

**APPROVING THE POLYGAMY PERMISSION FOR AN
UNREGISTERED (SIRRI) MARRIAGE IN THE PERSPECTIVE
OF AMINA WADUD MUHSIN'S HERMENEUTICS**

(A Study of the Gresik Religious Court Decision No. 1135/Pdt.G/2023/PA.Gs)

THESIS

BY: MAWARDAH RAHMAWATI

SIN 220201110042



ISLAMIC FAMILY LAW DEPARTMENT

SHARIA FACULTY

**STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM
MALANG**

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STATEMENT OF THE AUNTENTICITY

In the name of Allah,

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

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

Malang, November 21th 2025



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APPROVAL SHEET

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MOTTO

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ يَعِظُكُمْ لَعَلَّكُمْ

تَذَكَّرُونَ

“Indeed, Allah commands justice, doing good, and giving to relatives. He also forbids immorality, wrongdoing, and hostility. He instructs you so that you may take heed”

(QS. An-Nahl: 90)

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All praise is due to Allah, the Most Gracious, the Most Merciful, whose infinite guidance and blessings have enabled the author to complete this thesis entitled “Approving the Polygamy Permission for An Unregistered (Sirri) Marriage In the Perspective of Amina Wadud Muhsin’s Hermeneutics (A Study of the Gresik Religious Court Decision No. 1135/Pdt.G/2023/PA.Gs)”. May peace and blessings be upon the Prophet Muhammad (peace be upon him), the messenger of truth and justice, whose life exemplified wisdom, compassion, and unwavering commitment to the pursuit of knowledge and virtue.

With the guidance, support, and assistance, both materially and morally, granted to the writer. I wish to express my deepest and most sincere gratitude to:

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3. Hj. Erik Sabti Rahmawati, M.A. M.Ag. Head of the Islamic Family Law Study Program, Faculty of Sharia, State Islamic University Maulana Malik Ibrahim Malang.

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the joy, support, and togetherness shared throughout this academic journey, making the process of completing this thesis more meaningful and enjoyable.

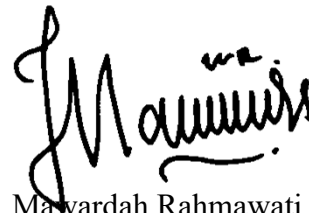
10. All other individuals who have directly or indirectly contributed to the completion of this thesis.

11. Last but not least, I wanna talk to me for not giving up, for showing up every day, and for always choosing to move forward, no matter how difficult it may get.

The writer is fully aware that this thesis still contains shortcomings. Therefore, constructive criticism and suggestions are sincerely welcomed for the improvement of future works. It is earnestly hoped that this thesis will provide meaningful contribution to the development of knowledge.

Malang, November 21, 2025

Writer,

A handwritten signature in black ink, appearing to read 'Mawardah Rahmawati', with a stylized flourish at the end.

Mawardah Rahmawati

220201110042

TRANSLITERATION GUIDANCE

Transliteration refers to the conversion of Arabic script into Indonesian (Latin) script, not the translation of Arabic language into Indonesian. This category includes, among others, Arabic names belonging to Arab people, whereas Arabic names belonging to non-Arab individuals are written according to the spelling of their national language or as written in the referenced work. The writing of book titles in footnotes as well as in the bibliography must still follow these transliteration rules.

A. Consonants

The list of Arabic letters and their transliterations into Latin characters can be found on the following page.

Arabic	Indonesian	Arabic	Indonesian	Arabic	Indonesian
ا	‘	ز	Z	ق	q
ب	b	س	S	ك	k
ت	t	ش	sh	ل	l
ث	th	ص	ṣ	م	m
ج	j	ض	ḍ	ن	n
ح	ḥ	ط	ṭ	و	w
خ	kh	ظ	ẓ	ه	h
د	d	ع	‘	ء	h
ذ	dh	غ	gh	ي	y
ر	r	ف	f		

Hamzah (ء) at the beginning of a word follows its vowel and is not marked with any symbol. If the hamzah (ء) appears in the middle or at the end of a word, it is written using an apostrophe (').

B. Vowels

The vowels in Arabic similar to Indonesian, consist of single vowels monophthongs and diphthongs. The single vowels in Arabic represented by vowel signs or harakat, are transliterated as follows:

Arabic Letters	Name	Latin Letters	Name
اَ	Fathah	A	A
اِ	Kasrah	I	I
اُ	Dammah	U	U

The Arabic diphthongs which are represented by a combination of vowel signs (harakat) and letters, are transliterated as a combination of letters, namely:

Sign	Name	Latin Letters	Name
أَي	Fathah dan ya	Ai	A dan I
أَوْ	Fathah dan wau	Lu	A dan U

Example:

كَيْفَ : kaifa,

هَوَّلَ : haula

C. Maddah

Maddah or long vowels which are represented by a combination of a vowel sign (harakat) and a letter are transliterated using specific letters and diacritical marks, namely:

Harkat and Letters	Name	Huruf and Sign	Name
أَ	Fatḥah dan alif atau ya	ā	a dan garis diatas
إِ	Kasrah dan ya	ī	i dan garis diatas
أُ	Ḍammah dan wau	ū	u dan garis diatas

Example:

مَاتَ : *māta*

رَمَى : *ramā*

قِيلَ : *qīla*

يَمُوتُ : *yamūtu*

D. Ta Marbūṭah

There are two transliteration forms for *tā' marbūṭah*. First, when the *tā' marbūṭah* carries a vowel sign fatḥah, kasrah, or ḍammah it is transliterated as (t). Second, when the *tā' marbūṭah* is silent or marked with a sukūn, it is transliterated as (h). For words ending with *tā' marbūṭah* that are followed by another word beginning with the definite article *al-* and both words are pronounced separately, the *tā' marbūṭah* is transliterated as *h*. Example:

رَوْضَةُ الْاِطْفَالِ : *rauḍah al-aṭfāl*

الْحِكْمَةُ : *al-ḥikmah*

E. Syaddah (Tasydīd)

Shaddah, or *tashdīd*, which in Arabic script is indicated by the diacritical mark (ّ), is transliterated in this system by doubling the consonant (a geminate consonant) that carries the shaddah.

Example:

رَبَّنَا : *rabbānā*,

عَدُو : *‘aduwwu*

If the letter ي with shaddah occurs at the end of a word and is preceded by a consonant bearing akasrah (ِ), it is transliterated in the same manner as a *maddah* vowel, namely ī. Example:

عَلِي : *Alī* (bukan ‘*Aliyy* atau ‘*Aly*),

عَرَبِي : *Arabī* (bukan ‘*Arabiyy* atau ‘*Araby*)

F. Definite Article

The definite article in the Arabic writing system is represented by the letters ال (*alif-lām ma‘rifah*). In this transliteration guideline, the definite article is transliterated in the usual form, al-, whether it is followed by a *sun letter* (*ḥurūf shamsiyyah*) or a *moon letter* (*ḥurūf qamariyyah*). The transliteration of the article does not adjust to the pronunciation of the letter that follows it. The definite article is written separately from the word it precedes and is connected by a hyphen (-).

Example:

الشَّمْسُ : *al-syamsu* (bukan *asy-syamsu*),

الْبِلَادُ : *al-bilādu*

G. Hamzah

The rule for transliterating the hamzah into an apostrophe (') applies only when the hamzah occurs in the middle or at the end of a word. However, when the hamzah appears at the beginning of a word, it is not represented in transliteration, because in Arabic script it is written in the form of an alif.

Example:

النَّوْءُ : *al-nau'*,

شَيْءٌ : *syai'un*

H. Writing Arabic Words Commonly Used in Indonesian

Arabic words, terms, or phrases that require transliteration are those that have not yet been standardized in the Indonesian language. Words, terms, or phrases that have already become common and are part of the Indonesian vocabulary, or are frequently written in Indonesian texts, are no longer transliterated according to the rules above. Examples include *Alquran* (from *al-Qur'ān*), *sunnah*, *hadis*, *khusus*, and *umum*. However, if these words appear as part of a complete Arabic text, they must be fully transliterated. Example:

Fī zilāl al-Qur'ān

I. Lafz Al-Jalālah (الله)

The word “*Allah*”, when preceded by a particle such as a prepositional letter (*ḥarf jarr*) or other particles, or when functioning as a *muḍāf ilayh* (in an *iḍāfah*/nominal phrase), is transliterated without the hamzah. Example:

دِينُ اللهِ : *dīnullāh*

As for *tā' marbūṭah* at the end of a word that is annexed (*muḍāf*) to the *lafẓ al-jalālah*, it is transliterated with the letter [t]. Example:

هُمْ فِي رَحْمَةِ اللَّهِ : *hum fī raḥmatillāh*

J. Capital Letters

Although the Arabic writing system does not recognize capital letters, in its transliteration the use of capital letters follows the rules of the current Indonesian spelling guidelines (EYD). Capital letters, for example, are used for the initial letter of proper names (persons, places, months) and the first letter at the beginning of a sentence. When a proper name is preceded by the definite article *al-*, the capital letter is applied to the initial letter of the proper name, not to the article. If it appears at the beginning of a sentence, then the letter A in the article *Al-* is written in capital form. The same rule also applies to the initial letter of the title of a reference that is preceded by the article *al-*, whether it is written in the main text or in the reference notes (footnotes, bibliography, and other citation formats).

Example:

Wa mā Muḥammadun illā rasūl, Abū Naṣr al-Farābī

Syahru Ramaḍān al-laẓī unzila fīh al-Qur'ān

Naṣīr al-Dīn al-Ṭūs

Abū Naṣr al-Farābī

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ABSTRAK

Mawardah Rahmawati 220201110042, **Pemberian Izin Poligami Atas Perkawinan Sirri Perspektif Hermeneutika Amina Wadud Muhsin (Studi Putusan PA Gresik No. 1135/Pdt.G/2023/PA.Gs)**. Skripsi Program Studi Hukum Keluarga Islam, Fakultas Syariah. Universitas Islam Negeri Maulana Malik Ibrahim Malang.

Dosen pembimbing: Prof. Dr. Hj. Umi Sumbulah, M.Ag.

Kata Kunci: Poligami, Perkawinan Sirri, Hermeneutika Amina Wadud Muhsin.

Perkara pada Putusan Nomor 1135/Pdt.G/2023/PA.Gs menunjukkan bahwa majelis hakim mengabulkan permohonan izin poligami meskipun pemohon sebelumnya telah melakukan perkawinan sirri dengan calon istri kedua. Praktik tersebut sejatinya menyalahi prosedur Undang-Undang Perkawinan karena poligami hanya dapat dilakukan setelah adanya izin pengadilan. Selain itu, alasan utama pemohon berupa kebutuhan biologis tidak termasuk dalam syarat alternatif poligami sebagaimana diatur dalam Pasal 4 ayat (2) UU Perkawinan jo. Pasal 57 KHI. Hal ini menunjukkan adanya kesenjangan putusan, sebab justifikasi hukum lebih diarahkan untuk memenuhi kepentingan Pemohon, sementara pengalaman dan kerentanan perempuan baik istri maupun calon istri kedua kurang diperhatikan. Penelitian ini memfokuskan analisis pada bagaimana hakim menetapkan *ratio decidendi* dalam perkara poligami atas perkawinan sirri, serta bagaimana pertimbangan tersebut dinilai melalui perspektif hermeneutika Amina Wadud Muhsin yang menekankan keadilan substansial dan kesetaraan gender.

Jenis penelitian ini adalah penelitian hukum yuridis normatif dengan pendekatan kasus (*case approach*). Jenis bahan hukumnya bersumber dari data sekunder dengan teknik pengumpulan bahan hukum dengan melakukan tinjauan kepustakaan (*library research*). Metode pengolahan bahan hukum meliputi: pemeriksaan bahan hukum, klasifikasi, analisis, dan kesimpulan. Sedangkan analisis bahan hukum yang digunakan adalah kualitatif dengan sifat analisis deskriptif.

Hasil penelitian menunjukkan bahwa putusan hakim dalam perkara ini belum sepenuhnya sejalan dengan prinsip hermeneutika Amina Wadud. *Ratio decidendi* yang dibangun hakim lebih menekankan pada pemenuhan syarat formal berupa persetujuan istri, kemampuan ekonomi, serta hubungan baik antar para pihak, tanpa mengkaji secara substantif pelanggaran prosedural berupa nikah sirri yang mendahului izin pengadilan. Dari perspektif Amina Wadud, keadilan dalam perkawinan menuntut perlindungan terhadap pengalaman perempuan sebagai subjek moral, bukan sekadar pemenuhan syarat administratif. Oleh karena itu, pertimbangan hukum dalam putusan ini dinilai belum mencerminkan keadilan yang berperspektif gender, karena tidak mengakomodasi dampak psikologis, sosial, dan relasional yang muncul akibat praktik poligami yang berawal dari pelanggaran prosedural dan relasi kuasa yang timpang.

