



Legal Certainty, Justice, and Maqasid al-Shari'ah in Polygamy Permits: A Case Study of Kediri Religious Court

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Abstract:

Polygamy has been a problem with pros and cons until now. This also includes permission for polygamy carried out by the



husband for reason of high sexual desire or hypersexuality, which causes the husband to take permission for polygamy to the Religious Court. This is what happened in the Kediri Regency Religious Court Number 3826/Pdt.G/2023/PA.Kab.Kdr. This article is library research, qualitative in nature, and uses a conceptual and statutory approach. The results of this research show that the practice of polygamy permit is in accordance with aspects of legal justice, legal certainty and legal benefit. As for *maqasid al-shari'ah*, if it is related to the case of polygamy permit, it can be understood that, First, legal texts and rules are not separate from their purpose. In Islam, there is a rule that polygamy is limited to four wives, the purpose of which is to worship Allah and form a harmonious family and must fulfill the positive legal aspects, namely permission from the first wife. Second, combine universal principles with arguments used for specific cases. In this case, even though there is a text about polygamy, it still requires permission from the first wife, and is connected to the principle of *hifz al-usrah* which contains *hifz al-din*, *hifz al-al-'aql*, *hifz al-nasl*, and *hifz al-mal*. All these principles emphasize the teachings of Islam *rahmatan lil 'alamin*. Third, achieving benefits and preventing harm. Therefore, polygamy must be accompanied by permission from the first wife to realize the benefits and the building of the family must prioritize the benefits aspect and avoid harm. Fourth, consider the final result. In this case, the implication of the husband's actions, if the impact is that the family structure is not harmonious, it is better for the husband to marry only one wife. So that the goals of marriage can be achieved. This is in accordance with the purposefulness feature conveyed by Jasser Auda.

Keywords:

Polygamy Permit, Justice, Certainty, Law, *Maqasid al-Shari'ah*.

Abstrak:

Poligami hingga sekarang menjadi hal yang pro dan kontra. Termasuk juga izin poligami yang dilakukan oleh suami dengan alasan hasrat sex yang tinggi atau hiperseksual sehingga menyebabkan suami izin poligami ke Pengadilan Agama. Hal ini sebagaimana terjadi di Pengadilan Agama Kabupaten Kediri

Nomor 3826/Pdt.G/2023/PA.Kab.Kdr. artikel ini merupakan penelitian kepustakaan, bersifat kualitatif, dan menggunakan pendekatan konseptual dan perundang-undangan. Hasil penelitian ini bahwa praktik izin poligami ini sudah sejalan dengan aspek keadilan hukum, kepastian hukum, dan kemanfaatan hukum. Adapun maqasid al-shari'ah apabila dihubungkan dengan kasus izin poligami dapat dipahami bahwa, Pertama, teks dan aturan hukum tidak terpisah dari tujuannya. Dalam Islam memang ada aturan poligami yang dibatasi hingga empat istri yang tujuannya beribadah kepada Allah dan membentuk keluarga harmonis dan harus memenuhi aspek hukum positif, yakni izin ke istri pertama. Kedua, mengombinasikan prinsip-prinsip universal dengan dalil yang digunakan untuk kasus tertentu. Dalam hal ini meskipun sudah ada teks tentang poligami, namun tetap harus izin kepada istri pertama, dan dihubungkan dengan prinsip hifz al-usrah yang memuat hifz al-din, hifz 'aql, hifz al-nasl, dan hifz al-mal. Semua prinsip ini menekankan ajaran Islam rahmatan lil 'alamin. Ketiga, mencapai kemaslahatan dan mencegah kemafsadatan. Maka poligami harus disertai izin dari istri pertama untuk mewujudkan masalah serta bangunan keluarga harus mengutamakan aspek masalah dan menghindari bahaya. Keempat, mempertimbangkan hasil akhir. Dalam hal ini implikasi dari perbuatan suami, apabila dampaknya justru bangunan keluarga tidak harmonis sebaiknya suami menikah dengan satu istri saja. Agar tujuan pernikahan dapat dicapai. Hal ini sesuai dengan fitur purposefulness yang disampaikan Jasser Auda.

Kata Kunci:

Izin Poligami, Keadilan, Kepastian, Hukum, Maqasid al-Shari'ah.

Introduction

The Marriage Law (UUP) stipulates that marriage adheres to the principle of monogamous marriage, which means that a husband only has one wife and a wife only has one husband. The meaning of this provision is that monogamous marriage is closer to justice and harmony. Even though the principle is monogamy, the rule of law in Indonesia does not mean that the door to polygamy is completely closed or prohibited. Polygamous marriages are still permitted, this is not only permissible in law but also in Islam. The permissibility of polygamy is not without terms and conditions, a person is still allowed to practice polygamy with strict conditions, among the conditions that allow someone to practice polygamy is when the wife cannot produce offspring, and the most important thing is justice for his wives when practicing polygamy. It is also regulated that in carrying out

polygamy, the husband must ask permission from his wife, along with approval from the Religious Court.

