

Judges' Consideration Of Polygamy Permits From The Perspective Of Positive Law And Islamic Law

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Abstrak

Application for polygamy permit made at the Krui Religious Court level. One of the polygamy practices that occurs in society. This study aims to analyse the Panel of Judges of the Krui Religious Court in its legal considerations in deciding case Number 0251/Pdt/2016/PA.Kr concerning the granting of polygamy permits. This research method uses the judicial case study type, namely the application of normative Law to certain legal events that give rise to conflicts of interest. The results of this Judge's consideration are that the Applicant has met the facultative reasons according to the provisions of Article 4 paragraph (2) letter (a) in conjunction with Article 57 letter (a). And has met the cumulative requirements as stipulated in Article 5, paragraph (1) of Law Number 1 of 1974 concerning Marriage in conjunction with Article 55, paragraph (2) and Article 58 of the Compilation of Islamic Law. The purpose of this writing is to serve as study material for judges and legal experts, scholars and students. The results of the study show that positive Law and Islamic Law have differences in considering permission, but both have the same goal, namely, to achieve justice. Judges making their decisions are not only based on the Law but also on the provisions contained in Islamic Law, one of which is that the Panel of Judges relies on the word of Allah in QS Al-Nisa / 4: 3. The submission of polygamy on the grounds of avoiding adultery, then the Applicant considers polygamy as the right solution. The implication of this study is the importance of considering psychological and sociological aspects in dealing with sexual dysfunction in married couples. This study highlights the legal considerations and jurisprudence of judges in cases of polygamy and the integration of positive norms and Islamic law.

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1. Introduction

Polygamy is a complex and controversial issue in society, especially in the context of Law and religion. In some cases, polygamy can raise legal issues, including in relation to marriage licenses and women's rights. Judges have an important role in considering polygamy licenses in the judicial process.¹ In positive Law, judges' consideration of polygamy permits is based on applicable laws and regulations. However, in Islamic Law, the Judge's consideration of a polygamy license is based on Sharia principles derived from the Quran and Hadith.²

Humans are social creatures who are unable to live alone and will not be separated from the instinct of dependence between men and women. One way to bind the relationship between humans is through a sacred bond of Marriage, a physical and mental bond between a man and a woman who generally come from different environments and then bind themselves to achieve a goal, namely, an eternal and happy family.³ Marriage is a very important event and requires preparing everything, including physical, mental, and socio-economic aspects.⁴

Basically, the principle of Marriage is monogamy, but in practice, the choice of monogamy or polygamy is considered a partial issue. The choice of monogamy or polygamy is not something that is based on free choice. Still, it must always refer to the basic principles of Shariah, namely the realisation of justice that brings benefit and does not bring harm or damage. Polygamy is very controversial; some groups reject polygamy, but some are pro-polygamy. On the side that rejects polygamy, many relate that polygamy is an act of gender injustice. Some groups are pro-polygamy, many of which argue that polygamy is an effort to minimise infidelity and prostitution. Society tends to view the man as the main perpetrator because he is considered unable to control his feelings towards the opposite sex, so second, third and fourth marriages occur; this is what makes men cornered in community life because this is the cause, so many people still think that polygamists are not natural.⁵

¹ Dedi Supriyadi Mustofa, *Perbandingan Hukum Perkawinan Di Dunia Islam* (Bandung: Pustaka Al-Fikriis, 2019).

² Ali Imron Luthfiah, Luthfiah, Al-Farisyi, "Legalitas Poligami; Studi Atas Aturan Praktik Poligami Diberbagai Negara Islam:(Turki, Syiria, Somalia, Mesir, Tunisia Dan Indonesia).," *ASASI: Journal of Islamic Family Law* Vol. 2, no. 2 (2022): 196–213.

³ Rahmatiah, "Studi Kasus Perkawinan Di Bawah Umur," *Jurnal Al Daulah* Vol. 5, no. 1 (2016): 144–66, <https://ejournal.stikku.ac.id/index.php/jmc/article/download/198/133>.

