

**ANALYSIS OF JUDGE'S DECISION ON REJECTION OF  
POLYGAMOUS MARRIAGE PROPOSAL IN *SADD ADZ-DZARI'AH*  
PERSPECTIVE**

**(Decision Study Number 280/Pdt.G/2020/PA.Sbh)**

**UNDERGRADUATE THESIS**

by:  
Thariqul Khaira  
SIN 18210155



**ISLAMIC FAMILY LAW DEPARTMENT  
SYARI'AH FACULTY  
STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM  
MALANG**

**2022**

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**MALANG**

**2022**

## STATEMENT OF THE AUTENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

### ANALYSIS OF JUDGE'S DECISION ON REJECTION OF POLYGAMOUS MARRIAGE PROPOSAL IN *SADD ADZ-DZARI'AH* PERSPECTIVE

(Decision Study Number 280/Pdt.G/2020/PA.Sbh)

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 17<sup>th</sup> of May 2022

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## APPROVAL SHEET

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**ANALYSIS OF JUDGE'S DECISION ON REJECTION OF  
POLYGAMOUS MARRIAGE PROPOSAL IN *SADD ADZ-DZARI'AH*  
PERSPECTIVE**


**(Decision Study Number 280/Pdt.G/2020/PA.Sbh)**

The supervisor stated that this thesis has met the scientific requirements to be  
proposed and to be examined on the Assembly Board of Examiners.

Malang, 17<sup>th</sup> of May 2022

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## PENGESAHAN SKRIPSI

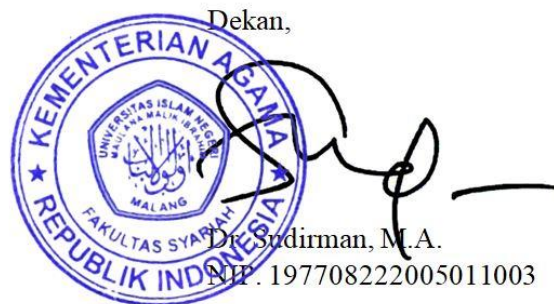
Dewan Penguji Skripsi saudara/i Thariqul Khaira, NIM 18210155, mahasiswa Program Studi Hukum Keluarga Islam Fakultas Syariah Universitas Islam Negeri Maulana Malik Ibrahim Malang dengan Judul:

### **Analysis of Judge's Decision on Rejection of Polygamous Marriage Proposal in Sadd Adz-dzari'ah Perspective**

Telah dinyatakan lulus dengan nilai: A

Malang, 16 Juni 2022

*Scan Untuk Verifikasi*



## MOTTO

وَإِنْ خِفْتُمْ أَلَّا تُفْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَنِّي وَتُلاثٌ وَرُبْعٌ فَإِنْ خِفْتُمْ أَلَّا  
تَعْدِلُوا فَوَاحِدَةٌ أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَلِكَ أَذَىٰ آلَا تَعُولُوا

*“And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hands possess [i.e., slaves].*

*That is more suitable that you may not incline [to injustice].”<sup>1</sup>*

[An-Nisa’ (4);3]

---

<sup>1</sup> Saheeh Internasional, [https://quranenc.com/en/browse/english\\_saheeh/4/3](https://quranenc.com/en/browse/english_saheeh/4/3)

## ACKNOWLEDGMENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Alhamdulillahirabbil'alamin, have given His rahmat and servan, so we can finish this thesis entitled “Analysis Of Judge’s Decision On Rejection Of Polygamous Marriage Proposal In *Sadd Adz-Dzari’ah* Perspective (Decision Study Number 280/Pdt.G/2020/PA.Sbh)”. Peace be Upon into The Rasulullah Prophet Muhammad SAW who has taught us guidance (*uswatun hasanah*) to do activity correctly in our life. By following Him, may we belong to those who believe and get their intercession on the last day of the end. Amien.

From all the teaching, advice, guidance, and helps of service for us to finish this thesis, then with all humanity the writer will expresses the gratitude which is unequalled to:

1. Prof. Dr. M. Zainuddin, MA, as the Rector of The State Islamic University Maulana Malik Ibrahim of Malang.
2. Dr. Sudirman, M.A., as the Dean of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
3. Erik Sabti Rahmawati, MA., as the Head of Family Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang,
4. Dr. Zaenul Mahmudi, M.A, as my thesis supervisor. The writer thanks for his spending time to guide, direct, and motivate to finish writing this thesis. The writer hopes that he and his family will be blessed by Allah.
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6. All lecturers at Syariah Faculty of the State Islamic University of Maulana Malik Ibrahim of Malang who have provided learning to all of us. With sincere intentions, may all of their charity be part of worship to get the pleasure of Allah SWT.
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9. My beloved friends in UIN Malang during the study, especially member of Islamic Family Law Department in International Class Program (ICP) 2018
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With the completion of this thesis report, the hope that knowledge which we have gained during our studies can provide the benefits of life in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for the forgiveness, criticism and suggestions from all parties for future improvement efforts.

Malang, 17<sup>th</sup> of May 2022

Writer,

Thariqul Khaira  
SIN 1820155



## TRANSLITERATION GUIDENCE

### A. General

Transliteration is the transfer of Arabic script into Indonesian (Latin) writing, not Arabic translation into Indonesian. Included in this category are Arabic names from Arabs, while Arabic names from nations other than Arabic are written as spelling of the national language, or as written in the reference book. Writing the title of book in the footnote and bibliography, still use the provisions of this transliteration

### B. Consonant

Arab	Latin	Arab	Latin
ا	A	ط	Th
ب	B	ظ	Zh
ت	T	ع	‘
ث	Ts	غ	Gh
ج	J	ف	F
ح	H	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dz	م	M
ر	R	ن	N
ز	Z	و	W
س	S	هـ	H
ش	Sy	ء	‘
ص	Sh	ي	Y
ض	DI		

Hamzah (ء) which is often symbolized by alif, if it is located at the beginning of a word, then in its transliteration follows the vowel, it is not symbolized, but if it is located in the middle or end of a word, it is symbolized by the comma above (‘), turning around with a comma (‘) to substitute for the “ع” symbol.

### C. Vocal, long-pronounce and diphthong

Every Arabic writing in the form of Latin fathah vowels is written with “a”, kasrah with “i”, dlommah with “u”, while long readings are each written in the following way;

Vocal <i>fathah</i>	= a
Vocal <i>kasrah</i>	= i
Vocal <i>dlommah</i>	= u

While long readings are each written in the following way;

Long-vocal (a) =	Â	e.g.	â	قال	become	Qâla
Long-vocal (i) =	Î	e.g.	î	قيل	become	Qîla
Long-vocal (u) =	Û	e.g.	û	دون	become	Dûna

Specifically for reading ya’ nisbat, it should not be replaced with “i” but it should still be written by “iy” in order to describe the ya’ nisbat at the end. Likewise for the diphthong, wawu and ya’ after fathah is written with “aw” and “ay”. Look the following example:

Diphthong (aw) =	و	e.g.	قول	become	Qawlun
Diphthong (ay) =	ي	e.g.	خير	become	Khayrun

### D. Ta’ marbuthah (ة)

Ta’ marbûthah translited as “t” in the middle of word, but if Ta’ marbûthah in the end of word, it translited as “h” e.g. الرسالة المدرسة become *alrisalat li al-mudarrisah*, or in the standing among two word that in the form of mudhaf and

mudla ilaih, it transliterated as t and connected to the next word, e.g. الله ي رحمة become *fī rahmatillâh*.

### **E. Auxiliary Verb and Lafadh al-Jalâlah**

Auxiliary verb “*al*” (ال) written with lowercase form, expect if it located it the position and “*al*” in lafadh al-Jalâlah which located in the middle of two or being or become *idhafah*, it remove frome writing.

- a. Al-Imâm al-Bukhâriy said...
- b. Al-Bukhâriy in muqaddimah of his book said...
- c. *Masyâ Allah kâna wa mâ lam yasya ‘ lam yakun..*
- d. *Billâh ‘azza wa jalla..*

### **F. Name and Indonesianized Arabic Word**

In principle, every word that comes from Arabic must be written using a transliteration system. If the word is an Indonesian Arabic name or an Indonesianized Arabic language, it does not need to be written using a transliteration system. Consider the following example:

“... Abdurrahman Wahid, the former Indonesian President, and Amin Rais, former Chair of the MPR at the same time, have made an agreement to eridicate nepotism, collusion and corruption from the face of Indonesian earth, one way through intensifying prayers in various government offices, but ...”

Look at the writing of the name “Abdurrahman Wahid”, “Amin Rais” and te word “salat” written using Indonesian language procedures that are tailored to the writing of his name. Even if theve words come from Arabic, they are Indonesian names and are Indonesianized, therefore they are not written by “Abd al-Rahman Wahid”, “Amîn Raîs”, and not written with “shalat”.

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## ABSTRAK

Khaira, Thariqul. 18210155. “Analisis Putusan Hakim Dalam Penolakan Permohonan Izin Poligami Perspektif *Sadd Adz-Dzari’ah* (Studi Putusan No. 280/Pdt.G/2020/PA.Sbh)”. Skripsi. Jurusan Hukum Keluarga Islam. Fakkultas Syariah. Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Dr. Zaenul Mahmudi, M.A.

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**Kata Kunci :** Putusan Izin Poligami, *sadd adz-dzari’ah*, kondisi psikis istri

Poligami merupakan perkara yang dibolehkan dalam hukum Islam sebagaimana tertuang dalam surat an-nisa’ ayat 3. Dalam undang-undang perkawinan Indonesia, poligami dibolehkan apabila memenuhi syarat yang telah ditentukan. Salah satunya, persetujuan istri pertama untuk dipoligami. Pada putusan no. 280/Pdt.G/2020/PA.Sbh permohonan izin poligami ditolak oleh hakim, padahal istri pertama sudah memberi izin kepada suami untuk melakukan poligami. Sehingga, penelitian ini fokus membahas mengenai pertimbangan hakim kemudian di analisis menggunakan metode penggalian hukum *sadd adz-dzari’ah*.

Penelitian ini merupakan jenis penelitian normatif (*Library Research*) dengan menggunakan pendekatan kasus (*Case Approach*) yang dilakukan dengan cara menelusuri, mencari, dan menelaah bahan berupa putusan, undang-undang, buku, jurnal dan sumber lainnya yang berkaitan dengan tema poligami dan *sadd adz-dzari’ah*.

Hasil Penelitian ini menunjukkan bahwa terdapat tiga pokok pertimbangan hakim dalam memutuskan perkara pada putusan No. 280/Pdt.G/2020/PA.Sbh yaitu; *Pertama*, Pertimbangan hakim mengenai alasan suami melakukan poligami untuk menambah anak lagi tidak sesuai dengan salah satu syarat alternatif poligami yang terdapat pada pasal 4 ayat (2) Undang-undang Perkawinan. *Kedua*, Pertimbangan hakim mengenai persetujuan istri yang diberikan karena terpaksa, hakim menilai bahwa istri berkeberatan untuk dimadu sehingga tidak memenuhi syarat kumulatif poligami yang terdapat pada pasal 41 huruf (a) Peraturan Pemerintah No. 9 Tahun 1975. *Ketiga*, Pertimbangan hakim mengenai prosedur poligami yang tidak sesuai dengan pasal 40 Peraturan pemerintah nomor 9 tahun 1975 karena pemohon dan calon istri kedua telah melakukan pernikahan poligami secara *sirri* sebelum mengajukan permohonan izin poligami ke pengadilan agama Sibuhuan. Menurut *sadd adz-dzari’ah*, apabila ditinjau dari sisi diterima atau tidaknya, perkara permohonan tersebut sama-sama mengandung *mafsadah*. perbedaannya terletak pada kualitas *mafsadah*; apabila perkara diterima, kualitas *mafsadah*nya adalah *qath’i*, yaitu terganggunya kondisi psikis istri pertama (tertekan) dan kondisi psikis anak-anak mereka, meningkatnya kasus pernikahan *sirri* pada masyarakat. apabila perkara ditolak, kualitas *mafsadah*nya adalah *ghalib*, yaitu tidak adanya perlindungan hukum terhadap istri kedua apabila terjadi kekerasan dalam rumah tangga, status anak dalam administrasi tidak jelas. Menutup *mafsadah* yang pasti lebih didahulukan, sehingga berdasarkan analisis *sadd adz-dzari’ah* perkara ini lebih baik ditolak karena lebih rendah kualitas *mafsadah*nya.

## ABSTRACT

Khaira, Thariqul. 18210155. “**Analysis Of Judge's Decision On Rejection Of Polygamous Marriage Proposal In *Sadd Adz-Dzari'ah* Perspective (Decision Study Number 280/Pdt.G/2020/Pa.Sbh)**”. Undergraduate Thesis. Islamic Family Law Department. Faculty of Shariah. State Islamic University Maulana Malik Ibrahim Malang. Supervisor: Dr. Zaenul Mahmudi, M.A.

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Keyword : The Decision about Polygamy Permits, *sadd adz-dzari'ah*, the psychology of the first wife.

Polygamy is allowed in Islamic law. This capacity is established in an-Nisa 4: (3). On the other hand, Polygamy is permitted under Indonesian marriage law if certain requirements are fulfilled. One of them, is the permission from the first wife to practice the polygamous marriage. The Sibuhuan religious court judge rejected the application for polygamy permission in decision number 280/Pdt.G/2020/PA.Sbh, even though the first wife had given her husband permission to conduct a polygamous marriage. Thus, this study focuses on examining judges' considerations in rejecting permissions for polygamy permits, which are subsequently analyzed using the *sadd adz-dzari'ah*.

The type of this research is normative research, commonly referred to as library research. this research *uses* a case *approach* which is carried out by tracing, searching, and reviewing materials in the form of decisions, laws, books, journals and other related sources with the theme of Polygamy and *sadd adz-dzari'ah*

This study shows that the judge made three main considerations in deciding the case in decision number 280/Pdt.G/2020/PA.Sbh; *First*, the judge's consideration that the husband's reason for Polygamy is to add more children is not one of the alternative requirements for Polygamy contained in Article 4 paragraph (2) of Law Number 1 of 1974 concerning Marriage. *Second*, the judge determined that the wife was not willing to be polygamous. Therefore it did not fulfil the cumulative requirements for Polygamy contained in article 41 letter (a) Government Regulation number 9 of 1975 concerning the implementation of Law number 1 of 1975. *Third*, the judge's considerations regarding polygamy procedures are not following Article 40 of Government Regulation No. 9 of 1975 concerning the implementation of Law No. 1 of 1974 because the applicant and the prospective second wife have performed a unregistered polygamous marriage (*sirri*) before applying for a polygamy permit to the Sibuhuan religious court.

According to *sadd adz-dzari'ah*, whether the application is accepted or rejected, both contain *mafsadah*; the difference is in the quality of the *mafsadah*; if the case is accepted, the quality of the *mafsadah* is *qath'i* (the disruption of the psychological condition of the first wife (depressed) and the psychological condition of their children, increasing cases of unregistered marriage in the community). If the case is rejected, the quality of the *mafsadah* is *ghalib* (the absence of legal protection for the second wife in the event of domestic violence, the status of the child in the administration is not

clear). Avoiding the *qath'i mafsadah* takes precedence. Hence this case is better rejected based on the *sadd adz-dzari'ah* because of the quality of the *mafsadah* is lower.