The rules regarding the permissibility of polygamy, in the Compilation of Islamic Law (KHI) also regulate the terms and conditions, in the KHI one of the conditions that must be met is that the husband is required to be able to act fairly, fair not only in terms of material sufficiency but also in terms of love and affection between all members of his family, and children from the polygamous marriage that is carried out. The strict requirements for polygamy are not only stated in the law, in Islam the requirements for polygamy are also quite strict, among them is that a husband who wants to practice polygamy should have sufficient assets, this is a guarantee that when he has more than one wife, his living needs can be met. In addition, the husband is also able to treat his first, second and subsequent wives in a manner that is good, fulfilling their needs fairly, both his rights and obligations as a husband, all of which must be given to his wives equally. Due to the strict conditions for polygamy, Islam advises that if one cannot be fair, it is better to have one wife. Formally, the requirements that must be fulfilled by a husband who wants to practice polygamy are that he must first obtain permission from the court.

Regarding permission for polygamy from the first wife, it is also necessary to pay attention to the wife's willingness and readiness to be polygamous with a second wife because polygamous marriage is not only a matter of sharing the fulfillment of biological desires but also concerns the issue of psychological readiness and sociological impacts. In addition, the wife's rights must also be protected so as not to cause injustice and misery for the wife when the application for permission for polygamy is actually granted by the Religious Court. A wife also has the right to obtain certainty regarding joint property with her husband. The wife's permission as part of the conditions for polygamy is an individual right that must be respected and fulfilled. A wife has the right to refuse or allow her husband to remarry another woman.

The distinction and novelty of this article with the previous article, first the article by Lia Noviana and Asep Awaludin entitled *Philosophical Basis of Various Polygynous Requirements: Comparative Study of Family Law's Philosophy in Asia and Africa*,

This study uses a comparative descriptive method to compare the provisions on polygamy in Indonesia, Morocco, Tunisia, Somalia, Türkiye, and Pakistan from the perspective of Islamic legal philosophy. The results of the study show that the categorization of polygamy regulations in modern Muslim countries consists of: absolute prohibition of polygamy, permissibility with strict conditions, permissibility with weak conditions, the obligation to seek court permission, and the criminalization of polygamy. There are two main elements that are the requirements for polygamy in modern Muslim countries, namely internal elements in the form of the conditions of the husband and wife and external elements in the form of the role of the court in granting permission for polygamy. Thus, the philosophical basis for these differences is more due to the diversity of schools of thought in each country which aims to safeguard the welfare of its people and renew Islamic family law which carries a contemporary spirit, especially the realization of equality and improving the position of women.

Second, the article by Said Amirulkamar, Iskandar, Fatimah Zuhrah, and M. Anzaikhan entitled *Administration Reagent of Aceh Family Law Qanun: Siri Marriage Motives Towards the Legality of Polygyny* which discusses the proposal of the polygamy qanun by the Aceh elite (executive and legislative) is aimed at the wider community because of the rampant phenomenon of secret marriage. Secret marriage is not prohibited in Aceh, even the administrative requirements are relaxed for ordinary people. This gap raises the question of whether the Acehnese elite proposed the polygamy qanun for the benefit of society or for subjective interests. This article is classified as field research with a qualitative approach. The methodology used is analytical descriptive research. The results of the study found that the key factor of the family law qanun in Aceh lies in the conditions in which the administrative requirements for polygamy are tightened outside the provisions of the Compilation of Islamic Law (KHI) and the requirements for unregistered marriage are relaxed based on the provisions of the KHI. The motive is the Acehnese elite's efforts to have their unregistered wives recognized (their legality) in Aceh's polygamy qanun. These findings can be input for family law studies to create more objective and independent regulations, especially in regions that have special autonomy rights.

Third, the article by Sumarkan, Ifa Mutitul Choiroh, and Basar Dikuraisyin entitled *Distinction of the Legal Trilogy on the Legalization of Polygamy in Madurese Society*, This study uses a qualitative approach in which data is taken from polygamy perpetrators, young clerics and the Pamekasan Regency DPRD as the formulator of the Draft Regional Regulation, as well as primary data. Two findings were produced, namely, first, the practice of polygamy in society is influenced by social structures, namely 1) genetic factors passed down from generation to generation, 2) attempts to save the fate of widows and their children, and 3) carried out for legal reasons. Second, the results of the analysis found 1) legally, the practice of polygamy in Pamekasan is in accordance with the provisions of Article 4 and 5 of Law No. 1 of 1974 concerning Marriage and Article 57 and 58 of KHI No. 1 of 1991; 2) sociologically, the practice of polygamy has entered the social structure space, its existence has an influence on creating social order; 3) the practice of polygamy aims to create *maslahah* and reject *mafsadat*. It is understandable that the three articles mentioned above have a distinction with the author's article, because this article discusses the permit for polygamy, an analysis of the decision of the Kediri Regency Religious Court Number 3826/Pdt.G/2023/PA.Kab.Kdr from the perspective of legal justice, legal certainty, legal benefits and *maqasid al-shari'ah*. The novelty in this article is because it discusses the permission for polygamy in the decision of the Religious Court of Kediri Regency with two theories, both positive law including legal justice, legal certainty, and legal benefit, then the theory of Islamic law in this case *maqasid al-shari'ah* so that a balanced analysis emerges. And the author's efforts to uphold the rules of law in Indonesia are balanced with the values of Islamic teachings contained in *maqasid al-shari'ah*.

