



DIABETES AS A REASON FOR POLYGAMY THROUGH COURT DETERMINATION WITHOUT MEDICAL RECORDS FROM THE KHI PERSPECTIVE (ANALYSIS OF DECISION NUMBER 465/Pdt.G/2023/PA.Pyb)

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ABSTRACT

This study aims to determine the legal considerations by the judges of the Panyabungan Religious Court in assessing and deciding cases of polygamy permits submitted based on diabetes reasons. This study uses a research method with a type of library research with a descriptive analytical research nature, and the approach is carried out with a case approach, and uses the decision of the Panyabungan Religious Court judge, especially in the decision of case Number: 465/Pdt.G/2023/PA.Pyb. The sources of legal materials use Primary Legal materials, namely Law No. 1 of 1974 concerning marriage and Secondary Legal materials, namely Legal books including theses, dissertations and articles in Legal journals. The results of this study are that the judge granted the application for permission for polygamy on the grounds of worship and the wife having a history of diabetes resulting in less than optimal service to the applicant. So it can be concluded that the reason for diabetes in the perspective of the compilation of Islamic Law could be valid, but when viewed from the perspective of the theory of justice, the court must treat a sick wife as having the same right to be protected without reducing her value because of illness. Then it is expected to provide the greatest benefit to the less fortunate and perhaps more relevantly should be tested whether the reason maintains the wife's rights, provides benefits to the wife, for example getting better care or economic security

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1. INTRODUCTION

The practice of polygamy existed long before the arrival of the Prophet Muhammad (peace be upon him), who brought Islam. Numerous historical facts demonstrate this. As quoted by Baiddan in Tafsir bi Al-Ra'yi, polygamy existed among ancient peoples, including the Greeks, Chinese, Indians, Babylonians, Assyrians, Egyptians, and others. The practice of polygamy during the aforementioned eras is indeed inappropriate according to Islamic law. Therefore, Islam reformed it, not prohibited it. Islam reorganized the rules of polygamy, which had been customary and had existed for centuries in human civilization. The advent of Islamic law provided a strong foundation and basis for regulating and limiting the evils inherent in polygamous societies. The goal was to preserve women's rights and their dignity, which had previously been neglected because polygamy was practiced without any specific ties, conditions, or limitations (Haras, 2013).

Islam also does not allow men to freely practice polygamy with an unlimited number of wives, nor does it condone the oppressive practices commonly committed by men. Islam limits the number of wives a man can marry to a maximum of four, according to a man's ability to fulfill his duties. This is also conditional on the husband's ability to provide for his wife and to be fair between them.

The consent of a wife or wives to a husband who wishes to have more than one wife can be given in writing or verbally, which must then be confirmed by the wife's verbal agreement at a Religious Court hearing. Consent is not required for a husband if it is impossible to obtain the wife's consent and cannot be a party to the agreement, if there has been no news from the wife or wives for at least two years, or for other reasons requiring a judge's assessment (Suma, 2008).

Considering the reasons for granting permission for polygamy above, it can be understood that they refer to the primary purpose of marriage: to establish a happy and lasting household (*sakinah, mawaddah, and rahmatan*) based on the belief in the One Almighty God (Tanjung, 2022). If the three reasons mentioned above apply to a husband and wife, the household can be considered incapable of creating a happy family. As food for thought, Al-Maragi, mentioned in his book *Tafsir Al-Maragi*, stated that the permissibility of polygamy mentioned in Surah An-Nisa verse 3, as the author has cited above, is a more complicated and restrictive permissibility. According to him, polygamy is permitted only in emergencies, and only for those in genuine need, provided they can be trusted to uphold justice and are safe from transgressions. Therefore, it is an obligation for judges and fatwas to recognize that preventing harm must take priority over achieving benefit.

