



## WIFE'S MENTAL DISORDERS AS A REASON FOR POLYGAMY:

### A STUDY OF ISLAMIC LAW ON CASE DECISIONS AT THE MAGELANG RELIGIOUS COURT

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#### **Abstract**

This study discusses the considerations of the judges of the Magelang Religious Court in granting permission for polygamy. In this case, the applicant applied for permission to practice polygamy because his first wife had a mental disorder. This study aims to determine judges' Islamic legal considerations in making decisions. This type of research is library research, using an analytical descriptive approach. The panel of judges, in their decision, apart from being based on the juridical aspect, also referred to the rule of fiqh: "If there are two evils threatening each other, then watch out for the one with the greater evil by carrying out the one with the least evil," then granted the petitioner's request because it was judged that the evil was much smaller than rejecting it. The petitioner's ability to act reasonably towards their wives and children is also considered to have met the requirements for polygamy as emphasized in the Qur'an (surah al-Nisa [4]: 3), so that the granting of permission for polygamy by the panel of judges is following Islamic Law and not against Indonesian Law.

**Keywords:** *Polygamy, Wive's Mental Disorder, Islamic Law, Religious Courts.*



## Introduction

Polygamy is a form of marriage practice regulated in Islamic law. The majority of scholars allow the practice of polygamous marriage, and this view is based on the Qur'an (surah an-Nisa [4]: 3), with strict conditions and under certain circumstances. In the Compilation of Islamic Law (KHI), the principle of monogamy and the permissibility of polygamy are also permitted, but under special conditions, as well as the fulfillment of several conditions that have been regulated.

Even though it has substantial legal and theological foundations, it seems that the practice of polygamy has always been controversial in some circles. The theme of polygamy, it seems, is always interesting to discuss. Discourse on polygamy is not only attractive to men, who make it an obsession in life, but also to women who perceive polygamy as something that endangers their position in the household<sup>1</sup> because it tends to cause adverse impacts in the form of disharmony and neglected attention towards children.<sup>2</sup> Based on the pheno-

<sup>1</sup> Agus Sunaryo, "Poligami di Indonesia: Sebuah Analisis Normatif-Sosiologis," *Yin Yang: Jurnal Studi Gender & Anak* 5, no. 1 (2010): 143-144, <https://ejournal.uinsaizu.ac.id/index.php/yinyang/article/view/265>.

<sup>2</sup> Khoirul Abror, "Poligami dan Relevansinya terhadap Keharmonisan Rumah Tangga: Studi di Kelurahan Rajabasa Bandar Lampung," *Al-Adalah* 13, no. 2 (2016): 227-238, DOI: 10.24042/adalah.v13i2.1141.

menon above, the author's scientific enthusiasm is called upon to contribute to discussing the reality of polygamy; in this case, the author analyzes the judge's considerations in making a decision.

The process of applying for a polygamy permit in Indonesia uses very diverse reasons, not only covering the three reasons stated in the laws and regulations.<sup>3</sup> Mental disorders in the wife are also a factor and reason in applying for a permit for polygamy as in the decision at the Magelang Religious Court, which occurred on January 12, 2023, with case register Number 11/Pdt.G/2023/PA.Mgl. Mental disorder or mental retardation disorder is a state of mental development that is stopped and incomplete which is mainly characterized by low skills that affect all levels of intelligence, namely cognitive abilities (memory, thinking power, learning ability), language, motor skills, and social,<sup>4</sup> thus making the wife who suffers from the disease unable to carry out her obligations as a wife properly. Such as being devoted to her husband, maintaining her husband's honor, maintaining her honor as a wife, guarding her

<sup>3</sup> Nurhadi, *Himpunan Peraturan Perundang-undangan yang Berkaitan dengan KHI dengan Pengertian dalam Pembahasannya* (Jakarta: Mahkamah Agung RI, 2011), 134.

<sup>4</sup> Emi Yunita, Byba Melda Suhita, and Koesnadi, *Gangguan Psikologis dan Gangguan Reproduksi Wanita dalam Poligami* (Kediri: STRADA Press, 2019), 8-9.

husband's property, and educating children.<sup>5</sup>

Judges of the religious courts have a vital role in granting polygamy permits. The judge's considerations in deciding polygamy permit cases are interesting things to study and research because the judge's considerations will determine whether or not a husband is allowed to practice polygamy. Based on Law Number 48 of 2009 concerning Judicial Powers Article 25 paragraph 3, the Religious Courts are one of the judicial powers that have the authority to examine, hear, decide, and resolve cases between Muslim people per statutory provisions.

