

Analysis of the Judges' Decision Number 318/Pdt.G/2022/Pa.Tli Regarding Polygamy Permit in Maqasid Sharia Perspective (Study at the Class II Religious Court of Tolitoli Regency)

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ARTICLE INFO

Volume: 2

KEYWORDS

Judges' Decision, Polygamy Permit, Maqasid Sharia

ABSTRACT

Principally, the Religious Courts only grant permission for polygamy if the parties concerned have fulfilled the cumulative and alternative requirements. However, in certain circumstances, the applicants could not meet these requirements, particularly the alternative circumstances. These become a challenge for the judge in analyzing and deciding the case. Of course, the theory of *maqâsid al-sharîa* is the main foundation. This thesis departs from the problem how is the perspective of *maqâsid sharîa* on the implementation of the Judge's Decision Number 318/Pdt.G/2022/PA.Tli regarding Polygamy Permits at the Class II Tolitoli District Religious Court?

The type of research is field research, using two data collection methods, interviews and documentation. The approach used is normative through analysis of *maqâsid al-sharîa* and juridical through laws and regulations. Data analysis used qualitative with inductive method.

The results of the study show that the procedures and administrative requirements of case number 318/Pdt.G/2022/PATli have been fulfilled. As for the consideration of the decision of the panel of judges in granting the request for the polygamy permit was using the main basis of *maslahat mursalat* of the applicant, the respondent, and the prospective second wife and setting aside the alternative requirements. Based on the results of the study, it was shown that the considerations of the panel of judges had accommodated the theory of *maqâsid al-sharîa* Imam Syatibi, both in terms of *qashdu shari'* at the *dharuriyat* level, namely protecting religion, soul, lineage, intellect, and property, as well as in terms of *qashdul mukallaf* regarding the intention and purpose of the applicant that consistent with the purposes of sharia. The decision of the panel of judges brings about *mashlahah* and avoids harm, in which the decision of the panel of judges does not have a *dharar* impact on the respondent and his family.

1. Introduction

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The granting of a polygamy permit by the court is closely related to the applicant's statements and the results of the examination of his first wife. The basis for a court decision that allows polygamy is related to the status/behavior of the wife and husband. The basis for the court's consideration for granting permission for polygamy is related to the condition/behavior of the wife and husband. From the wife's point of view includes: 1) Infertility; 2) Physical maturity; 3) Physically unfit for intercourse; 4) Deliberately not trying to restore sexual rights; or 5) Mental illness. While from the husband are: 1) Being able economically to bear the wives and offspring, 2) Being able to treat wives fairly, 3) Marriage does not cause *al-dharar al-shar'i* (danger to religion, life, body, mind or property) to the wife/wives he previously marries, 4) The marriage will not cause a decrease in the dignity of the wives or other people related to the marriage, directly or indirectly. (Azni- 2015).

Therefore, the judge in adjudicating cases for polygamy permits must try to provide justice for the parties by not only referring to the regulatory provisions regarding the polygamy permit procedure but also referring to the perspective of the *maqasid sharia* theory.

According to Al-Syâthibi, the core of the goal of *sharîa* (law) or *maqâsid al-sharîa* is the benefit of mankind. In this regard, Al-Syâthibi stated that "Indeed *shâri'* (sharia maker) in sharia law aims to realize the benefit of his servants both in this world and in the hereafter simultaneously". Based on the statement, it can be concluded that *Maqashid al-Sharia* includes aspects of human nature.

One of the areas in Indonesia that has decided to issue a polygamy permit is the Tolitoli District Religious Court. This can be seen in the Judge's Decision Number 318/Pdt.G/2022/PA.Tli regarding a polygamy permit registered at the local court. In this case, there is a need for further study or research on the polygamy permit decision. This decision will be reviewed further from the perspective of *maqasid sharia*.

From the description of the background, the researchers raised the title "Analysis of Judge Decision Number 318/Pdt.G/2022/PA.Tli Regarding Polygamy Permits from the *Maqasid Sharia* Perspective (Study in Religious Courts of Tolitoli Regency Class II)" with problem statement: how is the perspective of Maqashid Shariah on the implementation of the Judge's Decision Number 318/Pdt.G/2022/PA.Tli regarding Polygamy Permits at the Class II Tolitoli District Religious Court?

