

## Reconstruction of Marriage and Divorce Law for Civil Servants

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**Abstract:** This article analyzes Government Regulation Number 45 of 1990, this regulation contains gaps in polygamy arrangements between men and women who are civil servants. The focus of this article is to describe the construction of polygamy regulations for the State Civil Apparatus (ASN) which seems gender biased, then how efforts to reconstruct polygamy rules for the State Civil Apparatus (ASN) and then analyze its contribution to the reform of Islamic family law in Indonesia. This library research article is descriptive analytical. The primary data sources in writing this article are the Qur'an, Hadith, and positive laws in Indonesia that regulate marriage and divorce for Civil Servants. The analysis uses the theory of Mashlahah Mursalah, Gender and Feminist Amina Wadud and Gustav Redbruch's theory of legal objectives. The result of the analysis is Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants which regulates polygamy for Civil Servants, must be rejected because it contains legal content that is not fair to women as legal subjects. It should be reconstructed by providing equitable regulations, no discrimination, and equalizing the position of men and women before the law.

**Keyword:** Reconstruction, Marriage and Divorce Law, Civil Servants

**Abstrak:** Artikel ini menganalisis Peraturan Pemerintah Nomor 45 Tahun 1990, regulasi ini terdapat kesenjangan terhadap pengaturan poligami antara pria dan wanita yang berstatus sebagai pegawai negeri sipil. Fokus kajian artikel ini adalah mendeskripsikan konstruksi peraturan poligami bagi Aparatur Sipil Negara (ASN) yang terkesan bias gender, kemudian bagaimana upaya rekonstruksi aturan poligami bagi Aparatur Sipil Negara (ASN) selanjutnya menganalisis kontribusinya bagi pembaharuan hukum keluarga Islam di Indonesia. Artikel pustaka (*library research*) ini bersifat deskriptif analitis. Sumber data primer dalam penulisan artikel ini adalah Al-Qur'an, Hadis, serta undang-undang positif di Indonesia yang mengatur tentang perkawinan dan perceraian bagi Pegawai Negeri Sipil. Analisis menggunakan teori Mashlahah Mursalah, Gender dan Feminis Amina Wadud dan teori tujuan hukum *Gustav Redbruch*. Hasil analisisnya adalah Peraturan Pemerintah Nomor 45 Tahun 1990 Tentang Izin Perkawinan dan Perceraian Bagi Pegawai Negeri Sipil yang mengatur perihal poligami bagi Pegawai Negeri Sipil, harus ditolak dikarenakan mengandung muatan hukum yang tidak berkeadilan bagi wanita sebagai subjek hukum. Seyogyanya agar di rekonstruksi dengan memberikan regulasi yang berkeadilan, tidak ada diskriminasi, serta menyamakan kedudukan pria dan wanita di depan hukum.

**Kata Kunci:** Rekonstruksi, Hukum Perkawinan Perceraian, Pegawai Negeri Sipil

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Article History: Received: May 15, 2023; Revised: June 01, 2023; Accepted: July 12, 2023

DOI: <https://doi.org/10.24042/smart.v2i2.14626>

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## A. Introduction

The discussion of gender issues and their impact on the development of Islamic law focuses on the issue that family law reform in the Muslim world aims to protect and improve the status of women (Mudhzar, n.d., p. 21). The material that becomes the renewal of marriage law in Indonesia in this case is about polygamy for civil servants.

Polygamy in Indonesia is a legalized marriage practice. Although there are restrictions on polygamy, in writing polygamy has been allowed in Indonesia. This can be seen from the regulations on polygamy listed in the marriage law. There are several rules or laws that are the basis for determining the law of polygamy, including those listed in Law No. 1 of 1974 article 3 concerning marriage, which reads: Article 3 paragraph (1), in principle a man may only have one wife (*Pemerintah Republik Indonesia*, n.d.). A woman may only have one husband. Paragraph (2), the court may grant permission to a husband to be married to more than one person if desired by the parties concerned. Article 4 paragraph (1) in the event that a husband wishes to have more than one wife, the husband must submit an application to the Court in the area where he resides (*Pemerintah Republik Indonesia*, n.d.). Paragraph (2) states that the court will only grant permission to a husband to have more than one wife if: a. The wife is unable to fulfill her obligations as a wife; b. The wife suffers from an incurable disability or disease; c. The wife is unable to produce offspring; d. The husband is unable to fulfill his obligations as a wife; e. The husband is unable to fulfill his obligations as a wife; e. The wife is unable to fulfill his obligations as a wife; f. The husband is unable to fulfill his obligations as a wife.