As formulated in Article 2 of Law Number 7 of 1989 in conjunction with Law Number 3 of 2006 in conjunction with Law Number 50 of 2009 concerning the Religious Courts, which reads, "Religious Court is one of the executors of judicial power for justice seekers who are Muslim regarding cases particular civil law regulated in this law. To resolve disputes in the Religious Courts, they should comply with the regulations stipulated in the procedural law of the Religious Courts. The procedural law of the Religious Courts is a legal regulation that regulates how to comply with material civil law through the mediation of a Judge or how to act before a Religious

<sup>5</sup> Umar Haris Sanjaya and Ainur Rahim Faqih, *Hukum Perkawinan Islam* (Yogyakarta: Gama Media, 2017), 47.

Court and how Judges act so that the law runs as it should.

Previously, there had been research discussing the application for a polygamy permit because his wife had a mental disorder, as was done by Fauziah Fitriani with the title "Polygamy Permit on the Reason that the Wife Has Mental Disorders (Analytic Study of Case Decision Number 0284/Pdt.G/2008/PA.JT) in the East Java Religious Court)."<sup>6</sup> Fitriani stated that the judge granted the applicant's request because it was deemed in line with the law and Fiqh. Then, the research was conducted by Lenni Yulia titled "Mental Illness as a Reason for Polygamy (Study of the Decision of the Pemalang Religious Court No. 0652/Pdt.G/2011/PA.Pml)."<sup>7</sup> In his research, Yulia stated that one factor that made the judge grant the applicant requested that the applicant's wife could no longer carry out her obligations as a wife. Furthermore, research was conducted by Toha Andiko with the

<sup>6</sup> Fauziah Fitriani, "Izin Poligami dengan Alasan Istri Mengalami Gangguan Jiwa: Studi Analisis terhadap Putusan Perkara Nomor 0284/Pdt.G/2008/PA.JT," *Undegraduate Thesis* (Fakultas Syariah dan Hukum UIN Syarif Hidayatullah, 2010), <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/2053/1/FAUZIAH%20FITRIANI-FSH.pdf>.

<sup>7</sup> Lenni Yulia, "Sakit Jiwa sebagai Alasan Poligami: Studi atas Putusan Pengadilan Agama Pemalang No. 0652/Pdt.G/2011/PA.Pml," *Undegraduate Thesis* (UIN KH Abdurrahman Wahid Pekalongan, 2012), <http://etheses.uingusdur.ac.id/id/eprint/2352>.

title "Setting the Reasons for Polygamy (Comparative Study of Family Law in Indonesia, Malaysia, Iran, Somalia, and Tunisia)."<sup>8</sup> Andiko said that only Malaysia lists a crazy wife as a reason for permitting polygamy.

The difference between the author's research and previous studies lies in the approach used (Islamic law) and the locus that is the subject of the study. The Islamic Law approach, in this case, focuses on the arguments of the Qur'an or Hadith and the principles of fiqh, which are used as legal considerations to decide cases, with the locus of the Magelang Religious Court.

This type of research is library research, conducted by collecting data from various literature and information. The primary data in this study is a copy of case decision Number 11/Pdt.G/2023/PA.Mgl., while the secondary data is in the form of books, scientific journals, and internet sites relevant to the chosen topic.

The technique used to collect data in this study is documentation, namely finding data about things or variables in notes, books, papers or articles, journals, and others. At the same time, the data analysis approach or technique

<sup>8</sup> Toha Andiko, "Pengaturan Alasan-alasan Poligami: Studi Komparatif terhadap Hukum Keluarga di Indonesia, Malaysia, Iran, Somalia, dan Tunisia," *Nuansa: Jurnal Studi Islam dan Kemasyarakatan* 6, no. 1 (2013): 79-92, <http://repository.iainbengkulu.ac.id/4086>.

used is a descriptive-analytical method, namely by describing and explaining the data obtained so that it can answer the problem clearly and accurately.

### Legal Basis of Polygamy

In general, polygamy can be understood as a marriage bond in which one party (the husband) marries more than one wife at the same time, not at the time of consent, but in living as a family, while monogamy means a marriage that only allows the husband to have one wife for a certain period.<sup>9</sup> Polygamy can be understood as a situation where a husband has more than one wife.<sup>10</sup> In Arabic, polygamy is called the term *ta'adud al-zawajah*,<sup>11</sup> namely, gathering several wives in a marriage bond at the same time.

There are three forms of polygamy, namely polygyny (a man has several wives), polyandry (a woman has several

<sup>9</sup> Muhamad Arif Mustofa. "Poligami dalam Hukum Agama dan Negara," *Al-Imarah: Jurnal Pemerintahan dan Politik Islam* 2, No. 1 (2017): 48, <https://ejournal.iainbengkulu.ac.id/index.php/alimarah/article/download/1029/892>.

