

Review of Husband's Polygamy Permit (Study of Rantauprapat Religious Court Decision Number 778/Pdt.G/2021/Pa.Rap)

Julia Asmini¹, Toni²

^{1,2}Universitas Labuhanbatu, Indonesia

juliaasmini@gmail.com, toni300586@gmail.com

Abstract

Polygamy is a form of legal marriage if the terms and conditions are fulfilled in accordance with the laws and regulations. Where basically Islam allows for husbands to remarry (polygamy) as long as they can be fair. The Religious Courts Council has absolute authority to examine, hear and decide every case. In consideration of deciding the case for a polygamy permit, the judge refers to the rules of the Qur'an, Hadith of the Prophet, Law No. 1 of 1974 amended Law No. 16 of 2019 concerning Marriage, Compilation of Islamic Law and legislation that can be used as a basis for deciding cases. As for the type This research is based on normative law research by way of a case study of the decision of the Rantauprapat Religious Court Number. 778/Pdt.G/2021/PA.Rap. This type of qualitative research is descriptive in which the research is to provide a detailed, clear and systematic description. Basis for consideration of the Panel of Judges in deciding the Polygamy permit in Case Number. 778/Pdt.G/2021/PA.RAP. Article 4 Paragraph (2) Explains "The court referred to in paragraph (1) of this article only gives permission to a husband who will have more than one wife if: 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 give birth to offspring", and Article 5 Paragraph (1). In the Compilation of Islamic Law, Article 57 and Article 58 Paragraph (1). From the conclusion that the Judge of the Rantauprapat Religious Court in deciding it was in accordance with the legal basis in writing as the basis for adjudicating.

Keywords

polygamy; judge's consideration; decision



I. Introduction

Marriage is a bond between a man and a woman to form a *sakinah, mawaddah, warohmah* family with the symbol of consent and *qobul*, therefore marriage is a sacred contract for religious people, especially in the view of Islam, and those who carry it out are rewarded with the reward of worship following the *sunnah* prophet. According to some *fiqh* experts, marriage is a contract (transaction) that produces legal consequences "permissibility for sexual relations", by using the words "marriage", or a marriage relationship carried out by the bride and groom for the continuation of the offspring and getting peace in the household. Marriage contract in Islam is considered as a matter that must be handled with care, because it will have legal implications for various other things caused by marriage, such as *nafaqah*, inheritance and also the sustainability of happy households.

Meanwhile, according to Islamic law, marriage is a marriage that is a very strong contract to obey Allah's commands and carry it out is worship, while the marriage aims to realize a *sakinah, mawaddah* and *warahmah* household life. From the above understanding,

marriage is carried out by a man and a woman to form an inner and outer bond in a household, which then creates rights and obligations that bind him with the hope of achieving peace of mind towards a happy and prosperous family (Widiyanto 2020).

Basically, marriage can only be done with one wife, except that the husband is allowed to practice polygamy if the wife cannot carry out her duties as a wife, the wife has a disability or an incurable disease, and the wife cannot give birth. In this case, the Petitioner has practiced polygamy because the Petitioner's wife is unable to carry out her obligations as a wife because the Petitioner has sexual desires outside of what people in general have.

Meanwhile, according to the Marriage Law in Article 1 explains "Marriage is an inner and outer 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 One Godhead". In the explanation it is emphasized in more detail that as a country based on Pancasila, where the first principle is Belief in One Supreme God, marriage has a very close relationship with religion or spirituality, so marriage does not only have physical or physical elements, but mental and spiritual elements also has an important role.

The focus of the research is regarding the husband's polygamy permit and the judge's considerations in deciding the Decision on Case No. 778/Pdt.G/2021/PA.Rap. Where the Petitioner has applied for a Polygamy permit against the Respondent, in his application the Respondent's legal wife from the Petitioner, starting from a desire for a polygamy permit because the Petitioner has a high sexual desire, the Respondent is overwhelmed to serve the Petitioner's inner needs in matters of bed (inner livelihood). For this reason, the intention of the Petitioner is to legally remarry and not contradict Islamic law. Because basically sex needs are primary needs that must be met, thus the mind will be calm and can think positively in activities.