Polygamous marriages are regulated in Islamic law, statutes, and government regulations. Within the context of Islamic law, particularly in the Compilation of Islamic Law (KHI), the requirements for valid polygamy include the husband's ability to treat his wives fairly and having a valid and compelling reason for practicing polygamy (Sudarsono, 2005). Furthermore, administrative requirements must be met: a husband wishing to have more than one wife must obtain permission from a religious court. Applications for a permit are made according to the procedures stipulated in Government Regulation No. 9 of 1975. Marriages with a second, third, or fourth wife without permission from the Religious Court are legally ineligible (Dalimunthe et al., 2024).

The Religious Court is the authority to grant permission for polygamy, provided that valid reasons are met. Medical reasons are frequently cited in applications for polygamy permits, such as diabetes, which is believed to impede the wife's ability to fulfill household duties (Susanto, 2008). However, in practice, issues often arise when medical reasons, such as diabetes, are used without sufficient medical evidence. This raises questions about the validity of such reasons in the court process for polygamy permit applications. For example, in one such application for a polygamy permit, the Panyabungan Religious Court ruled under Number 465/Pdt.G/2023/PA.Pyb, which granted permission for polygamy on grounds of religious observance and the wife's history of diabetes (Tanya, 2010).

Although there are no specific regulations requiring medical evidence to be a primary requirement for obtaining permission for polygamy, if the reason cited relates to a health condition, such as an illness that renders him incapable of sexual intercourse or performing household duties, medical evidence can be an important consideration in a polygamy application, particularly in ensuring that the reason is valid and legally justifiable (Setiawan, 2017).

According to the law and the Compilation of Islamic Law (KHI), the reasons for polygamy must be clear, including the wife's inability to bear children, the wife's inability to fulfill her duties as a wife, or the wife's physical disability or incurable illness. According to Nasaruddin Umar, this section will be tightened and clarified. The reasons for a wife's inability to bear children, illness, or disability will be clarified in the draft bill on the implementation of Religious Courts (Rahmiaty, 2015). In the future, husbands will no longer be able to arbitrarily claim that their wives are unable to bear children, are ill, or have physical disabilities that justify their right to polygamy. Husbands must provide evidence in the form of a medical certificate supporting this reason, issued by a government hospital upon request by the court. This aims to prevent the possibility of data manipulation by husbands seeking permission for polygamy (Sudirman, 2020).

Thus, the author considers it necessary to analyze more deeply regarding how the judge's legal considerations granted permission for polygamy on the grounds that the wife had a history of diabetes without any evidence from medical experts, then therefore this study aims to analyze the decision of the Panyabungan Religious Court in deciding the case of permission for polygamy submitted based on the reason of diabetes without any medical evidence listed and how the decision reflects the principle of justice to all parties, especially in the context of KHI, in addition, this study will also examine the legal and social implications arising from the decision of the religious court in similar cases.

2. RESEARCH METHOD

This type of research is normative juridical research with a keis approach. According to Soerjono Soekanto, the normative juridical approach is legal research conducted by examining library materials or secondary data as a basis for research by conducting searches on regulations and literature related to the problem being studied. In this research, it is library research. Library research is research that uses books, court decisions, journals, documents, magazines as material or data in completing research. In this research, the author uses the Decision of the Panyabungan Religious Court Judge, specifically in the Decision of Case Number: 465 / Pdt.G / 2023 / PA / Pyb. The author uses a normative legal research method in compiling this research to solve legal issues and provide prescriptions, research sources are needed in normative legal research. The sources of normative legal research are primary legal materials, secondary legal materials and tertiary legal materials. The legal material collection technique used is a literature study (Marzuki, 2016). Literature review is conducted by collecting available literature from libraries or other relevant sources. The researcher then reviews and studies the literature related to the research topic. After the materials are collected, the author processes and analyzes them. The methods used for processing and analysis are descriptive-analytical and prescriptive. Descriptive-analytical presents a description of the research object, comparing the case with theoretical studies, while prescriptive provides arguments or assessments of the facts and events being studied.

