



Analysis Decision Court on Polygamy Studies Case Decision of the Religious Court of Kasongan, Indonesia

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Abstract

Marriage in Indonesia adheres to the Monogamy principle, which is explicitly explained in Article 3, paragraph (1) of Law No. 1 of 1974 concerning Marriage. However, Article 3 paragraph (2) explains that the Court can grant permission to a husband to have more than one wife if the parties concerned desire. Hence, the validity of the principle of Monogamy is not absolute. In the case that a husband will have more than one wife, the husband must fulfill the requirements in Article 4 and Article 5 of Law No. 1 of 1974. However, in Decision Number 3/PDT.G/PA.KSN, the Kasongan Religious Court Judge, granted permission for polygamy submitted by the Applicant, who fulfills condition Article 4. Purpose of study This is to analyze and understand the regulation on polygamy based on positive law in Indonesia and to analyze and understand the judge's considerations in granting polygamy based on decision No. 3/PDT.G/2020/PA.Ksn. This research is normative legal research with a statutory approach, cases, And conceptual approach. Results in study This explains that polygamy in positive law in Indonesia is permitted with conditions (alternative conditions and cumulative conditions); this is regulated in the provisions of Law Number 1 of 1974 concerning Marriage, PP Number 9 year 1975 about Implementation Constitution Number 1 1974 concerning Marriage, and Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law. In decision No. 3/PDT.G/2020/PA.Ksn, the judge granted the request for polygamy even though condition four was not met on the assumption that the provision was a form of discrimination against women, which should be viewed as a tool law preventive and corrective, which aims To regulate and limit the practice of polygamy so that it does not harm women.

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Introduction

Marriage is a physical and spiritual bond between a man and a woman or several women as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God. To create a happy and eternal household, there must be... harmony as well as harmony Which created by husband and wife. Understanding This No Far different from understanding Which defined in Islamic teachings, namely by having a strong contract between men and women in order to create peace and happiness in life family with covered full flavor love saying with method which is blessed by Allah SWT. Based on this definition, marriage philosophically contains several meanings that must also be considered by society, namely:

1. Bond born and inner

The physical and spiritual bond referred to is where marriage is an agreement based on the physical and spiritual side. This means that marriage cannot be seen as an agreement on generally or agreement which nature connection civil solely,

but on marriage must viewed more ^[1].

2. Between man and Women

This is an important formulation in carrying out marital relations, namely that it can only be carried out by men and women or in terms known as couples of different genders ^[2].

3. Happy family (household).

In understanding marriage on Chapter 1 Constitution Number 1 of 1974 concerning marriage contains the meaning of forming a household, namely forming a happy and eternal household ^[3].

4. Based on Lord Which Maha One

Marriage based on the Almighty God is key to connection marriage. This makes the difference between marriage and agreement, which is only civil. Marriage must be based on the Almighty God, meaning that it is a sacred act to the point that this act can be said to be an event in religion ^[4].

Marriage in Indonesia adheres to the principle of monogamy, namely that there is only one man with one wife and vice versa for a specific period; this is explained explicitly in Article 3 paragraph (1) of the Law—number 1 Year 1974 about Marriage. However, Article 3 paragraph (2) explains that the Court can permit a husband to have more than one wife if the parties concerned wish. So the application of the principle of Monogamy does not apply absolutely or, because of provision Paragraph (2) Chapter 3, Because A husband is permitted to have more than one wife by the court if supported by the wishes of the parties concerned.

The practice of polygamy is historically a humanitarian problem—no foreign since Formerly. Before Islam, polygamy was already known by Hindus, Israelites, Persians, Arabs, Romans, Babylonians, Tunisians, etc. The nation that allows polygamy is the Jews. In this case, the Prophet Moses did not prohibit polygamy or limit the number. Islamic law limits four wives in marriage (polygamy) and provides benefits to its people, namely correcting previous people based on QS. An-Nisa Verse 3. In addition, another reason Islam allows men to practice polygamy is as an alternative way to overcome the distribution need for sex or also cause others to calm their inner selves so that they do not fall into adultery. Therefore, polygamy aims to prevent the husband from falling into sin ^[5].

Al-Juzairi, in his book *Al-Fiqh 'ala Madzahid al-Arba'ah*, reveals the status of polygamy. The main polygamy is located on the issue of "fairness." If you are afraid to say it is fair, then it is enough to marry one wife. On the other hand, if you can uphold justice, then you are permitted to have more than one wife. Therefore, fair conditions are mandatory. However, in some issues, to maintain fairness, having more than one wife is mandu (sunnah) ^[6]. Based on this opinion, the central concept of polygamy is the ability to act fairly.

