

TERAJU

Jurnal Syariah dan Hukum

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Siska Dwi Andini and Listyowati Sumanto

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Teraju: Jurnal Syariah dan Hukum, hadir dengan edisi perdana pada Maret 2019. Dalam Kamus Besar Bahasa Indonesia (KBBI), kata "**Teraju**" memiliki beberapa makna yang satu diantaranya berarti "timbangan" atau "neraca". Kehadiran **Teraju** tak lain ingin membawa pesan sebagaimana nilai yang termuat dalam namanya, yakni timbangan yang menggunakan dua buah piringan yang digantungkan dengan rantai (tali) pada kedua ujung lengannya yang merupakan identitas syariah dan hukum di berbagai belahan dunia.

Keberadaan **Teraju:** Jurnal Syariah dan Hukum, sebagai jurnal ilmiah dan media komunikasi ilmiah dengan fokus kajian pada ilmu syariah dan ilmu hukum. Jurnal ini diterbitkan dua kali dalam setahun, yakni pada Maret dan September oleh **P3M dan Jurusan Syariah dan Ekonomi Bisnis Islam STAIN Sultan Abdurrahman Kepulauan Riau** dengan **ISSN Online 2715-386X** dan **ISSN Print 2715-3878**. Berdasarkan Surat Keputusan Direktur Jenderal Pendidikan Tinggi, Riset, dan Teknologi Nomor 204/E/KPT/2022, tanggal 03 Oktober 2022 tentang Tingkat Akreditasi Jurnal Ilmiah Periode II Tahun 2022, **Teraju:** Jurnal Syariah dan Hukum **terakreditasi SINTA 5**. **Teraju** mengundang para peminat, pengkaji, peneliti, dan akademisi untuk mempublikasikan hasil penelitian dan karyanya yang berhubungan dengan ilmu syariah dan hukum di jurnal ini.

Focus and Scope

TERAJU: Jurnal Syariah dan Hukum merupakan Jurnal Ilmiah yang memiliki **focus** pada kajian **Syariah dan Hukum**. Sedangkan **scope** dalam Jurnal ini meliputi:

- **Syariah:** Usul Fikih, Fikih, Hukum Ekonomi Syariah, Hukum Keluarga Islam, Perbandingan Mazhab, dan Ilmu Falaq.
- **Hukum:** Filsafat Hukum, Hukum Bisnis, Hukum Pidana, Hukum Perdata, Hukum Tata Negara, Hukum Adat, Hukum Internasional dan Studi Perbandingan Hukum.

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Legal Analysis of the Application of Polygamy Marriage Validation Regulations in the Sibuhuan Religious Court: Case Number 90/Pdt.P/2023/PA.Sbh and 217/Pdt.P/2022/PA.Sbh from the Perspective of Justice

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Abstract

This study examines the following cases from the perspective of justice: The procedures followed by the Sibuhuan Religious Court in polygamous marriage situations are outlined in Articles 90/Pdt.P/2023/PA.Sbh and 217/Pdt.P/2022/PA.Sbh: 1) How are the decisions of the Sibuhuan Religious Court regarding polygamous marriages implemented? 2) Cases 90/pdt.p/2023 PA.Sbh and 217/Pdt.P/2022/PA.Sbh involve polygamous marriages; what were the judges' decisions in these cases? How did the court arrive at its decisions? What factors and cases were considered? The sources consulted included the 1974 Marriage Law, Islamic legal treatises, Supreme Court circulars, decisions made by religious courts, journals, and previous studies on family law fiqh, as well as other primary and secondary sources. In line with SEMA No. 3 of 2018, the Sibuhuan Religious Court approved the marriage based on these findings. Problems have arisen as a result of court decisions in cases 90/Pdt.P/2023/PA.Sbh and 217/Pdt.P/2022/PA.Sbh, which indicate legal loopholes related to the certification of polygamous marriages. There is variability in the way judges consider legal factors.