Methods

This type of research is library research. This is research that attempts to conceptually understand existing theories. In relation to this research, in this case the author tries to trace the data on polygamy permits contained in the Religious Court Decision Number 3826/Pdt.G/2023/PA.Kab.Kdr. This research is qualitative research, namely research that reveals a certain phenomenon by describing the true reality, formed by words

based on relevant data collection and analysis techniques, not in the form of numbers and statistics. This type of research is deliberately used to provide a complete picture of the object being researched. This research uses a conceptual approach. In this case, the concept of permission for polygamy in the decision of the Religious Court Number 3826/Pdt.G/2023/PA.Kab.Kdr is analyzed with legal justice, legal certainty, legal benefits, and maqasid al-shari'ah.

Conceptual Approach, namely an approach based on arguments and doctrines that have developed in legal science. This approach is important because knowledge of the arguments/doctrines that develop in legal science can be a reference in constructing legal arguments when resolving the legal issues faced. Argumentation/doctrine will explain ideas by providing legal definitions and legal principles that are appropriate to the problem. In this case, the concept of permission for polygamy in the Religious Court Decision Number 3826/Pdt.G/2023/PA.Kab.Kdr. Furthermore, it is analyzed using theories in positive law including legal justice, legal certainty, and legal benefits. Then there is the theory in Islamic law, namely maqasid al-shari'ah. This article also uses the Statute Approach in this research, namely the approach model carried out by examining all laws and regulations relating to the problem (legal issue) being faced. This legislative approach is carried out, for example, by discussing the consistency/conformity between the Constitution and the Law, or between one Law and another Law, and so on. In this case, the decision of the Religious Court Number 3826/Pdt.G/2023/PA.Kab.Kdr contains the 1974 Marriage Law. The formulation of the problem in this article is to answer two questions, first, what is the content of the Religious Court Decision Number 3826/Pdt.G/2023/PA.Kab.Kdr. regarding polygamy permit? Second, how is the analysis of polygamy permits in the Religious Court Decision Number 3826/Pdt.G/2023/PA.Kab.Kdr. from the perspective of legal

Result and Discussion

Reevaluating Polygamy Permits: A Case Study of the Kediri Religious Court's Decision

The Religious Court of Kediri Regency, which examines and tries civil cases at first instance, has issued a verdict in the case of Polygamy Permit between: a 42 year old husband, Place, Date of Birth, Kediri 10-25-1982, Religion Islam, Self-Employed, High School Education, Address Kediri Regency, Based on a special power of attorney dated November 21, 2023, it has given power of attorney to Suprianto and Mujiono, both Advocates or Legal Consultants who reside in Setonopundung Hamlet, Ngadi Village, Mojo District, Kediri Regency. Hereinafter the husband is called the "Applicant", then the first wife, Age 37 years, Place and Date of Birth, Kediri 25-07-1986, Religion Islam, Occupation Housewife, Education Junior High School, Address Kediri Regency, hereinafter called the "Respondent", the Religious Court has read the case file and heard the statements of the applicant, respondent and witnesses.

The case in this decision is Considering, that the Applicant with his application letter dated December 6, 2023 which was then registered in the case register of the Kediri Regency Religious Court on December 6, 2023 Number 3826/Pdt.G/2023/PA.Kab.Kdr., with its amendments has submitted the following matters in essence: First, that on July 30, 2003, the Applicant and the Respondent held a marriage which was recorded by the Marriage Registrar of the Religious Affairs Office (KUA) of Kediri Regency as evidenced by Marriage Certificate Number: 260/44/VII/2003, dated July 31, 2003, issued by the KUA, Kediri Regency.

Second, that up to now the Petitioner's household with the Respondent has been going well, and they have even been

blessed with 2 children, the first child, aged 21 years and the second child, aged 12 years. Third, that the Applicant intends to remarry (polygamy) with a woman or second wife aged 31 years, (Kediri 03/03/1992), religion Islam, Occupation Taking Care of Household, Status Divorced, Address Kediri district. Fourth, that the Applicant's reason for remarrying is because the Applicant's wife is no longer able to provide husband and wife relations because the Applicant has a high sexual desire and the Applicant wants to help the Applicant's future wife who has divorced her husband. Fifth, that the Respondent has stated that he is willing and has no objection if the Applicant remarries a second wife. Sixth, that between the Applicant and his second wife there are no prohibitions or specific relationships that could prevent the validity of the marriage.

Seventh, That the Applicant has an average monthly income of Rp. 8,000,000,- (Eight Million Rupiah), and if this permit application is granted, the Applicant is able to fulfill the living needs of the Applicant's wives and children well; That the Petitioner is capable of acting fairly between the Petitioner's wives. Ninth, that during the marriage the Applicant and Respondent have acquired movable and immovable property as follows: A house measuring 6x10 m², located in Kediri Regency, a 2014 Grand Max pick-up car AG 9142 AH, priced at Rp. 60,000,000.- (sixty million rupiah), and a 2009 Mio motorcycle, AG 2644 AF, maroon in color, priced at Rp. 4,000,000 (four million rupiah).

