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THE JUDGE'S PERCEPTION OF THE MEANING OF A WIFE NOT BEING ABLE TO PERFORM OBLIGATIONS UNDER THE REQUIREMENTS OF POLYGAMY, A STUDY IN THE AMUNTAI

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Abstract: This research is motivated by the existence of Article 4 paragraph (2) Marriage Law Number 1 of 1974 in conjunction with Law Number 16 of 2019, namely that the wife cannot carry out her obligations as a wife, the wife has a disability or disease that cannot be cured and the wife cannot give birth to offspring. Regarding the first condition, the law does not explain further or provide clear boundaries regarding what is included in a wife's obligations. Therefore, the judge, as a person who has authority and plays a role in granting or not granting permission for polygamy, can provide or clarify any obligations borne by the wife that cannot be carried out by the wife so that a husband can be given permission to practice polygamy. This research aims to find out the judge's perception in giving the meaning that the wife cannot carry out the obligations stated in the requirements for polygamy and the reasons used by the judge in giving the meaning that the wife cannot carry out the obligations. This research is empirical legal research with a qualitative and descriptive approach. This research was located at the Amuntai Religious Court. Data collection techniques are through observation, interviews and documentation with data sources namely informants from the Amuntai Class 1B Religious Court Judges. Based on the results of research conducted by the author, the meaning of a wife not being able to carry out her obligations under the requirements of polygamy is firstly, the judge in giving the meaning of a wife not being able to carry out her obligations focuses more on the benefit by looking at the facts in the trial, and secondly, the meaning of a wife not being able to carry out her obligations is the inability to carry out her obligations. Inner livelihood is caused by physical, psychological and age factors. The reason used by the judge is that judges cannot be fixated on the law, so that when adjudicating a case they need to pay attention to aspects of justice and benefit, and the next reason is because spiritual support is an absolute obligation of a wife.

Abstrak: Penelitian ini dilatarbelakangi dengan adanya Pasal 4 ayat (2) Undang-Undang Perkawinan 1974 jo Undang-Undang Nomor 16 Tahun 2019, yaitu istri tidak dapat menjalankan kewajibannya sebagai istri, istri mendapat cacat badan atau penyakit yang tidak dapat disembuhkan dan istri tidak dapat melahirkan keturunan. Terkait dengan syarat pertama, undang-undang tidak menjelaskan lebih lanjut atau memberikan batasan yang jelas mengenai apa saja yang termasuk kewajiban seorang istri. Maka dari itu, hakim sebagai orang yang berwenang serta berperan dalam memberi atau tidak memberi izin poligami, dapat memberikan atau memperjelas kewajiban apa saja yang dipikul oleh seorang istri yang tidak dapat dijalankan oleh istri, sehingga suami dapat diberi izin berpoligami. Penelitian ini bertujuan untuk mengetahui bagaimana persepsi hakim dalam memberikan makna istri tidak dapat menjalankan kewajiban yang disebutkan dalam persyaratan poligami serta alasan yang digunakan hakim dalam memberikan makna istri tidak dapat menjalankan kewajiban. Penelitian ini adalah penelitian hukum *empiris* dengan pendekatan kualitatif dan bersifat deskriptif. Penelitian ini berlokasi di Pengadilan Agama Amuntai. Teknik pengumpulan data melalui observasi, wawancara, dan dokumentasi dengan sumber data yaitu informan dari Hakim Pengadilan Agama Amuntai Kelas 1B. Berdasarkan hasil penelitian yang dilakukan penulis bahwa makna istri tidak dapat menjalankan kewajiban ialah, pertama hakim memberikan makna istri tidak dapat menjalankan kewajiban lebih menitikberatkan pada masalah dengan melihat fakta persidangan, dan kedua makna istri tidak dapat menjalankan kewajiban adalah ketidakmampuan menjalankan nafkah batin disebabkan faktor penyakit psikis, fisik dan umur. Alasan yang digunakan hakim adalah pertama hakim tidak bisa terpaku dengan undang-undang, sehingga dalam mengadili suatu perkara perlu memperhatikan aspek keadilan dan kemaslahatan, dan alasan selanjutnya karena nafkah batin adalah kewajiban mutlak seorang istri.



