

JUDGE'S CONSIDERATION IN POLYGAMY LICENSE FOR THE REASON OF SIRI MARRIAGE**(Study of Decisions in Case Number 1309/Pdt.G/2020/PA.Sal, Case Number 309/Pdt.G/2018/PA.Wno and Case Number 280/Pdt.G/2017/PA.Sgt)**Dea Shinta Rahmawati¹, Marisa Kurnianingsih²¹Fakultas Hukum, Universitas Muhammadiyah Surakarta (C100190377@student.ums.ac.id)²Fakultas Hukum, Universitas Muhammadiyah Surakarta (mk122@ums.ac.id)**ABSTRACT**

Marriage is an interior and outer bond between a man and a woman as husband and wife with the goal of forming a happy and eternal family (household) founded on faith in the Almighty God. To enter into a polygamous marriage, the partner or applicant must meet the alternative and cumulative polygamous marriage requirements. According to Islamic law and positive law, polygamy is permissible (mubah). Polygamy continues to be a controversial issue in Indonesia. Polygamy is believed to be harmful and miserable for women, while it only benefits men. The permissibility of polygamy in Islam is not a form of inequality between men and women, considering that the conditions for polygamy are very strict. Men who wish to practice polygamy must be able to comply with the legally stipulated requirements and principles of polygamy. The judge's consideration is his opinion in making a decision, which must consider the mitigating and aggravating circumstances of the applicant. In this case, the author uses a normative legal approach as a research methodology. Descriptive qualitative research was used in this study, namely research to describe carefully, thoroughly, and population characteristics or special aspects. The data source used in this study comes from other sources and therefore is secondary. This paper attempts to identify and explain the factors considered by judges in allowing polygamy based on unregistered marriages, as well as ascertaining the legal basis and factors used by judges to allow polygamy.

Keywords: Polygamy; Marriage; and Judge's Consideration.

INTRODUCTION

The word "married" is of etymological origin from the family relationship that develops between members of the same sex and the opposite sex through marriage. According to the KBBI, marriage is the formation of a legal union of a couple. Marriage Based on Republic of Indonesia Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage is the union of a man and a woman in the role of husband and wife with the aim of creating a happy and lasting life together. a house that prioritizes worship of God Almighty.

A husband or applicant for a polygamous marriage must meet both alternative grounds and cumulative standards for polygamy. Article 4 of Law Number 1 of 1974 explains other legal bases for polygamous marriages as follows:

1. According to Article 3 paragraph (2) of this Law, every couple who wishes to have more than one wife must first submit an application to the court at their place of residence.
2. A husband who wishes to marry multiple partners is only given power by the court as stated in paragraph (1) of this article if:
 - a. The wife cannot fulfill her obligations as a wife;
 - b. wife with physical disability or incurable disease;
 - c. The wife cannot bear children.

Article 5 of Law Number 1 of 1974 determines the cumulative conditions for polygamous marriages to occur.

1. The following conditions must be met to submit an application to the Court based on Article 4 Paragraph 1 of this Law:

- a. There is consent from the wife/wives;
- b. Wives and children can trust in their husbands' ability to provide for them;
- c. Guarantee of fair treatment of wives and children by husbands.

Polygamy is based on the husband having a first unregistered marriage with another woman, making it a very complicated problem in society. If you look closely at Article 4 and Article 5 of Law Number 1 of 1974 which discusses the reasons for practicing polygamy, it is clear that unregistered marriage with another woman is not one of the factors that can justify or encourage the permissibility of polygamy (Rofiq, 2015: 142-143)

However, the procedures for obtaining a polygamy permit in Indonesia have evolved using many different reasons, not just the three listed in the laws and regulations. The existence of a double decision on the application for a polygamy permit on the grounds that he had previously entered into an extramarital marriage, proves that the condition of the prospective second wife who entered into an extramarital marriage with the applicant is the reason for the application for polygamy. permission in the Religious Court, some of these decisions are Decision Number 1309/Pdt.G/2020/PA.Sal, Decision Number 309/Pdt.G/2018/PA.Wno and Decision Number 280/Pdt.G/2017/PA.Sgt .

