

## **Legal Protection for Children in Polygamous Families (Study in Siak Regency 2021-2024)**

**Ramai Yulis<sup>1</sup>**

<sup>1</sup>Law Study Program, Universitas Islam Riau, Indonesia.

\*Corresponding Email:  
ramai82@yahoo.co.id.

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### **ABSTRACT**

*Legal protection for children in polygamous families is a crucial aspect related to the fulfillment of children's rights, both from a positive and Islamic legal perspective. This study aims to analyze the implementation of legal protection for children in polygamous families in Siak Regency, identify obstacles that arise in its implementation, and formulate efforts to overcome them. The study uses a sociological legal research method with a descriptive approach, through direct observation and surveys with relevant parties, to obtain factual data regarding the conditions of children in polygamous families.*

*The research results show that polygamy in Siak Regency often occurs covertly, through unregistered marriages, extramarital affairs, or manipulation of administrative data, resulting in marital status lacking permanent legal force. This situation results in the failure to fulfill children's rights, including the right to custody, education, welfare, and legal protection. The dominant obstacles to the implementation of legal protection for children stem from family economic factors, the husband's inability to fairly provide for physical and spiritual needs, and weak harmony in relationships between family members. Furthermore, a lack of legal understanding and low public awareness are factors that worsen child protection in polygamous families.*

*Required efforts include enhancing the role of local governments and relevant institutions in oversight, providing legal education to the public, empowering families economically, and enforcing sanctions for violations of children's rights. Therefore, legal protection for children in polygamous families in Siak Regency needs to be strengthened to ensure optimal protection of children's rights.*

**Keywords:** children's rights; legal protection; polygamy

## **1. Introduction**

In everyday life, every person, as a legal subject protected by law, has various efforts and endeavors to fulfill their needs and various civil legal interests. Essentially, every legal subject has legal authority, however, not all legal subjects have the capacity to act as regulated by law.<sup>1</sup> Capacity to act is the ability to carry out legal acts with perfect legal consequences. Furthermore, regarding when legal capacity is obtained by each legal subject, this is also something that is eagerly awaited by each legal subject themselves, one of which is when each person is an adult and legally competent, there will be no obstacles for anyone who wishes to

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<sup>1</sup> Pasal 1329 KUHPerdata Menyatakan Bahwa Setiap Orang Adalah Cakap, Untuk Membuat Perikatan, Jika Ia Oleh Undang-Undang Tidak Dinyatakan Tak Cakap (Een Ieder Is Bevoegd Om Verbintenissen Aan Te Gaan, Indien Hij Daartoe Door de Wet Niet Ombekwaam Is Verklaard).

enter into marriage.

Marriage is a life partnership between a man and a woman that is formally confirmed by law, namely juridical and mostly also religious according to the purpose of husband and wife and law, and is carried out for life according to the institution of marriage. This has certainly become the will of Allah SWT, where humans as His creation are naturally created to form pairs, namely through marriage, the purpose of which is to form a household and have children who in essence have a desire to create a family that is harmonious, eternal, prosperous physically and spiritually and becomes a family that has peace.

According to Abu Zahrah, marriage is a contract that provides the benefit of validating the relationship between a man and a woman and helping each other between the two and confirming the rights and obligations of both.

Marriage is one of the acts prescribed in Islam. According to Article 1 of Law Number 1 of 1974, marriage is a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the belief in the Almighty God. Based on this understanding, marriage is not only a form of physical bond, but also a spiritual bond between husband and wife in a household life that is harmonious, peaceful and fostered with full love in accordance with the will of Allah SWT.

Regarding the legal basis for marriage, it can also be explained that marriage is essentially something that is commanded and recommended by Islamic law. Some of the statements of Allah and the hadiths of the Prophet Muhammad (peace be upon him) that relate to the legitimacy of marriage are:

"And if you are afraid that you will not be able to do justice to (the rights of) orphaned women (if you marry them, then marry (with) whomever you like from (other) women, two, three, or four. Then if you are worried that you will not be able to do justice (between your wives), then marry (with) just one. (Surat Al-Nisa' (4):3)".<sup>2</sup>

In essence, marriage aims to create a happy, eternal family, one that is prosperous both physically and spiritually, and peaceful within the family. Marriage always has legal consequences between husband and wife, which in turn impacts family relationships. This familial relationship is crucial, as it relates to the relationships between children and parents, heirs, guardianship, and guardianship.<sup>3</sup> Through marriage, a bond is created that contains rights and obligations, for example the obligation to live in the same place, and one must be loyal to the other.

