

# Socio-Juridical Analysis on Polygamy Requirements in the Compilation of Islamic Law (KHI)

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**Abstract:** *Socio-Juridical Analysis on Polygamy Requirements in the Compilation of Islamic Law (KHI).* This study is aimed at seeing the relevance of the requirement for polygamy in Law no. I of 1974 concerning marriage and in the Compilation of Islamic Law (KHI) including its implementation in several decisions on polygamy cases in the Religious Court (PA) of Ex Surakarta Regency. This type of research is field research using a socio-juridical approach. The results of this study conclude: 1) The requirements for polygamy as regulated in Law no. I of 1974 and KHI are complementary. While Law no. I of 1974 in article 5 specifies five conditions for polygamy, KHI mentions only three conditions. 2) In general, the reasons put forward by husbands for polygamy are always related to the condition of the wife who is unable to carry out her obligations. 3) Judges, in deciding polygamy cases, do not only base the reasons put forward by the husband but also make other considerations, especially related to matters of the benefit and welfare of the applicant's family.

**Keywords:** terms of polygamy, Compilation of Islamic Law, marriage law

**Abstrak:** *Analisis Sosio-Yuridis Persyaratan Poligami dalam Kompilasi Hukum Islam (KHI).* Penelitian ini bertujuan untuk melihat relevansi persyaratan poligami pada Kompilasi Hukum Islam (KHI) dan Undang-Undang (UU) No. 1 Tahun 1974 mengenai perkawinan dan implementasinya dalam beberapa putusan kasus poligami yang ada di Pengadilan Agama (PA) Eks Karisidenan Surakarta. Jenis penelitian ini adalah penelitian lapangan (*field research*) dengan menggunakan pendekatan sosio-yuridis. Hasil penelitian menunjukkan 1) Persyaratan poligami sebagaimana diatur dalam UU No. I Tahun 1974 dan KHI bersifat komplementer. UU No. 1 Tahun 1974 pada pasal 5 memuat lima syarat poligami sementara pada KHI hanya ada tiga syarat. 2) Umumnya alasan-alasan yang diajukan oleh suami untuk poligami selalu dikaitkan dengan keadaan istri yang tidak dapat melaksanakan kewajibannya. 3) Hakim dalam memutus perkara poligami tidak hanya mendasari pada alasan yang diajukan suami melainkan juga melakukan pertimbangan lain terutama masalah kemaslahatan dan kesejahteraan keluarga pemohon.

**Kata kunci:** syarat poligami, Kompilasi Hukum Islam, UU Perkawinan

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## Introduction

The practice of polygamy, the phenomenon of a husband having more than one wife, has been known since ancient times,<sup>1</sup> and can be found not only among nomadic tribes who are not familiar with civilization, but also in many ethnic groups living in this modern era.<sup>2</sup> Polygamy is in contrast to polyandry; Where in polygamy the core family consists of a husband with several wives, while the practice of polyandry is the opposite, a wife who has several husbands, also known as sexual communism.<sup>3</sup>

In Indonesia, the issue of polygamy has become a central issue that often appears in public discussions and debate forums. After the enactment of Law no. 1 of 1974 concerning marriage by the government, various responses, opinions, fatwas regarding polygamy were widely discussed. This is because the Marriage Law tends to adopt monogamy and prevent polygamy by specifying several strict conditions and procedures. This situation gave birth to two diametrically opposite poles, those who support and those who oppose the practice of polygamy, with several arguments put forward to strengthen their respective opinions.

The situation was exacerbated by the practice of polygamous figures, for example, the well-known businessman Puspo Wardoyo, and comedian Parto, KH. Abdullah Gymnastiar and many other public figures are then covered openly by the mass media.<sup>4</sup> In addition, there also emerge impressions and opinions in society that anyone who does not support the practice of polygamy does not support Islamic teachings, bearing in

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<sup>1</sup> Ahmad Cholid Fauzi, "Kedudukan Hukum Itsbat Nikah Poligami Sirri", *JURNAL USM LAW REVIEW*, 1.1 (2019) <<https://doi.org/10.26623/julr.v1i1.2234>>.

<sup>2</sup> Wely Dozan, 'Fakta Poligami Sebagai Bentuk Kekerasan Terhadap Perempuan: Kajian Lintasan Tafsir dan Isu Gender', *Marwah: Jurnal Perempuan, Agama dan Gender*, 19.2 (2021) <<https://doi.org/10.24014/marwah.v19i2.11287>>. Compare Abdul Qodir Zaelani, 'al-'Adalah fi Qadhiyah al-Ta'addud fi Nadzri al-Falsafiyah al-Qanuniyyah al-Mi'yariyyah, wa al-Nafsiyyah wa al-Ijtima'iyah', *Al-'Adalah*, 12.2 (2015), 903-914.

<sup>3</sup> Mukhlis Mukhlis, "Pembaharuan Hukum Perkawinan di Indonesia", *ADLIYA: Jurnal Hukum dan Kemanusiaan*, 11.1 (2019) <<https://doi.org/10.15575/adliya.v11i1.4852>>.

<sup>4</sup> Marzuki, "Poligami dalam Hukum Islam", *Jurnal Civics: Media Kajian Kewarganaan*, 2.2 (2003), 1–10 <<https://doi.org/https://doi.org/10.21831/civics.v2i2.4376>>.

mind that in the texts of the Al-Qur'an itself, there are texts that allow the practice of polygamy.<sup>5</sup>

Marriage law in Indonesia does not prohibit the practice of polygamy at all, it's just that doing so requires strict conditions and procedures. As clearly stated in Law Number 1 of 1974, the basic principle or principle in marriage is monogamy.<sup>6</sup> However, this does not mean that there is an opportunity to practice polygamy, a maximum of 4 people,<sup>7</sup> completely closed.<sup>8</sup> Opportunities for that still exist but must go through court approval.<sup>9</sup> Without court approval, polygamous marriages are deemed invalid and have no legal force.<sup>10</sup> Specifically for state civil servants (ASN) who wish to be polygamous, they must first obtain permission from their superiors,<sup>11</sup> and women civil servants, are prohibited from becoming second/third/fourth wives.<sup>12</sup>

Apart from Law Number 1 of 1974 concerning marriage, the issue of polygamy is also included in the Compilation of Islamic Law (KHI), a legal product that has received recognition from the government. Even though it is not yet at the level of the law, it is only through Presidential Instruction that the Compilation of Islamic Law (KHI) can be seen as the highest achievement of Indonesian Muslims in making legal rules based on Islamic teachings.<sup>13</sup> The KHI legislation is not necessarily a successful collaboration between the MUI (representing Indonesian Muslims), the Indonesian Ministry of Religion (government), and also the Supreme Court of the Republic of Indonesia (judicial authorities), but also, even this is the most important, thanks to the "green light" from the ruler of government (president). This fact further places Islamic Law not only

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<sup>5</sup> Putri Jannatur Rahmah, dkk, "Praktik Poligami dalam Komunitas Poligami Indonesia Perspektif CEDAW", *At-Thullab Jurnal Mahasiswa Studi Islam*, 2.1 (2020), 282–97.