⁴ Mardani, *Hukum Keluarga Islam Di Indonesia*, Cet. I (Jakarta: Kencana, 2018), 69.

⁵ Husein Muhammad, *Poligami: Sebuah Kajian Kritis Kontemporer Seorang Kia* (Yogyakarta: IRCiSoD, 2020), 28.

In general, there are only three reasons for polygamy that the Krui Religious Court can grant, as stipulated in Law No. 1 of 1974, Article 4, Paragraph (2), namely: The wife cannot fulfil her obligations as a wife. The wife gets a disability or disease that cannot be cured; the wife cannot give birth to offspring.⁶

This research was conducted for two reasons, namely. First, a person who can be polygamous must fulfil the conditions specified in Law No.1 of 1974 concerning Marriage and Islamic Law. Where the husband must obtain the consent of the wife or wives, be fair to the wives and their children, as well as be able to guarantee the needs of the wife and their children. And the rules of Islamic Law contained in the Compilation of Islamic Law state that having more than one wife at the same time is limited to four wives. Second, looking at the current phenomenon, someone who is polygamous no longer pays attention to the alternative reasons contained in the Marriage Law and Islamic Law; they are polygamous by following their lust without paying attention to the husband's reasons, so he is permitted to be polygamous.

The alternative reasons are a wife who cannot carry out her obligations as a wife, a wife who has a disability or an incurable disease, and a wife who cannot give birth. Therefore, the author is interested in examining the terms and conditions of polygamy, especially for the criteria of disability and illness in Law No.1 of 1974 concerning Marriage as a basis for polygamy. The reasons and criteria used by the Judge in deciding the polygamy permit case at the Krui Religious Court on the grounds of illness during sexual intercourse and only doing it once a month and the Respondent cannot, the Respondent applied for a polygamy permit at the Krui Religious Court.

This research is inseparable from the previous research literature that the author took from several journals and other studies; the following are the results of previous research, namely first, a journal written by Fitri Rafianti with the title "Granting Polygamy Permits by Religious Courts in Indonesia" explaining that in Islamic Law in Indonesia does not recognise the validity of polygamy carried out without the permission of the Religious Court. Polygamy Requirements Indonesian Marriage Legislation on Polygamy has tried to regulate that men who are truly economically capable of supporting and fulfilling all the needs (clothing, food, clothing) of the family (wives and children) and are able to be fair to their wives so that the wives and children of polygamous husbands are not wasted.⁷ The similarities of these two studies are that they both examine

⁶ Yaman Dermawansyah, "Analisis Kriteria Cacat Badan Dan Sakit Sebagai Alasan Poligami Dalam Undang-Undang No.1 Tahun 1974 Tentang Perkawinan Menurut Perspektif Hukum Islam," *Jurnal Tana Mana* 1, no. 1 (2020): 63–80.

⁷ Fitri Rafianti, "Pemberian Izin Poligami Oleh Pengadilan Agama Di Indonesia," *De Lega Lata : Journal Ilmu Hukum Umsu* Vol. 3, no. 2 (2018): 204–16, <https://doi.org/https://doi.org/10.30596/dll.v4i1.3167>.

polygamy permits in the Religious Courts using Islamic legal analysis. The difference is that the author's research examines polygamy permits because the wife is sick in the genitals, analysed using Islamic Law and positive Law, while Fitri Rafianti's research, Polygamy Permits by Religious Courts in Indonesia, with an analysis of Islamic Law.