<sup>10</sup> La Hanuddin, Nur Aliyah Alsaf, Muh. Yamin, and Abidun La Buni. "Kedudukan Hukum Poligami Tanpa Izin dan Implikasinya Menurut UU No. 16 Tahun 2019 Perubahan atas UU No 1 Tahun 1974 dan Hukum Islam," *Syattar: Studi Ilmu Hukum dan Pendidikan* 2, no. 1 (2021): 20, <https://jurnal-umbuton.ac.id/index.php/syattar/article/view/811>.

<sup>11</sup> M. Ichsan. "Poligami dalam Perspektif Hukum Islam: Kajian Tafsir Muqorona," *Jurnal Ilmiah Syari'ah* 17, no. 2 (2018): 153, DOI: 10.31958/juris.v17i2.1196.

husbands), and group marriage (a combination of polygyny and polyandry). At this time, society, in general, is more familiar with polygamy as a marriage of one husband with several wives.<sup>12</sup>

Law number 1 of 1974 Article 3 defines *polygamy* as a marriage bond in which a husband has more than one wife. In Indonesian Government Regulations Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, which was amended to become Indonesian Government Regulations Number 45 of 1990 in Article 4, polygamy can be interpreted as a male civil servant who has more than one wife. In the Indonesian Law Compilation (KHI) Article 55, paragraph 1, it is explained that polygamy is having more than one wife at the same time and is limited to only four people.<sup>13</sup>

According to historians, at first, polygamy was practiced by state kings and wealthy people. They take more than one woman; some are married, and some are only used to vent their lust and biological desires. The war at that time caused many girls to be traded, taken as servants, used as mistresses, and so on. The richer a person and the higher the position, the more women he has.<sup>14</sup> Thus, polygamy at that time was more towards the oppression of women by people with wealth and power.

<sup>12</sup> Yunita, "Gangguan Psikologis," 60.

<sup>13</sup> Nurhadi, "Himpunan Peraturan Perundang-undangan," 76.

<sup>14</sup> Arif, "Poligami dalam Hukum," 48-49.

Long before Islam was born in 610 AD, human civilization around the world was familiar with polygamy. Yusuf al-Qardhawi wrote that in the past, human civilization had known polygamy in a very terrible form because a man could have not only 4 (four) wives but more than that. There are up to 10 (ten), even hundreds of wives. Even in the Old Testament, David is mentioned as having 300 wives, both his official wives and concubines.<sup>15</sup>

In Islam, polygamy has the meaning of having more than one marriage, with limitations; generally, only up to four women are allowed. However, some understand the verse about polygamy with a limit of more than four or even more than nine wives.<sup>16</sup> Polygamy, with a limit of four, seems more supported by historical evidence because the Prophet forbade marrying women of more than four people.

Islam provides strict limits and conditions for a person who wants to practice polygamy, including being allowed to practice polygamy with up to four wives if he is truly able to treat his wives fairly about matters of living, residence, and time division. Islam emphasizes empathy that if it is feared that you will not be able

<sup>15</sup> Esther Masry. "Poligami dalam Perspektif Undang-Undang No. 1 Tahun 1974 tentang Perkawinan dan KHI," *Jurnal Krtha Bhayangkara* 13, no. 2 (2019): 227, DOI: 10.31599/krtha.v13i2.7.

<sup>16</sup> Arif, "Poligami dalam Hukum," 49.

to act fairly, then it is sufficient with one wife.<sup>17</sup> The basis and reference for the permissibility of polygamy are mentioned in the Qur'an (Surat an-Nisa [4]: 3).

If you are afraid that you will not be able to do justice to orphaned women (those you marry), then marry (other) women you like, two, three or four. Then if you fear that you will not be fair then marry only one, or your slaves. That way is closer to not being persecuted.

Thus, classical and contemporary jurists generally agree that the ability to treat a wife somewhat is a condition for the validity of the practice of polygamy. However, classical jurists, such as Imam Shafi'i, argue that justice between wives is not a substantive legal requirement but "a binding moral warning on the husband's awareness."<sup>18</sup> Contemporary Islamic scholars and experts, referring to the last sentence of the verse above, which states:

[...] that (monogamy) is closer to not committing maltreatment", then

<sup>17</sup> Andi Intan Cahyani. "Poligami dalam Perspektif Hukum Islam," *Al Qadau: Jurnal Peradilan dan Hukum Keluarga Islam* 5, no. 2 (2018): 274, DOI: 10.24252/al-qadau.v5i2.7108.

