Abstract

This paper aims to examine the essence of the contract in marriage, the taklik divorce as an agreement, polygamy agreements as mandated in the Marriage Law and property agreements in marriage. Normatively, everything is understood based on an agreement either by using the term contract or the agreement itself. This is a literature review (library research). The data analysis method used is content analysis. The results of this study indicate that contract law norms as mandated in Article 2 KHI, basically cannot be perceived as an agreement but are "a statement of handing over of responsibility from the guardian to the prospective husband. Taklik Divorce as an integral part of the marriage/marriage series is very counterproductive to Article 1320 of the Civil Code and the principles of agreements such as the principle of consensuality and the principle of freedom of contract. Polygamy agreements are basically accommodated in laws and regulations, but in principle are very counterproductive to the principle of justice and the orientation of the marriage itself as mandated in Article 1 of the Marriage Law and further emphasized by Article 2 KHI. Property agreements in marriage are perceived to prioritize the concept of materialism in marriage and are very counterproductive to Article 1 of the Marriage Law and Article 2 of the KHI. Based on the several points above, the legal norms related to these issues should be reviewed as an effort to place marriage on its true purpose and essence.

Keywords: Deconstruction, Agreement, Islamic Marriage Law

A. INTRODUCTION

According to Article 1 of Law 1 of 1974 concerning Marriage, it states that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in the One Supreme God.1

If one looks closely, it can be understood that marriage is a very comprehensive bond which is interpreted as an inner and outer bond as husband and wife, which is oriented towards realizing true happiness, but in the dynamics and problems of the household, it cannot be denied that each party has a different orientation in interpreting the nature of the house. the household itself, one of the most crucial in household problems is the problem of wealth, this is an implication when each party has a profession and it is ensured that each has income and it is not uncommon for the wife to have more income than the husband.

When property becomes a problematic starting point in household life, in this context it can be facilitated through a marriage agreement, as contained in Article 29 paragraph {1} of the Marriage Law, which states that: enter into a written agreement ratified by a marriage registrar, after which the contents also apply to third parties as long as a third party is involved.2 in Martiman Prodjohamidjojo’s perspective, the form of an agreement is understood to be limited to an agreement based on the agreement. Based on these provisions, it can be understood that a marriage agreement can be made in 2 phases, namely the phase during marriage and the phase before marriage. Inheritance either inheritance or property obtained before the marriage bond was held, but in its current development based on the

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1 Pasal 1 UU Nomor 1 tahun 1974 Tentang Perkawinan
2 Pasal 29 ayat {1} UU Nomor 1 Tahun 1974 Tentang Perkawinan
decision of the Constitutional Court Number 69/PUU-XIII/2015 this phase was expanded to while in the marriage bond of both parties, meaning either during, before or during the bond the marriage of the two parties, they can make a marriage agreement, of course the decision of the Constitutional Court Number 69/PUU-XIII/2015, has the potential to change the direction, purpose and essence of the marriage itself.

As it is known that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in the One and Only God, in this context marriage is interpreted as bond, but on the other hand marriage is interpreted as contract according to Article 2 of the Compilation of Islamic Law which states that marriage is marriage, namely a very strong contract or mitssaqan ghalidan to obey Allah’s commands and carry it out is worship.

Normatively, both bonds and contracts have the potential to be understood as a form of agreement, this can be observed from the issues contained in the laws and regulations governing marriage, between interpreting the contract in marriage, taklik divorce as a form of agreement, polygamy agreement to agreement on assets in marriage.

The author will try to describe these problems in this paper, so that the direction, purpose and essence of the marriage can be understood. This paper gives more stress, that formally and materially the marriage agreement is not a way out in every marital problem, even it is very absurd when understanding the essence of marriage itself.

### B. RESEARCH METHOD

This article is a literature review (library research), while the data analysis method used is content analysis. means trying to understand data not as a collection of physical events but as a symbolic phenomenon in uncovering the meaning contained in a text and obtaining an understanding of the message represented. Thus, the method of data analysis uses the content analysis method, namely to describe and then analyze the essence of the contract in marriage, taklik divorce as an agreement, polygamy agreements as mandated in the Marriage Law and property agreements in marriage. Normatively everything is understood based on an agreement either by using the term contract or the agreement itself.

