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JURIDICAL REVIEW OF POLYGAMY PERFORMED BY CIVIL SERVANTS VIEWED FROM GOVERNMENT REGULATION NUMBER 45 OF 1990

(STUDY OF DECISION NUMBER 325/PDT.G/2019/PA.PWL)

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Abstract: Polygamy for civil servants is contained in Government Regulation Number 45 of 1990 amendment to Government Regulation Number 10 of 1983 concerning marriage and divorce permits for civil servants. The problems raised in this study are how to regulate polygamy carried out by civil servants based on Government Regulation Number 45 of 1990 concerning marriage and divorce permits for civil servants and how judges consider them in granting case requests number 325/Pdt.G/2019/PA. Pwl. The purpose of this study is to find out the polygamy arrangements carried out by civil servants based on Government Regulation Number 45 of 1990 concerning marriage and divorce permits for civil servants and judges' considerations in granting case requests number 325/Pdt.G/2019/PA.Pwl. This research is a type of qualitative research that uses a normative juridical approach, namely a research approach by researching and studying research objects through library research. As for the author's hypothesis that polygamy practiced by civil servants must be in accordance with the applicable laws and regulations, namely Government Regulation number 45 of 1990 concerning marriage and divorce permits for civil servants/ASN. As formulated in Article 4.

Keywords: Marriage Permit, Polygamy, Civil Servants.

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1. Introduction

According to Law Number 16 of 2019, which amends Law Number 1 of 1974 about marriage, marriage is defined as a spiritual and physical bond between a man and a woman as husband and wife with the intention of creating a contented family that is founded on the Supreme God. Almighty One, a contract that stipulates the rights and obligations of a man and a woman who are not muhrims as well as the terms of their mutual help is described in the marital literature.¹

Humans need marriage to survive because it elevates their status and makes life more peaceful and joyful for the couple. Marriage also helps people fall in love with one another, which is crucial for human existence. According to the legal definition of marriage, a man and a woman who live together and adhere to the restrictions, namely the requirements of cohabitation, are considered to be married.²

Article 1 Chapter 1 of Law Number 16 of 2019 Concerning Marriage explains marriage. Indonesian marriage law similarly upholds the monogamy ideal. This simply indicates that a man can only have one wife and that a woman can only have one husband. This principle departs from the original intent of marriage before the Marriage Law was established and is driven by careless polygamy practices. But that does not imply that polygamy is forbidden.

¹ Martiman Prodjohamidjojo, *Hukum Perkawinan Indonesia*, Indonesia Legal Center Publishing, Jakarta, 2007, hlm. 8.

² Wiryono Prodjodikoro, *Hukum Perkawinan Indonesia*, Alumni, Bandung, 1991, hlm. 7.

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According to its etymology, the word "polygamy" derives from the Greek words pollus, which means "many," and gamos, which means "marriage." In its compounded sense, polygamy refers to several marriages or unions involving more than one person. Polygamy is the general term for the marital system in which a man has more than one wife at a time or a woman has more than one husband at a time. The Indonesian definition of polygamy is a marriage system in which one party has/marries multiple people of the opposite sex at the same time.³

In accordance with Law Number 16 of 2019 Concerning Marriage and Government Regulation Number 9 of 1975 Concerning Implementation of Law Number 16 of 2019 Concerning Marriage and Compilation of Islamic Law, polygamy is a legal act in Indonesia. Then, in Government Regulation Number 45 of 1990, an addition to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, it was expressly controlled for Civil Servants.

Article 4 paragraph (1) of Government Regulation Number 45 of 1990, which deals with marriage and divorce permits for civil servants, states that male civil servants who intend to have more than one wife must first get the official's approval. Due to the fact that polygamy is a delicate topic of discussion that, for those who practice it, also raises religious issues, the state has taken action to reduce the number of victims of polygamy, as provided for in a number of laws and regulations, such as Law Number 16 of 2019 Concerning Marriage. Rules for Implementing Law Number

³Eka Kurnia, *Poligami Siapa Takut*, Qultum Media, Jakarta, 2006, hlm.2.

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16 of 2019 Concerning Marriage are outlined in Government Regulation Number 45 of 2019 1990 of the Republic of Indonesia. Ordinary folks share the same life objective as civil servants, which is to have a happy family or household. However, as a member of the State Apparatus tasked with rendering assistance in the discharge of State tasks, civil servants (PNS) are not exempt from the polygamy issue. As such, any acts taken by the government must adhere to legislation. Legislation. Government Regulation Number 45 of 1990, an addendum to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, contains information about polygamy for civil servants.

