

Polygamy Permission From The Perspective Of Maqashid Al-Syariah (Study Of The Judge's Decision In Palu Religious Court Class 1 A)

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ABSTRACT

This is what then makes judges carry out *ijtihad* outside the context of the law by interpreting or *contra legem* as specified in the explanation of article 1 of Law no. 4 of 2004 concerning Judicial Power, and article 5 paragraph (2) of Law no. 1 of 1974 concerning Marriage. (2) Islam has regulated polygamy with predetermined conditions such as fulfilling a fair and capable attitude. Of course, not every case of polygamy in PA Palu Class 1 A is motivated by reasons as outlined by Islam, but they vary. Maqashid Al-Syariah is not burdensome, but rather lightening, with the existence of maqashid al-syariah as a pillar in doing good things, in polygamy maqashid al-syariah is really needed, because it has benefits for people who want to do polygamy, of course they don't run away from it. fair nature, financially capable, and other things. And the judge's decision can be given to the polygamist applicant with a decision of either acceptance or rejection, seen again from the perspective of benefit and being able to do justice to his wives

1. Introduction

Marriage is a sacred, strong and sturdy agreement to legally live together between a man and a woman to form an eternal household, courtesy and love (Sayuti Thalib :1986).

Marriage can be enforced and fostered in accordance with religious norms and the way of life in society. In a household, two people of different genders (husband and wife) gather, they relate to each other in order to produce offspring as the next generation. The people in the household are what is called family. The family is the smallest unit of a nation, the family that is aspired to in a legal marriage is a prosperous and happy family that always receives the pleasure of Allah SWT.

According to Law Number 1 of 1974 (Article 1), marriage is a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God. The consideration is that as a country based on Pancasila principles, the first principle of which is belief in the Almighty God, marriage has a very close relationship with religion/spirituality, so that marriage not only has a physical/physical element, but an inner/spiritual element also has an important role.

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Nikah or marriage in fiqh writing is alluded to by two words, namely nikah and zawaj. These two words are used in the daily life of Arabs and are found in the Koran and hadiths of the Prophet. The word na-ka-ha is found in the Qur'an with the meaning of marriage, as in Q.S An-Nisa/4:3

Polygamous marriages in the case of a husband having more than one wife are usually carried out for various reasons. When viewed from a religious perspective, in certain circumstances polygamy will be better than committing adultery. However, when viewed from the perspective of women's interests, almost nothing can be categorized as beneficial for women.

Polygamous marriages that receive permission from the wife are rarely found, especially if the wife can carry out her obligations perfectly, does not suffer from bodily defects or incurable diseases or the wife is unable to bear children.

Looking at the explanation above, it is clear that broad marriage guidelines, even though they depend on the principle of monogamy, provide important opportunities for men to practice polygamy if they meet the material requirements. The potential for polygamy to occur shows that couples often carry out actions that are not in accordance with applicable rules.

According to the provisions of the Marriage Law, more than one wife must have permission from a religious court and fulfill other conditions (1) the wife cannot carry out her obligations as a wife, (2) the wife has a physical disability or an incurable disease; and (3) the wife cannot bear children. However, in practice, this opportunity is then misused by the husband, giving rise to demands for separation from the previous marriage. In fact, as often happens in the lives of individuals, a couple will take the necessary steps to consummate their marriage to another woman, even without the permission of the primary wife or the approval of the court.

The strategy used is usually to fake a way of life as if the partner is still single or has become a single man. These arrangements are clearly visible in the existing marriage regulations in Indonesia, especially the Marriage Regulations. In essence, in a marriage a man may have one wife, if a husband has more than one wife, then he must submit an application to the court. Marriage regulations do not rule out and limit a husband/wife from having more than one wife. One of the circumstances is the consent of the partner. If the husband/wife does not allow their partner to have polygamy, the husband's marriage can be revoked. There are prerequisites that have been determined in the law which are combined into material needs and formal needs. These conditions must be fulfilled by the couple who will enter into marriage so that the marriage is seen as a valid marriage. If the prospective partner does not fulfill the conditions that have been determined, the marriage can be annulled, both by the party carrying out the marriage and by other people who have a close relationship.