Polygamy is a problem. Even until the moment. This is often debated among the community; some people or groups

consider polygamy as a sunnah teaching that is almost obligatory to be implemented. If we look again at the central concept of polygamy, namely the embodiment of justice, then what needs to be considered return is the ability of somebody to do fair, not only lies in the individual's desire to follow the guidance sunnah solely, However in implementation must implement under the established guidelines so that the intention to act reasonably is not forced which will later bring harm. However, in its implementation, conflicts often occur, starting from the beginning of polygamy until the polygamy takes place.

If a husband has more than one wife, the husband must submit an application to the court in the local area of his residence, as per provision Chapter 4 paragraph (1). Further explained in Chapter 4 paragraph (2) that is agreement the only will be granted by the Court to a husband who will have more than one wife if: ^[7]

- a. Wife No can operate his obligation as a wife;
- b. Wife get disabled body or disease Which No can heal;
- c. Wife No can give birth to descendants.

Departing from the provisions of Article 4 paragraph (2) regarding the reasons for the Court's permission to grant polygamy, polygamy should only be permitted if the wife falls under one or all three of the reasons specified in Article 4 paragraph (2). However, in Decision Number. 3/PDT.G/PA.KSN Judge Court Religion Kasongan granted the polygamy application submitted by the Applicant, which was based on the respondent's statement that during the marriage took place, the respondent And applicant gifted a person child, Which where matter the aborted reason third.

In addition, based on the witness's statement, the Respondent and the Applicant have carried out their obligations, received their rights, and were physically and mentally healthy during the marriage. So, based on that statement, the reasons that must be met for the Court to grant a request for polygamy are not met.

However, in Decision Number 3/PDT.G/PA.KSN, Judge Kasongan still grants the applicant's application for polygamy.

From the background above, several main issues are examined in this research, namely: How to regulate polygamy in law in positive Indonesia? And how is polygamy considered by judges in granting it based on decision No.3/PDT.G/2020/PA.KSN?

Method Study

Types of research chosen in study This is Normative research, where law is conceptualized as what is written in laws and regulations (law in books), or law is conceptualized as rules or norms that are benchmarks for human behavior that are considered appropriate. The approach method used to collect and analyze writing materials in this study is the first, Statute approach; the legal approach is carried out by examining all laws and regulations that are related to the legal issue being handled. Second, Approach Case Case

¹ U mar Haris Sanjaya & Aunur Uterus Faqih, *Law Marriage Islam in Indonesia*, Gama Media, Yogyakarta, 2017, p. 10.

² Ibid

³ Amir Syarifudin, *Law Marriage Islam in Indonesia between Jurisprudence Munakhat and the Marriage Law*, Kencana, Jakarta, 2011, p. 40.

⁴ Omar Haris Sanjaya & Aunur Uterus Faqih, *Op. Cit*, p. 11.

⁵ Agus Herman, *Problematics Law Family Islam in Indonesia*, Eternal Nusantara Literacy, Malang, 2021, p. 181.

⁶ Ibid, p. 179.

⁷ Indonesia, *Constitution About Marriage, Act Number 1 Year 1974, LNRI Number 1 of 1974, Article 4 Paragraph (2)*.

Approach), The case approach is carried out by examining cases related to the issue being faced, which has become a decision with permanent legal force ^[8]. Approach Conceptual, the conceptual approach starts from the views and doctrines that develop in legal science ^[9].

Data used in the study: Secondary data includes official documents, books, research results in the form of reports, and so on ^[10]. The types of legal materials from this research are legal materials that are primary and binding and Secondary legal materials that explain material law primarily, like the design Constitution, results study, or legal expert opinion ^[11]. Secondary legal materials are books, magazines, scientific works, and other articles related to the object of this research, and tertiary legal materials are materials that provide guidance and explanations regarding primary legal materials and secondary legal materials. Law secondary, like Dictionary Big Language Indonesia and the Legal Dictionary ^[12].

Collecting legal materials or secondary data in normative research is carried out using a literature study of primary legal materials, secondary legal materials, tertiary legal materials, and/or non-legal materials. These legal materials can be searched for by reading, viewing, listening, or searching the Internet or website ^[13]. Then, the method used is qualitative, namely data analysis that does not use numbers but rather provides descriptions in words of what is found. Therefore, the result prioritizes the quality of the data, not the quantity ^[14]. After the data analysis, the result will be served descriptively by describing what is appropriate for the researched problem. The conclusion, which is an answer to the issues raised in this study, can then be withdrawn from the results.