According to the analysis of Decision Number: 325/Pdt.G/2019/PA.Pwl about the polygamy permit case for government servants, the wife is unable to fulfill her husband's needs as a wife in the best possible way. The Polewali Religious Court will decide on the polygamy permit matter. Because the wife cannot fulfill her duties as a wife, this research was done at the Polewali Religious Court with the dual goals of exploring the legal factors employed by the panel of judges in resolving polygamy permit cases. In this instance, the petitioner has complied with all of the court's obligations as a civil servant, including getting approval from his superiors.

In this instance, the author wishes that all civil officials who choose to engage in polygamy do so legitimately, in accordance with Government Regulation Number 45 of 1990, which both regulates and permits polygamy when certain conditions are met. Considering the laws and government regulations that govern polygamy, it can

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be said that the restriction on polygamy for civil servants aims to prevent the occurrence of family disputes between husband, wife, and children, which is the sacred purpose of marriage. It also aims to educate obedience to the laws and government regulations relating to restrictions on polygamy on civil servants. If the husband is unable to treat his polygamous wives fairly and is unable to support himself financially and mentally.

According to Government Regulation Number 45 of 1990 about Marriage and Divorce Permits for Civil Servants, the following issues are highlighted by this study:

1. What are the rules surrounding polygamy for civil servants?
2. What factors did the judge take into account when issuing case judgment 325/Pdt.G/2019/PA.Pwl?

2. Method

This study is normative and use qualitative research techniques. The following factors should be taken into account:

The writers of this paper took a normative juridical approach. The main data the authors utilized was secondary data, data gathered based on literature studies, and supporting data was primary data, using field data, where this was done by looking for data at the research area. This is why the writers chose this strategy. The specifications in this study are analytical descriptive. The reason for choosing this specification aims to provide an overview of the applicable laws and regulations in

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relation to legal theories and the practice of implementing positive law relating to the problem. The method used to analyze the data in this study is by using legal reasoning (axiomatic). Because this method explains the judge's consideration of a decision using other legal views, this causes the author to be able to describe the results of his analysis of the Supreme Court decision Number 325/Pdt.G/2019/PA.Pwl.

3. Analysis or Discussion

Greek terms poly or pollus, which means many, and gamein and gamos, which imply marriage, are combined to form the word polygamy. So, polygamy refers to several marriages. Polygamy is referred to as a marriage bond in which one party owns or marries multiple members of the opposite sex at the same time in the General Indonesian Dictionary. While engaging in polygamy or practicing it.⁴

A condition or state that is certain is called certainty. Fundamentally, the law must be clear and equitable. Legal certainty can be addressed normatively, not sociologically, as a declaration. Regulations are established and promulgated with certainty because they regulate logically and definitively, and legal certainty is normative.⁵

The purpose of law and an attempt to accomplish justice is legal certainty. Real proof of legal certainty would include the moment of implementation and law

⁴WJS Poerwadarminto, *Kamus Umum Bahasa Indonesia*, Balai Pustaka, Jakarta, 1984, hlm. 693.

⁵CST Kansil, *Kamus istilah Hukum*, Gramedia Pustaka, Jakarta, 2009, hlm. 385.

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enforcement activity, independent of who committed the offense. Everyone can anticipate what will happen if they file a lawsuit thanks to legal certainty. Justice can only be realized with certainty. Legal certainty and law go hand in hand, particularly when it comes to codified legal standards. If there is no value of certainty in law, then it loses meaning since no one can use it as a standard for action.⁶

3.1. Government Regulation Number 45 of 1990 Concerning Marriage and Divorce Permits for Civil Servants, which Addresses Polygamy Against Civil Servants

One of the State's legal attempts to control marriage and divorce for Civil Servants is Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants. In addition to meeting the requirements set forth in Law Number 1 of 1974's marriage and divorce permits, those who wish to apply must submit a written request for permission to the higher authority in the hierarchy. The Governor and his deputy, the Regent/Mayor or his deputy, or other officials determined by law, are the officials who provide permits. A mutual feeling of love and affection between the husband and wife is important to forge the marriage bond. According to W. Goode, love is still crucial to the establishment of marriage. Love-related emotions have an impact on social structures. When an Indonesian citizen meets specific criteria, staffing officials will appoint them as State Civil Apparatus

⁶<http://repository.uma.ac.id/bitstream/123456789/5/138400056>. Diakses pada tanggal 14 November 2022.

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(ASN) on a permanent basis to fill posts in the government. This is what Law No. 5 of 2014 regarding State Civil Apparatus, Article 1 Point 3, refers to.

