
Fair Perception as a Condition for Polygamy Permit Application at Mojokerto Religious Court

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Abstract

This article aims to describe the application for polygamy at the Mojokerto Religious Court, the administrative complexities and the process for allowing husbands to practice polygamy. The judge can give consideration in granting permission for polygamy proposed by the husband. The research method used is a qualitative research method with a descriptive-analytical approach, this research uses judge interview data and then qualitative analysis is carried out with deductive methods. The results showed that hakim at the Mojokerto Religious Court interpreted fair in polygamy as proportional, that is, having to adjust and place something according to its place. The husband in terms of providing for his wives by paying attention to the needs of each wife. The factor or reason for the granting or rejection of the application for polygamy permission at the Religious Court is that the judge gets confidence that the husband will be able to act fairly with the judge's suspicion that is faced with evidence before the court. The evidence in the trial process includes letter evidence, statements of the applicant and respondent, witness statements that will assess from the evidence the ability and readiness of the husband to polygamy.

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Introduction

Polygamy has historical roots throughout human life itself. Before Islam came to the Arabian peninsula, polygamy was unlimited and even the absence of justice as a condition became a tradition for Arab society (Engineer, 2003). Islam came with the Sharia that it brought even though it did not directly eradicate this tradition, so Islam applies polygamy with a maximum restriction that husbands can have 4 (four) wives with strict requirements that are the necessity to be fair to wives. These conditions are found in two verses of polygamy, Surah al-Nisa verse 3 and verse 129 (Surjanti, 2014).

In addition, discourse and discussion about polygamy occurs among scholars who question justice (Faishol, 2016) which is an absolute requirement for polygamy. Quraish's opinion on the issue of justice in practicing polygamy which views that justice is measured

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from the material aspect alone does not include immaterial. This is in stark contrast to Fazlur Rahman's opinion that justice must also include material and immaterial love and compassion (Ashidiqie, 2021).

Different responses to this issue by feminines view polygamous behavior as a *ben tuk kehaliman* for women, because only women feel the pain of being polygamous. Thus, Musdah Mulia argued, that polygamy is *haram li ghayrihi*, that is, haram because of the adverse effects and excesses it causes. He also claimed to have data showing that the practice of polygamy in society has caused very crucial problems and very large social problems. Likewise, the high level of domestic violence, domestic rifts and neglect of children as one of the effects of polygamy. According to Quraish Shibab, polygamy is similar to an emergency exit in an airplane, which can only be opened in certain emergencies. The same thing was conveyed by Hasyim Muzadi, polygamy is like an emergency exit that is provided for those who need it (Sumardi, 2015).

Polygamy is a civil law act legalized in Indonesia (Syuib, 2019), must be carried out based on applicable legal provisions as stipulated in Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law. This aims to bring benefits and maintain the integrity of the household from polygamy practices that are carried out unlawfully that harm one party (Duri, 2022).

Arrangements related to polygamy are formally regulated in the Marriage Law No. 1 of 1974 concerning marriage, Government Regulation No. 9 of 1975 concerning the implementation of Law No. 1 of 1974 and so is also regulated in the Compilation of Islamic Law for citizens of Muslim faith. Article 43 of Government Regulation No. 9 of 1975 concerning the implementation of Law No. 1 of 1974 confirms that if there are sufficient reasons for the husband as the applicant to have more than one wife, the court grants permission to the husband in the form of permission to marry more than one person (Sunaryo, 2014). Furthermore, Article 44 of Government Regulation No. 9 of 1975 states that recording employees are prohibited from registering the marriage of a husband who will marry more than one before the permission of the court as referred to in Article 43. Polygamy that takes place outside the marriage law usually takes place under the hand (marriage under the hand), aka not carried out before Office of Religious Affairs (KUA). Because usually KUA officers will question whether there is no permission or determination from the court that allows the prospective husband to remarry. Marriage under this hand can be valid according to Islamic law, as long as the conditions and pillars of marriage are met. However, it has no legal force before the laws of Indonesia (Warni, 2018).