ABSTRACT

Mawardah Rahmawati 220201110042, **Approving the Polygamy Permission for An Unregistered (Sirri) Marriage in the Perspective of Amina Wadud Muhsin's Hermeneutics (A Study of the Gresik Religious Court Decision No. 1135/Pdt.G/2023/PA.Gs).** Undergraduate Thesis, Islamic Family Law Study Program, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University of Malang.

Supervisor: Prof. Dr. Hj. Umi Sumbulah, M.Ag.

Keywords: Polygamy, *Sirri* Marriage, Amina Wadud Muhsin's Hermeneutics.

The case in Decision Number 1135/Pdt.G/2023/PA.Gs shows that the panel of judges approved the petition for permission to practice polygamy even though the petitioner had previously entered into an unregistered (*sirri*) marriage with the prospective second wife. Such practice essentially violates the procedural requirements of the Marriage Law, as polygamy may only be conducted after obtaining a court's permission. In addition, the petitioner's primary reason biological needs is not included among the alternative grounds for polygamy as stipulated in Article 4 paragraph (2) of the Marriage Law in conjunction with Article 57 of the Compilation of Islamic Law (KHI). This indicates a gap in the judgment, as the legal justification appears to prioritize the interests of the Petitioner, while the experiences and vulnerabilities of women both the wife and the prospective second wife receive insufficient consideration. This research focuses on analyzing how the judges established the *ratio decidendi* in a polygamy case involving a *sirri* marriage, and how these judicial considerations are assessed through the perspective of Amina Wadud Muhsin's hermeneutics, which emphasizes substantive justice and gender equality.

This study employs a normative juridical legal research method with a case approach. The legal materials used consist of secondary data collected through library research. The legal material processing methods include examination, classification, analysis, and drawing conclusions. The analysis of legal materials is conducted qualitatively with a descriptive-analytical character.

The results of the study show that the judges' decision in this case is not fully aligned with the principles of Amina Wadud's hermeneutics. The *ratio decidendi* established by the judges focuses primarily on the fulfillment of formal requirements, namely the wife's consent, financial capability, and good relations among the parties, without substantively examining the procedural violation in the form of a *sirri* marriage that preceded the court's permission. From Amina Wadud's perspective, justice in marriage demands the protection of women's experiences as moral subjects, rather than merely ensuring compliance with administrative requirements. Therefore, the legal considerations in this decision do not yet reflect gender-responsive justice, as they fail to take into account the psychological, social, and relational impacts arising from the practice of polygamy that commenced with a procedural violation and unequal power relations.

الملخص

مؤادة رحوإل(220201110042) ، منى إذن التعدد بناءً على الزواج السري في منظور الهرمنيوطيقا لأمنية ودود
محسن) دراسة لحكم المحكمة الدينية في غريسك رقم .(1135/Pdt.G/2023/PA.Gs) بحث لنيل درجة الإجازة
في برنامج الأحوال الشخصية، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية في مالانج.
المشرفة: الأستاذة الدكتورة الحاجة أمي سمبوله، الماجستير في العلوم الشرعية.

الكلمات المفتاحية: التعدد، الزواج السري، هرمنيوطيقا أمنية ودود محسن.

أن هيئة القضاة قد وافقت على طلب بَيِّن القضية في الحكم رقم 1135/Pdt.G/2023/PA.Gs الإذن
بالتعدد رغم أن الطالب قد قام سابقًا بعقد زواج سري مع الزوجة الثانية. وهذه الممارسة تُعدُّ في الحقيقة مخالفةً لإجراءات قانون
الزواج، لأنَّ التعدد لا يجوز شرعًا ولا قانونًا إلا بعد الحصول على إذن من المحكمة. إضافةً إلى ذلك، فإنَّ السبب الرئيس الذي
قدّمه الطالب، وهو الحاجة البيولوجية، لا يدخل ضمن الشروط البديلة المجيزة للتعدد كما هو منصوص عليه في المادة 4 الفقرة
(2) من قانون الزواج مقرونًا بالمادة 57 من مدونة الأحكام الإسلامية .(KHI) وهذا يُظهر وجود فجوة في الحكم، إذ إنَّ التعبير
القانوني وُجِّه بالدرجة الأولى لخدمة مصلحة الطالب، في حين لم تُؤخذ تجربة المرأة ومعاناتها سواء الزوجة الأولى أو الزوجة الثانية بما
يكفي من الاهتمام. ويركّز هذا البحث على تحليل كيفية بناء القضاة لد في قضايا التعدد المبني على الزواج السري، وكذلك كيفية
تقييم تلك الاعتبارات من خلال منظور هرمنيوطيقا أمنية ودود محسن التي تُؤكِّد العدالة الجوهرية والمساواة بين الجنسين.

إنَّ نوع هذا البحث هو بحث قانوني فقهي -نظري (يُوريديس نُورماتيف) باستخدام منهج دراسة الحالة .أما مصادر
مادته القانونية فمستمدة من البيانات الثانوية، وذلك من خلال جمع المواد القانونية بواسطة أسلوب البحث المكتبي .وتشمل
طريقة معالجة المواد القانونية ما يأتي :فحص المواد القانونية، وتصنيفها، وتحليلها، واستخلاص النتائج .في حين يعتمد تحليل المواد
القانونية في هذا البحث على التحليل النوعي ذي الطابع الوصفي التحليلي.

تُظهر نتائج البحث أنَّ حُكم القاضي في هذه القضية لم ينسجم انسجامًا تامًا مع مبادئ الهرمنيوطيقا عند أمنية
ودود .ف الأساس الذي بَنى عليه القاضي يتركّز على استيفاء الشروط الشكلية فقط، مثل موافقة الزوجة، والقدرة الاقتصادية،
والعلاقة الجيدة بين الأطراف، من غير فحصٍ جوهريٍّ لمخالفة الإجراءات المتمثلة في عقد الزواج السري الذي سبق الحصول على
إذن المحكمة.ومن منظور أمنية ودود، فإنَّ العدالة في الزواج تقتضي حماية تجربة المرأة بوصفها فاعلاً أخلاقياً، لا مجرد استكمال
الشروط الإدارية.وبناءً على ذلك، فإنَّ الأسس القانونية في هذا الحكم لا تعكس عدالة ذات منظورٍ جندي، لأنها لم تُراع الآثار
النفسية والاجتماعية والعلاقية الناتجة عن ممارسة التعدد التي بدأت أساسًا من مخالفةٍ إجرائية ومن علاقة قُوَى غير متوازنة.

CHAPTER I

INTRODUCTION

A. Background of the Study

Polygamy is a marital system that allows a person to have more than one spouse at the same time.¹ Etymologically, the term “*polygamy*” originates from the Greek words *polus*, meaning “many,” and *gamos* or *gamein*, meaning “marriage.” In practice, polygamy is divided into two forms: polyandry, in which a woman has more than one husband, and polygyny, in which a man has more than one wife.² In the context of Islamic law, polyandry is explicitly prohibited, whereas polygyny is permitted under certain conditions.³ Although the accurate term for a man who has more than one wife is *polygyny*, the general public is more familiar with and commonly uses the term “*polygamy*.”

Polygamy stands in contrast to monogamy, which is understood as a marital union between one man and one woman.⁴ In the Indonesian legal system, monogamy serves as the fundamental principle of marriage as stipulated in Article 3 paragraph (1)

¹ Esther Masri, “Poligami Dalam Perspektif Undang-Undang Nomor I Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam (KHI),” *Krtha Bhayangkara* 13, no. 2 (2019): 223–41.

² Madiha Dzakiyyah Chairunnisa dkk., “Poligami dalam Perspektif Tafsir Modern Al-Manar,” *Istinbath Jurnal Penelitian Hukum Islam* 15, no. 1 (2019): 29–60.

³ Imam Machali, “Poligami dalam Perdebatan teks dan konteks: melacak Jejak argumentasi Poligami dalam teks suci,” *Palastren: Poligami dalam Perdebatan Teks dan konteks: Melacak Jejak Argumentasi Poligami dalam Teks Suci* 8, no. 1 (2015): 35–56.

⁴ Mufidah, Ch., *Psikologi Keluarga Islam Berwawasan Gender*, (Malang: UIN-Maliki Press, 2014), h.199.

of Law Number 1 of 1974 on Marriage.⁵ However, this principle is flexible, as Article 3 paragraph (2) opens the possibility for a husband to have more than one wife with the court's permission, provided that the requirements set forth in the law are fulfilled.⁶

The requirements are stipulated, among others, in Article 4 paragraph (2) of the Marriage Law, which states that the court may grant permission for polygamy only if the wife is unable to fulfill her marital obligations, suffers from a physical disability or an incurable disease, or is unable to bear children.⁷ In addition, Article 5 paragraph (1) requires the wife's consent, the husband's financial capability to provide for the family, and a guarantee that he will act justly.⁸ Thus, although Indonesian law upholds the principle of monogamy, exceptions exist that allow the practice of polygamy under strict alternative and cumulative conditions.⁹ This is in line with Articles 56–59 of the Compilation of Islamic Law (KHI), which further regulate the procedures for obtaining permission for polygamy.

Nevertheless, in the practice of religious courts, polygamy continues to be commonly found in Indonesia. This is evidenced by data showing the number of polygamous marriages in the country, as illustrated in the following diagram.

⁵ Pasal 3 ayat (1) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan (t.t.).

⁶ Pasal 3 ayat (2) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan (t.t.).

⁷ Pasal 4 Ayat (2) Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.

⁸ Pasal 5 Ayat (1) Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.

⁹ Tua Nasaruddin, *Pemenuhan Syarat Kumulatif Izin Poligami Menurut Hukum Positif Dan Hukum Islam (Studi Putusan No. 203/Pdt. G/2017/Pa. Gtlo, 21/Pdt. G/2017/Pta. Gtlo Dan 494 K/Ag/2018)*, Fakultas Syariah Dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, T.T.

Table 1.1**Polygamous Marriage Data in Indonesia**

The diagram, cited from the Directorate General of the Religious Courts, shows that there were 1,030 applications for polygamy permits in 2020.¹⁰ Furthermore, the Chairperson of the Indonesian National Commission on Violence Against Women (Komnas Perempuan), Andy Yentriyani, stated based on data from the Directorate General of the Religious Courts (Badilag) that in 2021 there were 682 applications for polygamy permits, which then increased to 850 cases in 2022.¹¹ Meanwhile, the number decreased to 754 cases in 2023, and in 2024 there were 674 polygamy permit applications registered. This figure was obtained from the Supreme Court Decision Directory, as no

¹⁰ Direktorat Jenderal Badan Peradilan Agama, “Data Permohonan Izin Poligami seluruh Indonesia Tahun 2020” (diakses pada tanggal 5 September 2025)

https://pusatdata.badilag.net/perkara/Pencarian_smart/direktoriDataset_jenis/341

¹¹ Yla, “Komnas Perempuan Sebut Kasus Cerai dan Poligami Naik Gegara Pandemi,” *CNN Indonesia*, 26 Mei 2023, (diakses pada tanggal 5 September 2025)

[Komnas Perempuan Sebut Kasus Cerai dan Poligami Naik Gegara Pandemi](#)

data from relevant sources such as Badilag or BPS has been published regarding the number of polygamous marriages in 2023 and 2024.

In the Gresik Religious Court, the number of polygamy permit cases over the past five years has shown fluctuating trends. According to court records, in 2020 there were 13 polygamy permit cases, which drastically decreased to 4 cases in 2021. In 2022, 5 cases were recorded, followed by an increase to 7 cases in 2023, and a decline to 3 cases in 2024.¹² These data illustrate that although the number is relatively small compared to other marriage-related cases such as divorce lawsuits and divorce petitions, the practice of polygamy remains an ongoing phenomenon that requires legal attention and critical analysis, particularly regarding the reasons submitted and how judges consider them in their decisions.

