

Polygamy Permission Because The Wife Cannot Perform Its Obligations

(Case Study at the Solok Religious Court)

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Abstract

In Islamic law, it is preferable for a man to have only one wife, even if he can keep her to the end. Islam teaches that marriage must create an atmosphere of sakinah, mawaddah and mercy. The atmosphere is difficult to do if a man has more than one wife. Justice as a condition of creating harmony between wives is very difficult to happen. Therefore religion warns Norma to practice polygamy and choose one wife at the same time. The results of this study reveal that there are still many men who have an understanding and carry out this polygamous marriage without paying attention to the terms and conditions contained in Islamic law.

Keywords : marriage, polygamy, wife obligations, case studies, religious courts,

Background

Marriage is the behavior of creatures created by God Almighty so that life in the world develops well. Humans are intelligent creatures, so marriage is a culture that has rules and recognizes the development of human culture in people's lives. The rules of marriage order have existed since indigenous peoples have been maintained by community members and traditional leaders.

Marriage rules based on Islamic teachings can be seen from the rules regarding Marriage according to Islam. The ideals of the Indonesian people and nation to have a law that regulates marriage nationally, and all the impacts caused by a marriage that applies to all groups of society, namely a unification, have long existed and have been fought for by organizations, society and government. Finally, Law Number 1 of 1974 concerning Marriage was born. Selectively, this Marriage Law came into effect on October 1, 1975 with the issuance of Government Regulation Number 9 of 1975 concerning the implementation of Law Number 1 of 1974.

The Marriage Law in addition to laying down legal principles, national marriage also accommodates the principles and provides the legal basis for marriage contained in the provisions of Islamic law which is a guide for the community in carrying out a marital relationship and things that occur after marriage, namely about the existence of polygamy permit. Although in public life there are provisions regarding marriage and polygamy contained in the Compilation of Islamic Law (KHI), their implementation must still adhere to the provisions contained in Law Number 1 of 1974 in line with Islamic Law. With the enactment of the National Marriage Law, it will automatically affect the process of implementing marriage and granting permission to men who want to have more than one wife (polygamy).

In Islamic law, it is preferable for a man to have only one wife, even if he can keep her for the rest of his life. The marriage recommended by Islam must create an atmosphere of sakinah, mawaddah and mercy. An atmosphere that is difficult to implement if a man has more than one wife. Justice as a condition for creating harmony between wives is very difficult to implement. Therefore religion warns against polygamy and choosing one wife at the same time. Although Islam paved the way for polygamy, this can be done and allowed for people who are forced and believe that he can do justice. Even then, it cannot be separated from the provisions and conditions contained in the Compilation of Islamic Law. However, there are still many of them who marry without looking at and paying attention to the provisions and conditions contained in Islamic law, and this is what causes the husband's unfair and arbitrary treatment of his wives. This is because in reality humans only love one of the many, especially for a wife who is young, beautiful and

fresher. This situation cannot be forced on humans to be able to share it fairly among wives. Therefore, the enactment of Law Number 1 of 1974 concerning Marriage, because in the Law it is legally regulated regarding permits for polygamy, in order to create justice for wives if their husbands want to practice polygamy.

Research Problem

Based on the background of the problems stated above, the following problems can be formulated:

1. What are the substantive and administrative requirements that must be met by a husband to obtain a polygamy permit according to the provisions of the applicable laws and regulations?
2. How is the examination process by the Solok Regency Religious Court on the application for a polygamy permit?

Research Method

This type of research is in a descriptive scope, which describes the administrative and requirements that must be met by the husband to obtain a polygamy permit according to the provisions of the applicable laws and regulations as well as the examination process for the application for a polygamy permit.

The main approach method used in this research is the normative juridical approach which is carried out by studying primary and secondary legal materials which will later be used as guidelines in understanding and analyzing the problems discussed, while as a supporter of the main approach an empirical juridical approach is used, this study uses primary and secondary data sources.