Talking about justice in polygamous marriages cannot be separated from rights and obligations, a husband who performs polygamous marriages must fulfill all his rights and obligations, in polygamous marriages the priority problem is the right to property in marriage and the right to satisfy needs (Yuni Fili Aningrum, Moh. Muhibbin 2017).

II. Research Method

This research is based on normative law research by way of a case study of the decision of the Rantauaprat Religious Court Number. 778/Pdt.G/2021/PA.Rap. This type of qualitative research is descriptive in which the research is to provide a detailed, clear and systematic description of the problem to be studied. The data consists of Primary Decisions of the Rantauaprat Religious Court, laws and regulations, secondary data in the form of journals, books that are considered relevant related to research according to (Soekanto, Soejono, 1986). That descriptive research is to provide data that is as accurate as possible about humans, circumstances or other symptoms with the aim of confirming hypotheses, so that they can assist in strengthening old theories, or in the framework of developing new theories.

III. Results and Discussion

Legal Considerations of Judges in Deciding Case Number: 778/Pdt.G/2021/PA.Rap concerning the Granting of Permits to Husband's Polygamy

Of course, the Panel of Judges when resolving a case cannot decide it just like that, all decisions must be based on clear and valid arguments and legislation in Indonesia. Reflecting on that, in deciding his decision a judge must not have an authoritarian nature, must be smart in providing arguments and seeking rational legal facts as well as reasons that are acceptable and clear to all parties and to justice seekers for legal certainty. In the judge's legal considerations, it is quite clear that the basis for submitting his application which has been registered at the Registrar's Office of the Rantauapratat Religious Court with Number. 778/Pdt.G/2021/PA.RAP by the Petitioner against the Respondent.

The basis for the application for a polygamy permit against the Respondent, namely in the judge's consideration, can be seen where it is explained by the Petitioner that the most basic is that the Petitioner and the Respondent are legally legal wives, the Respondent gives the Petitioner permission for polygamy with high awareness. That is, it started with the Petitioner having sex that was more than usual so that the Respondent was overwhelmed to carry out his obligations to fulfill his inner desires. Therefore, from the judge's legal considerations, the Petitioner has legal standing to apply for a polygamy permit as regulated in Article 4 Paragraph (2) Explaining "The court referred to in paragraph (1) of this article only gives permission to a husband who will have more than one wife if :

- a. The wife cannot carry out her obligations as a wife;
- b. The wife has a disability or an incurable disease;
- c. Wife cannot bear children."

Previously, the Panel of Judges had given an understanding to recommend the Petitioner for one wife only and to cancel his intention to polygamy so as not to burden the Petitioner. The Chief Justice has recommended mediation between the Petitioner and the Respondent in accordance with the Regulation of the Supreme Court of the Republic of Indonesia Number 01 of 2016 concerning the mediation procedure. From the results of the mediation there was no agreement (failed). The judge's considerations regarding the Petitioner's polygamy permit are still being considered because the Petitioner has developed a love relationship with another woman who is already very close, besides that the Respondent is also unable to fulfill the Petitioner's extraordinary inner living. Therefore, the Petitioner is very worried that he will commit an act that is prohibited by religious norms.

The judge's considerations in the arguments regarding the Polygamy permit are the Petitioner's ability to provide birth support in which the Petitioner's income is sufficient for the survival of his two wives and children fairly, while the Petitioner's assets are in the form of movable property (cars, motorbikes, oxen), and immovable property (building on a plot of land and its contents, a plot of oil palm). And has obtained permission from the Respondent for polygamy so that it has fulfilled the requirements as regulated in Law No. 1 of 1974 concerning Marriage Article 5 paragraph (1) explains "To be able to submit an application to the Court, as referred to in Article 4 paragraph (1) of this Law, the following conditions must be met:

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

That the permit for polygamy is regulated in Article 4 paragraph (2) of Law Number 1 of 1974 concerning marriage, which reads "there are three reasons that can be used as reasons for a husband to have polygamy. First, the wife cannot carry out her obligations as a wife. Both wives have a disability or an incurable disease. Third, the wife cannot give birth to offspring". In line with the Compilation of Islamic Law Article 57 explains "The Religious Court only gives permission to a husband who will have more than one wife if:

