data collection techniques with observation and document study. The data analysis is qualitative data appearing in tangible words rather than sequences number or quantity (Soejono dan Abdurrahman, 2003, p. 52), then presented descriptively (Soekanto, 2012, p. 9)

3. Results and Discussions

The Government's Role in Handling Blood Marriages Performed by the Polahi People

In Law of the Republic of Indonesia No. 1 of 1974 on Marriage, as well as in the Compilation of Laws and Civil Code, it is forbidden that marriage is forbidden between two blood-related persons in a straight lineage down or upwards, and the blood relation in the sideways lineage is between a brother, between one and a parent's brother and between one and his grandmother's brother.

It is legal for marriage to be done according to the law of each religion and its beliefs. If religious law and belief govern that same-sex marriage is forbidden, then same-sex marriage is invalid. Article 2 Presidential Instruction No. 1/1991 on Dissemination of The Compilation of Islamic Law (KHI) affirms marriage, which is a very strong contract or *miitsaaqan gholiidhan* to obey the commandments of Allah and perform it is worship.

According to *Thaba'thaba'i*, in *Tafsir al-Mizan*, the practice of bloody marriage existed in the early days of human civilization, because at that time the human population was still very small and the rules of prohibition of incest marriage had not been regulated, inevitably marriage was done by fellow brothers, in order to maintain human survival, to be forged in that way. Ibn Katheer suggested in *Qashah al-Anbiyaa* that each time she conceived, Eve gave birth to two twins, a boy and a girl. "Adam was commanded to marry his son to the daughter of another twin son, and so on," This means God has instructed man to continue his descendants.(Nashrullah, 2020)

However, in the case of this Prophet Adam, all that is allowed is cross marriage, not with the twin brother he was born with. "So it is forbidden to marry his own twin brother."(Nashrullah, 2020). History has noted that in the past, the practice of bloody marriages has also occurred to Egyptian rulers and nobles in several other countries, this was done in order to maintain their status as pure blood.(Sartika, 2019). With the increasing number of people, the marriage of fellow brothers is not justified, even with siblings. At the time of the Prophet Muhammad SAW, the provisions of marrying blood brothers were abolished in absolute terms,(Nashrullah, 2020) much less is affirmed in QS. An Nisa verse 23 relating to the prohibition of blood marriage, which means:

It is forbidden for you to marry your mothers. your daughters; Your sisters, your father's sisters; your mother's sisters; daughters of your brothers; daughters of your sisters; your mothers who breastfeed you; sister of one; your wives' mothers(in-laws); daughters of your wives who are in your care from wives you have intervened with, but if you have not intervened with your wife, then it is not sinful for you to marry her. And it is forbidden to you that you will not be helped. And it is forbidden to gather two sisters except what has happened in the past. Verily, Allah is Forgiving, Merciful."

The prohibition of marriage is also found in Article 39 of article 39 (1) letter a KHI, which states that it is forbidden to have a marriage between a man and a woman because:

(1). Due to nasab's connection:

- a. with a woman who gives birth or loses it or her offspring
 - b. with a woman of father or mother's offspring
 - c. with a sister woman who gave birth to
- (2). Because of the relationship of relatives as good as:
- a. with a woman who gave birth to his wife or his ex-wife
 - b. with a woman the ex-wife of the one who brought it down
 - c. With a woman descended from his wife or ex-wife, except for the breakup of the marriage with his ex-wife qabla ad dukhul
 - d. with a woman of her offspring's ex-wife
- (3). Because of the relationship sesusuan:
- a. with the woman who breastfeeds her and so on according to the straight line up
 - b. with a woman one way and so on according to a straight line down
 - c. with a sister's woman, and a niece and a sister down
 - d. with an aunt and auntie's grandmother on
 - e. with a child who was used by his wife and his descendants.