<sup>18</sup> M. Ali Mubarak and Dety Vera Dinyati, "Hukum Islam dan HAM: Tinjauan Hukum Poligami dan Kesetaraan Hak dalam Perkawinan," *An-Nawa: Jurnal Studi Islam* 5, no. 1 (2023): 53, DOI: 10.37758/annawa.v4i1.600.

conclude that the norm in marriage is monogamy while the practice of polygamy is an exception.<sup>19</sup>

The law of polygamy is *mubah* (permitted), and the law of *mubah* can be different for each person who will carry it out according to their respective conditions, namely by looking at the side of benefit practicing polygamy. The principle that must be applied in applying the *maslahah* rule is that rejecting damage takes precedence over taking advantage. This principle has been formulated in the fiqh rules: Rejecting *mafsadah* is prioritized over taking *maslahah*.<sup>20</sup>

The issue of marriage in Indonesia, including the issue of polygamy, has been formally regulated in law. The product of these laws and regulations is an effort to limit polygamy, which is extracted from Islamic religious values as an instrument to create a just, balanced husband and wife relationship with the principle of equality. Polygamy is an exception only, which is given to

<sup>19</sup> Mashood A. Baderin, *Hukum Internasional HAM dan Hukum Islam* (Jakarta: KOMNASHAM, 2010), 142-143, [https://www.komnasham.go.id/files/20161021-hukum-internasional-hak-asasi--\\$VK9YT4B.pdf](https://www.komnasham.go.id/files/20161021-hukum-internasional-hak-asasi--$VK9YT4B.pdf).

<sup>20</sup> Firdaus and Nurul Salihin, *Al-Qawaid al-Fiqhiyyah: Membahas Kaidah-kaidah Pokok dan Populer Fiqh* (Padang: Imam Bonjol Press, 2015), 86-87, <https://scholar.uinib.ac.id/id/eprint/14>; Fathurrahman Azari, *Qawaid Fiqhiyyah Muamalah* (Banjarmasin: LPKU, 2015), 111-112, <https://idr.uin-antasari.ac.id/6804/1/QAWAID%20FIQHIYYAH.%20revisidocx.pdf>.

people who, according to law and religion, are allowed. The principle of marriage in the Indonesian legal system is monogamy, which means "a man can only have one wife, and vice versa; a woman can only have one husband."<sup>21</sup> Indonesian law allows exceptions to this monogamy principle, which is still permissible if certain conditions, reasons, and procedures are met. If all the conditions for these reasons are fulfilled, both religious and statutory requirements, and he has received a stipulation from the court, he can practice polygamy.<sup>22</sup>

Arrangements regarding polygamy in the Marriage Law are contained in Article 4, paragraphs (1) and (2).<sup>23</sup> This law is a positive response to regulate a husband who wants to marry more than one person (wife).<sup>24</sup> "Article 4 paragraph (2) of the Marriage Law explained that the Religious Courts only permit husbands who will have more than one wife if:

1. The wife cannot carry out her obligations as a wife;

<sup>21</sup> Hanuddin, "Kedudukan Hukum Poligami," 20.

<sup>22</sup> Sanjaya and Faqih, *Hukum Perkawinan Islam* (Yogyakarta: Gama Media, 2017), 38, <https://law.uui.ac.id/wp-content/uploads/2017/05/Umar-Haris-Sanjaya-dan-Aunur-Rahim-Faqih-Hukum-Perkawinan-Islam-di-Indonesia.pdf>.

<sup>23</sup> Nurhadi, "Himpunan Peraturan Perundang-undangan," 134.

<sup>24</sup> Hanuddin, "Kedudukan Hukum Poligami," 20.

2. The wife has a physical disability or an incurable disease;
3. Wives cannot bear children.

Apart from what has been mentioned above, Article 5 paragraph (1) of the Marriage Law states that:<sup>25</sup>

1. There is an agreement between the wives;
2. There is the certainty that the husband can guarantee the necessities of life for his wives and their children;
3. There is a guarantee that husbands will treat their wives and children fairly.

For example, paying attention to the provisions of the rule of law as mentioned above, in this case, most polygamists only prioritize fulfilling their desires, thus ignoring the principles of realizing justice and benefit.

Arrangements for polygamy procedures can also be seen in Article 40 of Government Regulation Number 9 of 1975, which states that "if a husband intends to have more than one wife, he must submit a written application to the court." The duties of the Court have been regulated in Article 41 of Indonesian Government Regulations 9 of 1975, namely:

<sup>25</sup> Nurhadi, "Himpunan Peraturan Perundang-undangan," 134.