3. RESULTS AND ANALYSIS

Legal Justice for the First Wife in Polygamy Permit Cases Through Religious Court Decision Number: 465/Pdt.G/2023/PA.Pyb

The word "just" comes from the Arabic word for "conscience" or "conscience," which signifies a good and upright soul. In French, the word "just" is "justices," and in Latin, "just" is "justica." Therefore, "justice" means placing something in its proper place, or accepting rights without excess and granting rights to others without less. Therefore, "justice" means giving the rights of everyone entitled to it in full, without more or less, among those entitled, under equal circumstances, and punishing those who violate the law according to their faults and transgressions (Nurdin, 2011).

The Quran, as the holy book of Muslims, demonstrates the practice of upholding justice, honoring and elevating those who act justly, and forbidding and condemning acts of injustice. The Quran also places justice as a principle that must be upheld by every human being in all aspects of life. Justice is the virtue closest to piety because it is a reflection of piety. This can be seen in the words of Allah in Surah Al-Ma'idah verse 8: Meaning: Be fair, because justice is closer to piety. And fear Allah, indeed Allah knows best what you do. (Q.S. Al-Ma'idah: 8). Justice is an action, treatment, decision, and so on which includes the following things:

1. Not taking sides and giving biased decisions
2. Do not exceed or reduce what is reasonable
3. Taking sides or adhering to the truth
4. According to abilities and actions
5. Not arbitrary

The meaning of justice in law is a principle or concept that refers to balance, equality and fair treatment for all individuals in the legal system. The concept of justice in law involves several aspects. First, there is equal and objective treatment of all individuals, without discrimination or unfair exceptions. Second, everyone has the right to equal protection of the law and the right to defend themselves before a court. Third, legal decisions must be based on valid evidence and a fair process, with judges or law enforcement acting neutrally and impartially. The meaning of legal justice in polygamy cases relates to the principle that in implementing polygamy, a husband must treat his wives and children fairly, both materially and non-materially.

The justice of polygamy should not be seen solely in terms of its effects, but rather in the motivation to increase the potential for human justice. To achieve this justice, intellectual, emotional, spiritual, and financial well-being must be enhanced. The justice of polygamy is not merely as taught by Islamic jurisprudence (fiqh), which is fair in the distribution of material goods and sleep. It must also consider the psychological justice of each wife, understanding her individual character and psyche. This is because the breakdown of marriages is often due to psychological jealousy. Polygamy will be a blessing when truly implemented in accordance with its sharia objectives, with the motivation of the Prophet Muhammad (peace be upon him), and with sincerity, not lust. It becomes injustice when lust and ignorance dominate the marriage (Dalimunthe et al., 2024).

For the rules of justice in the case of polygamy, it is mentioned in the Qur'an, the word of Allah SWT in the letter An-Nisa verse 3: as it means: If you fear that you will not be able to deal justly with orphans when you marry them, marry other women of your choice, two, three, or four. But if you fear that you will not be able to deal justly, marry only one or the female slaves you have, that is nearer to not doing injustice (Tanjung, 2022).

Furthermore, the rule of justice in positive law in Indonesia regarding polygamy is regulated in Law No. 1 of 1974 concerning Marriage, Article 5, paragraph 1, letter c, which guarantees that a husband will treat his wives and children fairly. Furthermore, in the Compilation of Islamic Law, Article 55, paragraph 2, the primary requirement for having more than one wife is for a husband to treat his wives and children fairly.

From the explanation above, it can be concluded that polygamy is a form of marriage regulated by Islamic law and law, with the primary requirement for its permissibility being that the husband treats them fairly. One important aspect of a husband's responsibility is to provide fair support to his wives and children. Support, whether material such as clothing, food, and shelter, or non-material such as affection and attention, is an obligation that must be fulfilled fairly by a husband living in a polygamous marriage. Fair provision of support is not only a legal obligation but also reflects a husband's moral commitment to ensuring the welfare of all family members, ensuring that each wife and child receives their rights without any inequality or treatment that is detrimental to either party.