Keywords: *legal analysis, polygamous marriage validation, justice.*

Abstract

This research examines the following instances from a justice standpoint: The procedure that the Sibuhuan Religious Court follows in situations concerning polygamous marriages is outlined in Articles 90/Pdt.P/2023/PA.Sbh and 217/Pdt.P/2022/PA.Sbh: 1) What are the procedures for carrying out the rulings of the Sibuhuan Religious Court regarding polygamous marriages? 2) The cases of 90/pdt.p/2023 PA.Sbh and 217/Pdt.P/2022/PA.Sbh involve polygamous marriage; what was the judge's decision on this matter? How did the court arrive at its decision? What factors and cases were considered? Sources consulted included the 1974 Marriage Law, Islamic legal treatises, Supreme Court circulars, judgements made by religious courts, publications, journals, and prior study on family law fiqh, as well as other primary and secondary sources. In line with SEMA No. 3 of 2018, the Sibuhuan Religious Court approved the marriage based on these findings. Problems have arisen as a result of court rulings in cases 90/Pdt.P/2023/PA.Sbh and 217/Pdt.P/2022/PA.Sbh, which suggest legal smuggling connected to the certification of polygamous marriages. There is variability in the way the judges take legal factors into account.

Keywords: *justice, legal analysis, polygamous marriage confirmation.*



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Introduction

As part of His guidance for Muslims, Allah SWT permits polygamy. In verse 3 of Surat An-Nisa, the Qur'an states the following about polygamous marriage:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَنِّي وَتِلْكَ وَرُبْعٌ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ آدَتِي أَلَّا تَعْدِلُوا

3. *And if you fear that you will not be able to deal justly with orphan girls (if you marry them), then marry women of your choice, two or three or four. Then if you fear that you will not be able to treat them fairly, then (marry) only one, or the slaves you possess. That is more likely to prevent you from doing injustice¹.*

Marriage in Indonesia is essentially monogamous according to Law Number 1 of 1974 concerning Marriage (Marriage

Law), but the state allows a husband to practise polygamy with multiple wives. Polygamy is permitted and even encouraged according to Islamic marriage law². Based on the guidelines set out in "Article 3 paragraph (1) of the Marriage Law," a husband has the right to request court approval for the purpose of having multiple wives. According to Article 4 paragraph 1 of the Marriage Law, a husband is required to obtain permission from the court in his jurisdiction if he wishes to have more than one wife³.

Assuming certain conditions are met and both parties agree, the court may allow a husband to have multiple wives.

² Anwar Hafidzi, "Prerequisites for Polygamy in Islamic Fiqh Books and Compilations of Islamic Law from the Perspective of Mashlahah Mursalah," *Al-Daulab: Journal of Islamic Law and Legislation* 7, no. 2 (2017): 366–92.

³ Republic of Indonesia, "Law No. 11 of 1974 on Marriage," 2012, 1–5.

¹ Ministry of Religious Affairs, *AL-QURAN*, 2024.

Many people take advantage of the polygamy permit, which is like a small back door. Although it is only a means to achieve the goal of following one's desires, it is still better than following the Sunnah of the Prophet. It is important to look at how the Qur'an deals with the issue of polygamy in order to dispel the misconceptions that some people have. If the Marriage Certificate does not contain evidence of marriage registration as referred to in Article 7 paragraph (2) of the KHI, an application may be submitted to the Religious Court to validate the marriage, which is called *Isbat Nikah*⁴. This loophole is used by those who practice illegal polygamy through unregistered marriages. Any person with an interest in the marriage, including the spouses, minor children, and marriage guardians, may apply for marriage validation, provided they comply with the relevant legal requirements and regulations.

Therefore, according to Article 7 paragraph (3) of the KHI, the laws and regulations regarding the legalisation of marriage apply, namely:

- a. Marriage for the purpose of finalising a divorce
- b. Loss of marriage certificate
- c. Doubts about the validity of the marriage
- d. Conducting a marriage before the enactment of Law No. 1 of 1974 on Marriage.
- e. According to Article 2(1) of Law No. 1 of 1974 on Marriage, a husband and wife may enter into marriage if there are no impediments⁽⁵⁾.