Civil Servant is an Indonesian citizen who meets certain requirements, appointed as a permanent State Civil Servant by the civil service supervisory official to occupy a government position (*Pemerintah Republik Indonesia*, n.d.). Seeing that Civil Servants have an attachment in the form of an employment agreement with a Government agency, this causes Civil Servants to have special rules that must be obeyed as employees working within the Government (Jackson, 2014, p. 1). This is regulated in various Government Regulations relating to Civil Servants, including Law Number 8 of 1974 concerning Civil Service Principles (hereinafter referred to as Law No.8 of 1974) and Law No.43 of 1999 concerning Amendments to Law No.8 of 1974 (hereinafter referred to as Law No.43 of 1999), as amended by Law No.5 of 2014 concerning State Civil Apparatus (hereinafter referred to as UUASN). Not only that, marriage and divorce permits for civil servants are also regulated in Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants (hereinafter referred to as PP No.10 of 1983) which has been amended by Government Regulation Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants (hereinafter referred to as Government Regulation No.45 of 1990).

The Government Regulation not only regulates marriage and divorce permits for Civil Servants but also regulates polygamy committed by Civil Servants. As for sanctions against Civil Servants, they are listed in Government Regulation No. 30 of 1980 concerning Civil Servant Discipline Regulations (PP No.30 of 1980) and Government Regulation No. 53 of 2010 concerning Civil Servant Discipline

(hereinafter referred to as Government Regulation No.53 of 2010) (Pemerintah Republik Indonesia, n.d.).

In fact, the practice of polygamy in Indonesia is still relatively high. The high number of polygamy cannot be separated from the Indonesian people's perception of the institution of polygamy itself. As is known, the Islamic religious doctrine (conventional fiqh), which in fact allows polygamy, has been held by the Indonesian people for centuries, so that in some societies there is an acculturation of life views and attitudes of the Indonesian people. In this case, the view of traditional Islamic law on polygamy has more or less influenced the perception of Indonesian society.

Some examples of cases of dismissal of female civil servants who were proven to be polygamous wives: 1) Dismissal of female civil servants who were proven to be second wives, in the Sidoarjo Regency Government, there were two female civil servants who were proven to be second wives. Both were dismissed from their positions. These dismissals occurred in 2010 and 2011, and were due to violations of Article 4 (2) of Government Regulation No 45 of 1990. Referring to Article 15 (2), civil servants who violate Article 4 (2) of Government Regulation No. 45 of 1990 will be subject to severe disciplinary sanctions in the form of dismissal (Glori K. Wadrianto, n.d.); 2) Dismissal of a female civil servant who was proven to be a second wife, within the Bogor Regency Building and Settlement Planning Agency (DTBP) in 2015 (Sahrul, n.d.); 3) Dismissal of a female civil servant who was proven to be a second wife, within the Education and Training Personnel Agency (BKPP) of Lebak Regency (Sandi, n.d.).

The gap in polygamy arrangements between male and female civil servants, where men are allowed to polygamy provided they get permission from their superiors, while female civil servants do not have the opportunity to become the second third and fourth wives, as stipulated in Article 15 of Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants, if proven, female civil servants who become the second third and fourth wives will be dishonorably dismissed, even though from the material side, polygamous civil servants are more secure and will not interfere with the husband's economic situation. Then if a male civil servant commits polygamy without permission, he is subject to one of the severe disciplinary penalties as stipulated in Government Regulation Number 53 of 2010 concerning Civil Servant Discipline Article 7 Paragraph (4), the sanctions are gradual starting from demotion, demotion to a lower level position, removal from office, and dishonorable dismissal.

Research relevant to the study of this article was conducted by (Nur Khoirin, 2010), which concluded that the requirements and procedures for obtaining a polygamy license are actually very simple, namely the permission of the first wife/wives and the willingness of the prospective new wife. They are the ones who know best whether or not their husbands can be fair, whether or not they can provide for their children, and whether or not they are the ones who will live the life of the marriage. If there is already permission from the wives and the willingness of the prospective new wife, then the examination of the polygamy license application in court should also be simplified. It does not need to be examined like a dispute that takes a long time.