Permission or request for consent (Riyandi, 2015) to the first wife is an absolute requirement in polygamy that is often an obstacle for husbands (Aina, 2022). In Indonesia itself, polygamy is not solely a private matter, husbands who want to be polygamous must apply for permission to the Religious Court (Makka, 2022) to be examined and decided by a judge (Do'i, 2002), in this case the intervention of the Religious Court is involved. The

urgency of the Court's permission to practice polygamy is very concerning the existence of marriage in legal recognition and community association. The philosophical values carried by the provisions of the law that require permission for polygamy are that the existence of marriage is: has no legal force, because the marriage is considered to have never existed, so it does not cause legal consequences; cannot be used as a basis for a legal-formal legal interest in any matter concerning the legal relationship of the marriage; cannot be used as the basis for all lawsuits to the Court for disputes arising from the marriage in the future; and cannot be used as a basis for claiming the rights of husband and wife including their children legally-formally in state life or in social relations. Legal provisions related to polygamy stipulate the requirement that husbands who will practice polygamy must be able to be fair to their wives (Harahap, 2007).

The Mojokerto Religious Court is a court located in the Mojokerto, East Java, area that understands the situation and condition of the community wanting to apply for a polygamy permit for certain reasons as a condition for practicing polygamy so that an in-depth study is needed on the opinion of judges within the Mojokerto Religious Court in viewing the conditions of fair behavior as a condition for applying for a polygamy permit. From the above problems, the author needs to conduct an in-depth study of the perception of the Mojokerto Religious Court judges in interpreting and interpreting fair as a condition for applying for a polygamy permit and what are the factors or reasons for accepting or rejecting a polygamy permit application at the Mojokerto Religious Court.

Research Methods

This research is an empirical legal research that aims to determine the perception of fairness according to the judge of the Mojokerto Religious Court as a condition for applying for a polygamy permit. Using an analytical descriptive approach, the author elaborates and describes how the perception of fairness according to the judge of the Mojokerto Religious Court as a condition for applying for a polygamy permit. After that, the author analyzes the problem using written library data taken from libraries and other relevant sources.

The authors use interviews and documentation as data collection methods. The interview was conducted by conducting face-to-face meetings to conduct questions and answers to sources or respondents to answer the problems studied, namely digging up information about the perception of fairness as a condition for applying for polygamy permits, according to the judge of the Mojokerto Religious Court (Nizar, 1999). This article also uses documentation which is a method of data collection, collecting information from the necessary data and obtained from credible and valid sources. The types of information generated from the documentation process include letters or official documents, meeting results, articles, media, proposals, and clippings, that are considered necessary and in accordance with the research study.

This article uses primary data sources and secondary data. Primary Data is data

collected and obtained directly by the author in the research field, namely the Mojokerto Religious Court to determine the perception of fairness according to the judge of the Mojokerto Religious Court. Interviews with several judges will be conducted by the author to obtain information about the perception of fairness that is a problem in this study.

The secondary data is data that is already available and obtained by the author from other parties, namely in the form of records, historical reports, archives that have been documented. The author uses secondary data in this study which is taken from the literature to work on primary data by using library research methods, namely data collection techniques by visiting libraries to obtain written sources related to research. After the data collection process has been carried out, the author uses descriptive-analytical to describe the facts objectively so that with this analysis similarities and differences can be found to solve the problem under study. Thus, relationships and symptoms can be established to analyze research problems (Soejono, 1999).

Result And Discussion

Fair Perception according to Mojokerto Religious Court Judge as a Condition for Polygamy Permit Application

According to the judge of the Mojokerto Religious Court as a condition for submitting or applying for a polygamy permit, it was obtained by the author from the interview. This is data that is described descriptively by the author to describe the problem under study. Fair, according to the judge of the Mojokerto Religious Court, is judged based on balance proportionally without requiring equality of levels and conditions. This kind of fairness in polygamy is judged proportionately which means eliminating social jealousy among wives. Fair is not defined as equal fulfillment of the needs of wives because not all wives have the same needs. This means that husbands who are going to practice polygamy must apply justice proportionately so as to create a balance to fulfill both material and non-material rights to their wives.

The Mojokerto Religious Court uses grammatical interpretation of laws and regulations or uses grammar as a method or way of interpreting laws and regulations according to the terms of words (terminology) contained in laws and regulations. This means referring to the meaning of words or terms used in laws and regulations. The judge tries to interpret and interpret a word that is commonly used in common everyday language. By using the method of interpretation word for word and then described clearly and proportionately in families that practice polygamy, this proposition can eliminate social jealousy among wives. If so, then the wife will obtain rights according to her rights or give according to her needs and needs so as to avoid the husband's tyranny against his wives.