<sup>6</sup> Law no. I of 1974 concerning Marriage Article 3 Paragraph (1).

<sup>7</sup> KHI article 55 ayat (1).

<sup>8</sup> Law no. I of 1974 concerning Marriage Article 3 Paragraph (2).

<sup>9</sup> Law no. I of 1974 concerning Marriage Article 3 Paragraph (2), and KHI article 56 paragraph (1).

<sup>10</sup> KHI article 56 paragraph (3).

<sup>11</sup> Government Regulation No. 45 of 1990 article 4 paragraph (1).

<sup>12</sup> Government Regulation No. 10 of 1983 dealing with Marriage and divorce for PNS article 4 paragraph (2); Government Regulation No. 45 of 1990, with changes no. 2 paragraph (2).

<sup>13</sup> Abdurrahman, *Kompilasi Hukum Islam di Indonesia* (Jakarta: Akademika Pressindo, 1992).

as part of the national legal system but also as one of the authoritative references as evidenced in several judges' decisions in the judiciary.<sup>14</sup>

The study of polygamy is not new in the academic world. Previously, many previous researchers studied the issue of polygamy including Esther Masri, Dikson T. Yasin, Esther Masri, through their research, concluded that the purpose of the Marriage Law and KHI in providing terms and conditions regarding polygamy is so that there is no arbitrariness against women. Women (so that a happy, eternal, and harmonious family is formed).<sup>15</sup> Meanwhile, Dikson T. Yasin, who also studies polygamy in the Compilation of Islamic Law, revealed that there have been many pros and cons among scholars, society, academics, and also scholars on polygamy.<sup>16</sup> Musdah Mulia, one of the opponents of polygamy, said that there was an imbalance in the conditions for polygamy contained in the Compilation of Islamic Law, especially in the position of the wife. According to Article 59 KHI, if the wife permits her husband to practice polygamy, the Religious Court can decide to give permission.<sup>17</sup>

Another researcher, Muhammad Syahrur, focuses more on the aspects of justice and humanity. According to him, Law no. 1 of 1974 and its derivative legislation, including KHI, are still far from the values of Pancasila and the main mission of Islamic law. Legalizing oppression in the form of polygamy by only paying attention to the biological interests of one party is an entry point to eliminate the marwah of marriage.<sup>18</sup>

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<sup>14</sup> Ichtijanto, *"Pengembangan Teori Berlakunya Hukum Islam di Indonesia, dalam Hukum Islam di Indonesia Perkembangan dan Pembentukan"* (Bandung: Remaja Rosdakarya, 1991).

<sup>15</sup> Esther Masri, "Poligami dalam Perspektif Undang-Undang Nomor I Tahun 1974 Tentang Perkawinan dan Kompilasi Hukum Islam (KHI)", *Krtha Bhayangkara*, 13.2 (2019), 223–41 <<https://doi.org/10.31599/krtha.v13i2.7>>.

<sup>16</sup> Dikson T Yasin, "Menelitik Pesan Sosial Poligami dalam KHI pada Dasarnya Prinsip Perkawinan adalah Monogami, Namun dalam Prakteknya, Pilihan Monogami atau Poligami Dianggap Persoalan Parsial. Status Hukumnya akan Mengikuti Kondisi Ruang dan Waktu Sunnah Nabi Sendiri", 2 (2018), 77–96.

<sup>17</sup> Musdah Mulia, *Pandangan Islam Tentang Poligami* (Jakarta: Lembaga Kajian Agama dan Jender dan Perserikatan Solidaritas Perempuan dan The Asia Foundation, 1999), p. 60. See Dewani Romli, & Abdul Qodir Zaelani, 'Counter Legal Drafting of the Islamic Law Compilation, A Gender Perspective', *Advances in Social Science, Education and Humanities Research*, 49 (2019), 331-337

<sup>18</sup> Muhammad Syahrur, *Nahwa Ushûl Jadidah li al-Fiqh al Islâmî Fiqh al-Mar'ah* (Damaskus: al-Ahali li Tib'ah wa al-Nasyr wa al-Tauzi, tt), p. 303.

Meanwhile, Nurfaidah revealed that it is permissible for a man to have more than one wife, as stated in Article 4 paragraph (2) of the Marriage and KHI Law, which needs to be given a maximum limit of four people. This permissibility is granted based on the conditions of the applicant, for example, if polygamy is not granted it will lead to acts prohibited by Islam such as adultery, and also the need for children to continue the lineage.<sup>19</sup>

This research is different from previous research, in which the focus of the study was on previous research which highlighted more regulatory uncertainty in regulating the issue of polygamy. While this research focuses more on the relevance aspect of the provisions in Law no. 1 of 1974 and KHI regarding the requirements of polygamy from a socio-juridical perspective and its application in several judges' decisions in polygamy cases at the Religious Court of the Exs Residency of Surakarta.

## Research Methods

This research is qualitative in nature using an analytical-descriptive method with a socio-juridical approach. The aim is to obtain an overview of empirical phenomena/events regarding polygamy and its problems among the wider community. Data were obtained from several documents in the form of books, articles, judge's decisions, reports, and other written sources of information relating to the research topic. The data obtained is then processed and analyzed using a socio-juridical approach to conclude. From this research, it is hoped that broad insights and in-depth interpretations will be obtained regarding the value or meaning of a reality that exists in society.<sup>20</sup>

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<sup>19</sup> Nurfaidah, *Tinjauan Yuridis Putusan Izin Poligami Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Kompilasi Hukum Islam*, Skripsi (Makassar: Progran Studi Sarjana Hukum Jurusan Ilmu Hukum Fakultas Syariah dan Hukum, Universitas Islam Negeri Alauddin Makassar, 2017)

<sup>20</sup> Lexy J. Moleong, *Metode Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, 2004).