## ملخص البحث

الخير، طارق، ١٨٢١٠١٥٥، ٢٠٢٢. "تحليل حكم القاضي برد مطالبة تصريح تعدد الزوجات من وجهة نظر سد الذرائع". المقالة . قسم الأحوال الشخصية ، كلية الشريعة، الجامعة مولانا مالك إبراهيم الإسلامية الحكومية مالالنج. المشرف : د.ر. زين المحمود

### الكلمات المفتاحية : تصريح تعدد الزوجات, سد الذرائع, الحالة النفسية للزوجة الأولى

تعدد الزوجات هو أمر مسموح به في الشريعة الإسلامية هذه القدرة مذكورة في القرآن سورة النساء الآية ٣. ومع ذلك ، في قانون الزواج الإندونيسي ، يُسمح بتعدد الزوجات إذا استوفى الشروط المحددة في القانون. أحدهم ، وهو الزوج الذي يريد أن يتزوج متعدد الزوجات ، يجب أن يحصل على إذن من زوجته الأولى لإجراء زواج متعدد الزوجات. . في الحكم رقم 280/Pdt.G/PA.Sbh رد قاضي محكمة الدينية سيوهوان في طلب تصريح تعدد الزوجات ، على الرغم من أن الزوجة الأولى منحت زوجها الإذن بالزواج متعدد الزوجات. وبذلك تركز هذه الدراسة على مناقشة اعتبارات القضاة في رد طلبات الحصول على تصريح تعدد الزوجات ، ثم يتم تحليل هذه الاعتبارات بطريقة استخراج قانون السد الذريعي.

هذا البحث هو نوع من البحث المعياري أو يشار إليه عموماً باسم بحث المكتبة باستخدام نهج حالة، التي تتم من خلال تتبع وبحث ومراجعة المواد في شكل قرارات وقوانين وكتب ومجلات ومصادر أخرى تتعلق بموضوع تعدد الزوجات و سد الذرائع.

نتيجة هذا البحث أن هناك ثلاثة اعتبارات الرئيسية للقاضي في قضية طلب تصريح تعدد الزوجات في رقم الحكم 280/Pdt.G/PA.Sbh إنه؛ أولاً ، نظر القاضي في سبب الزوج لتعدد الزوجات هو إضافة المزيد من الأبناء ، لا يتماشى مع أحد المتطلبات البديلة لتعدد الزوجات الواردة في المادة ٤ فقرة (٢) من القانون رقم ١ لسنة ١٩٧٤ بشأن الزواج. ثانياً ، نظر القاضي فيما يتعلق بموافقة الزوجة التي أعطيت بسبب إجبارها على ذلك ، اعتبر القاضي أن الزوجة اعترضت على الزواج حتى لا تستوفي المتطلبات التراكمية لتعدد الزوجات الواردة في المادة ٤١ حرف (أ) من اللائحة الحكومية رقم ٩ لسنة ١٩٧٥ بشأن تنفيذ القانون رقم ١ لسنة ١٩٧٤. نظر القاضي في موافقة الزوجة لأنها أجبرت على ذلك ، واعتبر القاضي أن الزوجة اعترضت على تعدد الزوجات بحيث لا يستوفي المتطلبات التراكمية لتعدد الزوجات الواردة في المادة ٤١ حرف (أ) اللائحة الحكومية رقم ٩ لعام ١٩٧٥ بشأن تنفيذ القانون رقم

١ لسنة ١٩٧٤ . ثالثاً ، اعتبارات القاضي فيما يتعلق بإجراءات تعدد الزوجات التي لا تتفق مع المادة ٤٠ من اللائحة الحكومية رقم ٩ لسنة ١٩٧٥ بشأن تنفيذ القانون رقم ١ لسنة ١٩٧٤ لأن الزوج والزوجة الثانية المرتقبة قد أبرما زواجاً متعدد الزوجات بطريقة سري قبل التقدم بطلب للحصول على تصريح تعدد الزوجات إلى محكمة الدينية سيوهوان . وبحسب السد الذرائع ، عند النظر إليه من وجهة نظر قبول الطلب أم لا ، فإن كلاهما يحتوي على مفسدة ، والفرق بينهما يكمن في نوعية المفسدة . وإذا قضية قُبلت فإن صفة المفسدة ممنوعة قطعاً (دون اختلاف في الرأي) وهي تعطيل الحالة النفسية للزوجة الأولى (المكتئبة) والحالة النفسية لأطفالهما ، وزيادة حالات الزواج غير المسجل في المجتمع ، وإذا رُفضت القضية فصفة المفسدة غالب (عادة ممنوعة باختلاف الرأي) وهي عدم وجود حماية قانونية للزوجة الثانية في حالة العنف الأسري ، وضع الطفل في الإدارة غير واضح . وإغلاق المفسدة القطعية له الأسبقية ، فبناءً على تحليل السد الذريعي فإن هذه الحالة أفضل رفضاً لأن نوعية المفسدة منخفضة .

# CHAPTER I

## INTRODUCTION

### A. Research Background

Polygamy is a type of marriage that is frequently discussed among Muslims. A polygamous marriage is when a man marries two or more women simultaneously. Polygamy is governed in Indonesia's Marriage Law and the Compilation of Islamic Law on terms and execution.<sup>2</sup> Polygamy is a fascinating topic to debate because many people have engaged in polygamous marriages and others oppose it for various reasons, including normative, psychological, and even concerns of gender inequity. On the other hand, those who support polygamy, they rely on apparent and obvious reasons; Islam permits polygamous marriage in a form that is permissible under Islamic law. However, many people still do not understand the genuine meaning of polygamy; therefore, it is mainly exploited to gratify sexual wants, with little regard for the noble purpose it serves. Regardless of the pros and cons, many people who commit polygamous marriages violate current religious and state laws.

According to state law, Polygamous Marriage is regulated in Law Number 1 of 1974 on Marriage and Presidential Decree Number 1 of 1991 on the Compilation of Islamic Law. In-Law Number 1 of 1974 on marriage, marriage generally adheres to

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<sup>2</sup> Rijal Imanullah, *Poligami Dalam Hukum Islam Indonesia (Analisis Terhadap Putusan Pengadilan Agama No. 915/Pdt.G/2014/PA.BPP Tentang Izin Poligami)*, Mazahib; Jurnal pemikiran hukum islam, Vol XV, No. 1, 2016, 105

the principle of monogamy except when religious law specifies otherwise. While in the Compilation of Islamic Law article 55 paragraph (2), it is explained that polygamous marriage is allowed if it has met the requirements, the main requirement of polygamous marriage is that the husband must be able to be fair to his wife and children. This is in line with the quran in an-Nisa' (4) : 3;

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثَلًا وَثُلُثَ وَرُبُعٍ فَإِنَّ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ

“And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hands possess [i.e., slaves]. That is more suitable that you may not incline [to injustice].”<sup>3</sup>

And the Qur'an in an-Nisa' (4) : 129;

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ وَإِنْ تُصْلِحُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا

“And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so]. So do not incline completely [toward one] and leave another hanging.[221] And if you amend [your affairs] and fear Allāh - then indeed, Allāh is ever Forgiving and Merciful.”<sup>4</sup>

<sup>3</sup> Saheeh International, [https://quranenc.com/en/browse/english\\_saheeh/4/3](https://quranenc.com/en/browse/english_saheeh/4/3)

<sup>4</sup> Saheeh International, [https://quranenc.com/en/browse/english\\_saheeh/4/129](https://quranenc.com/en/browse/english_saheeh/4/129)

The principle of marriage in Islam is monogamy, as may be seen from these two verses. As stated in verse, the capacity to practice polygamy when the requirements are satisfied ensures the husband's fairness to his wives. Although the requirements of fairness in terms of sharing love will not be feasible according to an-Nisa' (4) : 129, Islamic law still permits polygamy as long as the spouses are treated fairly.

Polygamy, according to Islam, is a sort of marriage that brings about *maslahah* when contrasted to other types of marriage that existed before the polygamy regulations. Polygamy is legal if it fulfill the following conditions; fairness and the limitation of just four wives. Polygamy is forbidden in Islam if these requirements are not met. With these two requirements, Islam has prioritized women's rights in marriage.<sup>5</sup> Furthermore, Compilation of Islamic Law (KHI) requires the first wife's consent to execute a polygamous marriage, which is distinct from Islamic law, which does not require the first wife's permission.

However, many polygamous marriage practices in Indonesia do not follow the existing provisions, such as the case in the Sibuhuan Religious Court in 2020 with Case Number 280/Pdt.G/2020/PA.Sbh. In this case, the husband applied for polygamy because he wanted to have more children, and his first wife could no longer give birth to another child due to a cyst disease after giving birth the third child from their marriage. In this condition, the husband's reason for polygamy is in accordance with the alternative requirements for polygamy contained in article 4 paragraph (2) of Law

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<sup>5</sup> Diana Ulfatun Khasanah, *Permohonan Izin Poligami Dengan Alasan Calon Istri Kedua Sudah Hamil Dalam Perspektif Sadd Adz-Dzari'ah*,3

number 1 of 1974 concerning marriage, that is the condition of the wife who has a cyst disease that cannot be cured and cannot give birth anymore. In addition, the husband has also obtained permission from the first wife to practice polygamous marriages. In this case, the husband has qualified to practice a polygamous marriage in article 5 paragraph (1) of Law number 1 in 1974 Jo. Article 58 Compilation of Islamic Law has obtained permission from the first wife. However, the case was rejected in the decision of the Sibuhuan Religious Court Judge with the consideration that the first wife was in a state of distress when giving polygamy permission to the husband, and the judge analysis that the first wife had objected to polygamy. This was seen by the judge from the attitude and statement of the first wife at the trial. The next judge's consideration is about the husband's reason for wanting to have another child was not related with article 4 paragraph (2) of Law number 1 in 1974 because the husband had three children with his first wife.

Under civil law, an agreement with distressing conditions has no legal force, and this is in accord with Civil Code article 1321, which provides that no agreement has force if provided in mistake or gained by force or fraud.<sup>6</sup> According to Article 1324, Coercion arises when an action conveys the perception and might generate dread in a rational person that he, his people, or his riches are in danger of substantial loss shortly. The age, gender, and status of the person in question must all be considered.<sup>7</sup> However, this is not the same as marriage law when the husband needs permission from his first

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<sup>6</sup> Pasal 1321 KUHPerdata

<sup>7</sup> Pasal 1324 KUHPerdata

wife to practice polygamy. Wives who will be polygamous indirectly feel melancholy due to factors other than their husbands or third parties. According to Lendri Nani Anggraini's dissertation titled "Psychological Condition of Wives Willing to Polygamy in Pal 7 Village, Bermani Ulu Raya District, Rejang Lebong Regency". The first wife felt obligated to accept polygamy since polygamy may hurt, cause quarrels, and harm the family. In this case, there was no disagreement among the informants; they all agreed that they permitted her husband to practice polygamy for too many reasons, forcing them to acquiesce while feeling compelled and resentful.<sup>8</sup> The wife's heartbreak when she sees her husband with another woman is impacted by her profound love for him and her feelings of inferiority, as though her spouse did so because he was unable to achieve his physical pleasure.<sup>9</sup> However, under the Marriage Law, the husband may practice polygamy with the first wife's permission, indicating that the Marriage Law's construction took into account the psychological characteristics of the polygamous wife. On the other hand, if the court rejects polygamy because of the wife's mental pressure, this becomes inconsistent when the judge approves polygamy in other circumstances. As a result, this regulation is no longer valid. This matter is confirmed by Judge Number 280/Pdt.G/2020/PA.Sbh denied permission for polygamy due to the wife's grief when providing consent. The same thing happened in case Number

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<sup>8</sup> Lendri Nani Anggraini, "Kondisi Psikologis Istri Bersedia Dipoligami di Desa Pal 7 Kecamatan Bermani Ulu Raya Kabupaten Rejang Lebong", (Undergraduate thesis, Institut Agama Islam Negeri Bengkulu, 2021)

<sup>9</sup> Herlina Fitriana dan Novia Suhastini, "Dinamika Psikologis Istri Pertama Yang Dipoligami", *Qawwam: Journal for gender mainsteaming*, No. 2 (2021): 31  
<https://doi.org/10.20414/qawwam.v15i2.4153>

172/Pdt.G/2020/PA.Sbh decision. Even though he had gotten polygamy consent from his first wife, the judge dismissed it because she felt betrayed and depressed, regardless of the judge's other considerations.

The Sibuhuan Religious Court Judge's policy in deciding the case of polygamy authorization has various factors to examine. The judge must evaluate the fairness and the advantages that will occur or avert damage while deciding a case. It is *sadd adz-dzari'ah* to prevent such damage from occurring. *Sadd adz-dzari'ah* refers to precautionary or preventative steps used to avoid the occurrence of anything unfavorable (worse thing). Meanwhile, according to Abdul Hamid, *sadd adz-dzari'ah* is the establishment of legislation prohibiting specific conduct that is generally authorized or banned to prevent the emergence of other prohibited activities.<sup>10</sup>

As a result, the author is interested in learning more about the judge's decision in case Number 280/Pdt.G/2020/PA. Sbh used the *sadd adz-dzari'ah* perspective.

## **B. Statement of Problem**

1. What are the judge's considerations in the decision that rejects the request for a polygamous marriage proposal that has already obtained the first wife's consent?
2. How is the judge's decision which rejected the permission of the unregistered polygamy in the *sadd Adz-Dzari'ah* perspective?

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<sup>10</sup> Muhammad Takhim, *Saddu al-Dzari'ah dalam Muamalah Islam*, Akses : Jurnal Ekonomi dan Bisnis, Vol. 14 No. 1, 2019, hlm. 20



### **C. Objective of Research**

1. To find out the judge's considerations in the decision that rejects the request for a polygamous marriage proposal that has received the first wife's consent.
2. To explain the judge's decision which rejected the permission of the unregistered polygamy in the *sadd Adz-Dzari'ah* perspective.

### **D. Benefit of Research**

1. Theoretical Benefits

This research is expected to be helpful. From the aspect of science, it can be a different discourse of science, the completeness of the library. It can enrich the insight of knowledge related to the law of polygamy.

2. Practical Benefits

- a. This research is expected to contribute to providing information related to polygamy.
- b. This research is expected to be used as a comparison and reference material for further researchers.

### **E. Operational Definition**

The title of this study is "Analysis Of Judge's Decision on Rejection of Polygamous Marriage Proposal in the *sadd Adz-Dzari'ah* Perspective," Then there are some terms that need more explanation details:

1. The Judge's decision is the Judge's statement that has been awaited by the litigants to resolve the dispute between the parties concerned because, with the judge's decision, the legal certainty and justice in the case is guaranteed.<sup>11</sup>
2. A polygamy is a man who marries more than one wife at the same time but is limited to four wives.<sup>12</sup>
3. *Sadd Adz-Dzari'ah* is one of the ways to dig into Islamic law in order to prevent, prohibit, close the way or *wasilah* that causes damage or something that is prohibited, which in the beginning the matter is allowed.<sup>13</sup>

## F. Method of Research

Methods are scientific activities that are planned, structured, systematic and have specific goals, both practical and theoretical. It is said to be a "scientific activity" because research is carried out with aspects of science and theory. It is said to be "planned" because research must be planned by taking into account time, funds, and accessibility to places and data.<sup>14</sup> In addition, the function of the research method is to obtain valid, objective and accurate information from the results of data processing.<sup>15</sup>

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<sup>11</sup> Moh. Taufik Makarao, *Pokok-pokok Hukum Acara Perdata, cet. 1*, (Jakarta: PT. Rineka Cipta, 2004), 124

<sup>12</sup> Rijal Imanullah, *Poligami dalam Hukum Islam Indonesia*, 108

<sup>13</sup> Intan Arafah, "Pendekatan *Sadd adz-dzari'ah* Dalam Studi Islam", *Al-Muamalat*, Vol. 5 No. 1(2016): 70 <https://journal.iainlangsa.ac.id/index.php/muamalat/article/download/1443/1201/>

<sup>14</sup> Conny R. Semiawan, *Metode Penelitian Kualitatif*, (Jakarta: Grasindo), 5

<sup>15</sup> Sugiyono, *Metode Penelitian Kuantitatif dan Kualitatif dan R & D*, (Bandung: Alfabeta, 2011), 2

## 1. Type of Research

The type of research used is normative legal research. Normative legal research is legal research conducted by means of research on library materials or secondary data, or commonly referred to as *library research*.<sup>16</sup> This is based on the object of research that was studied relating to legal materials related to the refusal of permits for unregistered polygamous marriage (*sirri*) according to Decision Number 280/Pdt.G/2020/PA.Sbh.