Marriage also aims to organize the family as a subject for familiarizing itself with the experiences of the teachings of the family. The family's function is to be the

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<sup>2</sup> Zulkarnaini Umar, *Perkawinan Islam Dalam Membangun Keluarga Sakinah* (Yogyakarta: Aswaja Pressindo, 2015).

<sup>3</sup> Ali Afandi, *Hukum Waris, Hukum Keluarga, Hukum Pembuktian Menurut Kitab Undang-Undang Hukum Perdata (BW)* (Jakarta: PT. Bina Aksara, 1984).

most decisive implementer of education. Because the family is one of the informal educational institutions that parents and children first encounter, and all the treatment they receive and experience can form the basis for the personal growth or personality of the children themselves.

Islam mandates marriage for specific purposes, including:

- a) To continue the lineage
- b) To protect oneself from sinful acts
- c) To foster feelings of love and affection
- d) To honor the Sunnah of the Prophet
- e) To purify one's lineage.<sup>4</sup>

Marriage also inevitably produces offspring, namely children. Children are naturally the direct responsibility of their parents. Children have rights that must be fulfilled, especially by their parents. Under normal circumstances, meaning children who grow up in a complete family with both parents and are fully responsible for meeting their developmental needs, these rights will be met to some extent. However, there are many conditions that cause children's rights to go unfulfilled, such as parental negligence, parental abandonment, lack of parental knowledge and education, economic problems, and so on. Furthermore, family ills such as divorce, infidelity, adultery, and so on also play a significant role in creating child neglect. Therefore, responsibility for children as the nation's next generation is not solely the responsibility of parents but also the responsibility of the public, including the government.

One form of marriage frequently discussed in Muslim communities is polygamy. Polygamy itself is defined as a man marrying two or more women simultaneously. Marriage law regulates polygamy in practice.<sup>5</sup> Problems surrounding polygamy, both conceptually and in practice, persist today. Polygamy, or having more than one wife, is not a new issue. It has existed since ancient times, in human society across various communities around the world. Arabs practiced polygamy long before the arrival of Islam, as did other nations around the world at that time.<sup>6</sup>

The Indonesian government has implemented numerous child protection efforts through several laws. This is based on the principle that the state guarantees the welfare of every citizen, including children. Children are a trust and gift from God, endowed with the inherent dignity and worth of a complete human being. To ensure that every child can grow optimally physically, mentally, and socially, and develop noble character, it is necessary to implement protection measures and

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<sup>4</sup> Abd Thalib & Admiral, *Hukum Keluarga Dan Perikatan* (Pekanbaru: UIR Press, 2008).

<sup>5</sup> Rijal Imanullah, 'Poligami Dalam Hukum Islam Indonesia (Dalam Norlina, Analisis Terhadap Putusan Pengadilan Agama Samarinda Tentang Pembatalan Perkawinan Poligami (Studi Kasus Putusan Nomor 224/Pdt.G/1998/PA. Smd Dan Putusan Nomor 473/Pdt.G/1998/Pa.Smd' (IAIN Samarinda, 2003).

<sup>6</sup> Abdur Rahman I Doi, *Karakteristik Hukum Islam Dalam Perkawinan (Syari'ah 1)* (Jakarta: PT. Raja Grafindo Persada, 1996).

ensure the welfare of children by guaranteeing the fulfillment of their rights and providing non-discriminatory treatment. To this end, the Indonesian government has issued several policies on child protection, one of which is Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.<sup>7</sup>