## Results and Discussion

### Polygamy in Indonesian Family Law

Law Number I of 1974 explicitly states that the basis/principle of marriage is monogyny/monogamy.<sup>21</sup> But the possibility of polygamy is permitted,<sup>22</sup> a maximum of 4 people,<sup>23</sup> and must obtain permission from the Religious Courts.<sup>24</sup> The law also stipulates that civil servants who wish to become polygamous must first obtain permission from their superiors/leaders, and female civil servants are prohibited from becoming second, third, or fourth wives.<sup>25</sup>

The polygamy procedure begins with the filing of an application made by a husband to the Religious Court.<sup>26</sup> Furthermore, before deciding whether or not a polygamy permit is granted, the Court will examine the fulfillment of these conditions to ensure their validity and adequacy.<sup>27</sup> Polygamy permission is granted if it meets at least one of the optional conditions and three cumulative conditions.<sup>28</sup> The terms of choice are: (a) the wife cannot carry out her obligations as a wife; (b) the wife has a disability or disease that is difficult to cure; or (c) the wife cannot have children.<sup>29</sup> While the cumulative requirements are: (a) there is written approval/permission from the wife; (b) there is a certainty that the husband is ready to provide for the necessities of life of his wife and children; and (c) there is a written guarantee that the husband will treat his wife and children fairly.<sup>30</sup> The wife's consent must be confirmed in

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<sup>21</sup> Law No. I of 1974 on Marriage article 3 paragraph (1).

<sup>22</sup> Law No. I of 1974 on Marriage article 3 paragraph (2).

<sup>23</sup> KHI article 55 paragraph (1).

<sup>24</sup> Law No. I of 1974 on Marriage article 3 paragraph (2), and KHI article 56 paragraph (1).

<sup>25</sup> Government Regulation No. 10 of 1983 dealing with Marriage and divorce for PNS article 4 paragraph (2); Government Regulation No. 45 of 1990, with changes no. 2 paragraph (2).

<sup>26</sup> Law No. I of 1974 on Marriage article 4 paragraph (1).

<sup>27</sup> Government Regulation No. 9 of 1975 article 42, "In examining matters in articles 40 and 41, the court must summon and hear the wife concerned".

<sup>28</sup> Government Regulation No. 10 of 1983 dealing with Marriage and divorce for PNS article 4 paragraph (1).

<sup>29</sup> Law no. 1 of 1974 concerning Marriage Article 3 paragraph (2); Government Regulation No. 9 of 1975 article 41 letters a and c, Government Regulation No. 10 of 1983 article 10 paragraph (3), and KHI article 57.

<sup>30</sup> Law no. 1 of 1974 concerning Marriage Article 5; Government Regulation No. 9 of

court. Unless the wife cannot be brought in to ask for her approval, if he cannot be a party to the agreement, or if there is no news from the wife for at least 2 (two) years, or because of other conditions that need to be assessed by the Religious Court Judge, then in such a situation the wife's approval or permission is not needed.<sup>31</sup> Furthermore, proof that the husband can guarantee the needs of the family must be shown through a statement on the husband's income signed by the treasurer, a tax certificate, or other certificates that can be accepted by the court.<sup>32</sup> Meanwhile, as a guarantee that the husband will treat his wife fairly in the future, it is usually made in the form of an agreement.<sup>33</sup>

If the reason for polygamy is deemed sufficient and meets statutory provisions, the court will issue a permit for that.<sup>34</sup> But if not enough, then the application was rejected. Whereas those who violate the rules of polygamy, according to applicable regulations, can be fined a maximum of IDR 7,500.<sup>35</sup>

If a polygamous marriage has occurred, the husband is obliged to provide equal guarantees to one or all of his wives and children, and the second wife and so on do not have the right to joint property that occurred before their marriage,<sup>36</sup> unless there are other provisions agreed upon in advance, then this provision is not applicable.<sup>37</sup>

From the above arguments, it can be concluded that the Indonesian Marriage Law seeks to ensure that men who practice polygamy are true men: financially strong, able to provide all the necessities (clothing, food, and housing) for the family (wife and children) him, and can be fair with his wife so that they are not abandoned. The rule of law in Indonesia

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1975 article 41 letters b and c, Government Regulation No. 10 of 1983 article 10 paragraph (3), and KHI article 58 paragraph (1).

<sup>31</sup> Law No. 1 of 1974 concerning Marriage article 5 paragraph (2) and KHI article 58 paragraph (3), "The agreement referred to in paragraph (1) letter an of this article (article 5 Law No. 1 of 1974 or article 58 KHI).

<sup>32</sup> Government Regulation No. 9 of 1975 article 41 letter c.

<sup>33</sup> Government Regulation No. 9 of 1975 article 41 letter d.

<sup>34</sup> Government Regulation No. 9 of 1975 article 43.

<sup>35</sup> Government Regulation No. 9 of 1975 article 45 paragraph (Ia).

<sup>36</sup> Law No. 1 of 1974 article 65 paragraph (1).

<sup>37</sup> Law No. 1 of 1974 article 4 paragraph (1).

respects the wife's role as the husband's life partner by requiring her to first obtain permission before engaging in polygamy.

## The Relevance and Synchronization of the Terms for Polygamy as Stipulated in KHI and Law No. 1 of 1974 Concerning Marriage

### 1. Reasons for Permits for Polygamy in Law no. 1 of 1974 and KHI

Article 4 of Law No. 1 of 1974 states that a Religious Court cannot be granted unless certain conditions are met:

- 1) The wife cannot carry out her obligations as a wife;
- 2) The wife has a disability or disease that is difficult to cure;
- 3) The wife cannot give birth to children.<sup>38</sup>

This is in line with what is stated in Article 57 KHI which reads: PA only permits a husband to have enough wives if:

- 1) The wife cannot carry out her obligations as a wife;
- 2) The wife suffers from a disability or disease that is difficult to cure;
- 3) The wife cannot give birth to children.<sup>39</sup>

The three reasons above explained Zainuddin Ali and Ahmad Rofiq, refer to the main goal of marriage, namely to create a harmonious family, which in KHI terms is referred to as a *sakīnah*, *mawaddah*, and *rahmah* (harmonious and prosperous) family.<sup>40</sup>

### 2. Polygamy Requirements in Law No. 1 of 1974 and KHI

Apart from the three reasons above, Article 5 of Law no. I of 1974 also determined three conditions viz:

- 1) there is the wife's consent;
- 2) there is a certainty that the husband is in a position to guarantee the necessities of life for his wife and children;
- 3) there is a guarantee that the husband will treat his wife and children fairly.

<sup>38</sup> Article 4 Law Number 1 of 1974 Concerning Marriage.

<sup>39</sup> Article 57 Compilation of Islamic Law (KHI).

<sup>40</sup> Zainuddin, *Hukum Perdata Islam di Indonesia* (Jakarta: Sinar Grafika, 2007).