Based on the description of the problem above, it encourages the author to pay close attention, research and study further in the form of a thesis, with the title "JUDGES' CONSIDERATIONS IN PERMITTING POLYGAMY WITH REASONS FOR SIRI MARRIAGE".

Matters that can be debated regarding this case include dissecting the judge's considerations behind the decision to grant Case No. 1309/Pdt.G/2020/PA.Sal, Case Number 309/Pdt.G/2018/PA.Wno and Case Number 280/Pdt.G/2017/PA.Sgt concerning permission for polygamy on the grounds of unregistered marriage.

RESEARCH METHODS

Research methodology A normative judicial strategy is used by the author here. The goal of normative legal research is to identify applicable legal rules, a set of legal principles, or a body of doctrine to resolve a particular legal problem. Descriptive qualitative research, which aims to explain in great detail the characteristics of a population or other special field of study, is used in this research. Secondary data sources, or data collected from elsewhere, were used for this research. Meanwhile, data from secondary sources can be considered as reinforcement for the main data. Secondary research materials for this research were collected through a literature review, consisting of statutory regulations, government documents, novels and scientific journals. Primary and secondary legal materials were researched through online library catalogs and in-person interviews for this project.

RESULTS AND DISCUSSION

Comparison of Case Number 1309/Pdt.G/2020/PA.Sal, Case Number 309/Pdt.G/2018/PA.Wno and Case Number 280/Pdt.G/2017/PA.Sgt Concerning Permits for Polygamy on the Reason of Unregistered Marriage.

The following is a comparison of cases regarding permits for polygamy with reasons for unregistered marriage, namely as follows:

Table 1. Comparison of Polygamy Cases

Case Number Qualification	Number 1309/Pdt.G/2020/PA.Sal	Number 309/Pdt.G/2018/PA.Wno	Number 280/Pdt.G/2017/PA.Sgt
Names of Parties	<ul style="list-style-type: none"> • Applicant: XXXX place and date of birth Semarang Regency, 	<ul style="list-style-type: none"> • Applicant: XXXX 68 years old, Muslim, occupation 	<ul style="list-style-type: none"> • Applicant: Irwansyah, 40 years old, Muslim, self-employed, resides

	<p>March 13 1976, religion Islam, Self-Employed work, Primary School Education, residence in Semarang Regency</p> <ul style="list-style-type: none"> • Respondent: XXXX place and date of birth Semarang Regency, 01 January 1978, religion Islam, occupation Not working, Elementary school education, residence in Semarang Regency 	<p>Entrepreneur/cattle breeder, residence address in Gunungkidul Regency.</p> <ul style="list-style-type: none"> • Respondent: XXXX 68 years old, Muslim, works as looking after a house stairs, address of residence in the Regency Gunung kidul. 	<p>in RT 02, RW 01, Solok Village, Muaro Jambi Regency.</p> <ul style="list-style-type: none"> • Respondent: Ety Kurniati Seke, 49 years old, Muslim, works as a civil servant, lives in the Garuda 3 Jaya Complex, Number 33, RT 12, Baganpete Village, Alam Barajo District, Jambi City.
Reasons for Polygamy	<p>The Petitioner is polygamous because the Petitioner and the Petitioner's prospective second wife were married in the Islamic faith on August 15 2015 and the Petitioner wanted to register the marriage at the Religious Affairs Office, Susukan District, Semarang Regency.</p>	<p>After realizing that he and the Respondent would not be able to have children if the Petitioner did not remarry, he sought permission for polygamy. If the Petitioner does not practice polygamy, then the Petitioner is very worried that he will carry out actions that are contrary to religious principles.</p> <p>The Petitioner was married to the Petitioner and had one child, and when he married, the Petitioner's future wife was a virgin.</p>	<p>The Petitioner is polygamous because the Respondent is unable to fulfill her responsibilities as a wife;</p> <p>The Petitioner and his prospective second wife are already married and have a daughter;</p> <p>That is to obtain a clear legal status before the law regarding children.</p>
Decision	Accepted/accepted	Accepted/accepted	Rejected