So that the expectations of this research are projected to be a positive contribution in the renewal of the Compilation of Islamic Law when understanding the meaning of akad and/or agreements that explicitly use the term akad as a terminology of marriage, taklik talak as a form of agreement, polygamy agreement and marital property agreement.

### C. RESULT AND DISCUSSION

#### 1. The Concept and Essence of Legal Deconstruction

Jacques Derrida a philosopher, born in Algeria in 1930 then moved to France in 1959. Jacques Derrida is a British philosopher who offers to develop the concept of deconstruction, this is based on "anxiety" against "logocentrism hegemony" in western philosophy which is believed to be has a weakness because it glorifies the authority of "signs", as if signs are everything when representing every idea that exists. Derrida develops the concept of deconstruction with "meaning", in this context Gavin P Hendricks explains that Derrida's...
deconstruction is a very monumental new starting point in the study of philosophy. This deconstruction is an act of the subject to question, to dismantle an object which is composed of various elements oriented to review the norms or standards in legal theory, and its implementation which comes from what is known as the modern legal system. In Derrida's perspective, the deconstructive model begins by tracing the elements of the text that are disassembled in such a way, then determines the elements that philosophically determine the meaning of the text in a comprehensive manner, meaning that Derrida does not only translate a text, but he gives new meanings, so that the axis Derrida's thought is known as difference, namely: a concept of searching for meaning based on the traces that exist in each sign of writing, meaning that in this context understanding the text to get to the truth is based on essence, reason and meaning itself. so that deconstruction is understood as a method for understanding the contradictions contained in a text, then deconstruction is understood to reject a text constantly and it is believed that a text must have facts and hidden meanings.

A part from that, the orientation to be achieved from this deconstruction model can be understood in 4 (four) terms, namely: First, deconstruction greatly determines the method for identifying contradictions in the politics of texts so that it is hoped that it can help to gain a higher awareness of the existence of forms of consistency in texts, meaning that the construction of words in a sentence is very decisive in understanding the text itself. Second, deconstruction treats text, context, and tradition as a means which is expected to open up new possibilities for change so as not to limit new ways of interpretation, allowing creativity because tradition opens up new possibilities by uncovering the trajectory of texts. Third, deconstruction helps improve critical thinking skills and see ways in which experience is determined by ideology that is not realized, because ideology has been built and integrated into language. Fourth, deconstruction is considered successful if it is able to change the text, make it foreign to readers who already consider themselves familiar, thus giving rise to new perceptions for them. Basically this deconstruction method is better known as the chaos method which is interpreted as a form of reformulation or reconstruction in understanding each text, norms and others.

2. Interpreting Agreement Norms in Islamic Marriage Law

The term agreement in English is known as an agreement, while in KBBI it is interpreted as a form of agreement between two parties (each expressing a willingness and ability to do or not do something). This is a form of legal relationship that is usually carried out in the civil world, in this context explained in the provisions of Article 1233 of the Civil Code which states that "Every agreement is born, either because the agreement is good because of the law", agreement" (English) and overeenkomst (Dutch), when examined carefully it can be understood that an agreement occurs between 2 parties who carry out the engagement itself, this is based on article 1313 of the Civil Code which states that: An agreement is an act by which one person or more bound himself a n against one or more other people.

Besides that, what must be understood is that in the context of the agreement, those

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7Ibid., h. 99
10Muakibatul Hasanah dkk, Loc. Cit
12Anton F. Susanto, filosafat & Teori Hukum, Jakarta, Kencana:2019, h.132
13Muakibatul Hasanah dkk, Loc. Cit
15https://kbbi.web.id/perjanjian, diakses pada tanggal 18 Januari 2022 Jam 11.30
who are bound and bound in the agreement are those who make the agreement themselves, meaning that the provisions of Article 1313 of the Civil Code can be formulated as follows: First, an act, Second, the legal subject is at least 2 people and/or more, Thirdly, the Agreement gave birth to an agreement between the two parties.16