## 2. Research Approach

The approach used in this research is a case approach, that is studying the application of marriage law regarding polygamy in legal practice. The case studied in this study is case number 280/Pdt.G/2020/PA.Sbh. regarding the application for a polygamy permit. So that what will be studied in this research is the application of laws regarding marriage, especially those that regulate polygamy.<sup>17</sup>

## 3. Law Material

This research is classified as normative legal research that uses library materials as its basic material. In normative research, research sources are obtained through the literature, not through the field. Therefore, in terms known as research material, it is legal material.<sup>12</sup> The legal materials used in

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<sup>16</sup> Amirudin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta : PT Raja Grafindo Persada, 2004), 133

<sup>17</sup> Jonaedi Efendi dan Johnny Ibrahim, *Metode Penelitian Hukum Normatif dan Empiris*, (Jakarta: Kencana, 2016), 146

this research are legal materials which are divided into primary legal materials, secondary legal materials, and tertiary legal materials.

a. Primary legal materials

Primary Legal materials are legal materials that have a legally binding force. Because this study examines the judge's decision, the legal material used in this study is the decision of the religious court number 280/Pdt.G/2020/PA.Sbh, Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975, and Compilation of Islamic Law.

b. Secondary legal materials

Secondary legal materials are legal materials that provide support for the explanation of primary legal materials; journals, books, articles that are relevant to the discussion being studied. The relevant books and journals used in this research are books and journals that discuss polygamy and *sadd adz-dzari'ah*.

c. Tertiary legal materials

Tertiary legal materials are materials that provide an explanation of primary and secondary legal materials; alquran, *hadits*, dictionary, the large Indonesian language dictionary, encyclopedia or obtained through the internet and other news on the website.<sup>18</sup>

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<sup>18</sup> I Ketut Suardita, *Pengenalan Bahan Hukum*, (Jurnal: Universitas Udayana, 2017), 2

#### **4. Law Material Collection**

The data collection method used in this research is literature study. Data collection techniques by conducting a literature study or reviewing books, literatures, notes, and reports that have to do with the discussion of research either in the library or private collections. This technique is used to obtain the basics and opinions in writing which is done by studying various literatures related to the problem under study.

#### **5. Analysis of Law**

After all the required data has been collected, the next writer will analyze the data in several ways;

a. Edit

In this method, researcher examine the legal materials acquired based on the clarity of meaning, completeness of legal materials, and appropriateness of legal materials with other legal materials carried out by legal materials seeker.<sup>19</sup> The researcher modified the legal materials collected from the literature study on decision number 280/Pdt.G/2020/PA.Sbh, Law no. 1 of 1974 concerning marriage, Law no. 95 of 1975 concerning the implementation of Law no. 1 of 1974, and the Compilation of Islamic Law in this study.

b. Classification

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<sup>19</sup> Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, 168

Researcher classify all legal materials obtained from the findings of the literature review. The obtained legal materials are thoroughly studied, then grouped according to the need so that the obtained legal materials are easy to read and understand and provide objective information, and and at last, the obtained legal materials are grouped based on the similarities and differences between one legal material and another.

c. Examination

The researcher re-examine all of the acquired legal documents to ensure that the legal materials utilized in this study were appropriate for the research subjects, polygamy and sadd adz-dzari'ah, and that genuine legal materials could be recognized and used in research.

d. Data Analysis

The purpose of the analytical process is to reach a conclusion. The analysis here is to systematically organize the legal materials that have been collected. After collecting all legal materials, the legal materials are collated and decomposed into several stages, such as categorizing, analyzing, interpreting, and confirming data, so that a fact subsequently incorporates scientific, academic, and social qualities. Researcher utilized descriptive analytic techniques in this study. The researcher examines the judge's decision on polygamy by studying the usage of Law No. 1 of 1974 about marriage, Law No. 95 of 1975 concerning the implementation of

the marriage law, and compilation of Islamic law, as well as reviewing the legal material from the sadd adz-dzari'ah perspective.

e. Conclusion

A conclusion is the final step in the legal material processing procedure. The conclusion is a summary of the findings from the problem or object under study following the prior data processing (edit, classification, examination, and data analysis).

## **G. Previous Research**

1. The Journal was written by Dyna Martine Setyowati, SH. Postgraduate Master of Notary Students, Faculty of Law, University of Brawijaya Malang, in 2016 entitled "Pembatalan Perkawinan Poligami Dalam Putusan Pengadilan Agama". This study uses a type of normative juridical research. The approach used is the descriptive analysis approach, that is, by describing the legal material first and then analyzing through analytical techniques. Then the source of legal materials for this study consists of primary legal materials (Book of Civil Law, Law Number 1 of 1974 on Marriage), secondary (books on marriage), and tertiary legal materials (law dictionary and Islamic law dictionary). Steps to analyze the data in this study by using the method of teleological (sociological) interpretation, which is the interpretation done by paying attention to the intent and purpose of the Law.

The difference is that the previous study examined the rejection of the application for annulment of marriage in the Decision of the *Syar'iyah* Court. The equation in this study is a type of normative jurisprudence research and discusses the cancellation or rejection of petitions regarding polygamy.

2. The thesis was written by Muhammad Akramul Fata. Students of the Faculty of *Syari'ah* and Family Law of the Islamic State University of *Ar-Raniry Darussalam* Banda Aceh in 2018 entitled "Pembatalan Perkawinan Karena Poligami Tanpa Izin". This research uses a type of qualitative research that is research used to describe and analyze phenomena, events, social activities, attitudes, beliefs, perceptions, and people individually and in groups. The data collection method consists of literature research field research. Data sources for this study consisted of primary data sources (from interviews with judges) secondary data sources (from books, articles, journals). Data collection techniques in this study used direct interviews or dialogues with sources. The data analysis technique used is a descriptive analysis technique performed by collecting data in accordance with the actual facts, and then the data is compiled, processed, and analyzed to provide an overview of existing problems.

The difference is that the previous study examined the rejection of the application for annulment of marriage due to polygamy without permission, while in this study, the rejection of polygamy that already has the consent of



the first wife. Then the equation in this study is to discuss the cancellation or rejection of polygamy in the Decision of the Religious Court.

3. A Thesis was written by Diana Ulfatun Khasanah. Student of the Faculty of Sharia and Law, major *Ahwal Al-Syakhsyiyah*, Walisongo Islamic State University, Semarang in 2018, entitled “Permohonan Izin Poligami Dengan Alasan Calon Istri Kedua Sudah Hamil Dalam Perspektif Sadd Adz Dzari’ah (Studi Analisis Putusan di Pengadilan Agama Kendal Perkara Nomor 2202/Pdt.G/2015/PA.Kdl)”. This research uses legal research, which is a process to find legal rules, legal principles, and legal doctrines to answer legal cases. The source of legal materials for this study consists of primary legal materials (Decisions, Laws, KHI) and secondary legal materials (Books, legal journals, interview results). This data collection method uses the interview method and documentation method. The data analysis technique of this research uses the qualitative analysis method. The data obtained will be analyzed by descriptive methods, which is to describe or describe the subject or object based on facts. This method aims to describe and systematically analyze the decision and the basis of the judge’s legal judgment in resolving the case.

The difference is that the previous study examined the rejection of polygamy application because the second wife was pregnant first, while in this study, the rejection of polygamy is due to the situation of the applicant’s first wife in a depressed state. Then the equation in this study is to discuss the

rejection of polygamy in the Decision of the Religious Court through the perspective of *Sadd Al-Dzari'ah*.

4. A Thesis was written by Depri Lutfi Amin. Student of the Faculty of Sharia and Law, Department of Islamic Civil Law, Family Law, Sunan Ampel State Islamic University, Surabaya in 2018, entitled “Analisis *Sadd Al-Dhari'ah* Terhadap Penolakan Izin Poligami Bagi Suami Yang Tidak Mempunyai Tempat Tinggal Tetap (Putusan Nomor : 2480/PDT.G/2015/PA.SDA)”. The type of research uses normative research that is literature that is the analysis of the judge’s decision on the case of denial of polygamy permission. Data sources used in this study consist of primary sources (decisions and interviews) and secondary (Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law). Data collection techniques in this study use Documentary (literature study or reading text) and interviews (interview). These data processing techniques use Editing (editing the collected data) and Coding (categorizing the data). The data analysis technique of this study uses a descriptive method of analysis that describes the case of description of the case of denial of polygamy and analysis by inductive pattern, which departs from the knowledge that is specific to assess something that is general.

The difference is that the previous study examined the rejection of polygamy application because the applicant (husband) did not meet one of the cumulative requirements of polygamy, while in this study, the rejection of polygamy because the applicant could not present evidence of the cumulative

requirements for polygamy. Then the equation in this study is to discuss the rejection of polygamy in the Decision of the Religious Court through the perspective of *Sadd Al-Dzari'ah*.

5. The thesis was written by Nano Romadlon Auliya Akbar. Students of the Sharia Faculty of Islamic Family Law Study Program Maulana Malik Ibrahim State Islamic University Malang in 2020, entitled “Analisis Putusan Hakim Pengadilan Agama Karangasem Nomor 1/Pdt.G/2018/Pa.Kras Tentang Pengabulan Permohonan Izin Poligami Ditinjau dari *Maqashid al-Syariah Ibn Asyur*”. This type of research uses normative research with a case approach. The sources of legal materials used consist of primary legal materials (Judgment Number 1/Pdt.G/2018/PA. Kras regarding the application for a polygamy permit, Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975 concerning the implementation of the Act - Law Number 1 of 1974, Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning Religious Courts and the Compilation of Islamic Law) and secondary (*maqashid al-syari'ah al-islamiy* book by *Ibn 'Asyur*, scientific books, previous research, and some literature related to law in the form of books and research journals). Data collection techniques using library research by searching and recording data obtained from sources related to the material discussed. In this thesis, the legal materials that have been collected are processed in stages; Editing, Classifying, verifying, Analyzing, and Concluding.

The difference is, in previous studies examining whether the application for a polygamy permit was granted or received in the judge's decision number 1/Pdt.G/2018/PA.Kras by using the analysis knife of *Maqashid al-Shari'ah Ibn 'Asyur* in the condition that the applicant has impregnated the prospective second wife without any marriage ties (out of wedlock), while this study examines the judge's refusal against the polygamy permit in decision number 280./Pdt.G/2020/PA.Sbh is in a situation where the husband and the prospective second wife have married unregistered (*sirri*) and have obtained the approval of the first wife at the time the marriage took place. In addition, this decision was analyzed using the *Sadd Adz-dzari'ah* legal *istinbath* method. While the similarities with this research were discussing the study of judges' decisions regarding requests for polygamy permits in the Religious Courts and analyzed using Islamic law.

No.	Name of Researcher	Title	Similarities	Differences
1.	Dyna Martine Setyowati, SH. (Journal, Universitas Brawijaya Malang, 2016).	Annulment of Polygamous Marriage in Religious Court Decisions	Discuss the cancellation or rejection of polygamy applications in the Decision of the Religious Court.	In the previous study examined the annulment of marriage in the Decision of the Religious Court, while in this study discusses the denial of polygamy permission in the Decision of the Religious Court in the perspective

				of <i>Sadd Al-Dzari'ah</i>
2.	Muhammad Akramul Fata (Thesis of <i>Ar-Raniry Darussalam State Islamic University Banda Aceh</i> , 2018)	Marriage Annulment Due to Polygamy Without Permission (Study Decision Number 0156/Pdt.G/2016/MS.Bna).	Discussing the rejection of the application for the annulment of polygamy in the Decision of the <i>Syar'iyah</i> Court of Banda Aceh Number 0156/Pdt.G/2016/MS.Bna.	In the previous study examined the rejection of the application for annulment of marriage due to polygamy without permission, while in this study the rejection of the application for polygamy with the consent of the first wife
3.	Diana Ulfatun Khasanah. Student of the Faculty of Sharia and Law, Prodi <i>Ahwal Al-Syakhsyiyah</i> , Walisongo Islamic State University, Semarang, 2018	Application for Polygamy Permit on the Reason that the Candidate's Second Wife is Pregnant in the Perspective of <i>Sadd Adz-Dzari'ah</i> (Study of Decision Analysis in Kendal Religious Court Case Number 2202/Pdt.G/2015/PA.Kdl	Study of Religious Court Decisions, Conducting analysis using <i>Sadd Adz-Dzari'ah</i>	previous research examines the rejection of polygamy applications because the second wife is pregnant first, while in this study the rejection of polygamy is due to the state of the applicant's first wife in a depressed state
4.	Depri Lutfi Amin. Student of the Faculty of Sharia and Law, Department of Islamic	Analysis <i>Sadd Al-Dhari'ah</i> about rejection of Polygamy Permit for Husbands Who Do Not Have a Permanent	discusses the rejection of polygamy in the Decision of the Religious Court through the perspective	previous research examines the rejection of polygamy application because the applicant (husband) does

	Civil Law, Family Law, Sunan Ampel State Islamic University, Surabaya in 2018,	Residence (Decision Number: 2480/PDT.G/2015 /PA.SDA)	of <i>Sadd Al-Dzari'ah</i>	not meet one of the cumulative requirements of polygamy, while in this study can present evidence of the cumulative requirements for polygamy
5.	Nano Romadlon Auliya Akbar. Student of the Faculty of Sharia, Islamic Family Law, State Islamic University Maulana Malik Ibrahim Malang in 2020	Analysis of the Decision of the Judge of the Religious Court of Karangasem Number 1/Pdt.G/2018/Pa.Kras on the Approval of Polygamy Permit Application Reviewed by Asyur <i>Maqashid al-Syariah Ibn</i>	Discussing the study judge's decision on polygamy permit application in Religious Court and analyzed using Islamic Law	Previous research examined the acceptance of polygamy permit application where the second wife was pregnant using <i>Maqashid al-Syari'ah</i> Ibn analysis, while this study examined the judge's rejection of polygamy permission in the case of the husband with the prospective second wife has performed the marriage in secret and has obtained the consent of the first wife at the time the marriage took place in the analysis using the method of <i>Sadd Adz-dzari'ah</i> .

