

# Legal Consequences Of Husband's Infidelity To Legal Wife

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## **Abstract.**

*Introduction, The legal consequences of husband's infidelity that occur in the household will have a negative impact on the wife and children. The infidelity committed by a husband greatly affects the psychology of his wife and children which results in the breakdown of the household. The rights of a wife who are threatened with not getting gono gini property if there is a marriage agreement. Marriage agreement before and after marriage. Problem formulation, 1) What is the legal protection for the wife if the husband is having an affair? 2) Will a wife who is a victim of infidelity get her rights if there is no marriage agreement? Normative juridical research method. Which includes legal principles, legal norms, and written and unwritten legal rules. The data collection method uses qualitative data analysis which aims to analyze the legal protection of infidelity, and dig deeper into the rights that will be obtained by a legal wife. The results of the study, 1) Written legal protection is not yet strong if there is no evidence. 2) The rights of a wife can be fought for by a court order.*

**Keywords:** *Infidelity; Husband; Legal Consequences.*

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## **I. INTRODUCTION**

Marriage is an event that is highly coveted by all people in all parts of the world. Marriage is the union of two individuals, namely between a man and a woman, both of whom promise to build a small family together in a marriage bond. The definition of marriage itself is regulated in Article 1 of Law Number 1 of 1974 concerning marriage. The purpose of marriage itself is to form a happy and eternal family based on God Almighty. Through the marriage bond the parties involved will have a mutual relationship with their respective families. Based on these provisions, marriage has the principle of monogamy, which means that husband and wife only have one partner in the marriage bond.<sup>1</sup> In this day and age it is not surprising, if in family law, especially households or married couples who have just married or have been married for a long time, they will feel bored, bored and have experienced small problems that become big and have fatal consequences. In household affairs, we all recognize the existence of infidelity or what is called adultery, it is not only done by a husband, sometimes there are also wives who have an affair. In this paper, the author will analyze the legal consequences of infidelity by a husband against his wife.

Cheating according to the Indonesian Big Book Dictionary, namely,

1. means like to hide something for their own sake, not frank, dishonest, obscene, fraudulent;
2. likes to embezzle money/corruption;
3. likes to stray.

This can be interpreted with various understandings according to the point of view and thoughts of each individual. A husband or wife who is proven to have committed overspelling can report her partner to the local authorities. However, until now there has never been a case of imprisoning a husband or wife who is proven to have an affair. A husband who is in charge of protecting, protecting, providing for physically and mentally, is responsible for physically and spiritually to a wife who is willing to accompany him, but is damaged by an infidelity or adultery, is very hurtful to feelings or destroys what is the responsibility of a husband himself. A wife will not want her husband to have a special relationship with another woman other than the wife herself. Basically, marriage law can only be enforced on the basis of objective facts and in a broad scope, recognizing the primacy of monogamy and not absolutely prohibiting polygamy. Forbidding anything less than perfect will lead you to fall into the error of thinking that everyone is perfect or capable of living a perfect way of life. That is the provision of marriage law, which recognizes that monogamy is closer to justice and wisdom. In certain circumstances monogamy actually makes men who expect offspring very

burdened because of something that cannot be obtained. Therefore polygamy is needed to preserve family life.<sup>2</sup>All of these causes the occurrence of adultery or in other words infidelity which is actually very dangerous and can violate the purpose of Islamic law.

Discussing the sanctions that can be accepted by the perpetrators of infidelity, it is contained in Article 284 of the Criminal Code which explains that the perpetrators are threatened with a maximum sentence of nine months. The criminal threat applies to a husband or a wife who commits infidelity or adultery. Then what about a husband marrying religiously without being known or through the permission of a wife, can it be legally punished. The Criminal Code does not specifically regulate the issue of infidelity. However, it is very unfortunate that in a country that mostly adheres to Islamic law, it deviates from what is taught and applied today. Article 284 of the Criminal Code is an absolute complaint offense, which means that it cannot be prosecuted if there is no complaint from the husband or wife who is harmed. And regarding the criminal sanction of only nine months, is it appropriate and commensurate with the painful sacrifice of an cheated person? This also applies to women or men who become mistresses.

Observing the description above, the authors need to explore and analyze, so that they can find answers in the research entitled The Legal Consequences of Husband's Infidelity to the Legal Wife.