Furthermore, the formulation of Article 1313 of the Civil Code was also agreed upon by experts, including: Subekti explained that an agreement is an event where a person promises to another person, where two people promise each other to carry out something.17 Meanwhile, R Wirjono Prodjodikoro essentially explained that an agreement is a legal relationship related to property between two legal subjects, in which one party promises to do something while the other party has the right to sue for the agreement. Besides that, Yahya Harahap also states the same thing where substantively it is understood that the Agreement is a legal relationship of wealth/property an object between two or more parties that gives the power of right to one party to obtain an achievement and at the same time obliges the other party to fulfill the achievement.18 Another term than an agreement is often referred to as a contract, which can be understood as a promissory agreement, between 2 (two) people or more parties can cause, modify or eliminate legal relations.19 Besides that, in the perspective of contemporary Islamic law, an agreement is known as Iltizam, and the term contract when mentioning an agreement, where it can be understood that a contract is "Affinity between consent {first party} and kabul {second party} which is justified by syara' and has legal consequences for the object,"20 This means that the contract can be understood from several aspects. First, the contract is a connection or meeting of consent and qabul with the consequences of having legal consequences. Second, the contract is a legal action for both parties. Third, the purpose of the contract is to give birth to legal consequences for both parties in the contract.21 When examined substantively in both the perspective of the Civil Code and Islamic Law, they are actually the same both in the context of legal subjects, legal relations and legal consequences of the contract itself.

When an agreement is understood as a form of a series of legal relations in the field of assets, then as a consequence that the achievements/obligations of one party towards the other party should be realized, this is in accordance with the provisions of Article 1234 of the Civil Code which explains:

"Every engagement is to give something, to do something or not to do something"

If further elaborated, it can be understood that the object of the agreement is the achievement itself, both in the context of giving something, as in a buying and selling event, then doing something as described in Article 1603 of the Civil Code, which essentially states that a worker must do his job as well as possible., while not doing anything can be understood in Article 1550 of the Civil Code, which in essence, explains that the lessee is allowed to enjoy the rented item as long as the rental period lasts.22

3. The Meaning of Agreement/Akad in Marriage

Agreement as a form of engagement, as explained in the Civil Code, where in fact it

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16Kartini Muljadi, Perikatan Yang Lahir dari Perjanjian, Jakarta, PT. Rajawali Grafindo Persada:2006, h. 7
18Ibid., h. 13
19Munir Fuady, Pengantar Hukum Bismis, Menata Bismis Modern di Era Global, (Bandung, PT. Citra Adyta Bakti:2005), Cet ke-2, h. 9
21Syamsul Anwar, Op. Cit h. 69
22Joni Emirzon dan Muhamad Sadi Is, Op.Cit, b. 21
gives more stress to the realm of property, this also has implications for the realm of Islamic marriage, in this context it can be observed from Article 1 of Law Number 1 of 1974 concerning Marriages, which states that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family {household} based on Belief in One and Only God. In the context of Article 1233 of the Civil Code, it can be understood that marriage is a form of engagement Law so that parties who are unable to carry out the achievements as stipulated in the Marriage Law are included in the category of unlawful acts. However, in the context of Article 2 of Presidential Decree No. 1 of 1991 concerning Compilation of Islamic Law which is a lex specialist in understanding marriage in the Islamic realm, it states that marriage according to Islamic law is marriage, namely a very strong contract or mitssaqan ghalidan to obey Allah's commands and carry them out is worship. The contract that is perceived by Article 2 KHI is more interpreted as an agreement which is actually very absurd both in the context of the Civil Code and Islamic law. The conditions required in marriage are the guardian and the prospective husband.

