

---

# PROTECTION OF WOMEN'S RIGHTS IN POLYGAMY IN INDONESIA

**Asep Saepullah, Akhmad Shodikin, Puput Putri Utami**

Department of Family Law, Faculty of Sharia and Islamic Economics, Universitas Agama Islam Negeri Cirebon, Indonesia  
puputputriutami1@gmail.com

**Received:** 1/2/2023

**Revised:** 1/3/2023

**Published:** 1/4/2023

---

## **Abstract**

With the existence of the principle of monogamy adhered to by Law Number 1 of 1974 concerning Marriage, polygamy in Indonesia is only permitted during an emergency and if the requirements stipulated by the Law are fulfilled. However, the practice of polygamy that occurs in society is much wider and more diverse, including in the Cirebon Religious Court. One of them is case Number 910/Pdt.G/2019/PA.CN. The Petitioner was granted by the Religious Court to practice polygamy, even though the Respondent (first wife) was still able to carry out her obligations properly, had no disease or disability, and was able to give birth to offspring. According to Law Number 1 of 1974 concerning Marriage, the application must be rejected. The research method used in this study is qualitative with a descriptive-analytical approach. This research uses a type of normative legal research, namely doctrinal legal research or library research because this research is only aimed at written regulations. The results of the study show that the judge considers social justice with the consent of the first wife to be a legal consideration in granting the application for a polygamy permit as an effort to protect women's rights and in terms of civil order the Panel of Judges guarantees heirs and certainty of joint assets to save the rights of the first wife. The judge decided on a polygamy permit Number 910/Pdt.G/2019/PA.CN. granted through his suspicions and beliefs when exploring a case that was preceded by proof. By considering the benefits and harms that will arise from this polygamy and referring to the consent of the first wife, the application for a polygamy permit is appropriate to be granted even though the facultative conditions are not met in case Number 910/Pdt.G/2019/PA.CN.

**Keywords:** Protection of Women's Rights; Polygamy; Decisions; Regulation.

---

## INTRODUCTION

As social beings, humans to achieve happiness and perfection of life certainly need other humans. Marriage is a means to achieve happiness and perfection in life, through marriage humans can preserve offspring and of course in legal bonds. In Law no. 1 of 1975 concerning Marriage. Marriage adheres to the principle of monogamy, but polygamy is still possible, therefore efforts to make polygamy are tightened with predetermined requirements and submit an application to the Religious Court to grant permission to a husband who will have more than one wife. This policy was made in line with the influence of modernization, causing more developed thinking and responding to events in society that polygamy carries more risks than benefits.

With this in mind, Indonesia has established separate regulations related to polygamy as a response to demands for sharia legislation for the implementation of family law. Provisions regarding polygamy are regulated in Law no. 1 of 1974 concerning Marriage which adheres to the principle of monogamy and Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law. In this case, a husband who wants to have more than one wife is required to apply for a polygamy permit to the Religious Court for the reasons set out in Article 4 of Law Number 1 of 1974, namely:

### Article 4:

- (1) In the event that a husband has more than one wife, as referred to in Article 3 paragraph (2) of this Law, then he is obliged to submit an application to the Court in the area where he lives.
- (2) The court referred to in paragraph (1) of this article only gives permission to a husband to have more than one wife if:
  - a. The wife cannot carry out her obligations as a wife;
  - b. The wife has a physical disability or an incurable disease;
  - c. The wife cannot bear children.

Thus, in addition to the husband having the right to apply for a polygamy permit to the court, a woman as a wife also has the right to be protected so as not to cause misery when the application for a polygamy permit is granted by the local Religious Court, such as taking into account the willingness and willingness of a wife to be married to a second wife because a polygamous marriage is not only related to biological issues but also related to issues of psychological fulfillment, sociological impact, and certainty of joint assets with her husband. In this case, the wife's permission as part of the conditions for polygamy is an individual right owned by a woman as a wife and needs to be fulfilled and respected when her husband remarries another woman.

From the description above, it can be seen that the polygamy regulations in Indonesia have stipulated that when the Religious Courts grant an application for a permit for polygamy, it is necessary to consider that there is a clear guarantee that the husband will act fairly, have a qualified income, even consider if the condition of the second wife is proven to be pregnant or prevents the occurrence of adultery. From the results of the temporary library research, the Cirebon Religious Court has a form of legal protection of women's rights in cases of applications for polygamy permits, where in this case the wife is positioned as the respondent (contentius), there must be an optional reason for polygamy, it is obligatory to fulfill all the cumulative reasons for polygamy, and is obliged to apply for determination of joint assets. A judge in carrying out his considerations to protect women's rights in cases of applications for polygamy permits needs to also pay attention to the instructions of Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Trying Cases of Women Against the Law who are active in carrying out local inspections of joint assets as legal protection and justice.