## II. FORMULATION OF THE PROBLEM

The formulation of the problem raised from the introduction above is as follows:

1. What is the legal protection for the wife if the husband is having an affair?
2. Will a wife who is a victim of infidelity get her rights if there is no marriage agreement?

## III. METHODS

The research method used in this paper is normative juridical. Normative juridical research is legal research that puts the law as a building system of norms. That is law as a complete system, including a set of legal principles, legal norms, and legal rules, both written and unwritten. Specifications The research used is descriptive analytical, the sources and types of data in this study are secondary data types. The data obtained by the researcher indirectly through the literature are legal materials consisting of primary legal materials, namely binding legal materials, consisting of the 1945 Constitution; Law Number 1 of 1974 concerning Marriage; Criminal Code; Civil Code. Secondary legal materials, namely legal materials that provide instructions and explanations of primary legal materials, consisting of literature books, papers, articles, research results, scientific works related to this research. Tertiary legal materials, namely legal materials that provide instructions and explanations of primary legal materials and secondary legal materials consisting of the Big Indonesian Dictionary, Legal Dictionary, English-Indonesian Dictionary, Encyclopedia, Wikipedia, Internet. The method of data collection carried out by researchers, namely by techniques or methods in the form of document studies and data analysis. The data analysis method uses qualitative data analysis which aims to analyze the legal protection of infidelity, the regulation of legal protection of the marriage agreement, and the settlement of disputes between husband and wife through litigation due to the marriage agreement.

## IV. DISCUSSION

### 1. Legal Consequences for Cheating Husbands

#### a. Affair

Infidelity is no longer a taboo in Indonesian society and in other parts of the world. If it is highlighted from a legal perspective, cheating can be punished for a maximum of nine months according to Article 284 of the Criminal Code. What can be said cheating is a husband or wife is legally bound in a legally valid marriage and is recorded in the registry office according to the religion believed by law. In marriage, the agreement between husband and wife is to be loyal to each other and maintain the integrity of the household, which is the dream of every human being.

Virtue is not in the sense that a man is sufficient to have one wife because of his inability to have two or three wives. But the priority here is if a man is actually able to have more than one wife, but men do not do it. Of his own volition the man is not polygamous,<sup>3</sup> But in that case a man who has a wife will commit adultery or in other words have an affair with a woman other than his wife because he does not want to hurt a wife's heart. Cheating can also be said to be the result of promiscuity experienced by every individual who is in love or in love. It is possible for someone who commits the affair to demand more from a partner, because cheating has several reasons that are not known to a wife who is a victim of her husband's infidelity. A husband who has an affair does not think about the impact that will occur on his domestic relationship, because he is lulled by the wind of heaven that blinds his eyes. In Islamic law it is strictly forbidden to have an affair or in other words adultery. Strictly in Islamic law explains that prohibits infidelity that refers to adultery. The phenomenon of infidelity lately is really concerning in the midst of society. Especially with the extraordinary development of social media, it creates and forms a new person for the community who sees and pays attention to all the behavior and theatrics of the players. Infidelity is not only done by people who are financially rich, but also by people who are less financially.

Even more concerning, infidelity is currently also carried out by people who still have a kinship relationship, such as the affair between a father or mother and her stepdaughter, between a brother and a sister, between a sister-in-law and a sister-in-law. In addition, infidelity is also carried out by a father or mother with a boyfriend or close friend of his child and a man with his female neighbor who is married. Infidelity is also carried out by people who have been building a household for years and those who have just married.<sup>4</sup> Infidelity can be interpreted as cheating in love between a husband or wife, besides that infidelity is also closer to adultery between a woman and a man. There are also women's affairs today with women or men with men who can be said to like the same sex. Do not get the wrong guess what the meaning of infidelity itself. Many things were unexpected, and I didn't think of the slightest infidelity that occurred not just the opposite sex. The developments in our country are extraordinary, even the current perspective and culture has changed drastically following foreign cultures. Where society is harmonious, just and prosperous, as is said to be the motto of the Indonesian nation. Culture fades eroded by age, infidelity is used as an event like a competition that must be won and maintained for its existence. Maintaining a marital relationship is very difficult, especially when there are very complicated problems in the household. Back again to the perspective of the individual who undergoes household chores, tests and internal and external disturbances when establishing ties in the household must be strong and sturdy to defend and fight so that they cannot be shaken by infidelity.