Additionally, the Supreme Court has issued regulations regarding the Validation of Integrated Marriages through PERMA No. 1 of 2015. Article 2 letters a and b of

Supreme Court Regulation No. 1 of 2015 on the Validation of Integrated Marriages have the following substance:

- a. Expanding the availability of legal representation
- b. Assisting citizens, especially those with low incomes, to access their rights to obtain marriage licences, marriage certificates, and birth certificates in a timely, affordable, and easy manner.⁶

Marriage can be formalised more easily thanks to government legislation. However, there are still people who do not have the necessary documents and are looking for ways to circumvent the rules. Problems arise when some people apply for confirmation of marriage while still legally married to someone else, a practice often referred to as confirmation of polygamous marriage.

The following studies have been conducted that are relevant to the research planned by the researcher:

1. A thesis entitled "Achmad Sofyan Sudrajad's Legal Analysis of Cilacap District Court Decision Number 0430/Pdt.P/2019/Pa.Clp and Supreme Court Decision Number 223 K/Ag/2020" examines polygamy through the lens of biological justice theory⁷.
2. Polygamy in Marriage Validation: The Sirius Perspective In his thesis for Sema Study No. 3 of 2018,

⁶ and Birth Certificate Supreme Court Regulation No. 1 of 2015 on Integrated Services for Mobile Courts and Religious Courts/Sharia Courts in the Context of Issuing Marriage Certificates, Marriage Book, "Supreme Court Regulation No. 1 of 2015 concerning Integrated Services for Mobile Courts of the State and Religious Courts/Sharia Courts in the Context of Issuing Marriage Certificates, Marriage Books, and Birth Certificates," 2015.

⁷ Achmad Sofyan Sudrajad, "Rechtvinding Itsbat Poligami Perspektif The Biological Justice Theory (Juridical Analysis of the Decision of the Cilacap District Court No. 0430/Pdt.P/2019/Pa.Clp and the Supreme Court Decision No. 223 K/Ag/2020)," *UIN Syekh Ali Hasan Ahmad Addary*, 2023, 1–130.

⁴ Ministry of Religious Affairs, "Compilation of Islamic Law in Indonesia," *Sustainability (Switzerland)* 11, no. 1 (2019): 1–14.

⁵ Indonesia, "Law No. 11 of 1974 on Marriage."

- Muhammad Nasrulloh used the title *Masalah Mursalah Syatibi*⁸.
3. According to Maqashid Syariah Ibnu Asyur: Afiani Hilda Dinuria's thesis on the Control of Polygamous Marriage Validation in Sema No. 3 of 2018⁹.
 4. Nurul Inayah titled her thesis "Analysis of the Decision on the Validation of Polygamous Marriage." This thesis reviews the decisions of the Bima Religious Court (No. 0663/Pdt.G/2014/PA.Bm) and the Mataram High Religious Court (No. 0093/Pdt.G/2014/PTA.Mtr)¹⁰.
 5. The case of Atas Nuzuluddin, which was decided by the Giri Menang Religious Court in decisions No. 225/Pdt.G/2016/PA.Gm and No. 721/Pdt.G/2017/PA.GM, concerns the confirmation of polygamous marriages¹¹.
 6. Journal by Mukhtaruddin Bahrum: Issues of Validation in Polygamy¹².
 7. Scientific journal on the validation of polygamous marriages with the name Nur Halimah¹³.

⁸ Muhammad Nasrulloh, *Isbat Nikah Poligami Siri Perspektif Maslahat Mursalah Syatibi: Studi Sema Nomor 3 Tahun 2018*, 2021.

⁹ Afivani Hilda Dinuria, "Regulation of Isbat Nikah Poligami in Sema No. 3 of 2018 (Perspective of Maqashid Syariah Ibnu Asyur)," *UIN KHLAS Jember* 2018, no. 3 (2022).

¹⁰ Nurul Inayah, "Analysis of the Decision on the Validation of Polygamous Marriage (Study of the Decision of the Bima Religious Court No. 0663/Pdt.G/2014/PA.Bm Jo Decision of the Mataram High Religious Court No. 0093/Pdt.G/2014/PTA.Mtr), 2019," *Thesis, Sunan Kalijaga State Islamic University Yogyakarta*, no. 0663 (2019).