The agreement can be waived if: the wife/wives cannot be asked for consent, cannot be a party to the agreement, or if there is no news from the wife for a minimum of 2 (two) years, or for other reasons that need to be assessed by the Judge Court.<sup>41</sup>

The three conditions and conditions as stipulated in Law no. I of 1974 is also regulated in the Compilation of Islamic Law (KHI), in particular Article 55 paragraph (2), Article 58, and Article 59 of the KHI which state three main conditions and cumulative conditions. The main requirement concerns one of the three reasons for polygamy, while the cumulative requirement is the wife's permission; there is a certainty that the husband has sufficient income to meet the needs of his wife and children, and is obliged to treat his wife and children fairly. Permission as referred to in paragraph (1) letter a is not required for the husband if the wife or wives are unable to attend the consent granted, or if there is no news from the husband. wife or wives for a minimum of two years or for other reasons that need to be assessed by a judge.<sup>42</sup> Meanwhile, an oral permit is made before the trial of the Religious Court. This is also regulated in Article 59 of the Compilation of Islamic Law (KHI) which confirms that the Religious Courts can determine the granting of permits after examining and hearing the wife concerned at the Religious Court hearing, and by this determination, the wife or husband can submit appeals and cassation.<sup>43</sup>

The stipulation of the above conditions can be said as an absolute provision. So if the three reasons and the cumulative conditions above are not met then the marital status cannot be recognized by law and also has no power in the eyes of the law.<sup>44</sup> The Marriage Law and KHI also emphasize that marriages, both past and future, must be registered at the Office of Religious Affairs (Article 2 paragraph (1)

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<sup>41</sup> Rofiq, *Hukum Islam di Indonesia* (Jakarta: Raja Grafindo Persada, 1995).

<sup>42</sup> Article 58 Compilation of Islamic Law (KHI)

<sup>43</sup> ach Faisol, 'Poligami dalam Berbagai Perspektif', *Jurnal Ilmiah Abwal Syakhshiyah (JAS)*, 2.1 (2020) <<https://doi.org/10.33474/jas.v2i1.6820>>.

<sup>44</sup> Khoiril A. Harahap, 'Kebijakan Pemerintah Republik Indonesia dan Hukum Islam Mengenai Poligami: Sebuah Kajian Perbandingan', *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi*, 2.1 (2019), 89–105 <<https://doi.org/10.24090/volksgeist.v2i1.2684>>.

of Law No. 1 of 1974) and Article 5 paragraph (1), article 6, and Article 7 of KHI.<sup>45</sup>

From the description above, it can be understood that marriage in Indonesia principally adheres to the principle of monogamy, namely that the husband may only marry one woman. To strengthen this, if one day he is going to remarry, the wife's approval/permission is a requirement that must be fulfilled. The requirement for a permit is also followed by other cumulative conditions in the form of being obliged to treat his wife fairly. If the conditions of justice cannot be fulfilled by the husband, then he is obliged to marry only 1 wife. It is clear that the legal regulations above, both Law No. 1 of 1974 and KHI, aim to reduce the arbitrariness of a man (husband) against a woman (wife). So that a harmonious, happy, and eternal family is realized.<sup>46</sup>

### **Judge's Considerations in Responding to KHI and Law No. 1 of 1974 on Polygamy Cases at the Former Surakarta Residential Religious Court**

Judges, in deciding cases, must be based on written legal norms. However, if the norm cannot be found, the judge can use unwritten legal norms, or seek the law himself by using an analogy.<sup>47</sup> This is intended so that the results of the judge's decision can fulfill the path of justice and can provide benefits for justice seekers.<sup>48</sup> Specifically for polygamy cases, judges will usually consider several supporting factors in the form of reasons and conditions that must be met by a husband applying for polygamy.<sup>49</sup>

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<sup>45</sup> Satriana Satriana, 'Studi Komparatif Pelaksanaan Poligami Rasulullah dan Pelaksanaan Poligami pada Zaman Kekinian Menurut Inpres Nomor 1 Tahun 1991 Tentang Kompilasi Hukum Islam (Studi Kec. Mare)', *Jurnal Al-Dustur : Journal of Politic and Islamic Law*, 1.1 (2019) <<https://doi.org/10.30863/jad.v1i1.351>>.

<sup>46</sup> Rijal Imanullah, 'Poligami dalam Hukum Islam Indonesia (Analisis Terhadap Putusan Pengadilan Agama No. 915/ Pdt.g/ 2014/ Pa.BGovernment regulationTentang Izin Poligami)', *Mazahib*, 15.1 (2016), 104–27 <<https://doi.org/10.21093/mj.v15i1.607>>.

<sup>47</sup> Ahmad Rifai, *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif* (Jakarta: Sinar Grafika, 2017).

<sup>48</sup> Zakki Adhlyati and Achmad Achmad, 'Melacak Keadilan dalam Regulasi Poligami: Kajian Filsafat Keadilan Aristoteles, Thomas Aquinas, dan John Rawls', *Undang: Jurnal Hukum*, 2.2 (2020) <<https://doi.org/10.22437/ujh.2.2.409-431>>.

<sup>49</sup> Harel Bayu Faizin, 'Telaah Pemikiran Ali Mustafa Ya'qub Tentang Poligami', *An-Nida'*,

The following are some descriptions of the considerations taken by judges in examining polygamy cases in several religious courts in Central Java.

### 1. Considerations of Judges in Permitting for Polygamy at the Surakarta Religious Court

In 2020, there is one case of polygamy, namely case No. 752/Pdt.G/2020/PA. Ska.<sup>50</sup> In the case, the applicant reasoned that the applicant applied for polygamy, namely because of worship or wanting to carry out Islamic law, because the applicant was worried that he would commit an act prohibited by religious norms if he did not practice polygamy.<sup>51</sup>

The initial consideration of the Religious Court judge in granting permission for polygamy is that the application must have two conditions or pillars that must be met, namely:

- a. The legal relationship between the Petitioner, the Respondent as well as the Petitioner's future wife.
- b. There are reasons or conditions for polygamy.

In connection the reason for the applicant to practice polygamy because it is to carry out the Shari'a, according to the judge it is not right. The majority of Ulama interpret that polygamy is permissible or may not be sunnah, or obligatory.<sup>52</sup> However, if what is meant is that the Petitioner intends to practice polygamy because he is afraid of doing something that is prohibited by religion, if he does not practice polygamy, the Panel of Judges will consider this matter further.<sup>53</sup>

43.1 (2021) <<https://doi.org/10.24014/an-nida.v43i1.12314>>.