Finally, it should be stated here that polygamy is a human right that must be protected and channeled reasonably. Laws that contradict basic human instincts

will inevitably be ineffective, and if enforced will lead to adverse effects and deviations. Prohibiting polygamy is like damming a flood so that it does not flow down, one place is dammed, in another place it will surely break outside the channel, even uncontrollable. Other research by (Yuli Yani, 2022). The results of the study found that the reasons for polygamy for civil servants are the same as the reasons stipulated in the Islamic law of positive law applicable in Indonesia, the difference in polygamy requirements that must be met by civil servants is the permission of the Court and permission from superiors. Applications for polygamy permits for civil servants can be granted by the Panel of Judges if the reasons and requirements are in accordance with applicable regulations. Applications for polygamy permits for civil servants can be rejected by the Panel of Judges because the reasons and requirements are not met (Adi Riyanto, 2019).

The purpose of this research is to find out what regulations are applied among Civil Servants (PNS) regarding divorce and to find out the causes of divorce among Civil Servants (PNS). The results of the study are Regulations regarding divorce and polygamy are regulated in Law Number 1 of 1974 concerning Marriage; Government Regulation Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants; Government Regulation Number 53 of 2010 concerning Disciplinary Regulations for Civil Servants. Factors that influence divorce are education, length of marriage, income, economic problems, domestic violence, infidelity, interference from extended family (parents). The research gap between this article and the above article is that this article reveals inequality and injustice in the legal rules of marriage and divorce for civil servant men and women, civil servant women are not allowed to become second, third and fourth wives, while men are allowed. Meanwhile, the study of this article emphasizes the legal injustice. So that the novelty of this article is the reconstruction of the law of marriage and divorce for civil servants which contains rules that discriminate against women.

## **B. Method**

This article is a library research, which is writing done by studying literature. (Sugiyono, 2016). The writing of the article is descriptive analytical. The primary data in writing this article are the Qur'an, Hadith, Law Number 1 of 1974 concerning National Marriage Law, The primary data in writing this article are Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants, PP. Number 9 of 1975 as the implementing regulation of Law No. 1974, and INPRES No.1 of 1991 concerning the Compilation of Islamic Law (KHI). The analysis in this article uses three theories: 1) Grand Theory using Mashlahah Mursalah; 2) Middle Theory using Gender and Feminist Amina Wadud and; 3) Application Theory using Gustav Redbruch's theory of legal objectives. Data analysis in this article uses inductive thinking techniques then the author makes data analysis with qualitative analysis.

## **C. Discussion**

### **Polygamy in Law Number 1 of 1974 concerning Marriage**

Indonesian legislation does not prohibit polygamy. This can be seen in Law No. 1 of 1974 concerning marriage (Tarigan, 2006). However, this prohibition of

polygamy is only an exception, because basically Law No. 1 of 1974 adheres to the principle of monogamy. As contained in Article 3 paragraph 1, it states: "In principle, in a marriage a man may only have one wife. A woman may only have one husband". However, in another section it is stated that in certain circumstances polygamy is justified. The justification of polygamy is actually only an exception as explained in article 3 paragraph 2 "The court may grant permission to a husband to have more than one wife if desired by the parties concerned".

So, this article explains that polygamy is basically not allowed, but can be excluded if there is permission from the court and permission from the parties concerned. The court in granting permission must see the reasons for a husband who wants polygamy, which are explained in article 4 paragraph 2.

In Chapter 4 paragraph 2 lists the reasons for allowing a person to commit polygamy, namely: The court referred to in paragraph (1) of this article only gives permission to a husband who will have more than one wife if: a) The wife cannot fulfill her obligations as a wife; b) The wife has a disability or illness that cannot be cured; c) The wife cannot give birth to offspring.

With the article that allows polygamy for certain reasons as mentioned above, it is clear that the principle adopted by the Marriage Law is not the principle of absolute monogamy but open monogamy or to borrow Yahya Harahap's language, monogamy that is not absolute (Harahap, n.d., p. 42) Polygamy is placed in the status of emergency law, or in an extra ordinary circumstance. In addition, polygamy is not solely the full authority of the husband but is based on the permission of the judge (Court) (Azhari, 2004).