Therefore, if this request for permission is granted, the Applicant requests that the assets be designated as joint assets (gono-gini) between the Applicant and the Respondent. Based on the reasons/arguments above, the Applicant requests that the Head of the Kediri Regency Religious Court cq the Panel of Judges immediately summon the parties in this case, then examine and try this case by issuing a verdict whose ruling reads as follows: Granting the Applicant's request; Determining, granting permission to the Applicant to remarry (polygamy)

with the Applicant's second prospective wife; Determining joint assets between the Applicant and the Respondent as per posita number 9; Charging legal costs; and Requesting the fairest decision.

The legal basis for consideration and the provisions in this decision consider that the intent and purpose of the Applicant's application is as explained above; Considering, that the Applicant in essence argues in his application, The Respondent was unable to carry out her duties as a wife, namely being unable to fulfill the Applicant's sexual needs, because of that the Applicant wants to remarry a woman, The Respondent has permitted it or does not object if the Applicant remarries the woman; Considering, that in the trial the Applicant has stated that he is willing to treat his wives fairly after the second marriage (polygamy); Considering that both parties have attempted to reach a settlement, both through the Panel of Judges while this case has not been decided and through mediation but have not been successful, therefore the settlement efforts as regulated in the Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2016 are declared to have been fulfilled.

Considering that the written evidence submitted by the Applicant has been prepared by an authorized official, stamped, and therefore can be used as evidence and has binding evidentiary value in this case; Considering, that based on evidence P.1 and P.2 it has been proven that this case is within the authority of the Kediri Regency Religious Court; Considering, that based on evidence P.3 and the statements of two witnesses, it must be proven that the Applicant and Respondent are bound by a legal marriage; Considering, that based on evidence P.4 and the statements of two witnesses, it has been proven that the applicant's prospective wife has had the status of a divorcee since 2012; Considering, that based on evidence P.5 and the statements of two witnesses, it has been proven that the Applicant has assets in the form of a house and

land as mentioned above.

Considering, that based on evidence P.6 and the statements of two witnesses it has been proven that the Applicant has an average monthly income of Rp. 8,000,000.00 to Rp. 10,000,000.00; Considering, that based on evidence P.7 it has been proven that the Applicant and Respondent have joint assets in the form of a 2014 Daihatsu brand goods car with license plate number AG 9142 AH; Considering, that based on evidence P.8 it has been proven that the Applicant and Respondent have joint assets in the form of a 2009 Yamaha Mio motorbike with license plate number AG 2644 AF; Considering, that in his response, the Respondent has acknowledged the Applicant's arguments, and stated that he has no objection to the Applicant remarrying his second prospective wife as mentioned above, while the acknowledgement according to the provisions of Article 174 HIR is perfect evidence; Considering that the witnesses presented by the Applicant before the trial are witnesses who are adults and have given statements based on what they know, therefore, in accordance with legal provisions, their statements can be used as evidence in this case.

Considering that based on the provisions of Article 4 paragraph (2) of Law No. 1 of 1974, the Court will only grant permission to a husband who will have more than one wife if: The wife cannot carry out her duties as a wife, the wife has a physical disability or an incurable disease or the wife cannot give birth to children. Considering that the provisions regulated in the above article are optional requirements, which means that if one of them has been fulfilled, it can be used as a reason for a husband to submit an application for permission for polygamy to the Religious Court; Considering, that because the arguments of the Applicant's application have been acknowledged by the Respondent and supported by the statements of two witnesses before the court under oath, the arguments of the Applicant's application have become fixed facts; Considering, that based on the above-mentioned fixed facts, the Panel concludes that the

Respondent has been proven unable to carry out her obligations as a wife, and therefore the Applicant's application has legal grounds, in accordance with the provisions of optional reasons, namely Article 4 paragraph (2) letter a of Law No. 1 of 1974 concerning Marriage.

Considering, that in addition to having to fulfill the optional reasons as mentioned above, then based on the provisions of Article 5 paragraph (1) of Law No. 1 of 1974 concerning Marriage, a husband in order to be able to submit an application for permission to remarry to the Court, must also fulfill the following requirements: there is agreement from the wife/wives, there is certainty that the husband is able to guarantee the living needs of the wives and their children, there is a guarantee that the husband will treat his wives and their children fairly; Considering, that the provisions of Article 5 paragraph (1) above are cumulative requirements which as a whole must be fulfilled by the Applicant as a reason for submitting an application for permission to remarry; Considering, that in the trial it was proven that the Respondent had agreed to the Applicant remarrying.