Second, a journal written by Isqi Dzurriyyatus Sa'adah and Mohamad Sar'an with the title "Implementation of Polygamy Practices in Islamic Family Law: An Analysis of Tafsir An-Nisā Verse 3". Writing that polygamy must be returned to its original Law in accordance with the interpretation of an-Nisā verse 3, that, in fact, the most rational reason for the permissibility of polygamy is to save the dignity of women in the household by upholding the greatest possible justice that can be done within the limits of humanity. The similarity between these two studies is that they both examine polygamy permits, while the difference is that this study examines polygamy permits because the wife is sick in the genitals. In contrast, the research by Isqi Dzurriyyatus Sa'adah and Mohamad Sar'an examines the Practice of Polygamy in Islamic Family Law: An Analysis of Tafsir An-Nisā Verse 3.⁸

From the description above, the author formulates the problem in this study, namely, how the view of Islamic Law and positive Law on the consideration of the Krui Religious Court Judge in the polygamy permit case Number 251/PDT.G/2016/PA.KR because the wife is sick in the genitals during sexual intercourse? The purpose of the problem in this study is to obtain an in-depth understanding of the view of Islamic Law on polygamy permission by the Krui Religious Court because the wife is sick in the genitals during sexual intercourse.

In this case, the Applicant or husband filed a polygamy application in the Krui religious court on the grounds that his wife could not serve his sexual needs due to pain in the genitals, so he could not express his sexual desires. In a case like this, of course, there is a separate legal reasoning for the Panel of Judges of the Krui Religious Court to decide to grant and give the Applicant permission for polygamy. Based on this explanation, the author is interested in analysing the permit application case number 0251/Pdt.G/2016/PA.Kr because it is a unique case where the reasons for applying for a polygamy permit are not listed in positive Law, and Islamic Law does not apply.

2. Method

This type of research is normative legal research, namely research that examines document studies using secondary data, namely laws and regulations, court decisions, and

⁸ Isqi Dzurriyyatus and Mohamad Sar, "Implementasi Praktik Poligami Dalam Hukum Keluarga Islam : Analisis Terhadap Tafsir an- Nisā," *Al-Mawarid : Jurnal Syari'ah Dan Hukum* Vol. 6, no. 1 (2024), <https://doi.org/https://journal.uui.ac.id/jsyh/10.20885/mawarid.vol6.iss1.art5>.

legal theories and can be in the form of scholarly opinions.⁹ This research is a normative legal study to examine several decisions on the permissibility of polygamy because the wife is sick in her genitals. This research approach includes the type of judicial case study, namely the application of normative Law to certain legal events that cause conflicts of interest. However, it cannot be resolved, namely resolved through the court (judicial decision) at the Krui religious court with case number 0251/Pdt.G/2016/PA.Kr

3. Results and Discussion

a. Considerations of Judges using Law Number 1 of 1974 and the Compilation of Islamic Law in Deciding Polygamy Permit Cases

Marital Law, as contained in Law No. 1/1974 on Marriage and the Compilation of Islamic Law, recognises the permissibility of polygamy, although it is limited to four wives. These provisions are contained in Article 3, Article 4, and Article 5 of Law Number 1 of 1974 and Articles 55-59 of the Compilation of Islamic Law. A man can only have one wife, so polygamy or a husband wanting to have more than one wife is not allowed if desired by the parties concerned and the court has given permission. In Article 4, paragraph 2, it is explained that the alternative conditions that a petitioner must follow are that he must apply to the court in the area where he lives. Then, the court in question only permits a husband who more than one wife will have; the alternative conditions are:¹⁰ 1) The wife is unable to perform her duties as a wife. 2) The wife suffers from an incurable disability or disease. 3) The wife is unable to bear offspring.

Suppose the Religious Court has received an application for a polygamy license. In that case, the religious court examines it based on Article 57 of the Compilation of Islamic Law, which is regulated in Article 41 of the 1975 Government Regulation:¹¹ 1) There are grounds to allow a husband to remarry with their new partner, whether. 2) The presence or absence of consent from the wife, either oral or written consent; if the consent is oral, the consent must be pronounced before a court session. 3) The presence or absence of the husband's ability to guarantee the living needs of the wives and children. 4) There is a guarantee that the husband will be fair to the wives and their children by a statement or promise from the husband made in the form prescribed for that purpose, whether.