2. Literature Review

2.1 Definition of Polygamy

In the Big Indonesian Language Dictionary, polygamy is defined as a marriage system in which one party marries several members of the opposite sex simultaneously (W.J.S Poerwadamita - 2006).

2.2 Polygamy in the Compilation of Islamic Law (CIL)

In CIL, the discussion of polygamy is discussed in articles 55-59. The articles read in full:

Article 55

- 1) Having more than one wife simultaneously is limited to four wives.
- 2) The main requirement to have more than one wife is the husband must be able to act fairly towards his wives and children.
- 3) If the main conditions referred to in paragraph (2) cannot be fulfilled, the husband is prohibited from having another wife. (Compilation of Indonesian Islamic Law)

Article 56

- 1) Husbands who wish to have more than one wife must obtain permission from the Religious Court.
- 2) Submission of the permit application referred to in paragraph (1) is carried out according to the procedure stipulated in Chapter VIII of Government Regulation No.9 of 1975.
- 3) Marriages entered into with the second, third or fourth wife without permission from the Religious Courts do not have the force of law. (ibid)

Article 57

The Religious Courts only give 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. (ibid)

Article 58

1) In addition to the main requirements referred to in Article 55 paragraph (2), in order to obtain a religious court permit, the conditions specified in article 5 of law number 16 of 2019 concerning amendments to law number 1 of 1974 must also be met, namely: a. the wife's approval; b. there is certainty that the husband is able to guarantee the necessities of life for his wives and their children.

2) Without prejudice to the provisions of Article 41 letter b of Government Regulation No. 9 of 1975, the consent of the wife or wives can be given in writing or orally. However, even though there has been a written agreement, this agreement must be confirmed by the wife's verbal consent at the trial of the Religious Court. (ibid.)

Article 59

In the case where the wife does not want to give consent, and the application for permission to have more than one wife is based on one of the reasons stipulated in Article 55 paragraphs (2) and 57, the Religious Courts can stipulate the granting of permission after examining and hearing the wife concerned at the religious court trial, and against this determination, the wife or husband can appeal. (ibid)

The provisions in the Compilation of Islamic Law above give the understanding that polygamy can be carried out with several conditions. If these conditions cannot be met then polygamy cannot actually be practiced.

3. Methodology

3.1 Research Approach and Design

The research type used in this research is descriptive qualitative analysis with an emphasis on case study research. The researchers use this type of research because the researchers are very confident in the validity of the data and research obtained.

3.2 Research Location

This research was conducted by taking the location at the Tolitoli Religious Court. The field selection or determining the research location was directed by substantive theory. This is a theory developed for substantive or empirical purposes in inquiry (examination with an interview system).

3.3 Positionality of the Researchers

In qualitative research, the presence of researchers is necessary as the leading actors in the process of conducting research. Researcher in qualitative research plays a vital role in conducting research. The first function is as an instrument. Second, the researcher formulates and continuously refines the research design. Third, he makes qualitative notes. Fourth, he analyzes data and formulates research findings. In connection with these four components, it is clear that the researcher's position is the main instrument in this research.

3.4 Data Collection Techniques

Data collection is a crucial step in this research because the primary purpose is to collect data. According to Miles and Huberman, in qualitative research, data collection is carried out under natural conditions of the primary data sources. The data collection techniques involve more participation observation, in-depth interviews, and documentation

3.5 Data Analysis Techniques

Data analysis in qualitative research was carried out before entering the field, during the field, and after completion in the field. In this case, Nasution stated, "The analysis has started since formulating and explaining the problem, before going into the field, and continues until the writing of the research results.

4. Results and Discussion

4.1. Overview of Maqasid Sharia on Granting Polygamy Permits in Case Number 318/Pdt.G/2022/PA. Tli

The enactment of a law with the background of 'illat must have a goal, namely, to benefit mankind. In reality, there is a relationship between 'illat and the purpose of enacting the law, which can be understood intellectually, and some cannot.