Considering, that the second cumulative condition is that there must be a guarantee that the Applicant is able to meet the living needs of his wives and children; Considering that sufficient can be symbolized by adequate material or wealth and income, then based on the Applicant's confession and written evidence and statements from two witnesses that the Applicant has an income in one month of between Rp. 8,000,000.00 to Rp. 10,000,000.00, then it has been proven that the Applicant is classified as someone who is able to support his wives and children; Considering, that in addition to the above conditions, it is also necessary to have a guarantee that the husband will treat his wives and their children fairly; Considering, that based on the evidence reaffirmed verbally in court, the Applicant stated his willingness to act fairly towards his wives; Considering, that

the Assembly needs to state the Word of Allah SWT in Surah An Nisa verse 3: Meaning "So marry two, three, four women you like, then if you are afraid that you will not be able to act fairly, then just marry one." Considering, that the panel of judges has conducted a local inspection on January 9, 2024 of the joint assets of the Applicant and Respondent at the residence of the Applicant and Respondent, as well as the location of the joint assets in the form of a house and land as in the case above, which in essence, as written in the posita of the Applicant's application, is in accordance with the existing reality.

Considering, that based on the provisions of Article 94 of the Compilation of Islamic Law, it must be determined that the assets in question are joint assets between the Applicant and the Respondent; Considering, that based on the considerations above, it must be stated that the Applicant's application has fulfilled the optional and cumulative requirements as stipulated in Articles 4 and 5 of Law No. 1 of 1974 concerning Marriage mentioned above; Considering, that based on the above considerations, the Applicant's application can be granted. Considering, that based on Article 89 of Law Number 7 of 1989 as amended twice, most recently by Law Number 50 of 2009, the court costs are borne by the Applicant; Paying attention to the applicable statutory provisions and Islamic law relating to this matter.

Then judge with the decree: Grant the Petitioner's request; Granting permission to the Applicant to remarry (Polygamy) with a woman; Determine as joint property between the Applicant and the Respondent; Charge the Applicant to pay the costs of this case amounting to Rp. 2,855,000,-(two million eight hundred and fifty five thousand rupiah). Thus, this decision was handed down on Thursday, January 11, 2023 AD, coinciding with the 29th of Jumadil Akhir 1445 Hijri, by Arudji, as the Chairperson of the Panel and Agus Suntono, and Toif, as Member Judges and was pronounced by the Chairperson of the Panel on that day in an open session for the

public assisted by Lailiya Rahmah, as the Substitute Clerk, in the presence of the Petitioner and the Respondent.

Legal Justice and Judicial Perspectives on Polygamy Permits

Decision of the Religious Court of Kediri Regency Number 3826/Pdt.G/2023/PA.Kab.Kdr. This decision essentially grants the request for permission for polygamy and determines the joint property of the husband and first wife. In this decision, the panel of judges has carried out processes that include constituting, qualifying and constituting. In its considerations, the panel has also considered all aspects carefully. So in the sub-discussion of this article, the decision is examined from a legal justice perspective. Justice is very broad in scope. In the case of polygamy permits, the aspect of justice can be seen when the parties receive their rights. Polygamy is a form of right. By regulating this issue in regulations that allow polygamous marriages, it can be said to be a right.

However, for this right to be valid, there are conditions that must be met. This means that if the conditions have been met, then polygamous marriage has become a full right. In this case, the Judge tries to provide distributive justice. That is something that is a person's right. This is in accordance with what Aristotle proposed about distributive justice. Where a person should be given his rights according to his achievements. In legal terms, achievement is what someone has done.

In the context of this polygamy permit, achievement is the condition of the parties, such as the applicant's ability in economic matters. Also, conditions that have been permitted by law to carry out polygamous marriages, such as the wife being sick or because the wife is unable to serve her husband. Also the wife's permission. This is an achievement. Such conditions must of course be proven as legal facts in court. In fact, in court, the respondent was unable to carry out her duties as a wife, namely, she was unable to fulfill the applicant's sexual needs, therefore the applicant wanted to remarry a woman, the respondent had

permitted it or did not object if the applicant remarried the woman. In case No. 3826/Pdt.G/2023/PA.Kab.Kdr. The condition or situation has been proven as a legal fact. So, the legal aspect that is trying to be fulfilled in terms of justice is the distribution of rights. The Panel of Judges through this decision can be said to have provided distributive justice to the parties.

Exploring Legal Certainty and Justice: Maqasid al-Shari'ah in Action

Decision of the Religious Court of Kediri Regency Number 3826/Pdt.G/2023/PA.Kab.Kdr. This decision essentially grants the request for permission for polygamy and determines the joint property of the husband and first wife. In this decision, the panel of judges has carried out processes that include constituting, qualifying and constituting. In its considerations, the panel has also considered all aspects carefully. Therefore, in the sub-discussion of this article, the decision is examined from a legal certainty perspective. This legal certainty is closely related to the Act or positive law. Legal certainty in decisions granting permission for polygamy lies in the legal protection of polygamous marriages themselves. Without a ruling granting permission, polygamous marriages cannot be carried out.

If it continues without permission, their marriage will not be recognized. This is as stated in the principles adopted in Law Number 1 of 1974. Where the principle of marriage is the principle of open monogamy. In Article 3 of Law No. 1 of 1974, it is stated that, "(1) In principle, a man can only have one wife. A woman can only have one husband. (2) The court may give permission to a husband to have more than one wife if the parties concerned wish. Legal certainty requires regulations that clearly govern a marriage. As in the article above, it describes the existence of the principle of open monogamy. Where basically marriage is monogamous.