2. Literature Reviews

According to Law Number 1 of 1974, marriage is a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on belief in the Almighty God. Therefore, the definition of marriage in Islamic wisdom has the value of love, so that Article 2 of the Association of Islamic Sharia emphasizes that marriage is a very noble contract to submit to Allah's commands, and carrying it out is a form of worship. (Zainuddin Ali :2007)

Sayyidah Aisyah RA said that this verse is about an orphan girl who was in the care of her guardian. The guardian then wants to marry off the child whose dowry is the cheapest because he likes the child's beauty and wealth. Then, if he wins in mating, the guards will abuse him because there is no one to protect him.

It was in conditions like this that they were then told, "If you are afraid of not being able to do justice in fulfilling the rights of orphans and feel heavy hearted because of this, you should also be afraid of your injustice towards your children. wife."

The pillars and conditions that determine the validity of a law, especially matters that interfere with whether the demonstration is legal from a legal point of view. These two words contain a very important meaning, namely something that must be completed. In a wedding event, harmony and conditions must not be abandoned. As for the marriage, it is invalid if both parties are lost or divided. Both have different implications because one is something that exists in nature and is the part or component that makes it happen. Meanwhile, a condition is something that is outside it and is not a component. These conditions are related to agreement in the sense of the conditions that apply to each component that includes

friendship. There are also conditions that are still separate because they are not criteria and elements of harmony. (Amir Syarifuddin :2009)

The word polygamy comes from the Greek Polis which means many, Gamon which means marriage. A marriage framework in which a man has more than one partner at a time. In the reference to the word philosophy, it is revealed that the word polygamy comes from Greek which means multiple relationships, having more than one partner simultaneously. (Gerald D Collins :1991)

The conditions for polygamy regulated in Islamic law do not make polygamy an obligation for Muslim men and it is not mandatory for a woman's family to accompany her child to marry a man who already has about one partner. Moreover, according to Islamic law, women and their families have the honor to practice polygamy if there are benefits and advantages for their daughters. They have the right to refuse if they are concerned.

Maqashid al Syari'ah refers to the goals that Allah and His Messenger had in mind when designing Islamic law. This goal can be followed in parts of the Qur'an and the Sunnah of the Prophet as a reasonable justification for detailing regulations that are in favor of the benefit of mankind. (Satria Efendi :233)

The concept of maqshid al-shar'ah thought put forward by Jasser Auda emphasizes four aspects, the first is the division of maqshid into three levels: universal (al-maqshid al-'ammah), specific (al-maqshid al-khssah), and some (al-maqshid al-juz'iyyah). Second, the reach of maqshid extends beyond individuals, communities, nations, Muslims everywhere, and even humanity. Third, the Al-Quran and mutawatir hadith, not the opinions of madhhab scholars, are the main sources of maqshid. Fourth, the meaning of maqshid's goals shifts from safeguarding (al-'ismah) and protecting (al-hifz) to development (at-tammiyah), which ultimately achieves human development, human rights and overall benefit (maqshid al-'ammah).

Before handing down a decision, the panel of judges must first find out the facts and events expressed by the injured party and the defendant, as well as the evidence presented by the trial court at the preliminary hearing. With the aim of finding the law on a case being examined in court, the judge can search it from top to bottom. Before making a decision, the panel of judges must first understand the reality and current events discovered by the injured party. also, the meetings for the case, as well as the evidence presented by the preliminary court at the first hearing.

A framework is a line of thinking that is briefly arranged to explain how research is carried out from the beginning, process, implementation, to the end. Furthermore, Uma Sekaran in his book Business Research states that a thinking framework is a conceptual model of how theory relates to various factors that have been identified as important problems. The framework of thinking in a study concerns two or more variables. If the research only discusses one or more variables independently, then what the researcher does is in addition to presenting a theoretical description for each variable, as well as arguing for variations in the magnitude of the variables studied. The framework of thought is the line of thinking used in research which is described thoroughly after having a theory that supports the title of the research.