¹¹ Nuzuluddin, "Analysis of Judges' Decisions on Polygamous (Study of Decision No. 225/Pdt.G/2016/PA.GM and No. 721/Pdt.G/2017/PA.GM)," *Abwal Al-Syakhsbiyyah Postgraduate Study Programme* 5, no. 3 (2019): 248–53.

¹² Mukhtaruddin Bahrum, "Problems with Isbat Nikah Poligami Sirri," *Al-Adalah: Journal of Islamic Law and Politics* 4, no. 2 (2019): 194–213, <https://doi.org/10.35673/ajmpi.v4i2.434>.

The following are the differences in the researchers' findings:

1. The exclusive focus of this research is on the rules of the Religious Court regarding the validation of polygamous marriages.
2. According to the research, when making decisions, judges only consider legal factors.
3. The judges' considerations are the sole focus of the researchers.

Method

Normative legal research, of which this study is an example, draws its conclusions from established legal bodies and generally recognised social norms. Peter Mahmud Marzuki argues that normative legal research seeks to answer legal questions by establishing principles, norms or doctrines.¹⁴ Normative legal research, of which this study is an example, draws its conclusions from established legal bodies and generally recognised social norms. Peter Mahmud Marzuki argues that normative legal research seeks to answer legal questions by establishing principles, norms or doctrines. The main materials used for this study are Marriage Law No. 1 of 1974, the Compilation of Islamic Law, Law No. 16 of 2019, the Supreme Court Circular Letter (SEMA), and Religious Court Decisions.

Information obtained from previous research or the results of data processing by others is considered a relatively valid legal source. Data collected from other sources is referred to as secondary data. This data comes from reliable sources, so it is dependable.¹⁵ Books on Islamic family law, journal articles related to the research issue, and relevant previous research reviews are some of the sources used by

¹³ Nurhalimah, "Isbat Nikah Poligami: A Study of Marriage Law," *Al-Azhary* 07, no. 02 (2021): 1–23.

¹⁴ Et al.) Rifa'i, Iman Jalaluddin, *Legal Research Methodology*, 2023.

¹⁵ Muhaimin, *Legal Research Methods*, vol. 11, 2019.

researchers to obtain information on this topic. To assist with the topic being researched, researchers also took notes, observed, and interviewed people.

Discussion

Definition of Isbat Nikah

The Arabic word "*istbat*" (*masdar*) and its root, "*atsbata*," both imply "determination," and both contain the element of isbat. The term meaning "to marry one another" is "*nakaha*," which is the origin of the English word "*marriage*." A man and a woman form a sacred bond, *mitsaqon gholizhon*, when they pledge their lives to each other as husband and wife and take on the special responsibility of obeying Allah's laws. This bond is seen as a form of worship¹⁶. The phrase "Isbat nikah" means "establishment of marriage" for this reason.

"Penetapan kebenaran perkawinan" is the definition of the Great Dictionary of the Indonesian Language for the confirmation of marriage. In marriage law, the phrase "setubuh dan bercampur" is used to describe this union. Marital equality gives the husband the legal right to use and enjoy his wife's honour and entire body, while experts disagree on the exact meaning of the term. However, a morally sound marriage can unite a man and a woman into one flesh and blood family, with the aim of creating a blessed and eternal household¹⁷.

Marriage Validation Application System

The term "isbat nikah" historically means formal recognition of a marriage as husband and wife according to Islamic

law, particularly in cases where all the requirements and pillars of marriage have been fulfilled. Isbat, which means "decision," is a by-product of the Religious Court, namely its action, which is formally known as *Juris Dictio Voluntair*¹⁸. Here, the KUA official in charge of recording marriages, namely the Marriage Registrar (PPN), does not even keep records of marriages that have taken place. The characteristics of voluntary disputes include the fact that the petition is not a lawsuit and there is no opposing party. Initially, the proposed law was the only criterion for accepting objections to the petition. For example, the voluntary dispute section, namely the decision on dispute petition number (No.217/Pdt.P/2022/PA.Sbh), is marked with a P. The decision will not carry any punishment other than a declarative punishment because it is a product of the court that was born in response to the petitioner's petition without any opposition. Truth, as a principle bound by the decision as "one-sided truth," is the first principle mentioned in the decision.