According to the Qur'an, Surah al-Maidah verse 8 affirms that the substance of justice in polygamy is faith and piety in Allah Almighty in the heart of the husband which affects his attitude towards his wives as well as towards his children (Lestari, 2020).

This has been affirmed in Surah al-Maidah verse 8 which essentially explains that justice is closer to piety to Allah. In this context, justice is always associated with a form of piety and faith in Allah Almighty. The verse has affirmed and warned that in the establishment of justice, one should not be influenced by hatred towards a race or group which can eventually lead to tyranny. In principle, the meaning and essence of justice is not only the formal aspect but also the material aspect. The enforcement of justice is an obligation for humans to Allah Almighty. The meaning of fair according to the judge at the Mojokerto Religious Court is divided into 2 (two) forms. *First*, it is fair in the form of material that can be assessed according to its size and level. In this context, for example the first wife lives in the countryside, while the second wife lives in the city, it is certain that groceries are more expensive in the city than in the countryside and then the husband provides more for the second wife who lives in the city. This is not allowed to make a significant distribution of income (prominent) so as to cause jealousy among his wives.

Second, Fair is non-material in a form that cannot be judged such as affection, love, care for each of his wives. Husbands should not be unfair by being more inclined to one wife than to another. In the case of the distribution of turns that must be equal between the wives, if the first wife is 3 (three) days then the second wife is also 3 (three) days. Also, in the aspect of meeting the needs of his wives, he should not be inclined and prominent to one of the wives. Fair in this form is usually difficult for husbands to do. Therefore, fairness is so important in polygamy that it is used as one of the conditions for applying for a polygamy permit in the Religious Court. This requirement has indeed been regulated in Law No. 1 of 1974 and has also been affirmed in Surah al-Nisa. Fairness is an important aspect of polygamy, because the process of polygamy is prone to cause social jealousy among wives if the husband is unable to act fairly. If the husband is able to do justice then it will be able to close the dhalimat he made.

Factor or Cause of Acceptance and Rejection of the Polygamy Permit Application by the Judge at the Mojokerto Religious Court

A review of the reasons for the judge who has been interviewed by the author in granting the application for polygamy permission has been regulated and stipulated by law including Article 55 paragraph (1) of the Compilation of Islamic Law (KHI) (Utomo, 2021). Polygamy rules allow husbands to marry a maximum of 4 (four) wives. If the husband wants to remarry, then one of his 4 wives must be divorced. Thus there is no marriage with a fifth wife, if it occurs then it is considered null and void. The application for a polygamy permit must be made in the religious court where the applicant resides as confirmed in Article 4 paragraph (1) of Law No. 1 of 1974 jo. Article 40 of Government Regulation No. 9 of 1975 and Article 56 paragraph (1) of the KHI (Hariyanti, 2018). If a person wants to practice polygamy, he must meet the requirements as specified in Article 4 paragraph (2) and article 5 paragraph (1) of Law No. 1 of 1974 concerning Marriage (Ardhian, 2015).

In addition, it is also considered about the aspects of *maslahat* and *mafsadat* for families who will practice polygamy. The reason for permission to practice polygamy must be based on legal considerations obtained by the panel of judges during the trial, namely in the form of suspicion and conviction of the judge by hearing the statements of the applicant, respondent and witnesses. In the evidentiary process in the polygamy permit application hearing, the Judge will hear from the applicant (husband), whether the applicant is prepared to be fair in the family that practices polygamy and whether the husband can accept the logical consequences in the future if the wives do not get along. Likewise, the respondent as a wife is really ready to divide her rights and accept sincerely and willingly if the husband has two wives. Similarly, the judge hears the testimony of witnesses whether the husband in his daily life behaves and has good morals so that it is impossible to injure the rights of the wife, then whether the husband is able to do justice in financial matters or the distribution of matterial income.

Permission for polygamy will be denied by the judge if the facts of the trial show that the wife was coerced and the case of the wife's affidavit of consent to polygamy forged by the husband. Witness statements are needed before the court as an effort by the judge to assess and know how the daily life of husband and wife. As much as possible the judge obtained data that the attitude and morals of the person concerned (husband) who would practice polygamy were really good and commendable in the environment in which he lived.