In practice, applications for polygamy permits often give rise to debate, as demonstrated by the research of Agnia Lutfiah (2024), which found disparities in judicial decisions regarding polygamy permits. Some judges granted permission even when the alternative requirements were not met, while others rejected the applications on the grounds that the petitioners failed to fulfill statutory provisions.¹³ This indicates inconsistency in the application of the law and the potential for legal uncertainty in

¹² Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung Republik Indonesia, *Direktori Putusan: Pengadilan Agama Gresik* (diakses pada tanggal 3 September 2025) <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pa-gresik/kategori/izin-poligami-1.html>

¹³ Agnia Lutfiah, *Disparitas Putusan Hakim Terhadap Izin Poligami Perspektif Kepastian Hukum (Studi Putusan Nomor 7611/Pdt.G/2021/PA.Cbn Dan Putusan Nomor 2608/Pdt.G/2022/PA.Kdl)* (Jakarta: UIN Syarif Hidayatullah, 2024)

judicial practice. Similar findings were also presented by Wulan Rizki Fajriana (2019), who observed that there are still judicial decisions granting polygamy permits despite the absence of substantive grounds.¹⁴

A similar situation can be found in the judicial practice of the Gresik Religious Court, as illustrated in Decision Number 1135/Pdt.G/2023/PA.Gs. A 67 year old man submitted an application for permission to practice polygamy with his 58 year old wife. The couple had been legally married since 1984 and had five children. The petitioner argued that his wife was unable to adequately fulfill his biological needs, while he still possessed a high sexual desire. However, the petitioner had in fact been in a relationship with the prospective second wife for 12 years and had even entered into an unregistered religious marriage (*nikah sirri*) with her in 2011, without official registration at the Office of Religious Affairs (KUA). From that relationship, a son was born and formally acknowledged through a certificate issued by the village office.¹⁵

During the trial, the respondent (the first wife) did provide written consent for her husband to remarry. However, the reasons submitted by the petitioner do not fall within the substantive requirements stipulated in Article 4 paragraph (2) of the Marriage

¹⁴ Wulan Rizki Fajriana, *Analisis Hukum Islam terhadap Pertimbangan Hakim dalam Perkara Izin Poligami di Pengadilan Agama Sidoarjo* (Surabaya: UIN Sunan Ampel, 2019).

¹⁵ Pengadilan Agama Gresik., *Putusan Nomor 1135/Pdt.G/2023/PA.Gs tentang Izin Poligami. Tanggal 30 Oktober 2023. (diakses pada tanggal 22 Mei 2025)*
<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee40bd616b571681d7313432373432.html>.

Law.¹⁶ A husband's biological needs do not constitute a lawful basis for polygamy.¹⁷ Nevertheless, the panel of judges granted the petition. In their legal considerations, the judges stated that the petition for a polygamy permit submitted by the petitioner had fulfilled the requirements set out in Article 4 paragraph 2 letters (a) and (b), as well as Article 5 paragraph 1 of Law Number 1 of 1974 on Marriage, and Articles 55 paragraph 2, 57 letters (a), (b), and (c), and 58 paragraphs 1 and 2 of the Compilation of Islamic Law.

From the perspective of positive law, the husband's claim of having high biological needs does not have a strong normative basis. In other words, there is a legal vacuum regarding whether such a reason can be considered a valid ground for granting a polygamy petition. Furthermore, procedurally, the petitioner had already entered into a *sirri* marriage before applying for permission, which clearly contradicts the provisions of positive law. This situation reveals a legal loophole that can be exploited to legitimize unregistered marriages, while simultaneously creating new problems related to the protection of the rights of the wife and child.

This case is important to examine because it raises fundamental questions about how the court interprets grounds for polygamy that are not explicitly stated in the law, and how a *sirri* marriage which should legally be preceded by a formal procedure was instead conducted beforehand. If the court grants the petition, this may set a negative

¹⁶ Pasal 4 ayat (2) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

¹⁷ Masri, "Poligami Dalam Perspektif Undang-Undang Nomor I Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam (KHI)."

precedent for future polygamy practices in Indonesia. Conversely, if the petition is rejected, it may lead to serious legal implications for the status of the second wife and the child born from the marriage.

This phenomenon is noteworthy for further study not only because it concerns legal certainty but also because it relates to gender relations within the family. Therefore, this research adopts the perspective of Amina Wadud Muhsin, a contemporary Muslim feminist who developed a model of feminist hermeneutics.¹⁸ This model emphasizes the importance of reading the Qur'an comprehensively by connecting the universal and particular aspects of the verses, understanding the historical context of revelation, analyzing the grammatical composition of the text, and discovering the Qur'an's worldview as a whole.¹⁹ In the context of polygamy, Amina asserts that the primary condition permitted by the Qur'an is justice not merely material justice, but also immaterial justice such as affection, attention, moral, spiritual, and intellectual support. With this perspective, the analysis of Gresik Religious Court Decision Number 1135/Pdt.G/2023/PA.Gs becomes significant, as it enables an examination of whether the judges' considerations based on the husband's biological needs and the wife's consent align with the substantive justice principles intended by the Qur'an.

¹⁸ Umi Sumbulah, *Epistimologi Pemikiran Hukum Islam Kontemporer* (UIN Maliki Press, 2023), h,170.

¹⁹ Uswatun Hasanah Harahap dan Zulkarnaen Zulkarnaen, "Hermeneutikaa Feminisme dalam Tafsir Al-Qur'an: Kajian Metodologi Amina Wadud," *Alhamra Jurnal Studi Islam* 5, no. 1 (2024): 85–96.

B. Scope of the Study

To avoid an overly broad discussion and to ensure that this research remains focused on the object of study, the scope of the research is limited to the analysis of the Gresik Religious Court Decision Number 1135/Pdt.G/2023/PA.Gs, which approved permission for polygamy based on a *sirri* marriage. This study focuses on the judges' considerations in approving the polygamy permit on the grounds of the husband's high biological needs as the basis of the petition. Thus, the scope of analysis is directed toward examining how the judges assessed the argument of biological needs, as well as how these considerations are evaluated from the perspective of Amina Wadud Muhsin's feminist hermeneutics, particularly regarding the reinterpretation of polygamy-related verses within the framework of justice and gender equality.

C. Statement of the Problems

1. How is the *ratio decidendi* of the judges regarding the approval of permission for polygamy based on a *sirri* marriage in Decision Number 1135/Pdt.G/2023/PA.Gs?
2. How is Decision Number 1135/Pdt.G/2023/PA.Gs which approves permission for polygamy based on a *sirri* marriage viewed from the perspective of Amina Wadud Muhsin's hermeneutics?

D. Research Objectives

Based on the formulation of the problems above, the objectives of this research are as follows:

1. To analyze the *ratio decidendi* of the judges regarding the approval of permission for polygamy based on a *sirri* marriage in Decision Number 1135/Pdt.G/2023/PA.Gs.
2. To analyze Decision Number 1135/Pdt.G/2023/PA.Gs which approves permission for polygamy based on a *sirri* marriage from the perspective of Amina Wadud Muhsin's hermeneutics.

E. Research Benefits

This research is intended to benefit readers. The benefits of this study can be outlined into two main categories: theoretical benefits and practical benefits. The details are as follows:

1. Theoretical Benefits

The results of this research are expected to contribute to enriching the body of Islamic thought, particularly in understanding the practice of approval polygamy permits based on *sirri* marriages through the lens of Amina Wadud Muhsin's feminist hermeneutics. This study is also expected to serve as a foundational reference for the development of future, more in-depth research related to gender justice issues within Islamic family law in Indonesia.

2. Practical Benefits

a. For Society

This research can provide practical guidance for the community, especially women, in understanding the dynamics surrounding the approval of polygamy permits for *sirri* marriages, which often lead to gender inequality. By employing

Amina Wadud Muhsin's feminist hermeneutical approach, this study is expected to assist women in becoming more critical in assessing legal policies related to polygamy, as well as in increasing awareness regarding the importance of justice and equality in the practice of Islamic family law.

b. For Religious Institutions

This research is expected to contribute to legal practitioners, particularly judges within the Religious Courts, as a reference in deciding polygamy permit cases, especially those involving *sirri* marriages. Through the feminist hermeneutical approach developed by Amina Wadud Muhsin, this study can function as a critical reference in evaluating substantive justice for women and can encourage the application of laws that are more responsive to gender equality values within judicial practice.

c. For Future Research

This study is expected to serve as an initial foundation and academic reference for future research focusing on issues of polygamy, *sirri* marriage, and gender justice in Islamic law. By utilizing Amina Wadud Muhsin's feminist hermeneutical approach, this research opens opportunities for broader and more in-depth studies on gender-just interpretations of Islamic law from normative, sociological, as well as juridical-practical perspectives.

F. Operational Definitions

1. Polygamy

Polygyny, commonly referred to as polygamy, according to Wahbah Az-Zuhaili, is defined as a marital practice in which a man marries more than one woman simultaneously, with a maximum of four wives as permitted under Islamic law.²⁰ Although allowed (*ibahah*), polygamy is not considered the ideal form of marriage in Islam, as monogamy is regarded as more commendable.²¹

2. *Sirri* Marriage

The word *nikah* appears in the Qur'an 23 times, meaning "to unite." The Qur'an also uses the word *zawwaja* or *zauj*, which carries a meaning similar to *nikah*, a total of 80 times.²² The term *nikah* in the Qur'an refers to a covenant (*mitsaq*) between a man and a woman who are bound in a valid marital relationship. Abbas Mahmud al-Aqqad defines marriage as an agreement or contract establishing the best form of companionship and interaction between a man and a woman as lawful spouses.²³

The word *sirri* in the term *nikah siri* derives from the Arabic word *sirrun*, meaning "secret." Based on this root meaning, *nikah sirri* is understood as a marriage conducted in secrecy. A *sirri* marriage is defined as a form of marriage

²⁰ Wahbah Zuhaili, *Maushu'ah al-Fiqh al-Islami wa al-Qadhaya Fiqhiyah Mu'ashirah*, Juz 8 (Damaskus: Dar al-Fikr: 2010), h.318.

²¹ Noer Yadi Izzul Haq, *Asas Monogami Perkawinan Pada Izin Poligami Di Pengadilan Agama Jakarta Selatan Perspektif Gender Dan Hukum Progresif*, 2020.

²² Quraish Shihab, *Tafsir Al-Mishbah* (Jakarta: Lentera Hati, 1996), h.191.

²³ Syauqi Nawawi, *Fiqh Munakahat* (Jakarta: Kencana, 2002), h.112.

carried out solely in accordance with religious law and/or customary traditions but not publicly announced and not officially registered with the Office of Religious Affairs (KUA) for Muslims or the Civil Registry Office for non-Muslims.²⁴

3. Amina Wadud Muhsin's Hermeneutics

Amina Wadud Muhsin's hermeneutical interpretation is defined as a method of interpreting the Qur'an that integrates Fazlur Rahman's contextual hermeneutics with a feminist perspective. In this approach, Qur'anic verses are understood through three main aspects: the historical and social context of revelation, the linguistic composition of the text, and the holistic coherence of meaning. This interpretation not only emphasizes understanding the particular meaning within the text but also deriving universal moral principles that remain relevant across time.²⁵

G. Research Methodology

1. Type of Research

This study is a normative juridical research, which refers to legal research conducted by examining library materials or secondary data.²⁶ In this research, the author observes, understands, and analyzes the judges' legal considerations in

²⁴ Happy, Susanto, *Nikah Siri Apa Untungnya?* (Jakarta Selatan: Transmedia, 2007), h.22.

²⁵ Amina Wadud Muhsin, *Wanita di dalam Al-Quran* (Penerbit Pustaka, 1994), h.4.

²⁶ Maijestati, *Metode Penelitian Hukum* (Sumbar: LPPM Universitas Bung Hatta, 2022), h.55.

Decision Number 1135/Pdt.G/2023/PA.Gs from the perspective of Amina Wadud Muhsin's feminist hermeneutics in relation to the issues examined in this study.

2. Research Approach

In normative legal research, there are five possible approaches: the statute approach, the case approach, the historical approach, the comparative approach, and the conceptual approach.²⁷ In this study, the researcher employs the case approach, which involves examining or analyzing normative issues related to the subject of the research that have been decided in a legally binding religious court decision. In this context, the focus is on analyzing the judges' considerations in the Gresik Religious Court Decision Number 1135/Pdt.G/2023/PA.Gs concerning the petition for a polygamy permit.

3. Types of Legal Materials

a. Primary Legal Materials

Primary legal materials are the fundamental data used in legal research. There are various types of primary legal materials, such as legislation, official records or minutes from the creation of legislation, and judicial decisions.²⁸ Based on the theme that is the subject of discussion in this research, the primary legal material is the legal product from the Religious Court in the form of Decision Number 1135/Pdt.G/2023/PA.Gs regarding the polygamy permit.

²⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi, Jakarta: Kencana Prenada Media Group, 2016, h. 93

²⁸ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2010), 141.

b. Secondary Legal Materials

Secondary legal materials are those that are related to the topic being discussed but not directly. In other words, they serve as complements or support to the explanation of the primary legal materials.²⁹ In this case, secondary materials help the author sharpen the analysis regarding the judges' considerations in granting the polygamy permit for a *sirri* marriage. Typically, secondary materials in legal research include journals, books, articles, theses, and other documents related to the subject of the study. The secondary legal materials used in this research are:

1. Law Number 1 of 1974 on Marriage.
2. Presidential Instruction Number 1 of 1991 on the Compilation of Islamic Law.
3. *Quran According to Women: Rereading the Holy Book with the Spirit of Justice; Quran and Women: Reading the Sacred Text from a Woman's Perspective* by Amina Wadud Muhsin.
4. *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence) termasuk interpretasi Undang-Undang (Legisprudence)* by Achmad Ali.
5. *Ilmu Hukum* by Satjipto Rahardjo.
6. *Legal Philosophy* by Gustav Radbruch.