#### **b. Legal Consequences of Cheating Husband**

The legal consequences if the husband or wife has an affair can be criminally charged on a complaint from the husband or wife is legal, if the affair leads to the act of adultery, as regulated in Article 284 of the Criminal Code. Basically the marriage law in Indonesia as regulated in Article Law Number 1 of 1974 concerning Marriage stipulates 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 God. The Almighty". In this case marriage or marriage in Arabic fiqh literature is called by two words, namely marriage and *zawaj*. These two words are used in everyday life. According to the opinion of experts, among others, Soedharyo Saimin stated that marriage is an agreement between a man and a woman with a material goal, namely to form a happy and eternal family (household), must be based on the One Godhead. As the first principle in

Pancasila.<sup>5</sup> There are several reasons why husbands decide to have an affair, namely from economic factors, the absence of offspring and incompatibility factors between the husband and wife. Disconnection in marriage is very unwelcome because it is hated by Allah SWT. Regardless of the religion adopted by the parties, it is not recommended to break the marriage relationship. However, this actually causes both parties to commit adultery or adultery. Law Number 1 of 1974 concerning marriage does not only regulate marriage, but also regulates divorce. There are several divorces that have bad consequences for the victim, namely the family, husband or wife who is divorced and the children of the divorce victim. Apart from traumatized victims of divorce, of course, there are also some who are very disadvantaged in this regard regarding joint property. Provisions regarding joint property are not explicitly regulated in the Qur'an and the Prophet's Hadith. There are differences of opinion from legal experts regarding the arrangement of joint property, A.

Hasan Bangil considers that joint property in customary law is acceptable and is considered not contrary to Islamic law. There are at least two views of the Islamic community in viewing the assets obtained by husband and wife during marriage which are based on local customs or habits and not only based on Islamic law.<sup>6</sup> Husband and wife deciding to separate is very difficult, in this case they think about the children who have been born and are still the responsibility of both parents. If both parents still decide to separate then many things will be faced in the future. But behind all that they do not understand, finally there was an affair where it was all to treat pain, a feeling that made them more able to get what they wanted. Deciding to divorce for the victim or child is very detrimental, especially when there is an affair. not only children, husband or wife, family, neighbors and relatives, but also ridicule from the whole community who will be in the result of having an affair. However, in this case, people still see the form of the affair with the eyes of a horse. Divorce is not something that is easily understood by children, especially about infidelity.<sup>7</sup> as a result of infidelity will inevitably lead to divorce or termination of marriage between husband and wife is legal. The bad impact for someone who commits an affair, will be traumatizing for the families and children of the victims of the affair. Although the law has emphasized that infidelity or adultery is prohibited, in reality there are still many who violate it. How do we all overcome and eradicate infidelity, until whenever there will be infidelity or adultery in society as a result of lack of supervision and the presence of elements from within and outside the community. Domestic violence is also a trigger for the breakdown of the marriage dice. In society in general, not many people dare to report when there is domestic violence. With this, more and more victims will result in deep trauma and a bad impact on children. There are no legal aid institutions that have explicitly defended or stopped domestic violence. There is no one who responds swiftly to bad things in the household, even though a family that is properly formed in harmony and understands each other will form a good and confident person in society in particular. The high level of violence against women in the household is not only enough to be prevented by law.

Mechanisms to demand justice are often faced with the culture of society which still considers the household to be a private world. Feelings of guilt when having to reveal domestic disgrace to court is an obstacle for women to demand justice.<sup>8</sup> In handling the law in domestic crimes, namely in violence, it is still neglected, especially with crimes committed without a definite legal basis. In the process of handling criminal cases and the consequences that must be borne by crime victims because legal protection for crime victims does not get adequate arrangements.<sup>9</sup> It can be seen in the Criminal Procedure Code, the articles that discuss victims are very few, the discussion does not focus on the existence of victims of criminal acts but only as ordinary citizens who have the same rights as others. Victims of crime who should receive protection from and by law for perpetrators of crimes, but victims are not given much attention. Especially with the case

of victims in the household, the ends of domestic crimes are separation or divorce which makes all victims. Not only victims of violence, but in the household psychological victims and traumatized victims are ignored. The law should make and not only focus on the perpetrators of the crime, but with the victims who must be protected and given justice and legal certainty. Currently, there is no legal protection that focuses on victims in the household, namely victims of infidelity, which is currently rampant. Not only husbands who have an affair, but there are also wives who commit acts of infidelity. why is that,