## **H. Structure of Discussion**

To facilitate discussion and understanding in writing this thesis, the author arranges it in a collection of several chapters which will be broken down into several sub-chapters. The systematic discussion in this study is as follows:

**CHAPTER I** (first) is the introduction. In this chapter, the writer will explain the reasons why the researcher chose this theme which is considered interesting. This will be explained on the background of the problem, then to focus on the intended problem, it will be included in the problem formulation. The next sub-chapter will explain the research objectives. The next sub-chapter will explain the benefits of research in theory and practice. The next sub-chapter is operational definition and systematic discussion sub-chapter.

**CHAPTER II** (second) is a literature review. This chapter contains juridical thoughts or concepts as a theoretical basis for the study and analysis of problems and contains the development of data or information, both substantially and methods relevant to the problems in this research

**CHAPTER III** (third) is the result of research and discussion. This chapter describes the data that has been obtained from the results of literature research which is then edited, classified, verified, and analyzed. This chapter has also answered the problems contained in the formulation of the problem which includes explaining the analysis of the judge's decision regarding the rejection of polygamy permits according to *Sadd Adz-Dzari'ah*.

**CHAPTER IV** (fourth) is Closing. In this chapter, there is a conclusion which this section contains conclusions from all discussions of the results of the research that has been carried out, and answers questions on the formulation of the problem, and suggestions from researchers for further researchers who will conduct research with the same theme, that is Analysis of Judge Decisions Regarding Rejection of Polygamy Permit According to *Sadd Adz-Dzari 'ah*.



## CHAPTER II

### JUDGE'S DECISION, POLYGAMY AND *SADD ADZ-DZARI'AH*

#### A. Judge's Decision

##### 1. Definition of Judge's Decision

Decision in Dutch is called *vonnis* and in Arabic is called *al-qada'u*. The judge's decision is a product of the Religious Courts because there are two opposing parties in one case, the Plaintiff and the Defendant. The product of the court is usually termed *Jurisdictio contentiosa*, which is the product of the real justice<sup>20</sup>. According to Elfrida R. Gultom, a Judge's Decision is a statement by a judge as an authorized state official that is pronounced in court with the aim of ending or resolving a dispute between the parties, the decision is not only spoken by the judge but also a statement that is set forth in written form. and then pronounced by the judge at trial.<sup>21</sup> Meanwhile in Article 10 of Law Number 7 of 1989 it is explained that: "A decision is a court decision on a lawsuit based on a dispute".

The judge's decision should contain several aspects; *first*, the judge's decision is a description of social life as part of the process of social control; *second*, the judge's decision is a tangible form of applicable law and is useful for every individual, group or country; *third*, the judge's decision is an

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<sup>20</sup> Erfaniah Zuhriah, *Peradilan Agama Indonesia*, (Malang: Setara Press, 2016), 170

<sup>21</sup> Elfrida R Gultom, *Hukum Acara Perdata*, (Jakarta : Mitra Wacana Media, 2017), 99

illustration of the balance between written legal provisions and the reality that exists in society; *fourth*, the judge's decision is a picture of the ideal awareness between law and social change; *fifth*, the judge's decision has benefits for everyone who is litigating; *Sixth*, the judge's decision does not create new conflicts for the litigants and the community.<sup>22</sup>

## 2. Principles of Implementing Decisions

Implementation of decisions has several principles, including:

- a. Court decisions have permanent legal force, except for the implementation of *vitvoerbaar bij voorraad* decisions, provisional decisions, peace decisions, and executions based on *Groze deed*
- b. Decisions are not implemented voluntarily
- c. The verdict contains a *condemnatory order*
- d. Execution under the leadership of the Head of the Religious Court.<sup>23</sup>

## 3. Types of Judge's Decisions

In terms of their function, decisions are divided into;

- a. Interlocutory Decision (*tussen vonnis*)

Interlocutory decisions are decisions that are handed down while still in the trial process before the final decision. The Interlocutory decision aims to facilitate the continuation of the examination of the case, clarify and expedite

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<sup>22</sup> Fence M. Wantu, *Mewujudkan Kepastian Hukum, Keadilan dan Kemanfaatan Dalam Putusan Hakim di Peradilan Perdata*, Jurnal Dinamika Hukum, Vol. 12 No. 3, 482

<sup>23</sup> Erfaniah Zuhriah, *Peradilan Agama Indonesia*, 170

the trial.<sup>24</sup> There are several types of interlocutory decisions; *first*, the *preparatoir* decision, the preparatory decision before the final decision regarding the proceedings of the trial without mentioning the main points of the case, such as the decision on adjournment of the trial, the decision to refuse the postponement of the examination of witnesses; *second*, *interlocutoir* decisions, decisions that contain orders for evidence, such as decisions to examine witnesses or local examinations; *third*, *incidentiel* decisions, decisions related to incidents, events that stop ordinary court procedures but are not yet related to the main decision of the case, such as decisions that allow third parties to participate in a case; *Fourth*, *provisional* decisions, a decision handed down to provide answers to provisional demands, a request by the litigating party to take preliminary action in the interests of the applicant before the final decision is rendered, as in a divorce before the subject matter is decided, the wife asks to be released from the obligation to live with her husband, because her husband is abusive.<sup>25</sup>

b. The Final Decision (*einds vonnis*)

The final decision is a decision that ends the case at trial, this decision is the main product of a trial.<sup>26</sup> The final decision according to the nature of the order is divided into 3 types,; *first*, *condemnatoir* decisions which is a decision

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<sup>24</sup> Elfrida R Gultom, *Hukum Acara Perdata*, 101

<sup>25</sup> Elfrida R Gultom, *Hukum Acara Perdata*, 101

<sup>26</sup> Mardani, *Hukum Acara Perdata Peradilan Agama & Mahkamah Syar'iyah*, 118

with a brush to punish the defeated party to fulfill achievements, such as trying and punishing the defendant to hand over a sum of money to the plaintiff; *second, declatoir* decisions a decision which states a condition as a legal condition according to law, such as stating that the plaintiff is the owner of the disputed land; *Third, constitutive* decisions is a decision whose ruling creates a new situation, such as stating that the marriage between the plaintiff and the defendant has been broken due to divorce<sup>27</sup>.

Meanwhile, in terms of the presence or absence of the parties, the decision is divided into three :<sup>28</sup>

- 1) *Verstek* decision, the decision that was handed down because the defendant/respondent was not present at the trial even though it had been officially summoned, while the plaintiff/applicant was present
- 2) Dismissal Decision, which is a decision stating that the lawsuit/application is void because the plaintiff/applicant was never present even though he has been officially summoned, while the defendant/respondent is present in court and asks for a verdict.
- 3) Contradictory Decision, the final decision which at the time it was handed down/delivered in the trial was not attended by one of the parties or the litigating parties. In examining a contradictory decision, it is

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<sup>27</sup> Elfrida R Gultom, *Hukum Acara Perdata*, 102

<sup>28</sup> Mardani, *Hukum Acara Perdata Peradilan Agama & Mahkamah Syar'iyah*, 119-120

required that both the plaintiff and the defendant have been present at the trial.

#### 4. The position of the Judge in deciding cases

The position of the judge is as an official who exercises judicial power regulated by law. In the law on judicial power, Judges are enforcers of law and justice who are obliged to explore, follow and understand the law that live in society. In carrying out their duties, Judge may not reject incoming cases on the grounds that there is no law that regulates this matter or does not know about the things proposed. This is intended to provide legal certainty to the community. Then the obligations of judges contained in law number 14 of 1970 are:<sup>29</sup>

- 1) Decide for justice based on the Almighty God (Article 4 paragraph 1)
- 2) Explore, follow, and understand the values of law and the sense of justice that lives in society (article 28 paragraph 1)
- 3) In considering the severity or lightness of the sentence, the judge must pay attention to the good and evil nature of the defendant (article 28 paragraph 2).

According to Prof. Atho Mudzar, the judge's decision is a decision of the mind and conscience, if the defect is small then the decision will be a

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<sup>29</sup> Nur Aisyah, "Peranan Hakim Pengadilan Agama dalam Penerapan Hukum Islam di Indonesia", *Al-Qadau*, Vol 5, No. 1 (2018): 78 <https://doi.org/10.24252/al-qadau.v5i1.5665>

torture to the sense of justice of society.<sup>30</sup> In deciding a case, the judge does not need to always adhere to written rules alone, the judge can resolve a case by paying attention to the laws that live in society or known as customary law. This aims to fill legal gaps in the Indonesian legal system.<sup>31</sup>

From the above explanation it can be seen that in deciding the case, the judge has 3 principles, the principle of legal certainty, justice and usefulness. Ideally, in order to implement legal certainty, justice, and expediency, the judge's judgment must be in line with the main objectives of a court, containing legal certainty; *first*, carrying out an authoritative solution, which means offering a way out of the legal difficulties encountered by the parties (petitioners and respondents); *second*, efficiency implies that the process must be fast, simple, and low cost; *third*, in accordance with the objectives of the legislation which is utilized.; *fourth*, it contains a aspect of stability, which implies that it may create a sense of order and security in society; *fifth*, it contains equality, which means that litigants have equal possibilities.<sup>32</sup>

According to Sudikno Mertokusumo, the power of a judge's decision in the Civil Procedure Law has 3 powers of Judicial Decision:

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<sup>30</sup> Nur Aisyah, "Peranan Hakim Pengadilan Agama dalam Penerapan Hukum Islam di Indonesia", 88

<sup>31</sup> Syaiful Hidayat, "Studi Kontraksi Tugas dan Fungsi Hakim di Pengadilan Agama", *Tafaqquh*, Vol. 4, No. 2 (2016): 11

<sup>32</sup> Fence M. Wantu, *Mewujudkan Kepastian Hukum, Keadilan dan Kemanfaatan Dalam Putusan Hakim di Peradilan Perdata*, Jurnal Dinamika Hukum, Vol. 12 No. 3, 483

1) The binding power

The party concerned is bound by the decision passed, meaning both parties must submit and obey the decision passed by the Judge in the Religious Court, wrong one party cannot oppose the decision.

2) The Power of Proof

Decision as an authentic deed used as a tool of evidence for the parties who want to file an appeal, cassation, or execution.

3) Executorial

The power to execute what is stipulated in the decision by force by the state apparatus.<sup>33</sup>

The position of judges in Islamic law has a very important role in explaining the laws of God called *qadha'*. The law of *qadha'* is *fardhu kifayah*, then there must be someone who gives an explanation related to *qadha'* to humans. This is the responsibility of the ruler or *khalifah*. Then in certain areas, the *khalifah* may delegate the obligation of *qadha'* or the application of Islamic laws to the judge. So that in Islam, the judge is the official representative of the *khalifah* in applying Islamic laws in their main territory.

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<sup>33</sup> Mohammad Afifudin Sholeh, "Eksekusi Terhadap Putusan Pengadilan Tata Usaha Negara yang berkekuatan Hukum Tetap", *Mimbar Keadilan Jurnal Keadilan Hukum*, (2018): 22-23 <https://doi.org/10.30996/mk.v0i0.1604>

The judge or *qadhi*’ in deciding cases must be in accordance with justice and Islamic values. Judges are divided into three groups; one group of heaven (*ahlul jannah*), and two groups of hell (*ahlun naar*). The Prophet (peace and blessings of Allah be upon him) said which means:<sup>34</sup>

“The judges are divided into three (groups): the two (groups) go to hell, the one (group) goes to heaven, the one (group) does justice in the decision of the law, then they enter Paradise, one (group) knows the justice but they deviate deliberately, then they enter hell, and the other (group) decide (cases) without knowledge but they are ashamed to say "I do not know" then they (also) enter hell.

The meaning of the hadith is that the judge in deciding cases must do justice and understand the cases decided. Judges cannot set aside justice in deciding cases and deciding cases without knowledge.

## **B. Poligamy**

### 1. Definition of Polygamy

Polygamy is etymologically derived from the Greek language, which is a combination of the two words *poly* and *pollus* meaning many and the words *gamein* and *gamos* meaning marriage. Therefore, polygamy can be defined as multiple marriages<sup>35</sup>. Meanwhile, in terms of polygamy, it is a condition when a man marries two or more women at the same time. In Islam, polygamy is a marriage performed

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<sup>34</sup> Syaiful Hidayat, “Studi Kontraksi Tugas dan Fungsi Hakim di Pengadilan Agama”, 4

<sup>35</sup> Marzuki, *Poligami Dalam Hukum Islam*, Jurnal Pendidikan Kewarganegaraan dan Hukum, Universitas Negeri Yogyakarta, 2



by a man with two or more women with a limit of up to four women only. The legal basis for Islamic polygamy is listed on the letter and An-Nisa' (4): 3;

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَنِّي وَثَلَاثَ وَرُبْعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ

“And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hands possess [i.e., slaves]. That is more suitable that you may not incline [to injustice].”<sup>36</sup>

## 2. Reasons for Doing Polygamy

The reasons and conditions for polygamy determined by law can be found in Article 4 and Article 5 of Law Number 1 of 1974. Article 4 paragraph (1) reads “In the event that a husband will have more than one wife, as referred to in Article 3 paragraph (2) of this Law, then he is obliged to submit an application to the Court in the area where he resides.” Then in paragraph two (2) it is explained that “The court referred to in paragraph (1) of this article only gives permission to a husband who will have more than one wife if:

- a. The wife cannot carry out her obligations as a wife.
- b. The wife has a disability or an incurable disease.
- c. Wife can't give birth.”

<sup>36</sup> Saheeh International, [https://quranenc.com/en/browse/english\\_saheeh/4/3](https://quranenc.com/en/browse/english_saheeh/4/3)

Then article 5 of Law Number 1 of 1974 explains the conditions for allowing polygamy for a husband, which reads: Article 5 paragraph (1): “To submit an application to the Court as referred to in Article 4 paragraph (1) Of the Law This law must fulfill the following conditions:

- a. There is the consent of the wife / wives.
- b. There is certainty that the husband is able to provide for the necessities of life for his wives and children.
- c. There is a guarantee that husbands will treat their wives and children fairly.”

Permission for polygamy by the Religious Courts can be granted if the husband’s reasons have fulfilled alternative reasons in accordance with the provisions of Article 4 paragraph (2) and the cumulative conditions contained in Article 5 paragraph (1) of Law Number 1 of 1974 as mentioned above. The formal juridical provisions which form the legal basis for granting polygamy permits are regulated in Law Number 1 of 1974 concerning marriage, in conjunction with Government Regulation Number 9 of 1975.

Law Number 1 of 1974 Article 3 paragraph (2) junto Article 43 of Regulation Government Number 9 of 1975, states that “The court can give permission to a husband to have more than one wife if the parties concerned want”. In addition, Article 4 paragraph (1) states “in the event that a husband will have more than one wife, as referred to in Article 3 paragraph (2) of this Law, then he is obliged to submit an application to the Court in the area where he lives”. Government Regulation Number 9 of 1975 stipulates the provisions for the implementation of

the granting of polygamy permits in article 43 which states that “if the Court is of the opinion that there is sufficient reason for the applicant to have more than one wife, the Court shall give its decision in the form of permission to have more than one wife”.

In addition to this law, the Compilation of Islamic Law or KHI also discusses polygamy. The terms of polygamy contained in the KHI are contained in article 55 which explains that:

- a. “Having more than one wife at the same time is limited to only four wives.
- b. The main requirement is to have more than one wife, the husband must be able to treat his wives and children fairly.
- c. If the main conditions referred to in paragraph (2) cannot be fulfilled, the husband is prohibited from having more than one wife.”

In addition, KHI also discusses the reasons for allowing polygamy as contained in Article 57 which reads: “The Religious Court only gives permission to a husband who will have more than one wife if:

- b. The wife cannot carry out her obligations as a wife;
- c. The wife has a disability or an incurable disease;
- d. The wife cannot bear children.”