Primary data is data obtained from field research in the Religious Courts of Solok Regency. The primary legal materials are 1). Book of Civil Law Laws, 2). Law number 1 of 1974, 3). Law Number 7 of 1989 in conjunction with Law Number 3 of 2006 in conjunction with Law Number 50 of 2009 concerning Religious Courts, 4). Law Number 14 of 1985 in conjunction with Law Number 5 of 2004 in conjunction with Law Number 3 of 2009 concerning the Supreme Court, 5). Law Number 2 of 1986 in conjunction with Law Number 8 of 2004 in conjunction with Law Number 49 of 2009 concerning General Courts, 6). Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, 7). Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law.

Secondary data for this study were obtained from library sources, literatures, legislation, scientific journals and scientific works related to the object of research. Secondary data consists of: primary legal materials, secondary legal materials and tertiary legal materials. Secondary legal materials are 1). In the opinion of scholars, 2). Various kinds of literature literature. While the Tertiary legal material, consists of 1). Indonesian dictionary. 2). Legal Dictionary.

The data obtained from this study, both primary and secondary data were collected by 1). Literature study (Library Research), namely collecting data from various secondary legal materials, namely materials that are closely related to primary legal materials by studying laws and regulations, literature and documents that support the object of research, 2) Field Studies (Field Research) Research), by obtaining primary data. In this case, it is obtained by conducting interviews or questions and answers with parties related to the research problem. The data analysis the author uses in this study is qualitative, namely data analysis that produces analytical descriptive data that describes problems that are not numbers.

Research Results and Discussion

1. Substantive and Administrative Requirements for Polygamy

Polygamy in Islam is a solution offered when extraordinary things happen. In contrast to the Western view which considers polygamy as degrading women. They prefer their daughters to have sex outside of wedlock and hang out together with dozens of men, even those who are already married, rather than live in an official polygamous family. A prostitute who satisfies her biological lust freely with whomever she likes is better and more honorable than one who lives a good family life by means of polygamy.

Polygamy is an emergency situation when things happen that are out of the ordinary in a marriage with very strict conditions, namely being able to act fairly. If you are unable to act fairly, then the principle of monogomy is the right choice without dispensation. The permissibility of polygamy must be preceded by reasonable, logical and rational reasons, such as a wife who is sick who cannot give birth to children, or certain consequences such as the number of women being far greater than men due to war or natural disasters, not because of mere lust. .

Based on the provisions of Article 9 of Law Number 1 of 1974 concerning Marriage, it is stated that a person who is still bound by marriage to another person cannot remarry, except: the court gives permission on the condition that there is approval from the first wife, there is certainty that the husband guarantees his needs. the life of the wife and their children, as well as a guarantee that the husband will act fairly (Article 3 and Article 5)

Based on the above provisions, it will be an absolute requirement for someone who wants to be polygamous to fulfill the conditions as mentioned above. If the above is not fulfilled, new legal problems will arise, among others, a person can be convicted on the grounds that he has violated the provisions of Article 279 Paragraph (1) of the Criminal Code, namely that "Whoever holds a marriage knowing that his existing marriages are an obstacle that legal for it."

For someone who wants to be polygamous, the conditions that must be met are court permits, in this case the Religious Courts for Muslims and the District Courts for non-Muslims, are important to fulfill so that someone can be polygamous. So the application must first be submitted to the Court in order to obtain permission for polygamy. The court will give permission for polygamy of course with various considerations, including whether there is consent from the first wife to the applicant for polygamy. In addition to this, the Court also requires the applicant to ensure that the husband guarantees the necessities of life for his wife and children as well as guarantees to be fair.

In addition to the above conditions that must be met, there is an additional requirement for a person who has the status of a Civil Servant, namely that he must fulfill the provisions of Article 4 of the Government Regulation of the Republic of Indonesia Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants. Civil servants, namely: "Civil servants who will have more than one wife, must first obtain permission from the official" Paragraph (3) "The request for permission as referred to in Paragraph (1) is submitted in writing".