1. Whether or not there are reasons that allow a husband to remarry;
2. Whether or not there is consent from the wife, both oral and written consent, if the agreement is oral, the agreement must be said before a court hearing;
3. Whether or not the husband can guarantee the life of his wives and children by showing 1) A statement regarding the husband's income signed by the treasurer of the workplace, or 2) an Income tax certificate, or 3) Other certificates that the court can accept; 4) Whether or not there is a guarantee that husbands will treat their wives and children fairly.<sup>26</sup>

Violation of this article has been regulated in Indonesian Government Regulation Number 9 of 1975 Article 45 concerning criminal provisions "as in paragraph (1) of the article with a maximum fine of Rp.7,500 and punishes someone who wants to hold a wedding but does not get permission from the religious court and does not notify the Religious Affairs office (KUA). Penal sanctions also apply to marriage registrars who violate or do not carry out their duties as they should."<sup>27</sup>

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<sup>26</sup> Hanuddin, "Kedudukan Hukum Poligami," 21.

<sup>27</sup> Hanuddin.

Based on the above, it is clear that 3 (three) reasons are used as the basis for submitting applications for polygamy that must be tightened because polygamy is not a religious order but is only permissible with several conditions that must be met. Namely, the husband must first ask for the wife's approval.

### **Magelang Regency Religious Court Decision**

The applicant, with his application letter dated January 11, 2023, has submitted a Polygamy Permit, which was registered at the Registrar's Office of the Magelang Religious Court on January 12, 2023, with case register Number 11/Pdt.G/2023/PA.Mgl. The Petitioner and the Respondent were married on XX January 2024 in the presence of a KUA PPN official, Magelang Selatan District, Magelang City, Central Java Province, with a Marriage Certificate Number XX/XX/I/2024 dated XX January 2024, and were blessed with 1 (one) children whose names are: Name Disguised, born in Magelang, XX March 2006.

The Petitioner wishes to remarry (polygamy) with a woman named "Ponymous Name", born in Magelang Central Java Province. The Petitioner applied for this polygamy permit because the Respondent could not carry out his obligations as a wife. Then, the Respondent stated that he was willing and had no objection if the Petitioner remarried.



The Petitioner can provide for the life needs of the Petitioner's wives and children and can act fairly towards the Petitioner's wives. According to Islamic law and applicable laws and regulations, there is no prohibition against marriage between the Petitioner and the Petitioner's future wife. Moreover, the prospective wife of the Petitioner is willing to serve as the 2<sup>nd</sup> (two) wife of the Petitioner.

Based on the description of the arguments above, the Petitioners' Petition has complied with the provisions of Law Number 1 of 1974 concerning marriage, articles 4 and 5, and other relevant laws and regulations. Therefore, the Petitioner requests the Chairman of the Magelang Religious Court cq. The judge examining this case is pleased to grant or give permission for the Petitioner (public name) to remarry (polygamy) with a woman named pseudonym.

### **Verdict Rule**

Regarding the above case, the Magelang Religious Court, through Case Decision Number 11/Pdt.G/2023/PA.Mgl, on February 15, 2023, coinciding with the 24<sup>th</sup> Rajab 1444 Hijri, has rendered a decision which orders as follows:

1. Granted the Petitioner's Application;
2. Permitted the Petitioner (Pseudonym) to remarry (polygamy) with a woman named Pseudonym;
3. Charge the Petitioner to pay court fees of Rp.1,395,000 (one million

three hundred ninety-five thousand rupiahs);

### **Legal Considerations**

Considering that based on the confessions of the Respondent's auxiliaries, written evidence, and statements from two witnesses presented at trial, the Judge found the facts revealed at trial as follows:

1. The Petitioner and Respondent are a husband and wife who live in the City of Magelang, were married on January XX 2004 in South Magelang District, Magelang City, and have one child;
2. Whereas the Petitioner wishes to remarry a woman named Pseudonym with a virgin status, with the reason that the Respondent is mentally ill;
3. Whereas the Respondent's guardian has agreed in front of the court for the Petitioner to remarry the prospective wife of the Petitioner, both of whom are;
4. Whereas the second prospective wife of the Petitioner is Muslim, has not been proposed to by another man, is an adult, has no sexual or sexual relationship with the Petitioner and the Respondent, and there is no prohibition on marriage;
5. Whereas the prospective wife of the Petitioner has stated in writing and verbally that he is willing to be polygamous by the Petitioner;

6. Meanwhile, the Petitioner works as a painter and engraver with an income of Rp.2,000,000 (two million rupiahs), and has declared in writing or verbally before the court that he is ready to treat his wives and children fairly;
7. During the marriage, the Petitioner and the Respondent acquired the following assets: 1 (one) plot of land on which stood a building measuring  $\pm 100 \text{ m}^2$  (approximately one hundred square meters).