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INTRODUCTION

One form of marriage that is often discussed in muslim society is polygamy. Polygamy has always been an interesting issue to discuss for both men and women. According to the Big Indonesian Dictionary, polygamy is a marriage system in which one party marries several members of the opposite sex at the same time.¹What is meant by one of the parties is the husband. According to social anthropology, polygamy is defined as the marriage

¹ "The meaning of the word polygamy - Big Indonesian Dictionary (KBBI) Online," accessed January 17 2024, <https://www.kbbi.web.id/poligami>.

of one man to many women at the same time.² So, in general, polygamy is a marriage in which a man marries more than one woman at the same time, not during marriage but during family life. The term polygamy in Marriage Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 can be interpreted as the marriage of a man with several women, or in other words a husband who has more than one wife.

Polygamy in Islam is indeed permitted, the majority of ulama also allow it for men who are able to do justice in domestic life.³ Fairness is meant to be fair in serving one's wife, such as being fair in matters of living, housing, spending on clothes, determining turns, and other matters of a physical nature.⁴ If a man feels unable to do justice then a monogamous marriage will save him from wronging others.⁵ As stated in QS an-Nisa/4: 3.

وَأِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَنِّي وَتَلْتِ وَرُبِعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ
ذَلِكَ أَذَىٰ أَلَّا تَعْلَمُوا

“And if you are afraid that you will not be able to do justice to (the rights of) orphaned women (if you marry them), then marry (other) women that you like: two, three or four. Then if you are afraid that you will not be able to do justice, then (marry) just one person, or the slaves you have. That is closer to not committing wrongdoing.”

In Indonesia, the provisions for polygamy are regulated in Marriage Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 in article 3 paragraph (1) which states that the principle of marriage is monogamy. This means that polygamy can be carried out if desired, of course by going through procedures and applications in accordance with applicable laws and regulations.⁶ This is stated in article 3 paragraph (2), which reads:

1. Basically, in a marriage, a man can only have one wife. A woman can only have one husband.

² Khoirul Abror, *Marriage and Divorce Law* (Yogyakarta: Ladang Kata, 2017), p. 269.

³ Cholil Nafis, *Family Fiqh* (South Jakarta: Mitra Abadi Press, 2009), 45.

⁴ Agus Hermanto, *Problems of Islamic Family Law in Indonesia* (Malang: CV. Literasi Nusantara Abadi, 2021), p. 177.

⁵ Suud Sarim Karimullah, "Polygamy from a Fiqh and Family Law Perspective in Muslim Countries," *Maddika : Journal of Islamic Family Law* 2, no. 1 (15 October 2021): p. 11.

⁶ Umar Haris Sanjaya and Aunur Rahim Faqih, *Islamic Marriage Law in Indonesia*, (Yogyakarta: Gama Media, 2017), p. 178.

2. The court can give permission to a husband to have more than one wife if the parties concerned wish.

Then in article 4 paragraph (1) it is stated that: "In the case of a husband who will have more than one wife, as stated in article 3 paragraph (2) of this Law, he is obliged to submit an application to the Court in the area where he lives." With several provisions as stated in article 4 paragraph (2), 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.

Regarding the first condition, the law does not explain further or provide clear boundaries regarding what is included in a wife's obligations. Therefore, the judge, as a person who has authority and plays a role in granting or not granting permission for polygamy, can provide or clarify any obligations borne by the wife that cannot be carried out by the wife so that a husband can be given permission to practice polygamy. Based on this background, in this article we will discuss further the judge's perception of the meaning of a wife not being able to carry out her obligations and the reasons why.

METHODS

This type of research is empirical legal research, namely a legal research method that uses empirical facts taken from human behavior, both verbal behavior obtained from interviews and real behavior carried out through direct experience.⁷ In this case, the author came directly to the court to conduct interviews to gather data regarding the perceptions of Religious Court Judges regarding the meaning of a wife not being able to carry out her obligations under the requirements of polygamy. As for pThe approach the author uses is qualitative.⁸ The nature of this research is descriptive, that is, the author provides an overview or explanation of the subject and object of the research.⁹

⁷Mukti Fajar and Yulianto Achmad, *Dualism of Normative and Empirical Research* (Yogyakarta: Student Library, 2010), 280.