It turns out that the Marriage Law also contains conditions for the permissibility of polygamy. As contained in article 5 paragraph 1, the conditions that must be met for a husband who wants to commit polygamy are: a) The consent of the wife; b) The certainty that the husband is able to guarantee the living needs of his wives and their children; c) The guarantee that the husband will be fair to his wives and their children.

To distinguish the requirements in articles 4 and 5, article 4 is called an alternative requirement, which means that one of them must be present in order to apply for polygamy. Meanwhile, Article 5 is a cumulative requirement in which all of them must be fulfilled by the husband who will commit polygamy. However, in chapter 5 paragraph 2, an exception is again given that: The consent referred to in paragraph (1) letter a of this article is not required for a husband if his wives cannot be asked for their consent and cannot be a party to the agreement, or there is no news from his wife for at least 2 (two) years, or for other reasons that need to be judged by the court.

Law No. 1 of 1974 does not regulate the procedure for applying for a polygamy license in more detail. The procedure for applying for a polygamy license is regulated in more detail in Government Regulation No. 9 of 1975 in article 45 paragraph (1) Regarding the implementation of polygamy without permission from the Religious Court, a fine of Rp. 7,500 may be imposed.

Meanwhile, the rules of polygamy in the Compilation of Islamic Law are contained in section IX with the title, having more than one wife, which is revealed from articles 55 to 59 (Nurrudin, Amir dan Akmal Taringan, n.d., p. 167)



Chapter 55 states: a) Marrying more than one person at the same time is limited to four wives; b) The main condition for having more than one wife is that the husband must be able to be fair to his wives and children; c) If the main condition mentioned in paragraph (2) is impossible to fulfill, the husband is prohibited from having more than one wife.

Furthermore, Article 56 emphasizes that husbands who wish to commit polygamy must obtain permission from the Religious Court. Thus, a husband who commits polygamy without the approval of the Religious Court does not have legal force.

Meanwhile, the content of section 57 is no different from article 4 of Law No. 1/1974, which contains provisions on the reasons for allowing a person to commit polygamy. In section 58, it explains the conditions that must be met by a husband, namely, the wife's consent, the certainty that the husband can guarantee the needs of his wife and children. The wife's consent is in writing, with verbal confirmation during the court hearing.

Furthermore, Article 59 illustrates how great the authority of the Religious Court is in granting licenses. So that for wives who do not want to give consent to their husbands to commit polygamy, that consent can be taken over by the Religious Court. The article reads more fully as follows:

"In the event that the wife is unable 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 paragraph (2) and 57, the Religious Court may determine to grant permission after examining and hearing the wife concerned at the Religious Court trial, and against this determination the wife or husband may file an appeal or cassation".

The Compilation of Islamic Law explains how the law of marriage is valid according to law and religion. A marriage with a second, third or fourth wife without permission from the Religious Court has no legal force. However, Article 58 paragraph 3 explains that the wife's consent is not required if it is impossible to seek her consent and cannot be a party to the agreement or if there is no news from the wife or wives for at least 2 years or for other reasons that need to be assessed by the Judge.

Here it is clear that if a wife does not want to give consent to her husband to commit polygamy, then the Court cannot force the husband to give permission. This is due to the consideration of the panel of judges. However, the Religious Court can determine the granting of permission after examining and hearing the wife concerned at the Religious Court trial, and against this determination the wife or husband can file an appeal or cassation.

Polygamy in Indonesian Positive Law In Article 49 of Law Number 7 of 1989 which has been amended by Law No. 3 of 2006 and the second amendment with Law Number 50 of 2009 states that "Religious Courts have the duty and authority to examine, decide, and resolve cases at the first level between people who are Muslims in the fields of: marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah, and shari'ah economy. In the explanation of Article 49 second paragraph, it is also explained that what is meant by "between people who are Muslims" is "including persons or legal entities who automatically submit themselves voluntarily to Islamic law regarding matters that fall under the authority of the Religious Courts in

accordance with the provisions of this article". Then in the explanation of letter a of this article, it is stated that what is meant by "marriage" is "matters regulated in or based on the applicable law regarding marriage conducted according to shari'ah", which includes, among others, "permission to have more than one wife". Permission to have more than one wife (the commonly used term is polygamy permission), in the explanation of Article 49 second paragraph as above, is stated to be included in the scope of the definition of marriage, and of course becomes the absolute authority of the Religious Court as long as the legal subjects are Muslims and the marriage is conducted according to Islamic law. On the basis of the authority granted by the law as described above, the Religious Court is absolutely authorized to examine and decide on the case of a polygamy license application submitted to it.