Social and Legal Implications Arising from the Religious Court Decision Number: 465/Pdt.G/2023/PA.Pyb

Every marriage is required to be registered according to applicable regulations. Therefore, marriage registration according to Islamic law is carried out by a marriage registrar at the Civil Registry Office.

The validity of a marriage, as stipulated in Law Number 1 of 1974, is contained in Article 2 paragraph (1), which explains: "A marriage is valid if it is conducted according to the laws of each religion and its beliefs." Based on this sentence, Law Number 1 of 1974 requires that a marriage be valid if two conditions are met: the requirements according to the provisions of each religion and the procedures required by state law. Without these provisions, the marriage is invalid. Anyone wishing to marry must fulfill the requirements and pillars of marriage. Furthermore, Article 2 paragraph (2) of Law Number 1 of 1974 concerning marriage states that: "Every marriage is registered according to applicable laws and regulations."

Marriage registration serves as recognition of the validity of the marriage by the state, and the authorized institutions to register marriages are the Office of Religious Affairs and the Civil Registry Office. The state must implement marriage registration at an institution because this marriage registration institution has four objectives:

1. To ensure legal certainty.
2. To establish legal order.
3. To provide evidence.
4. To facilitate government activities in the field of population and population administration.

In the case of polygamy, it has complex social and psychological implications for the individuals and families involved. Several studies have demonstrated the positive and negative impacts of this practice, including aspects such as family stability, children's education, and emotional well-being. In some cases, polygamy can provide protection to women who may be widowed or facing economic difficulties. Polygamy can be an alternative for them to maintain their well-being. However, there are also many cases where women feel they are not provided with protection or equality in polygamous marriages. Inequality within marriage and the risk of unfair treatment of wives can be serious problems. Polygamy can provide broader financial and social support to children in the extended family, thus benefiting their well-being. However, if not managed properly, polygamy can create conflict within families and affect the emotional well-being of children. The practice of polygamy can provide greater social and economic support within a community, especially in societies that are still strongly patriarchal. On the other hand, polygamy can also trigger competition and conflict within families and communities, which can disrupt social well-being and create disharmony within the community (Harianto et al., 2023). In some cases, polygamy can provide more opportunities for women to participate economically and socially, especially if the husband provides financial support and equality. Polygamy can also raise issues of gender inequality and the neglect of women's rights, especially if the husband does not treat his wives fairly. The positive implications of polygamy have sparked increased awareness of women's rights in society and the need for education and support for wives in polygamous marriages. The negative implications of this education and awareness still need to be improved to ensure that all parties in polygamous marriages understand their rights and responsibilities.

In addition to social implications, polygamy also has legal impacts or legal consequences, legal impact is an action taken to obtain a result desired by the perpetrator and which is regulated by law, or the impact/result given by law for a legal event from a legal subject, in other words, legal consequences are the result of a legal action carried out by a legal subject. Legal subjects are humans and/or legal entities, in the case of polygamy, the legal subjects are the perpetrators of polygamy and/or related parties and cause legal consequences/impacts by the occurrence of a legal event of polygamy.

The distribution of wives' inheritance rights in polygamous marriages is clearly regulated in the Compilation of Islamic Law (KHI), primarily to ensure justice for the wives. In polygamous marriages, a husband who leaves an inheritance is obligated to ensure that his wives' rights are fulfilled, including through provisions for inheritance distribution in accordance with Islamic law. Justice is the primary basis for the distribution of inheritance rights in polygamous marriages. This principle is affirmed in Article 94 paragraph (1) of the KHI, which states that joint assets acquired by a husband and each wife must be separated. This separation applies not only to marital life but also to the inheritance distribution process. Each wife has the right to the joint assets acquired in their respective marriages, which form part of the total inheritance to be divided.