Thus it is clear that for a civil servant who wants to have polygamy besides having to fulfill the provisions of Article 9 of Law Number 1 of 1974 concerning Marriage, he must also comply with the provisions of Article 4 of the Government Regulation of the Republic of Indonesia Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 can be ignored. by the Religious Courts in granting the application for polygamy on the grounds that:

1. The Plaintiff has submitted a statement that he is willing to bear all the risks.
2. In the judge's consideration, it is better if the applicant is given permission to marry again according to the fiqh proposal method which states that refusing harm takes precedence over taking benefits.

The reasons for the permit for polygamy as regulated in Article 4 paragraph (2) of Law Number 1 of 1974 are facultative, meaning that if one of the requirements can be proven, the Religious Courts can grant permission, namely:

1. The wife cannot carry out her obligations as a wife;
2. The wife has a disability or an incurable disease;
3. Wife can not give birth

While the reasons stated in Article 5 paragraph (1) are cumulative, meaning that the Religious Courts can only grant polygamy permits if all the requirements have been met, namely:

1. There is consent from the wife/wives
2. There is certainty that the husband is able to provide for the necessities of life for his wives and children;
3. There is a guarantee that husbands will treat their wives and children fairly

Then the requirements for polygamy regulated in the Compilation of Islamic Law are contained in Chapter IX with the title Having more than one wife. Article 55 reads:

1. Have more than one wife at the same time, limited to four wives
2. The main requirement is to have more than one wife, the husband must be able to treat his wives and children fairly
3. If the main conditions mentioned in paragraph (2) cannot be fulfilled, the husband is prohibited from having more than one wife.

Article 56 reads:

1. Husbands who wish to have more than one wife must obtain permission from the Religious Courts.
2. The application for the permit referred to in paragraph (1) shall be carried out according to the procedure as regulated in Chapter VIII of Government Regulation Number 9 of 1975
3. Marriages carried out with the second, third or fourth wife without permission from the Religious Courts, have no legal force.

2. Examination by the Religious Courts on Applications for Permits for Polygamy

The marital relationship is not only a living contract between a husband and a wife, but a husband can also have more than one wife. This pattern of relationships is called polygamy, which often becomes a problem in family or household life, so that the husband's desire for polygamy is often not accepted by the wife. Seeing the fact that the implementation of polygamous marriages, especially in Indonesia, is a little difficult because the law stipulates various requirements that are not easy to just fulfill, there is a tendency in our society to practice polygamy secretly, without the knowledge of the wife, even without being registered in the marriage registry. , there are also those who use false identities.

Many incidents of polygamy occur in society, so there are several opinions and understandings of polygamous marriages, whether they come from the general public or from intellectuals. In general, there are still many who think that polygamous marriages do not show justice and a sense of humanity. Therefore, the government issued Law Number 1 of 1974 concerning Marriage. The law regulates the principle he adheres to, namely the principle of monogamy, that for both men and women only if desired by the person concerned because of law and religion that allows it, a husband can take more than one wife, even though this is desired by the parties concerned. the party concerned, can only be carried out if it fulfills certain conditions and is decided in court.

For the smooth implementation of Law Number 1 of 1974, Government Regulation Number 9 of 1975 has been issued which regulates the implementation provisions of the Act. And in the case of a husband who intends to marry more than one person, then he is obliged to submit a written application to the religious court, then the religious court will give a decision whether the application is approved or rejected. The next step is the implementation at the Marriage Registration Office. Where marriage registrar employees are prohibited from recording the marriage of a husband who will have more than one wife, before there is permission from the court.