⁹ Zulki Zulkifli. Noor, *Metodologi Penelitian Kualitatif Dan Kuantitatif: Petunjuk Praktis Untuk Penyusunan Skripsi, Tesis, Dan Disertasi: Tahun 2015* (Deepublish, 2020).

¹⁰ Akhmad Budi Cahyono I Gede Yudi Arsawan, "Keabsahan Dan Akibat Hukum Perkawinan Poligami Yang Tidak Memenuhi Syarat Alternatif (Analisis Penetapan Nomor 682/Pdt.P/2016/PN.DPS)," *Maleo Law Journal* Vol. 5, no. 2 (2021): 5–24.

¹¹ & Meldani Winata Fauzi, R., "Pelaksanaan Poligami Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *El-Ahli : Jurnal Hukum Keluarga Islam* Vol. 2, no. 1 (2021): 9–25, <https://doi.org/https://doi.org/10.56874/el-ahli.v2i1.477>.

Article 58 of the Compilation of Islamic Law reads:

1. In addition to the main requirements mentioned in Article 55 paragraph (2), to obtain a religious court permit, the requirements set out in Article 5 of Law No. 1/1974 must also be met.¹² 2) Consent of the wife 2) There is certainty that the husband can provide for the wife and their children. 3) Without prejudice to the provisions of Article 41(b) of Government Regulation No.9 of 1975, the consent of the wife or wives may be given in writing or orally. Still, even if there is written consent, this consent is confirmed by the wife's verbal consent at a session of the Religious Court. 4) The consent referred to in paragraph (1) letter a is not required for a husband if his wife or wives cannot be asked for their consent and cannot be a party to the agreement or if there is no news from his wife or wives for at least 2 years or for other reasons that need to be assessed by the Judge.

Furthermore, Article 59 also describes how the authority of the Religious Court is only to grant permission. So, for wives who do not want to give consent to their husbands to commit polygamy, the consent can be taken over by the Religious Court. The full text of the article is as follows:

In the event that the wife is unwilling to give consent, and the request for permission to have more than one wife is based on one of the reasons set out in Articles 55(2) and 57, the Religious Court may decide on the granting of permission after examining and hearing the wife concerned at a Religious Court trial, and against this decision, the wife or husband may file an appeal or cassation.

In principle, polygamy in the Marriage Law and the Compilation of Islamic Law allows for more than one wife, provided that the number of wives at the same time. However, it is limited to four people. The conditions that the husband must meet are to be fair to his wives and children in terms of nafkah and justice. In addition, the husband must first obtain permission from the religious court. If without permission from the religious court, the Marriage has no legal force.¹³

b. Social Basis for Judges' Consideration in the Permissibility of Polygamy

¹² Pasal 5 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.

¹³ N Harun, "Analisis Terhadap Putusan Hakim Pa Bitung Tentang Poligami Dengan Alasan Isteri Tidak Dapat Menjalankan Kewajiban," *I'tisham: Journal of Islamic Law and Economics* Vol. 2, no. 2 (2023): 140–52, <http://journal.iain-manado.ac.id/index.php/itisham/article/view/2597%0Ahttps://journal.iain-manado.ac.id/index.php/itisham/article/viewFile/2597/1537>.