Discussion

1. Polygamy regulations in law positive Indonesia

a. Regulation of polygamy based on law number 1 of 1974 concerning marriage

In Indonesia, marriage adheres to the principle of monogamy, as explained in Article 3, paragraph (1), Which states that a man's marriage can only have one wife and vice versa, for a wife is only allowed to have one husband. However, paragraph (2) of Article 3 of the Law Number 1 Year 1974 about Marriage mentions that a husband is permitted to marry more than one wife on condition that the parties desire it and this permission can be obtained through the Court. With the validity of paragraph (2), this causes the principle of monogamy, which is reflected in paragraph (1), applicable inadvertently absolute in Indonesia. Because in marriage, a man is required to have more than one wife if the party concerned so wishes with permission from the Court.

Law Number 1 of 1974 concerning Marriage provides the possibility for a husband to practice polygamy. Polygamy or marriage more from One person is a very important thing

feared by every woman. Implementation polygamy or marry more from One people without being restricted by regulations that strictly limit them, this will give rise to things Which nature negative in erecting a house the stairs. Usually connection with young wife And old wife become tense, temporary That children Which different Mother That leading to on opposition Which endanger continuity his life, this is usually happens if the father has died. So that things that are negative That does not happen in household people Which marry more from One person, then the law This marriage strictly limits the implementation of such marriages, by anticipating in advance the limitation of marriages between more than one person for certain reasons and conditions ^[15].

For the husband who want to polygamous required to request permission from the court. The request for permission is in the form of filing a case that is contentious/disputed ^[16]. For the court to grant the application for permission for polygamy, the submission of the case must fulfill the reasons as follows: set up in Chapter 4 Shrimp Law Number 1 Year 1974 concerning Marriage, namely:

- 1) Wife No can operate obligation as a wife;
- 2) Wife gets disabled body or disease Which No can be cured
- 3) Wife no can give birth to descendants

The reasons above are alternative, meaning that one of them is just one of three matters that made up the reason for bringing the application for polygamy to court. The applicant can support the reason his request to marry more than one person can be granted by the court ^[17]. The conditions that must filled by a husband Who will submit an application permission polygamous to the court, as regulated in Article 5, are:

- 1) Must There is agreement from wife;
- 2) There must be certainty that the husband is capable of guaranteeing the necessities of life for their wives and children;
- 3) Must there be a guarantee that husbands can be fair to their wives and children?

The requirements listed in Article 5 of Law Number 1 Year 1974 about Marriage are cumulative, meaning that the court of Religion can only give permission for polygamy to a husband if all of these requirements have been met. If one of the requirements is not met, the Religious Court must reject the application.

b. Regulation of polygamy based on republic of Indonesia government regulation Indonesia number 9-year 1975 about implementation of law number 1 of 1974 concerning marriage

In the provisions of this implementing regulation, Article 40

⁸ Amiruddin & Zainal Cool, Introduction Method Knowledge Law -Ed. Revision, 9th edition, Rajawali Press, Jakarta, 2016, p. 165.

⁹ Ibid, p. 166.

¹⁰ Ibid, p. 31.

¹¹ Ibid, p. 32.

¹² Ibid

¹³ Muhaimin, Method Study Law, Mataram University Press, Mataram-NTB, 2020, p. 65.

¹⁴ Salim HS And Erlies Septiana Nurbaini, Implementation Theory Law On Thesis and Dissertation Research, 6th ed., Rajawali Pers, Depok, 2022, p. 19.

¹⁵ Husni Wise, " Polygamy" in Draft Law Indonesia ", Journal Law Islamic Family, Vol.1, No. 2, 2021, p. 144.

¹⁶ HM Anshary, Op. Cit, p. 89

¹⁷ Ibid, p. 90

explains that a man intends to marry more than one wife so He must apply in a way written to the Court. In addition, the mechanism for applying for polygamy to the Religious Court after the application is submitted, the Court then examines:

a. Whether or not there are reasons that allow a husband to remarry, namely:

- 1) That wife No can operate his obligation as a wife;
- 2) That the wife has a physical disability or an incurable disease;
- 3) That wife No can give birth to descendants

The reasons above are also classified as alternative requirements as reflected in Article 4 of Law Number 1 of 1974 concerning Marriage, based on Article 41 letter (b), which states that the reasons (which are indicated in letter a) must be accompanied by the wife's consent, either in writing or verbally, if done verbally then the consent must be stated in front of the Court.