²⁹ Bachtiar, *Metode Penelitian Hukum* (Tangerang Selatan: Unpam Press, 2018), h,141.

c. Tertiary Legal Materials

Tertiary legal materials provide further clarification, both from primary and secondary legal materials.³⁰ In this research, the tertiary materials used are the *Kamus Besar Bahasa Indonesia* (Indonesian Dictionary) and relevant websites.

4. Methods of Collecting Legal Materials

The technique used in collecting legal materials in this research is documentation study or library research, namely a method of data collection carried out by examining various books, literature, and other written sources.³¹ At this stage, the author compiles various documents such as legislation, reference books, scholarly works, and other relevant records that relate to the topic and focus of this research.

5. Methods of Processing Legal Materials

After all the required legal materials have been collected, the author processes them through several stages, including:³²

- a. Editing, which is the process of reviewing the collected legal materials to ensure their completeness. If any shortcomings are found, the materials are supplemented to support a comprehensive analysis.

³⁰ Peter Mahmud Marzuki, *Penelitian Hukum, Edisi Revisi* (Jakarta: Kencana Prenada Media Group, 2016), h,64.

³¹ Moch. Nazir, *Metode Penelitian* (Jakarta: Ghalia Indonesia, 2008), h,111.

³² Bachtiar, *Metode Penelitian Hukum* (Tangerang Selatan: Unpam Press, 2018), 158.

- b. Classifying, which is the stage of filtering and systematically grouping legal materials based on their interrelatedness. These materials are then selected and summarized according to their relevance to the discussion of the Gresik Religious Court Decision Number 1135/Pdt.G/2023/PA.Gs.
- c. Analyzing, which involves elaborating the research findings based on the accumulated legal materials and analyzing them juridically to examine the main issues of the study. This analysis aims to reveal comprehensive information regarding the *ratio decidendi* or the judges' legal reasoning in granting the polygamy permit in the case, using the perspective of Amina Wadud Muhsin's hermeneutics.
- d. Concluding, which is the final stage of processing legal materials, presenting the results of the examination of the Gresik Religious Court Decision Number 1135/Pdt.G/2023/PA.Gs as answers to the research questions. The conclusions are compiled concisely and systematically using a deductive reasoning method, drawing conclusions from general principles to the specific issues examined.

H. Previous Research

Previous research refers to a review of scholarly works that are relevant to the topic under study. This review aims to identify similarities and differences with the present research, while also serving as a foundation to strengthen the research argumentation. In this context, the author examines several studies related to polygamy permits, which demonstrate variations in perspectives, characteristics,

and research objects. Therefore, this section presents several relevant previous studies as comparative material and analytical support. These studies include:

1. A study conducted by Muhammad Rafi Azzizuddin in 2024 entitled *The Ratio Decidendi of Judges in Polygamy Applications on Grounds of Infidelity from the Perspective of Gustav Radbruch's Legal Theory (A Study of Decision Number 2982/Pdt.G/2023/PA.BL)*. The primary focus of this research is analyzing how judges use infidelity as a legal basis for granting polygamy permits and examining it through Gustav Radbruch's legal theory, which encompasses elements of justice, legal certainty, and expediency. The research method used is normative juridical legal research with a case study approach, focusing on the Blitar Religious Court Decision Number 2982/Pdt.G/2023/PA.BL. The results indicate that the judges considered protection for the wife and children, justice for all parties, and legal certainty in the implementation of polygamy. However, from Radbruch's perspective, there is a tension between justice and expediency, particularly in the context of protecting women's rights as vulnerable parties within the practice of polygamy.³³
2. A study conducted by Dina Nur Amiliah Balbis in 2023 entitled *Judges' Legal Reasoning in Granting Polygamy Permits (A Study of the Kajeen Religious Court Decisions in 2021–2022)*. This study examines the legal reasoning

³³ Muhammad Rafi Azzizuddin, "Ratio Decidendi Hakim dalam Permohonan Poligami dengan Alasan Perselingkuhan Perspektif Tujuan Hukum Gustav Radbruch (Studi Putusan Nomor 2982/Pdt.G/2023/PA.BL)," *Malang: UIN Maulana Malik Ibrahim*, 2024.

employed by the panel of judges at the Kajen Religious Court in granting polygamy permit applications during 2021–2022. The central focus is on cases where judges approved polygamy permits despite the petitioner's failure to fulfill the alternative requirements for polygamy. This research examines three cases, namely case numbers: 1591/Pdt.G/2022/PA.Kjn; 553/Pdt.G/2021/PA.Kjn; and 1760/Pdt.G/2021/PA.Kjn. The research type is normative juridical, using secondary data comprising primary legal materials (court decisions and their legal bases) and secondary legal materials as supporting data. The approaches used are the case approach and the conceptual approach. The study finds that the fulfillment of cumulative requirements serves as the judges' legal reasoning in deciding polygamy cases, with three legal consequences: implications for the parties involved, the legal status of the child, and the marital property.³⁴

3. A study conducted by Agnia Luthfiah in 2024 entitled *Judicial Disparity in Polygamy Permit Decisions from the Perspective of Legal Certainty (A Study of Decision Number 7611/Pdt.G/2021/PA.Cbn and Decision Number 2608/Pdt.G/2022/PA.Kdl)*. This research highlights the disparity or differences in judicial rulings between two polygamy cases. In Decision Number 7611/Pdt.G/2021/PA.Cbn, the panel of judges granted the polygamy application without applying the alternative requirements stipulated in the

³⁴ Dina Nur Amilah Balbis, *Legal reasoning hakim dalam mengabulkan permohonan izin poligami (studi putusan pengadilan agama kajen tahun 2021-2022)* (Pekalongan: UIN K.H Abdurrahman Wahid, 2023).

legislation. The judges based their decision on the argument that the petitioner's and respondent's reasons aligned with the fiqh principle "*Preventing harm is prioritized over attaining benefit*," and that the application fulfilled the cumulative requirements. Meanwhile, in Decision Number 2608/Pdt.G/2022/PA.Kdl, the judges rejected the polygamy application because the petitioner did not meet either the alternative or cumulative requirements, emphasizing that polygamy permits must fulfill the alternative conditions specified in Article 4 paragraph (2) of Law Number 1 of 1974 on Marriage. This study employs a qualitative normative legal research method using the statute approach and case study, with primary legal materials in the form of judicial decisions and secondary materials as supporting data. The findings indicate the existence of legal uncertainty within the practice of religious court adjudication regarding polygamy permits, particularly when judges fail to consistently apply the governing regulations. Decisions granting polygamy applications without fulfilling the stipulated requirements create legal uncertainty, whereas decisions rejecting such applications based on applicable rules provide legal certainty for the parties involved.³⁵

4. *A study conducted by Nandar Nata Alfazari in 2023 entitled Islamic Law and Positive Law Analysis of Judges' Considerations in Granting Polygamy*

³⁵ Aghnia Luthfiah, "Disparitas Putusan Hakim Terhadap Izin Poligami Perspektif Kepastian Hukum (Studi Putusan Nomor 7611/Pdt.G/2021/PA.Cbn Dan Putusan Nomor 2608/Pdt.G/2022/PA.Kdl)," Jakarta: UIN Syarif Hidayatullah, 2024.

*Permits to Women Already Impregnated (A Study of Decision Number: 0131/Pdt.G/2016/PA.Tnk).*³⁶ This research aims to examine the judges' reasoning in rejecting a polygamy permit application on the grounds that the petitioner had impregnated his prospective second wife, and to analyze it from the perspectives of Islamic law and positive law. The study focuses on how the judges applied the provisions of Article 4 paragraph (2) of Law Number 1 of 1974 on Marriage in deciding the case, and compares it with the provisions of the Compilation of Islamic Law, which allows marriage for a woman pregnant out of wedlock as stipulated in Article 53 of the KHI. The research is a library study with a descriptive-analytical approach, using primary data sources such as court decisions, the Marriage Law, and the KHI, and secondary data from books, journals, and relevant literature. The findings show that the judges rejected the polygamy permit application because the petitioner did not meet either the alternative or cumulative requirements stipulated in the legislation, despite the fact that polygamy is permissible in Islamic law as long as justice can be maintained. The analysis reveals similarities between Islamic law and positive law in emphasizing the requirement of justice, but differences in regulatory aspects, where positive law is more stringent due to its formal procedural conditions.

³⁶ Nandar Nata Alfaza, "Analisis Hukum Islam Dan Hukum Positif Terhadap Pertimbangan Hakim Mengenai Pemberian Izin Poligami Terhadap Wanita Yang Sudah Dihamili Pada Pengadilan Agama Tanjung Karang (Studi Putusan Nomor: 0131/Pdt.G/2016/Pa.Tnk)," *Lampung: Uin Raden Intan Lampung*, 2023.

5. *A study conducted by Ima Siti Fatma Azzahra in 2024 entitled Analysis of Judges' Legal Reasoning in Determining Polygamy Permits (A Case Study of Religious Court Determination Number 0158/Pdt.G/2022/PA.Mjl).*³⁷ *masalahat*.

This research aims to examine the judges' legal reasoning in granting a polygamy permit and to review it from the perspective of Islamic law. The study focuses on how the judges interpreted Article 4 paragraph (2) and Article 5 paragraph (1) of Law Number 1 of 1974 on Marriage, as well as Article 57 of the Compilation of Islamic Law, as the juridical basis for granting the polygamy permit. The research method used is qualitative with a normative juridical approach, utilizing interviews, observations, and documentation. The findings show that the judges granted the polygamy permit because the petitioner fulfilled both the cumulative and alternative requirements stipulated by law, including obtaining consent from the first wife and the prospective second wife. The judges also considered the petitioner's reason of wishing to avoid committing adultery, which was reinforced by the fiqh principle "*Preventing harm takes precedence over acquiring benefit*." From the perspective of Islamic law, this decision is deemed appropriate as it considers family welfare and justice for all parties involved.

³⁷ Ima Siti Fatma Azzahra, "Analisis Legal Reasoning Hakim Dalam Menetapkan Izin Poligami (Studi Kasus Penetapan Pengadilan Agama Nomor 0158/Pdt.G/2022/Pa.Mjl)," *Cirebon: Institut Agama Islam Negeri (Iain) Syekh Nurjati Cirebon*, 2024.

Table 1.2**Table of Similarities and Differences in Previous Research**

NO.	Heading	Similarity	Difference
1.	Racio Decidendi Judge in Polygamy Appeal on the Grounds of Infidelity Perspective of Legal Purpose Gustav Radbruch (Study of Decision Number 2982/Pdt.G/2023/PA. BL (Thesis)	Both studies discuss cases of polygamy permits in the Religious Courts and analyze the judges' considerations in the polygamy permit decisions.	The previous research focused on analyzing the judges' juridical considerations using Gustav Radbruch's theory of legal purposes. Meanwhile, this study critically analyzes the issue through Amina Wadud's hermeneutical interpretation, with an emphasis on gender justice.
2.	Judges' Legal Reasoning in Granting Polygamy Permit Applications (A Study of the Kajen Religious Court Decisions for 2021–2022).	It discusses polygamy permit cases in the Religious Courts and analyzes the judges' considerations in granting polygamy applications.	The previous research emphasized normative analysis and the consistency of judges in interpreting the requirements for polygamy using legal reasoning theory, whereas this study critically examines the religious court decision through Amina Wadud's hermeneutical interpretation, focusing on gender justice and the impact of polygamy on women's rights.
3.	Judicial Disparity in Polygamy Permit Decisions from the	It discusses polygamy permit cases in the Religious Courts and	The previous research highlighted the disparity in polygamy

	Perspective of Legal Certainty (A Study of Decision Number 7611/Pdt.G/2021/PA.Cbn and Decision Number 2608/Pdt.G/2022/PA.Kdl)	analyzes the judges' considerations in granting or rejecting polygamy applications.	permit decisions from the perspective of legal certainty, whereas this study examines polygamy permits involving <i>sirri</i> marriages through the perspective of Amina Wadud Muhsin's feminist hermeneutics.
4.	Islamic Law and Positive Law Analysis of Judges' Considerations in Granting Polygamy Permits to Women Already Impregnated (A Study of Decision Number 0131/Pdt.G/2016/PA.Tnk at the Tanjung Karang Religious Court).	It discusses polygamy permit cases in the Religious Courts and analyzes the judges' considerations in granting or rejecting polygamy applications.	The previous research examined polygamy permits for pregnant women through an analysis of Islamic and positive law, whereas this study critically investigates polygamy permits involving <i>sirri</i> marriages using Amina Wadud's gender-based hermeneutical perspective to assess gender justice and women's rights.
5.	Analysis of Judges' Legal Reasoning in Determining Polygamy Permits (A Case Study of Religious Court Determination Number 0158/Pdt.G/2022/PA.Mjl).	It examines polygamy permit cases in the Religious Courts and analyzes the judges' considerations in granting or rejecting polygamy applications.	The previous research emphasized a normative analysis of Islamic and positive law regarding the legal basis for polygamy, whereas this study critically examines the religious court decision using Amina Wadud's feminist hermeneutical interpretation.