In general, the Qur'an and hadith allow the practice of polygamy. From a social approach, several social conditions in society are the best solution for the permissibility of polygamy.¹⁴

1. Suppose the wife suffers from a dangerous illness such as paralysis, apoplexy or a contagious disease. In this case, it is better to have another wife to fulfil and serve the needs of the husband and children. Her presence will also help the sick wife.
2. Suppose the wife is proven to be infertile and, after medical examination, the experts are of the opinion that she cannot conceive. In that case, the husband should marry a second wife so that he may have offspring, because children are the jewel of life.
3. Suppose the wife is suffering from memory loss. In this case, the husband and children will suffer greatly.
4. If the wife is elderly and so weak, she is unable to fulfil her duties as a wife, maintain the household and serve her husband.
5. If the husband finds that his wife has a bad and incorrigible character, he should marry another wife as soon as possible.
6. If she has run away from her husband's house and is insubordinate, and he finds it painful to correct her.
7. In times of war, when men are killed, leaving behind a large number of women, polygamy can serve as the best solution.
8. In addition to the above, if a man feels that he cannot work without a second wife to fulfil his strong desires and he has sufficient wealth to support him, then he should take another wife.

The social basis for judges' consideration in allowing polygamy in Indonesia is the provisions of the Marriage Law (UU Perkawinan) and the Compilation of Islamic Law (KHI), which regulate the conditions and reasons for polygamy. In general, judges will consider whether the husband has a strong and legitimate reason to have more than one wife, whether the first wife gives consent, and whether the husband is able to provide for his wives and children.

The social basis is one of the Judge's considerations in the permissibility of polygamy, which varies depending on the social, cultural, and religious context of the community. Here are some of the social grounds that can influence judges' considerations, namely: 1) Religious values inherent in society can be influenced by Islamic values that

¹⁴ Anwar Hafidzi, "Prasyarat Poligami Dalam Kitab Fiqih Islamdan Kompilasi Hukum Islamperspektif Mashlahah Mursalah," *Al-Daulah : Jurnal Hukum Dan Perundangan Islam* Vol. 7, no. 22017 (2017), <https://doi.org/https://doi.org/10.15642/ad.2017.7.2.366-392>.

allow polygamy under certain conditions. 2) Social norms that exist in the community can influence the Judge's consideration, such as the community's view of polygamy as something normal or abnormal. 3) Culture can also influence judges' considerations, such as views on the roles of husbands and wives in the family. 4) Family is one of the social factors that can influence the Judge's decision on family balance and children's welfare in deciding the permissibility of polygamy.

In deciding, the Judge must consider all these factors and make a fair and wise decision based on the Law and the social values of the community. The Judge will also consider the social circumstances in the area where the case takes place, including prevailing norms and values. This rule is important to ensure that the Judge's decision is appropriate to the local social and cultural context. The Judge will strive to reach a decision that is best for all parties while considering the prevailing norms and values in the community to maintain the mental and psychological stability of the family, especially the children and the wife.

c. The Method of Using Mashlahah Mursalah in Polygamy

Actually, there are a lot of scholars who try to use the concept of *istishlahini*; among the scholars who are most lenient in using it is Imam Malik, quoted again by Wahbah Zuhaili in his development.¹⁵ The arguments for the use of *maslahah* in *mualamah* issues are: First, there is harmony between *mashallah*, which is used as the basis with *maqâsid shari'ah* and does not conflict with *qath'i* arguments in order to realise benefits and reject misfortunes. Second, it can be accepted by common sense and based on facts that occur. Third, the use of *mashallah* can eliminate general distress, which can bring benefits for others, and no one feels harmed in its practice. *Mashlahah* theory from Wahbah Zuhaili has a character that is general and does not harm the surrounding environment, is in reality, and there is no public engineering, does not conflict with the main points of the Qur'an and hadith, and does not cause harm to others or oneself.

Mashlahah Polygamy according to Wahbah Zuhaili According to Wahbah Az-Zuhaili in his book states that in outline, the requirements of polygamy are only two. First, justice for the wives or their children.¹⁶ Second, a husband must be able to provide for his

¹⁵ Hari Widiyanto, "Dasar Hukum Dan Pertimbangan Hakim Dalam Memutus Permohonan Izin Poligami Karena Istri Tidak Bisa Menjalankan Kewajiban (Analisis Putusan Hakim Pengadilan Agama PurworejoNo. 0090/Pdt.G/2018/PA.Pwr)," *Al Furqan: Jurnal Ilmu Al Quran Dan Tafsir* Vol. 3, no. 1 (2020).