### 3. Procedure of Polygamy

Procedure of polygamy permits is regulated in Article 40 of Government Regulation Number 9 of 1975 which states that “If a husband intends to have more than one wife, he is obliged to submit a written application to the Court.”

Then the task of the Court is explained in the next article, article 41 that the court examines:

- a. Whether or not there is a reason that allows a husband to remarry
- b. The presence or absence of consent from the wife, both verbal and written consent, if the consent is an oral agreement, the consent must be pronounced before a court session
- c. The presence or absence of the husband's ability to provide for the necessities of life for his wives and children, taking into account:
  - 1) Certificate of husband's income signed by the treasurer of the place of work; or
  - 2) tax certificate; or
  - 3) Other certificates that can be accepted by the Court.
- d. There is or is no guarantee that the husband will treat his wives and children fairly with a statement or promise from the husband made in the form prescribed for it.”

Furthermore, in article 42 it is explained that the court must summon the wives to give explanations or testimony. This article also explains that the court is given 30 days to examine the application for polygamy after it is submitted by the husband complete with the requirements.

If the husband meets the requirements and reasons for polygamy, the court has the authority to give permission to practice polygamy. This is stated in article 43 of Government Regulation number 9 of 1975: “If the Court is of the opinion

that there is sufficient reason for the applicant to have more than one wife, then the Court gives its decision in the form of permission to have more than one wife”. Therefore, marriage registrar employees are prohibited from registering the marriage of a husband who will have more than one wife before permission to perform polygamy from the court, this is in accordance with article 44 of Government Regulation number 9 of 1975. The procedure for polygamy in the Compilation of Islamic Law is regulated in article 56 which contains:

- a. “Husbands who wish to have more than one wife must obtain permission from the Religious Courts.
- b. The submission of the permit application referred to in paragraph 1 is carried out according to the procedure as stipulated in chapter VIII of PP Number 9 of 1975.
- c. Marriages with second, third or fourth wives without permission from the Religious Courts have no legal force.”

Likewise with Government Regulation Number 9 of 1975, KHI also gives great authority to the Religious Courts in granting polygamy permits, so that religious courts can take over polygamy agreements for wives who do not want to give their husbands consent to polygamy, as contained in article 59 of the Compilation of Islamic Law.

### **C. Sadd Adz-Dzari’ah**

1. Definition of *Sadd Adz-Dzari’ah*

According to language, *Adh-dzari'ah* means *wasilah* or media that conveys to something. In addition, there are those who specialize the meaning of *dzari'ah* with something that leads to what is prohibited and contains harm. Meanwhile, according to Ibn Qayyim al-Jauziyah, *adz-dzari'ah* contains two meanings: What is forbidden to be carried out is called *sadd al-dzari'ah* and what is required to be carried out is *fath al-dzari'ah*. Imam al-Syathibi defines *adz-dzari'ah* with "Doing a job that originally contained benefits to lead to a harm"<sup>37</sup> means that someone does a job that was initially allowed because it contained benefits, but the goal to be achieved ends up being harmful.

*Adz-dzari'ah* in terms of Usul Fiqh has the meaning of something that becomes a medium or *wasilah* to arrive at something related to *syara'* law, both haram and halal.<sup>38</sup>

## 2. Position *Sadd's adz-dzari'ah* in Islamic law

Malikiyah scholars and Hanabilah scholars state that *sadd adz-dzari'ah* can be accepted as one of the arguments in establishing *syara'*. Meanwhile Hanafiyah and Shafi'iyah scholars can accept *sadd adz-dzari'ah* as a proposition in certain matters and reject it in other matters. The reason given by the Malikiyah and Hanabilah scholars in accepting *sadd dzari'ah* as a proof is the word of God in Surah al-an'am verse 108:

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<sup>37</sup> Nasrun Haroen, *Ushul Fiqh* (Jakarta: Logos Wacana Ilmu, 1997), 161

<sup>38</sup> Djazuli dan I. Nurol Aen, *Ushul Fiqh Metodolofi Hukum Islam*, (Jakarta: PT Raja Grafindo), 271

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ ۗ كَذَلِكَ زَيَّنَّا لِكُلِّ أُمَّةٍ عَمَلَهُمْ ثُمَّ إِلَىٰ رَبِّهِمْ مَرْجِعُهُمْ فَيُنَبِّئُهُمْ بِمَا كَانُوا يَعْمَلُونَ

“And do not insult those they invoke other than Allāh, lest they insult Allāh in enmity without knowledge. Thus We have made pleasing to every community their deeds. Then to their Lord is their return, and He will inform them about what they used to do”.<sup>39</sup>

This verse contains the prohibition of Allah to curse the worship of the polytheists, because the polytheists will curse Allah with the same and even more curses. In addition to that verse, Malikiyah and Hanabilah scholars also argued in the form of hadith the Prophet peace be upon him, among which:

حَدَّثَنَا أَحْمَدُ بْنُ يُونُسَ، حَدَّثَنَا إِبْرَاهِيمُ بْنُ سَعْدٍ، عَنْ أَبِيهِ، عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو . رَضِيَ اللَّهُ عَنْهُمَا . قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ” إِنَّ مِنْ أَكْبَرِ الْكِبَائِرِ أَنْ يَلْعَنَ الرَّجُلُ وَالِدَيْهِ “ . قِيلَ يَا رَسُولَ اللَّهِ وَكَيْفَ يَلْعَنُ الرَّجُلُ وَالِدَيْهِ قَالَ ” يَسُبُّ الرَّجُلُ أَبَا الرَّجُلِ، فَيَسُبُّ أَبَاهُ، وَيَسُبُّ أُمَّهُ “ .

Allah's Messenger (ﷺ) said. “It is one of the greatest sins that a man should curse his parents.” It was asked (by the people), “O Allah's Messenger (ﷺ)! How does a man curse his parents?” The Prophet (ﷺ) said, “The man abuses the father of another man and the latter abuses the father of the former and abuses his mother.”<sup>40</sup>

<sup>39</sup> Saheeh International, [https://quranenc.com/en/browse/english\\_saheeh/6/108](https://quranenc.com/en/browse/english_saheeh/6/108)

<sup>40</sup> Good Manners and Form (Al-adab), Chapter: A Man Should Not Abuse His Parents. Sahih al-Bukhari 5973, vol 8 book 73, Hadith 4 <https://sunnah.com/bukhari/78>, June 05 2022

According to Ibn Taimiyah, the hadith shows that *sadd adz-dzari'ah* is one of the reasons for establishing the syara', because the hadith of the prophet saw is still *zhan* or conjecture, and on the basis of that assumption the prophet forbid it. Meanwhile, Hanafiyah and Shafi'iyah scholars accept *sadd adz-dzari'ah* on certain cases only. Shafi'iyah scholars use *sadd adz-dzari'ah* on the case of being allowed to leave Friday prayers for men who have *excuses* or obstacles such as illness, and travelers who then replace them with midday prayers. However, the midday prayer is carried out in secret and secretly so as not to cause slander to be accused of intentionally leaving Friday prayers. Hanafiyah scholars also use *sadd adz-dzari'ah* on several legal cases such as not receiving the admission of a person who is in a state of illness that leads a person to death or *mardh al-maut*, this prohibition is intended so that the person's confession does not result in the cancellation of the rights of others in receive an inheritance<sup>41</sup> as a person who is in a state of *mardh al-maut* admits that he has a debt to another person as much as part or all of his property, according to the Hanafi scholars this recognition results in the cancellation of the heir to get his share of the inheritance from the property.

Differences of opinion regarding the acceptance of *sadd adz-dzari'ah* as a legal discovery are based on the differences between these scholars regarding intentions and pronouncement in contract matters. According to Hanafiyah scholars and Syafi'iyah scholars, in a contract or transaction the benchmark is the contract, that is, if the

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<sup>41</sup> Nasrun Haroen, *Ushul Fiqh*, 168-169



conditions and pillars of the contract have been fulfilled, the contract is valid, and does not judge the intention of the person who made the contract because intention is a hidden problem that lies in the human heart and the problem is the business of Allah swt. As long as there is no indication that shows the intention of the perpetrator, then the following rules apply:<sup>42</sup>

المعتبر في أوامر الله المعنى و المعتبر في أمور العباد الاسم و اللفظ

“The basic benchmark in matters relating to Allah’s rights is intention while those relating to rights - the right of the servant is the pronunciation.”

However, if the purpose of the person who is contracting can be captured from several existing indicators, then the following rule applies:

العبرة بالمعاني لا بالألفاظ و المباني

“The basic benchmark is the meaning/intention, not pronunciation and form

Meanwhile, according to the Malikiyah and Hanabilah scholars, the benchmark for the validity of a contract is the intention and purpose. If an action is in accordance with the intention, then the act is valid. However, if the act is not in accordance with its original purpose, but there is no indication that the intention is in accordance with that purpose, then the contract is still considered valid, but there is a calculation between Allah and the perpetrator, because the only one who knows

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<sup>42</sup> Nasrun Haroen, *Ushul Fiqh*, 170

the intentions of a person is Allah. If there are indicators that indicate the intention, and the intention does not conflict with the objectives of the *Shari'ah*, then the contract is valid. However, if the intention is contrary to the *syara'*, then the action is considered damaged, however, there is no legal effect.<sup>43</sup>

### 3. Classification of *Sadd adz-Dzari'ah*

*Sadd adz-Dzari'ah* can be classified by looking at several aspects, and scholars differ in determining the classification of *sadd adz-dzari'ah* into several aspects, including:

a. *Dzari'ah*, seen from its shape, can be divided into three:

- 1) Something that, if done, will usually lead to the forbidden.
- 2) Something which, if done, will not lead to what is prohibited
- 3) If done according to consideration, an act is equally likely to lead to what is forbidden and what is not forbidden.<sup>44</sup>

b. *Dzari'ah*, in terms of the quality of its validity, Imam al-Syathibi divides *dzari'ah* into four types:

- 1) The actions carried out lead to definite *mafsadat (qath'i)*.

Like someone digging a well at someone else's door at night, the house owner does not know it. The evil form of this act can be ascertained, the fall of the house owner into the well, and that can be ascertained because

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<sup>43</sup> Hifdhotul Munawaroh, *Sadd al-dzari'at dan Aplikasinya Pada Permasalahan Fiqh Komtemporer*, Jurnal Ijtihad, Vol.12 No.1 tahun 2018, 76

<sup>44</sup> Intan Arafah, "Pendekatan Sadd Adz-Dzari'ah Dalam Studi Islam", *Al-Muamalat*, Vol. 5 No. 1(2016): 78 <https://journal.iainlangsa.ac.id/index.php/muamalat/article/download/1443/1201/>

the house owner did not know that the well was at the door. Acts like this are prohibited, and if it turns out that the owner of the house fell into the well, then the hole digger is subject to punishment because the act was done intentionally to harm other people.

- 2) Actions that can be done because they rarely lead to evil.

Such as digging a well in a place that usually does not give *harm* or selling a type of food that usually does not give *harm* to people who eat it. Acts like this remain on the original law, *permissible* (permissible).

- 3) The actions taken are likely to lead to evil.

Like selling weapons to the enemy because it is very likely that the weapon will be used for war or killing, alternatively, like selling grapes to liquor producers because the wine being sold may be processed into liquor. Acts like this are prohibited because there is a strong suspicion (*zhann al-Ghalib*) that these actions lead to evil.

- 4) Actions that are initially allowed to be carried out because they contain benefits, but it is also possible for the act to lead to harm.

Such as the case of buying and selling, which is called *bay'u al-'ajal*, buying and selling at a price higher than the original price because it is not in cash. For example, a person buys a vehicle for thirty million rupiahs on credit. Suppose the vehicle purchased on credit for thirty million rupiahs is resold to the seller (the creditor) at a cash price of fifteen million rupiahs. In that case, it is as if the goods being traded do not exist. Meanwhile, the

seller (the creditor) is just waiting for the profit from paying the vehicle on credit. So buying and selling like this is not allowed because it tends to be usury.<sup>45</sup>

c. Dzari'ah in terms of the type of *mafsadah*, Ibn Qayyim divides dzari'ah into four:

1) *Dzari'ah*, which basically leads to destruction.

For example, intoxicating drinks will damage the mind, and adultery will damage offspring

2) *Dzari'ah* is determined for something that is permissible (permissible) but is intended for evil deeds that damage, whether intentional such as *muhallil* or unintentional, such as insulting the worship of other religions.

3) *Dzari'ah*, which was initially determined to be permissible, was not intended for damage, but usually, it is the same for damage, and the damage is more significant than the good. Like the decoration of a wife who has just been abandoned by her husband while she is in the *iddah period*.

4) *Dzari'ah*, which was initially determined to be permissible, sometimes leads to damage, but the damage is more minor than the good. An example, in this case, is seeing a woman's face when she is proposed to.<sup>46</sup>

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<sup>45</sup> Nasrun Haroen, *Ushul Fiqh*, 162

<sup>46</sup> Intan Arafah, "Pendekatan Sadd Adz-Dzari'ah Dalam Studi Islam", *Al-Muamalat*, Vol. 5 No. 1(2016): 78 <https://journal.iainlangsa.ac.id/index.php/muamalat/article/download/1443/1201/>

**CHAPTER III**  
**THE JUDGE'S DECISION NUMBER 280/Pdt.G/2020/PA.Sbh**  
**IN SADD ADZ-DZARI'AH PERSPECTIVE**

**A. Case Description**

The case submitted is a case of a polygamy permit application which was submitted to the Sibuhuan Religious Court on November 9, 2020. The application for a polygamy permit was submitted by a husband (applicant) who is 40 years old and works as a farmer against a respondent (wife) who is 37 years old and works as a housewife. The core case contains; that the Petitioner and the Respondent were married on March 12, 2005, according to the marriage certificate number: 284/24/XII/2005 dated December 1, 2005, from the Office of Religious Affairs of the District of Hutaraja Tinggi. After Marriage, the Applicant or Petitioner and the Respondent were blessed with two daughters and one son. Then, the Petitioner stated that he wanted to remarry (polygamous Marriage) with a woman named Resna Dewi Pratiwi bint Ngadino or referred to as the prospective second wife who works as a Civil Servant (PNS).

Polygamy was carried out because the Respondent could no longer have children whereas the Petitioner wanted to have another child. Then the Respondent has stated that he is willing and does not object if the applicant remarries the prospective second wife of the applicant. The Petitioner has also stated that the Petitioner can meet the necessities of life and can treat his wives and children fairly in the future. The

petition submitted by the applicant to the panel of judges based on the case above is to permit the applicant to marry Resna Dewi Pratiwi bint Ngadino as a second wife.

The panel of judges has tried to reconcile the Petitioner and the Respondent. The Petitioner and the Respondent have also gone through a mediation process with a legal mediator, but both efforts were unsuccessful. Due to the failure of mediation efforts, the trial continued by submitting an answer by the Respondent verbally, which in essence stated that the Petitioner and his prospective second wife had been married secretly since two months ago. In contrast, the Respondent could not have any more children because the Respondent had experienced cystitis after the third child was pregnant. By the doctor, it was declared that he could not have any more children. The Respondent was forced to permit polygamy because the Petitioner and the prospective second wife had been married secretly (*sirri*).