However, under certain conditions, it is possible to marry more than one. This is a form of certainty in the principle of

marriage. From here, it can be seen that this regulation is not rigid with the principle of monogamy. However, moderate. Keeping open the possibility of marrying more than one wife. It's just that there are terms and conditions that must be met. This permission for polygamy is granted by the court based on an examination carried out on the application for polygamy submitted by the party wishing to practice polygamy. In this case, the court may reject or grant the application for permission for polygamy based on the examination carried out. In examining a polygamy permit, the Judge examines and considers whether the requirements are met or not.

Because to practice polygamy you have to fulfill certain conditions and requirements. If the party has fulfilled this, the Judge can grant the request for permission that has been submitted. If you don't comply, the judge will likely refuse. Then, legal certainty also lies in the recognition of polygamous marriages that are carried out. Article 2 of Law No. 1 of 1974 states that: "(1) A marriage is valid if it is carried out according to the laws of each religion and belief. (2) *Tiap-tiap perkawinan dicatat menurut peraturan perundang-undangan yang berlaku.*" Based on this article, a marriage is declared valid if the marriage is carried out according to the laws of each religion and belief. This means that the marriage is carried out according to the religious customs of both bride and groom.

Thus, both bride and groom must have the same religion, namely Islam. Therefore, a marriage between two people of different religions cannot be declared valid. Then the marriage must also be registered. This marriage registration is carried out based on applicable regulations. In line with this, in the Compilation of Islamic Law (KHI) Article 4 states that "A marriage is valid if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage." This article emphasizes the above concept, that a valid marriage must be carried out in an Islamic

manner and registered. From this description, it can be understood that a marriage is considered valid if it is carried out according to Islamic methods and registered.

Recognition of a polygamous marriage lies not only in the validity of the marriage but also in its registration. If a polygamous marriage is carried out without permission, it cannot be registered. Thus, the marriage cannot be declared valid. This will have an impact on the status of the husband and wife and also their rights. If a polygamous marriage is not registered, it means that the marriage is not recognized as a marriage. This means that their status is not recognized as husband and wife. This will result in losses for the wife because she cannot claim her rights as a wife. Because legally, she is not recognized as a wife. This certainty will also have an impact on children born in polygamous marriages. That is the recognition of children born from their marriage.

Because if their marriage is not recognized, then the children born will also not be recognized. Their children are not considered legitimate children. In fact, children have reciprocal rights and obligations towards their parents. For example, parents' obligations towards their children are to care for and educate them until they are adults or married. The child's obligation towards his parents is to respect and obey them. Then also take care of them when they are adults. Likewise in broader civil matters such as property issues. If a polygamous marriage is not registered because there is no permit, then these rights and obligations are not legally recognized.

Regarding children's rights, they also cannot be sued. Because legally, he is not recognized as a child. Legal certainty also has an impact on the wife's rights in marriage. Such as the rights to maintenance from the husband. Or also inheritance rights if the husband dies. Because if their marriage is carried out with permission, then their marriage is valid. But if there is no permission, their marriage is considered invalid. So that polygamous marriages like that are not recognized by the state.

This has an impact on the wife not being able to claim her rights as a wife. As a husband and wife, both have reciprocal rights and obligations. If polygamous marriages are not registered, these rights and obligations are not legally protected. This means that the mechanism for polygamous marriage seeks to provide legal certainty for the parties involved, especially the husband and wife.

In the decision of the Kediri Regency Religious Court Number 3826/Pdt.G/2023/PA.Kab.Kdr, it is explained that based on the fixed facts above, the Panel concluded that the Respondent was proven unable to carry out her obligations as a wife, and therefore the Applicant's request had legal grounds, in accordance with the provisions of optional reasons, namely Article 4 paragraph (2) letter a of Law No. 1 of 1974 concerning Marriage. That in addition to having to fulfill the optional reasons as mentioned above, then based on the provisions of Article 5 paragraph (1) of Law No. 1 of 1974 concerning Marriage, a husband must also fulfill the following requirements in order to submit an application for permission to remarry to the Court: there is agreement from the wife/wives, there is certainty that the husband is able to guarantee the living needs of the wives and their children, there is a guarantee that the husband will treat his wives and their children fairly. The provisions of Article 5 paragraph (1) above are cumulative requirements which must be fulfilled as a whole by the Applicant as a reason for submitting an application for permission to remarry.

Decision of the Religious Court of Kediri Regency Number 3826/Pdt.G/2023/PA.Kab.Kdr. This decision essentially grants the request for permission for polygamy and determines the joint property of the husband and first wife. In this decision, the panel of judges has carried out processes that include constituting, qualifying and constituting. In its considerations, the panel has also considered all aspects

carefully. Therefore, in the sub-discussion of this article, the decision is examined from a legal benefit perspective. In essence, the law must provide benefit. Likewise in this polygamy permit decision. The usefulness of a judge's decision lies in the utility value of the decision. That is, to what extent this decision is useful for the parties.