Therefore, polygamy is only permitted during an emergency, and the judge in his decision must consider the benefits and harms and make it a special case when dealing with women who are in conflict with the law (Al Huzni, 2018). This is an interesting topic for researchers to examine more deeply regarding legal considerations for the protection of women's rights in the polygamy permit decision case and what factors lead to the granting of the polygamy permit application number 910/Pdt.G/2019/PA.CN. at the Cirebon Religious Court.

Knowing this is a manifestation of the role of Judges in the Religious Courts as law enforcers in an effort to protect women's rights which shows that the implementation of family law has a major influence as a result of modernity as the demands of the times in the form of changing laws or positivization of statutory regulations as formal legislation, so that what is the hope of the community with the existence of family law that applies specifically can be carried out according to what is needed by society at this time.

The following are some documented studies related to the issues studied, namely First, research in the form of a journal conducted by (Lahati, 2018) with the title "Gender Injustice in Polygamy Permit Decisions (Study of Limboto Religious Court Decisions 2013-2016)", discussing judges through their decisions role in elevating the degree of dignity of women with all rights and responsibilities equal to men. So that the role of judges in trials is very vital to protect and maintain treatment that refers to gender discrimination. The similarity of the previous research mentioned above with the research that the writer will do is that they both discuss the Judge's decision in the case of applying for a polygamy permit. However, the problems studied are different, namely what was examined in the previous research above is that the researcher presented a statement about gender injustice in the decision given by the judge in the application for a polygamy permit which was granted by the Judge of the Limboto Religious Court. Meanwhile, this study presents a discussion of the protection of women's rights by judges in the decision to apply for polygamy permits.

Second, (Mulyaningsih, 2010) thesis entitled "Considerations of Judges in Granting Permits for Polygamy According to Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning Implementation of the Marriage Law in the Wonogiri Religious Court (Case Study of Case Number 515 / Pdt. g / 2000 / PA. Wng)". This study discusses the considerations of the Panel of Judges of the Wonogiri Religious Court in granting an application for a polygamy permit whether or not it complies with Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning Implementation of the Marriage Law. The similarity of the previous research above with the research that the writer will do is that they both discuss the considerations of judges in granting polygamy. However, the problems studied are different. The problem studied in the previous research above is regarding the comparison of decisions that are guided by the provisions stipulated in Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning Implementation of the Marriage Law. Meanwhile, in this study, the decision to apply for a polygamy permit was discussed based on the judge's consideration regarding the protection of women's rights as a result of modernity affecting the implementation of marriage law.

Third, (Nurrahmah, 2015) thesis entitled "Women in Polygamous Marriages (Case Study: Women in Cibeber Village, Cikahuripan Village, Bogor Regency)", this study aims to analyze the reasons why women in Cibeber village are willing to be polygamous, then explain the differences in the conditions of wives before polygamy and after polygamy. to look at women in polygamous marriages, starting from the reasons they are ready for polygamy from a sociological point of view, then analyzing polygamous marriages from a feminist point of view. The similarity of the previous research above with the research that the writer will do is that they both discuss women's rights in polygamous marriages. However, the problems studied are different. The problems studied in the previous research above discussed the sociological side of polygamous marriages with their impact on fulfilling women's rights, while this study discussed the protection of women's rights in polygamy regulations on the study of judges' considerations in giving decisions on polygamy permits.

Fourth, (Al Huzni, 2018) thesis entitled "Justice in Polygamy Cases (Perception of Cirebon Religious Court Judges on Article 55 Compilation of Islamic Law)". This study aims to find out how polygamy is fair according to Islamic law and positive law, and to describe the perceptions of Cirebon Religious Court Judges regarding justice in polygamy cases. The similarity of the previous research above with the research that the author will do is that they both discuss polygamy regulations that apply in Indonesia and the judge's considerations in the decision to apply for a polygamy permit. However, the problems studied are different. The problems studied in the previous research above concern the judge's perception of justice in polygamy cases to decide polygamy permits at the Cirebon Religious Court. While this research is discussed, namely the analysis of judges' considerations at the Cirebon Religious Court

regarding the decision to apply for a polygamy permit for the protection of women's rights in the regulation of polygamy in Indonesia.