According to Islamic law, as stated in Article 45 of the Compilation of Islamic Law, the legal consequences of inheritance law for a husband who is legally married more than once (polygamous) are that if the polygamous husband dies, the distribution of joint assets from the marriage is half the joint assets acquired with the first wife and half the joint assets acquired with the second wife, with each wife's assets being separated and without any intermingling (Tanjung, 2022). Unless a specific agreement regarding joint property is made before or after the marriage ceremony, Article 1 (f) of the Compilation of Islamic Law states that marital property, or *syirkah*, is property acquired individually or jointly during the marriage, without any dispute over its registration (Syam et al, 2024).

Polygamous marriages should emphasize the "protection" of the joint property of the husband and wife in the first couple. For the younger wife, there must be a statement that separate property remains for the husband and wife. This classification is emphasized in cases such as: the joint property of the husband and younger wife includes household items from the younger wife, possibly from their business or that of one of them, and the assets of each party are substantial and valuable. Article 94 of the Compilation of Islamic Law, paragraphs (1) and (2), explains that joint property in polygamous marriages must be distinct. This is to prevent the mixing of joint property, which could lead to disputes in the event of the death of a spouse or possible divorce.

Legal Analysis of Diabetes Cases as a Reason and Permission for Polygamy Through Religious Court Decision Number: 465/Pdt.G/2023/PA.Pyb. From the Perspective of the Islamic Law and the Theory of Legal Justice

Hans Kelsen, a prominent figure in legal positivism, explains law in the following exposition: Law is a system of norms, a system based on imperatives (what should be, or *das sollen*). For Hans Kelsen, norms are the product of human thought, deliberative in nature. Something becomes a norm if it is desired to be a norm, the determination of which is based on morality and good values. According to him, the considerations underlying a norm are metajuridical. Something that is metajuridical is *das sollen*, and has not yet become law binding on society. In short, for Hans Kelsen, legal norms are always created through will. These norms will become binding on society when they are desired to become law and must be set forth in written form, issued by an authorized institution, and contain orders. Hans Kelsen's opinion indicates his belief that legal positivism considers the discussion of morals and values to be complete and final when it comes to the formation of positive law.

The ought (ideal) realm originates from thoughts that can be based on values and teachings. Thus, in the concept of the ought realm, an example is given: if someone is threatened to give something, they should not give it. The meaning of "they should not give" is highly dependent on will. However, according to Hans Kelsen, this will is not a psychological will. This will, according to Hans Kelsen, is a neutral, objective will, and a will that, according to common sense, should be so. Therefore, the will not to give something is based on considerations that are generally accepted (common sense) as true. Why is it considered true? Because it is based on a teaching that is objectively true, for example, the teaching that one should not accept something that is not one's right. This objective teaching, according to Hans Kelsen, must be traced back to higher teachings, down to the most fundamental norm (*grundnorm*).

Grundnorm resembles an assumption about the "order" that is to be realized in communal life (in this case, the state). Hans Kelsen himself did not specify the content of the *grundnorm*. He simply stated that the *grundnorm* is a transcendental-logical requirement for the validity of all legal systems. All positive legal systems must be hierarchically guided by the *grundnorm*. Thus, indirectly, Hans Kelsen also created a theory of legal order. Using the concept of *Stufenbau* (layers of rules according to echelon), he constructed

a concept of legal order. Within this construction, the levels of legislation were determined. The entire legal system has a pyramidal structure (from the abstract, the *grundnorm*, to the concrete, such as laws, government regulations, and so on). Therefore, according to Hans Kelsen, the way to identify a rule as legal and illegal is to examine it through the logic of *Stufenbau*, with the *grundnorm* being the primary touchstone.