The method of interpretation used in interpreting laws and regulations first begins with interpretation according to words and grammar (grammatical), interpretation according to history (historical) and sociological interpretation. The sociological interpretation is an important interpretation for judges if it is remembered that many laws are drafted and made long before the time they are used. In giving a decision on the permission of polygamy, the judge considers the law by looking at the arguments in the *posita*, *petitum* and evidence in the trial.

The form of proof as a condition for granting permission for an application for polygamy is to consider the economic aspect in the form of the husband's pay slip where the husband works. With this evidence, the panel of judges can obtain information and information and assess the husband's ability to meet the needs of his wives (Arto, 2005). However, there are husbands who do not have proof of salary slips or income certificates, so the husband can submit witnesses who can testify under oath that it is true that the husband will be able to meet the needs of his wives.

Evidence in civil procedural law, namely allegations used by judges in the form of conclusions drawn as a result of examination at trial by taking into account important, thorough, certain and relevant matters in relation to each other. The aspects of *maslahat* and *mafsadat* that will arise in the future are always considered by the judge before deciding to reject or accept an application for polygamy permit. When viewed from the

requirements for permission to practice polygamy, namely if the wife has a disability or disease that cannot be cured as confirmed in Article 4 (2) of the Marriage Law.

It is even more regrettable that many applications for permission for polygamy can be granted only by fulfilling the cumulative conditions, even though there are absolutely no alternative conditions as referred to in Article 4 (2) of the Marriage Law. In general, the judge considered that as long as the wife allowed her husband to practice polygamy, this was sufficient consideration for the judge to grant the application for permission to polygamy. In this case, the judge tries to fix the principles believed in examining polygamy cases, such as the conditions that must be met when the husband will commit polygamy and the judge also examines alternative reasons, not only statements at the trial, but also expert statements or statements of competent parties. In the problem of wife's infertility, this must be based on the obstetrician's statement. If this is done, then the decision to grant the application for polygamy permission for the husband will be even more severe and strict. The principle of Monogamy and polygamy is a way for emergency to be implemented properly.

Fair Concept

The word *al-'adl* which means the same, gives the impression of two or more parties, concerning abstract, relative, and subjectivity matters, for example, when understood by more than one person, then they will differ in judgment about the fair meant at present and the future (Hazairin, 1975; Shihab, 2003). Judging from the above definition, it can be understood that the scholars above define fair which can only be calculated by numbers that are part of each wife or which are quantitative. Whereas according to Abduh's fatwa, that justice in polygamy is causative, such as affection, love, attention all of which cannot be measured by numbers. So here a qualitative nature of justice is needed for every wife. Qualitative fairness is indeed very difficult. This fairness has long been debated by Greek philosophers ranging from Plato, Socrates and Aristotle, because the benchmarks are also different. This issue is still not final when scholars, experts also look at it with different views related to the concept of justice (Yunita, 2020). This concept is still very abstract so it is difficult to measure and very subjective and contextual (Asman, 2019).

The word polygamy itself comes from the Greek "*polygamie*", namely poly means many and gamie means man, so the meaning of polygamy is a man who wives more than one woman in one marriage bond. Such a husband may have two or more wives at the same time. The word polygamy comes from Greek, which consists of the word *polus* which means many and game in which means marriage. So polygamy is a man who wives more than one woman at the same time (Abdullah, 2004). In Arabic polygamy is called *ta'dīd al-zaujāt* (number of pairs). While in Indonesian polygamy is called marriage (Hakim, 2002).

According to the Indonesian Marriage Law, Polygamy has actually tried to regulate so that men who practice polygamy are men who are truly able to economically meet all

family needs and do justice to their wives (Nuruddin, 2004). The Marriage Law highly values women as evidenced, for husbands who will practice polygamy, husbands must first obtain the consent of the wives. On the other hand, the role of the Religious Court to legalize the practice of polygamy is decisive and can even be said to be the only institution that has the authority to allow polygamy. The concept of justice in polygamy contains two elements of justice, namely ethical justice, which is justice based on the highest virtue that determines human behavior and theological justice, which is justice in accordance with the doctrine established by theologians regarding the will of Allah. Which means that the meaning of fair must be reviewed from all aspects (Baidhaw, 2007).