Polygamy permission by the Religious Court can be granted if the husband's reasons have fulfilled the alternative reasons in accordance with the provisions of Article 4 paragraph (2) and the cumulative conditions listed in Article 5 paragraph (1) of Law Number 1 of 1974 as mentioned above. The formal juridical provisions that form the legal basis for granting polygamy permits are regulated in Law Number 1 of 1974 concerning marriage, juncto Government Regulation Number 9 of 1975, juncto Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. Law Number 1 of 1974 Article 3 paragraph (2) in conjunction with Article 43 of Government Regulation No. 9 of 1975, states that "The court may grant permission to a husband to have more than one wife if desired by the parties concerned". In addition, Article 4 paragraph (1) states that "in the event that a husband will have more than one wife, as mentioned in Article 3 paragraph (2) of this Law, he must submit an application to the Court in the area where he lives" (Depag RI, 1997).

Government Regulation No. 9 of 1975 regulates the provisions for the granting of polygamy permits in Article 43 which states that "if the Court is of the opinion that there is sufficient reason for the applicant to have more than one wife, the Court shall give its decision in the form of permission to have more than one wife". Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law provides a legal basis for granting polygamy permits through Article 56 paragraph (3) which states that "Marriages conducted with a second, third or fourth wife without permission from the Religious Court, have no legal force".

The provisions contained in the Compilation of Islamic Law are essentially Islamic law, which in a narrow sense is local fiqh with Indonesian characteristics. It is said so because the Compilation of Islamic Law is extracted from the sources and arguments of Islamic law through an *ijtihad* and contemporary legal thinking. The purpose of the Compilation of Islamic Law is the unification of Islamic law applicable to Muslims according to the conditions and legal needs of the Indonesian Muslim community. The unification of Islamic law is carried out based on the legal thinking of Islamic jurists about the need for the transformation of Islamic law into positive law, so as to create uniformity in the implementation of Islamic law in addressing the problems of the lives of Muslims in the field of *mua'amalah*.

### **Regulation on Polygamy Regulation for State Civil Apparatus**

Regarding the rules regarding polygamy, civil servants in matters of marriage are required to be disciplined by Government Regulation No. 45 of 1990, that every

marriage, divorce, wanting to have more than one wife must be registered and permission from superiors, in this case, the officials above them, while the provisions for Civil Servants (PNS) who will be polygamous in addition to the two legal products, are also subject to Government Regulation No. 10 of 1983 in conjunction with Government Regulation No. 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants.

Civil servants may have more than one wife with permission from an authorized official in accordance with the requirements stipulated in Government Regulation No. 10 of 1983 jo Government Regulation No. 45 of 1990. Thus, for civil servants, the rules for polygamy are even stricter, because they must obey all the marriage regulations in the three regulations. This is motivated because civil servants have an important and decisive position and role, because they are an element of the state apparatus, to organize government and development in order to achieve national goals. As stated in the Preamble of the 1945 Constitution, in order to achieve national goals, it is necessary to have civil servants who are loyal and obedient to the Pancasila and the 1945 Constitution, the State and the Government and who are united, have a good mentality, have authority, are strong, efficient, clean, of high quality and are aware of their responsibilities as state apparatus, servants of the state and servants of the community. (Pola Pembinaan Ketatalaksanaan Peradilan Agama, 2000)

Before the existence of Government Regulation No. 45 of 1990 concerning marriage and divorce permits for Civil Servants, the government first made a regulation of Government Regulation No. 10 of 1983 concerning marriage and divorce permits for Civil Servants. The existence of Government Regulation No. 45 of 1990 is a form of change from the previous Government Regulation. In order to further improve and enforce civil servant discipline and provide legal certainty and a sense of justice, it is deemed necessary to amend several provisions in Government Regulation Number 10 of 1983 concerning marriage and divorce permits for Civil Servants. In its implementation, some provisions of Government Regulation Number 10 of 1983 are unclear. Certain civil servants who should be subject to the provisions of Government Regulation No. 10 of 1983 can avoid, either intentionally or unintentionally, the provisions. Some of the changes include the prohibition for female civil servants to become a second, third or fourth wife (Sudarsono, 2010, p. 279).