Based on the definition of illat by Imam as-Syatibi, it can be concluded that the legal permit for polygamy in the decision of the Tolitoli Religious Court Number 318/Pdt.G/2022/PA. Tli is in line with the accompanying 'illat, namely:

- 1) The applicant and the prospective second wife are in love with each other and have had a serious relationship, so they are afraid of causing slander in the community;
- 2) There is a fear of adultery;
- 3) There is concern that the applicant will commit an unregistered marriage so that it will cause greater harm.

The 'illats mentioned above are dharar which is an antonym or the opposite of benefit. Therefore, if granting the applicant's permission to practice polygamy will provide masalah (benefit) for the survival of the applicant and

the prospective second wife, then refusing the application for polygamy is considered dharar. Dharar is a person's position at a limit where he will perish or almost perish if he does not consume something that is prohibited (A. Djazuli - 2006). Dharar can be in the form of illness or difficulties that greatly determine human existence because, if unresolved, it will threaten religion, soul, lineage, mind, and property.

In connection with the application of illat to polygamy permits granted by the Tolitoli Religious Court from the perspective of maqâsid al-sharîa according to Imam as-Syatibi, he divides the maqâsid in Al-Muwafaqat into two important parts, the meaning of syari' (qashdu asy-syari') and the meaning of mukallaf (qashdu al-mukallaf).

First: Qashdu As-Syari'.

In the first part, Imam as-Syatibi explains: "First, the basic purpose of Allah in establishing sharia; second, Allah's purpose in establishing sharia to provide understanding; third, Allah's purpose in establishing sharia for orders that must be carried out; fourth, Allah's purpose in establishing shari'ah to bring humans into sharia law." (Abu Ishaq Al-Syatibi, 2004)

The primary purpose of Allah in establishing this category of sharia is closely related to the content and nature of maqâsid al-sharîa in the projection to translate Allah SWT's obsession for the benefit of mankind (Abu Ishaq Al-Syatibi, 2004). In this case, Al-Syatibi divides it into three levels, dharuriyah, hajiyah, dan tahsiniyah.

In the polygamy permit decision by the Tolitoli Religious Court number 318/Pdt.G/2022/PA.Tli, in terms of the dharuriyyat level aspect as mentioned by Imam Al-Syatibi is as follows:

4.1.1 Maintaining Religion (*Hifz ad-Din*)

The decision of the Tolitoli Religious Court granting the request for a polygamy permit in the context of maintaining religion can be seen from the point that marriage is an act of worship and is in the context of protecting the applicant from disobedience, adultery, and immoral acts which are forbidden.

It is also reinforced that from the marriage law point of view, the law of marriage varies according to one's circumstances. It means that marriage has different laws, not just one. This follows a person's condition (casuistically). (Sa'id Musthafa Al-Khin dan Musthafa Al-Bugha, 2000)

From this information, it can be understood that the law on marriage or polygamy will vary according to a person's condition and is specific, so the law cannot be generalized.

In this case, the applicant, in applying for a polygamy license, may be subject to a 'compulsory' law because he is considered capable of doing polygamy and is afraid that he will fall into adultery as the result of the Judge's examination at the trial at the Tolitoli Religious Court. The granting of permission for polygamy, in this case, ignores alternative conditions and refers to maslahat and harm or maqasid al-sharia based on the fiqh rule: "preventing damage takes precedence over bringing about good". In another fiqh rule, it is stated that harm must be eliminated.

The granting of permission for polygamy by the Tolitoli Religious Court is required to act fairly in accordance with the maqasid sharia whose initial goal is the benefit in this world and the hereafter life. If fairness is fulfilled in the practice of polygamy, it will bring benefits to the afterlife. In this case, believing in the day of judgement in Islam is part of the pillars of Faith.

4.1.2 Protecting the Mind (*Hifz al-'Aql*)

The granting of permission for polygamy by the Tolitoli Religious Court also accommodates maqasid al-sharia in protecting the mind. It refers to the main goal of a marriage, which is creating a happy household following the provisions of the Islamic religion and obtaining happiness and peace of life (*sakinah*) so that it can give birth to clarity in thinking and acting, which is part of maqasid al-sharia (protecting the mind).