¹⁶ Moch Yunus, "Kajian Tafsîr Munîr Karya Wahbah Az-Zuhayli.," *HUMANISTIKA: Jurnal Keislaman* Vol. 4, no. 2 (2018): 162–172.

family. However, in the next discussion, he explains the reasons for the permissibility of polygamy, including overcoming the problems of polygamy that can harm women.¹⁷

The requirements given and stipulated in the Compilation of Islamic Law and Law show that preserving the soul, property, and self is the most important part of polygamy. The Mashlahah to be achieved in KHI is in line with fiqh studies, which state that Marriage must have affection to create a happy family.

If a man is fair to his wives, and he is equal to all his children in education, learning, and maintenance. He sets limits for each wife that must not be violated; then, he contributes greatly to uprooting the seeds of slander and ugliness, as well as envy and hatred among his family members. If, after that, there is still jealousy experienced by the wife and children, then it is something ordinary which cannot be released, so the attitude of wisdom and justice of a husband can overcome all of that. The mashallah approach is also raised by the Compilation of Islamic Law to limit those who want polygamy in the name of Islamic Law, even though it is very clear that the arguments that reference the prerequisites for polygamy are lacking.

The main objective in the Compilation of Islamic Law and the Law on Polygamy is more directed towards the legality of a nation that is more dignified and respectful of women in the household in order to achieve goodness and benefit from the factors of property, soul, social community, and even the government.¹⁸ On the other hand, if it is not able to achieve all of that, then it is feared that it will cause harm, so it is recommended to have only one wife for the sake of benefit and to avoid the destruction of the household ark.

d. Consideration of Judges of the Krui District Court in Deciding Case Number: 251/Pdt/2016/PA.Regarding Polygamy Permit Due to Pain in the Genitals

1. Juridical Considerations

The Respondent's reasons for committing polygamy in the Krui religious court are as follows:

- a. The Respondent, as a wife, was unable to fulfil the biological needs of the Applicant because, after giving birth to their seventh child, every time they had intercourse, they always felt pain or stinging.

¹⁷ Sakinah Pokhrel, "Izin Poligami Perspektif Mashlahah Mursalah Wahbah Al-Zuhaili," *Syntax Idea* Vol. 6, no. 5 (2024): 37–48.

¹⁸ Pdt G P A Ska et al., "Analisis Putusan Hakim Tentang Izin Poligami Dengan Dalih Post-Partum Depression Dan Anxiety Disorder (Studi Putusan No .366/Pdt.G/2023/PA.Ska)," *Jurnal Darussalam; Jurnal Pendidikan, Komunikasi Dan Pemikiran Hukum Islam* XVI, no. 1 (2024): 98–116.

- b. The Respondent, as a wife, is less able to give attention and serve the Petitioner and the children optimally due to the Respondent's status as a civil servant who is more often in the office.
- c. Want to carry out one of the Sunnah worships.

The Judge's consideration of allowing polygamy has the following reasons:

- a. The Applicant can meet the living needs of the Applicant's wives and children because the Applicant works as a farmer and a BUMD employee, has an average monthly income of Rp 15,000,000.00 (fifteen million rupiah)
- b. That the Applicant can be fair both physically and mentally towards the Applicant's wives.
- c. That the Respondent is willing and has no objection if the Applicant remarries the Applicant's prospective second wife
- d. The prospective wife states that she is willing and has no objection to becoming the second wife of the Petitioner.
- e. The Petitioner's prospective second wife stated that she would not interfere with the existing property but that it would remain intact as joint property between the Petitioner and the Respondent.
- f. Parents and family of the Applicant's second wife-to-be are willing or have no objection if the Applicant marries the Applicant's second wife-to-be and are willing to be the marriage guardians.