<sup>50</sup> Direktori Putusan Mahkamah Agung RI, 'Putusan Poligami Pengadilan Agama Surakarta', *Mahkamah Agung RI*, 2020 <[https://doi.org/https://putusan3.mahkamahagung.go.id/search.html?q=%22Poligami%22&t\\_put=2020&cat=620f4cc570bb70cf968651c5cb507135&court=401168PA761](https://doi.org/https://putusan3.mahkamahagung.go.id/search.html?q=%22Poligami%22&t_put=2020&cat=620f4cc570bb70cf968651c5cb507135&court=401168PA761)>, accessed on Saturday, July 18, 2021, at 08.40 A.M.>.

<sup>51</sup> Supreme Court Decision Number 752/Pdt.G/2020/PA.Ska. Directory of Indonesian Supreme Court Decisions, 2020.

<sup>52</sup> Imanullah.

<sup>53</sup> Supreme Court Decision Number 752/Pdt.G/2020/PA.Ska.

According to the panel of judges, concerning the requirements for polygamy, the things that the Petitioner was worried about would happen were things that were prohibited by religion which could be interpreted as immoral acts, namely committing *khulwat* (promiscuity), or even committing adultery. From the basis of religious knowledge possessed by the Petitioner, namely as an al-Quran teacher, at the normative level, this would not have happened. Likewise, according to the facts, the Petitioner and the Respondent currently have three children and the Respondent is also in good health. Citing the laws and regulations in Indonesia, there is no alternative reason for the Petitioner to practice polygamy. However, because the Petitioner and Respondent are Egyptian nationals (foreigners), the Petitioner and Respondent must also consider all the regulations that apply in Egypt.<sup>54</sup>

Furthermore, the panel of judges also considered the cumulative requirements as contained in Article 4 Paragraph (1) and Article 5 of Law Number 1 of 1974, namely: contained in Article 4 Paragraph (1) and Article 5 of Law No. 1 of 1974, namely: permission of the wife/wife, knowledge that the husband is ready to guarantee the necessities of life for his wife and children, and there is a guarantee that the husband will treat his wife and children fairly.<sup>55</sup> Based on the facts of the trial, the judge concluded that the cumulative requirements above could be met by the applicant so the judge granted the polygamy request.<sup>56</sup>

## **2. Considerations of Judges in Permitting for Polygamy at the Klaten Religious Court**

At the Klaten Religious Court, in 2020, there were five decisions in cases of polygamy permits, with details of 2 decisions being granted and 3 being rejected. The following is a description of the reasons for polygamy and the judges' considerations of these decisions:<sup>57</sup>

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<sup>54</sup> Supreme Court Decision Number 752/Pdt.G/2020/PA.Ska.

<sup>55</sup> Supreme Court Decision Number 752/Pdt.G/2020/PA.Ska.

<sup>56</sup> Karmin, Chairman of the panel of judges in the hearing of the decision No. 752/Pdt.G/2020/PA.Ska, interview on September 27, 2021.

<sup>57</sup> Direktori Putusan Mahkamah Agung RI, 'Putusan Poligami Pengadilan Agama Klaten', *Mahkamah Agung RI*, 2020-<<https://doi.org/https://putusan3.mahkamahagung.go.id/search.html?q=IZIN>

**a. Judge's Decision on Case No. 0001/Pdt.G/2020/PA.Klt.**

The Petitioner stated that he wished to remarry (polygamy) because since 1 year ago the Respondent was no longer able to carry out his obligations as a wife, especially serving his biological needs because the Respondent had gone through menopause. So that the Petitioner is very worried that he will do something that is prohibited by religious norms if the Petitioner does not practice polygamy.

Against this request, the judge then took several steps and considerations as follows:

- 1). Regarding the application for a polygamy license to prove the truth of the arguments in their application, the Petitioner has submitted evidence of a letter marked P.1, to P.12 and a pair (two) witnesses;
- 2). Based on the statement of the Petitioner and the Respondent's answers, connected with the documentary evidence and the statements of the witnesses, the Panel has obtained the facts at trial in essence that the Petitioner wants to remarry (polygamy) with a woman named Sulastri binti Mulyo Raharjo as his second wife for the reasons, because since 1 year ago the Respondent could not carry out his obligations as a wife because the Respondent had menopause, the Respondent could not serve the biological needs of the Petitioner, in addition to that the Respondent as the wife of the Petitioner had no objection to the Petitioner remarrying (willing to be married);
- 3). Based on the arguments for this fact, the Panel of Judges believes that the reasons and conditions for polygamy as referred to in Article 4 paragraph 2 letter a and Article 5 paragraph (1) of Law No. 1 of 1974 for the Petitioner have been fulfilled. So the Panel of Judges then decided to accept the request.

**b. Judge's Decision on Case No. 0391/Pdt.G/2020/PA.Klt.**

The Petitioner stated that he wished to remarry (polygamy) because the Petitioner's Polygamous wife-to-be named N binti L, 24 years old,

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POLIGAMI&t\_put=2020 &court=401121PA745&cat=620f4cc570bb70cf968651c5cb507135, accessed on Saturday, July 18, 2021, at 08.00 A.M>.

Islam, factory worker, residence in Kandiwarno RT 021/RW 011, Kanoman Village, Kec. Karangnongko, Kab. Klaten, who previously had the status of a virgin, has now given birth to a biological daughter from the Petitioner,

Against this request, the judge then took several steps and considerations as follows:

- 1). In the case of the application for a polygamy permit, to strengthen the truth of the argument for his application, the Petitioner has submitted evidence of letters signed P.1, up to P.14 and 2 (two) witnesses;
- 2). Based on the arguments of the Petitioners and the Respondent's answers, connected with the evidence and statements of witnesses, the Examining Judge has obtained facts at trial which in essence were that the Petitioners wanted to remarry (polygamy) with a woman named Nuryani binti Lasiman as a second wife because the prospective wife was Polygamous The Petitioner currently has a biological daughter from the Petitioner;
- 3). Based on these facts, the Panel believes that the arguments and conditions for polygamy as set out in Article 4 paragraph 2 letter a and Article 5 paragraph (1) of Law No. I Year 1974 for the Petitioner have complied with. So the Panel of Judges then decided to accept the request.

The judge's view in trying this case refers to article 4 paragraph 2 letter a and article 5 paragraph (1) of Law no. I of 1974. Article 4 paragraph 2 letter states that the court only permits a husband to have more than one wife if: The wife cannot carry out her obligations as a wife. Meanwhile, in Article 5 paragraph (1) of Law no. 1 of 1974 namely to apply to the Religious Court as stated in Article 4 paragraph (1) of this Law the following conditions must be fulfilled: There is approval/permission from the wife/wives; There is a certainty that husbands can guarantee the necessities of life for their wives and children; there is a guarantee that the husband will treat his wives and children fairly.