In this condition, the truth is expressed in a manner that benefits the petitioner; however, the truth is not disclosed to others. The second principle is based on the first: no one is bound by the strong and enforceable provisions except the person who submitted the request, their heirs, and those who acquired rights through them. Thirdly, the terms of the decision cannot be used as evidence against any party, as confirmed by the third premise. Furthermore, the established principle of the decision does not have the authority to be enforced. The reason for this is that the provision cannot

¹⁶ Meita Djohan Oe, "Isbat Nikah in Islamic Law and Legislation in *Indonesia*," 5, no. 3 (2013): 248–53.

¹⁷ Hukama Zulhaiba et al., "Marriage in Islam Builds a Family Full of Peace, Love and Mercy Madrasah Ibtidaiyah Teacher Education Study Programme Will Provide Them with the Ability to," no. 1 (2025).

¹⁸ Maria Rosalina et al., "The Process of Examining Civil Lawsuits in District Courts," *Jurnal Pengabdian Mitra Masyarakat* 3, no. 1 (2023): 47–52, <https://doi.org/10.30743/jurpammas.v3i1.7978>.

have any value in terms of enforceability due to its declarative nature¹⁹.

Understanding Polygamy

"Polus" (meaning "many") and "Gamos" (meaning "marriage" in Greek) originate from German. Having more than one wife is considered socially acceptable for men, but not for women. To distinguish between the two concepts, researchers use the English word polygamy, which comes from the Greek words polus (meaning "many") and gune (meaning "woman")²⁰. "Polygamy" refers to a pattern of marriage in which a husband has more than one wife. Derived from the Greek words polus ("many") and aner andros ("man"), the words polyandry and polygamy refer to the same thing.

According to Islamic law, polygamy is permitted to a certain extent. Although the Qur'an only allows four wives, some scholars argue that the number should be greater. People disagree on whether polygamy is permissible because they read the passage differently. The historical development of polygamy and matters related to its intended purpose inform the basis for establishing laws related to polygamy. Before Islam, polygamy was common in Arab and non-Arab countries. There were restrictions on the number of partners one could marry when Islam came into the world. Islam established rules for successful and fair polygamy²¹.

Polygamy existed long before Islam spread throughout the world. Citizens of Russia, Yugoslavia, Czechoslovakia, Germany, Belgium, the Netherlands,

Sweden, and the United Kingdom still practise polygamy in some modern European countries. Polygamy is also practised by some Eastern societies, such as the Hebrews and Arabs. Consequently, the claim that Islam is the birthplace of polygamy regulations is unfounded, as modern polygamy regulations also exist and have developed in various countries. Multiple spouses, or *ta'adduduz-zaujaat* in Arabic, is the definition of polygamy according to Islamic legal terminology²². Marriage in which one spouse has or marries multiple individuals of the opposite sex at the same time is referred to as polygamy in the Legal Dictionary.

Legal Basis for Marriage Validation

Those who were legally married in an unofficial ceremony before the enactment of Law No. 1 of 1974 on Marriage were initially only given the authority to validate their marriage in a religious court. The Compilation of Islamic Law (KHI) in Article 7 paragraphs 2 and 3 states that "In the event that a marriage cannot be proven by a marriage certificate, the legalisation of the marriage may be submitted to the Religious Court," which further expands and deepens this authority. "The validation of marriages submitted to the Religious Court is limited to matters related to the following conditions²³:

- a. the settlement of divorce
- b. loss of marriage certificate.
- c. Concerns regarding the legality of marriage obligations
- d. Marriages that occurred before the enactment of Law No. 1 of 1974 on Marriage
- e. As long as it does not violate Law Number 1 of 1974 concerning

¹⁹ Arzani Rezky Apdina, "A Judicial Review of Non-Enforceable *AkMen Scientific Journal* 15, no. 2 (2018): 247–56.