Based on the table above, it is known that when judges examine and decide cases, they use different legal considerations, so there are differences in their decisions. Please note that the court has the authority to examine cases granting permits for polygamy. Article 49 letter (a) Law no. 7 of 1989 concerning Religious Courts as amended by Law no. 50 of 2009 concerning the Second Amendment to Law no. 7 concerning Religious Courts is the absolute authority of the Religious Courts, as can be seen in the consideration of Case No. 1309/Pdt.G/2020/PA.Sal;

Article 49 letter (a) of Law no. 7 of 1989, concerning Religious Courts, namely:

Article 49

- (1) The Religious Court is the first level to adjudicate disputes between Muslims in the following areas: a. marriage; b. inheritance, wills and gifts, which are carried out based on Islamic law; c. waqf and shadaqah.
- (2) Paragraph (1) letter a "marriage field" is everything based on marriage law.
- (3) Determining who will inherit, determining the amount of inherited assets, distributing portions of the inheritance to the heirs, and carrying out the distribution are all aspects of the field of inheritance as referred to in point (1) letter b.

The Salatiga Religious Court has the authority to handle this case because both the Petitioner and Respondent admit that they reside in the jurisdiction of the Salatiga Religious Court and because the evidence and statements from witnesses prove this. (relative competency per Article 4 paragraph (1) of Law Number 1 of 1974 concerning Marriage).

Meanwhile, in Case Number 309/Pdt.G/2018/PA.Wno, the judge considers the reasons for applying for polygamy based on the legal basis used by the applicant, namely in accordance with the provisions of Law No. 1 of 1974 concerning Marriage, Article 4 Paragraphs (1) and (2), Letter A. Article 40 Government Regulation No. 9 of 1975, Concerning the Implementation of Law No.1 of 1974 jo. Article 56 paragraphs (1), (2), and (3), as well as 57 letter a of the Summary of Islamic Law, are therefore acceptable for further examination and decision.

Article 4 Marriage Law 1 of 1974, PP 9 of 1975 concerning the Implementation of Marriage Law 1 of 1974, and Article 57 of the Compilation of Islamic Law.

- a) The wife cannot fulfill her responsibilities;
- b) The wife suffers from an incurable disability or disease.
- c) The wife cannot produce children.

Whereas the Petitioner has stated the legal basis for the examination and decision of the Sengeti Religious Court regarding Case No. 280/Pdt.G/2017/PA.Sgt in accordance with the provisions of Article 49 and Elucidation of Law No. 7 of 1989 as amended by Laws No. 3 (2006) and 50 (2009).

Considering, that the a quo case was filed at the Sengeti Religious Court, where the Petitioner is domiciled in the jurisdiction of the Muaro Jambi Regency government, while the Respondent is domiciled in the Jambi City area, and regarding this situation, the Respondent did not submit an exception, then according to the provisions of the Sengeti Religious Court it is quite competent adjudicate this case according to Article 4 paragraph 1 of Law no. 1 of 1974.

Once it is fulfilled and proven that the religious court has the right to examine and decide on cases regarding polygamy, the judge then gives considerations regarding granting or rejecting the application based on the evidence available at the trial, namely:

1. Case Number 1309/Pdt.G/2020/PA.Sal

Based on the judge's considerations, the panel of judges had given the opinion that the Petitioner (husband) had been determined to have polygamy with his prospective second wife named the Petitioner's prospective second wife, who had been in a relationship/lived at home for 5 (five) years, even from the relationship a child had been born. So a symptom of the request for polygamy that has been carried out by the Petitioner in proposing polygamy is a necessity that can no longer be withheld in order to marry, therefore, it is reasonable to conclude that the net benefits will be greater than the costs if the situation is manipulated in such a way that the request The applicant was rejected.