Furthermore, Article 41 letter (c) states that: the husband Which wants to do polygamy must declare ability in a way material To ensure the need for wives and children by showing:

- 1) Letter information about income husband Which is marked- handled by the treasurer of the place of work; or
- 2) Certificate tax income; or
- 3) Letter other information Which can accepted by the Court.

In addition, in Article 41, letter (d), the thing that needs to be prepared is a guarantee for the husband to be fair towards wives and children, with a statement or promise from the husband made in the prescribed form. If the requirements have been met, the court will examine the matters contained in Articles 40 and 41 of PP No. 9 of 1975; then the Court will... must call and hear the wife who is concerned. Article 43 PP no. 9 of 1975 states that if the Court thinks that there is sufficient reason for the applicant to have more than one wife a, the Court gives the verdict in the form of permission to marry more from a. Then confirmed return in Article 44 that employee logger forbidden for do registration of the marriage of a husband who will have more than one wife a person before there was permission Court like Which meant in Article 43.

Government Regulation Number 9 of 1975 concerning the Implementation Constitution Number 1 Year 1974 about More marriages emphasizes the mechanism that must be followed by parties who want to apply for polygamy. However, Basically, the provisions for allowing a husband to have more than one wife must fulfill alternative and cumulative requirements.

Based on Article 41 letter d, there is a guarantee that the husband will apply fair to wives and children with a statement or promise from the husband when referring to the provisions fair by John Stuart Mill, which focuses on draft justice in the protection of claims aimed at improving welfare and holding promises equally and equally interpreted as meaning that the position of people is equal (equal in height), equal in position or balanced in position. Regarding the guarantees mentioned in Article 41 of PP No. 9 of 1975, the concept of justice has been formulated so that the urgency related to very fair put

forward in this regulation. But literally, a statement containing commitment No can be made into a guarantee that's so tied to someone. Whether polygamy is related to conscience or internally, feelings are abstract and cannot be measured or added up, so measuring justice and its guaranteed implications will be challenging. Different if related to external sustenance concerning with need physique or material like food, clothing, and board Which where its nature tangible (can see) then in the external context, this justice will be easier to imply And guarantee it under provision Chapter 41 letter d PP No. 9 of 1975.

In PP No. 9 of 1975, especially in Articles 40 to 47, Chapter 44 has load-related permission for a husband who chooses to marry more from a along with mechanism and its conditions; this shows that there is legal certainty related to polygamy. Legal certainty emphasizes clarity of something in a rule, consistency, and prediction. The implementing regulations of Law No. 1 of 1974 concerning Marriage have explicitly provided certainty that a husband may only have more than one wife if he meets the specified requirements, reflecting the basic principle of legal certainty. In addition, the existence of a guarantee, as stated in Article 41 letter d, has provided legal certainty regarding the protection of the rights of women who will become wives and children who will be involved in polygamous marriage.

b. Regulation of polygamy based on compilation law Islam (KHI)

Polygamy is one of the most talked about and controversial issues in marriage. On the one hand, polygamy is rejected by various arguments, both normative and psychological, and is always associated with gender injustice. Even Western writers often claim that polygamy is proof that Islamic teachings in the field of marriage are very discriminatory to women. On the other, Polygamy is campaigned for because it is considered to have a firm normative basis and viewed as Wrong. One alternative for resolving the phenomena of cheating and prostitution^[18].

Polygamy is the marriage of a husband with more than one wife at the same time. In addition to the provisions of the legislation, the Compilation of Islamic Law (KHI) also regulates the issue of polygamy. This is regulated from Article 55 to Article 59 in chapter IX regarding having more than one wife. The contents are more details from on Which arranged in Constitution, that is:

A. Chapter 55, Which the terms and conditions containing:

1. Married more than One person on time simultaneously, limited to four wives.
2. The Condition main married more from a, the husband must be able to treat his wives and children fairly.
3. If the condition is main, which is called in paragraph (2), no one may be fulfilled, and the husband is prohibited from marrying one.