As a legal theory, the Pure Theorie of Law is a positive legal theory, but it does not discuss positive law within a legal system, but rather a general legal theory. Hans Kelsen's explanation of the Pure Theorie of Law aims to explain the nature of law (what is law?) and how it is made, rather than to explain what the law ought to be or how it should be made. The Pure Theorie of Law is a legal science, not a matter of legal policy. This theory concentrates solely on law and seeks to separate legal science from the interference of foreign disciplines such as psychology and ethics. Kelsen separates the concept of law from all elements that play a role in the formation of law, such as psychology, sociology, history, politics, and even Ethics. All of these elements constitute the "legal idea" or "legal content." Legal content is inseparable from political, psychological, socio-cultural, and other elements. This is not the case with the definition of law. The definition of law expresses law in its formal sense, namely as a regulation that applies legally. This is law in the true sense, pure law (*das reine Recht*).

In Hans Kelsen's theory of positive law, law is a structured system of norms in which each norm derives its validity from the norm above it. Within this normative structure, a norm can be considered valid if it is created in accordance with the procedures of the higher norm. In this case, the panel of judges granted the request and deemed that the requirements and reasons had been met as stipulated in Articles 4 and 5 of Law Number 1 of 1974 in conjunction with Articles 57 and 58 of the Compilation of Islamic Law.

The application of children's *hadhanah* rights based on *munakahat fiqh* places the mother as the party who has the most right to care for children who are not yet *mumayyiz* after a divorce, based on sharia arguments and the views of the majority of *ulama*. This right is not absolute, because it can be transferred if the mother does not meet the eligibility requirements such as being trustworthy, being a Muslim, and being physically and mentally able to care for the child. The main principle in *hadhanah* is the benefit of the child (*mashlahah al-mahdhūn*), not solely the rights of the parents. In the legal context in Indonesia, this provision is in line with the Compilation of Islamic Law, although in practice deviant decisions (*contra legem*) are still found, which require confirmation of norms and consistent implementation for the best protection for children. The trial process for transferring the *hadhanah* rights of a child who is not yet *mumayyiz* to the father is carried out through a lawsuit to the Religious Court by the father on the grounds that the mother is no longer fit or capable of carrying out the obligations of *hadhanah*. In the trial process, the judge will examine the evidence and witnesses, and consider the principle of the best interests of the child. In this case, the father is also legally flawed in the child's *ahadanah* rights. Although according to Islamic law and the Compilation of Islamic Law, the mother or father has greater rights over a child who is not yet *mumayyiz*, if it is proven that care by the mother or father no longer guarantees the child's welfare, the court can decide to transfer the *hadhanah* rights to the family, while still considering the family's readiness and suitability to care for and raise the child. The judge's *ex officio* authority in deciding civil cases is the judge's right to take certain legal actions without having to be requested by the parties, in order to uphold justice and the public interest, including the protection of children or weaker parties. In the context of civil cases, especially regarding *hadhanah*, the judge can determine matters not explicitly requested in the lawsuit, such as determining child custody, even though it was not requested, if this is deemed important to ensure the child's welfare. This authority stems from the principle of active judges in civil procedural law in Indonesia and aims to ensure that decisions not only fulfill formal aspects, but also reflect a sense of justice and legal protection in substance.

In Indonesian law, the legal provisions regarding polygamy are stipulated in Law No. 1 of 1974 concerning Marriage, the Compilation of Islamic Law, and government regulations. Under positive law, reasons for polygamy, such as the wife's inability to fulfill her obligations or an incurable illness, must be objectively proven, including through medical records or expert testimony, if the reason is medical. According to Hans Kelsen's positive legal theory, if a judge makes a decision that deviates from a higher-level legal norm, the decision is less normatively relevant, as it loses its formal validity within the hierarchical legal system.

Furthermore, the decision notes that the applicant and his prospective second wife had already entered into a secret marriage before applying for permission from the court. This indicates that the act was carried out without following established legal procedures, as stipulated in Article 4 of Law No. 1 of 1974, which explicitly states that court permission is a valid requirement for polygamy. Similarly, Article 56 of the Compilation of Islamic Law stipulates that a husband wishing to have more than one wife must obtain

permission from a religious court. If a husband practices polygamy without permission from a religious court, the marriage is legally void.