The use of the decision regarding polygamy permit for the parties is to ensure that polygamous marriages are carried out legally. This means that with permission for polygamy in the decision, the parties can carry out their marriage legally. The usefulness of the decision regarding granting permission for polygamy is important, because this decision is the key to the implementation of polygamous marriages. With the decision granting permission, the parties can carry out their polygamous marriage. Apart from justice and certainty, this benefit is an important aspect of law. Benefit can be interpreted as meaning that the existence of the state and law is solely for the sake of true benefit, namely how to create happiness for the people. This happiness should be felt by every individual in a nation. In other words, the goal of a state of law is to produce happiness for society. In other words, the purpose of law is to create happiness for its people. This is relevant to what is desired by the utilitarian school of law.

One of the utilitarian philosophers is Jeremy Bentham who is known as the father of legal utilitarianism. This principle of utility was put forward by Bentham in his work entitled *Introduction to the Principles of Morals and Legislation*. In this work, Bentham describes utility as the property of objects that produce pleasure, goodness, and happiness. Namely preventing damage, suffering, crime and unhappiness. From this, it appears that the decision on permitting polygamy is in accordance with these criteria. Thus, the legal aspects of the Judge's decision in granting permission for polygamy at the Kediri Regency Religious Court have been fulfilled.

Decision of the Religious Court of Kediri Regency

Number 3826/Pdt.G/2023/PA.Kab.Kdr. This decision essentially grants the request for permission for polygamy and determines the joint property of the husband and first wife. In this decision, the panel of judges has carried out processes that include constituting, qualifying and constituting. In its considerations, the panel has also considered all aspects carefully. So in the sub-discussion of this article the decision is examined with a review of *maqasid al-shari'ah*. *Maqasid al-shari'ah* or the goals and objectives of Islamic law are clear. This theme is important, but somewhat neglected in the *shari'ah*. Abd. Wahab Khallāf, an expert on *uṣūl fiqh*, considers that *shari'ah* texts cannot be understood correctly except by someone who knows the *maqasid al-shari'ah* (purpose of the law).

Regarding the permission for polygamy above, it can be understood that if a husband can be responsible to his wife and children as stated in the decision and does not act arbitrarily while still carrying out his obligations as a husband, then this is not a problem. However, it becomes a problem if the husband is unable to be fair, is arbitrary, and neglects his wife and children, especially in relation to aspects of protection or care and education. So it is important to emphasize the aspect of *hifz al-usrah* which in this case is in line with *hifz al-din* carrying out religious commands well and correctly, *hifz al-mal* manages the family's assets and uses them proportionally for the family, *hifz al-nasl* is maintaining children or descendants, then *hifz 'aql* is to maintain the psyche of the wife and children and to think and reflect on the actions carried out by the husband. In *maqasid al-shari'ah*, what is emphasized is: First, the text and legal rules are not separate from their objectives; second, combining universal principles with evidence used for specific cases; third, achieving benefits and preventing harm; and fourth, considering the final result. This is in accordance with what was conveyed by *Aḥmad al-Raysūnī*.

Al-Raysuni's opinion above actually emphasizes the

importance of the relationship between illat, axioms, and benefits as the objectives of law. This opinion is parallel to the principle put forward by al-Shāt.ībī in terms of the desire to bring out the face of Islamic law that is directed at public interest as the goal of the shari'ah. This way of thinking is in accordance with the rules of thinking with maqasid reasoning, as follows:

وضع الشرائع انما هو لمصالح العباد في العاجل و الاجل معا

"The determination of the laws of sharia is for the good of the servant, both in this world and in the hereafter".

الأوامر و النواهي من جهة اللفظ علي تساو في دلالة الاقتضاء
وانما الاختلاف بين ما هو امر وجوب او ندب و ما هو نهى
تحريم او كرهة لا تعلم من النصوص و ما حصل الفرق الا
باتباع المعاني و نظر في اى مرتبة تقع

"Commands and prohibitions from the textual side are the same in terms of the strength of their evidence, the difference between whether it is determined as obligatory or sunnah and between being forbidden or disliked cannot be known from the text, but from the meaning and analysis in terms of its benefits and to what degree it occurs."

Based on this rule, it can be understood that prohibitions and commands have similarities in terms of text. This is because both have the same strength of argument. If you want to determine the laws of wajib, sunnah, haram and makruh, it is not enough to just look at the text, but you need to understand the meaning and complete point of view. Apart from that, it is also reviewed from the aspect of the goodness that arises and its level. This should be done by someone who is an expert in this field.

للمجتهد ان ينظر فى الأسباب ومسبباتها

"The Mujtahid is obliged to analyze the causes and consequences of the law"

This rule provides an understanding that experts in the field of law (mujtahid) must view (analyze) the causes and effects of law as a whole. This aims to produce legal products that are acceptable to common sense and have a universal dimension. This last rule shows that the ijtiḥad process is not only focused on the axiom text, but also on the context of the event and on the consequences as an effort to find the benefits and disadvantages. Al-Raysuni's way of thinking and the maqasid logical principle, when connected to the case of permission for polygamy, can be understood that, firstly, the text and legal rules are not separate from their objectives.