Research reveals that polygamy can have a negative impact on children's mental development, especially for girls. The research conducted by Mudhofar Badri revealed the concerning finding that polygamous marriages place a heavy psychological burden on children. This creates feelings of inferiority and avoidance of socializing with peers, and girls often find it difficult to socialize with their male friends. This will impact the child's psychology, which in turn will affect their way of thinking later on. A further consequence of this psychological pressure on children is a weakened physical condition, making them susceptible to various diseases. Legal protection for children is clearly stated in the Qur'an and Hadith. Children have the right to live, grow, and develop. Islam forbids parents from killing their children for any reason. This protection for life, growth, and development is provided by Islam from the time they are in the womb. As stated in the Qur'an, Surah Al-Isra, verse 31:

"And do not kill your children for fear of poverty. We provide for them and for you. Indeed, killing them is a great sin."<sup>8</sup>

Normatively, marriage in Indonesia adheres to the principle of monogamy. This means that a man is only allowed to have one wife or vice versa. This is confirmed by Article 3 paragraph (1) of the Marriage Law which states "in principle, in a marriage, a man can only have one wife. A woman can only have one husband."

However, as stipulated in Article 4 of the Marriage Law, the court may grant permission or grant a husband's request to have more than one wife if the parties concerned so desire, provided the following conditions apply: First, the wife is unable to fulfill her duties as a wife; Second, the wife has a physical disability or incurable disease; and Third, the wife is unable to bear children.

It is also emphasized in the Circular Letter Number 13 of 2018 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2018 as a Guideline for the Implementation of Duties for the Court, namely in the Legal Formulation of the Religious Chamber Part (A) on "Family Law" in Point 8, it is emphasized that "Applications for confirmation of polygamous marriages based on unregistered marriages. Applications for confirmation of polygamous marriages based on unregistered marriages, even on the grounds of the interests of the children, must be declared unacceptable. To guarantee the interests of the children, an application for the origin of the children

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<sup>7</sup> Ratna Kusuma Wardani dan Idaul Hasanah, 'Pemenuhan Hak Anak Dalam Keluarga Poligami', *Jurnal Perempuan Dan Anak*, 1 (2015), 1-6.

<sup>8</sup> Dkk. Wahab Afif, *Mushaf Albantani: Al-Qur'an Dan Terjemahnya* (Banten: Pemprov Banten, 2013).

can be submitted."

However, this is not the case in Siak Regency, where polygamous marriages outside of legally valid polygamous marriages often occur, even without permission. In Siak Regency, there are quite a few problems that occur, especially for children from polygamous marriages, where children receive less attention and love from their parents, do not receive education and some experience frustration, some of which are abandoned and some even become street musicians and beggars because their fathers and/or mothers are polygamous. Meanwhile, if we pay attention to Article 1 paragraph (2) of Law Number 35 of 2014, it states that Child Protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and honor, and receive protection from violence and discrimination.

Furthermore, the responsibility for child care is the responsibility of all parties (government, society, and family). The family (parents) is the primary and primary party responsible for child care, as stipulated in Law No. 4 of 1979 concerning Child Welfare.

Therefore, starting from what should be implemented in protecting children from polygamous marriages which according to the law must be implemented in connection with the phenomena and realities that occur in the field, especially in the Siak Regency area as mentioned above, then to see further how the phenomenon of the development of polygamy cases and their practices in the Siak Regency jurisdiction from 2021 to the present, it is very potential and necessary to conduct a study on the problems of children resulting from polygamous families, especially in the Siak Regency jurisdiction, on this occasion the author conducted a legal research with the title LEGAL PROTECTION OF CHILDREN IN POLYGAMOUS FAMILIES (STUDY IN SIAK REGENCY 2021-2024).

## **2. Research Method**

In order to achieve research that has clear ideas in this research so that the main problems can be answered and can be accounted for, it is important to have a method as a guideline in a research. The research method used in this study is a sociological legal research method. Based on its type, it is conducted through observational research using a survey. This means that the author conducts research directly in the field to obtain information and data related to the research. Judging from its nature, this research is descriptive, providing a clear picture of what actually happens in a problem being studied, especially in terms of explaining how the Implementation of Legal Protection for Children in Polygamous Families as it should be according to applicable legal provisions. Survey research is research that takes samples from a population using questionnaires and interviews as the main data collection tools.<sup>9</sup>

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<sup>9</sup> Masri Singarimbun dan Sofian Effendi, *Metode Penelitian Survei* (Yogyakarta: LP3ES, 1987).