Based on the table above, it can be understood that research on polygamy permits has been conducted by several scholars within the past three years. The significant differences between the previous studies and this research lie in the following aspects: First, the object of research, in which this study uses the Gresik Religious Court Decision Number 1135/Pdt.G/2023/PA.Gs as its primary object. Second, the analytical framework, where this research employs Amina Wadud Muhsin's feminist hermeneutical theory, which emphasizes interpreting the Qur'an by understanding the intended meanings of Qur'anic expressions and their historical context to determine the true meaning, particularly in evaluating gender justice and the fulfillment of women's rights.

I. Structure of the Writing

To ensure that the preparation of this thesis is well-organized and systematically structured, the author outlines the general arrangement consisting of four chapters, as follows:

Chapter I Introduction, this chapter provides an overview of the study, including the background that inspired the researcher to examine the topic, the formulation of the problems, the research objectives, the research benefits, the research methodology, previous studies, and the structure of the thesis. It presents a general description of the overall content.

Chapter II Literature Review, this chapter presents the theoretical foundation and relevant literature. The discussion contains the basic concepts and

theoretical framework used to analyze the issues in accordance with the research theme.

Chapter III Research Findings and Analysis, this chapter explains the research findings and analysis derived from primary, secondary, and tertiary legal materials. These materials are analyzed to obtain answers to the issues raised by the author. Accordingly, this chapter describes the *ratio decidendi* of the judges in Decision Number 1135/Pdt.G/2023/PA.Gs, particularly their considerations in granting permission for polygamy based on a *sirri* marriage, analyzed through Amina Wadud Muhsin's feminist hermeneutical theory.

Chapter IV Conclusion and Closing Remarks, this chapter contains concise answers to the problems formulated in the research, presented in the form of key points. It also includes recommendations related to the development of further research or discussions following this study.

CHAPTER II

LITERATURE REVIEW

A. Polygamy in the Perspective of Positive Law and Islamic Law

1. Definition of Polygamy

The meaning of polygamy, as explained by Mufidah referring to *Istibsyaroh*³⁸, is etymologically derived from the Greek words *polus*, meaning “many,” and *gamos*, meaning “marriage.” Thus, polygamy can be literally interpreted as the practice of having more than one marital bond simultaneously.³⁹ According to Musdah Mulia in her book *Pandangan Islam tentang Poligami*, polygamy is defined as a marital arrangement in which one party (the husband) marries multiple wives at the same time.⁴⁰ Although the term *polygamy* is commonly used in society, the more precise term is *polygyny*, yet its usage is relatively uncommon in general discourse.⁴¹

In Islamic teachings, polygamy is understood as the practice of a husband marrying more than one wife, with a maximum limit of four wives at the

³⁸ Mufidah Ch, *Psikologi Keluarga Islam Berwawasan Gender* (UIN Maliki Press, 2013), h, 199.

³⁹ Nurul Faizatur Rohmah dan Budihardjo Budihardjo, “Praktik Pernikahan Poligami Dalam Pandangan Hukum Islam Dan Hukum Negara,” *Profetika: Jurnal Studi Islam*, 2021,h. 243.

⁴⁰ Musdah Mulia, *Pandangan Islam tentang Poligami* (Lembaga Kajian Agama dan Jender, 1999), h,2.

⁴¹ Muhammad Ichsan, “Poligami Dalam Perspektif Hukum Islam (Kajian Tafsir Muqaranah),” *JURIS (Jurnal Ilmiah Syariah)* 17, no. 2 (2018): 69.

same time, provided he is able to uphold justice among them.⁴² Meanwhile, in Indonesian positive law, although the definition of polygamy is not explicitly stated, the practice refers to granting permission to a husband to have more than one wife.⁴³ This permission is tightly regulated in legislation, particularly within the framework of marriage law and religious law, by requiring specific conditions such as justice, financial capability, and the consent of the first wife.

2. Legal Basis of Polygamy

In Islamic law, there is no Qur'anic verse that explicitly prohibits polygamy. However, Islam fundamentally upholds the principle of monogamy, meaning that a man is ideally entitled to have only one wife, and likewise, a wife is entitled to have only one husband.⁴⁴ The Qur'an, in Surah An-Nisa' verse 3, states:⁴⁵

وَأِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَّةَ ۖ فَإِنْ خِفْتُمْ
أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَٰلِكَ أَدْنَىٰ ۖ أَلَّا تَعُولُوا^{٤٥}

"And if you fear that you will not deal justly with the orphan girls, then marry those women who are lawful for you two, three, or four. But if you fear that you will not be able to treat them justly, then marry only one, or those whom your right hands possess. That is more fitting so that you do not commit injustice."

⁴² Marzuki, *Poligami Dalam Hukum Islam, Jurnal Civics: Media Kajian Kewarganegaraan*, 2, no. 2 (2019): h.2.

⁴³ Ahmad Fawwaz, *Egalitas Poligami Berdasarkan Hukum Positif Di Indonesia Dalam Rangka Membangun Keluarga Yang Sejahtera*, Universitas Islam Sultan Agung Semarang, 2024.

⁴⁴ Heppy Hyma Puspytasari dkk., "Poligami dalam hukum Islam dan hukum perkawinan," *Journal of Education Research* 4, no. 4 (2023): 2517–24.

⁴⁵ Tim Penerjemah, *Al-Quran dan Terjemahannya* (CV. Diponegoro, 2015), h.77.

Contextually, this verse does not specifically discuss polygamy. rather, it has often been cited as justification for the practice because it is frequently quoted partially, detached from its complete meaning. The essence of the verse is a command to uphold justice toward orphaned girls. The revelation of this verse had three primary objectives: first, to admonish guardians of orphaned girls who intended to marry them in order to avoid paying dowries and to seize their property; second, to set a maximum limit of four wives, without encouraging polygamy; and third, to emphasize the centrality of justice in any practice of polygamy.⁴⁶

However, alongside this verse, there is also a verse indicating that the foundational principle of marriage in Islam is monogamy, as stated in Surah An-Nisa' verse 129:⁴⁷

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 perfectly just among your wives, even if you strive to do so. Therefore, do not incline completely toward one (wife) so that you leave the other hanging (in neglect). But if you make amends and fear Allah, then indeed Allah is All-Forgiving, Most Merciful.”

This verse explains that human beings will never be capable of achieving absolute justice among their wives in matters of feelings and affection. Imam al-

⁴⁶ Mufidah, *Psikologi Keluarga Islam Berwawasan Gender* (Malang: UIN Malang Press, 2008), h.235.

⁴⁷ *Al-Quran dan Terjemahannya* (CV. Diponegoro, 2015), h.99.

Qurtubi states that Allah's words in this verse signify the impossibility of justice among wives in terms of emotional inclination, affection, and intimate relations.⁴⁸ Furthermore, this verse clarifies that human beings are created with limited capacity to control the inclinations of their hearts toward their wives.

At first glance, the two verses discussing justice appear contradictory one commands justice, while the other asserts that humans are incapable of perfect justice. However, the two verses are not contradictory. The justice that is required pertains to *outward, material justice*, not emotional or internal inclinations. The justice negated in the latter verse refers specifically to matters of love and affection. From these two verses, it can be understood that the fundamental principle of marriage in Islam is monogamy, while polygamy is permitted only in exceptional or urgent circumstances, based on considerations of human welfare

In Indonesian positive law, polygamy is regulated in the Marriage Law, particularly Article 3 paragraph (1), which affirms that the fundamental principle of marriage is monogamy one husband for one wife and vice versa.⁴⁹ However, Article 3 paragraph (2) provides an opportunity for a husband to practice polygamy if he obtains permission from the court and agreement from the

⁴⁸ Khairunnas Jamal, *Tafsir Ahkam Ayat-Ayat Ibadah, Munakahah, dan Muamalah* (Riau: Kalimedia, 2018), h,112-113.

⁴⁹ Amir Nuruddin dan Azhari Akmal Taringan, *Hukum Perdata Islam di Indonesia Studi Kritis Perkembangan Hukum Islam dari Fiqih, UU No 1/1974 sampai KHI* (Jakarta: Prenada Media, 2004), h,157.

relevant parties.⁵⁰ This means that although monogamy is the primary principle, the law still provides space for polygamy under certain conditions that meet the required legal and consensual criteria.

3. Requirements for Polygamy

The requirements for polygamy in Indonesia are regulated in the Marriage Law and the Compilation of Islamic Law (KHI). According to Article 3 paragraph (2) of the Marriage Law, a husband may practice polygamy if he obtains permission from the court and approval from the relevant parties.⁵¹ For this purpose, the husband must submit an application to the court in his place of residence, as stipulated in Article 4 paragraph (1).⁵² The court may grant permission if the wife is unable to fulfill her marital obligations, suffers from a physical disability or an incurable disease, or is unable to bear children, as stated in Article 4 paragraph (2).⁵³ In addition to these conditions, Article 5 paragraph (1) sets forth cumulative requirements, namely: the wife's consent, the husband's financial ability to provide for the needs of his wives and children, and his capacity to act justly.⁵⁴ Unlike Article 4 paragraph (2), which provides alternative requirements (where fulfilling one condition is sufficient), all provisions in Article 5 paragraph (1) must be fulfilled entirely.

⁵⁰ Pasal 3 ayat (2) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

⁵¹ Pasal 3 ayat (2) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

⁵² Pasal 4 ayat (1) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

⁵³ Pasal 4 ayat (2) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

⁵⁴ Pasal 5 ayat (1) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

Similarly, the Compilation of Islamic Law (KHI) regulates these matters in Book I, Chapter IX, Articles 55 to 59, with an additional stipulation in Article 55 paragraph (1) that a husband may have a maximum of four wives at the same time.⁵⁵ KHI itself is the result of *ijtihad* derived from Islamic legal sources and adapted to the Indonesian legal context.

Beyond positive legal provisions, the requirements for polygamy also refer to Qur'an Surah An-Nisa' verse 3, which emphasizes the importance of justice in the treatment of wives, especially in material matters such as financial support, housing, and the division of time. If a husband believes he is unable to act justly, he is advised to remain monogamous. Thus, polygamy is permissible only in exceptional circumstances and only when all requirements have been duly fulfilled.

4. Procedure for Obtaining a Polygamy Permit

As previously explained regarding the requirements for polygamy within the Indonesian legal system, the practice of polygamy cannot be carried out freely but must follow specific legal procedures regulated under Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 on Marriag.⁵⁶ This regulation establishes the administrative and juridical

⁵⁵ Intruksi Presiden RI Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam.

⁵⁶ *Peraturan Pemerintah Nomor 9 Tahun 1974 tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.*

procedures that must be fulfilled by a husband intending to have more than one wife.

Based on Article 40 of Government Regulation Number 9 of 1975, a husband who intends to practice polygamy is required to submit a written application to the Religious Court. Furthermore, as stipulated in Article 41, the court will examine the application by considering several substantive factors. The primary considerations include the existence of valid reasons that permit a husband to remarry, such as when the wife is unable to fulfill her marital obligations, suffers from a physical disability or an incurable disease, or is unable to bear children.

In addition, the court must ensure that the wife has given her consent. Such consent may be expressed either in writing or orally; however, if given orally, it must be delivered directly before the panel of judges during the court hearing. The court also assesses whether the husband is financially capable of providing for the needs of his wives and children, which must be supported by official documents such as income statements, tax payment records, or other legitimate evidence demonstrating the husband's economic sufficiency.

Furthermore, Article 42 affirms that during the examination process, the court must summon and hear the testimony of the concerned wife. The examination of the application must be completed within no more than 30 days from the date the complete application and its attachments are received.