⁸Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), 105.

⁹Muhaimin, 105.

Data collection techniques are through observation, interviews and documentation with data sources namely informants from the Amuntai Religious Court Judges.

RESULT AND DISCUSSION

Provisions for Polygamy According to Islamic Law and Marriage Law in Indonesia

The verse or legal basis relating to polygamy is the word of Allah SWT. Qs an-Nisa/4: 3, as the author mentioned previously. The meaning of the verse above is that Islam allows polygamy under certain conditions. These include limiting polygamy to only four people. However, if you are afraid of doing injustice, if you marry more than one woman, then just marry one woman. In connection with the verse above, some scholars who adhere to the Shafi'i School of Religion claim that they are able to provide a living for people who want to practice polygamy. These requirements are based on Imam Syafi'i's understanding of the text of the Koran: This is closer to not committing violence. What this means is don't increase your family size if it causes trouble.¹⁰

Based on the perspective of Law Number 1 of 1974 in conjunction with Law Number 16 of 2019, the provisions for reasons for polygamous marriage are regulated in Article 3 paragraph (2) The court can give permission to a husband to have more than one wife if the parties concerned wish. Furthermore, in Article 4 paragraph (1), if a husband intends to have more than one wife, as in Article 3 paragraph (2) of this law, he is obliged to submit an application to the court in the area where he lives. Article 4 paragraph (2) The court referred to in paragraph (1) of this article only gives permission to a husband who wants to engage in polygamy 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 bear children.

¹⁰ Zaeni Ashhadie et al., Family Law According to Positive Law in Indonesia (Depok: Rajawali Press, 2020), p.63.

Wife's Oblagations According to Islamic Law and Marriage Law in

Indonesia

The verse or legal basis relating to the wife's obligations is the QsAn-Nisa /34:4 section.

فَالصَّالِحَاتُ قَانِتَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۗ وَاللَّاتِي تَخَافُونَ نُسُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ ۚ فَإِنِ اطَّعْتُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

"So pious women are those who obey (Allah) and take care of themselves when (their husbands) are not around, because Allah has taken care of (them). For women who you are worried about nusyuz, you should give them advice, leave them in bed (separate beds), and (if necessary) beat them. But if they obey you, then don't look for reasons to trouble them. Indeed, Allah is Most High, Most Great."¹¹

In a broad sense, the verse above does not explain in real terms what a wife must look after when her husband is absent or traveling. However, in al-Qurthubi's interpretation it is interpreted that Allah SWT's care for the wife is manifested in the form of a trust or obligation towards the husband. Thus, whatever the husband leaves behind when he is absent or traveling is the wife's obligation to look after it.¹²

The wife's obligations in the Marriage Law are stated to always go hand in hand with rights. The rights and obligations of husband and wife in Marriage Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 are contained in Chapter VI Articles 30-34. Article 30 states: "Husband and wife bear the noble obligation to uphold the household which is the basic pillar of society." Furthermore, article 31 explains the rights and obligations of husband and wife in the household, namely:

¹¹ *Al-Qur'an and its translation*, p. 123.

¹² Nur Taufik Sanusi, *Household Jurisprudence Perspective of the Qur'an in Managing Conflict into Harmony*, Print 1 (Depok: Elsas, 2010), p.63.

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1. The rights and position of the wife are balanced with the rights and position of the husband in domestic life and social life together in society;
 2. Each party has the right to take legal action;
 3. The husband is the head of the family and the wife is the housewife.

Article 32 states that:

1. Husband and wife must have a permanent place of residence;
2. The residence referred to in paragraph (1) of this article is determined by the husband and wife together.