²⁰ Mughni Labib Ilhamuddin Is Ashidiqie, "Polygamy in the Context of Sharia Law and Reality," *Al-Ahwal Al-Syakhshiyah: Journal of Family Law and Islamic Justice* 2, no. 2 (2021): 199–218, <https://doi.org/10.15575/as.v2i2.14332>.

²¹ Abdul Edo Munawwar, "Polygamy Rules: Reasons, Objectives, and Levels of *Achievement*," XVII, no. 1 (2021).

²² Elva Imeldatur Rohmah, "The Problematic Nature of Polygamy Across History and Religion," *Al-Qanun: Journal of Islamic Legal Thought and Reform* 25, no. 1 (2022): 85.

²³ Ministry of Religious Affairs, "Compilation of Islamic Law in Indonesia."

Marriage, anyone can get married. Based on Article 64 of Law Number 1 of 1974 concerning Marriage, marriages that took place before the enactment of this law and were carried out legally according to previous provisions remain valid and legally binding.

The Theory of Justice in Judicial Decisions in Court

1. Substantive Justice

The root of the English word "*justitia*" (justice) is "*fair*," which means impartial, unbiased, appropriate, not arbitrary, and siding with the righteous²⁴. Based on various definitions, it is clear that justice encompasses all aspects of human relations, including the requirement that individuals treat each other fairly in accordance with their rights and responsibilities, without showing favouritism or discrimination.

According to Black's Law Dictionary, 7th edition, "substantive justice" means that the substantive rights of the plaintiff will be upheld regardless of whether there are procedural errors²⁵. This suggests that there may be injustice if what is right in terms of process turns out to be wrong in terms of substance. On the other hand, if the form is wrong, it may be acceptable if the content is sufficiently fair; judges are willing to overlook procedural violations as long as they do not jeopardise the essence of justice. In other words, judges are not obliged to consistently disregard explicit legal language in order to uphold substantive justice. On the other hand, the concept of

substantive justice allows courts to disregard laws that fail to promote justice.

The main purpose of substantive justice is to uphold the basic principles of law. This is to prevent matters centred on legal processes from discussing the substance of the law. Substantive justice, according to theorists, is a kind of distributive justice that regulates the fundamental organisation of society in all matters, both good and bad. Every social institution is structured to encourage fair interaction between the two genders in accordance with this principle of justice. The basic principle of distributive justice is the guarantee of fair access to justice for all²⁶.

2. John Rawls' Social Justice

For John Rawls, justice is nothing more than fairness²⁷. John Rawls' views are based on Kant's deontological teachings and Rousseau and Locke's social contract theory. The following are some of his views on justice:

- a. This justice also stems from the right decision. This stems from Rawls' premise that, in reality, members of society are unaware of their starting point, aspirations, generational affiliations, and social groups (veil of ignorance). In other words, people in society are a vague concept. As a result, the principles of justice are chosen by society.
- b. Pure procedural justice is a product of justice as fairness. To define "fair" in the context of pure procedural justice, one need not look beyond the method itself. It is not the outcome that reveals justice, but rather the system or process.

²⁴ Veronika Niken and Debi F Ng Fallo, "A Judicial Review of Judges' Decisions on Criminal Cases of Sexual Intercourse Committed by Children," no. 4 (2024).

²⁵ Murlinus, "Legal Analysis of the Ultra Petita Principle by the Constitutional Court as an Effort to Realise Substantive Justice in Indonesia," 33, no. 1 (2022): 1–12.

²⁶ Muslimah Hayati, "Juridical Analysis of Pros and Cons of Opinions," n.d.

²⁷ Neneng Putri Siti Nurhayati Andra Triyudiana, "The Application of the Principle of Justice as Fairness According to John Rawls in Indonesia as the Embodiment of Pancasila," *Das Sollen: Journal of Contemporary Legal and Social Studies* 02, no. 01 (2023): 1–25, <https://doi.org/10.11111/dassollen.xxxxxxx>.

First, two principles of justice will be selected, according to John Rawls²⁸.