At the time of proof, the Petitioner has proven his arguments by submitting documentary evidence in the form of; photocopies of the ID cards of the Petitioners and Respondents (P.1 and P.2), the marriage certificate quotation number 284/24/XII/2005 (P.3). The three pieces of evidence have been matched with the originals by the panel of judges and turned out to be by the originals, then given marks P.1, P.2, P.3 and initialled. However, the Respondent submitted all the evidence without being given duty stamp payment verified. The evidence is in the form of; a photocopy of a marriage certificate (T.1), photocopy of a polygamy permit statement (T.2), photocopy of an ID card (T.3), photocopy of a letter of sale and purchase of a piece of rubber plantation land (T.4), photocopy of the letter of compensation (T. 5).

However, T.1 and T.3 can be matched with the original, which turns out to be by the original. All of the evidence submitted by the Respondent being marked by the panel of judges is then initialled.

The case is the application for a polygamy permit has been decided by the Judge of the Sibuhuan Religious Court in case number 280/Pdt.G/2020/PA.Sbh with a decision; reject the applicant's application in its entirety. In the case decision number 280/Pdt.G/2020/PA.Sbh, the Judge legally considered that the applicant's application to have polygamy with a prospective second wife was because the applicant wanted to have more children. However, the Respondent could not because they had the cystic disease after having their third child. This reason does not match the alternative conditions for polygamy because it is a legal fact that the applicant and the Respondent have been blessed with 3 (three) children. Therefore, the applicant's reason for polygamy does not meet the provisions of Article 4 paragraph (2) of Law Number 1 of 1974 concerning Marriage in conjunction with Article 41 letter (a) Government Regulation Number 9 of 1975 concerning the implementation of Law Number 1 of 1974 concerning Marriage, in conjunction with Article 58 paragraph (1) Compilation of Islamic Law.

Then the panel of judges legally considered that based on the provisions of Article 5 letter b of Law Number 1 of 1974 concerning Marriage in conjunction with Article 58 letter b of the Compilation of Islamic Law, The Religious Courts only give permission to a husband who will have more than one wife if approval is obtained for polygamy from the first wife. However, the Respondent or the first wife acknowledged

with a clause on the Petitioner's argument that the Respondent has given permission for polygamy because according to the Respondent the permission was forced to be given because the applicant has been married unregistered (*sirri*) with a second wife. Thus, the Judge considered that the Respondent had objected to polygamy. Then, based on the provisions of article 4 paragraph (1) of law number 11 of 1974, That permission to have more than one wife should be applied for before the second Marriage is carried out and must be submitted to the Religious Court at the place of residence of the applicant, while in the quo case there has been a unregistered polygamous marriage (*sirri*) between the Applicant and the prospective second wife so that permission to have more than one wife (polygamy) requested by the applicant is no longer relevant for asking for permission.

Therefore, based on the legal facts and legal considerations mentioned above, the panel of judges thinks that the Petitioners' reasons are not proven and have no legal basis, and violate the provisions of Law Number 1 of 1974 article 3 paragraph (2 ), Article 4 paragraphs (1) and (2) in conjunction with Article 40 of Government Regulation Number 9 of 1975, Article 56 paragraphs (1) and (2) of the Compilation of Islamic Law, for which the applicant's application should be declared rejected.<sup>47</sup>

Based on the description above, three points are considered by the Judge in deciding to reject the applicant's application for a polygamy permit. First, the applicant's reason for polygamy is that he wants to have more children. However, as the first wife, the

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<sup>47</sup> Salinan Putusan Pengadilan Agama Sibuhuan Nomor : 280/Pdt.G/2020/PA.Sbh



Respondent has been sentenced to suffer from cystic disease after giving birth to their third child. So that, She can no longer fulfil the wishes of the Petitioner. Second, the cumulative requirement for the applicant's polygamy is not fulfilled, obtaining permission from the first wife. The permission means the willingness or no objection from the first wife which is the Respondent to be polygamous. Because when giving his permission, the Respondent was under pressure, the Judge judged that the Respondent had an objection to being polygamous by the applicant. Third, the applicant's application for a polygamy permit should be made to the local Religious Court before the Marriage between the applicant and the prospective second wife. However, there has been a unregistered polygamous marriage (*sirri*) between the applicant and the prospective second wife in this case. So that the application for permission requested by the applicant is no longer relevant because there has been a marriage.

**B. Consideration of the Judge's Decision on Case Number 280/Pdt.G/2020/PA.Sbh**

A polygamy permit can only be granted if it fulfils at least one of the alternative requirements and three cumulative conditions. And for doing polygamous marriages, there are established procedures contained in article 56 of the compilation of Islamic law.

In this case, the case occurred at the Sibuhuan Religious Court with case number 280/Pdt.G/2020/PA. Sbh is considered not to meet one of the alternative requirements for polygamy, one of the cumulative requirements for polygamy, and also not follow the

procedures for doing polygamy. The basis for legal considerations imposed by the judges include:

1. Article 4 paragraph (2) of Law Number 1 of 1974 concerning Marriage
2. Article 41 letter (a) Government Regulation Number 9 of 1975 concerning the implementation of Law Number 1 of 1974
3. Article 56 paragraph (1 ) Compilation of Islamic Law

As for the legal facts obtained by the Judge, the reason that underlies the applicant's application for polygamy does not have a legal reason. Therefore, the applicant's application by the Judge cannot be accepted.<sup>48</sup>

In decision number 280/Pdt.G/2020/PA. There are three provisions put forward by the panel of judges in their legal considerations so that the case is not accepted in its decision. First, regarding alternative requirements in the form of reasons for applying for polygamy, wanting to have more children. Second, regarding the cumulative requirements, the first wife's consent, the husband's ability to act fairly, and the husband's ability to ensure the necessities of life for his wives and children. Third, regarding submitting an application for a polygamy permit, which must first obtain permission from the Religious Court before carrying out a polygamous marriage.

### **1. Consideration of Alternative Conditions**

In decision number 280/Pdt.G/2020/PA.Sbh, the husband's reasons when applying for polygamy were not by the provisions contained in article 4 paragraph (2)

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<sup>48</sup> Salinan Putusan Pengadilan Agama Sibuhuan Nomor : 280/Pdt.G/2020/PA.Sbh

of Law number 1 of 1974 in conjunction with article 41 letter ( a) Government Regulation number 9 of 1975 concerning the implementation of law number 1 of 1974 concerning Marriage in conjunction with article 58 paragraph (1) of the Compilation of Islamic Law. The reason for the husband as the applicant is that the applicant wants to have another child. However, the Respondent, as the first wife, can no longer fulfil the applicant's request because the Respondent has a cyst disease and was sentenced to be unable to give birth again by a doctor. Meanwhile, the applicant and the Respondent already have three (3) children. Therefore this case was not accepted by the Judge because the reason for polygamy did not match the alternative conditions.

The law does not regulate applications for polygamy permits because they want to increase their offspring. However, in another decision in the case of applying for a polygamy permit because the husband wants to add offspring to case number 203/Pdt.G/2020/PA.Wsb the request for polygamy is accepted, or the husband is allowed to practice polygamy. The panel of judges thinks that the reason underlying the Petitioner petitions is that the Respondent is no longer able to carry out his duties as a wife. The reason is to have fulfilled the alternative requirements and the cumulative requirements by article 5 paragraph 1 of Law number 1 of 1974 Article 41 letter (c) Number 9 of 1975. In addition, the Panel of Judges also used the argument of the quran, An-Nisa' (4): 3;

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مِثْلَ مَا أُوتِيتُمْ وَإِنْ خِفْتُمْ

أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ

“And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hands possess [i.e., slaves]. That is more suitable that you may not incline [to injustice].”<sup>49</sup>

Based on the arguments of the quran above, the Panel of Judges considers based on the facts that the applicant has been able to prove the arguments of his application and has complied with the norms of Islamic law contained in verse.<sup>50</sup>

Similar to case number 280/Pdt.G/PA.Sbh, the underlying reason for the applicant wanting to practice polygamy was to have another child. At the same time, as the first wife, the Respondent could no longer fulfil her husband’s wish because she had a cyst disease. The Respondent also confirmed this fact when giving his answer at trial. According to article 174 HIR, “A confession pronounced before a judge is a sufficient evidence to incriminate the person who admits it, whether he has spoken it himself, or with the help of another person, who is specifically authorized to do so”.<sup>51</sup>

<sup>49</sup> Saheeh International, [https://quranenc.com/en/browse/english\\_saheeh/4/3](https://quranenc.com/en/browse/english_saheeh/4/3)

<sup>50</sup> Shilfa Ayya Amalia, “Permohonan Izin Poligami Karena Ingin Menambah Keturunan Perspektif Maqashid al-Syari’ah” (Undergraduate thesis, Institut Agama Islam Negeri Purwokerto, 2020), <http://repository.iainpurwokerto.ac.id/id/eprint/8658>

<sup>51</sup> Pasal 174 Herizien Inlandsch Reglement

The problem of polygamy with an application to increase offspring has not been regulated in the Marriage Law. Meanwhile, the marriage law regulates the conditions for polygamy as stated in Article 4 paragraph 2 of Law Number 1 of 1974;

- a. The wife cannot carry out her obligations as a wife
- b. Wife has a disability or an incurable disease
- c. The wife cannot bear children.<sup>52</sup>

In-Law number 1 of 1974 concerning Marriage regarding the conditions for a husband who will be polygamous, a deeper explanation is needed. As in Article 4 paragraph (2) point c, which reads that the wife cannot give birth to offspring, in this case, it is not explained that she cannot give birth before the husband applies for a polygamy permit or after applying for a polygamy permit. Because in this case, the Respondent's condition before the applicant filed for polygamy had given birth to 3 children. However, when the applicant applied for a polygamy permit, the Respondent was unable to give birth to offspring due to a cyst disease, so the doctor was sentenced to be unable to give birth again. This article needs to be clarified again, and further studies are needed.

In Islam, procreation is one of the purposes of marriage. In accordance with the words of the Prophet which reads:

“a man will come to the Prophet SAW and say; surely I have found a woman of good and beautiful offspring, but she is barren, shall I marry her? He replied: "No" Then he came a second time and he forbade it, then he came a third time and the Prophet SAW said: "Marry women who are

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<sup>52</sup> Pasal 4 ayat (2) Undang-undang nomor 1 tahun 1974 tentang Perkawinan

loving and fertile (many descendants), because I will be proud of other people with so many of you. ”

Marriage is not just an ordinary contract like the contract in other acts of worship, as in the Qur'an in al-baqarah verse 187:

أَحِلَّ لَكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثُ إِلَى نِسَائِكُمْ هُنَّ لِيَاسٍ لَكُمْ وَأَنْتُمْ لِيَاسٍ ۗ هُنَّ عَلِمَ اللَّهُ أَنَّكُمْ كُنْتُمْ تَخْتَانُونَ أَنْفُسَكُمْ فَتَابَ عَلَيْكُمْ وَعَفَا عَنْكُمْ فَالآنَ بَاشِرُوهُنَّ وَأَبْتَغُوا مَا كَتَبَ اللَّهُ لَكُمْ وَكُلُوا وَاشْرَبُوا حَتَّى يَتَبَيَّنَ لَكُمُ الْخَيْطُ الْأَبْيَضُ مِنَ الْخَيْطِ الْأَسْوَدِ مِنَ الْفَجْرِ ۖ ثُمَّ أَتَمُوا الصِّيَامَ إِلَى اللَّيْلِ وَلَا تُبَاشِرُوهُنَّ وَأَنْتُمْ عَاكِفُونَ فِي الْمَسْجِدِ ۗ تِلْكَ حُدُودُ اللَّهِ فَلَا تَقْرُبُوهَا ۚ كَذَلِكَ يُبَيِّنُ اللَّهُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَّقُونَ

“It has been made permissible for you the night preceding fasting to go to your wives [for sexual relations]. They are a clothing for you and you are a clothing[67] for them. Allāh knows that you used to deceive yourselves,[68] so He accepted your repentance and forgave you. So now, have relations with them and seek that which Allāh has decreed for you [i.e., offspring]. And eat and drink until the white thread of dawn becomes distinct to you from the black thread [of night]. Then complete the fast until the night [i.e., sunset]. And do not have relations with them as long as you are staying for worship in the mosques. These are the limits [set by] Allāh, so do not

approach them. Thus does Allāh make clear His verses [i.e., ordinances] to the people that they may become righteous.”<sup>53</sup>

The above verse indicates that when Allah gave relief (*rukshoh*) to the Prophet Muhammad SAW to be able to interfere with his wife at night of *Ramadhan*, God's command is not just for the gratification of lust only, but to carry out what has been determined by God, the effort to obtain offspring.<sup>54</sup>

Therefore, the reason for marriage is to have more children or to multiply children is not contrary to Islamic law that has been established in the Qur'an and *sunnah*. So doing a polygamous marriage to have more children because the first wife can no longer give birth because she has suffered from cysts is in accordance with the recommendations contained in Islamic law.

## **2. Consideration of Cumulative Conditions;**

The Religious Courts grant permission for polygamy if the husband has fulfilled all the cumulative requirements stated in Article 5 paragraph (1) of Law Number 1 of 1974:

- a. The existence of consent from the wife or wives
- b. There is a certainty that the husband can guarantee the necessities of life for his wife and their children

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<sup>53</sup> Saheeh International, [https://quranenc.com/en/browse/english\\_saheeh/2/187](https://quranenc.com/en/browse/english_saheeh/2/187)

<sup>54</sup> Ach Farid, “Hadis Tentang Memperbanyak Keturunan (Kajian Living Hadis Riwayat Abu Dawud No. Indeks 2050 di Dusun Batulabang Pamekasan), (Skripsi, Universitas Islam Negeri Sunan Ampel Surabaya, 2021)

c. There is a guarantee that husbands will treat their wives and children fairly.<sup>55</sup>

In the Judge's decision number 280/Pdt.G/2020/PA.Sbh, regarding the application for a polygamy permit in the case, the husband as the applicant has obtained permission from the first wife, the Respondent, to carry out a polygamous marriage. However, this could not be proven because the polygamy permit brought by the Respondent to the court was not stamped and was duty stamp payment verified, so the evidence could not be accepted. However, the Respondent stated verbally that he had agreed to his husband's polygamous Marriage at the trial. However, the Respondent also explained that the Respondent was forced to permit because the applicant and the prospective second wife had been married in an unregistered. Therefore, after observing the Respondent's answer and attitude at the trial, the Judge considered that the Respondent had objected to being co-opted. In essence, there are no women who are willing to be polygamous. Psychologically, all wives will feel hurt when they see their husbands having sex with other women. This problem usually triggers the breakdown of a family. This psychological impact not only impacts the wife's psyche but also the impact on the children, especially for their mental development.

The formulation of marriage law number 1 of 1974 and the compilation of Islamic law regarding polygamy must have taken into account the benefits and harms that will arise, especially the psychological side of the wife when she is going to be polygamous. This can be seen from the conditions for the first wife's consent so that

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<sup>55</sup> Pasal 41 huruf (a) Peraturan Pemerintah nomor 9 Tahun 1975 Tentang Pelaksanaan Undang-undang Nomor 1 Tahun 1974



her husband can practice polygamy. Generally, if men practice polygamy secretly without prior notification from the man to the wife, it will cause damage (*mafsadah*) and eventually lead to household damage. Husbands who practice polygamy without telling their wives beforehand will reap big problems in the household. The reason that the wife is hurt, the effect or damage (*mafsadah*) causes discomfort. It is not peaceful in the household. Finally, the wife looks for negative ways so that the relationship between the wife recently with her husband is cut off.<sup>56</sup> The marriage law still allows polygamy by proposing several conditions that the husband must meet. This leads to the idea that there are inconsistent laws in this polygamy case.