According to Aminah Wadud regarding the concept of fairness in polygamy, polygamy states that polygamy is fair treatment of orphans that must be fulfilled by a husband or man. Fair treatment is manifested by a sense of responsibility in managing orphans' property. Aminah strongly opposed polygamy, Polygamy as in the classics as a last resort and last solution for men to marry more than one when a wife is unable to perform her duties as a wife for example there are defects such as not having children or barren or due to accidents that ultimately cannot satisfy the lust of their spouse but still pay attention to the rights of the first wife, there is no provision in the Qur'an (Natriani, 2022).

As for the differences and similarities between Quraish Shihab and Aminah Wadud in terms of fair application in polygamy, namely Quraish Shibab, argues that polygamy is not an encouragement or obligation to practice polygamy, but an alternative to solve family problems. The implementation of polygamy is also accompanied by several terms and conditions that must be done by husbands who want to marry more than one wife. This is in the hope of achieving justice and also protecting women. Meanwhile, Amina Wadud's opinion about the impermissibility of polygamy for reasons that have been believed to have never existed in the Qur'an. Apparently, Aminah Wadud expressed her opinion on this issue based on social conditions and her thoughts that always use a gender perspective in looking at a problem in Islamic law.

Fair treatment of the husband as a condition of a polygamous husband. According to Muhammad Hussein al-Zahabi it is fair as there is equality in providing income and sharing days to fellow wives within the limits that humans can do. According to Mustafa al-Sibai, justice here is material justice such as shelter, clothing, food, drink, housing and others (Ghazaly, 2000; Khayyath, 2007).

Meanwhile, according to Ibn Hazm, justice in the matter of polygamy must be fulfilled by a husband in the division of night (mental bread) and the distribution of material bread. The husband is not allowed to be more inclined towards one of the wives among the wives, not to discriminate between them, whether free wives, slaves, Muslims or dhimmis. The husband is not allowed to stay in one of his wife's homes except in case of emergency. The Prophet did not give special treatment to the wife of Hurrah from Ammah, Muslim woman from Dhimmiah. According to him, when the distribution in terms of

income is the same, in terms of the distribution of overnight shifts, it must also be the same. So it can be concluded that what is meant to be fair in polygamy according to Ibn Hazm is absolute and complete justice that applies equally without any inequality, superiority and differences between one wife and another (Hidayatullah, 2015).

The majority of fiqh scholars realize that they tend to understand justice here quantitatively which can be measured by numbers, whereas as justice required by the Qur'an is qualitative justice such as compassion, love, attention which all cannot be measured by numbers. is something that is absolutely impossible to realize. In Surah al-Nisa verse 3 (Zuhaily) came down after the battle of Uhud, in which many Muslim fighters were killed, which resulted in many wives becoming widows and children becoming orphans. From this problem, marriage is the only way to solve the problem. As a result, many marriages are polygamous with the aim of protecting abandoned widows and orphans. The condition of fairness is not at the same time as an encouragement for polygamy, this can be seen in the *asbāb al-nuzūl* of the descent of the verse. To become a rule, the definition of fair as a condition in polygamy must have a comprehensive study, so as not to cause *mudhārāt* in its application (Baidhawiy, 2007).

Quraish Shihab understands the verse by saying that if the husband is afraid that he will not be able to do justice to the orphan women, and you are confident that you will do justice to other than the orphaned women, then marry what you like according to your taste. You can even practice polygamy to the limit of four women as wives at the same time. If you fear that you will not be able to do justice, both in material and immaterial matters, both outwardly and mentally, then marry only one or marry the slaves you have. Thus, that is, marrying other than an orphan woman and providing for one wife, is closer to not persecuting. The requirement of doing justice to the married wives is an absolute requirement of Allah and it is stated expressly in the verse (Shihab, 2003).

According to mufassir Ahmad Musthafa al-Maraghi about verse 129 of Surah al-Nisa, that justice imposed on man is adjusted to his ability. With the condition that you must try your best to be able to uphold justice, because the biggest factor that encourages to tend to do justice is none other than the tendency of the soul and heart that cannot be controlled by a person if he cannot master natural influences. On this basis, God leniency and explains that if perfect justice is not to be done, it should be unrighteous to tend toward the beloved wife and neglect the other wife, who seems to have no husband nor divorce. So at least want to make the wives (Khayyath, 2007) happy for their treatment. Allah warns about the importance of the value of *kedilan* in polygamy. By classical fiqh scholars (Shāfi'i, Hanbali, Maliki and Hanafi) the inability of man to do justice in terms of affection and sexual relations. For this reason, they do not include affectionate and sexual feelings as categories of justice that must be met by a polygamous husband. The classical (Maraghi, 2003) *fuqahā'* considered the permissibility to marry up to four wives to carry the force of law, while the claim to be fair to them was merely considered suggestion, without any particular

bonding effect. Thus, *fuqahā'* take specific verses (the permissibility of polygamy) as binding rules and general principles as recommendations (Engineer, 2003).