History of the Sibuhuan Religious Court

Through a presidential decree, the Sibuhuan Religious Court was established on 26 April 2016 in Jakarta. The court office is located in Sibuhuan. The Medan Religious High Court has jurisdiction over Padang Lawas Regency in North Sumatra Province through the Sibuhuan Religious Court. Law No. 3 of 2006 expanded the authority of the Religious Court beyond its original scope by revising Law No. 7 of 1989 and establishing the court. Disputes related to Islamic economics must be accepted, examined, and resolved by this body²⁹.

Legal Analysis of the Application of Polygamous Marriage Validation Regulations in the Sibuhuan Religious Court Case Number 90/Pdt.P/2023/PA.Sbh and Number 217/Pdt.P/2022/PA.Sbh

The Compilation of Islamic Law, Supreme Court Regulation Number 1 of 2015 concerning the Validation of Integrated Marriage announced the introduction of legally recognised marriages.³⁰ Marriages that took place before the Marriage Law was enacted, marriages that are being considered as part

of a divorce settlement, marriages whose marriage certificates have been destroyed or lost, marriages whose marriage requirements are in doubt, and marriages for which there are no legal obstacles to the marriage, are all subject to the provisions outlined in the Act. If the local religious court finds that all the necessary requirements have been met, the marriage can be legalised.

Marriage is regulated in Law No. 16 of 2019, which is an extension of Law No. 1 of 1974 and forms the basis for the rules on polygamy in Indonesia. For polygamy to be legal in Indonesia, certain rules must be met: Couples can apply to their local court in their respective jurisdictions, provided they meet the following criteria: The wife's consent is not required if the husband can obtain it and she is not a party to the agreement, if she has not been in contact for at least two years, or if there are other factors that need to be considered by the judge. The husband will treat his family fairly and will be able to meet their basic needs, as well as the needs of his wife and children.³¹ Polygamy can be legitimised if a woman is unable to fulfil her role as a wife due to mental or physical disability, an incurable illness, or an inability to bear children. It can then be brought before the local religious court if all these requirements are met.

Unlike the provisions regarding polygamous marriage, in making decisions on this arrangement, one must refer to the 2018 Supreme Court Plenary Session Decision, SEMA No. 3 of 2018, which discusses the application of the decision in this session to the current operational activities of the court. To "ensure the interests of the child," SEMA states that a person may request information about the child's origins.³²

²⁸ Sunaryo Sunaryo, "John Rawls' Concept of Fairness, Criticism and Its Relevance," *Jurnal Konstitusi* 19, no. 1 (2022): 001, <https://doi.org/10.31078/jk1911>.

²⁹ Sibuhuan Religious Court, "Https://Pa-Sibuhuan.Go.Id/," n.d.

³⁰ Supreme Court Regulation Number 1 of 2015 concerning Integrated Services for Mobile Courts of the State Court and Religious Court/Sharia Court in the Context of Issuing Marriage Certificates, Marriage Book, "Supreme Court Regulation No. 1 of 2015 concerning Integrated Services for Mobile Court Sessions of the District Court and Religious Court/Sharia Court in the Context of Issuing Marriage Certificates, Marriage Books, and Birth Certificates."

³¹ Indonesia, "Law No. 11 of 1974 on Marriage."

³² Supreme Court, "Enforcement of the Results of the 2018 Supreme Court Plenary Meeting as Guidelines for the Implementation of Court Duties" (Supreme Court, 2018).

1. Even for the interests of the child, the Religious Court cannot accept or approve a request for the legalisation of a polygamous marriage based on a secret marriage.

2. If both parents are involved in a secret polygamous marriage, it is possible to file a request discussing the child's origins to protect the child's legal rights.

The judge of the Sibuhuan Religious Court, Mr Taufiqurrahman, made the following statement in a study conducted by the court's researchers:

"Judges who make decisions based on SEMA should only use it as a supplement and guide for other precedents, such as compilations of Islamic law and marriage law."

Based on the judge's decision, SEMA is only used in cases where the law is unclear or ambiguous. Judges will use SEMA as a legal framework for making decisions. The judge's decision confirms that unregistered polygamous marriages are not permitted to be regulated. However, this appears to be an attempt to circumvent the law on unregistered polygamous marriages, as the Sibuhuan Religious Court judge has rejected such marriages in cases 217/Pdt.P/2022/PA.Sbh and 90/Pdt.P/2023/PA.Sbh.