Based on this, there are several legal rules that are very exploratory in explaining this, namely First, the Aspect of Legal Subjects, the parties to the marriage contract are none other than the guardian and the prospective husband, who actually make consent and consent, which is actually a manifestation of Article 1315 Civil Code, which states that in general a person cannot enter into a binding or agreement other than for himself. meaning that in principle those who are bound are the marriage guardian and the prospective husband himself but in reality, it is the husband and wife who carry out the achievement. states that in order for a valid agreement to occur, it is necessary to fulfill four conditions; the agreement of those who bind him; the ability to make an engagement; a certain subject matter, a cause which is not forbidden. Certainly has legal consequences as contained in Article 1338 of the Civil Code which states that all agreements made in accordance with the law apply as laws for those who make them, meaning that the guardian and the prospective husband are bound to carry out matters that are the object of the agreement itself. such as household activities including sexuality problems which are an integral part of the marriage contract. The legal implications can be observed based on Article 1365 of the Civil Code, which states that every action that violates the law and brings harm to other people requires the person who caused the loss because of his mistake to replace the loss, meaning that one party can file a claim for compensation as a consequence of achievement in various forms that are not carried out by each party including the problem of sexuality in the realm of marriage itself, now the question is who will be sued, is it between the husband and the marriage guardian who carried out the contract or between the husband and wife who are actually in the real family.

Basically, when understood actually, the use of contract norms in marriage terminology is very inappropriate, in fact it is "a statement of handing over of responsibility from the guardian to the prospective husband as the responsibility of the marriage guardian to his child is even given privileges in the form of having intimate relations with his child as a husband wife. One form of this responsibility begins with the obligation to provide a dowry to the prospective wife as can be observed from Article 30 KHI which states that the prospective groom is obliged to pay a dowry to the prospective bride whose amount, form and type are agreed upon by both parties, while the form of dowry is based on with the concept of simplicity.

4. Taklilk Divorce as a Form of Agreement

23Undang Undang Nomor 1 Tahun 1974 tentang Perkawinan
24Inpres Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam
25Amiur Nuruddin dan Azhar Akmal Tarigan, Hukum Perdata Islam di Indonesia, Jakarta, Kencana:2004, h. 61
26Muhammad Arif, “Konsep Akad dan Perjanjian Dalam Perspektif Hukum Islam dan Hukum Perdata.Berawan”
Journal of Islamic Civil Law, Vol. 1, No.2, 2022, h. 146
Deconstruction of The Agreement

Muhammad, Widya

Taklik divorce is a collaboration of two words, namely taklik and divorce. Taklik comes from the Arabic word 'allaqa yu'alliqu ta'liqan, which means to hang. Furthermore, the word talak comes from the Arabic word talaqa yutlliqu tatliqan, which means mentalak, to divorce, in this context it can be understood that taklik talak is a form of divorce that depends on certain circumstances, is an agreement spoken by the prospective groom after the marriage contract is included in the marriage certificate in the form of a promise of divorce depending on a certain condition that may occur in the future. Furthermore, Article 45 KHI provides an explanation that the two prospective bride and groom can enter into a marriage agreement in the form of: taklik Divorce and other agreements that do not conflict with Islamic law. This provision is elaborated through Article 11 of the Regulation of the Minister of Religion Number 3 of 1975, namely "Prospective husband and wife can enter into an agreement as long as it does not conflict with Islamic law. And the agreement in the form of taklik divorce is considered valid if the agreement is said and signed by the husband after the marriage contract is held.

If one looks at the provisions of Article 11 PMA No. 3 of 1975 it can be understood that taklik divorce is not a necessity because normatively it states that "Prospective husband and wife can enter into an agreement. Etc., meaning can be implemented / not. Substantively, the points of taklik divorce are regulated based on the Decree of the Minister of Religion Number 298 of 2003 concerning taklik divorce, the provisions for taklik divorce read as follows: "after the marriage ceremony, I...bin...promise with all my heart, that I I will fulfill my obligations as a husband, and I will have intercourse with my wife named...binti...well (mu'asyarah bil ma'ruf) according to the teachings of Islamic law, then I say sighat taklik divorce for my wife as following: "Firstly, Whenever I leave my wife for two consecutive years, or Second, I don't give her the obligatory maintenance for three months, or Thirdly, I hurt my wife's body/physically, or Fourth, I let (don't care) ) my wife was six months old, then my wife was not happy and complained about the matter to the Religious Court or to an officer who was given the right to deal with the complaint, and the complaint was justified and accepted by the court or the officer, and his wife paid Rp. 10,000 iwad (replacement) to me, then my one divorce falls on him, I authorized the court or officer to receive the iwad (substitute) money and then give it for social worship purposes".