### **3. Considerations of Judges in Permits for Polygamy at the Sragen Religious Court**

At the Sragen Religious Court, there were 7 decisions on polygamy permits in 2020, with details of 5 being granted and 2 being canceled. The following is a table regarding the reasons for polygamy and judges' considerations of their decisions:

#### **a. Judge's Decision on Case 0862/Pdt.G/2020/PA.Sr.**

The Petitioner stated that in 2015 the Respondent was sick due to an accident so the Respondent could not carry out his obligations as a wife. Therefore, the Petitioner wishes to remarry a woman named Sulastri binti Mulyo Raharjo who has known each other since 2002 and then loved each other. The Petitioner was worried that if he did not get married soon there would be an act that violated religious norms.

Against this request, the judge then took several steps and considerations as follows:

- 1). Regarding the application for a polygamy license to prove the truth of the arguments for his application, the Petitioner has submitted evidence of a letter marked P.1, to P.12 and two witnesses;
- 2). Based on the statement of the Petitioner and the Respondent's answers, connected with the documentary evidence and the statements of the witnesses, the Panel has obtained the facts at trial in essence that the Petitioner wants to remarry (polygamy) with a woman named Sulastri binti Mulyo Raharjo as his second wife for the reasons, because since 1 year ago the Respondent could not carry out his obligations as a wife because the Respondent had menopause, the Respondent could not serve the biological needs of the Petitioner, in addition to that the Respondent as the wife of the Petitioner had no objection to the Petitioner remarrying (willing to be married);
- 3). Based on the arguments for this fact, the Panel of Judges believes that the reasons and conditions for polygamy as referred to in Article 4 paragraph 2 letter a and Article 5 paragraph (1) of Law No. 1 of 1974 for the Petitioner have been fulfilled. So the Panel of Judges then decided to accept the request.

**b. Judge's Decision on Case No. 1488/Pdt.G/2020/PA.Sr**

The Petitioner wants to remarry (polygamy) with a woman because the Respondent does not want to have any more children. This was done by the Petitioner because he still wanted to have children, and wished to remarry so as not to violate religious norms.

Against this request, the judge then took several steps and considerations as follows:

- 1). In the Petitioner's argument and the Respondent's answer, linked to evidence P.1 to P.15 and witness statements, the Panel of Judges has obtained the facts at trial which in essence is that the Petitioner has met the requirements specified in Article 5 paragraph (1) of Law Number 1 the Year 1974 concerning Jo's marriage. Article 41 letters b, c, and d Government Regulation Number 9 of 1975 jo. Article 58 paragraphs (1) and (2) of the Compilation of Islamic Law namely that there is a permit from the Respondent, there is a certainty that the Petitioner can guarantee the necessities of life for his wives and children, and there is a guarantee that the Petitioner will act fairly towards his wives and children;
- 2). The Petitioner's reasons for polygamy meet the requirements specified in Article 4 paragraph (2) of Law Number 1 of 1974 concerning Marriage jo. Article 57 KHI, namely the wife cannot carry out her obligations as a wife;
- 3). Based on the above considerations, the Petitioner's request for polygamy was subsequently granted.

**c. Judge's Decision on Case No. 1695/Pdt.G/2020/PA.Sr**

The Petitioner wants to remarry (polygamy) with a woman because the Respondent is unable to carry out his obligations as a wife and the Respondent does not want to have any more children. This was done by the Petitioner because the Petitioner still wanted to have children, and also so as not to violate religious norms.

Against this request, the judge then took several steps and considerations as follows:



- 1). The reason for the Petitioner's wish to remarry (polygamy) is because the Respondent cannot carry out his obligations as a wife, besides that the Petitioner also still wants to have children, so as not to violate religious norms the Petitioner wants to remarry;
- 2). Based on the Petitioner's statement and the Respondent's answers, connected with evidence P.1 to P.13 and witness statements, the Panel of Judges has obtained facts at trial which in essence is that the Petitioner's petition has fulfilled the reasons as referred to in Article 4 Number (2) letter c, and Article 5 Number (1) letter a Law no. I in 1974 Jo. Article 57 letter c, and Article 58 letter a KHI, so that the Petitioner's request can be granted.

#### **d. Judge's Decision on Case No. 1744/Pdt.G/2020/PA.Sr**

The Petitioner reasoned that he wanted to remarry (polygamy) with a woman because the Petitioner's wife could not carry out her obligations as a wife. So that the Petitioner is worried that he will take an action that is prohibited by religious norms if the Petitioner refuses to practice polygamy

Against this request, the judge then took several steps and considerations as follows:

- 1). In the case of the application for a polygamy license, to strengthen the arguments for his application, the Petitioner has submitted evidence coded P.1 to P.11 and two witnesses;
- 2). Based on the Petitioner's arguments and the Respondent's answers, linked to evidence P.1 to P.11 and witness statements, the Panel of Judges has found facts at trial which in essence is that the Petitioner fulfills the requirements to be married twice (polygamy) as in Article 5 paragraph ( 1) Law no. 1 of 1974 in conjunction with article 41 letter (c) PP No. 9 of 1975.

Based on the above considerations, the Panel of Judges believes that the Petitioners have sufficient reasons and therefore the Petitioners' petition should be granted.

### e. Judge's Decision on Case No. 1777/Pdt.G/2020/PA.Sr

The Petitioner wishes to practice polygamy with a woman named LN. This was done because the Respondent was unable to serve the high sexual needs of the Petitioners. Therefore the Petitioner is worried that he commits an act prohibited by religious norms if the Petitioner does not practice polygamy.

Against this request, the judge then took several steps and considerations as follows:

- 1). In the case of the application for a polygamy license, to strengthen the arguments for the argument for his application, the Petitioner has submitted evidence coded P.1 to P.12 and 2 witnesses;
- 2). Based on the Petitioner's arguments and the Respondent's answers, linked to evidence P.1 to P.12 and witness statements, the Panel of Judges has obtained facts at trial which in essence is that the Petitioner has met the requirements to be married twice (polygamy) as set out in Article 5 paragraph (1) Law no. 1 of 1974 in conjunction with article 41 letter (c) Government Regulation No. 9 of 1975;
- 3). Based on the above considerations, the Panel of Judges believes that the Petitioner has sufficient reasons, therefore the petition deserves to be granted.

Of the 5 polygamy permit decisions granted by the Sragen Religious Court, all of them had the same reason for polygamy, namely the Petitioner's wife was unable to carry out her obligations as a wife. Therefore, the Petitioner is very worried that he will take actions prohibited by religious sharia norms if the Petitioner does not practice polygamy. As for the legal considerations of the judges in these decisions, referring to Article 4 Number (2) letter c, and Article 5 Number (1) letter an of Law no. 1 the year 1974 Jo. Article 57 letter c, and Article 58 letter a Compilation of Islamic Law.