- a) the wife cannot carry out her obligations as a wife;
- b) the wife has a disability or an incurable disease;
- c) wife can't give birth

The Compilation of Islamic Law Article 58 paragraph (1) explains that 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 No. 1 of 1974 must also be met, namely:

- 1) the wife's consent;
- 2) there is certainty that the husband is able to guarantee the necessities of life for his wives and children
- 3) there is a guarantee that the husband will treat his wives and children fairly

In the judge's consideration regarding the joint property of the Petitioner and the Respondent which was obtained at the time of the marriage so that it can be used as joint property in accordance with Law Number 1 of 1974 concerning Marriage regarding "property" it is stated in Article 35 Paragraph (1) explaining "Property acquired during the marriage becomes joint property.

It is explained that in registering the case, the application for polygamy can be granted if it is in an emergency and can be proven by valid documents. The granting of polygamy permits also requires the husband's ability to act fairly. So the parties who want to have polygamy need to think about this carefully in order to avoid things that are not desirable. Issues that develop in society are so easy to give permission for polygamy to end up being misused so that it becomes a source of misery for some women, especially wives.(Beautiful Lestari 2020)

Article 58 of the Compilation of Islamic Law also refers to Article 41 letter b of Government Regulation number. 9 of 1975 concerning the implementation of Law Number 1 of 1974 concerning Marriage, which states that the wife's or wives' consent can be given in writing or orally, but even if there is written consent, this agreement is confirmed with the wife's verbal consent at the religious court session. . In accordance with the provisions of Article 43 of Government Regulation Number 9 of 1975 which states that "If the court is of the opinion that there is sufficient reason for the applicant to have more than one wife, the Court shall give its decision in the form of permission to have more than one wife".(Lubis and Andayani 2020)

In marriage in Indonesia itself adheres to the principle of monogamy, but in terms of polygamy itself it cannot be blamed because it can provide several better solutions for some people who are indeed better off with polygamy. In practice, polygamy that occurs has an impact that changes the way people's views change due to infidelity.(Qonitah Elghina Dzakkiyah Kamilah, Mardani 2021)

Judging from the essence of Law Number 16 of 2019 Amendments to Law Number 1 of 1974 concerning Marriage in Article 4 paragraph (2) and Article 5 the cumulative conditions have been met, it is not permissible to directly grant the request of the respondent for the reasons referred to In the polygamy permit there are also alternative conditions. Likewise, when the reasons for the alternative conditions have been met while the husband does not meet the cumulative requirements, then it is not permissible to grant

the respondent's request for polygamy. Based on the above background, the authors are interested in knowing more about polygamy permits in the Rantau Prapat Religious Court.(z. Hasan, L. Nugraha 2021)

Regarding the authority of the judge in making a decision, a judge will consider the benefits and harms first before making a decision. Judges adhere to the principle of freedom, namely that court judges in giving decisions against parties in litigation must be based on belief and must not be influenced by other parties. The decision of the judicial judge carried out, "For Justice Based on the One Godhead" means that all judges' decisions must be able to provide a sense of justice based on the One Godhead to the community. Therefore, for the sake of justice based on God Almighty is the main guideline for judges in making any decisions or making decisions. In case No. 915/Pdt.G/2014/PA.Bpp the panel of judges granted based on this,(Fitri and Mannas 2018)

IV. Conclusion

Based on the legal facts revealed in examining, adjudicating and deciding the judge in granting polygamy permits, it is quite careful and based on the statutory regulations. The basis of the judge's consideration in deciding cases is an important role in upholding the fairest justice. The legal considerations decided by the panel of judges in Case No. 778/2021/Pdt.G/PA.Rap is quite clear in accordance with the rule of law and fair consideration for justice seekers. Meanwhile, for husbands who want to marry more than one, they must consider the ability for the concept of fairness to their wives and children. In accordance with Articles 4 and 5 of Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law Articles 57 and 58. These basics are the reference for husbands who want to marry more than one. However, in reality, the concept of fairness in polygamy is difficult to obtain because many conditions are violated by husbands regarding the needs that husbands must fulfill for their wives.

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