From the several studies described above, it turns out that there has not been a specific and comprehensive review of judges' considerations regarding the protection of women's rights in the decision to apply for polygamy permits and the object of research conducted at the Cirebon Religious Court.

### **Protection of Women's Rights**

Indonesia has ratified international human rights instruments from several conventions that protect women's rights, including the 1952 Convention on the Political Rights of Women and the International Convention on the Elimination of All Forms of Discrimination Against Women (Convention on the Elimination of Women). All Forms Discrimination Against Women: CEDAW) of 1979 was ratified by Law Number 7 of 1984 (Rahayu, 2015). The principles of the State's obligations according to CEDAW include guaranteeing women's rights through laws and policies to protect women's human rights which cover policies in the realm of public law and private law (Mareta, 2016).

The implementation of CEDAW in Indonesia has equalized the rights of men and women, this is what is known as gender equality. Gender equality in Indonesia has been implemented in various areas of social life in Indonesia, such as gender equality in the political, economic and other fields of life and most importantly equality before the law, which is an embodiment of the legal principle of equality before the law (Departemen Hukum dan HAM, 2006). This is done as a form of effort to minimize acts of oppression against women that occur in society as a phenomenon of gender inequality that befalls women.

In addition, among the articles that emphasize women's rights in the marriage bond in CEDAW namely in article 16, as follows:

1. Article 16 letter (a) states equal rights between men and women to enter into marriage ties;
2. Article 16 letter (b) the same rights to freely choose a life partner and to enter into marriage ties only with free and full consent;
3. Article 16 letter (c) requires the same rights and responsibilities during marriage and at termination of marriage;
4. Article 16 letter (d) recognizes the same personal rights as husband and wife including the right to choose a name, family, profession and position;
5. Article 16 letter (f) requires equal rights for both husband and wife with regard to objects.

Regarding the provisions in Article 16 paragraph 1 above, CEDAW becomes a counterweight if there is a loss of rights against women in marital relations, especially in cases of polygamy where many cases occur in favor of the power of authority rather than the wife and in the distribution of joint assets. The issue of joint property is technically not discussed in the CEDAW Convention, it's just that there are two articles in this convention that are closely related to women's rights in marriage and family law, including equal rights before the law and rights

related to marriage. and family relationships. Equal rights before the law are contained in Article 15 which consists of several points, namely:

1. States parties are obliged to provide women with equal rights with men before the law;
2. States Parties shall accord to women, in civil affairs, the same legal competence as men and the same opportunity to exercise this competence, in particular granting women the same rights to sign contracts and to manage property. , as well as being obliged to give them equal treatment at all levels of procedure before the Judge and the Court;
3. The participating countries agree that all contracts and all documents which have the force of law which are aimed at limiting the legal capacity of women, must be declared null and void;
4. States Parties shall accord to men and women the same rights with respect to laws relating to the mobility of persons and the limitations to choose their place of residence and domicile

Indonesia through Law no. 7 of 1984 concerning Ratification of the Convention Concerning the Elimination of All Forms of Discrimination Against Women, shows that Indonesia has legally recognized the principle of gender equality and justice between men and women. The justice referred to in this convention is not only formal justice, but substantive and proportional justice without containing discriminatory elements, on the contrary containing equality that can actually be felt by both men and women.

The equality here is not only in terms of equal access to human rights for women but also in terms of benefits or results. So that forms of affirmative action or special policies for women are not then interpreted as discrimination against others, but this specificity must be pursued to guarantee the same benefits and results considering the different situations or contexts that must be considered (Roni, 2020).

### **Polygamy**

According to Islamic syari'at, polygamy or ta'addud al-zaujāt is defined as the permissibility of marrying two, three, or four women who are liked if they can act fairly, as contained in the letter an-Nisa' verse 3. The term polygamy in fiqh according to jumhur the clergy is limited to four women, where the words polygamy are called mašnā, šulās, and rubā' (Supardi, 2007). According to Huzaimah Tahido Yanggo, polygamy is marrying several members of the opposite sex at the same time. Polygamy or practicing polygamy is the same as polygyny, namely marrying several women at the same time (Ghazalba, 1975). Meanwhile, according to Siti Musdah Mulia, polygamy is essentially legalized cheating, and therefore hurts the wife's feelings even more (Mulia, 2004).