The Judge's consideration in deciding this case has fulfilled the cumulative requirements for polygamy as required by Article 5 paragraph (1) of Law Number 1 of 1974 concerning Marriage junctis Article 41 letters (b), (c) and (d) of Government Regulation No. 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage as well as Article 55 paragraph (2) and article 58 paragraph (1) of the Compilation of Islamic Law. As a legal basis, the Judge used the argument of Surah An-Nisā verse (3), which has been explained previously.¹⁹

In the facts of the trial, it was found that the Judge's consideration only used the facts of the trial and did not use the psychological and medical facts of the Respondent, both the doctor's testimony and the testimony of medical experts who supported the claim, that the Respondent said he was still able to fulfil sexual needs within one month. The Respondent already had seven children with the Applicant. The Applicant did not seek medical treatment before deciding to become polygamous. In this case, the Judge did not see through these considerations that the Respondent could be said to be negligent in maintaining and caring for the Respondent.

¹⁹ & Kurniawan Ngatimin, *Analisis Yuridis Putusan Verstek Dalam Perkara Perceraian Di Pengadilan Agama Surakarta* (Surakarta: Tahta Media Group, 2021).

The Judge concluded that the Respondent approved of the Applicant's remarriage with his prospective second wife and that the Applicant was able to treat his wife and children fairly from the Applicant's testimony before the trial; from the legal facts above and in relation to the reasons for the Applicant's request, the confession of the Applicant's second wife, evidence, and the testimony of the Applicant's witnesses. As a result, the Judge considered that the Applicant had fulfilled the polygamy requirements contained in Law No.1 of 1974, Article 5, paragraph (1) and Article 41 letters (b), (c).

For the above reasons, the Judge should have rejected the Applicant's request for permission to engage in polygamy because, in general, the wife/respondent had fulfilled her responsibilities well and had been blessed with seven children; however, this was due to the birth of the seventh child, specifically a disorder of the genitals. The Judge granted the Respondent's request for permission to polygamy, taking into account the Respondent's request for irregularity and the wife's consent to the second Marriage. Therefore, the Judge considered that the Petitioner's intention could be considered to strengthen the Petitioner's arguments.

2. Non-juridical considerations

The Judge's decision was made through careful consideration and using several studies, such as the Mashlahah Mursalah approach, with consideration of First, justice for wives or their children. Second, a husband must be able to provide maintenance. However, in the next discussion, he describes the reasons for the permissibility of polygamy, including overcoming the problem of polygamy that can harm women.

The decision of the Surakarta Religious Court No. 251/Pdt.G/2016/PA. Kr contains non-juridical considerations: Considering the intent and purpose of the Applicant's application as described above is how the Judge responds to the case. This result is the argument supporting the Applicant's application to the Surakarta Court to file for polygamy. This decision is explained in the decision of the Surakarta Religious Court No. 251/Pdt.G/2016/PA.Kr. Examining the text of the Qur'an and fiqh is the basis for consideration in accordance with Islamic Law (syar'i). The Judge considered the following aspects of Islamic Law when deciding whether to grant a request for permission for polygamy in this case, namely, with maslahah mursalah and the QS. An-Nisā'/4:3.

The Applicant's rationale, the theoretical purpose of maqosidus shari'ah, is to uphold the principle of granting children's rights and legal status to raise their offspring. Second, adhering to Islamic Law validates romantic partnerships of individuals of different sexes. Negative things, including domestic violence, are believed to occur if the Applicant's application is rejected because the Applicant considers the service in bed to be below standard and could even result in adultery. The panel of judges considered that

the Applicant would feel more negative impacts if his application were rejected than if the Judge granted it. The Applicant requests that the public interest be the goal of the Judge's *ijtihad*.