The judge has also considered the applicant's reasons and the requirements stipulated in Article 4 (2)(a), (b), and (c) JIS; Article 5 paragraph (1)(a), (b), and (c) Law no. 1 of 1974 jo; Article 55 paragraph (2); and Article 58 paragraph (1)(a) and (b) Compilation of Islamic Law. Therefore, the Court has decided to grant the Petitioner's request for a Polygamy Permit.

2. Case Number 309/Pdt.G/2018/PA.Wno

The applicant is proven to fulfill the alternative requirements for practicing polygamy as required by Article 4 paragraph (2) letter an of Law Number 1 of 1974 and the cumulative requirements as required by Article 5 paragraph (1) letter an of Law Number 1 of 1974 based on considerations judge regarding the application, the respondent's answer, the statement of the applicant's second wife, written evidence, and witness statements.

According to Articles 8, 9, and 10 of Law no. 1 of 1974, as well as Articles 39, 40, 41, 42, 43 and 44 of the Compilation of Islamic Law, there is no obstacle to marriage between the Petitioner and the Petitioner's second wife.

The Petitioner's decision to remarry depends on whether the Respondent can demonstrate his maturity and sense of responsibility as a man by avoiding involvement in matters that are outside

Islamic law and religious teachings.

The Panel of Judges decided that the Petitioner's request to remarry did not violate Islamic law so the Petition could be granted.

3. Case Number 280/Pdt.G/2017/PA.Sgt

Due to the potential for instability in the household of the Petitioner and Respondent, the Panel of Judges has determined that the Petitioner's application for a polygamy permit is inappropriate and must be rejected. The reason is, the trial evidence revealed that the Petitioner and Respondent separated because the Respondent was not happy with the Petitioner's intention to have polygamy with a woman named Rian Octaviani;

Considering that one of the purposes of the Petitioner's polygamy, as per the facts at the trial, the Petitioner stated that he wanted clarity on the status of the child resulting from an unregistered marriage with a woman named Rian Octaviani, regarding this matter the Panel of Judges will consider it as follows;

Raising children is a form of moral responsibility that must be carried out because children are a gift and a command given by Allah SWT with the hope that parents can protect, look after and care for them until they grow up with great love;

Considering, based on the considerations made by the judges, the Petitioner's request for permission to practice polygamy does not have a legal basis as intended in Article 4 paragraph (2) Jo. Article 5 paragraph (1) Law no. 1 of 1974 Jo. Articles 57 and 58 paragraph (1) Compilation of Islamic Law (KHI). The Petitioner's application for polygamy must therefore be rejected.

Considering that based on the considerations above, the Petitioner's petition must be rejected in its entirety. From the three decisions mentioned above, it is known that the judge in giving considerations to grant or refuse looked at several aspects apart from the legal basis as well as from the facts proven at trial. The judge also looked at the petition further by considering whether it brought the potential for bigger problems in the future for the first marriage with the aim of protecting the wife's rights in the first marriage.

CONCLUSION AND SUGGESTION

Conclusion

From the discussion above the following conclusions are drawn:

In the judge's decision in Case Number 1309/Pdt.G/2020/PA.Sal and Case Number 309/Pdt.G/2018/PA.Wno regarding the application for a permit for polygamy on the grounds of unregistered marriage, the judge has granted it because he succeeded in proving that it has fulfilled Article 4 paragraph 1 of Law no. 1 of 1974 concerning Marriage. The judge's decision in Case Number 280/Pdt.G/2017/PA.Sgt, which concerns an application for a polygamy permit on the grounds of marrying out of wedlock, violates Article 4 of Law no. 1 of 1974 concerning Marriage, Government Law no. 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, and Article 57 of the Compilation of Islamic Law. According to the rules mentioned above, this justification does not cut it when it comes to allowing polygamy. Therefore, after considering several factors, the judge decided on this decision.

Suggestion

In connection with the mandate of the Religious Court decision regarding permits for polygamy, the author provides the following recommendations.

1. Husbands considering polygamy are warned against doing so through unregistered marriages.
2. So that no party in this polygamy case feels that they have been treated unfairly, the judges who try it must be careful when taking legal grounds that can be used for policy in making their decisions.

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