The classical Jumhur Ulama who are the founders of four Sunni schools of thought in Islam allow the practice of polygamy. Imam Hanafi, Hanbali, Maliki, and Shafi'i are of the opinion that a husband may have more than one wife. But limited to only four wives. With the condition that they must be able to act fairly between these women both in terms of income and their turn. But if you can't be fair, it's better to have just one wife (Yunus, 2004). Allah SWT said, regarding the legal basis of polygamy in QS. An-Nisa verses 3 and 129 as follows:

وَإِنْ خِفْتُمْ أَلَّا تُفْسِدُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَنِّي وَتِلْكَ وَرُبِعٌ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَٰلِكَ أَدْنَىٰ أَلَّا تَعُولُوا

*Meaning: "And if you are worried that you will not be able to do justice to (the rights of) orphaned women (when you marry her), then marry (other) women you like: two, three or four. But if you are worried that you will not be able to act justly, then (marry) only one, or the female slaves you have. That is closer so that you do not do injustice". (QS. An-Nisa [4]: 3)*

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ وَإِنْ تُصْلِحُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا

*Meaning: "And you will not be able to act fairly between (your) wives, even though you really want to do so, therefore don't be too inclined (to the one you love), so you leave the others adrift. And if you make improvements and protect yourself (from cheating), then indeed, Allah is Forgiving, Most Merciful." (QS. An-Nisa [4]: 129)*

According to the majority of scholars, the asbabun nuzul surah An-Nisa verse 3 came down after the Uhud war, when many Islamic fighters (mujahideen) died on the battlefield. As a consequence, many orphans and widows were left to die by their fathers and husbands. As a result, many orphans are neglected in their life, education and future (Nasution, 1996). So the treatment is regulated with the principles of humanity and great justice. As Yusuf Ali said, events occurred in the past, but the principles still apply. Therefore, Muslim scholars and jurists have set the requirements if a person wants to marry more than one, namely:

1. He must have enough ability and wealth to finance various needs with the addition of the wife he marries.
2. He had to treat all his wives fairly (Rahman, 1996).

The meaning of the verse is that if a man believes he cannot do justice to orphaned girls, then look for another woman. This kind of understanding in the verse is not the result of an implicit understanding, because the scholars agree that whoever believes can do justice to orphaned girls. So he has the right to marry more than one woman.

Polygamy is a classic problem that has long existed in Indonesian society because it seems not to take sides with women. However, at the same time the Law was born to regulate this issue. With the formation of Law no. 1 of 1974 concerning marriage and followed by Government Regulation no. 9 of 1975 concerning the implementation of Law no. 1 of 1974, after which the Compilation of Islamic Law (KHI) was born which was in force with Presidential Instruction No. 1 of 1991.

The article which indicates the opportunity for polygamy is as stated in Article 3 paragraph (2) which reads, "The court can give permission to a husband to have more than one wife if desired by the parties concerned". In the elucidation of Article 3 paragraph (2) it is stated, "In giving a decision, apart from examining whether the conditions referred to in Article 4 and Article 5 have been met, it must also consider whether the provisions of the marriage law of the prospective husband permit polygamy." This explanation is a consequence of the provisions contained in Article 2. With the formulation in Article 2 paragraph (1) what is meant by the law of each religion and belief includes statutory provisions that apply to groups of religions and beliefs as long as they do not contradict or not otherwise specified in this Marriage Law.

In Article 4 above it is stated that polygamy is permissible with severe limitations in the form of urgent conditions and objectives:

1. The number of women who may be married may not be more than four people. Although there are also those who argue that the maximum limit of 9 people is by adding up two plus three plus four, such an interpretation is not correct.
2. Able to do justice to his wives, if he feels he cannot be fair to his wives. Then you should not remarry for the second time or so.
3. The woman to be married is under the care of a man who will be polygamous and treat the orphans and their property fairly.
4. The woman who is about to marry should not have a sibling relationship, whether blood or suckling (Soemiyati, 1982).

The conditions that must be met by a husband to obtain permission from the first wife are basically a woman who does not like polygamy, so if a woman is willing to give permission due to forced circumstances with considerations such as the wife cannot make a living for herself, there is little chance of getting married. back with other people because he is old enough, the wife doesn't want her family to break up for the sake of her children (Prawirohamidjojo, 1986). As for Article 5 paragraph (2) concerning consent from a wife, it indicates that consent is not needed if a wife does not allow her consent to be sought, or if there is no news for at least two years or other reasons that require an assessment from a judge. If the wife does not want to give consent to her husband, the Religious Court determines the granting of permission after examining and hearing the wife in question at a religious trial, and against this stipulation the husband or wife may appeal.