## **2. Wife's Rights in Marriage Agreement**

### **a. Wife's Rights in the Household**

The rights of a wife in the household are to be treated well by her husband, to be protected and protected, to be given physical and spiritual support, to be consulted properly in the event of a dispute. The wife is a woman whose nature is protected by a husband, where a wife who accompanies her husband is given the comfort and feasibility of living in the household. In marriage, it has been regulated how the rights of a wife and what are the obligations of a wife in the household dipper. Not only the rights and obligations of a wife, but a husband also has the rights and obligations in the household to be a good leader and become an example for his wife and children, as well as unite two different families into one unity and harmony. Marriage is an agreement in the broad sense of a marriage in which there is a requirement for conformity of wills, as can be seen in articles 28 and 80 of the Civil Code.

The principle of marriage requires the freedom of agreement between the prospective husband and wife, which means without coercion, error or fraud. Marriage law itself includes matters relating to marital property. In principle, it should not change and be coercive, even though the parties are given the opportunity to determine their rights and obligations, but in this case the limits are permitted by law, or in accordance with the limits determined by law.<sup>10</sup>Wives' rights in the household or in ongoing marriages, often the wives do not get the rights as promised in a marriage. Marriage is also called an agreement between a man and a woman who unite themselves to make an agreement to be loyal to each other, complement each other, give each other their rights and carry out their respective obligations according to the rules and regulations according to the beliefs they hold. . But it is very unfortunate for a wife who is a victim of infidelity, swallowing the bitterness of life, that is, being hurt twice by the presence of another woman who has a special relationship with her husband and does not get her rights as a legal wife who must be given physical and spiritual support.

The rights of the legal wife in the household:

- The right to be given an inward living, that is, not to be hurt in body and heart;
- The right to be given an outward living, namely the right to be given a decent living according to one's ability, clothing, housing and food;
- The right to give birth and be given love, be guided and advised;
- The right to good treatment.

Duties of the wife in the household:

- Obedient to husband, unless the husband teaches bad things;
- Treat your husband right;
- Be a good wife and housewife;
- Serving husband and children;
- Helping husbands when they are in trouble and together build a quality household to educate their children.

### **b. Wife's Rights If There Is No Marriage Agreement**

The marriage agreement refers to Article 1320 of the Civil Code regarding the conditions for the validity of an agreement. In the marital life of a married couple who legally bind themselves in a household

marriage, of course, there will be a lot of polemics that will be faced in the future. Not only from both parties, but also from children, family, relatives or society. The factors that cause household rifts are not only internal but also external. The more developed married life in society, the more diverse the conflicts faced. Therefore, the marriage agreement becomes a necessity in a marriage marriage, to anticipate the existence or emergence of problems in domestic life. The existence of a marriage agreement will be born an agreement that comes from two people who promise each other to jointly carry out a written agreement. By making a marriage agreement between the two parties, it is mandatory for an agreement between the two of them. The agreement must be written by both parties without coercion from anywhere. The purpose of making a marriage agreement is so that both parties between husband and wife help each other if one of them is affected by administrative problems. The other goal is if one of them gets arbitrarily treated.<sup>11</sup> Marriage agreements usually only contain the separation of joint property. If both parties feel aggrieved, the marriage agreement to be agreed upon is void. Marriage agreements are usually legalized before a notary and notarized only the separation of joint property. There is also an underhand marriage agreement which is warmekking because it is not only the separation of joint assets but also other agreements that are not included in the separation of joint assets. Legal and illegal agreement letters under the hands of the warmekking, according to mutual agreement and the witnesses. By making a marriage agreement, husband and wife can be open to each other and share whatever they want and want without having to harm either party. And with the making of this marriage agreement, it will provide a sense of security if one day their household is no longer harmonious, so that it can be used as a guide that has a legal basis and is legal in the eyes of the law.<sup>12</sup>