Considering that based on the facts above, the reason for the Petitioner's polygamy is because the Respondent is in a state of mental illness. Thus, the reason has fulfilled the facultative requirements, as stipulated in Article 4 paragraph (2), Letter an of Law Number 1 of 1974 concerning Marriage jo. Article 41 Letter a Indonesian Government Regulation Number 9 of 1975 concerning Implementing the Marriage Law jo. Article 57 Letter a Compilation of Islamic Law;

Even though it has been considered as above juridically, the judge will also add considerations from the *maslahat* and *mafsadah* aspects in the *Al-Asybah wa an-Nazha'ir'*. According to Jalaluddin as-Suyuthi, there are *fiqh* rules (legal norms) that have been taken over into the opinion of the judge as follows:

If two dangers/evils threaten each other, be aware of the one with the

greater danger/worse by carrying out the one with the least danger/worse.

Considering that in the *quo case*, the Judge considered that two dangers/bads/losses might arise, namely:

1. If the application for polygamy is granted, losses will likely arise for the Respondent and their children because the togetherness and attention of the Petitioners as husband and parents will decrease because they must be divided between the new wife and their children;
2. If the polygamy application is rejected, likely, bad things will also arise because of the possibility that the Petitioner will continue to have a relationship with his future wife without legal ties, and of course, this will trigger an affair with a third party in the household of the Petitioner and the Respondent which can consequently lead to disputes and quarrels between both of which can lead to divorce;

Considering that of the two losses/bad/dangers mentioned above, the judge considers that the first danger is less dangerous than the second danger because the first danger, between the Petitioner and the Respondent, are still able to maintain their household and their respective rights as husband and wife are

still protected Likewise, their children also still get their rights as a child, even the second wife will also get their rights as a wife.

It is different from the second danger; the possibility for the Petitioner as a husband or parent to neglect his obligations towards the Respondent and his children is very large, as well as the possibility for the Petitioner to continue to have contact with his future wife without legal ties is also huge even though the latter is an act which is strictly prohibited by the Islamic religion, not to mention the consequences of this illicit relationship will trigger disappointment, disputes, fights can even lead to divorce, plus the losses suffered by the prospective wife are also huge.

Considering that based on the above considerations when connected with the legal norms above, granting permission for polygamy to the Applicant is more beneficial or at least less dangerous/worse than refusing the application for a polygamy permit.

Considering that apart from that, the Judge needs to remind the Petitioner of the Word of Allah contained in the Qur'an (surah an-Nisa [4]: 3):

Marry two, three, or four of the women you like; if you are afraid you will not be fair, only marry one.

Considering that based on the considerations mentioned above, the peti-

tion of the quo Petitioner insofar as the application for a polygamy permit is sufficiently reasoned and not against the law, therefore the Petitioner's application for a polygamy license should be granted.

Considering that because the quo case is in the field of marriage, then based on Article 89 paragraph (1) of Law Number 7 of 1989 concerning Religious Courts, as amended by Law Number 3 of 2006 and the second amendment by Law Number 50 In 2009, the costs of the case were borne by the Petitioner.

Remember all the articles in the statutory regulations and Islamic law relating to this case.

### **Re-examining the Case Decision from an Islamic Law Perspective**

Polygamy cannot be carried out by individuals (husbands) independently. Therefore, a particular person or institution, namely a judge or a court, must consider it. After going through a trial and deliberation process, the judges have the authority to decide between accepting or rejecting a husband's polygamy permit, considering fairness, legal certainty, and benefits<sup>28</sup> (*mashlahah* and *mafsadah* aspects). The court will permit

<sup>28</sup> Izzat Abdika Mukalafin, "Maslahah dalam Pertimbangan Hukum Hakim pada Putusan Izin Poligami Nomor 0020/Pdt. G/2017/PA,MN.," *Ascarya: Islamic Science, Culture, and Social Studies* 1, no. 1 (2021): 38–46. DOI: 10.53754/iscs.v1i1.4.

a husband polygamy if the benefits that arise are more dominant, such as being able to provide a living for his wives and children, being able to act fairly, and so on. Conversely, if the harm that will arise is more dominant, the Judge will not grant the polygamy permit.

Allah allows the practice of polygamy with up to four wives on condition that they are treated fairly, that is fair in serving their wives, such as matters of living, housing, clothing, and all outward matters. If you are unable to act fairly, then only one wife (monogamy) is sufficient; this is based on the word of God in the Qur'an (an-Nisa [4]: 3).