The problem of taklik divorce as a form of agreement has in principle been annulled and very counterproductive based on the provisions of Article 1315 of the Civil Code which states that in general a person cannot enter into a binding or agreement other than for himself, because taklik talak is a series of consents and qabul that occurred before between the parties marriage guardian with the prospective husband, which should be if the taklik divorce is justified as an agreement then the bond applies to the parties, but substantively the taklik divorce actually provides legal space between the husband and wife.

Furthermore, substantively, divorce divorce violates the provisions of Article 1320 of the Civil Code, which states that "in order for a valid agreement to occur, four conditions need to be met; the agreement of those who bind him; the ability to make an engagement; a certain subject matter, a cause that is not prohibited, meaning that the substance of taklik divorce has been regulated based on the Decree of the Minister of Religion Number 298 of 2003 which is actually null and void because the legal requirements of taklik divorce as an agreement are not fulfilled because it violates the principle of consensuality and the principle of freedom of contract which is the main principle in entering into an agreement.

Besides that. The legal consequence of taklik talak as a form of agreement is divorce depending on one of the four conditions stated in sighat taklik talak as the reasoning of law,
even though one of the reasons that can justify the filing of a divorce either in the context of talak divorce or contested divorce under Article 116 KHI has stated that firstly one of the parties commits adultery or becomes a drunkard, addict, gambler and so on which is difficult to cure, Second. one party leaves the other party for 2 (two) consecutive years without the other party's permission and without a valid reason or for other reasons beyond his capacity, Third. one of the parties gets a prison sentence of 5 (five) years or a more severe punishment after the marriage takes place, Fourth. one of the parties commits cruelty or severe persecution that endangers the other party, Fifth. one of the parties gets a physical disability or illness as a result of not being able to carry out their obligations as husband or wife. Sixth. between husband and wife there are constant disputes and fights and there is no hope of living in harmony in the household. Seventh. Husband violates divorce decree, Eighth. conversion of religion or apostasy which causes disharmony in the household, meaning that substantively, 2 of the 4 points of sighat taklik divorce are covered in Article 116 KHI, so that it can be understood if this matter is still understood as part of the agreement clause, it is certainly not appropriate because normatively it is very ineffective, even both husband and wife can file for divorce via the Religious Courts if one party violates Article 116 point second or fifth KHI.

Furthermore, the following legal problems are, First, when the provisions of Article 2 KHI regarding the terminology of marriage which is termed a contract is believed and agreed upon as an engagement, then Article 116 KHI can also be accepted based on Article 1233 of the Civil Code which states that each engagement is born, either because the agreement is good because law” because KHI is not a law but part of legislation, that is 2 {two} different things when viewed from the perspective of Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning Formation of Laws and Regulations, Second, when the provisions of Article 2 of the KHI concerning the terminology of marriage which is termed a contract are believed and agreed upon, it is not a form of engagement, then neither the Decree of the Minister of Religion Number 298 of 2003 concerning taklik divorce nor Article 116 of the KHI can be applied, because the contract that occurs in a marriage is a "statement transfer of responsibility from the guardian of the future husband.

5. Polygamy Agreement

Polygamy is the marriage of a husband with more than one wife at the same time while in Islam it is explained in Q.S: An Nisa' verse 3:

وَانْخَفَفْ ائْتِمَّ فَأَفْكَرُوْا مَنْ طَابَ لَكُمْ مِنَ النِّسَاءِ مَلَكَتُكُمُ الْمُنْتَدِبَةَ وَعَلِّنِيَّ فَإِنْ خَفْتُمْ أَلَّا تَعْلَمُوا فَأَحْدَاهُ أوَّلًا أَوْ مَا مَلَكَتْ لَكُمُ الْمُنْتَدِبَةَ١ ٣

And if you are afraid that you will not be able to do justice to (the rights of) orphaned women, then marry women - (other) women you like: two, three or four. Then if you are afraid that you will not be able to do justice, then (marry) only one person, or the slaves you have. That is closer to not doing wrong.