Law number 1 of 1974 concerning Marriage allows polygamy by proposing several conditions that must be met by the husband, in which the formulation of the law has taken into account aspects of *masalah*, *madharat*, and psychological aspects of the wife who will be polygamous so that she requires permission from the previous wife in order to be able to do polygamy. Polygamy. However, in case number 280/Pdt.G/2020/PA.Sbh, the Judge refused the husband's permission for polygamy, considering that the wife objected to being married off because when she gave the permission, the wife felt pressured. Meanwhile, the wife can no longer fulfil her husband's desire to have more children. If this case is reviewed according to marriage law number 1 of 1974 regarding the cumulative requirements in article 5, the consent

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<sup>56</sup> Riyandi, S, "Syarat Adanya Persetujuan Istri Untuk Berpoligami Analisis Ushul Fikih Syafi'iyah Terhadap Undang-undang Perkawinan Nomor 1 Tahun 1974", *Islam Futura*, vol. 15 No. 1(2015): 139 DOI: <http://dx.doi.org/10.22373/jiif.v15i1.561>

from the first wife was obtained, even though the evidence documents were not proven because it is not stamped and not duty stamp payment verified.

However, in response to the Respondent at trial, he admitted that he had permitted the Petitioner. Although the permission was given because of pressure. Because no woman does not feel pressured when she finds out her husband is going into polygamy. The condition of the wife is depressed because of the wife's inferiority, who cannot fulfill her husband's needs, not being able to give more offspring to her husband, as well as the condition of a husband who has been married unregistered (*sirri*) with his second wife. The wife's feeling of compulsion is caused by herself being sad to see the reality, the compulsion is not forced by the husband, prospective second wife or other parties.

In Islamic law the permission is not required from the first wife to practice polygamy, polygamous marriage is valid if it has fulfilled the pillars and conditions of marriage that have been set by Islam.

Then, regarding the second condition, that is the guarantee of meeting the needs of his wives and children, and the third condition is the guarantee that he will be fair, there is no written evidence. However, verbally the applicant has stated when providing answers to the Respondent's answer at trial that he has income. IDR 25,000,000 from plantation products, not yet calculated with income from other businesses. The Petitioner's acknowledgement can already be used as evidence as contained in Article 174 HIR that "The confession pronounced before the Judge is sufficient evidence to incriminate the person who admits it, whether he has spoken it himself, or with the help

of another person, who is specially authorized for it”.<sup>57</sup> Thus, the applicant’s permit application has met the Cumulative requirements for polygamy.

### **3. Consideration of the Polygamy Procedures**

The procedure for granting polygamy permits is regulated in Article 40 of Government Regulation number 9 of 1975, which states that “if a husband intends to have more than one wife, he is obliged to submit a written application to the Court”. Article 56 of the Compilation of Islamic Law has also explained the procedure for polygamy:

- a. “Husbands who wish to have more than one wife must obtain permission from the Religious Courts.
- b. The permit application submission referred to paragraph 1 is carried out according to the procedure as stipulated in chapter VIII of PP Number 9 of 1975.
- c. Marriages with a second, third or fourth wife without permission from the Religious Courts have no legal force”.<sup>58</sup>

Therefore, polygamous marriages can be carried out if they have obtained permission from the competent Religious Court. In case Number 280/Pdt.G/2020/PA.Sbh, the applicant has been married unregistered (*sirri*) with a prospective second wife for two months before applying for a polygamy permit to the

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<sup>57</sup> Pasal 174 HIR

<sup>58</sup> Pasal 56 Kompilasi Hukum Islam

Sibuhuan Religious Court. Of course, this has violated the provisions regarding the polygamy procedure contained in Government Regulation number 9 of 1975 and Article 56 of the Compilation of Islamic Law. And the application for permission for polygamy by the applicant with the second wife becomes irrelevant to ask for permission because there has been a marriage between the applicant and the prospective second wife three months before this case was decided. So the procedure that the husband should take is the application for its bat or the determination of polygamous Marriage to the local Religious Court.

**B. Analysis of the Judge’s Decision on Case Number 280/Pdt.G/2020/PA.Sbh using the *Sadd adz-dzari’ah***

Polygamy is actually allowed in Islamic teachings. This ability is found in An-Nisa’ (4) : 129;

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ وَإِنْ تُصْلِحُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا

“And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so]. So do not incline completely [toward one] and leave another hanging.[221] And if you amend [your affairs] and fear Allāh - then indeed, Allāh is ever Forgiving and Merciful.”<sup>59</sup>

<sup>59</sup> Saheeh International, [https://quranenc.com/en/browse/english\\_saheeh/4/129](https://quranenc.com/en/browse/english_saheeh/4/129)

From the verse above, it can be seen that polygamous Marriage is allowed because it is not allowed to marry more than four (4) wives, and the husband must be able to act fairly. These two conditions are absolute conditions that the husband must meet if he wants a polygamous marriage. If one of these conditions is not met, the husband cannot do polygamy. According to Quraish Shihab, the permissibility of polygamy is a small emergency door that is only done when it is needed in conditions that are not light. God does not allow polygamy without limitations that allow for the benefits and benefits and rejects the damage (*mafsadah*) it may cause.<sup>60</sup>

However, in case number 280/Pdt.G/2020/PA.Sbh, the applicant's application for a polygamy permit was rejected by the panel of judges even though the initial polygamy law was permissible. When viewed from the case number 280/Pdt.G/2020/PA.Sbh at the Sibuhuan Religious Court, The Panel of Judges did not grant the case with three primary considerations in its decision:

1. The applicant's reason for polygamy was that he wanted to have more children. However, the Respondent, as the first wife, has been sentenced to suffer from cystitis after giving birth to their third child so that they can no longer fulfil the wishes of the Petitioner, the request of the applicant who wants to have another child with the condition that he already has three children is considered not to meet the requirements for alternative polygamy by the Judge.

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<sup>60</sup> Azwarfajri, "Keadilan Berpoligami dalam Perspektif Psikologi", *Jurnal Substantia*, Vol. 13, No. 2(2011): 162 <https://www.jurnal.ar-raniry.ac.id/index.php/substantia/article/download/4820/3108>

2. The cumulative requirement for the applicant's polygamy is not fulfilled, obtaining permission from the first wife. The permission means the willingness or no objection from the first wife, the Respondent, to be polygamous. Because when giving his permission, the Respondent was under pressure, the Judge judged that the Respondent had an objection to being polygamous by the applicant.
3. The applicant should apply for a polygamy permit from the local Religious Court before the Marriage between the applicant and the prospective second wife. However, there has been a unregistered polygamous marriage (*sirri*) between the applicant and the prospective second wife in this case. So that the application for permission requested by the applicant is no longer relevant because there has been a marriage.

Therefore, the authors analyze it using the *sadd adz-dzari'ah* method. This method is a prevention effort so that something bad or negative doesn't happen. This is in line with the objectives of syara' or *maqashid shari'ah* because *maqashid shari'ah* is to realize the benefit and avoid all kinds of damage, both in this world and in *sadd adz-dzariah* the hereafter.<sup>61</sup> *Sadd adz-dzari'ah* is a method used as a law taking in the form of a prohibition on doing an act which is allowed to cover or prevent the occurrence of evil. In the context of the methodology of Islamic legal thought, *sadd adz-dzari'ah* can be interpreted as an earnest effort from a *mujtahid* to establish the law

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<sup>61</sup> Ali Mutakin, "Hubungan Maqashid al Syariah dengan Metode Istinbath Hukum", *Analisis*, Vol. 17, No. 1(2017): 120 <https://doi.org/10.24042/ajsk.v17i1.1789>

by looking at the legal consequences that arise, by inhibiting something that mediates the damage.<sup>62</sup>

*Sadd adz-dzariah* in Islamic law can be used as a method of extracting law. Malikiyah and Hanabilah scholars use *sadd adz-dzariah* as a method of extracting their law, while Hanafiyah and Shafi'iyah priests only use *sadd adz-dzariah* on some cases. Zahiriyah scholars also reject *sadd adz-dzari'ah*, but Ibn Hazm himself uses *sadd adz-dzari'ah*. He uses *sadd adz-dzari'ah* for things that will definitely bring to *mafsadah*. In this case there are definitely *mafsadah* if the case accepted or rejected. Polygamy is allowed in Islam and also in Indonesian law but in this case the polygamy had been prohibited by the judge. So that, this case is appropriate to be analyzed using *sadd adz-dzari'ah*.

Islamic law regulates human behaviour that has been done and what has not been done. This does not mean that Islamic law tends to restrict freedom. But because it is, one of the goals of Islamic law is to realize the benefit and avoid damage (*mafsadah*). If an act that has not been carried out is strongly suspected of causing damage (*mafsadah*), then the things that lead to the act are prohibited.

Every action has two sides: the encouraging side and the objective or goal side, which becomes the *natijah* (conclusion/consequence) of the deed. If his *natijah* is good,

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<sup>62</sup> Intan Arafah, "Pendekatan *Sadd adz-dzari'ah* Dalam Studi Islam", *Al-Muamalat*, Vol. 5 No. 1(2016): 72 <https://journal.iainlangsa.ac.id/index.php/muamalat/article/download/1443/1201/>

then everything that leads to him is good, and he must do it. If his *natijah* is wicked, then anything that supports him is likewise wrong and is prohibited.<sup>63</sup>

When viewed from the legal level, the legal provisions against *wasail* are much lighter than the legal provisions in the *maqashid*. Apart from that, the basis for accepting *sadd adz-dzariah* as a method of taking the law is a review of the consequences of an act.

Then it will be analyzed from two points of view; if this case is accepted and if this case is rejected regarding *mafsadah* that will be generated to get an objective goal. This aims to determine the greater *mafsadah* between the two.

### **1. Analysis if case number 280/Pdt.G/2020/PA.Sbh is accepted**

When viewed from the applicant's motive for polygamy, it is to want to have another child. At the same time, the Respondent can no longer fulfil the request of the applicant because the Respondent was sentenced to have cystitis by a doctor after giving birth to a child they are third. The purpose or motive of the applicant is actually one of the wisdom of polygamy, avoiding cheating or adultery. With polygamy, it will avoid acts that are not recommended by religion.

When viewed from the impact, receiving this polygamy permit by the Judge can lead to several possibilities of *mafsadat* that will occur, such as disruption of the psychological condition of the first wife, because when giving

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<sup>63</sup> Intan Arafah, "Pendekatan *Sadd adz-dzari'ah* Dalam Studi Islam", *Al-Muamalat*, Vol. 5 No. 1(2016): 78 <https://journal.iainlangsa.ac.id/index.php/muamalat/article/download/1443/1201/>



permission, the wife is already in a state of stress with the condition of her husband. He has carried out a unregistered polygamous marriage (*sirri*). This psychological disorder occurs not only in the first wife but also in their children because they see the disharmony of their parent's household. Psychologically, the wife will feel hurt when she sees her husband having sex with other women. There are at least two factors that make a wife feel this way:

- a. Because of the encouragement of a deep sense of loyal love for her husband
- b. .Because the wife feels inferior as if her husband is polygamous because he cannot fulfil his biological satisfaction. Feelings of inferiority are increasingly becoming a psychological problem, especially if they are under pressure from family.

In addition, the damage (*mafsadah*) that will arise is internal conflicts within the family, either between wives, between wives and stepchildren or between children with different wives. There is a sense of unhealthy competition between wives caused by feelings of jealousy and envy. This happens because usually, husbands pay more attention to young wives than old wives.<sup>64</sup> In addition, the acceptance of the application for a polygamy permit which has been carried out the unregistered polygamy (*sirri*) in this case by the judge, seems as if the judge allows and legitimizes a similar case so that people

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<sup>64</sup> Herlina Fitriana, Novia Suhastini, "Dinamika Psikologis Istri Pertama Yang Dipoligami (Studi Kasus Pada Suku Sasak Nusa Tenggara Barat)", *Qawwam: Journal For Gender Mainstreaming*, Vol. !5, No. 2(2021): 31 <https://journal.uinmataram.ac.id/index.php/qawwam/article/download/4153/1848>

think that this case can be accepted by the judge, thus increasing cases of unregistered polygamy (*sirri*) among the community.

## 2. Analysis if case number 280/Pdt.G/2020/PA.Sbh is rejected

From the side, the application for a polygamy permit is not accepted or rejected, it gives rise to several *mafsadah*, that the husband's reason for doing polygamy is to want to have more children, so if the husband is prohibited from doing it According to Quraish Shihab, completely closing the door to polygamy which has been opened by Islamic law will lead to the rise of unregistered marriage (*sirri*) or even the presence of mistresses or even further to the emergence of acts that lead to the practice of prostitution.<sup>65</sup> However, in this case, the husband has carried out a polygamous marriage with the prospective second wife in a unregistered polygamous marriage (*sirri*), so the fear of falling into adultery is inappropriate because the relationship between the husband and the prospective second wife is legally Islamic even though it is not registered in state law. Thus, the damage (*mafsadah*) that will arise is regarding the status of the second wife in her position as a second wife in state law, such as not being entitled to a living from her husband, not being considered a legal wife because the husband has legal freedom so that it allows the husband to deny his Marriage and second wife can be divorced anytime and anywhere because according to Islamic law, the talaq handed down by the husband is valid. Then

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<sup>65</sup> Azwarfajri, "Keadilan Berpoligami dalam Perspektif Psikologi", 164

there is no legal protection for the second wife in the event of violence in their household.<sup>66</sup> as well as the position or clarity of the status of the offspring of their children who will be born from the unregistered polygamous marriage (*sirri*) is not clear. In addition, the *madharat* that will arise is in the form of a conflict between husband and first wife due to the first wife's confession at trial because when she gave her husband's polygamy permit, she was under pressure so that the panel of judges rejected her husband's request for polygamy permission. It could even be that her husband divorced his first wife to marry a prospective second wife legally. However, incidents like this are rare. Because during the research, the author only found one case like this, in the thesis written by Diana Ulfatun Khasanah. In that case, the husband's polygamy permission was rejected by the panel of judges, even though the second wife was pregnant, so the husband married the second wife in a unregistered polygamous marriage (*sirri*). After the prospective second wife gave birth, the husband divorced the first wife in order to marry his second wife legally.

From some of *mafsadah*, it can be seen that if case number 280/Pdt.G/2020/PA.Sbh is accepted, it will cause more *mafsadah* which is sure to occur and the time it occurs immediately when the case is accepted, the disruption of the psychological condition of the wife who is depressed seeing her husband. Doing

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<sup>66</sup> Ayu Wulandari, "Dampak Perkawinan Poligami Secara Sirri Terhadap Keutuhan Rumah Tangga", (Undegraduate thesis, Universitas Islam Negeri Sulthan Thaha Saifuddin Jambi, 2020), <http://repository.uinjambi.ac.id/7234/1/wtr-AYU%20WULANDARI.pdf>

polygamy is confirmed because when in court, the wife feels pressured when giving permission, and no woman feels sad and depressed when her husband is doubled on her even though she allows her husband to be polygamous. In addition, polygamy will also cause psychological burdens on children, such as the lack of attention from their fathers, who are busy taking care of their wives.<sup>67</sup> Besides that, the child's psychological condition will also be disturbed by seeing his sad and depressed mother being polygamous with his father. In addition, the acceptance of the application for a polygamy permit which has been carried out the unregistered polygamy (*sirri*) in this case by the judge, seems as if the judge allows and legitimizes a similar case so that people think that this case can be accepted by the judge, thus increasing cases of unregistered polygamy (*sirri*) among the community.