Male Civil Servants who will have more than one wife, must obtain prior permission from an Official; 2. Female Civil Servants are not permitted to become a second/third/fourth wife; 3. Requests for permission as referred to in paragraph (1) shall be submitted in writing; 4. In the letter requesting permission as referred to in paragraph (3), complete reasons must be stated on which the request for permission to have more than one wife is based.

Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants. This is intended so that Civil Servants can be a good example to their subordinates and be an example of a good citizen in society, including in fostering family life. The PP is indirectly intended to tighten and complicate divorce permits and polygamy permits. The sanctions for violations are contained in the serious disciplinary violations in Government Regulation No. 30 of



1980 concerning civil servant discipline, which was later replaced by Government Regulation No. 53 of 2010 (Utomo, 2003).

The regulation is made so that civil servants are not disturbed by their household or family affairs, namely the issue of marriage permits (polygamy) and divorce and obedience to applicable regulations. In addition, civil servants in carrying out their duties are expected not to be disturbed by their household or family affairs. In the author's opinion, the meaning of being disturbed by household or family affairs here is the issue of marriage licenses (polygamy) and divorce.

In the Indonesian context, especially for those who are civil servants, it appears that polygamy is accepted with strict requirements as can be found in Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits and Government Regulation Number 53 of 2010 concerning civil servant discipline for Civil Servants. The interesting thing then to be observed is that in the contents of Government Regulation Number 45 of 1990, only female civil servants are not allowed to engage in the practice of polygamy as stated in Article 4 paragraph (2) while male civil servants are still allowed even though with quite strict requirements. Therefore, the author is interested in examining Government Regulation No. 45/1990 on Marriage and Divorce Permits for Civil Servants to measure justice between men and women in order to illustrate a justice that can position men and women in a horizontal-subordinative relationship and not in a vertical-coordinative relationship. (Musgamy, n.d., p. 400)

In Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants which adheres to the principle of monogamy, it has been clearly regulated whether or not a male civil servant may have more than one wife and whether or not a female civil servant may become a second/third/fourth wife. This implies that it is still possible for a male civil servant to have more than one wife, while a female civil servant is not allowed to be a second/third/fourth wife at all. (Hilmi Yusron Rofi'i., Zaki, H. M., Faizal, L., & Qohar, 2022)

Based on these reasons, the regulation of Civil Servants who will have more than one wife (polygamy) is specifically regulated in Government Regulation Number 10 of 1983 which is amended by Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants. So the marriage permit referred to in this government regulation is a permit for Civil Servants who have more than one wife (polygamy).

Male Civil Servants who will have more than one wife and female Civil Servants who will become the second/third/fourth wife are required to obtain prior permission from the Official. Likewise, Civil Servants who will divorce must obtain prior permission from an Official. Meanwhile, female Civil Servants are not permitted to become the second, third or fourth wife of a Civil Servant. The provision of having to obtain prior permission from an Official for the marriage and divorce of Civil Servants does not reduce the provisions applicable to the institution of marriage and divorce itself. The need for prior permission is given that the person concerned has a position as a Civil Servant.

Based on Circular Letter Number: 48/SE/1990 which was stipulated and promulgated in Jakarta by the President of the Republic of Indonesia Soeharto together with the Minister or State Secretary Moerdiono on September 6, 1990 concerning instructions for the implementation of Government Regulation Number

45 of 1990 concerning amendments to Government Regulation No. 10 of 1983 concerning marriage and divorce permits for civil servants in section III regulates male civil servants who will have more than one wife, there are several provisions, namely: PNS yang akan beristri lebih dari seorang wajib memperoleh izin tertulis lebih dahulu dari Pejabat.