According to al-Tabari, stated that the meaning of this verse is related to the concern that there is no guardian who can do justice to orphans. So, if that's the case, this concern naturally also applies to the way women are treated. So "don't be polygamous, except for women who maybe you can do justice, two to four." On the other hand, if it is known that you cannot do justice when you are polygamous, then it is enough to marry the slave girl you own, because it is more likely that you will not commit fraud.

The problem of polygamy is a phenomenal thing both procedurally and unprocedurally, but what is certain is that the basis of law based on Article 29 paragraph {1} of the Marriage Law can be used as a reasoning of justification of the polygamy agreement, which explains that

30Pasal 55 ayat {1} Kompilasi Hukum Islam
31Widya Sari, dkk “Perjanjian Perkawinan Sebagai Syarat Mutlak Poligami [Studi Terhadap Pemikiran Ibrahim Hosen Perspektif Hak Perempuan], Syaksia”, Jurnal Hukum Keluarga Islam, Vol. 23 No. 3 Edisi Januari - Juni 2022, h. 36
"at the time or before the marriage takes place, both parties by mutual agreement can enter into a written agreement which is legalized by the marriage registrar, after which the contents also apply to third parties as long as a third party is involved ", then in the context of the frame of agreement timing it is expanded based on the decision of the Constitutional Court number 69/PUU-XIII/2015 being while in the marriage bond of both parties, meaning that both during, before or during the marriage bond of both parties, they can make a marriage agreement, more explicitly Article 58 paragraph {1} letter a KHI explains that in addition to the main conditions referred to in article 55 paragraph (2) then to gain by the permission of the Religious Court, the conditions stipulated in Article 5 of Law No. 1 of 1974 must also be fulfilled, namely the wife's approval, while Article 55 paragraph {2} KHI explains that the main requirement is to have more than one wife, the husband must be able to apply fair to his wife and children.

If you look closely at the legal constructions above, make sure that the husband can enter into a marriage agreement at any time, even though the wife can actually require something at the time or before the marriage takes place, either requiring the consent of polygamy or requiring the refusal of polygamy itself.

The absurdity of the legal construction above which opens space for polygamous agreements to occur can be seen from two perspectives, while Roscoe Pound explains that justice is the result that can be given to society. Besides that, John Rawls states that justice is fairness which contains the principles that independent and rational people who have the will to develop their interests obtain the same position. Furthermore, Aristotle emphasizes more on justice in 2 perspective: First, Distributive Justice, which is justice that gives everyone according to their place in society, Second, Corrective Justice, which provides a measure for carrying out the law every day.

In the context of law, it can also be understood that there is a dualism-monism of justice, which can be explained as follows: First, the dualism of law and justice is better understood that between justice and law have their respective forms which are believed to be different, these differences are believed to be difficult to achieve, for example, justice is a city. A and Law are city B, the long distance between A and B will have implications for the difficulty of A getting to B or vice versa. Second, monism of legal justice which perceives more that law and justice are one form that produces other forms of existence such as light that comes from God who then implanted into the human soul, meaning that in this context Law is the source of justice.

Based on the several perspectives above, basically the debatable discourse on justice is a form of different understanding in understanding the object of law itself, even though it is certain that the purpose of law is to bring about justice, in the context of justice in polygamy, in principle, Allah SWT has said: Q.S. An Nisa verse 129, explains what means "And you will never be able to act fairly between your wives, even though you really want to do so" means that in principle Islam justifies monogamous marriages because regardless of the substance of the polygamy agreement made by each respectively, true justice in polygamy is very difficult to achieve, therefore basically the legal norms that provide legitimacy and justification for the birth of polygamy agreements before, during or during the marriage bond can be ascertained to be ineffective as legal norms.

Furthermore, the Second Perspective is Marriage Orientation, this can be understood based on Article 1 of the Marriage Law which explains that marriage is a physical and spiritual
bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in the One God. and it is emphasized again with Article 2 KHI which explains that marriage according to Islamic law is marriage, namely a very strong contract or mitssaqan ghalidzan to obey Allah's commands and carry it out is worship. Besides that, the crystallization of the orientation of marriage is explained by Allah SWT in Q.S Ar Ruum: 21 namely First, Realizing a sakinah household, which is perceived as a manifestation of serenity, Second, Realizing mawaddah which is manifested in the form of love related to physical matters, and Third, Realizing a gracious family which is manifested in affection relating to spiritual matters. Yahya Harahap emphasized that, if the orientation of marriage has been well understood, then everything has covered all mutual obligations, namely, mutual cooperation, mutual help, mutual understanding, mutual relation and mutual interdependency.