According to Islamic Law, marriages that are forbidden can be distinguished between those that are forbidden for good and for a while. What is forbidden for good is marriage which is done because of blood connection, semenda association, susan association, and the reason for adultery. Marriage is forbidden because of blood relations, because marriage between a man and his grandmother's mother (continues upwards), with his daughter, granddaughter (kept down), with sister, daughter of brother/woman (continues downwards), marriage with aunt i.e. sister of mother/father, brother of grandmother or grandfather (continues upwards). (Hilman Hadikusuma, 1990, pp. 65–66)

Vice Chairman of the Indonesian Ulama Council (MUI) KH Yunahar Ilyas asserted that same-sex marriage in Islam is illegal, and should be annulled, because there is no umbrella of the law that governs specifically, therefore if the marriage is not valid, even though there is already a marriage license, marriage is the same blood as adultery (Tim Okezone, 2020)

Legal Consequences of Bloody Marriage

As a result of the law, under Article 90 of the Civil Code it is determined that the annulment of all marriages that take place in violation of the provisions contained in Article 30, Article 31, Article 32, and Article 33, may be prosecuted (requested annulment) either by the husband and wife himself, either by their parents or blood families in an upward line, either by those concerned with the annulment, or by the Court. (Suparyanto, 2005, p. 111)

Lecturer at the Faculty of Law, University of Indonesia (FHUI), Wirdyaningsih, argues that the sanction for inbreeding is the annulment of the marriage. However, if the marriage is carried out under the hands or married in a siri, then automatically it will be null and void because it violates the Marriage Law and the Compilation of Islamic Law (for those who are Muslim). He added that the Marriage Law does not embrace criminal sanctions. Another consequence of matters prohibited in the Marriage Law is administrative. Therefore, if KUA officers violate the rules in the Marriage Law, they are subject to administration. However, he continued, if the party involved in the incestuous marriage process is proven to have deliberately falsified documents, then the act could be brought into the realm of crime. (Heriani, 2019)

In line with the Criminal Law Observer of Trisakti University, Abdul Fickar Hadjar, said that inbreeding is prohibited by Law Number 1 of 1974 concerning Marriage. This rule is contained in Article 8 letter b, which reads: "Marriage is prohibited between two people who are related by blood on either side of the line, namely between siblings, between one and a relative of the parent and between one and his grandmother". So the Marriage Law does not adopt criminal sanctions, but rather an administrative one. The perpetrator of an inbreeding can be subject to a marriage annulment sanction. Meanwhile, KUA officers who violate these regulations are subject to administrative sanctions. Criminal sanctions can be imposed if it is proven that there is falsification of documents and false witnesses. (Kompas. 2009)

That incest marriage can be annulled or processed through a religious court where the submission is made by the husband or wife, the family is straight up from the husband or wife, the authorities only as long as the marriage has not been decided if the wife of the incest marriage does not know they are siblings. However, in the event of an element of willfulness then the marriage violates Islamic sharia.(Maimunah, p25)

The Origin of Polahi

Based on historical facts, polahi people are a group of Gorontalo people who fled to the forest during the Dutch colonial period. Therefore they are called "Polahi" which means "escape".(Sulung Lahitani, 2015) The Polahi people are also one of the alienated tribes and still live in the forest interior of Sulawesi Island. around Mount Boliyohuto, Gorontalo Province. Their lives are far from the values of social ethics, education and religion, so the derivatives become very marginalized citizens and do not know the social system in general as well do not know the reading and make them a tribe that does not adhere to religion. A primitive habit that polahi still maintains is mating with fellow brothers. Because he does not know religion and education, and tends not to want to live socially with other citizens, the son of a Polahi can marry his father, the mother can marry his son, and the sister marries his brother. In addition to Paguyaman, polahi tribes can also be found in Suwawa and Sumalata areas. Everything is around Mount Boliyohuto, Gorontalo Province.(Kompas, 2013).

Therefore, it takes an approach from the government to get them to know religion and education requires proper study, for example by socialization or legal counseling so that the handling of their social life is targeted.(Kompas, 2013).