While *mafsadah* that will arise if this case is rejected is more in impact of unregistered polygamous marriage (*sirri*) . Such as the absence of legal protection for the second wife in the event of domestic violence and the absence of protection of the wife's rights in this case, such as a living, gonorrhoea property, can be divorced anytime and anywhere. Even so, *mafsadah* is a possibility that will happen, and it is not sure to happen.

The several *mafsadah* that will arise will then be analyzed regarding the quality of *Sadd adz-dzari'ah*. According to Imam al-Syathibi, the quality of *mafsadat* is divided into four types:

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<sup>67</sup> Ayu Wulandari, "Dampak Perkawinan Poligami Secara Sirri Terhadap Keutuhan Rumah Tangga"

- a. The actions carried out lead to definite *mafsadat (qath'i)*.

Like someone digging a well at someone else's door at night, the house owner does not know it. The evil form of this act can be ascertained, the fall of the house owner into the well, and that can be ascertained because the house owner did not know that the well was at the door. Acts like this are prohibited, and if it turns out that the owner of the house fell into the well, then the hole digger is subject to punishment because the act was done intentionally to harm other people.

- b. Actions that can be done because they rarely lead to evil.

Such as digging a well in a place that usually does not give *harm* or selling a type of food that usually does not give *harm* to people who eat it. Acts like this remain on the original law, *permissible* (permissible).

- c. The actions taken are likely to lead to evil.

Like selling weapons to the enemy because it is very likely that the weapon will be used for war or killing, alternatively, like selling grapes to liquor producers because the wine being sold may be processed into liquor. Acts like this are prohibited because there is a strong suspicion (*zhann al-Ghalib*) that these actions lead to evil.

- d. Actions that are initially allowed to be carried out because they contain benefits, but it is also possible for the act to lead to harm.

Such as the case of buying and selling, which is called *bay'u al-'ajal*, buying and selling at a price higher than the original price because it is not in

cash. For example, a person buys a vehicle for thirty million rupiahs on credit. Suppose the vehicle purchased on credit for thirty million rupiahs is resold to the seller (the creditor) at a cash price of fifteen million rupiahs. In that case, it is as if the goods being traded do not exist. Meanwhile, the seller (the creditor) is just waiting for the profit from paying the vehicle on credit. So buying and selling like this is not allowed because it tends to be usury.<sup>68</sup>

In Case Number 280/Pdt.G/2020/PA.Sbh, when viewed from the aspect of *mafsadah quality*. So in terms of if the case is accepted, the quality of *mafsadah* is starch (*qath'i*), and that has already happened, the feeling of the wife being depressed when permitting polygamy to her husband. If viewed from the side, if the case is rejected, the quality of the *mafsadah* is *Ghalib* (ordinary) because *mafsadah* does not directly occur to the second wife (not necessarily the case). That is like the absence of legal protection for the second wife in the event of domestic violence if viewed based on the decision in case Number 280/Pdt.G/2020/PA.Sbh, there is no quarrel between the applicant and the prospective second wife, *mafsadah* is uncertain (*Ghalib*) will occur. Therefore, based on the quality of the *mafsadah*, what is avoided is the one that has the quality of definite *mafsadah* (*qath'i*) because the scholars agreed to forbid it without a difference of opinion. Meanwhile, in terms of the quality of *Ghalib*, the scholars disagree (*ikhtilaf*), meaning that there is still a prohibition, but there are differences of opinion.

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<sup>68</sup> Nasrun Haroen, *Ushul Fiqh*, 162

Case number 280/Pdt.G/2020/PA.Sbh is a polygamy permit case which is a permissible act but can be an intermediary for the occurrence of evil, whether with intentional or unintentional purposes. In this case, polygamy did not aim to create new conflicts but was based on the judge's consideration. The first wife objected to polygamy because she felt pressured to be the root of new problems if her husband's permission for polygamy was accepted. The damage that will inevitably occur is the wife's psychological disturbance, which is evidenced by the wife's feeling of being depressed or forced when giving permission. At the same time, the psychological condition must be maintained and considered, which is by the objectives of the Shari'a (*maqashid shari'ah*), *hifd al-nafs*.

Based on the *qaidah* of *Ushul fiqh*, when there are two *mafsadahs* that collide, then the choice is the *mafsadah* that is lighter or less;

إِذَا تَزَاوَعَتِ الْمَصَالِحُ قُدِّمَ الْأَعْلَى مِنْهَا وَإِذَا تَزَاوَعَتِ الْمَفَاسِدُ قُدِّمَ الْأَخْفُ مِنْهَا<sup>69</sup>

In this case when this case is accepted and when this case is rejected both give rise to *mafsadah*, but when this case is accepted will give rise to more *mafsadah* and have a heavier quality of *mafsadah*. So closing this *mafsadah* is very necessary. So that in this case the possibility of *mafsadah* is chosen which is less and which has a lighter quality of *mafsadah*, that is, this case is rejected.

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<sup>69</sup> Al-Manhaj, <https://almanhaj.or.id/4072-kaidah-ke-33-jika-ada-kemaslahatan-bertabrakan-maka-maslahat-yang-lebih-besar-harus-didahulukan.html>

From *Sadd adz-dzari'ah*'s analysis of case number 280/Pdt.G/2020/PA.Sbh, the author further strengthens the judge's opinion who rejected the case regarding the polygamy permit. This is in accordance with the *sadd adz-dzari'ah* principle, which is a method of extracting preventive laws or preventing misconduct. And *mafsadah* that often arises is when the case for a permit application for polygamy is received. So, *mafsadah* should be avoided, by refusing the application for a polygamy permit.

So, according to the author, the refusal of this polygamy permit case has shown that the law is consistent in maintaining the objectives of *shari'ah* (*maqashid sharia*), obtaining benefit and rejecting the damage that will be caused. The wife's consent requirement is to prevent damage to their household caused by the wife's heartache when she finds out her husband has committed polygamy without her knowledge. However, in this case, the wife's psychological condition has been depressed by her husband's condition, having done a polygamous marriage with someone else, so the negative impact of polygamous marriages is visible.



## CHAPTER IV

### CLOSING

#### A. Conclusion

From the analysis of case number 280/Pdt.G/2020.PA.Sbh, the following conclusions can be drawn:

1. The Judge's considerations in deciding the polygamy permit case are summarized in three primary considerations. First, regarding the reason the husband wants to remarry, wanting to have more children, it is not by the alternative requirements for polygamy as stated in Article 4 paragraph 2 of Law Number 1 of 1974. Second, regarding the first wife's permission, which was given because she was stressed, the Judge judged that the first wife had objected to the marriage. Therefore, the application for a polygamy permit does not meet the cumulative requirements for polygamy contained in article 5 paragraph (1) of Law number 1 of 1974. Third, regarding the procedure for polygamy by article 40 of Government Regulation number 9 of 1975, before carrying out polygamous marriages, permission must be asked from the Religious Court first. However, there was a unregistered polygamous marriage (*sirri*) between the Petitioner and the prospective second wife in this case. The Judge considered that the application for a polygamy permit was no longer relevant.
2. By the *sadd adz-dzari'ah*, the *mafsadah* will be inflicted on this case, whether this case is accepted or rejected. However, the difference between the two lies

in the quality of their wisdom. If this case is accepted, the quality of *mafsadah* *mafsadah* is *qath'i* (definitely): a disruption of the first wife's psychology (depressed) and also their children's psychology, The judge's decision appears to condone the practice of unregistered marriage, which has the potential to expand the number of instances in the community. By law, this is strictly prohibited without any difference of opinion. Then if this case is rejected, the quality of the *mafsadah* is *Ghalib* (general or ordinary), the absence of legal protection for the second wife in the event of domestic violence and the absence of protection of the wife's rights, such as a living, gonorrhoea property, can be divorced anytime and anywhere, the status of the offspring of their children who will be born from the unregistered polygamous marriage is not clear. This is legally prohibited, but there are differences of opinion (*ikhtilaf*). If this case is accepted, the *mafsadah* that are raised are more and have a heavier quality than if this case is rejected. and closing the *mafsadah* that are more and heavier is given priority, so that what is chosen is the *mafsadahs* that is lighter and less, that is, the rejection of this case. So this analysis, in essence, strengthens the Judge's decision to reject case number 280/Pdt.G/2020/PA.Sbh, because of its *qath'i* avoided first than the quality of the *Ghalib's* (general, ordinary) malice.

## **B. Suggestion**

1. Reseacher

This thesis only discusses the rejection of the application for a polygamy permit because the wife is forced to give polygamy permission using the sadd adz-dzari'ah analysis tool. The researcher suggests to further researchers to examine other cases regarding polygamous marriages using other analytical tools such as; *maqashid sharia*, *maslahah mursalah*, *fath dzari'ah* and so on.

## BIBLIOGRAPHY

### Laws

Kompilasi Hukum Islam

KUHPerdata

Peraturan Pemerintah nomor 9 Tahun 1975 Tentang Pelaksanaan Undang-undang Nomor 1 Tahun 1974

Undang-undang nomor 1 tahun 1974 tentang Perkawinan

### Books

Amirudin, dan Zainal Asikin. *Pengantar Metode Penelitian Hukum*. Jakarta: PT Raja Grafindo Persada. 2004.

Djazuli, I. Nurol Aen. *Ushul Fiqh Metodoloji Hukum Islam*. Jakarta: PT Raja Grafindo

Efendi, Jonaedi dan Johnny Ibrahim. *Metode Penelitian Hukum Normatif dan Empiris*. Jakarta: Kencana. 2016.

Gultom, Elfrida R.. *Hukum Acara Perdata*. Jakarta: Mitra Wacana Media. 2017.

Haroen, Nasrun. *Ushul Fiqh* . Jakarta: Logos Wacana Ilmu. 1997

Makara, Moh. Taufik. *Pokok-pokok Hukum Acara Perdata, cet. 1*, Jakarta: PT. Rineka Cipta. 2004

Mardani. *Hukum Acara Perdata Peradilan Agama & Mahkamah Syar'iyah*. Jakarta: Sinar grafika. 2009.

Nurdin, Amiur, dan Azhari Akmal Tarigan. *Hukum Perdata Islam di Indonesia Studi Kritis Perkembangan Hukum Islam Dari Fikih*. Jakarta: Kencana Premedia Group. 2004.

Nuruddin, Amiur dan Azhari Akmal Tarigan. *Hukum Perdata Islam di Indonesia*. Jakarta: Prenada Media Group. 2004.

Semiawan, Conny R., *Metode Penelitian Kualitatif*. Jakarta: Grasindo.

- Soekanto, Soejono. *Pengantar Penelitian Hukum*. Jakarta: UI-Pers. 1986.
- Sugiyono. 2011. *Metode Penelitian Kuantitatif dan Kualitatif dan R & D*. Bandung : Alfabeta.
- Zuhriah, Erfaniah. *Peradilan Agama Indonesia*. Malang: Setara Press. 2016.

### Journals

- Ali Mutakin, “Hubungan Maqashid al Syariah dengan Metode Istinbath Hukum”, *Analisis*, Vol. 17, No. 1(2017): 120  
<https://doi.org/10.24042/ajsk.v17i1.1789>
- Arafah, Intan. “Pendekatan Sadd Adz-Dzari’ah dalam Studi Islam,” *Jurnal Hukum & Ekonomi Syariah*, Vol. 5 No. 1 Edisi. 1 : 70  
<https://journal.iainlangsa.ac.id/index.php/muamalat/article/download/1443/1201/>
- Ayu Wulandari, “Dampak Perkawinan Poligami Secara Sirri Terhadap Keutuhan Rumah Tangga”, (Undegraduate thesis, Universitas Islam Negeri Sulthan Thaha Saifuddin Jambi, 2020), <http://repository.uinjambi.ac.id/7234/1/wtr-AYU%20WULANDARI.pdf>
- Herlina Fitriana dan Novia Suhastini, “Dinamika Psikologis Istri Pertama Yang Dipoligami”, *Qawwam: Journal for gender mainstreaming*, No. 2 (2021): 31  
<https://doi.org/10.20414/qawwam.v15i2.4153>
- Imanullah, Rijal. “Poligami Dalam Hukum Islam Indonesia,” *Jurnal pemikiran hukum Islam*, Vol XV, No. 1 (2016): 105
- Marzuki. “Poligami Dalam Hukum Islam,” *Jurnal Pendidikan Kewarganegaraan dan Hukum* : 2
- Mohammad Afifudin Sholeh, “Eksekusi Terhadap Putusan Pengadilan Tata Usaha Negara yang berkekuatan Hukum Tetap”, *Mimbar Keadilan Jurnal Keadilan Hukum*, (2018): 22-23 <https://doi.org/10.30996/mk.v0i0.1604>
- Muhammad Takhim, *Saddu al-Dzari’ah dalam Muamalah Islam*, *Jurnal Ekonomi dan Bisnis*, Vol. 14 No. 1 (2019): 20
- Munawaroh, Hifdhotul. “Sadd al-dzari’at dan Aplikasinya Pada Permasalahan Fiqh Komtemporer,” *Jurnal Ijtihad*. Vol.12 No.1(2018) : 76

- Nur Aisyah, “Peranan Hakim Pengadilan Agama dalam Penerapan Hukum Islam di Indonesia”, *Al-Qadau*, Vol 5, No. 1 (2018): 78  
<https://doi.org/10.24252/al-qadau.v5i1.5665>
- Riyandi. S, “Syarat Adanya Persetujuan Istri Untuk Berpoligami Analisis Ushul Fikih Syafi’iyah Terhadap Undang-undang Perkawinan Nomor 1 Tahun 1974”, *Islam Futura*, vol. 15 No. 1(2015): 139  
 DOI: <http://dx.doi.org/10.22373/jiif.v15i1.561>
- Shilfa Ayya Amalia, “Permohonan Izin Poligami Karena Ingin Menambah Keturunan Perspektif Maqashid al-Syari’ah” (Undergraduate thesis, Institut Agama Islam Negeri Purwokerto, 2020),  
<http://repository.iainpurwokerto.ac.id/id/eprint/8658>
- Suardita, I. Ketut. “Pengenalan Bahan Hukum,” *Jurnal Universitas Udayana*, (2017)
- Syaiful Hidayat, “Studi Kontraksi Tugas dan Fungsi Hakim di Pengadilan Agama”, *Tafaqquh*, Vol. 4, No. 2 (2016): 11
- Wantu, Fence M. “Mewujudkan Kepastian Hukum, Keadilan dan Kemanfaatan Dalam Putusan Hakim di Peradilan Perdata,” *Jurnal Dinamika Hukum*, Vol. 12 No. 3: 482

### **Thesis**

- Ach Farid. “Hadis Tentang Memperbanyak Keturunan (Kajian Living Hadis Riwayat Abu Dawud No. Indeks 2050 di Dusun Batulabang Pamekasan). Skripsi. Universitas Islam Negeri Sunan Ampel Surabaya. 2021.
- Lendri Nani Anggraini, “Kondisi Psikologis Istri Bersedia Dipoligami di Desa Pal 7 Kecamatan Bermani Ulu Raya Kabupaten Rejang Lebong”. Undergraduate thesis. Institut Agama Islam Negeri Bengkulu. 2021.



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