3. Methodology

The type and design of research in this thesis is normative-empirical research. According to Abdulkadir Muhammad, what is meant by normative-empirical legal research (applied law research) is research that uses normative-empirical legal case studies in the form of legal behavioral products. (Abdulkadir Muhammad :2004)

The data sources used in this research are divided into two, namely primary data and secondary data.

1) Primary Data:

Primary data is data directly obtained from direct observations and interviews with informants (the public) who were used as research subjects, regarding the contextual learning approach and implementation of Polygamy Permits in the Palu City Religious Court, West Palu District, Central Sulawesi Province.

2) Secondary Data:

Secondary data is supporting data sourced from documents in the form of important sheets in the Religious Courts which are related to the issues being discussed or which are relevant to the topic of discussion. After the data was collected, the author

analyzed the data using qualitative data analysis, namely a research procedure that produces descriptive data in the form of speech, writing or behavior taken from data samples to obtain final conclusions.

According to Bogdan and Biklen, as quoted by Moleong, qualitative analysis is an effort carried out by working with data, organizing data, sorting it into one manageable part, finding patterns, finding what is important and what is learned and deciding what to study. can be told to other people. The data analysis technique used in this research consists of three stages, namely:

1) Data reduction

Etymologically, reduction means reducing or cutting. Reductionism or procedures simplify complex symptoms, data and so on so that they become less complex. Data reduction is applied to the results of interviews, observations and documentation and then categorizes the data by reducing things that are considered insignificant for the research.

2) Presentation of data

Data presentation is presenting data that has been reduced in certain models in an effort to facilitate the presentation and confirmation of conclusions and avoid misinterpretation of the data.

3) Data verification

Data verification is a procedure for drawing conclusions from compiling data according to needs. This is the final analysis in the form of a conclusion, and the verification is intended to produce valid conclusions.

Data validity checking is applied in this research so that the validity and credibility of the data obtained is guaranteed. The data obtained from the research location is very important to check again. Checking the validity of the data in this research plan is very important, because it can determine the level of validity and credibility of the data. The data was checked by the author himself by evaluating the findings in the field. If there are things that are still unclear and do not correspond to reality, the author clarifies them and looks for similarities between the data obtained and the conditions in the field. Apart from that, the author also held discussions with colleagues to find solutions to the problems the author faced in order to obtain data that was accurate and recognized for its validity, so that the data obtained at the research location could be accounted for.

The technique for checking the validity of the data that the author uses is data triangulation, namely checking the validity of the data which uses something outside the data for checking purposes or as a comparison of the data.

4. Results and Discussion

The Palu Class 1 A Religious Court was formed based on the Decree of the Minister of Religion Number 5 of 1958 concerning the Establishment of Religious Courts/Shar'iyah Courts in Sulawesi, Nusa Tenggara, Maluku and West Irian. The Palu Class 1A Religious Court is one of the implementers of judicial power at the first level for Muslim justice seekers regarding special civil cases in accordance with Law Number 7 of 1989 as amended by Law Number 3 of 2006 and secondly as amended by Law No. Law Number 50 of 2009. Palu Class 1A Religious Court is located in the capital city of Central Sulawesi Province. The jurisdiction of the Palu Class 1A Religious Court covers 8 (eight) sub-districts and 45 (forty-five) sub-districts in Palu City.

According to Article 1 of Law Number 1 of 1974 concerning Marriage ("Marriage Law"), marriage is essentially a physical and spiritual union between a man and a woman to form a happy and eternal family (household) based on belief in Allah. . The One Almighty God. Therefore, Indonesian marriage law is based on monogamy as a result of these provisions.

Article 3 paragraph (1) of the Marriage Law further emphasizes the concept of monogamy, which states that a man may only have one wife in a marriage. where a woman can only marry one man. This shows that monogamy is actually recommended by law.