B. Article 56 Which the terms and conditions containing:

1. Husbands who wish to have more than one wife must obtain permission from the Religious Court.
2. Submission of application Permission meant on

¹⁸ Amiur Nuruddin And Azhari Akmal Dance, Law Civil Islam in Indonesia (Study Critical Development Law Islam from Jurisprudence, Act No. 1/74 until KHI), Kencana Prenada Media, Jakarta, 2012, p. 156.

paragraph (1) carried out according to the procedures as regulated in Chapter VIII of Government Regulation No. 9 of 1975.

3. Marriages entered into with a second, third or fourth wife without permission from the Religious Court have no legal force.

C. Article 57, Which the terms and conditions containing:

The Religious Court only permits a husband who will marry more than one wife if:

- a) wife No can operate obligation as wife;
- b) the wife suffers from a physical disability or an incapacitating disease healed;
- c) The wife cannot give birth to the descendants.

In this article, the urgent position of court permission in marriage polygamy is according to the law of Islam, where the law formally follows the material law, which also determines the validity of the marriage. A marriage that only meets the material requirements but does not fulfill the provisions formally considered marriage has never happened, which in fiqh terms is called "Your form, you Adam." In contrast, marriage has fulfilled formal legal provisions, but it turns out that it does not meet the provisions of the law material, so marriage can canceled ^[19].

D. Article 58 Which the terms and conditions containing:

1. Besides the main requirement that called on chapter 55 verses (2) to obtain permission court Religion, it must also fulfill the conditions stipulated in Article 5 of Law No. 1 of 1974, namely:
 - a. Existence of wife's consent;
 - b. There is certainty that the husband can guarantee the living needs of his wives and children.
2. With no reduced provision Chapter 41 letter b Government Regulation No. 9 of 1975, the consent of the wife or wives can be given in writing or verbally. Still, even if there is written permission, this consent is confirmed by the verbal consent of the wife at a Religious Court hearing.
3. The consent referred to in paragraph (1) letter a is not required for a husband if it is impossible for his wife or wives to ask for their permission and cannot be a party to the agreement or if there has been no news from his wife or wives for at least 2 years or for other reasons that need to be assessed by a Judge.

E. Chapter 59, the provisions of which contain

In the event that the wife does not want to give consent and the request for permission to marry more than one person is based on the above Wrong One reason, which is set in Article 55 paragraph (2) and 57, the Religious Court may decide on granting permission after examining and hearing the wife concerned at the Religious Court hearing. Against this decision, the wife or husband may file an appeal or cassation. It can be said that the provisions above do not only regulate polygamy in Indonesia but Also arrange reasons, conditions, and mechanisms that should be carried out when someone wants to practice polygamy.

These restrictions directly provide normative clarity both to individuals who wish to implement polygamy practices in marriage and to law enforcement agencies. However, it needs to be re-emphasized that legal certainty is not only a matter of quantity limits, but also includes the mechanisms and conditions that must be met to exercise these rights. In the context of the law in force in Indonesia, the provisions on limits amount to the wife are Also accompanied by administrative and judicial, such as permission from the religious court and the consent of the previous wife, as regulated in Law Number 1 of 1974 and the Compilation of Islamic Law. This emphasizes that although Islam provides the polygamy rights limited, the country gives restrictions additionally to guarantee the protection of rights and justice in the household.

Thus, the limitation to four wives is a concrete form of legal certainty in Islamic law. When combined with state regulations, it becomes a legal instrument that leads to social order and substantive justice.

The regulation of polygamy in the KHI is not an absolute form of permissibility but is limited by many strict conditions that a husband must meet. Matter This set up in Chapter 55 up to Article 59 of the KHI, which stipulates that a husband who wishes to have more than one wife must obtain permission from the religious court and fulfill terms and conditions specific, like existence reason Which legitimate, the ability to act reasonably, and the ability to guarantee the living needs of his wives and children. This provision aims to ensure that the practice of polygamy is not carried out arbitrarily and detrimentally by party Women but truly runs within the framework of justice and responsibility.

From the perspective of utility theory, the arrangement reflects effort law for maximize benefit social and minimize harm. With this regulation, the law provides protection to women and children from the practice of polygamy Which potential harm, at a time still give space for the implementation of Islamic teachings for those who are truly capable and fulfil condition. With thus, arrangement Polygamy in the KHI is a concrete form of the application of the principle of benefit in Islamic family law in Indonesia.

In addition to providing individual protection, the application of the theory of utility in arrangement This Also contribute on the creation of order social. When polygamy set up in a way firm and monitored by the judicial institution, the potential for conflict, injustice, and abuse of authority in the household can be reduced. This is in line with the purpose of law according to the theory of utility, namely to create balance and happiness in social life.