### 3. Result and Discussion

#### 3.1 Legal Protection for Children in Polygamous Families in Siak Regency

The ease with which polygamous marriages occur in several areas in Siak Regency is caused by various factors, including the husband's desire to use bachelor status in the certificate from the village, in this case there is administrative manipulation at the Village Office. This is caused by the ease of making an ID card in the Village without any clarity of marital status, as long as the person has a close family or is well acquainted with one of them.

So in this kind of situation, polygamous marriages are easily found to occur, where the polygamous marriages in question are not unregistered or unofficial, but are initiated by administrative manipulation, so that the goal of marriage is achieved, so that it is generally known but specifically kept secret by the husband who practices polygamy from his wife and family. Thus, it is emphasized that the motivation for polygamous marriages occurs in the Siak Regency area, which can be seen in the respondents' answers regarding the occurrence of polygamy due to the husband's desire with administrative manipulation of marital status.

**Tabel 3.1**

Respondents' Answers Regarding the occurrence of polygamy due to the husband's wishes through administrative manipulation of marital status.

No	Respondent's Answer	Number of Frequencies	percentage
1	Yes	7	70%
2	No	3	30%
<b>Amount</b>		<b>10</b>	<b>100%</b>

Source: Data Primer 2024

Based on the respondents' answers above, 70 (seventy) percent of respondents answered that polygamy was caused by the motivation or desire of husbands by manipulating the administration of marital status and the rest answered no, which can be concluded that the strong desire of husbands to practice polygamy is very dominant.

That in the case of polygamy, according to Ade Ahmad Hanif, S.H.I. (Head of the Siak Sri Indrapura Religious Court)<sup>10</sup> emphasized that if the first wife or second wife objects to polygamy, then she can annul the marriage, in accordance with Article 71 of the Compilation of Islamic Law, namely that a marriage can be annulled if a husband practices polygamy without permission from the religious court and permission from

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<sup>10</sup> Ketua Pengadilan Agama Siak Sri Indrapura, 'Wawancara Ketua Pengadilan Agama Siak Sri Indrapura, Juli 20204', 2024.

the first wife (administrative manipulation at the sub-district) to the Religious Court (PA).

### **Implementation of Legal Protection for Children in Polygamous Families**

In essence, children are the most beautiful gift from God and play an important role in a household. They are a comfort, complement the family, and a driving force for maturity. Children are also a mandate and a gift from God Almighty, which we must always protect as stated in Article 45 paragraph (1) of Law Number 16 of 2019, an amendment to Law Number 1 of 1974 concerning marriage, that both parents are obliged to care for and educate their children as well as possible.

Likewise, it is emphasized that the essence of child protection in Law Number 35 of 2014 concerning Child Protection as regulated in Article 13 paragraph 1, that "as long as a child is in the care of parents, guardians, or any other party responsible for care, has the right to receive protection from violence, abuse, neglect and discrimination and injustice." Child Protection is continuous protection. Child protection is a human right that is recognized and protected by law.

However, the implementation of legal protection for children in polygamous families is quite difficult in practice, because the purpose of legal protection for children has a fairly broad meaning, not only seen at the level of care and the period of care, but legal protection here is seen up to the level of education. Simply put, legal protection for children can be done by caring for and maintaining the welfare of children, not neglecting children,

#### **a. Caring for and Maintaining the Welfare of Children**

The following are respondents' answers regarding the implementation of legal protection for children in polygamous families.

**Tabel 3.1.2**

Implementation of legal protection Maintaining and Maintaining Children's Welfare

<b>No</b>	<b>Respondent's Answer</b>	<b>Frequency</b>	<b>Percentage</b>
1.	Caring for and Maintaining the Welfare of Children	6	60%
2.	Not caring for and safeguarding children's welfare	4	40%
<b>Amount</b>		10	100,00

Source: Data Primer Tahun 2024

#### **b. Do Not Neglect Children**

The following are respondents' answers regarding the implementation of legal

protection for children in polygamous families.