1. Every superior who receives a letter requesting permission to marry more than one person shall give consideration to the Official.
2. Every superior who receives a letter requesting permission to have more than one wife, shall submit it to the Official through hierarchical channels no later than three months from the date of receiving the letter requesting permission.
3. Each Officer shall make a decision no later than three months from the date he/she receives the letter requesting the license.
4. To assist the Officials in carrying out their obligations, a team to implement Government Regulation No. 10 of 1983 and Government Regulation No. 45 of 1990 shall be formed in their respective environments.
5. If within the specified time the Official does not make a decision that does not grant or does not reject the request for permission from a civil servant within his/her area to have more than one wife, then the Official shall be deemed to have rejected the request for permission to have more than one wife submitted by his/her subordinate civil servants.
6. If the matter mentioned in point 6 above turns out to be the negligence of the Official, the Official concerned shall be subject to disciplinary punishment. (Sudarsono, 2005, p. 271)

Furthermore, Article 10 paragraph (1) of Government Regulation Number 10 of 1983 states that a polygamy license can be granted by an official if it meets at least one alternative requirement and three cumulative requirements, namely: Alternative conditions are: 1. The wife is unable to carry out her obligations as a wife; 2. The wife has a disability or other incurable disease; 3. The wife cannot give birth to offspring after at least ten years of marriage (Article 10 paragraph (2) of Government Regulation Number 10 of 1983).

Meanwhile, the cumulative requirements are: 1. There is a written consent made sincerely by the wife of the civil servant concerned; 2. The male civil servant concerned has sufficient income to support more than one wife and their children; 3. There is a written guarantee from the male civil servant concerned that he will be fair to his wives and children (Article 10 paragraph (3) of Government Regulation Number 10 of 1983).

Based on Government Regulation Number 45 of 1990 Article 1 point 7, the head of a State-Owned Bank and the head of a State-Owned Enterprise must seek prior permission from the President. Meanwhile, the head of a Regionally-Owned Bank and the head of a Regionally-Owned Enterprise must seek prior permission from the Head of the relevant Region.

### **Reconstruction of Polygamy Rules for State Civil Apparatus (ASN)**

The gap regarding polygamy regulations for male and female civil servants has been running for about 30 years, namely since the enactment of Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil

Servants. This has become a problem in the community, resulting in the practice of siri polygamy in civil servants' lives.

Based on these regulations, it is clear that there is discriminatory treatment between male and female civil servants in the regulation of laws and regulations regarding polygamy for civil servants. Male civil servants are given the opportunity to have more than one wife and female civil servants are prohibited from becoming polygamous wives. This will result in the practice of siri polygamy for civil servants, which will result in greater harm.

The writing of this article is analyzed using amina wadud's theory of gender equality, in her work *Women's Reform in Islam* (2006) it is clear that Wadud bases her thinking on feminist theory and her interest in fighting for gender equality and justice arises in a historical context that is closely related to the struggle of African-American women for gender justice. On this basis, Wadud's interpretation of feminism uses the framework of Western feminism. (Muhsin, 2006)

The regulation on polygamy for civil servants as stipulated in Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants, there is gender inequality in the regulation.

Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants, that in its regulations as Article 4 Paragraphs 1 and 2 and Article 15 Paragraphs 1 and 2, there is discrimination against women. Where men are allowed polygamy with the condition of permission from superiors, on the other hand women are prohibited. The sanctions between men and women are also different, if those who violate Article 4 Paragraph 1 are punished in the form of severe discipline in accordance with the rules on civil servant discipline, but violators of Article 4 Paragraph 2 are immediately subject to dishonorable dismissal.

Based on these regulations, there is an absence of gender in favor of patriarchy, where men are considered to have power and women are discredited and considered weak, on the grounds that they are easily exposed to inner pressure which has the effect of decreasing performance as public servants, so that this is used as a basis for prohibiting women from becoming polygamous wives, many of which are inconsistent with the facts in the field, because there are women civil servants who become polygamous wives who are able to carry out their duties as public servants properly.

The reasons in the regulatory considerations are refuted, and not proven to be true, and the inequality in gender seems to corner women only, as if men are given power or considered strong and capable in carrying out polygamous marriages while women are considered weak and unable to carry out as polygamous wives as well as public servants.

Adaya ketidak setaraan gender, kesetaraan laki-laki dan perempuan especially in the field of law, in this right is the law of polygamy. In the regulation of PP No. 45 of 1990, which differentiates between men and women in regulation. Therefore, with the existence of inequality, there should be a revision of PP No. 45 of 1990 which accommodates the equality of men and women in regulation, so that the existence of men and women as legal subjects is more visible and the realization of justice in terms of polygamy regulations for civil servants.