The following table was created by the researcher to compare the judges' rulings:

Table 1 Comparison of Rulings

No	Decision No.	Ruling Status	Comparison of Laws
1	217/Pdt.P/2022/PA.Sbh	Rejected	Article 7(2) of the Compilation of Islamic Law, Article 7(3) of the Compilation of Islamic Law, Article 7(4) of the Compilation of Islamic Law, Article 3 of Law No. 1 of 1974 on Marriage and Law No. 16 of 2019 on Marriage jointly, Article 9 of Law No. 1 of 1974 on Marriage and Law No. 16 of 2019 on Marriage jointly, Article 4 of Law No. 1 of 1974 on Marriage and Law No. 16 of 2019, and Article 5 of Law No. 1 of 1974 on Marriage and Law No. 16 of 2019.
2	90/Pdt.P/2023/PA. Sbh	Granted	Law No. 1 of 1974 on Marriage, Article 2 Paragraph (2) in accordance with Law No. 16 of 2019. Constitutional Provision No. 1 of 1991 concerning Islamic Law, Article 14. Article 7 Paragraph (4) of Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law.

This table allows one to compare the decision-making processes of different judges. Case 90/Pdt.P/2023/PA.Sbh

shows judicial bias because the verdict was handed down without taking into account the provisions on polygamy in the

marriage law. On the other hand, Case 217/Pdt.P/2022/PA.Sbh included legal justification for polygamy and was therefore rejected on that basis. The concept of justice should have been prioritised in both cases as they were identical. Nevertheless, attempts to smuggle in illegal polygamy were evident in both cases.

The Supreme Court has established general and specific qualifications for judges, as they are an integral part of the judicial institution and play an important role in resolving disputes between institutions. When talking to Mr Taufiqurrahman, a judge at the Sibuhuan Religious Court, the researcher asked for his opinion on the following aspects of justice related to the judicial decision-making process:

"Justice is a sacred ideal, and judges are seen as divine messengers sent from heaven. Substantive justice is used by judges when they decide a case."

In line with public sentiment and demands for justice or what satisfies the public's sense of justice, substantive justice is a form of true justice. This means that what is technically correct in terms of procedure can be held accountable if it significantly and fundamentally undermines justice. On the other hand, if something is fundamentally and substantially fair, it can be justified even when it is formally procedurally incorrect. When we talk about substantive justice, it implies that the court can disregard unjust laws while following a fair formal legal process that provides legal certainty.

There should be no conflict between the two marriage validation petitions (No. 217/Pdt.P/2022/PA.Sbh) and the decision (No. 90/Pdt.P/2023/PA.Sbh) according to the researcher's conclusion, as both discuss the same subject matter. According to the researcher, the parties already had divorce certificates from the Sibuhuan Religious

Court before filing for marriage validation, therefore the decision was based on legal facts. As God's representatives on earth, the panel of judges has a dual responsibility, namely to protect the community and provide legal clarity for those seeking justice, as well as to ensure that those seeking justice obtain it. Given the position of the Religious Court as one of the state organs whose primary duty is to uphold the right to justice guaranteed by Pancasila and the 1945 Constitution of the Republic of Indonesia, this becomes very clear.

Conclusion

Article 3 paragraph (1) "Implementation of the 2018 Supreme Court Plenary Meeting Results as Guidelines for the Implementation of Court Duties" in Circular Letter Number 3 of 2018 regulates the legalisation of polygamous marriages by the Sibuhuan Religious Court. a). The Religious Court will not consider requests to validate polygamous marriages based on unregistered marriages, regardless of whether it is in the best interests of the child. b) A child whose parents' polygamous marriage was conducted unofficially may claim their legal rights by requesting information about their parents' marital status. Various factors, including polygamy, were taken into consideration by the court in its decisions on cases 90/Pdt.P/2023/PA.Sbh and 217/Pdt.P/2022/PA.Sbh. Substantive justice, which judges use in making decisions, ensures legal clarity while providing a sense of justice.

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