### **Judicial Power**

The Religious Court as one of the executors of judicial power has the main task of receiving, examining and adjudicating and resolving every case submitted to it in order to uphold law and justice based on Pancasila for the sake of the implementation of the Republic of Indonesia Law State (Articles 1 and 2 of Law No. 14 of 1970 ). The Religious Court Judges have the duty to uphold Islamic civil law which is their authority in ways regulated in the procedural

law of the Religious Courts. The main duties of a Judge in the Religious Courts can be broken down as follows (Arto, 1996):

1. Assist justice seekers

In civil cases, the Court assists justice seekers to achieve a simple, fast and low-cost trial (Article 5 paragraph (2) of Law No. 14 of 1970).

2. Overcome all obstacles and obstacles

The judge is obliged to overcome all obstacles and obstacles to achieve a simple, fast and low-cost trial (Article 5 paragraph (2) of Law No. 14 of 1970), both technical and juridical. In addition, judges are required to declare themselves not competent in cases that are tried outside the absolute competence of the Religious Courts or outside the relative competence of the Religious Courts concerned in divorce cases (Articles 66 and 73 of Law No. 7 of 1989).

3. Reconcile the disputing parties

Peace is better than forced decisions. In divorce cases, especially if there are already children, the judge must be more serious in trying to reconcile.

4. Examine and adjudicate cases.

In examining and adjudicating cases, the judge is obliged to:

- a. To check whether the events/facts put forward by the parties are true or not by proving them through valid means of evidence, according to the law of evidence, which are described in the proceedings of the case and the minutes of the trial.
- b. Qualify events/facts that have been proven, namely assessing whether or not the legal relationship involved the event, finding the law for the events that have been constipated to be then set forth in legal considerations.
- c. Constituting, namely establishing the law which is then set forth in the ruling.

5. Twisting the case file.

Minutering or minutation is an action that makes all case documents official and valid. Minutasi is carried out by court officials in accordance with their respective fields, but as a whole it is the responsibility of the judge concerned.

6. Supervise the implementation of the decision.

The judge is obliged to supervise the implementation of the decision so that the decision can be carried out properly and smoothly and so that humanity and justice are maintained.

7. Provide shelter to justice seekers.

The Religious Courts are required not only to establish themselves as an institution of judicial power that must apply procedural law properly and correctly, but also as a social institution that resolves family disputes in ways that do not cause spiritual and social damage to family members seeking justice.

8. Exploring legal values that live in society.

Judges as enforcers of law and justice are obliged to explore, follow, and understand the legal values that live in society (Article 27 (1) of Law No. 14).

9. Supervise legal counsel.

Judges are obliged to supervise legal advisors who practice in the Religious Courts. If there is a deviation or violation of the code of ethics and professional law committed by a legal adviser, then it is reported to the District Court where he is registered as a legal adviser.

## **METHODS**

The research method used in this study is qualitative with a descriptive-analytical approach. This research uses a type of normative legal research, namely doctrinal legal research or library research because this research is only aimed at written regulations.

## **RESULTS AND DISCUSSION**

### **A. Legal Analysis in Protecting Women's Rights as Wives in the Case of Application for Polygamy Permit Number 910/Pdt.G/2019/PA.CN.**

Cirebon Religious Court Decision Number 910/Pdt.G/2019/PA.CN. Regarding polygamy permits that have permanent legal force, the submission, trial, legal considerations and decisions can be described as follows.

The data obtained from the research results revealed that the application for a polygamy permit had been submitted by the Applicant who was registered at the Registrar's Office of the Cirebon Religious Court with Number 910/Pdt.G/2019/PA.CN. on December 10, 2019. With reference to Articles 4 and Article 5 of Law Number 1 of 1974 concerning Marriage which are the references of the Panel of Judges as mentioned above, not all of them appear to be explicit in their legal considerations, especially on the facultative requirements granted by the Cirebon Religious Court . Especially on the reasons for polygamy as stated in Article 4 paragraph (2) of Law Number 1 of 1974 concerning Marriage which reads in full:

The Religious Courts only give permission to a husband who will have more than one wife if:

1. The wife cannot carry out her obligations as a wife;
2. The wife has a physical disability or an incurable disease;
3. The wife cannot give birth to offspring.