However, when it comes to polygamy, a very phenomenal problem in today's socio-culture, both procedurally and unprocedurally, it is believed that the true orientation of marriage is difficult to realize with various motives behind it, even according to Muhammad Abduh, he sees that the cause of division in society is because men indulge in their lusts, so that in the perspective of polygamy Abduh says it is not permissible and the law is unlawful, this is based on the potential for bloodshed as a consequence of jealousy between one and the other.

6. Property Agreement in Marriage

Marital law cannot be separated from assets in the marriage itself, so it needs to be regulated in such a way, which is often termed marital property law, namely: are legal regulations governing the consequences of marriage on the assets of husband and wife who have entered into a marriage. Problems of assets in Marriage is a very crucial problem that greatly affects the sustainability of household life, and is even a current trend, each party takes preventive steps in this problem.

The problem of assets in marriage can be elaborated in 2 forms namely First, joint assets, namely assets acquired either individually or together with husband and wife while in a marriage bond, without questioning whether they are registered in the name of anyone and Second, inherited assets, namely assets brought before marriage, both husband and wife, the assets are obtained either in the form of gifts or inheritance, in the context of Article 35 paragraphs 1 and 2 of the Marriage Law which explains that: "properties acquired during marriage become joint property, and "inheritance of each -each husband and wife and the assets obtained by each as a gift or inheritance, are under the control of each as long as the parties do not specify otherwise, meaning that inherited property can become joint property if both parties do not specify otherwise either in the form of restrictions, mastery under each. In the KHI perspective, assets in marriage are referred to as joint assets as Article 1 letter f KHI, which states that assets acquired either individually or jointly with husband and wife while in a marriage bond take place hereinafter referred to as joint assets, regardless of being registered in the name of anyone, normatively Article 1 letter f KHI, does not provide an explicit description regarding the assets acquired by each party both before and during marriage, although in this context it can be understood due to the development of the times and the economic burden on the family which is so great that a wife can work in meeting the needs of the family, better known as "shirkah al abdan".

However, when examined further, basically the problem of assets in marriage is actually

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37 Abd Shomad, *Hukum Islam, Penormaan Prinsip Syariah Dalam Hukum Indonesia*, Jakarta, Kencana: 2012, h. 262
a form of inconsistency of the legal rules contained in the KHI itself so that turbulence of law occurs when the legal rules are applied in the life of Muslim society, this can be elaborated as follows: First, Status Law of Property in Marriage, The principle is that in marriage there is no joint property, the concept of joint property has not been found in fiqh books because it is perceived that the husband plays the role of earning a living and the role of the wife in the household to manage the assets of their husband and their children it is the same in principle also found in Article 86 KHI, which states that basically there is no mixing of husband's and wife's assets due to marriage, means that KHI has justified the positioning of each party in controlling assets which are understood to come from inheritance and gifts, this condition will be annulled by a marriage agreement winan as Article 49 paragraph {1} KHI which states that "An agreement on mixing personal assets can cover all assets, both those brought into the marriage by each of them as well as those acquired by each during the marriage, while Article 49 paragraph{2} states that by not reducing the provisions in paragraph (1) it can also be agreed that the mix of personal assets brought at the time the marriage took place, so that this mix does not include personal assets obtained during the marriage or vice versa, meaning that an agreement on marital assets can be made and the agreement is binding on both parties including third parties, as of the date the marriage is held before the Marriage Registrar. the form of debt owed by husband or wife d burden on each other's assets except for debts for the benefit of the family, then it is borne by the joint property, this can be understood based on the provisions of Article 93 paragraph {1}, KHI which states that responsibility for the debts of a husband or wife is borne by their respective assets. while Article 93 paragraph {2} states that responsibility for debts made for the benefit of the family is borne by the joint assets.