**Tabel 3.1.3**

Implementation of legal protection by not neglecting children in polygamous families

No	Respondent's Answer	Frequency	Percentage
1.	Do Not Neglect Children	3	30%
2.	Abandoned children	7	70%
<b>Amount</b>		10	100,00

Source: Data Primer Tahun 2024

From the respondents' answers above, 3 respondents (30%) explained that children from polygamous families were not neglected, while 7 other respondents (70%) explained that children in polygamous families were neglected. From the respondents' statements above, it shows that the majority of children are neglected due to polygamy. This is certainly true, especially if the polygamy is carried out based on the unilateral wishes of the husband or due to infidelity, so that as a result of the polygamy, the legal interests of the children are neglected.

It cannot be denied that there are many abandoned children living on the streets as beggars and buskers, because they experience physical and psychological violence due to polygamy (broken homes).

**c. Fulfilling the child's living needs**

Parents are obligated to provide for their children's education and needs. For the sake of their children's survival, they are obligated to protect, provide for, and fulfill all their physical and spiritual needs. So, what will happen to children in polygamous families? Are their needs and education optimally met? The following are respondents' responses regarding the fulfillment of education and the needs of children in polygamous families in Siak Sri Indrapura Regency.

**Tabel 3.1.3**

Implementation of legal protection for the fulfillment of education and living needs of children in polygamous families

No	Respondent's Answer	Frequency	Percentage
1.	Fulfilled	5	50%
2.	Not fulfilled	5	50%
<b>Amount</b>		10	100,00

Source: Data Primer Tahun 2024

From the respondents' answers above, 5 respondents (50%) explained that the living needs of children from polygamous families were met and 5 (50%) respondents explained

that the living needs of children from polygamous families were still not met. From the respondents' statements above, it shows that the fulfillment of children's living needs is still in a disturbed condition even though the polygamous marriage is carried out legally and or in other words because of an agreement between the parties. However, it does not guarantee the survival of children (children from the first wife) due to polygamy can be fulfilled as before, because the family kinship atmosphere has changed and will certainly have an impact on the survival of children.

### 3.2 Obstacles in the Implementation of Legal Protection for Children in Polygamous Families in Siak Regency

As is known, the development of children in a family is not the same, the lives of children, including their social, religious, economic and educational lives are not the same between one family and another.

Previous research has shown that family happiness is more likely to be achieved in a monogamous marriage than in a polygamous one. This is because in monogamy, a husband can devote all his emotions and attention to only one wife and their children. It is easier for him to fulfill the rights of his wife and children, including affection, attention, and material needs. The same is difficult in a polygamous marriage.<sup>11</sup>

There are various factors that hinder the implementation of legal protection for children in families, as is the case in Siak Regency, which can be described based on data from respondents in the research results, namely:

- a. Costs of living for children in polygamous marriages;
- b. Costs of educating children in polygamous marriages;
- c. Relationships between children in polygamous families (children from the first and second wives);
- d. Relationships between children and their parents.

#### **Inhibiting factors due to the cost of living for polygamous children**

Children's needs are a crucial factor in polygamous families. For the sake of their children's survival, parents are obligated to meet all their physical and spiritual needs. These needs naturally require financial resources, which must also be met.

However, the situation is different in polygamous families in Siak Regency. Based on survey results, the average income of polygamous husbands is actually below the average income of sufficient income, namely still in the range of income around Rp. 1,000,000 (one million rupiah) to Rp. 1,500,000 with the average job as casual laborers, construction workers.

As a result of the income of the parents (husband) of the polygamous family being below average, it causes insufficient living expenses for the children, which is clear, with an income that is still below sufficient, how can they possibly meet the needs due

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<sup>11</sup> Hanif Yusoh, 'Analisis Pelaksanaan Poligami Dan Implikasinya Terhadap Kehidupan Rumah Tangga (Studi Kasus Di Desa La'han, Kabupaten Yingo, Propinsi Narathiwat, Thailand Selatan)' (Pasca Sarjana Universitas Islam Negeri Alauddin Makassar, 2015).

to the addition of a new family member, namely a new wife and of course the addition of family members (children) from the second wife.