It can be concluded that referring to Article 4 paragraph (2) which was used as legal consideration by the Panel of Judges in the application for a polygamy permit Number 910/Pdt.G/2019/PA.CN that none of the optional requirements are in accordance with the provisions of the Law. The argument put forward by the Petitioners is that they still want to have children while the wife has entered the menopause phase. Polygamy like this is a form of injustice against women, because women are considered to be merely satisfying the lusts of men. Women become subordinate to the patriarchy, and are seen as objects that can be

exchanged or traded. The position of a woman as a wife must be willing to be seconded by her husband because of things beyond her control and being discriminated against because by nature it is as if women are treated as mere means of production. This triggers very broad implications and consequences, whether having a polygamous marriage will bring benefits or even greater negative impacts. Article 5 of the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) Convention states that the State must change the patterns of social and cultural behavior of men and women, eliminate prejudices and habits and all other practices based on the inferiority or superiority of one sex, gender and the stereotyped roles of men and women.

With the existence of this Article, it is appropriate for Indonesia to have efforts to protect women's rights in legal considerations not only taking sides with the husband as the Petitioner in polygamy cases, but taking sides with the wife as the Respondent also needs to be considered, because physically and psychologically it will cause feelings of inferiority to the wife, she has feelings of guilt for not being able to meet her husband's biological needs, so the husband practices polygamy. If this is felt by a wife continuously, it will cause mental illness continuously in the wife. Thus that the practice of polygamy can cause harm to the wife. Evidently, in research at the Cirebon Religious Court in 2019 there were 12 divorce cases caused by polygamy. The legal provisions concerning husbands in applying for polygamy permits regulated in Articles 4 and 5 of the Marriage Law Number 1 of 1974 are considered to be problematic from a gender justice perspective because they give husbands the right to leave an unproductive wife even though his wife has carried out her obligation to provide offspring. The husband's position is not clarified regarding his obligations to his wife in polygamy, besides the certainty in the distribution of wealth and the concept of fairness it cannot be ensured that the wife gets psychological protection which is her right as a woman, in terms of justice love and affection there is no confirmation for the husband to exercise his rights the first wife to be given protection, not to do things that make the first wife feel fair, the right of the first wife so that the husband does not commit violence in the household, in terms of maintaining a harmonious household, and there are strict sanctions if the husband does injustice. In the article above there is still a gender bias in polygamy permit decisions. Women are still placed in a weak object, in a marginalized situation.

Although this regulation regarding polygamy is considered to be less effective for the development of today's society, the provisions of this law are still used for the sake of civil order. In order not to conflict with the principle of monogamy adhered to by Law Number 1 of 1974 in granting polygamy permits and as an effort to protect the rights of women (wives), the Cirebon Religious Court when examining and deciding cases of applications for polygamy permits must be guided by the following matters: :

1. The case for the application for a polygamy license must be contentious in nature by placing the wife as the respondent's party.

2. The reason for the polygamy permit regulated in Article 4 paragraph (2) of Law Number 1 of 1974 is optional, meaning that if one of these requirements can be proven, the Religious Court can grant a polygamy permit.
3. The requirements for a polygamy permit regulated in Article 5 paragraph (1) of Law Number 1 of 1974 are cumulative, meaning that the Religious Courts can only grant polygamy permission if all of these requirements have been met.
4. Joint property in the case of a husband having more than one wife, has been regulated in Article 94 of the Compilation of Islamic Law, but this article contains injustice which in certain circumstances can be detrimental to the wife who was married first. Therefore, it is necessary to provide an explanation as follows:
  - a. The assets acquired by the husband while in the marriage bond with the first wife are joint property belonging to the husband and first wife. Whereas assets acquired by a husband during his marriage to the second wife and during that time the husband is still married to the first wife, these assets are joint property belonging to the husband, first wife and second wife. The same is true of marriages with third and fourth wives.
  - b. The provisions on shared assets do not apply to assets assigned to the second, third and fourth wives (such as houses, furniture and clothing) as long as the assets assigned to the second, third and fourth wives do not exceed 1/3 (one third) of the joint assets acquired by second, third and fourth wives.
  - c. Assets acquired by the first, second, third and fourth wives are joint property with their husbands, except for those obtained by the husband/wife from gifts or inheritance.
  - d. When applying for a polygamy permit, the husband is also required to apply for the determination of joint assets with the previous wife, or joint assets with the previous wives. In the event that the husband does not submit an application for the determination of joint assets which is combined with the application for a permit for polygamy, the wife or his wives may submit a reconvention for the determination of joint assets.

When the process of examining an application for a polygamy permit by the competent Court has been regulated in Government Regulation Number 9 of 1975, Article 42 explains that the Court must summon and hear the wife in question and the examination by the Judge is carried out no later than 30 (thirty) days after receipt application letter and its attachments. Provisions in Article 43 if there are sufficient reasons for the Petitioner to have more than one wife, the Court will issue a decision in the form of permission to have more than one wife. From this article it can be illustrated that efforts to realize women's rights are aimed at overcoming differences, disparities, or situations that are detrimental to women.