Furthermore, this article is analyzed using Gustav Redbruch's theory of legal objectives, Gutav Redbruch explains that every law that will be enacted must contain

the values of justice in it, either essential or distributive justice, without any distinction from any basis. Gustav Radbruch stated that in legal objectives it is necessary to use the principle of priority of the three basic values that are the purpose of law. namely justice, certainty, expediency. (Gustav, 1975)

Based on the factual data on the dismissal, it is very clear that the injustice in PP No. 45 of 1990 is gender biased and not in accordance with the values of justice. The regulation is proven to discriminate and discredit women's rights in the field of marriage rights, and violate human rights.

Justice in law as Gustav Redbruch, then PP No. 45 of 1990 should be rejected because there is injustice in it, in the form of discrimination between men and women in legal regulations, as well as violations of legal principles in PP No. 45 of 1990 regulations. It should be reconstructed, so that the rule of law in its regulation provides the value of justice in law for men and women.

Furthermore, Gustav Radbruch explained that the second barometer of legal objectives is legal certainty, that women experience discrimination in law which causes legal inequality for women in legislation. Gustav Redbruch gave the concept that regulation in order to realize the purpose of law is the existence of certain legal certainty, legal certainty is needed to realize the principle of equality before the law without discrimination. Based on the analysis of legal certainty, the regulation of Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants should be rejected because it contains legal content that discriminates against women as legal subjects.

The third legal objective of Gustav Radbruch is legal expediency (*zweckmaeszigkeit*), that in Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants, that in this regulation women experience injustice, discrimination in law which causes legal imbalances for women in legislation.

Based on the analysis of legal expediency, the regulation of Government Regulation No. 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants should be rejected because it contains legal content that discriminates against women as legal subjects and indicates harm to women in the regulation.

Then in the analysis of *maslahah mursalah*, there is a side of *kemudhorotan* in the regulation of PP No. 45 of 1990, namely the existence of injustice in the regulation, that there are different sanctions in the regulation. Article 15 Paragraphs 1 and 2, there is discrimination against women. Where men are allowed polygamy on condition of superior permission, on the other hand women are prohibited. The sanctions between men and women are also different, if those who violate Article 4 Paragraph 1 are punished in the form of severe discipline in accordance with the rules on civil servant discipline, but violators of Article 4 Paragraph 2 are immediately subject to dishonorable dismissal. That these sanctions are evidence of injustice.

The barometer of *kemashlahatan* is the existence of justice and responds to the values of expediency that live in society. So that based on this analysis, the regulation of PP No. 45 of 1990 is not in accordance with the concept of *mashlahah mursalah*. So that in order to realize *kemashlahatan*, there should be changes to the disciplinary regulations on marriage and divorce for civil servants that provide

balanced regulations between men and women, in order to create justice for men and women who work as State Civil Apparatus.

Berdasarkan analisis di atas, maka regulasi Peraturan Pemerintah Nomor 45 1990 concerning Marriage and Divorce Permits for Civil Servants must be rejected because it contains legal content that discriminates against women as legal subjects, resulting in not achieving legal objectives as conceptualized by Gustav Redbrudh, and does not appear to be the values of benefit in the community. Because it does not fulfill the value of justice in law, the value of certainty in law and the value of benefit in law.

Given the changes in regulations regarding Civil Servants, as stipulated in Law Number 5 of 2014 concerning the State Civil Apparatus, the scope of Civil Servants is regulated in Article 6, that the State Civil Apparatus is Civil Servants (PNS) and Government Employees with Work Agreements (PPPK). Therefore, the reconstruction of Government Regulation Number 45 of 1990 should be updated in accordance with the latest State Civil Apparatus Law, in order to avoid any ambiguity in the law.

#### **D. Conclusion**

Government Regulation No. 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants which regulates polygamy for Civil Servants, must be rejected because it contains unjust legal content, there is discrimination against women as legal subjects, so that gender inequality in regulation and results in not achieving legal objectives as conceptualized by Gustav Redbrudh, namely not fulfilling the value of justice in law, the value of certainty in law and the value of benefit in law. And the value of kemashlahatan does not appear in PP No. 45 of 1990. In achieving gender equality, the achievement of legal objectives and kemashlahatan should be reconstructed by providing regulations that are equal, there is no discrimination, and equalize the position of men and women before the law.

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