One example of a dispute in the household marriage is a husband who brings another woman into his household life, and asks his wife for permission to polygamy. Polygamy is a form of the appearance of a superior man's power construction with the aim of controlling women, which can increase the burden on the wife so that in reality polygamy is a form of oppression of a husband against his wife who does not take sides with humanity and justice.<sup>13</sup> And if a wife does not approve of her husband to have polygamy then a husband is usually reckless and will continue his relationship with other women or in other words commit adultery or have an affair. Discussing about infidelity where a wife is oppressed by her husband's treatment, it is very important a marriage agreement in domestic marriage, because it involves the rights of a wife that must be fulfilled by a husband. In the marriage agreement, the rights of a wife will be protected, even the rights of the children who have been born. There are two marriage agreements that can now be notarized, namely marriage agreements made before marriage and marriage agreements made after marriage. However, if a marriage does not occur a marriage agreement, and a husband who has an affair or is about to commit polygamy, then a legitimate wife will be oppressed and get rights according to her rights as a wife and a natural mother. The rights that will be obtained are only the right to joint property which will be shared equally with the husband, and the right to be given a decent life by the husband. A wife will not be able to claim more of her rights if there is no marriage agreement in the household. The marriage agreement refers to aspects of the agreement that arise during the marriage. The marriage agreement after the decision of the Constitutional Court No. 69/PUU-XIII/2015 can be made before, during and during the marriage with a notarial deed and reported to the Implementing Agency or Technical Implementation Unit (UPT) of the Implementing Agency.<sup>14</sup>

The agreement according to Article 29 paragraph (4) of the Constitutional Court's Decision 69/2015 can be regarding marital property or other agreements, thus the parties can freely determine the contents of the marriage agreement including those that need to be considered, namely (Budiono/2017) if husband and wife make a marriage agreement throughout the marriage, while the agreement is declared valid from the time the marriage takes place, then there has been mixed assets. With a situation like that makes it difficult to divide the mixed treasure. It is recommended that since the marriage until the date of the marriage agreement

is made, it remains a mixed property and while since the marriage agreement there has been a separation of assets. If there are assets that are pledged to the bank,<sup>15</sup>

Things that must be considered in making a marriage agreement that is carried out after the marriage takes place include:

1. Regarding the marriage agreement made during the marriage, namely the marriage agreement must be made by a notary and ask for a decision from the Court;
2. Joint assets that are being used as objects of credit guarantees must be excluded from the agreement, or in other words, the objects of credit guarantees remain as joint assets that cannot be transferred or changed in status. This is a form of legal protection for third parties;
3. The marriage agreement made during the marriage includes assets obtained after the marriage agreement was made, does not include assets that existed before the marriage agreement was made;
4. The marriage agreement made during the marriage takes effect since the agreement was made, then the marriage agreement is not retroactive;
5. The model, form, format of the marriage agreement must pay attention to norms, ethics and good faith, this is due to legal protection so that there is legal certainty and justice for interested parties;
6. It must be noted that the period of marriage that is allowed to make a marriage agreement.

With the explanations above, it is very important if in a marriage, the marriage agreement after or before the marriage takes place must be understood by the parties. Because there is a strong legal basis and refers to justice as well as legal certainty, it is natural for husbands and wives to understand each other and understand what the meaning of the marriage agreement is. The rights received by a wife in the event of a marriage agreement are also clear and fair. What about the rights of the wife if in the marriage there is no or no marriage agreement, of course the rights of a wife who is a victim of her husband's infidelity is very unfair. Due to the absence of a marriage agreement that will protect the rights of the wife in a joint property separation agreement or other agreement.

## V. CONCLUSION AND SUGGESTION

### 1. Conclusion

a. Infidelity can be interpreted as cheating in love between a husband or wife, besides that infidelity is also closer to adultery between a woman and a man. The culture of infidelity is used as an event like a competition that must be won and maintained for its existence. Some of the reasons why husbands decide to have an affair, namely from economic factors, the absence of offspring and the incompatibility factor between the husband and wife.

b. The rights of a wife in the household are to be treated well by her husband, to be protected and protected, to be given physical and spiritual support, to be consulted properly in the event of a dispute. The existence of a marriage agreement will be born an agreement that comes from two people who promise each other to jointly carry out a written agreement.

### 2. Suggestion

a. In a marital relationship, husband and wife must hold the initial commitment since the marriage is legalized. The government is further reaffirming the Marriage Law to protect the parties who have been harmed materially and physically.

b. The marriage agreement should be applied to all couples who will get married or after marriage, so that the parties can protect each other or prevent bad things after the marriage takes place.

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