As revealed by the judge at the Sragen Religious Court, Muhdi Kholil, before the judge gives a decision on polygamy, he will consider the legal basis which refers to Law no. 1 of 1974 and Compilation of Islamic Law.<sup>58</sup> In this deliberation process, the Court will only permit a husband to

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<sup>58</sup> Muhdi Kholil, Judge in Religious Court of Sragen, interview on September 25, 2021.

have more than one wife only if the wife cannot carry out her obligations as a wife, the wife has a disability or an incurable disease, and the wife cannot give birth to children. Apart from that, the judge will also consider if there is a wife's statement that she is able and willing to accept concubines or a statement that the wife is no longer able to carry out her obligations as a wife and a statement that the husband will be fair to his wives, as emphasized in the al-Qur'an Surah An-Nisa Verse 3.<sup>59</sup>

#### **4. Considerations of Judges in Permits for Polygamy at the Sukoharjo Religious Court**

At the Sukoharjo Religious Court, there are three decisions for polygamy permits in 2020. The following is a brief description of the reasons for polygamy and the judge's considerations in deciding the case:

##### **a. Judge's Decision on Case No. 386/Pdt.G/2020/PA.Skh.**

The Petitioner stated that he wanted to remarry because the Petitioner had a high sexual libido, so the Petitioner was very worried that he would take actions prohibited by religious law (shari'a) if the Petitioner did not practice polygamy.

Against this request, the judge then took several steps and considerations as follows:

- 1). Based on the testimony of the Respondent, the Panel of Judges has obtained facts at trial in essence that the Respondent has not been able to carry out its obligations as a wife optimally;
- 2). The Petitioner's statements before the trial, the confessions of the Respondent and the Petitioner's 2 potential wives, as well as the written evidence and corroborated statements from the Petitioners' witnesses, it turns out that the Respondent agrees and has no objection if the Petitioner remarries 2 potential wives;

The Panel of Judges believes that the Petitioner's petition has fulfilled the provisions for polygamy as outlined in Article 5 paragraph (1) of the

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<sup>59</sup> Muhdi Kholil

Law. No. 1 of 1974 juncto Article 41 letters (b), (c), and (d) PP. No. 9 of 1975 and Article 55 paragraph (2) and Article 58 paragraph (1) KHI and pay attention to the Word of Allah SWT in the letter An-Nisa verse (3).

#### **b. Judge's Decision on Case No. 768/Pdt.G/2020/PA.Skh.**

The Petitioner stated that he wanted to remarry because the Petitioner felt he was still young and wanted children, but the Respondent could not give birth to children due to health reasons, where the Respondent's current age was very vulnerable to rebirth. Therefore the Respondent permitted the Petitioner's second marriage. This is done to avoid things that can violate religious norms.

Against this request, the judge then took several steps and considerations as follows:

- 1) On the day of the scheduled hearing the Judge tried to advise the Petitioner to reconsider his desire to remarry, the Petitioner declares that he accepts it, then the Petitioner declares to withdraw his case;
- 2). Because this case was withdrawn by the Petitioner before the examination of the case, approval from the Respondent was not required, so that the Petitioner's request to withdraw the case could be granted;

By granting the revocation, the examination of this case is declared complete.

#### **c. Judge's Decision on Case No. 1353/Pdt.G/2020/PA.Skh**

The Petitioner wishes to remarry (polygamy) because the Respondent has been suffering from ongoing stomach ulcers since 1990 and has been taken to a doctor but until now it still recurs, so the Respondent cannot carry out his obligations as a wife. Thus, the Petitioner wishes to remarry (polygamy), because the two of them have known each other for more than 30 years and then fell in love with each other. The Petitioner was also worried that if he did not get married soon there would be an act that violated religious norms.

Against this request, the judge then took several steps and considerations as follows:

- 1). On the day of the hearing that had been determined, the Judge had tried to advise the Petitioner to reconsider his desire to remarry, the Petitioner stated that he accepted, then the Petitioner declared that he would withdraw his case;
- 2). Because this case was withdrawn by the Petitioner before the examination of the case, approval from the Respondent was not required, so that the Petitioner's request to withdraw the case could be granted;
- 3). By granting the revocation, this case is declared complete.

The description above illustrates that of the 3 cases examined only one was granted, namely case No. 386/Pdt.G/2020/PA.Skh. Meanwhile, the other two cases, namely case No. 768/Pdt.G/2020/PA.Skh and case No. 1353/Pdt.G/2020/PA.Skh has been revoked by the applicant. Therefore, the discussion will only focus on the polygamy permit decision No 386/Pdt.G/2020/PA.Skh.

In case No. 386/Pdt.G/2020/PA.Skh stated that the reason the applicant filed for polygamy was that the applicant had a high sexual libido; So the Petitioner is very worried that he will take an action prohibited by religious norms if the Petitioner does not practice polygamy. Meanwhile, the judge's legal considerations in the decision refer to what is contained in Article 5 paragraph (1) of the Law. No. 1 of 1974 juncto Article 41 letters (b), (c), and (d) PP. No. 9 of 1975 and Article 55 paragraph (2) and Article 58 paragraph (1) KHI and pay attention to the Word of Allah SWT in the letter An-Nisa verse (3).

As conveyed by Muhammad Fauzi Ardi, chairman of the panel of judges, based on the provisions of Article 4 paragraph (2) of Law no. 1 the year 1974 Jo. Article 41 PP Number 9 of 1975 Jo, Article 57 KHI, a possible reason for a person to be polygamous is that the wife cannot carry out her obligatory role as a wife, the wife has a physical disability or a disease that is difficult to cure, or the wife cannot give birth to children.<sup>60</sup> Based on the facts of the trial, that of the Petitioner's statement before the trial, the testimony of the Respondent and the Petitioner's second wife-to-be, as well as documentary evidence and corroborated by the

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<sup>60</sup> Muhammad Fauzi Ardi, Judge in Religious Court of Sukoharjo, interview on September 26, 2021.

testimony of the Petitioners' witnesses, that the Respondent agrees and has no objection if the Petitioner remarries his future wife second. Thus the Panel of Judges is of the view that the Petitioner's petition has fulfilled the requirements for polygamy as stipulated in Law no. 1 of 1974 and Compilation of Islamic Law.