In Islam, there is a rule that polygamy is limited to four wives, the purpose of which is to worship Allah and form a harmonious family and permission must be obtained from the first wife; Second, combining universal principles with arguments applied to specific cases. In this case, even though there is a text about polygamy, it still requires permission from the wife, and is linked to the principle of *hifz al-usrah* which contains *hifz al-din*, *hifz al-'aql*, *hifz al-nasl*, and *hifz al-mal*. All these principles emphasize the teachings of Islam *rahmatan lil 'alamin*. Third, achieving benefits and preventing harm. Therefore, polygamy must be accompanied by permission from the first wife to realize the *maslahah* and the family structure must uphold the *maslahah* aspect and avoid harm. Fourth, consider the final result. In this case, the implication of the husband's actions, if the impact is that the family structure is not harmonious, the husband should only marry one wife. So that the goals of marriage can be achieved.

Jasser Auda explains maqasid with a systems approach that contains aspects of purposefulness, goal-oriented and purposefulness which are common features in the proposed systems theories. Gharajedaghi, following Ackoff, distinguishes between goals and intentions. Gharajedaghi considers a system to be purposive (having the feature of intentionality) if: (1) the

system achieves the same results by different means in the same environment, and (2) it achieves different results in the same environment or in different environments. If this feature is connected with permission for polygamy, then this practice must create *maslahah* or harmonious family building, physical and spiritual prosperity, and be in line with religious law and positive law in Indonesia. However, if the goal of marriage is not realized, the husband should only marry one wife, because the main principle of marriage in Indonesia is monogamy.

Conclusion

The conclusion of this article about the permit for polygamy in the Decision of the Religious Court of Kediri Regency Number 3826/Pdt.G/2023/PA.Kab.Kdr. that the aspect of justice can be seen when the parties get their rights. Polygamy is a form of right. By regulating this issue in regulations that allow polygamous marriages, it can be said to be a right. However, for this right to be valid, there are conditions that must be met. This means that if the conditions have been met, then polygamous marriage has become a full right. In this case, the Judge tries to provide distributive justice. That is something that is a person's right. This is in accordance with what Aristotle proposed about distributive justice. Where a person should be given his rights according to his achievements. In legal terms, achievement is what someone has done. In the context of this polygamy permit, achievement is the condition of the parties, such as the applicant's ability in economic matters. Also, conditions that have been permitted by law to carry out polygamous marriages, such as the wife being sick or because the wife is unable to serve her husband. Also the wife's permission. This is an achievement.

In the decision of the Kediri Regency Religious Court Number 3826/Pdt.G/2023/PA.Kab.Kdr, it is explained that based on the above-mentioned facts, the Panel concluded that the Respondent was proven unable to carry out her obligations as a wife, and therefore the Applicant's request had legal grounds, in accordance with the provisions of optional reasons, namely Article 4 paragraph (2) letter a of Law No. 1 of 1974 concerning Marriage. That in addition to having to fulfill the optional reasons as mentioned above, then based on the

provisions of Article 5 paragraph (1) of Law No. 1 of 1974 concerning Marriage, a husband must also fulfill the following requirements in order to submit an application for permission to remarry to the Court: there is agreement from the wife/wives, there is certainty that the husband is able to guarantee the living needs of the wives and their children, there is a guarantee that the husband will treat his wives and their children fairly. Considering, that the provisions of Article 5 paragraph (1) above are cumulative requirements which as a whole must be fulfilled by the Applicant as a reason for submitting an application for permission to remarry. This is in line with legal certainty which has an impact on the practice of polygamous marriages and children produced in polygamous marriages. That is the recognition of children born from their marriage.

The usefulness of a judge's decision lies in the utility value of the decision. That is, to what extent this decision is useful for the parties. The use of the decision regarding polygamy permit for the parties is to implement polygamous marriages legally. This means that with permission for polygamy in the decision, the parties can carry out their marriage legally. Furthermore, if this maqasid logical principle is connected to the case of permission for polygamy, it can be understood that, first, the text and legal rules are not separate from their objectives. In Islam, there is a rule that polygamy is limited to four wives, the purpose of which is to worship Allah and form a harmonious family and permission must be obtained from the first wife as stated in positive law; Second, combining universal principles with arguments applied to specific cases. In this case, even though there is a text about polygamy, it still requires permission from the wife, and is linked to the principle of *hifz al-usrah* which contains *hifz al-din*, *hifz al-'aql*, *hifz al-nasl*, and *hifz al-mal*. All these principles emphasize the teachings of *Islam rahmatan lil 'alamin*. Third, achieving benefits and preventing harm. Therefore, polygamy must be accompanied by permission from the first wife to realize the benefits and the family structure must uphold the benefits aspect and avoid harm. Fourth, consider the final result. In this case, the implication of the husband's actions, if the impact is that the family structure is not harmonious, the husband should only marry one wife. So that the goals of marriage can

be achieved. This is in accordance with the purposefulness feature conveyed by Jasser Auda.

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