Article 33 states: "Husband and wife are obliged to love, respect, be faithful and provide physical and spiritual assistance to each other." Article 34 states as follows:

1. The husband is obliged to protect his wife and provide all household necessities according to his ability;
2. The wife is obliged to manage household affairs as well as possible;
3. If a husband or wife neglects their respective obligations, they can file a lawsuit with the court.

Maslahah Mursalah Theory

According to Al-Buthi' al-mashlahah, the benefits stipulated by the Sharia for his servants include maintaining their religion, self, intellect, lineage and property in a certain order. From this definition, the benchmark in mashlahah is sharia goals or based on sharia provisions, even though it sometimes seems to conflict with human goals which are often based solely on lust.¹³ Ushul fiqh scholars agree that maslahah al-murlah is not valid as a legal basis for worship, because worship must be practiced as exemplified by the Prophet, but the scholars differ in their opinion about practicing al-maslahah murlah in the field of muamalat.¹⁴ One of the scholars who accepted and used it as a postulate to determine the law, including Imam Malik and

¹³ Firdaus, Ushul Fiqh Methods for Comprehensively Studying and Understanding Islamic Law, Print 1 (Depok: Rajawali Pers, 2017), p. 92.

¹⁴ Satria Efendi, Ushul Fiqh, p.137.

Imam Ahmad for the reasons namely The existence of Shari'a as concluded by scholars based on the instructions of the Qur'an and Sunnah aims to realize human benefit and the needs of mankind. Meanwhile, human needs are always developing and it is impossible for everything to be detailed in the Qur'an and Sunnah. However, in general, the Shari'a has provided instructions that its purpose is for the needs of humanity. Thus, everything that is considered *maslahah murlah* as long as it does not conflict with the main source of Islamic law, then *maslahah al-murlah* is legally used as a legal basis.

Analysis of the Judge's Perception of the Meaning of a Wife Not Being Able to Carry Out Obligations in Polygamy Requirements and the Reasons

The following is the perception of the Amuntai Religious Court Judge regarding the meaning of a wife not being able to carry out her obligations under the requirements of polygamy:

First, the judge gave the meaning that the wife could not carry out the obligations contained in the requirements for polygamy taking into account the benefits and harms. Requesting polygamy on the grounds that the wife cannot carry out her obligations, a judge cannot just stick to the law because almost nothing is appropriate or the same as the existing provisions. It is often found that the first wife is still healthy and fit but her husband is the only one who wants to have polygamy, so here the judge needs to be careful in considering it. Like the case of polygamy permission that he encountered, a husband was far from his wife because of work, and it was not possible for the wife to follow her husband because she had to look after the children and so on. From this situation it can be interpreted that the inability to carry out the obligations in question is spiritual support taking into account the benefits and harms. This means that the judge, in providing a perception of the meaning of the wife's failure to carry out her obligations, focuses more on the welfare aspect. Consider whether something undesirable might happen, such as adultery. According to the author's analysis, the above mindset is in line with *maslahah murlahah*, namely that there are benefits included in *maqasid syari'*, preventing adultery from occurring is part of *maqasid syari'*, namely *hifzu*

nasab (protecting offspring), so that the husband's desires for spiritual support can be realized through a legal marriage. by making the best use of polygamy permits and paying attention to the husband's abilities and being able to do justice to his wives.

Second, The meaning of a wife not being able to carry out her obligations under the requirements of polygamy is her unwillingness to carry out her obligations without Sharia reasons. This means that the wife has rejected her duties and functions as a housewife without justifiable reasons. Meanwhile, in the Compilation of Islamic Law, Article 83 paragraph (1) states "Wives are obliged to be filial and spiritual to their husbands within the limits permitted by the Islamic religion," filial piety means submission and obedience.¹⁵ A wife is obliged to obey her husband's orders with the following conditions: 1) The orders issued by the husband are in the interests of the family; 2) The order does not conflict with the Sharia.¹⁶ The requirements for polygamy are interpreted as unwillingness to carry out it without Sharia reasons. According to the author's analysis, this perception is not correct because the wife's reluctance or unwillingness to carry out her obligations can be said to be *nusyuz*. *Nusyuz* means out of obedience,¹⁷ avoid existing obligations. And the *nusyuz* solution is not polygamy, but the first thing is to advise, the second to move to bed, and the third to give a light blow.¹⁸ Thus, according to the author's analysis, the inability to carry out the obligations under the requirements of polygamy is interpreted as unwillingness, because being reluctant means actually being able to, but deliberately not wanting to carry it out.