Subsequently, based on Article 43, the court may grant permission for polygamy if the reasons submitted by the petitioner are deemed sufficient and in accordance with legal provisions. This requirement is reinforced by Article 44, which prohibits marriage registrars from recording a polygamous marriage without official permission from the court.⁵⁷

Thus, it can be concluded that the procedure for obtaining a polygamy permit in Indonesia involves not only substantive requirements related to reasons and consent but also strict procedural requirements. These regulations demonstrate that the implementation of polygamy in Indonesia is subject to rigorous legal oversight to ensure the realization of justice, legal certainty, and the protection of the rights of women and children within marital life.

B. Sirri Marriage

Etymologically, the term *nikah sirri* consists of two words: *nikah* and *sirri*. The word *nikah* derives from the Arabic *nakaha–yankihu–nikāhan*, which means “to marry” or “to perform a marriage contract.” Meanwhile, the word *sirri* comes from *sir* or *sirrun*, also an Arabic term, meaning “secret,” “hidden,” or “not publicly announced.” Thus, linguistically, *nikah sirri* can be understood as a form of marriage conducted privately or without being announced to the public.⁵⁸

⁵⁷ Peraturan Pemerintah Nomor 9 Tahun 1975 tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan Pasal 40-44.

⁵⁸ Kharisudin, *Nikah Siri Dalam Perspektif Kompilasi Hukum Islam Dan Undang Undang Perkawinan Indonesia*, Vol. 26, No. 1 (2021): h, 50-52.

In the sociocultural development of Indonesian society, the term *nikah sirri* has undergone an expansion of meaning. It no longer refers solely to marriages conducted in secrecy, but now also refers to marital practices that are valid according to religious law yet not officially registered with state authorities, such as the Office of Religious Affairs (KUA) for Muslims or the Civil Registry Office for adherents of other religions.⁵⁹ In other words, a *sirri* marriage substantively fulfills the Islamic requirements and pillars of marriage such as the presence of a guardian (*wali*), two witnesses, and the *ijab* and *qabul*. However, from the standpoint of state administrative law, such a marriage is considered invalid because it is not officially registered.

Sirri marriages in society occur due to several interrelated factors.⁶⁰ Economic reasons often become the primary cause, where financial limitations lead couples to marry without undergoing formal registration procedures. Additionally, failure to meet the minimum legal age for marriage, as stipulated in the law, also triggers the practice of *nikah sirri*, particularly among younger individuals. Employment or educational commitments may also influence the decision, as some individuals feel restricted by institutional regulations or worry that marriage formalities might disrupt their studies. Moreover, there is a societal perception that a *sirri* marriage is religiously valid and that registration at the KUA

⁵⁹ Ahmad Sobari, "Nikah Siri Dalam Perspektif Islam," *Jurnal Al-Mizan* Vol. 1 No. 1 (2019): h.51.

⁶⁰ Siti Ummu Adillah, *Analisis Hukum Terhadap Faktor-Faktor Yang Melatarbelakangi Terjadinya Nikah Sirri Dan Dampaknya Terhadap Perempuan (Istri) Dan Anak-Anak*, *Jurnal Dinamika Hukum*, Vol. 11, (Februari 2011), h.106- 108.

is merely an administrative formality. Another significant factor is pregnancy outside of marriage, which often motivates couples to enter into a *sirri* marriage immediately. A lack of understanding regarding the importance of state marriage registration further reinforces this practice, leaving many unaware of the legal implications that may arise in the future.

In addition to these factors, the issue of polygamy is also a prominent cause. Within Indonesia's positive legal system, polygamy is strictly regulated under Marriage Law Number 1 of 1974 and its amendments, which require court permission and the consent of the first wife. These regulations, perceived by some as complicated and burdensome, lead certain men to choose *sirri* marriages as a means to practice polygamy without going through the legal mechanisms. Such practices not only disregard the legal rights of wives and children but also reflect gender inequality within the household. From the perspective of Islamic feminist legal thought, this condition shows that polygamy conducted without state regulation has the potential to harm women, as their rights related to financial support, legal protection, and the status of their children become unguaranteed. Thus, *sirri* marriage in the context of polygamy is not merely an administrative issue but also a matter of gender justice and legal protection that must be critically examined.

C. Judicial Power

Judicial power is one of the main pillars of the Indonesian constitutional system, functioning to uphold law and justice.⁶¹ Article 1 paragraph (1) of Law Number 48 of 2009 on Judicial Power states that judicial power is “*the independent power of the state to administer the judiciary in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the realization of the rule of law.*”⁶² This formulation emphasizes that judicial power is independent, free from interference by other branches of government, and carries both moral and constitutional responsibility in realizing substantive justice within society.

Judges, as the executors of judicial power, hold a central role in upholding truth and justice. In carrying out their duties, judges are not merely “the mouthpiece of the law” (*la bouche de la loi*), but also legal discoverers (*rechtsvinding*) who actively explore, follow, and understand legal values and the sense of justice that lives within society, as stipulated in Article 5 paragraph (1) of the Judicial Power Law. This means that judges may not apply the law rigidly, instead, they must interpret it contextually in accordance with social dynamics,

⁶¹ Christine St Kansil Dan Keiko Patricia Liwe, “Kedudukan Pelaku Kekuasaan Kehakiman Terhadap Mahkamah Konstitusi Dalam Sistem Hukum Ketatanegaraan Indonesia,” *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 4, No. 2 (2024): H, 102.

⁶² *Pasal 1 ayat 1 Undang-Undang No. 48 Tahun 2009 tentang Kekuasaan Kehakiman.*

cultural values, and the moral principles of Indonesian society based on Pancasila.⁶³

Furthermore, Article 4 of the same law mandates that courts must provide assistance to justice seekers and strive to eliminate obstacles to achieve a judiciary that is simple, swift, and low-cost.⁶⁴ Thus, the judge's role goes beyond merely issuing decisions; it also includes ensuring access to justice for all members of society.

Sociologically, the court does not only function as a legal institution enforcing formal justice, but also as a social institution that plays a role in restoring social relations between disputing parties.⁶⁵ Judges are expected to resolve cases in ways that do not damage but rather restore these relationships through sociological approaches and humanistic values. In this context, judges may apply conflict management principles to transform disputes into constructive cooperation. A judge's success in restoring social relations is both a moral and social achievement, reflecting the judiciary's function as an instrument for maintaining peace and social harmony.

⁶³ Ribut Baidi dan Aji Mulyana, "Peran Hakim Memperkokoh Integritas Peradilan sebagai Benteng Penegakan Hukum dan Keadaban Publik," *Jurnal Hukum Mimbar Justitia* 10, no. 1 (2024): h, 23.

⁶⁴ *Pasal 1 ayat 1 Undang-Undang No. 48 Tahun 2009 tentang Kekuasaan Kehakiman.*

⁶⁵ Ismail Rumadan, "Peran Lembaga Peradilan Sebagai Institusi Penegak Hukum Dalam Menegakkan Keadilan Bagi Terwujudnya Perdamaian," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (2017): 69–87.

Beyond juridical and sociological aspects, judicial power also contains ethical and religious dimensions. Article 2 paragraph (1) of Law Number 48 of 2009 states that “*The judiciary shall be conducted for the sake of justice based on the belief in the One and Only God.*”⁶⁶ This affirms that judicial decisions must not only align with positive law but also adhere to moral and spiritual values. Judges are accountable not only before the law and society but also before God.⁶⁷ Therefore, a judicial decision must never contradict divine justice; it must not legitimize what is prohibited, prohibit what is lawful, or violate legal values rooted in God’s teachings.

In carrying out their duties, judges possess judicial discretion or independence in making decisions based on their conviction and rational argumentation.⁶⁸ This discretion is an essential part of judicial independence recognized by law, provided it remains grounded in legal principles and justice. In practice, discretion allows judges to determine relevant legal provisions and interpret statutes contextually to resolve cases fairly. However, the use of discretion must remain aligned with the principle of legal certainty and not deviate from the foundations of social justice.⁶⁹

⁶⁶ Pasal 1 ayat 1 Undang-Undang No. 48 Tahun 2009 tentang Kekuasaan Kehakiman.

⁶⁷ Nur Fitra Annisa, “Peranan Hakim sebagai Penegak Hukum Berdasarkan Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman,” *Lex et Societatis* 5, no. 3 (2017).

⁶⁸ Alva Dio Rayfindratama, “Kebebasan Hakim dalam menjatuhkan putusan di Pengadilan,” *Birokrasi: Jurnal Ilmu Hukum Dan Tata Negara* 1, no. 2 (2023): 1–17.

⁶⁹ Brieen Kaeng, “Kebebasan dan Pedoman Hakim dalam Penerapan Putusan Pengadilan,” *Lex Administratum* 10, no. 2 (2022).

Ideally, a judicial decision embodies several essential aspects. First, as a representation of social life, it must reflect societal realities and address social needs. Second, as a manifestation of prevailing law, it must be based on legitimate legal norms and proper interpretation. Third, as a balance between law and facts, the decision must harmonize the application of law with the factual circumstances of the case. Fourth, as a reflection of the ideal awareness between law and social change, judges must be responsive to societal dynamics. Fifth, the decision must bring benefits to the parties, meaning it should promote substantive justice and utility. Sixth, the decision should not create new conflicts, thereby ensuring certainty and peace within society.⁷⁰

Thus, judicial power in Indonesia has a comprehensive dimension encompassing juridical, sociological, ethical, and religious aspects. Judges do not merely serve as enforcers of formal law but also as guardians of morality and social harmony oriented toward substantive justice, public welfare, and transcendent responsibility to God Almighty.

D. Amina Wadud Muhsin's Hermeneutics

1. Biography of Amina Wadud Muhsin

Amina Wadud Muhsin, born as Maria Teasley on September 25, 1952, in Bethesda, Maryland, United States, is widely recognized as a prominent and

⁷⁰ fencem Wantu, "Mewujudkan Kepastian Hukum, Keadilan Dan Kemanfaatan Dalam Putusan Hakim Di Peradilan Perdata," *Jurnal Dinamika Hukum* 12, No. 3 (2012), <https://doi.org/10.20884/1.Jdh.2012.12.3.121>.

controversial Muslim feminist scholar. Her father was a Methodist minister, while her mother was a descendant of Arab Muslim slaves and African-Berber Americans. In 1972, she embraced Islam and later changed her name to Amina Wadud Muhsin in 1974 as an expression of her religious identity.⁷¹

Her academic journey is extensive and diverse. She earned her Bachelor of Science (BS) degree from the University of Pennsylvania, followed by a Master's degree in Near Eastern Studies and a Ph.D. in Arabic and Islamic Studies. To further deepen her expertise, Amina studied at the American University in Cairo, pursued Qur'anic exegesis at Cairo University, and took philosophy courses at Al-Azhar University. This strong educational foundation led her to become a professor of Islamic Studies in the Department of Philosophy and Religious Studies at Virginia Commonwealth University, USA.⁷²

In addition to her academic contributions, Amina has been actively involved in various women's organizations, including co-founding Sisters in Islam in Malaysia.⁷³ Her activism focuses on advocating for gender justice, particularly through the reinterpretation of Qur'anic verses. She rejects classical interpretations that she considers patriarchal and develops a feminist hermeneutical approach. Through her influential works such as *Qur'an and*

⁷¹ Umi Sumbulah, *Epistimologi Pemikiran Hukum Islam Kontemporer*, h, 158-159.

⁷² Jazil Amrullah, *Kepemimpinan Perempuan Perspektif Kesetaraan Gender dalam Al-Qur'an: Studi Pemikiran Amina Wadud Muhsin*, Institut Agama Islam Negeri Madura, 2023.

⁷³ Norliyana Bt Abdul Rahman, *Gerakan Feminisme Islam Malaysia (Study Terhadap Organisasi "Sister In Islam" Menolak Ajaran Poligami)*, 2007.

Woman: Rereading the Sacred Text from a Woman's Perspective and *Inside the Gender Jihad: Women's Reform in Islam*, Amina emphasizes that the Qur'an must be read holistically, highlighting the principles of *tawhid* and social justice.⁷⁴

However, Amina Wadud's prominence does not arise solely from her academic contributions but also from her actions that are seen as challenging traditional norms. One of the most controversial moments occurred on March 18, 2005, when she delivered the Friday sermon and led the Friday prayer as imam at the Sundaram Tagore Gallery in New York, USA. The event was attended by around 100 congregants, consisting of both men and women, with the call to prayer performed by an unveiled woman. In her sermon, Amina stated that there is no Qur'anic verse prohibiting women from leading prayers. She even cited a hadith in which the Prophet Muhammad permitted Umm Waraqah to lead prayer for both men and women.⁷⁵ This action sparked strong reactions, including from prominent scholars such as Sheikh Yusuf al-Qaradhawi, reinforcing her image as a progressive yet controversial Muslim feminist figure.