### **Inhibiting factors for the cost of educating polygamous children**

Fulfilling the cost of education for children in polygamous families will certainly be fraught with inadequacy, especially if the parents' (husband's) income is still below the average income standard. As previously explained, the income of polygamous husbands, as occurs in the Siak Regency area, is actually below the average income of sufficient, namely still in the range of income around Rp. 1,000,000 (one million rupiah) to Rp. 1,500,000 with the average job being a casual daily laborer, construction worker.

Some informants say that children who lack education are less likely to succeed, but children from polygamous families with sufficient education are more likely to succeed. This opinion is not entirely true, although not entirely wrong, as many other factors influence it, including the attitudes, beliefs, abilities, and tenacity of the children and their parents.

So in this case, in the author's (researcher's) opinion, the educational success of children from polygamous families is less than ideal due to several factors, including:

- a. Lack of funds from the parents due to the increased burden of their parents due to polygamy.
- b. The parents are simply less interested in educating their children.
- c. The parents pay little attention to their children's education because the family's circumstances are unstable. The father often quarrels with the mother and the father does not give enough attention to his children, even neglecting their children's education or perhaps showing favoritism toward other children.

### **3.3 Efforts to Address Obstacles Occurring in Polygamous Families in Siak Regency**

Based on data from the results of the respondent research, several efforts to overcome or overcome obstacles that occur in polygamous families can be analyzed, as can be seen in the respondent's answer table below.

Tabel 3.3.

Efforts to overcome obstacles that occur in polygamous families regarding child protection.

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<b>No</b>	<b>Prevention Efforts</b>	<b>Respondent's Answer (F)</b>	<b>Percentage</b>
1	Enforcing husband's leadership in the family	7	70%
2	Responsible for fulfilling the physical and spiritual needs	10	100%

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of children in the family			
3	Husband acts objectively and neutrally	8	80%
4	Be fair in giving love to children	10	100%
5	Husbands are able to maintain a balance of rights and obligations	7	70%

*Source: Data primer, tahun 2024*

From the table of respondents' answers above, 100% of their efforts were more dominant towards the husband's responsibility in being responsible for fulfilling the physical and spiritual needs of the child and 100% of the other efforts were that the husband was able to act fairly in giving affection to the child, and 80% of respondents answered that the husband must be able to act objectively and neutrally.

Therefore, it can be concluded that the husband is the key to family life, especially in dealing with family problems in polygamous marriages. Furthermore, when a family crisis occurs, particularly one involving the relationship between the wife and their children, the appropriate attitude for the husband is as follows:

- a. Upholding the husband's leadership in the family;
- b. The husband's objectivity and neutrality;
- c. The husband's justice;
- d. The husband's wise actions;
- e. The husband's affection;
- f. The husband's willingness to compromise for the sake of family harmony;
- g. The husband's responsibility to maintain a balance between rights and obligations.

#### **4. Conclusion**

Based on the description of the research results above, it can be concluded that:

- a. Incidents that occur to children due to polygamy include a lack of parental affection, neglect, and even a lack of education, and some experiencing frustration, largely due to their polygamous fathers. It is also undeniable that many children are neglected and live on the streets as beggars and buskers, experiencing physical and psychological abuse due to polygamy (broken homes).
- b. The implementation of legal protection for children resulting from polygamy is not sufficiently fulfilled because it is based on the ease of the polygamous marriage process because of something that can be justified according to law (legal) but behind it is motivated by the husband's hidden wishes (underhand marriage) and or infidelity, by means of manipulation of administrative data

and obscuring marital status so that such marriages do not have permanent legal force and are full of easy rifts in the household which leads to the insecurity of the existence of life and development of the children of the polygamous family itself which causes the fulfillment of children's legal rights not to be guaranteed.

- c. Obstacles in the implementation of legal protection for children in polygamous families in Siak Regency are caused by several factors, including: The hidden polygamous marriage factor (infidelity), the husband's income factor which is not sufficient for both physical and spiritual needs, so that children are poorly cared for or even neglected in terms of education and other needs, as well as the emergence of disharmony and harmony between children in polygamous families.

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