Meanwhile, if the facultative conditions are not met, according to the author, in this case the judge uses his function, namely the freedom of the judge in finding law based on his beliefs in handling a case. The judge saw the arguments of polygamous parties both in

conformity with applicable laws and through social justice. As for what is taken into consideration by judges in efforts to protect women's rights, judges are active in examining and adjudicating cases of applications for polygamy permits by carefully and thoroughly exploring the reasons for polygamy applications, and what is most used as the main consideration in granting polygamy permits in case Number 910/Pdt.G /2019/PA.CN. is the wife's willingness/permission to give permission for her husband to polygamy and the husband's financial ability to meet the needs of his wife/wives and children, equipped with certainty of assets in a polygamous marriage.

**B. Factors Causing the Granting of the Application for a Permit for Polygamy in the Decision of Case Number 910/Pdt.G/2019/PA.CN.**

The main requirement that became the basis for the Panel of Judges in granting the request for polygamy Number 910/Pdt.G/2019/PA.CN. is referring to Article 5 paragraph (1) Law Number 1 of 1974 concerning Marriage, namely the condition for the wife's consent, fair conditions and conditions for material ability. This is of course after the Panel of Judges can consider carefully and carefully during the trial process.

The application of formal polygamy law related to polygamy is an urgent matter for Judges in adjudicating cases, the existence of facultative and cumulative conditions is important in deciding cases of polygamy permits, because these conditions form the basis for Judges to grant applications for polygamy permits. The application for a polygamy permit was granted by the Cirebon Religious Court Judge Number 910/Pdt.G/2019/PA.CN. although the facultative conditions were not met, the Respondent gave permission because the Respondent's condition as a wife was unable to give birth to another child which became a weakness for her to allow her husband to practice polygamy. Besides that, the wife's willingness to become an additional husband as an effort to practice polygamy is a condition that must be fulfilled, and that is the basis for the judge to grant the permit for polygamy.

Thus, in the application for a polygamy license the Judge seeks to hear the statements of the Petitioner, Respondent and witnesses obtained during the trial in their legal considerations in the form of the Judge's suspicions and beliefs. In responding to the reasons argued by the Petitioner, in addition to the Judge using an interpretation of the statutory regulations, the Judge carried out a sociological interpretation as an effort to adjust to the dynamic conditions of society, because the Laws that were made were far from being used at the time. So, to decide on a permit for polygamy, first read the symptoms that occur in society, what the Judge does in this case is to use conjecture to get conclusions drawn from the examination. Seen in Decision Number 910/Pdt.G/2019/PA.CN, the Panel of Judges has considered the statement of the Petitioner's future wife that the Petitioner's second wife-to-be, with the Respondent have a good relationship and can communicate well, the statement of the first wife is very necessary in trial, as far as possible the Judge obtains true data that the attitude of the person concerned is commendable both in the household and in the

community environment, this effort can also be carried out by the Judge by presenting witnesses.

In deciding on a polygamy permit according to the author's analysis, the judge considers the law by looking at the *posita* which is an explanation of the circumstances or events related to the law that are used as the basis for the application, the *petitum* as part of the matter for which a decision is requested from the court, and the evidence proven at trial. By looking at the evidence of letters in the form of salary slips if working in an employment agency and other letters that need to be proven in court as legal considerations carried out by the Panel of Judges in the form of conviction as an indicator to be able to decide whether the Petitioner is eligible or not to obtain a permit for polygamy, by considering the benefits and the *mafsadat* that will arise from this polygamy, because protecting *muruah* with a new wife-to-be sacrifices the first wife for the second wife in order to save the *muruah* for the second wife, which still happens a lot, the first wife becomes a victim, not getting protection.

## **CONCLUSION**

From the results of research on the case mentioned above it is known that the application for permit Number 910/Pdt.G/2019/PA.CN. if referring to Article 4 and Article 5 of Law Number 1 of 1974 concerning Marriage which is the legal basis for the Panel of Judges as mentioned above, the Judge weighs through social justice with the consent of the first wife to be a legal consideration in granting the request for a polygamy permit. As for the matter of civil order to save the rights of the first wife, heirs from the first wife, joint property with the first wife, it is necessary that the requirements for the duration of marriage with the first wife must be completely recorded, because this is a requirement in a polygamous marriage as an effort to protect the rights woman.