Through her intellectual journey and activism, Amina Wadud Muhsin consistently advocates for the participation of women in religious and social spheres. For her, women must not be positioned merely as complements to men

⁷⁴ Umi Sumbulah, *Epistimologi Pemikiran Hukum Islam Kontemporer*, h,163.

⁷⁵ Ujang Imamul Muttaqin, "Pemikiran Feminisme Amina Wadud," *Jurnal El-Hamra: Kependidikan Dan Kemasyarakatan* 5, no. 3 (2020): h,38.

but must receive equal recognition in religious, societal, and national life.⁷⁶ Thus, her biography is not only the story of an academic, but also the portrait of a reformer who challenges patriarchal structures by upholding the spirit of justice embedded in the Qur'an.

2. Amina Wadud Muhsin's Thought on Polygamy

Amina Wadud is one of the leading contemporary Muslim feminist scholars who consistently critiques Qur'anic interpretations laden with patriarchal bias.⁷⁷ In her view, the practice of polygamy as understood and practiced in many Muslim societies cannot be separated from traditional exegetical constructions that, for centuries, were written almost exclusively by male exegetes. As a result, polygamy has often been regarded as a privileged right of men, while the voices and experiences of women have been marginalized.⁷⁸ Employing a feminist hermeneutical method, Wadud attempts to reinterpret Qur'anic verses concerning polygamy particularly Surah al-Nisā' (4): 3 through an approach that emphasizes *tawhid*, justice, and gender equality.

According to Wadud, this verse cannot be understood as an absolute legitimization of polygamy instead, it must be examined within its historical context. Surah al-Nisā' (4): 3 was revealed during a post-war period in Arabian

⁷⁶ Harahap dan Zulkarnaen, "Hermeneutika Feminisme dalam Tafsir Al-Qur'an: Kajian Metodologi Amina Wadud," 2024.

⁷⁷ Aji Febriansyah Dkk., "Kesetaraan Gender Menurut Amina Wadud: Penafsiran Kontekstual Dalam Al-Qur'an," *Almustofa: Journal Of Islamic Studies And Research* 2, No. 01 (2025): H,278.

⁷⁸ Khozainul Ulum, "Amina Wadud Muhsin Dan Pemikirannya Tentang Poligami," *Al Hikmah: Jurnal Studi Keislaman* 7, no. 1 (2017).

society, when many orphaned girls were left vulnerable and at risk of exploitation. The verse was revealed as a protective measure, with justice as its primary condition. In this regard, polygamy is permitted not to satisfy male desire, but to safeguard socially disadvantaged women.⁷⁹ Through her feminist hermeneutical lens, Wadud emphasizes that the principal message of the verse is the protection of women's rights, not the granting of unrestricted authority to men to marry multiple wives.

Wadud further highlights justice as the primary limitation on the practice of polygamy.⁸⁰ She stresses that justice is not confined to material aspects such as financial support or housing, but also encompasses non-material aspects including affection, emotional attention, and the recognition of women's dignity. In this context, she refers to Surah al-Nisā' (4): 129, which explicitly states that humans will never be able to be perfectly just between their wives, even though they desire to do so. According to Wadud, this verse serves as a strong indication that the requirement of justice is nearly impossible to fulfill. Consequently, the Qur'anic spirit inherently leans toward monogamy as the ideal form of marriage.

Furthermore, Wadud critiques classical justifications commonly used to legitimize polygamy, such as a wife's infertility, inability to bear children, or

⁷⁹ Zainal Abidin dkk., "Poligami dalam Islam dan Keadilan Gender," *The International Journal of Pegon : Islam Nusantara civilization* 8, no. 02 (2022): h,25, <https://doi.org/10.51925/inc.v8i02.65>.

⁸⁰ Muhammad Adnan Assyahibi, *Poligami Sebagai Bentuk Ketidakadilan Gender Terhadap Perempuan: Analisis Komparatif Pemikiran Yusuf Al-Qaradawi Dan Amina Wadud*, Universitas Islam Negeri Sultan Syarif Kasim Riau, 2025.

dissatisfaction in marital intimacy. These reasons, she argues, stem from patriarchal exegetical constructions that place the burden on women while giving men the freedom to seek fulfillment elsewhere. From an Islamic moral perspective, she asserts that more humane and just alternatives exist for instance, adopting orphans as a means to address the need for children.⁸¹ Thus, polygamy should not be considered the primary solution for resolving family issues.

Within her hermeneutical framework, Wadud distinguishes between the universal message of the Qur'an and the particularity of verses that emerged from seventh-century social conditions. Its universality lies in justice, equality, and the protection of the vulnerable; its particularity lies in polygamy as a situational solution relevant only within a specific context. Therefore, she argues that treating polygamy as a normative and universally applicable teaching contradicts the Qur'an's universal intent. By reading the verses holistically and considering social, cultural, and linguistic factors, Wadud concludes that monogamy aligns more closely with the principle of *tawhid*, which emphasizes unity, balance, and justice.

Moreover, through her feminist hermeneutical method, Wadud rejects any approach that equates the Qur'an with human interpretation. For her, the Qur'anic text never positions women as inferior; rather, it is patriarchal

⁸¹ Ahmad Dziya'Udin, *Kritik terhadap konsep keadilan gender dalam penafsiran amina wadud*, Fakultas Ushuluddin Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2016.h,57

interpretations that limit women and justify unqualified polygamy.⁸² Hence, a rereading that incorporates women's lived experiences is essential to uncover the Qur'an's true message of justice.

In conclusion, Amina Wadud's thought on polygamy asserts that polygamy in the Qur'an is not a normative command but a contextual solution for particular circumstances. The associated requirement of justice is nearly impossible to achieve, indicating that the Qur'anic spirit ultimately supports monogamy as the ideal marital form. Her feminist hermeneutical approach situates the Qur'an as a universal guide upholding justice and gender equality while rejecting patriarchal interpretations that frame polygamy as an inherent male privilege.

3. Amina Wadud Muhsin's Feminist Hermeneutical Interpretation

In the development of modern Islamic studies, various methodological approaches have emerged to interpret the moral messages of the Qur'an in a more contextual and socially responsive manner. These approaches include normative, sociological, theological, historical, and hermeneutical methods. The rise of these diverse theories is inseparable from the historical reality that Muslim societies have often placed women in subordinate positions. Through these new approaches, contemporary Muslim thinkers seek to provide interpretations that

⁸² Abidin dkk., "Poligami dalam Islam dan Keadilan Gender." h, 76.

are more just and equitable, in line with the universal messages of the Qur'an and the Prophet's Sunnah concerning justice and humanity.

One of the most influential figures in methodological reform in Qur'anic exegesis is Fazlur Rahman. He introduced a contextual hermeneutical approach, which emphasizes that every Qur'anic verse was revealed within a specific socio-historical framework. Therefore, a verse must first be understood within its historical context. However, the moral message of the verse should not be confined to that context; rather, it must be extracted and elevated into a universal moral principle applicable across time.⁸³ This concept became the foundation for contextual Qur'anic interpretation and served as inspiration for contemporary Muslim intellectuals, including Amina Wadud.

Methodologically, the interpretive model developed by Amina Wadud is known as feminist hermeneutical exegesis an approach that reads the Qur'an through the lens of women's experiences while remaining grounded in the principles of justice and equality in Islam.⁸⁴ Wadud expands Fazlur Rahman's ideas by incorporating the lived experiences of women, which have long been neglected in classical exegetical traditions. Thus, feminist hermeneutics aims not only to correct patriarchal biases in interpretation but also to present a more inclusive and humane understanding of the Qur'an.

⁸³ Amina Wadud Muhsin, *Quran Menurut Perempuan: membaca kembali kitab suci dengan semangat keadilan* (Serambi, 2006), h,91.

⁸⁴ Uswatun Hasanah Harahap dan Zulkarnaen Zulkarnaen, "Hermeneutika Feminisme dalam Tafsir Al-Qur'an: Kajian Metodologi Amina Wadud," *Alhamra Jurnal Studi Islam* 5, no. 1 (2024): h,92.

According to Wadud, the procedure of feminist hermeneutical interpretation rests on three fundamental components: (1) the context of revelation (*asbāb al-nuzūl*), (2) the linguistic composition of the Qur'anic text, and (3) the coherence of meaning within the Qur'an as a whole (a holistic reading).⁸⁵ These three pillars function as the interpretive foundation to avoid purely literal or textual readings. Through this approach, Wadud seeks to incorporate women's experiences directly while avoiding masculine stereotypes that often dominate traditional tafsir. She further elaborates this method into what she calls a holistic (*tauhidi*) approach.

a. Holistic (*Tauhidi*) Interpretation

The holistic (*tauhidi*) interpretive model developed by Amina Wadud is grounded in the view that the Qur'an is an integrated whole that cannot be understood in a fragmented or partial manner. This approach emphasizes the dynamic relationship between the universal and particular aspects of the Qur'anic message. The Qur'an contains universal principles, yet its verses were often revealed in particular socio-historical contexts specific to certain times and circumstances. Therefore, to bridge the relationship between universality and particularity, Wadud stresses the importance of methodological steps such as identifying the context of revelation (*asbāb al-nuzūl*), analyzing the grammatical

⁸⁵ Amina Wadud Muhsin, *Wanita di dalam Al-Quran*, h.4.

structure of the text, and formulating a comprehensive Qur'anic worldview (*weltanschauung*).⁸⁶

This holistic interpretive model stems from the integrative idea that all Qur'anic verses are interconnected and together form one unified thematic structure.⁸⁷ Thus, interpretation must not focus solely on isolated verses; instead, it should consider the interrelatedness (semantic interconnectedness) of verses to uncover the fundamental principles that embody the spirit of Qur'anic teachings.

In practice, Amina Wadud situates this approach within the realities of modern life by taking into account social, moral, political, and economic dimensions, including issues concerning women. She seeks to construct a Qur'anic reading based on women's lived experiences and to break away from patriarchal stereotypes that have long dominated classical exegesis. Consequently, her interpretations often differ from those of classical exegetes, as Wadud prioritizes direct engagement with the Qur'anic text rather than repeating established interpretations.⁸⁸ Accordingly, she argues that the Qur'an never intended to place women in a position of subordination; rather, it upholds justice and equality as universal Islamic values.

⁸⁶ Mohammad Fauzan Ni'ami dan Moh Irfan, "Hermeneutika Tauhid: Interpretasi Amina Wadud Terhadap Gender," *Humanistika: Jurnal Keislaman* 9, no. 2 (2023): h,41.

⁸⁷ Miftahul Janah dan Muhammad Yasir, "Hermeneutika tauhid; Kritik terhadap penafsiran Amina Wadud tentang nusyuz," *An-Nida'* 43, no. 2 (2019): h,56.

⁸⁸ Uswatun Hasanah Harahap dan Zulkarnaen Zulkarnaen, "Hermeneutika Feminisme dalam Tafsir Al-Qur'an: Kajian Metodologi Amina Wadud," *Alhamra Jurnal Studi Islam* 5, no. 1 (2024): h,12.

From an epistemological standpoint, Wadud's interpretive model shares similarities with Fazlur Rahman's ideas, particularly the distinction between the Qur'an's universal message and its historical context.⁸⁹ However, Wadud does not fully adopt Rahman's double-movement theory; instead, she develops a logical-synthetic approach. In philosophy, a logical synthesis involves integrating separate elements into a coherent whole. Wadud applies this principle by linking relevant verses and situating them within the unity of revelation. Each theme including issues of women's rights and roles is not viewed through a single verse, but rather through interrelated verses that collectively shape the Qur'an's ethical and justice-oriented framework.

Additionally, Wadud's thought is influenced by contemporary Islamic hermeneutical traditions, which maintain that interpretation must remain open to reinterpretation as society evolves.⁹⁰ In line with Fazlur Rahman, Muhammad Shahrur, and Muhammad Arkoun, Wadud argues that the Qur'an must continually be reinterpreted to remain relevant to human development. This principle is rooted in the dictum that the Qur'an is *ṣāliḥ li kulli zamān wa makān* applicable to all times and places. Therefore, the results of interpretation should

⁸⁹ Samsul Bahri dan Nushadiqah Fiqria, "Pengarusutamaan Gender dalam Penafsiran Al-Qur'an Menurut Amina Wadud Muhsin," *Jurnal Ilmiah Al-Mu'ashirah: Media Kajian Al-Qur'an dan Al-Hadits Multi Perspektif* 19, no. 2 (2022): h,57.

⁹⁰ Ahmad Baidowi, *Tafsir feminis: Kajian perempuan dalam al-Quran dan para mufasir kontemporer* (Nuansa Cendekia, 2023).h, 55.

not be sacralized (*taqdīs al-afkār al-dīniyyah*); rather, they must remain open to critique and renewal.