Marriage law can have many forms of law; referring to the Qur'an (surah al-Nur [24]: 32-33) as emphasized by several interpretations of *ahkam*, that the law of marriage by looking at the condition of the person who does it is divided into five; can be *wajib* (obligated), *sunnah* (recommended), *mubah* (permitted), *makruh* (avoided), and *haram* (prohibited).<sup>29</sup> Of course, these laws depend on the individual conditions of each person. Likewise, with polygamy, the law is very much determined by a person's condition by looking at the goals, as well as the *maslahah* and *mafsadah* aspects, when polygamy is carried out. This law is divided into three: *sunnah*, *makruh*, and *haram*.<sup>30</sup>

<sup>29</sup> Sanjaya, "Hukum Perkawinan," 49-50.

<sup>30</sup> Arif, "Poligami dalam Hukum," 52.

1. Polygamy is said to be *sunnah* when the husband gets permission from the first wife, or the first wife is in a sick condition where it is medically impossible to have children even though the husband really wants to have children and longs for them. It is *sunnah* more because there is a more significant benefit, but it is accompanied by the ability of the husband to do justice. It is polygamy that is commonly practiced by friends.
2. Polygamy is disqualified when a person's goal for polygamy is to have fun to fulfill his biological desires, and he doubts whether he is capable of being fair or tyrannical.
3. Polygamy is prohibited or forbidden when someone is weak economically or has the ability to act fairly but is determined to do polygamy.

Therefore, Islam views this proportionally and recommends that each person measure himself as to whether he can meet the conditions above so that the marriage embodies peace. Calm is the essence of marriage that must be realized both in polygamous and monogamous marriages.

Apart from considering *maslahah* and *mafsadah*, considerations for the condition and feelings of other people, such as his wife's family, cannot be countered; that is why we find the Prophet

Muhammad forbade Ali ibn Abi Talib to marry Fatimah, who was the daughter of the Prophet as the Hadith:<sup>31</sup>

In fact, some of the families of Bani Hisham ibn al-Mughirah asked permission to marry their daughter to 'Ali ibn Abi Talib, so I will not allow it, once again I will not allow it, really I will not allow it, unless 'Ali wants to divorce my daughter, then married their daughter. My daughter is a part of me; what bothers her disturbs my feelings too; what hurts her means hurts my heart too. (Narrated by Bukhari)

As for the case that occurred at the Magelang Religious Court Number Decision 11/Pdt.G/2023/PA.Mgl., regarding the Granting of a Permit for Polygamy because the Petitioner's wife has a mental disorder, so she cannot carry out her obligations as a wife. The author finds that the considerations used by the judge in the decision are not only based on statutory regulations or juridical aspects but also pay attention to the *mashlahah* and *mafsadah* aspects by referring to the principles of fiqh which are then linked to the norms in the Qur'an. The fiqh princi-

ples that the judge considers in the decision are: If two dangers/evils threaten each other, be aware of the one with the greater danger/worse by carrying out the one with the least danger/worse.

This fiqh rule is used because, in this case, the judge considered two *mafsadah* (dangers/bad/losses) that might arise, namely when the case or polygamy permit was granted and rejected. Moreover, by referring to the fiqh rules, the judge chose to grant the Petitioner's request because the *mafsadah* which is likely to appear is smaller, namely, "the Petitioner's attention to his children and his first wife will decrease due to the presence of a second wife." Meanwhile, suppose the Petitioner's application is rejected. In that case, the possibility of *mafsadah* that will appear is far greater, namely, "The Petitioner continues to maintain a relationship with his future wife without ties, and this can lead to disputes or quarrels between the Petitioner and the Respondent."

The fiqh rule can also be used in this consideration, is to reject harm, which is more important than benefit, as follows:

Rejecting damage takes precedence over attracting benefit, and if there is a conflict between *mafsadah* and *maslahah*, rejecting *mafsadah* takes precedence.<sup>32</sup>

<sup>31</sup> Masiyam M Syam, and Muhammad Syachrofi, "Hadis-Hadis Poligami: Aplikasi Metode Pemahaman Hadis Muhammad al-Ghazali," *Diroyah: Jurnal Ilmu Hadis* 4, no. 1 (2019): 94, <https://journal.uinsgd.ac.id/index.php/Diroyah/article/view/6018>.

<sup>32</sup> Firdaus and Salihin, "Al-Qawaid al-Fiqhiyah," 86-87.