Third, the meaning of a wife not being able to carry out her obligations is the inability to carry out her mental support due to factors such as age, illness and a state of severe stress or insanity. This is correct, because the understanding of the sentence "unable" is a cause that is not planned or

¹⁵ "The meaning of the word devotion - Big Indonesian Dictionary (KBBI) Online," accessed 19 January 2024, <https://kbbi.web.id/bakti>.

¹⁶ Wati Rahmi Ria, *Islamic Family Law* (Bandar Lampung: Faculty of Law, University of Lampung, 2017), p. 85.

¹⁷ Syaikh Zainuddin, *Fathul Mu'in* (Surabaya: Pustaka Salam, tt), p.110.

¹⁸ Muhammad Habib Badawi, "Nusyuz in the Perspective of Ahkam Hadith," *Al-Mashlahah Journal of Islamic Law and Islamic Social Institutions* Volume 8, Number 1 (May 2020): p.109.

intentional. Age, illness, and crazy accidents are not things that are deliberately created, let alone planned, they are events that happen because of God's will alone.¹⁹ So that in such circumstances the husband can be patient by treating his wife or filing a polygamy application with the court. However, according to the author, if viewed from a moral perspective, it is better for the husband to continue to accompany and be patient in treating his wife to the maximum, rather than abandoning him to remarry another woman.

Fourth, is the inability to carry out obligations in physical aspects, such as cooking and washing. In the Book of Fathul Mu'in it is stated that washing and cooking are the husband's obligations, and if the husband does not have the ability to cook or wash his wife's clothes, then the husband is obliged to find a servant. The fuqaha also argue that the wife's obligation to her husband is only in the form of providing spiritual support (istimtha') and obeying her husband.²⁰ So, according to the author, if a husband submits a request for polygamy because the wife does not carry out her obligations in the physical aspect, this is a very ordinary and flimsy reason because the job may be replaced by someone else. And the household work of cooking and washing is not the wife's responsibility, but is just a custom or habit in people's lives.

CONCLUSION

Based on the research and discussion that the author has previously described, it can be concluded that the meaning of a wife not being able to carry out her obligations under the requirements of polygamy is as follows:

First, is the inability to carry out an inner livelihood, but this first perception in giving this meaning focuses more on benefits. Second, namely the inability to carry out obligations without sharia reasons. Third, is the inability to provide an inner living due to several factors such as age, illness, experiencing severe stress or being crazy so that he can no longer provide an inner living and because the wife does not serve according to what the husband

¹⁹ Beni Ahmad Saebani, *Marriage in Islamic law and law: the perspective of munakahat fiqh and Law no. 1/1974 concerning polygamy and its problems*, Cet. 1 (Bandung: Pustaka Setia, 2008), p. 67.

²⁰ Dwi Kurniasih, "Examining Husband's Obligations: Uncovering Family Responsibilities According to Classical Books" 5, no. 1 (June 2020): p.84.

wants and often complains, and the wife is unable to serve because the husband is excess hormones. Fourth, is the inability to carry out obligations in physical aspects, such as cooking and washing.

The reasons used in giving the meaning that the wife can carry out her obligations are first, in interpreting the judge, the judge considers the benefit more. Second, the reason is because mental support is a wife's absolute obligation arising from a legal marriage. And third, the reason is that traditionally the obligation to cook, wash, etc. is a wife's obligation. Based on the author's analysis of the reasons above, the first and third reasons are correct. Because the main consideration in legal matters is benefit, then providing spiritual support services (*istimtha'*) is the wife's obligation according to the *fuqaha* agreement. And finally, the third reason is not correct because there is no text that shows washing and cooking are the wife's obligations, this is just a habit in society

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