4.1.3 Protecting the Soul (*Hifz an-Nafs*)

The granting of a permit for polygamy by the Tolitoli Religious Court is in the Context of Protecting the soul, where the applicant submits an application for a polygamy permit to create a *sakinah*, *mawaddah* and *warahmah* family built on the basis of togetherness and harmony as the spirit. This spirit leads to eternity to create serenity because calm and serenity cannot possibly be born amid turmoil and enmity that will lead to destruction.

The granting of permission for polygamy by the Tolitoli Religious Court is an attempt to achieve the objectives of Islamic law in the family field. The goal is to realize more significant benefits than just fulfilling the husband's wishes, namely wanting to help and ease the difficulties and burdens of the prospective second wife that he has been living with, as described in the driving reasons for polygamy in order to protect the soul (*Hifdz al-Nafs*) as expected by Islam.

4.1.4 Continuing lineage/offspring (*Hifz an-Nasl*)

One of the lessons of polygamy is to get offspring for a fertile husband, but his wife is barren or unable to produce offspring.

The granting of the applicant's application for polygamy by the Tolitoli Religious Court is one of the efforts to continue the lineage, where the applicant and the prospective second wife will legally marry in accordance with the provisions of Islamic law and the applicable regulations and laws and avoid adultery which will result in harm to the lineage of descent.

In addition, the prospective second wife certainly has great hopes that her marriage will give birth to offspring, which is the dream of every husband and wife. Moreover, the prospective second wife is still 28 years old. There is still a great chance to have offspring.

4.1.5 Maintaining Assets and Property (*Hifz al-Maal*)

The Tolitoli Religious Court granted permission for polygamy by considering the maqasid sharia perspective aspect, namely maintaining assets and property (*hifzul maal*), which was seen in the Judge's consideration with the decision to separate assets from the first wife so that there would be no disputes in the future. Also, considering the husband's economic ability to undergo polygamy and his desire to help the prospective second wife to fulfill her needs because her parents have separated so that no one provides for her daily life needs. The prospective second wife has also worked to assist the applicant in providing electronic rental services so that her position also helps maintain the applicant's economy.

Second : Qashdul Mukallaf.

The following is an analysis of maqasid sharia in the category of *qashdu mukallaf* in the polygamy permit decision by the Tolitoli Religious Court based on Imam as-Syatibi's theory:

1) The Urgency of Intention, Al-Syatibi states:

Maqasid Mukallaf is very influential in the actions of *Mukallaf*. Two acts with the same form sometimes have different legal implications due to someone's intentions, so the act can be something lawful and sometimes unlawful.

Maqasid mukallaf in granting permission for polygamy by the Tolitoli Religious Court is the intention of the applicant to do polygamy to help the prospective second wife who lives alone because her parents divorced and the intention to avoid committing adultery, which is strictly forbidden in Islam.

2). Bring Mashlahah (Benefit) and Avoid Mudharat (Harm)

Based on the statement of the Respondent and the witnesses brought in, the Respondent did not object and even encouraged the Applicant to apply for a polygamy permit. It shows that the Respondent was not affected by *dharar* of the polygamous marriage and the wishes of the Applicant, Respondent, and prospective second wife for a harmonious household together. Likewise, the statements from the witnesses stated that the closeness between the Applicant and the prospective second wife was already worrying that they would fall into adultery and slander in society.

5. Conclusion

The Applicant's reasons for applying for a polygamy permit are not included in the alternative requirements to be allowed to practice polygamy. Therefore, the panel of judges in granting the application for a polygamy permit case number 318/Pdt.G/2022/PA.Tli refers to the *maslahat mursalat* (*syar'i* reasons) for Applicant. Granting the application for a polygamy

permit is a way of eliminating harm. It was believed that if it is not granted, the Applicant would not be able to maintain his honor and may fall into adultery or enter into an unregistered marriage which would also have an impact on greater harm. Therefore, it can be concluded that the decision of the Tolitoli Religious Court case number 318/Pdt.G/2022/PA.Tli is still in line with the maqasid al-sharia theory according to as-Syatibi, namely protecting religion, soul, mind, property and lineage.

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