Based on the description above, it can be seen that polygamy in Indonesia is allowed only if there is fulfillment of certain conditions (alternative and cumulative conditions). These provisions are regulated in the provisions of positive Indonesian law, among others:

1. Constitution Number 1 Year 1974 about Marriage
2. Government Regulation Number 9 of 1974 concerning the implementation of Law Number 1 of 1974 concerning Marriage
3. Compilation of Laws Islam (KHI)
2. Judge's consideration in granting polygamy based on decision number 3/PDT.G/2020/PA.KSN

¹⁹ Reza Fitra Ardhan, " Polygamy" In Law, Islam And Law Positive Indonesia and Urgency Giving Permission Polygamy in Court Religion " Private Law, Vol. 3, No. 2 (July- December 2015), p. 101

Kasongan Religious Court Judge in Decision Number 3/PDT.G/2020/PA.KSN grants the application for polygamy to the Applicant. In giving testimony, the respondent or first wife revealed the fact that the permission for polygamy that she gave to the applicant was due to concerns regarding the adaptation behavior zina. In Provision Normative, Chapter 4 and Article 5, paragraph (1) of Law Number 1 of 1974 concerning Marriage explicitly regulates the conditions for permitting polygamy. In these provisions, it is stated that a husband may only have more than one wife if the wife cannot carry out her duties as a wife, suffers from a physical disability or incurable disease, or cannot bear children. Reasons "Afraid do adultery" No including in category reason legally valid to practice polygamy. Therefore, if the judge grants the application only on that basis, the decision does not meet material requirements and is contrary to applicable positive law.

Generally, law marriage in Indonesia aims to maintain order and justice in domestic life, not to legalize personal desires or concerns that are not necessarily based on fact law. Afraid will of adultery is a subjective form of concern that is personal and speculative, so it is not a base law, which firmly Sets aside the principle of monogamy, which the Marriage Law upholds. Suppose such personal concerns are used as the basis for polygamy. In that case, it will open loopholes for misuse of the law and make institution polygamy an escape from control of morals and law, not as a solution to household problems, the real one and objective.

Based on actions, The Prophet Muhammad Sallallahu 'alaihi wa sallam and the ijma' of his companions regarding this matter have noted in their ijtiḥad that polygamy can be included in five Sharia law as in marriage, namely obligatory, forbidden, recommended, makruh and permissible, and it depends on the conditions underlying polygamy and the reasons behind it ^[20].

Islam legalizes polygamy not to fulfill lust but for the greater good. Even according to some scholars, the original law of marriage is polygamy, except for those who fear injustice, then it is permissible to marry one woman. They argue with the word of Allah in Surah An-Nisa verse 3.

Additionally, based on the formulation of facts and the written permission from the applicant's first wife to practice polygamy, the statement was also made in court. Furthermore, the applicant earns an average of Rp. 30 to 34 million per month from a business as a grocery trader, which is considered sufficient to support himself and his two wives. Moreover, the applicant must also provide a written statement of commitment and willingness to act reasonably and state this orally before the trial, as witnessed by the respondent and the prospective wife. Therefore, the judge believes that the applicant's request to remarry meets the requirements outlined in Chapter 5, paragraph (1) of Law Number 1 of 1974 concerning Marriage.

A polygamy application granted by the court can be considered valid and proper if the conditions in Article 5 paragraph (1) of Law Number 1 of 1974 concerning Marriage have been cumulatively fulfilled. This article states that a husband who wants to marry more than One must to obtain permission from the court and fulfill several requirements, such as the consent of the wife, the guarantee that the husband can guarantee the necessities of life for his wife and children,

and the existence of a legitimate reason, for example, the wife is unable to carry out her obligations as a wife, suffers from a physical disability or incurable disease, or is unable to bear children. In the context of law and justice, if all of these requirements have been fulfilled, then there is no legal reason for the court to reject a polygamy application because the fulfillment of these cumulative requirements shows that the application was made in an orderly manner, did not harm the rights of the first wife, and accommodated interest all party in a way fair. Again, In Indonesia's positive legal system, the law has provided space limited to the practice of polygamy as a form exception to principle monogamy so that when an exception is executed according to rule play, Which strict, including verification condition cumulative by the court, then granting a request for polygamy is a manifestation of the principle of substantive justice.