The factor in the granting of the application for a polygamy permit Number 910/Pdt.G/2019/PA.CN at the Cirebon Religious Court was the Judge through his suspicions and beliefs when exploring a case which was preceded by evidence in front of the court by listening to the Petitioner's statement and pressuring the Petitioner to provide honest information to be honest. In addition, the judge saw evidence of letters that were deemed necessary to prove in court, such as payslips if working in an agency, and a statement stating the consent of the first wife. With the legal considerations carried out, the Judge will be able to decide whether or not the applicant deserves a permit for polygamy, by weighing the benefits and *mafsada* that will arise from this polygamy.

**BIBLIOGRAPHY**

- Al Huzni, S. (2018). *Keadilan dalam perkara poligami: Persepsi hakim Pengadilan Agama Cirebon Atas Pasal 55 Kompilasi Hukum Islam*. UIN Sunan Gunung Djati Bandung.
- Arto, A. M. (1996). *Praktek Perkara Perdata pada Pengadilan Agama*. Yogyakarta: Pustaka Pelajar.
- Departemen Hukum dan HAM. (2006). *Laporan Akhir Kompendium Tentang Hak-Hak Perempuan*. Jakarta: Departemen Hukum dan HAM.
- Ghazalba. (1975). *Menghadapi Persoalan Perkawinan*. Jakarta: Pustaka Antara.
- Lahati, T. (2018). Ketidakadilan Gender Izin Poligami (Studi Putusan Pengadilan Agama Limboto Tahun 2013-2016). *Farabi (e-Journal)*, 15(1), 14–26.
- Mareta, J. (2016). Mekanisme Penegakan Hukum Dalam Upaya Perlindungan Hak Kelompok Rentan (Anak Dan Perempuan)(Mechanism of Law Enforcement in Protecting the Rights of Vulnerable Group)(Child and Woman). *Jurnal HAM*, 7(2), 141–155. <https://doi.org/10.30641/ham.2016.7.141-155>.
- Mulia, M. (2004). *Islam menggugat poligami*. Gramedia Pustaka Utama.
- Mulyaningsih, E. (2010). *Pertimbangan hakim dalam pemberian izin poligami menurut undang-undang nomor 1 tahun 1974 tentang perkawinan dan peraturan pemerintah nomor 9 tahun 1975 tentang pelaksanaan undang-undang perkawinan di pengadilan agama Wonogiri (studi kasus perkara nomor 5*. UNS (Sebelas Maret University).
- Nasution, K. (1996). *Riba & Poligami: Sebuah Studi atas Pemikiran Muhammad Abduh*. Diterbitkan atas kerjasama Pustaka Pelajar dengan ACAdemia.
- Nurrahmah, L. B. (2015). *Perempuan dalam pernikahan poligami (Studi Kasus: Perempuan Di Kampung Cibeber, Desa Cikahuripan, Kabupaten Bogor)*. Jakarta: Fakultas Ilmu Sosial dan Ilmu Politik UIN Syarif Hidayatullah.
- Prawirohamidjojo, R. S. (1986). *Pluralisme dalam perundang-undangan perkawinan di Indonesia*. Universitas Airlangga.
- Rahayu. (2015). *Hukum Hak Asasi Manusia*. Semarang: Badan Penerbit Universitas Diponegoro.
- Rahman, A. (1996). *Perkawinan dalam Syariah Islam*. Jakarta: Rineka Cipta.
- Roni, H. B. (2020). *Akibat Hukum Bagi Perempuan Dalam Perkawinan Poligami Di Bawah Tangan Menurut Peraturan Perundang-Undangan (Perspektif Teori Masalah Dan CEDAW)*. Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta.

Asep Saepullah, Akhmad Shodikin, Puput Putri Utami

Soemiyati. (1982). *Hukum Perkawinan Islam dan Undang-Undang*. Yogyakarta: Liberty.

Supardi, M. (2007). *Menolak Poligami (Studi tentang UU Perkawinan dan Hukum Islam)*. Yogyakarta: Pustaka Pelajar.

Yunus, M. (2004). *Hukum Perkawinan Menurut Mazhab Syafi'i, Hanafi, Maliki, Hanbali*. Jakarta: PT Hindakarya Agung.

---

**Copyright holder:**

Asep Saepullah, Akhmad Shodikin, Puput Putri Utami (2023)

**First publication right:**

Journal of Law and Social Politic (JOLASTIC)

**This article is licensed under:**