The problem of agreements in Islamic marriage law both made before and when the marriage took place as Article 29 of the Marriage Law which states "At the time or before the marriage takes place, both parties by mutual agreement can enter into a written agreement which is legalized by the marriage registrar, after which the contents also apply against third parties as long as the third party is involved and extended again by the Constitutional Court Decision to be while in the marriage bond of both parties, meaning that either during, before or during the marriage bond of the two parties, they can make a marriage agreement, further emphasized again by Article 49 paragraph {1} KHI which states that "An agreement on the mixing of personal assets can cover all assets, both those brought by each into the marriage and those acquired by each during the marriage, while Article 49 paragraph {2} states that without prejudice to the provisions referred to in paragraph (1) it can also be agreed that the mix of personal assets brought at the time the marriage took place, so that this mix does not include personal assets acquired during the marriage or vice versa, meaning that an agreement on marital assets can be made and the agreement is binding on both parties including third parties, basically turbulence of law has occurred and even has the potential to distort the purpose and essence of marriage itself as stated in Article 1 of the Marriage Law that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household), based on Belief in the One and Only God, and emphasized again by Article 2 KHI which states that marriage according to Islamic law is a marriage, namely a very strong contract or mitssaqan ghalidan to obey Allah's commands and carry it out is worship, because those who are bound are not only born but also mentally and it will be very impossible to realize happiness when each party makes an agreement regarding these assets both innate and acquired during marriage, besides that what must be understood is
that marital problems basically become joint problems in the household so that it is very difficult to understand when debts the husband or wife's debts are paid by their respective assets as in Article 93 paragraph {1} KHI, which states that the responsibility for the debts of the husband or wife is borne by their respective assets, while Article 93 paragraph {2} states that the responsibility for debts made for the interests of the family are borne by the joint assets. When the joint assets are insufficient to settle debts for the benefit of the family, it is facilitated by Article 93 paragraph {3} that if the joint assets are insufficient, it is borne by the husband's assets, and Article 93 paragraph {4} states that if the husband's assets are not available or sufficient, the burden will be on the wife's assets.

According to the author's perspective, the problem of property agreements in Islamic marriages, which are justified by laws and regulations, as described above, is a manifestation of the growth and development of the materialist philosophy developed by Ludwig Andreas van Feuerbach, a western philosopher born on July 28, 1804, who stated that what can be said really is material because everything is a material entity, this understanding strongly rejects all entities that are non-material in nature, meaning that it is very counterproductive to what is mandated by Article 1 of the Marriage Law and emphasized again by Article 2 KHI as explained.

D. CONCLUSION

Marital problems which include the concept of contract, taklik divorce, polygamy and marital assets which are perceived as based on the agreement as described above, it can be concluded that:

1. The legal norms of the contract as mandated in Article 2 KHI, basically cannot be perceived as an agreement but is a "statement of handing over responsibility from the guardian to the prospective husband as the responsibility of the marriage guardian to his child is even given privileges in the form of having intimate relations with his child as husband and wife" because if it is perceived as an agreement, it is very counterproductive to Article 1315 of the Civil Code which states that in general a person cannot enter into a binding or agreement other than for himself
2. Taklik Divorce as an integral part of the series of marriages/marriage which is perceived as an agreement as stated in Article 1 letter e KHI, Article 45 KHI, which is further confirmed through Article 11 Regulation of the Minister of Religion Number 3 of 1975 and its substance is stated based on Article of Decree of the Minister of Religion Number 298 of 2003 concerning taklik divorce, very counterproductive to Article 1320 of the Civil Code and the principles of agreements such as the principle of consensuality and the principle of freedom of contract
3. Polygamy agreements are basically accommodated in laws and regulations, but in principle are very counterproductive to the principle of justice and the orientation of the marriage itself as mandated in Article 1 of the Marriage Law and confirmed again by Article 2 KHI
4. Property agreements in marriage are perceived to prioritize the concept of materialism in marriage and are very counterproductive to Article 1 of the Marriage Law and Article 2 of the KHI

Based on the several points above, the legal norms related to these issues should be reviewed as an effort to place marriage on its true purpose and essence.

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