From Hans Kelsen's perspective, the legalization of a polygamous marriage without prior court permission violates higher legal norms and contradicts positive law itself. If the husband has previously been in a secret marriage, he can be said to have violated formal legal provisions, and his request for permission can be considered a formality, losing its primary purpose, not seeking permission but seeking approval.

According to Aristotle, justice is divided into five forms: 1) Commutative Justice, which treats a person without regard to their services; 2) Distributive Justice, which treats a person according to their services; 3) Natural Justice, which gives something in accordance with what others have given us; 4) Conventional Justice, which treats a person who has complied with all required laws and regulations; 5) Justice according to the theory of reparation, which is someone who has attempted to restore another person's tarnished reputation.

Rawls then attempts to formulate two principles of distributive justice, as follows: 1) the greatest equality principle, which states that everyone should have the same right to the broadest basic freedoms, as broad as the same freedom for all. This is the most fundamental right that everyone should have. In other words, only by guaranteeing equal freedom for all can justice be realized (the principle of equal rights). Second, social and economic inequalities must be regulated in such a way that the following two principles are taken into account: the difference principle and the principle of fair equality of opportunity. Both are expected to provide the greatest benefit to the less fortunate, and emphasize that, under equal conditions and opportunities, all positions and positions should be open to all (the Principle of Objective Difference).

Justice must be understood as fairness, meaning that not only those with greater talents and abilities are entitled to enjoy more social benefits, but these benefits must also open up opportunities for those less fortunate to improve their life prospects. In this regard, the moral responsibility for the advantages of those who are fortunate must be placed within the framework of the interests of the less fortunate group.

4. CONCLUSION

The Religious Court Decision Number: 465/Pdt.G/2023/PA.Pyb in the case of a polygamy permit application reveals the complexity between fulfilling the formal requirements of positive law and the substantive meaning of justice in marital practice. Normatively, the decision refers to the provisions of Law Number 1 of 1974 and the Compilation of Islamic Law, which stipulate that justice both material and non-material is a fundamental requirement for the permissibility of polygamy. However, substantively, the practice of entering into a secret marriage prior to obtaining court permission reflects a violation of the legality principle and obscures the essence of justice as mandated by Islamic legal values and modern theories of justice. An analysis of justice in the context of polygamy based on the Qur'an particularly Surah An-Nisa (4:3) and Al-Ma'idah (5:8) indicates that justice is not merely a matter of equitable distribution of material rights, but also encompasses psychological and spiritual sensitivity toward each wife. Justice, in this sense, is a reflection of piety and the moral awareness of the husband in fulfilling his marital obligations.

This concept is reinforced by Hans Kelsen's theory of legal norms, which emphasizes the importance of the hierarchy of norms and consistency between the *grundnorm* (basic norm) and the application of positive law. When a court legalizes a polygamous marriage conducted in secret before formal approval, such action can be seen as violating a higher legal norm and merely legalizing procedural formality while neglecting substantive justice. Socially, polygamy produces dual implications. On one hand, it may offer economic solutions and protection for socially vulnerable women. On the other hand, unequal treatment and the neglect of the psychological rights of the first wife often lead to injustice, family disharmony, and the compromised well-being of children. Injustice in the division of marital property and inheritance rights as regulated in Article 94 of the Compilation of Islamic Law frequently becomes a source of conflict, especially when assets are not distributed fairly and separately between wives. Using the frameworks of Aristotle's and John Rawls' theories of justice, the decision still raises ethical and philosophical questions. Legal rulings should ideally be grounded in distributive justice and protect vulnerable parties particularly the first wife. Yet, this decision reflects a tendency toward legal formalism, neglecting the principle of social welfare. According to Rawls' theory, true justice is achieved when legal norms provide the greatest benefit to the most disadvantaged, emphasizing fairness and equitable opportunities.

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