Condition polygamous in law positive in Indonesia contained in Chapter 4 Constitution Number 1 Year 1974, Also referred to as alternative conditions, where one of these conditions is sufficient for the court to grant the application for polygamy submitted by the applicant. These conditions include:

- 1) Wife No can operate obligation as a wife;
- 2) Wife get disabled body or disease Which No can be cured;
- 3) Wife No can give birth to descendants.

Law Number 1 of 1974 mandates the court only to grant permission if the alternative conditions are met. In general grammar, meaning says only refers to the only meaning or nothing more than; it indicates a limitation or exception or states that something is the only one. So, in granting polygamy based on Chapter 4, the Court must see the existence of these three conditions; if even one is not met, then the Court should reject the application.

However, in this decision, the Judge of the Kasongan Religious Court stated that Article 4 of Law Number 1 of 1974 concerning Marriage is psychologically and sociologically not in line with the principle of upholding human dignity, especially women, because if observed, Article 4 makes the wife the object of the problem and gives a discriminatory impression. Need under review return that arrangement about polygamy in Article 4 of Law Number 1 of 1974 states that a husband can have more than one wife if he meets certain conditions, such as the wife's inability to carry out her obligations, the wife suffers from a serious illness or is unable to bear children. Although the wording seems to place women as the center of reason for permission polygamy, matter This cannot be directly interpreted as a form of discrimination. On the contrary, this provision is a form of legal protection and restriction. to practice polygamy, which is Formerly free without clear regulations.

Argumentation in the context of the urgency of implementation Article 4 paragraph (2) is as follows:

- 1) Polygamy is not given as an absolute right for men but is equipped with strict administrative and legal prerequisites, including permission from the court and agreement from the previous wife. This provision reflects the existence of state control over the practice of polygamy so that it is not misused and shows that the position of women is still taken into account and

²⁰ Muhammad Nurul Fahmi, et. all, " Procedures and Conditions for Polygamy in Indonesia Perspective Maqasid Sharia h", Al-Majaalis: Journal felt Islamic, Vol. 11, No. 2, 2 May 2024, p. 273.

protected.

- 2) The wife is not positioned as a passive object but rather as a legal subject who has the right to give or refuse agreement on plan polygamy. This is reflected in Article 5 of Law No. 1 of 1974, which states that polygamy can only be carried out if the wife gives consent and the court considers that the husband is able to act fairly. This shows that women have a power bid law that is formally recognized.
- 3) In practice, the court has the authority to objectively assess whether the reasons for polygamy are legitimate and do not deviate from the principles of justice. Thus, the existence of the court as a supervisor precisely becomes a form of structural protection of women's rights.
- 4) If viewed from the approach of substantive justice theory, this regulation can be considered as an attempt by the state to achieving a balance of rights and obligations in the household, not merely normalizing the subordination of women. This provision actually ensures that polygamy can only be carried out in conditions that are truly needed, with strict conditions that uphold the values of humanity and justice.
- 5) This arrangement aligns with the principle of non-discrimination in international law, especially listed in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Indonesia has also ratified through Constitution Number 7 the Year 1984. Although CEDAW promotes monogamy as the ideal form, Indonesia, in its socio-religious context, does not immediately prohibit polygamy but instead regulates it with the principles of caution and justice so that women's rights remain protected in this practice.
- 6) In a sociological and historical context, the practice of polygamy existed long before the enactment of Law No. 1 of 1974. The regulation in Article 4 is a progressive effort by the state to legally limit this practice so that it does not be misused by party men without considering the conditions and feelings of women. This indicates that the goal is primarily not to demean women but to build a legal protection system against potential losses that women may experience in the practice of polygamy.
- 7) Women have the legal right to refuse polygamy, including through agreement marriage, as set up in Article 29 of Law No. 1 of 1974. In this agreement, women can stipulate a ban on polygamy against their husbands. This shows that Indonesian law still provides legal autonomy for women to determine the fate of their household.

Therefore, the view that Article 4 paragraph (2) of Law No. 1 of 1974 is discriminatory against women is incorrect. Instead, this article should be seen as a preventive legal tool. And corrective, which aims to arrange and limit the practice of polygamy so as not to harm women. In this case, women are not made objects but are given a position as legal subjects who have the right to agree, reject, and even take legal action if they feel aggrieved. Within this framework, the regulation reflects normative justice and substantive justice, which aligns with the principles of progressive law and protection of human rights and also benefits the community or individuals concerned.