Judges' considerations regarding permission from a positive legal perspective and Islamic Law can differ significantly, especially in the context of polygamy. Judges tend to adhere to applicable laws and regulations, such as Law Number 1 of 1974 concerning Marriage. The principle of monogamy is the main principle in marriage law in Indonesia, but polygamy is permitted if it meets certain conditions. Judges can use *ijtihad* to decide cases that are not clearly regulated in laws and regulations. Islamic Law gives judges the freedom to consider local interests and wisdom in deciding cases. Meanwhile, the compilation of Islamic Law is a reference for judges in deciding Marriage and family cases.

Decision Number: 251/Pdt/2016/PA.Kr shows that judges can grant a request for polygamy even though it does not meet the requirements of the Law if the husband is able to meet the requirements and pillars of Marriage and obtain permission from the first wife. Judges can also use the opinions of Islamic jurisprudence scholars to decide cases that are not regulated in laws and regulations. From the perspective of positive Law and Islamic Law, the Judge's consideration of permission must consider justice, legal certainty, and benefits for society. Judges must conduct careful analysis and use *ijtihad* to decide complex cases that are not clearly regulated in laws and regulations.

In this case, the Judge considered the basis of justice for the wife and children, then, with the consideration that the wife had given permission and stated that there was indeed pain in the genitals during sexual intercourse. The husband was willing and able to provide spiritual and spiritual sustenance for both of them. These considerations were used as the basis for the permission for polygamy to be given.

Analysis of the Judge's Considerations in Decision Number: 251/Pdt/2016/PA.Kr, namely the fulfilment of the cumulative requirements in Article 41 letters (b), (c), and (d) of Government Regulation No. 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage submitted by the Respondent in this case, namely obtaining permission from the wife, economic balance, and being able to treat fairly to his seven children and wife. In the compilation of Islamic Law, Article 55 paragraph (2) and Article 58 paragraph (1) of the Compilation of Islamic Law regulate polygamy and the husband's obligations, namely to treat fairly to all wives, to treat fairly to all wives, including in terms of the division of property, maintenance, and equal treatment.

The considerations of the Krui District Court judge in deciding on a case of permission for polygamy due to genital illness, in general, will focus on: (1) adequate

medical information: The Judge will require strong and convincing medical evidence that the illness has indeed caused the husband to be unable to carry out his obligations as a husband, especially regarding sexual relations. (2) the husband's ability to provide adequate support for his wife: The Judge will consider the husband's ability to provide adequate support for his first wife and prospective second wife, as well as his children because polygamy can increase the financial burden. (3) the consent of the first wife: Permission for polygamy usually requires the consent of the first wife unless there is a strong reason that causes the wife to be unable to give consent, such as illness or inability to communicate. (4) The principle of justice and legal certainty: The Judge must ensure that his decision is fair to all parties involved and provides legal certainty for the community.

In the context of polygamy, positive Law and the Compilation of Islamic Law emphasise the importance of justice and equality in the husband's treatment of all wives. A husband who wants to practice polygamy must ensure that he can fulfil these obligations and treat all wives

4. Conclusion

Based on the results of research and discussion on the application for permission for polygamy at the Krui Religious Court in case Number 0251/Pdt.G/2016/PA.Kr, on the grounds of dissatisfaction with sexual needs services, it can be concluded that the Judge's legal reasoning or the results of the Judge's *ijtihad* are based on the argument of the Qur'an, Surah An-Nisā, verse 3. This verse is the main requirement for a husband who practices polygamy, namely, to treat his wives fairly. Is justice for their wives or children, through careful consideration and using several studies, such as the *Mashlahah Murlahah* approach, with the first consideration. Second, a husband must be able to provide a living. However, in the next discussion, he explains the reasons why polygamy is permitted, including overcoming the problem of polygamy, which can be detrimental to women.

This study is far from perfect. This study only analyzes one court decision and does not cover a broad view of various jurisprudence or the social impact of polygamy practices. This can be a reference for future authors.

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