When one rule of law has been established, it is very important to accompany counseling or socialization activities in order for the rule of law to be truly effective. The socialization process aims to:(Ahmad Ali, 1998, pp. 195–196)

1. So that members of the public can know the presence of a law or regulation,
2. So that citizens can know the content of a law or regulation,
3. So that citizens can adjust (mindset and behavior) to the desired purpose by the law or the rule of law.

The Devastating Effects of Bloody Marriage

Medical experts say it's dangerous for a bloody marriage to happen.(Safitri, 2020)

a. Low immune system

Each person has 2 pairs of genes in his body, one from the father and one from the mother. The second version of the gene could be different. This is what determines whether a child will later be healthy or not, depending on the genetic condition of both parents. In short, a descendant of a bloody marriage would have a very similar genetic. The dna of the mother and father will be similar because it comes from a single family line. In other words, the child's blood marriage results will have less varied DNA. Lack of DNA variation can cause the body's immune system to weaken. The child will have a variety of genes or a small number of Major Histocompatibility Complex (MHC) allerel. MHC is a group of genes tasked with warding off disease. MHC can work well if the allerel in the body is diverse. The more diverse the allerel, the more the body will be more optimal against disease in the body. Because the body of the child from inbreeding has few alleles, it will be more difficult for the body to detect foreign substances that enter. As a result, these children tend to get sick easily.

b. The child is born with defects

Inbreeding from one family line can produce deformed offspring. According to a study involving 48 cases of incest in 2008, experts found that this illicit marriage can increase the risk of birth defects. Supported by research in Czechoslovakia, about 42% of children in inbreeding were born with severe birth defects and died at birth. While the other 11 percent have a risk of mental retardation.

c. Hemophilia

Inbreeding can also put offspring at high risk of developing hemophilia. However, it should be noted that hemophilia does not always occur due to inbreeding. Hemophilia is a genetic disorder in the blood due to lack of blood clotting factors. This condition occurs due to mutations in the X chromosome and can be passed along the mother's family line. Because women have two pairs of X chromosomes, girls must inherit two pairs of defective genes to develop hemophilia. On the other hand, men have one X chromosome and one Y chromosome. This causes men to develop hemophilia even if they only get 1 defective gene from their parents. Children resulting from incestuous offspring can inherit 2 copies of the defective gene at the same time that are passed down from their mother.

d. Autosomal recessive disease

Everyone generally carries a hereditary disease gene that is inherited by one parent. For example, your father has diabetes and your mother doesn't. So, your father will pass 50% of these "defective" genes to your body, while the remaining 50% of you are saved by healthy genes from your mother. Thus, you may not necessarily have diabetes as long as you maintain a healthy lifestyle. Unlike children from inbreeding, these children usually carry a larger genetic disease. This condition is known as autosomal recessive disease. Autosomal recessive disease is a disease caused by a genetic disorder that is passed on by both parents. Examples of autosomal recessive diseases are albinism (albino), sickle cell anemia, cystic fibrosis, and so on. In the case of inbreeding, both the father and mother will pass similar genes to their children. Take, for example, your father has albinism. You and your partner (whether brother or sister) both carry a 50% chance of passing the defective gene to your child. If there is inbreeding, it is not impossible if the offspring will later carry the recessive albinism allele from the partner. This chance can be 25% to 100%.

Even though the results of inbreeding by the Polahi tribe, it does not affect their offspring, for example: physical disabilities, paralysis and idiots, but in order to avoid religious and legal prohibitions as well as medical prohibitions, efforts must still be made to give appreciation and insight to tribal people. Polahi, so as not to continue to the next generation. (Tilome, 2020, p. 132)

4. Conclusion

Based on the above research can be concluded that the incest marriage of close family practiced by the community in the Polahi tribe of Boliyohuto sub-district due to their isolation and ignorance about ethics, social, legal and religious and on health issues, makes them not know that incest is forbidden, and instead preserve it. There needs to be a role more than local government on the condition of its citizens, especially to the Polahi people to make them more familiar with religion and education with proper studies, for example by socialization or legal counseling so that the handling of their social life is targeted.

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