It is hoped that all polygamy issues can be controlled both sociologically and legally with the existence of national laws and regulations pertaining to the polygamous marriage system with all the procedures and requirements that are sufficiently strict, complicated, and limiting. This will allow the deviations that arise to be identified and can be anticipated as early as possible. As a result, it is possible to sustain each civil servant's authority.

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3.2. The Judge Approves the Request for Case Decision Number 325/Pdt.G/2019/Pa.Pwl.

Based on the factors the court took into account when rendering decision Number 325/Pdt.G/2019/PA.Pwl in the polygamy permit case at the Polewali Religious Court The judgement number 325/Pdt.G/2019/PA.Pwl, which has permanent legal effect and essentially granted the Petitioner's request about permission to have more than one wife (polygamy), granted the application for permission to have more than one wife (polygamy). In light of the decision to remarry the petitioner's intended second wife, the request was granted, giving the petitioner legal authorization to do so. the judgment rendered by the panel of judges in decision case number 325/Pdt.G/2019/PA.Pwl, which approved the applicant's request to engage in polygamy.

Because it is believed that polygamists are unable to act honestly, which might lead to conflict in the home, the author makes the case that polygamy should be avoided. Only under extreme circumstances is polygamy permitted. It is not against the law to practice polygamy; nevertheless, this should only be done in dire situations where it is absolutely necessary. Being able to conduct wisely and fairly in order to prevent difficulties in the home, being fair with regard to material items, and even having sufficient emotional reserves, are just a few of the additional prerequisites for engaging in polygamy. not just to the wife, but also to the polygamous children that were raised. Polygamy should not be practiced if this cannot be accomplished. The

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difficulty of upholding the requirements that must be fair to people who practice polygamy is one of the main points of contention over whether or not polygamy is acceptable.

From the research, the author learned the judge's opinion of polygamy permits for civil servants in the course of polygamy cases for civil servants, which can be accepted provided that polygamy satisfies the requirements as stated in Government Regulation Number 45 of 1990 amendment to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants. Because in the regulation it is clear that civil servants who wish to practice polygamy must meet the requirements set forth in Government Regulation Number 10 of 1983, Not only must the husband attach assets from the first marriage on the grounds that they do not mix with the joint assets of the second wife, but in this case the applicant must also attach a payroll so that the judge can consider whether the respondent is eligible or not to practice polygamy. In addition, the judge asked the first wife to make a written consent letter with the justification to make it one of the grounds in the judge's considerations in deciding the polygamy permit. Therefore, as long as polygamy does not conflict with current laws, there is no restriction on its use by civil servants. Because it is extremely evident in Islam itself that men are permitted to practice polygamy as long as they can be just.

The researcher can draw the conclusion that the judge's considerations regarding the case of polygamy permits for Civil Servants are accepted because the applicant

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satisfies the requirements set forth in Government Regulation Number 45 of 1990 concerning amendments to Government Regulation Number 10 by looking at polygamy permits for civil servants at the Polewali Religious Court, where the judges at the Polewali Religious Court decide to grant polygamy permits to Civil Servants.

4. Conclusion

Following the debate presented in the preceding chapter, the following conclusion can be drawn:

1. The procedure for implementing polygamy for civil servants is essentially the same as the procedure for polygamy for those who are not civil servants, in that they must fulfill additional conditions, namely that they must have permission from the authorized official in the relevant agencies, in accordance with laws and regulations governing polygamy generally. Additional terms:
 - a. A wife is unable to fulfill her spousal duties,
 - b. A wife has a physical impairment or an incurable illness, and
 - c. A wife is unable to have children.
 - d. cumulative prerequisites
 - e. With his wife's permission
 - f. There is no doubt that the husband can provide for his wives and their children's basic needs.
 - g. The husband's commitment to treating his wives and kids decently is a given.

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2. In accordance with the factors taken into account by the judge when making the decision in the Polewali Religious Court's polygamy permit case, decision number 325/Pdt.G/2019/PA.Pwl In essence, the petitioner's request for permission to have more than one wife (polygamy) was granted because the application for such authorization was approved and now has permanent legal validity. In light of the decision to remarry the petitioner's intended second wife, the request was granted, giving the petitioner legal authorization to do so. The author's research yielded the judge's perspective on polygamy permits for civil servants in the course of polygamy cases for civil servants, which can be accepted provided that polygamy satisfies the requirements as stated in Government Regulation Number 45 of 1990 amendment to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, because in the regulation it is clear that if civil servants who wish to practice po, In addition, the court requested a formal consent letter from the first wife in order to use it as one of the criteria in his decision to grant a polygamy permit.

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