In the interpretation of Engineer, these two verses actually explain how difficult it is for the Qur'an to accept polygamous institutions, but it is unacceptable in the present situation that the Qur'an allows men to marry up to four wives, in a way that must be fair. According to Engineer, the point of the above verse is not actually on the permissibility of polygamy, but how to do justice to orphans, especially when marrying them. If the husband is worried about tyranny (Engineer, 2003) and is unable to fulfill all their rights, then he is forbidden to practice polygamy. If only three are able to be fulfilled, it is unlawful for him to marry four people. If he is only able to fulfill the rights of two wives, it is unlawful for him to marry three wives. Likewise, if he is worried about committing tyranny by marrying two women, then it is haram for him to practice polygamy (Tihami, 2013).

Abdurrahman al-Jaziri wrote that equality of rights to sexual needs and affection among married wives is not an obligation for polygamists because as human beings, one will not be able to do justice in sharing affection because it is instinctive. It is natural for a husband to be interested in one of his wives more than the other and this kind of thing is beyond the limits of human control (Jaziri, 1969). Justice is universal, it can be seen from the existence of human beings wherever and whenever they always yearn for justice. The Qur'an as the holy book of Muslims shows the practice of upholding justice, respecting and elevating those who do justice, and denouncing acts of injustice. The Qur'an also places justice as a principle that must be held by every human being in all his life activities. Fair is a virtue and a reflection of piety (Jaziri, 1969).

The scholars agree that among the rights of polygamous wives is to be treated fairly in rotating between them as the Prophet divided turns fairly between wives. The Prophet said that if a husband has two wives and then leans towards one then on the judgment day he will come with one of his shoulders tilted. Prophet narrated that if he wanted to travel, he voted among them to accompany him. Scholars also differ if his wife is a virgin and a widow regarding the ration of days for each of them. According to Maliki, Shafi'i, and his followers the husband was on his virgin wife for seven days while his widowed wife had three days. Meanwhile, according to Hanafi it is the turn between them whether the wife is a girl or a widow. If he has a new wife, then he must rotate with the old wives (Shafi'i, 2007; Ibn Rushd).

This disagreement is due to the conflict between the hadith from Annas and the hadith of Umm Salamah, Hadith of Annas which means: "Indeed, the Prophet (peace be upon him) when he married a girl, he stayed with her for seven days, and if he married a widow, he stayed with her for three days." Nevertheless, the religion of Islam with its legal tools, provides a solution to the above problems. If polygamy as one's choice is due to certain factors, then the concept of fairness must be implemented. Material needs of a physical nature can be easily carried out by husbands, but what is often forgotten is the

concept of fairness in polygamy. Even though this one includes needs that must be really considered by the husband, because by being fair, polygamy will be conditioned. Love and affection are manifested so that conflicts between them can be minimized.

Polygamy (is the cause) of establishing relationships and closeness (between) many families, and this is one of the reasons for polygamy carried out by the Prophet. The wisdom includes (Ghazaly, 2000):

1. Among men there are those who have a high lust (from innate), so it is not enough for him to have only a wife, while he is a good person and always maintains his honor. However, he is afraid of falling into adultery, and he wants to channel his (biological) needs in what is lawful (Islam), so including the greatness of Allah's mercy towards humans is by allowing polygamy in accordance with His Shari'a.
2. Sometimes polygamy has to be done under certain conditions. For example, if the wife is elderly or sick, so that if the husband is not polygamous, it is feared that he cannot maintain his honor. Or if the husband and wife have been blessed with many children, so that if he has to divorce his wife, he finds it difficult to separate from his children, while he himself is afraid of falling into adultery if he does not polygamy.
3. Polygamy is the reason for the preservation (honor) of a large number of women, and the fulfillment of their needs (life), which is in the form of income (living expenses), housing, having many children and children, and this is a requirement of the Shari'a.
4. And including the great wisdom of polygamy, the stronger bond of love and affection between husbands and their wives. Because every time it is the turn of one of his wives, the husband is in a state of longing for his wife, so the wife misses her husband very much.