The religious court in its task of giving decisions on applications for polygamous marriages is guided by the applicable regulations, namely Law Number 1 of 1974, Government Regulation Number 9 of 1975 and Government Regulation Number 10 of 1983, especially for Civil Servants and security and legal certainty. So that a safe, orderly life atmosphere can be achieved, as is the ideal of the nation. Based on the power to adjudicate or handle cases (Absolute Coupentensia), religious courts have the right to settle cases of polygamous marriages and have considerations and interpretations of polygamy.

One of the problems that is still being discussed in the community is about polygamy, various groups of fuqoha understand polygamy, which is different from the understanding of the community and their understanding of the norms contained in polygamous marriages.

In examining the polygamy permit, the Court must first prove that the applicant in this case the plaintiff and the wife as the defendant as a legal husband and wife pair, and evidenced by a marriage certificate. Because if the court does not check the validity of the second marriage, it is possible that the marriage between the two is not valid according to Law Number 1 of 1974 so that polygamy permission is not needed for the applicant to marry because the previous marriage is considered to have never existed and is not valid according to the provisions of the applicable laws and regulations.

Furthermore, in the examination by the Religious Courts is the reason why the applicant applies for a permit for polygamy. In various cases, the reason for permitting polygamy is that the wife is no longer able to carry out her obligations as a wife, especially in marital relations. The judge of the Religious Court, in this case, of course, does not necessarily believe in the applicant's reasons, but it will also be confirmed to his wife, whether the reason stated by the applicant in this case is the husband. If the judge believes in the statement of the husband and wife, it is the duty of the judge to consider the petition from the applicant for polygamy because it is closely related to the benefit of the husband and wife.

Then the Court must also examine the statement of the applicant who is polygamous that he is able to guarantee the necessities of life for his wives and children and treats his wives and children fairly.

In the examination of the court hearing, the judge also pays attention to the provisions of Article 41 paragraphs b and d of Government Regulation Number 9 of 1975, where the judge also checks whether there is a statement made by the wife that she does not object to being co-opted and the plaintiff also signs a statement that will apply fair to his wife and children who are in the first and second wives.

In addition to the above, in the event that a husband who proposes polygamy has the status of a Civil Servant, then he should be required to obtain prior permission from the competent authority, the judge must also pay attention to this matter.

Conclusion

Based on the results of the research and analysis of the discussion above, it can be concluded as follows:

1. The conditions that must be met for someone who wants to have polygamy according to Law Number 1 of 1974 are Facultative, meaning that if one of these requirements can be proven, the Religious Court can give permission, namely:
 - a. The wife cannot carry out her obligations as a wife;
 - b. The wife has a disability or an incurable disease;
 - c. The wife cannot bear children.

Then the reasons stated in Article 5 paragraph (1) are cumulative, meaning that the Religious Courts can only give permission for polygamy if all the requirements have been met, namely:

- a. There is the consent of the wives;
 - b. There is certainty that the husband is able to provide for the necessities of life for his wives and their children;
 - c. There is a guarantee that husbands will treat their wives and children fairly.
2. The religious court in its task of giving decisions on applications for polygamous marriages is guided by the applicable regulations, namely Law Number 1 of 1974, Government Regulation Number 9 of 1975 and Government Regulation Number 10 of 1983 especially for civil servants and security and legal certainty. In examining the polygamy permit, the Court must first prove that the applicant in this case the plaintiff and the wife as the defendant as a legal husband and wife couple and evidenced by a marriage certificate. In the examination of the court hearing, the judge also pays attention to the provisions of Article 41 paragraphs b and d of Government Regulation Number 9 of 1975, where the judge also checks whether there is a statement made by the wife that she does not object to being combined and the plaintiff also signs a statement that it will be valid. fair to his wife and children who are in the first and second wives. Then the Court must also examine the statement of the polygamous applicant that he is able to guarantee the necessities of life for his wives and children and treats his wives and children fairly. In addition to the above, in the event that a husband who proposes polygamy has the status of a Civil Servant, then he should be required to obtain permission first from the competent authority, then the judge must also pay attention to this matter.

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