In addition, in the decision, there is a statement that the second wife will not interfere with the joint property obtained during the first wife's marriage with the applicant. This is in line with the context of marriage law in Indonesia, especially set up in Chapter 65, paragraph (1) letter b Law Number 1 Year 1974 about Marriage, status treasure together Husband and wife remain an essential part that must be considered when a person husband want to do polygamy. Treasure together or Gono-gini is property acquired during the marriage, regardless of who seeks it or in whose name the property is registered. If a husband wishes to remarry, he must obtain permission from the religious court (for Muslims), with certain conditions, including the consent of the first wife and the husband's ability in terms of justice and economy. In this polygamy application, the court will also consider the protection rights of the wife First, including certainty of joint property. If polygamy is permitted, the joint property from the first marriage remains the joint property of the husband and the first wife and Not in a way automatically shared or given to the second wife. The second wife will only share the joint property from her marriage with her husband after the marriage is legally valid.

Therefore, it is essential for a husband who wants to practice polygamy to separate his assets or make clear records. To treasures owned previously used to avoid legal conflicts in the future. In addition, to protect the rights of the first wife, the court, in this case, considers aspects of economic justice, including the potential financial impact on the first wife and children from previous marriages. Therefore, the polygamy process in Indonesian law does not only concern the emotional consent of the first wife but also includes legal protection of joint property that has been formed during the marriage.

In terms of providing legal certainty, Beccaria provides arguments related to the Theory of Legal Certainty, which positions the judiciary or judge just as a funnel Constitution, meaning justice or judge only follows What has been stated in law (statutes). Judges, as law enforcers and justices, must submit to and obey the law's mandate because the law is the highest written source of law in the Indonesian positive legal system after the 1945 Constitution. The law's mandate binds judges as the main guideline in examining, trying, and cutting off a case. Matter This is confirmed in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Power the Court, stating, "Judges are obliged to explore, follow, and understand the legal values and sense of justice that exist in society." However, exploring the law must remain within the applicable legal framework, not acting arbitrarily or exceeding the normative limits set by law. In other words, the freedom of judges is a responsible freedom within the framework of positive law.

If the judge does not follow What Which in a way firm stated in the law, it can cause fatal consequences, both from the legal aspect, justice, and legal certainty. First, the judge's decision can lose legal legitimacy because it is not based on a valid legal source. Second, this will create inconsistency and uncertainty legal uncertainty in public, in which the decision court becomes unpredictable and does not reflect legal certainty. Third, judges' disobedience to the law can also harm justice seekers (justifiable), especially if the deviant decision violates a person's legal rights. Fourth, in the context of the legal system, this deviation can also give rise to normative chaos, where the courts are no longer protectors of the law but source injustice. Even ethically and

professionally, judges who Do not comply with the Constitution are potentially subject to ethical and administrative sanctions because it is considered to abuse judicial power. Thus, the obedience of judges to mandate Constitution No must be normative and the primary foundation in maintaining legal integrity, substantive justice, and the trust of the public in institutional court. Judge Which No obedient on Constitution violates the law and betrays the constitutional mandate as the bearer of judicial power.

Based on the explanation above, it can be seen that in decision Number 3/Pdt.G/2021/PN.Ksn, the Judge granted the applicant's polygamy application, considering that the cumulative requirements stipulated in Article 5 of Law Number 1 of 1974 concerning Marriage had been fulfilled, but did not apply Article 4, which is also referred to as an alternative requirement, where at least one of these requirements must be fulfilled, this is because the Judge considers that Article 4 is a form of discrimination against women, which should be viewed as tool law preventive And corrective, Which aiming For arrange and limit the practice of polygamy so that does not harm women.

Conclusion

Polygamy regulation in law positive, which is applicable in Indonesia, declares allowed existence practice of polygamy with specific requirements; this is regulated in Article 3 to Article 5 of Law Number 1 of 1974 concerning Marriage, Article 40 until Article 45 Government Regulation Number 9 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, and the Compilation Law Islam Chapter 55 until Chapter 59 CHAPTER IX about being married to more than one person.

Considerations in granting polygamy in decision number 3/PDT.G/PA.KSN stated that the judge granted polygamy because the conditions had been fulfilled. Cumulative, in Chapter 5, Constitution No. 1 of 1974 concerning marriage, does not pay attention to Article 4 (condition alternative), which must fulfill a minimum of one. In addition, the court considered Article 4 a form of discrimination against women, which should be seen as preventive and corrective legal tools that aim to regulate and limit the practice of polygamy so that it does not harm women.

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