There are many other great wisdom and benefits, of course, that those who believe in Allah and the truth of His religion have no doubt about the perfection of His wisdom in every provision He decrees. Suffice it as the greatest wisdom of all is to fulfill the commandments of Allah the exalted and obey Him in all the provisions of the law that He prescribes.

The Concept of Fairness in Polygamy According to Positive Law in Indonesia

Taking into account Law No. 1 of 1974 concerning Marriage in article 5 (1) point c it is stated that: "there is a guarantee that husbands will do justice to their wives and children". Article 40 of Government Regulation No. 9 of 1975 states that "if a husband has a mask to have more than one wife, then he must submit a written application to the court". In addition, KHI is also explained in part IX which is explained in articles 55-59 regarding having more than one wife (Anshari, 2022).

The adoption of the principle of monogamy in the provisions of article 3 paragraph 1 of the Marriage Law reflects the priority of applying the principle of monogamy in every marriage. However, in the case of certain conditions and emergencies, polygamy is possible

on the basis of strict reasons and very onerous requirements. It is also intended to respect the views of some Muslim communities that allow polygamy on condition that it must be able to act fairly. According to Nur Rasyidah Rahmawati, the provision that allows polygamy in article 3 paragraph 2 of the Marriage Law is not intended as a form of harassment, discrimination, and superiority of men. This cannot be used to generalize that polygamy must be discriminatory, a form of oppression of husbands against wives (Rahmawati, 2005).

Article 4 of the Law states that a husband will have more than one wife if, the wife is unable to perform her duties as a wife, the wife has a disability or incurable disease, and the wife cannot bear children. Given the sound of articles allowing polygamy even for certain reasons, it is clear that the principles adopted are not actually principles of absolute monogamy but are called open monogamy. Polygamy is placed in the status of emergency law, besides that the institution of polygamy is not solely the full authority of the husband but on the basis of permission from the judge (court) (Harahap, 2007).

Indonesian legislation seems to be trying to respect wives proven, for husbands who will practice polygamy, husbands must first obtain the consent of the wives. On the other hand, the role of the Religious Court to legalize the practice of polygamy is decisive and can even be said to be the only institution that has the authority to allow polygamy. Regarding the requirements for polygamy, as stipulated in Article 4 paragraph (1) of Law Number 1 of 1974 concerning Marriage, states that a person who wants to marry more than one person must submit an application for polygamy to the local court. Furthermore, Article 5 paragraph (1) explains the conditions that must be met to be able to submit a permit application, namely:

- a. There is consent from the wife;
- b. There is certainty that husbands are able to provide for the necessities of life of their wives and children;
- c. There is a guarantee that the husband will do justice to his wives and children.

Article 4 of the Marriage Law. Given the sound of articles allowing polygamy even for certain reasons, it is clear that the principles adopted are not actually principles of absolute monogamy but are called open monogamy. Polygamy is placed in the status of emergency law, besides that the institution of polygamy is not solely the full authority of the husband but on the basis of permission from the judge (court). Meanwhile, according to the KHI (Harahap, 2007), the provisions for wives of more than one person are stated in Chapter IX from articles 55 to 59 (Abdurrahman, 1992).

Conclusion

From the results and discussion in the research, it can be concluded that First, the Judge of the Mojokerto Religious Court interpreted fair in polygamy as proportional, that is, it must adjust and place something according to its place. The husband in terms of providing for his wives by paying attention to the needs of each wife. With this kind of

fairness that is proportional, the husband will see the needs of each wife that will be met. Besides being fair in the gift of affection, love and care to wives, the husband should not stand out in giving it to one of his wives. Second, the factor or reason for the granting or rejection of the application for polygamy permission at the Religious Court is that the judge has confidence that the husband will be able to act fairly with the judge's suspicion that is faced with evidence before the court. The evidence in the trial process includes letter evidence, statements of the applicant and respondent, witness statements that will assess from the evidence the ability and readiness of the husband to polygamy. Similarly, the judge can decide whether or not the applicant is eligible to obtain a polygamy permit, by weighing the *benefits* and *customs* that will arise from this polygamy.

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