Judging from the judge's consideration process in the polygamy permit case above, it can be seen that in his consideration the judge deciding the polygamy permit used the syllogism rule. The application of this principle can be seen in the stages of the judge in examining the case. First of all the Judge puts forward the "Major Premise" in the form of regulatory provisions regarding polygamy that must be fulfilled, then the Judge will examine whether the conditions that exist on the parties in the case concerned (minor premise) are in accordance or not with the provisions in the regulation. The judge then concludes.<sup>61</sup>

Acep Sugiri, a judge at PA Sukoharjo, mentioned that the judge's consideration process showed that the judge had used the first pattern (syllogism). In the decision on case 386/Pdt.G/2020/PA.Skh, it is illustrated that at the beginning of his legal considerations, the Judge put forward several sentences of questions as a major premise, such as are the alternative conditions for polygamy regulated in the Law, namely: article 4 of Law No. 1 of 1974 Regarding Marriage and the cumulative requirements as stipulated in Article 5 of Law No. I of 1974, have been fulfilled or not. Next, the Judge matches the conditions argued by the Petitioner with these provisions by examining the evidence presented at trial. Finally, The judge concludes whether the conditions for polygamy are met or not.<sup>62</sup>

Not all judges in the trial process use the first pattern (syllogism). As stated by Acep Sugiri, in the deliberation process the judge sometimes also uses the second pattern, wherein the legal considerations it is not apparent that there is a major premise put forward by the Judge at the beginning of his legal considerations, but instead examines the facts presented by the Petitioner. Only later was it known in conclusion that the conditions of the Petitioners confirmed or not with Article 4 paragraph (2) of Law

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<sup>61</sup> Acep Sugiri, Judge in Religious Court of Sukoharjo, interview on September 23, 2021.

<sup>62</sup> Acep Sugiri

Number 1 of 1974 Concerning Marriage jo. Article 41 paragraph (1) Government Regulation Number 9 of 1975 jo. Article 57 Presidential Decree No. 1 of 1991 concerning KHI (Major premise). Some judges add other considerations beyond the existing provisions of polygamy, such as social welfare.<sup>63</sup>

The above description also reveals the fact that what causes people to practice polygamy is more dominated by the reason that the wife is unable to carry out her obligations as a wife. The reasons for being disabled so that the wife is unable to carry out her obligations very rarely appear in the Religious Courts. Some have fulfilled all their needs but still want to get married a second time, or for reasons of having a high sexual libido.

Concerning the reasons for such polygamy, it appears that these reasons are based more on the condition of the wife. In other words, a husband makes a reason for polygamy because his wife experiences one of 3 conditions, namely: 1). The wife cannot carry out her obligations as a wife; 2) The wife has a disability or disease that is difficult to cure; and 3). The wife cannot give birth to children. So that the impression arises that if there is a polygamous man, it can be strongly suspected that it is due to the "mistake" of his wife. The motive for polygamy may be caused by the husband's wishes. Like the situation of a husband who cannot maintain his *'iffah* with 1 wife because he has a high libido. So even though his first wife was able to carry out her obligations as a wife, was not physically disabled, was not sick, and was not barren, the man still wanted to take another wife.

Regarding the requirements for polygamy, the judge's legal considerations in deciding the polygamy permit case at the Religious Court of the former Surakarta Residency refer to the provisions contained in Law no. 1 of 1974 and KHI. Based on Law no. 1 of 1974. The judge considered alternative conditions as well as cumulative conditions. Alternative conditions are regulated in Article 4 paragraph (2) namely, "the court only issues a permit to a husband who wants to have another wife if; the wife is unable to carry out her obligations as a wife; the wife has a disability or illness that is difficult to cure; the wife cannot give birth

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<sup>63</sup> Acep Sugiri

to children". Alternative conditions mean that if one of these 3 points is fulfilled, the husband can apply for a polygamy permit. Meanwhile, the cumulative provisions are regulated in Article 5 paragraph (1) that, "to be able to apply, the conditions must be fulfilled; (a) there is consent from the wife/wives, (b) there is a certainty, that the husband can guarantee the necessities of life for his wives and children and (c) must be able to act fairly." Submission of an application for a polygamy permit must fulfill 3 conditions as outlined in article 5 paragraph (1) or commonly referred to as cumulative conditions.

Related to the provisions of the conditions for good polygamy as stipulated in Law no. 1 of 1974 concerning Marriage and also the KHI look not much different. It's just that, in KHI 3 the conditions for polygamy are translated into main (primary) and additional (secondary) conditions. The main requirement, as outlined in Article 55 paragraph (2) KHI stated: "The main requirement is to have more than one wife, the husband must be able to be fair to his wife and children". While the other two conditions are outlined in Article 58 and Article 59. Article 58 KHI states: (1) In addition to the main conditions referred to in Article 55 paragraph (2), to obtain a PA permit, the conditions specified in Article 5 must also be fulfilled. Law Number 1 of 1974, namely: (a) there is the approval/permission of the wife; (b) there is a certainty that the husband can guarantee the necessities of life for his wives and their children. KHI only took over the provisions of Law Number 1 of 1974 and made "the ability to act fairly" the main requirement. However, in practice, judges are not too concerned about the differences in KHI, because the ability to act fairly is difficult to prove. Because of this, the judge will generally be sufficient with the "commitment" of the husband in court, among others by agreeing with the husband which is made in the form specified for that, as stipulated in Article 41 letter d PP 1975.<sup>64</sup>

## Conclusion

The relevance of the polygamy requirements set out in Law no. 1 of 1974 Regarding Marriage and KHI are mutually compatible. There

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<sup>64</sup> Acep Sugiri



are three conditions for polygamy in Law no. 1 of 1974, as contained in Article 5. However, the KHI describes the conditions for polygamy as the main condition and additional conditions. The main requirements are stated in Article 55 paragraph (2) while the additional conditions are in articles 58 and 59.

Moreover, in the process of legal considerations, the Judge decides on a polygamy permit using the same pattern as the decisions in other cases, namely using the syllogism rule. Some of the uses of this syllogism rule appear explicitly in the structure of legal considerations, but some decisions do not explicitly contain that pattern, even though the framework of thinking uses syllogistic rules as well.

Furthermore, related to the reasons for polygamy that are argued to apply for a polygamy permit, it is more based on the physical condition of the wife who cannot carry out her obligations. This seems to give the impression that if there is a polygamous man, then it should be suspected that it was due to the "mistake" of his wife. The motive for polygamy may be caused because of the condition of the husband himself, such as the condition of the husband who is unable to maintain his *'iffah* with one wife because he has a strong libido. In other words, even though the wife can carry out her obligations as a wife, is not physically disabled, is not sick, and is not sterile, cases of polygamy still arise. This is where the judge's policy is then needed in considering his decision, so it is necessary to add other considerations beyond the existing provisions, for example, benefit and social considerations.

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