This rule emphasizes that rejecting harm is more important and takes precedence over taking advantage, including when there is a conflict between *masalah* and *mafsadah*. This rule also provides direction. If a policy is enacted and will cause harm on the one hand, but on the other hand, it will bring benefits, then negative impacts must be avoided. Because the negative impact is very likely to have a broader effect, the benefits obtained will be meaningless in the end.<sup>33</sup>

It aligns with the judges' consideration in the Magelang Religious Court Decision Number 11/Pdt.G/2023/PA.Mgl. who chose to reject the *mafsadah* in the form of "an affair is likely to occur between the Petitioner and his future wife, which will then lead to disputes between the Petitioner and the Respondent," rather than withdrawing the *masalah* in the form of "the Petitioner's attention to his children and his first wife (Respondent) will not decrease because there is no wife second."

After referring to the principles of fiqh to consider the *masalah* and *mafsadah* aspects, the judges of the Magelang Religious Court, in their decision, correlated with the norm of the permissibility of polygamy in the Qur'an

(surah al-Nisa [4]: 3).

So marry women (other) that you like: two, three or four. Then if you are afraid that you will not be able to do justice, then (marry) only one person, or the slaves you have. That is closer to not doing wrong.

In this verse, a husband's fair treatment of his wives is a condition that must be met in a polygamous marriage. According to Muhammad Sayyid Tawfiq, what is meant by fairness is fairness in providing a living and wife's rights according to her abilities as a human being,<sup>34</sup> such as giving clothes, shelter, time allocation, and others that are outward. As for feelings of love and their inclinations, they are not included in the conditions of polygamy because humans will not be able to share them fairly among their wives, and that is beyond their ability as humans.<sup>35</sup> As emphasized by Allah in the Qur'an (surah an-Nisa [4]: 129):

[...] and you will not be able to act fairly between your wives, even though you really want to do so; therefore, do not be too inclined (to the one you love), so you leave the others adrift.

<sup>33</sup> Mukhsin Nyak Umar, *Kaidah Fiqhiyyah dan Pembaharuan Hukum Islam* (Banda Aceh: Yayasan WDC, 2017), 101, <https://repository.ar-raniry.ac.id/id/eprint/1569/1/Nurdin%20Bakri%20Kaidah%20Fiqhiyyah%20%28Cetakan%20Kedua%29-editor.pdf>.

<sup>34</sup> Ali Hendri, "Poligami Perspektif Kitab al-Tafsir al-Wasit li al-Qur'an al-Karim," *Al-Bayan: Jurnal Studi al-Qur'an dan Tafsir* 3, no. 1 (2018): 57, DOI: 10.15575/al-bayan.v3i1.3128.

<sup>35</sup> Hendri, "Poligami Perspektif Kitab al-Tafsir," 58.

In this case, the Petitioner has stated in writing or verbally before the court that he is ready to treat his wives and children fairly, with an income of Rp. 2.000.000,- (two million rupiah) as a painter and sculptor. The judge, in this case, considering that the ability of the Petitioner to act fairly met the requirements for polygamy as emphasized in the Qur'an (surah al-Nisa [4]: 3), so the granting of permission for polygamy in case number 11/Pdt.G/2023/PA.Mgl. is following Islamic law and is not against the law.

## Conclusion

Based on the discussion above, the authors found the judge's consideration in the Magelang Religious Court (Case No. Decision 11/Pdt.G/2023/PA.Mgl). Besides being based on juridical aspects (laws and regulations), it has also paid attention to the *mashlahah* and *mafsadah* aspects, namely by referring to the fiqh rules, which are then linked to the Qur'anic norms regarding the permissibility of polygamy in the Qur'an (surah al-Nisa [4]: 3).

In the decision, the judge referred to the Fiqh rule: "If there are two dangers/ evils threatening each other, then be wary of the one with the greater danger/worse by carrying out the one with the least danger/ugliness" then granted the request because according to *mafsadah* the possibility would appear much more minor,

namely "attention Applicants against the child and the first wife will be reduced due to the presence of the second wife. Meanwhile, suppose the Petitioner's application is rejected. In that case, the possibility of *mafsadah* that will appear is far greater, namely, "The Petitioner continues to maintain a relationship with his future wife without ties, and this can lead to disputes or quarrels between the Petitioner and the Respondent."

Besides that, the judge also assessed the ability of the Petitioner to act fairly (in writing and verbally in front of the court) to their wives and children, having met the requirements for polygamy as emphasized in the Qur'an (al-Nisa [4]: 3), so that the granting of permission for polygamy in the case No. 11/Pdt.G/2023/PA.Mgl. is following Islamic law and does not violate Indonesian law.

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