However, the Marriage Regulations provide for special cases, as we find in Article 3 paragraph 2 of the Marriage Regulations, where the court can allow a husband to have more than one wife if desired by the association concerned.

According to Article 4 paragraph 1 of the Marriage Law, if a husband wants to have more than one wife, he must submit an application to the court in the area where he lives. Article 4 of the Marriage Law paragraph (2) further explains that the Court only allows 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 give birth to or give birth to children.

Apart from the things above, when a husband submits an application to marry more than one person, he must fulfill the following requirements (Article 5 paragraph 1 of the Marriage Law):

- a. There is consent from the wife/wives;
- b. There is certainty that the husband is able to guarantee the living needs of his wife and children;
- c. There is a guarantee that the husband will treat his wives and children fairly;

According to Article 5 paragraph 2 of the Marriage Law, the wife's consent is not required if it is impossible to obtain her consent and they are not parties to the agreement, if the wife has not been contacted for at least 2 years, or for other reasons that must be assessed by the Court Judge.

The Compilation of Islamic Law (KHI) is a source of polygamy regulations in Islamic law. The polygamy provisions in the Marriage Law are very similar to those in the KHI. It's just that the KHI also means that men who have more than one wife are given restrictions, namely that a man cannot have many wives. Apart from that, Article 55 KHI states that a man must be able to treat his wife and children fairly in order to be able to have more than one wife.

Basically, the main aim of enshrining Islamic law is to maintain benefit and at the same time avoid harm, both in this world and in the afterlife. The search by ushul fiqh experts for al-maslahah or benefit is realized in the form of the ijihad method. Various terms have been used by them to refer to methods of legal discovery. However, basically, all of these methods boil down to efforts to discover the benefit of humanity, and use it as a tool to establish laws whose cases are not explicitly mentioned either in the Qur'an or in the hadith. On the basis of this assumption, it can be said that every method of determining law used by ushul fiqh experts leads to maqashid syari'ah. It can be concluded that maqashid shari'ah are all Islamic rules that regulate everything in the survival of human life, for the sake of creating the benefit of human life, as well as eliminating all existing evils and harms.

Maqashid syari'ah in Islam itself means the purpose and secret of Allah in placing a syariah, this purpose is an interest (maslahah) for all people. Maşlahah is a manifestation of maqashid syari'ah (the aim of sharia), namely to bring maşlahah to His servants. So these two terms have very close relevance and connection.

5. Conclusion

1. The consideration of the class 1 a Palu religious court judge in granting permission for polygamy with the decision being granted was that the judge saw that the applicant wanted to remarry the prospective second wife because in order to carry out worship in terms of providing protection and welfare to the family of the prospective second wife, the applicant was also able to act fairly. to his wives and children, this states that the judge made a decision in granting permission for polygamy to the applicant and the judge decided to grant it because the judge believed that the applicant was able to treat his wives fairly, even the respondent (the applicant's first wife) was willing and stated no object if the applicant (husband) remarries a prospective second wife. And the judge's consideration in refusing permission for polygamy is that there is no consent from the wife, because Article 4 paragraph 2 of the Law stipulates that religious courts can allow polygamy if one of the three conditions is met, the wife can still produce offspring, the wife still carries out her obligations as a wife, and the judge decided that the applicant's (husband's) application was rejected because the wife was still carrying out her obligations and was physically healthy/not disabled.
2. The judge's decision from the perspective of maqashid al-Syariah which is applied in permitting polygamy in class 1 a Palu religious courts is maqashid dharuriyyat which includes maintaining religion (hifdz ad-din), maintaining the soul (hifdz nafs), maintaining reason (hifdz al-aql), maintaining offspring (hifdz an-nasb) and maintaining wealth (hifdz al-maal). The judge is of the opinion that practicing polygamy must include the 5 pillars of maqashid al-syariah. And husbands who want to have polygamy must fulfill these 5 pillars and act fairly and responsibly towards their wives and children.

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