Wadud's logical-synthetic approach also shares affinities with the thematic (*mawḍū'ī*) method of exegesis, which analyzes verses according to specific themes. However, Wadud asserts that thematic exegesis has limitations because it often fails to consider the unity between related themes. Her logical-synthetic approach seeks to connect all relevant themes to uncover the Qur'an's unified moral and spiritual message. In discussions concerning women, for example, Wadud analyzes not only verses that explicitly mention women's rights and roles but also connects them with other verses concerning human functionality, degrees (*darajah*), virtue (*faḍīlah*), marital discord (*nushūz*), polygamy, and inheritance. This interconnected reading aims to show the structure of equality and justice that underlies the Qur'an's teachings.

Thus, Amina Wadud's holistic tafsir is not only textual but also contextual, integrative, and reflective. Through this approach, she seeks to dismantle patriarchal biases embedded within classical exegetical traditions and assert that the Qur'an fundamentally serves as a universal guide promoting justice, equality, and humanity for both men and women before God.

In addition to formulating her holistic approach, Wadud critiques other interpretive models that she believes are inadequate in understanding the Qur'an's message. The first is traditional tafsir, primarily authored by men with

specialized interests in fields such as jurisprudence, linguistics, history, or Sufism.⁹¹ The atomistic style of traditional tafsir interprets verses independently without considering their thematic coherence. Due to its lack of engagement with women's experiences, such tafsir often produces patriarchal biases that perpetuate gender injustice.

The second category is reactive tafsir, which emerges as a response to modern-day limitations faced by women in Muslim societies. Although influenced by feminist and rationalist liberation discourse, this approach is also problematic in Wadud's view because it often fails to distinguish between the Qur'anic text and human interpretation. As a result, criticism is frequently directed at the Qur'an itself, as if the sacred text were inherently oppressive.⁹² For Wadud, however, gender inequality does not originate from the Qur'an but from patriarchal interpretations imposed upon it.⁹³

Consequently, Amina Wadud offers an alternative hermeneutical model rooted in logical synthesis and holism to interpret the Qur'an comprehensively and contextually. This approach rejects interpretive methods that isolate verses or react impulsively without textual grounding. Through her holistic method,

⁹¹ Aniqoh Zuhri, "Hermeneutika Al-Qur'an Amina Wadud Muhsin," *Revelatia: Jurnal Ilmu Al-Qur'an Dan Tafsir* 2, No. 2 (2021): H,79, <https://doi.org/10.19105/Revelatia.V2i2.5305>.

⁹² Zuhri, "Hermeneutika Al-Qur'an Amina Wadud Muhsin," H, 130.

⁹³ Amina Wadud Muhsin, *Quran Menurut Perempuan: membaca kembali kitab suci dengan semangat keadilan*, h, 187.

Wadud reinforces the Qur'an's universal message of justice, equality, and humanity values applicable to both men and women in every time and place.

b. Contextualization in Amina Wadud Muhsin's Interpretation

In developing her holistic interpretive model, Amina Wadud emphasizes the importance of contextualization in understanding the Qur'an. For her, Qur'anic verses were revealed within specific social, cultural, and historical circumstances that must first be examined in order to extract their universal moral principles.⁹⁴ This view aligns with Fazlur Rahman's contextual hermeneutical theory, which asserts that every verse contains two layers of meaning: a particular historical meaning and a universal moral meaning.⁹⁵

The process of contextualization involves two primary steps: first, understanding the context of revelation (*historical meaning*), including the social conditions of Arabian society during the Prophet's time; and second, deriving the universal moral message (*ideal meaning*) embedded within the verse for application in modern life.⁹⁶ Through this process, Wadud seeks to maintain balance between textual and contextual meaning so that Qur'anic interpretation does not fall into rigid literalism nor into unrestricted interpretation detached from the text.

⁹⁴ Amina Wadud Muhsin, *Wanita di dalam Al-Quran*, h.7.

⁹⁵ Elya Munfarida, "Metodologi Penafsiran Al-Qur'an™ an Menurut Fazlur Rahman," *Komunika: Jurnal Dakwah Dan Komunikasi* 9, no. 2 (2015): h. 97.

⁹⁶ Amina Wadud Muhsin, *Wanita di dalam Al-Quran*, h. 8.

Contextualization in Wadud's tafsir also stresses that the Qur'an's messages must remain relevant to contemporary realities.⁹⁷ Therefore, interpretation must be capable of addressing social and gender issues present within society. Wadud argues that much of the gender inequality observed today does not originate from the Qur'an itself, but from earlier exegetes who interpreted the text without considering its social context.⁹⁸ Through a contextual reading of the Qur'an, Wadud aims to uncover universal values such as justice (*al-'adl*), equality (*al-musāwāh*), and public welfare (*al-maṣlaḥah*) as the core principles that should guide every interpretation.

Moreover, this contextual approach reinforces the holistic (tawhidic) model, as both are rooted in the understanding that the Qur'an speaks to humanity across time. Hence, tafsir must not stop at the historical meaning of the verse but must be extended into contemporary contexts. Within this framework, Wadud asserts that the Qur'an consistently opens room for dialogue between text, context, and reader, making the interpretive process dynamic and oriented toward social justice.

Thus, contextualization becomes an epistemological bridge between Wadud's holistic approach and her feminist hermeneutics. She not only interprets the text but also connects it to social realities, allowing the Qur'an's values of

⁹⁷ M Aspandi, "Hermeneutik Amina Wadud; Upaya Pembacaan Kontekstual Teks Keagamaan," *Legitima: Jurnal Hukum Keluarga Islam* 1, no. 1 (2018): h, 49.

⁹⁸ Umi Sumbulah, *Epistimologi Pemikiran Hukum Islam Kontemporer*, h, 170.

justice and equality to be actualized in real life, including in sensitive issues such as polygamy, women's leadership, and family rights.

As a concrete application of her contextual and holistic approach, Amina Wadud interprets the Qur'anic verses on polygamy particularly Surah al-Nisā' 3 and 129 by emphasizing the importance of understanding both the socio-historical background (*asbāb al-nuzūl*) and the universal moral objectives (*maqāṣid al-syarī'ah*) of these verses.⁹⁹

According to Wadud, Surah al-Nisā' 3 cannot be read literally as a legitimization of polygamy; rather, it must be understood within the context of social justice following the Battle of Uhud, when many Muslim men had fallen, leaving behind orphaned girls and widows.¹⁰⁰ This social condition created welfare issues among vulnerable women and orphans, thus requiring protective measures. Therefore, the permission to marry "two, three, or four" wives in this verse is a temporary social intervention aimed at ensuring justice for vulnerable groups not a normative encouragement to practice polygamy.

In her interpretation, Wadud argues that the central message of the verse lies not in the number of wives but in the condition of justice:¹⁰¹ "*fa in khiftum*

⁹⁹ Aulia Fitriani dan Nayla Hidayatuzzahra, "Amina Wadud's Method of Interpreting the Qur'an in the Problem of Polygamy: Metode Penafsiran Al-Qur'an Amina Wadud dalam Permasalahn Poligami," *Al-Mabahits: Jurnal Studi Al-Qur'an, Hadis dan Tafsir* 2, no. 1 (2025): h,15.

¹⁰⁰ Alfandi Ilham Safarsyah Dkk., "Understanding Polygamy Laws In The Quran: An Analysis From The Perspectives Of Amina Wadud And Jasser Auda," *Alfiqh Islamic Law Review Journal* 2, No. 2 (2023): H, 71.

¹⁰¹ Safarsyah Dkk., "Understanding Polygamy Laws In The Quran: An Analysis From The Perspectives Of Amina Wadud And Jasser Auda." Vol 14. No. 2 <https://doi.org/10.14421/musawa.2015.142.123-142>.

allā ta‘dilū fa wāḥidah” (“if you fear that you will not be able to act justly, then marry only one”). For her, this conditional clause serves as a universal moral limit that restricts the practice of polygamy, rather than authorizing it. In other words, the verse contextually promotes monogamy as the ideal form of justice, since justice in marital relations is foundational and non-negotiable.

The connection between verse 3 and verse 129 of Surah al-Nisā’ further reinforces this interpretation. In Surah al-Nisā’ 129, Allah states: “*And you will never be able to be perfectly just between your wives, even if you strive to do so.*” Wadud interprets this verse as a theological affirmation of human limitations in achieving emotional and affective justice.¹⁰² Therefore, verse 129 functions as a critique of the practice of polygamy and complements verse 3, preventing it from being understood in isolation.

Through this contextual and holistic reading, Wadud argues that these two verses must be understood integratively rather than separately. Surah al-Nisā’ 3 provides conditional space for polygamy in the interest of social justice, while verse 129 sets a moral and psychological limit that is nearly impossible for humans to fulfill. As a result, the Qur’an when viewed contextually guides its followers toward monogamy as the ideal marital framework, where justice and equality can be upheld comprehensively.¹⁰³

¹⁰² Sokhifah Hidayah, *Kritik Terhadap Konsep Qur’anic Humanism Amina Wadud Dalam Meresepsi Fenomena Queer Muslim*, UIN KH Abdurrahman Wahid Pekalongan, 2025.

¹⁰³ Saif Ali Yasin, *Kesetaraan Gender tentang kepemimpinan perempuan: Analisis QS An-Nisa’: 34 perspektif Amina Wadud dan Nasaruddin Umar*, Universitas Islam Negeri Maulana Malik Ibrahim, 2025.

Wadud's approach thus critiques classical patriarchal interpretations that tend to read Surah al-Nisā' 3 as an unrestricted license for men to practice polygamy. For Wadud, gender inequality arising from such practices does not originate from the Qur'an, but from interpretive traditions that ignore historical context and the Qur'an's universal moral messages.

In this way, contextualization of Qur'anic verses on polygamy underscores Amina Wadud's commitment to justice and gender equality as universal Qur'anic values. Within the framework of Islamic feminist legal thought, this perspective becomes highly relevant, demonstrating that the legitimization of polygamy is not a theological command but a conditional social dispensation aimed at protecting the welfare of women and children in specific circumstances.

c. Woman's Experience in Amina Wadud Muhsin's Feminist Hermeneutical Interpretation

Within her feminist hermeneutical framework, Amina Wadud positions women's experience as an essential epistemological element in understanding the Qur'an. According to Wadud, Qur'anic interpretation cannot be separated from the subjectivity of the interpreter. For centuries, Qur'anic exegesis has been dominated by male scholars who interpreted the text through patriarchal social

and cultural lenses.¹⁰⁴ This has resulted in many verses concerning women being interpreted in biased ways, as they fail to account for the existential experiences of women as moral and spiritual subjects acknowledged in the Qur'an.

Wadud argues that to achieve a fair and comprehensive understanding of the divine message, women's experiences must be incorporated as sources of knowledge and hermeneutical tools.¹⁰⁵ In other words, women must not be treated merely as objects of interpretation but also as active subjects who read and interpret revelation. This approach marks a paradigm shift from androcentric exegesis toward gender-inclusive interpretation.

In her seminal work *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*, Wadud develops a feminist hermeneutical model consisting of three layers of reading:¹⁰⁶

1. Textual analysis, examining the linguistic and grammatical structure of verses to uncover their literal meaning.
2. Contextual analysis, understanding the historical and social circumstances in which the verses were revealed so that divine messages are not misinterpreted anachronistically.

¹⁰⁴ Amina Wadud Muhsin, *Quran Menurut Perempuan: membaca kembali kitab suci dengan semangat keadilan*, h, 29.

¹⁰⁵ Uswatun Hasanah Harahap dan Zulkarnaen Zulkarnaen, "Hermeneutika Feminisme dalam Tafsir Al-Qur'an: Kajian Metodologi Amina Wadud," *Alhamra Jurnal Studi Islam* 5, no. 1 (2024): 85–96.

¹⁰⁶ Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective* (Oxford University Press, 1999), h, 12.

3. Ta'wil tauhidi, situating all verses within the unified worldview of *tawhid*, wherein men and women are equal before God as His vicegerents on earth.

Within this framework, women's experience becomes the hermeneutical dimension that connects the text, its context, and contemporary social reality. Experiences of women often marginalized serve as tools to expose disparities in classical interpretations and to reaffirm Qur'anic principles of justice (*al-'adl*) and equality (*al-musāwah*).¹⁰⁷

Wadud maintains that any interpretation that disregards women's lived experiences is not only methodologically flawed but also contradicts the spirit of *tawhid*. *Tawhid* rejects all hierarchical structures that position some humans above others on the basis of gender.¹⁰⁸ Therefore, incorporating women's experience into Qur'anic interpretation is not an emotional subjectivity but an epistemological responsibility to ensure that hermeneutics truly reflects the Qur'an's universal values of justice and humanity.

Furthermore, Wadud's feminist hermeneutics serves as a tool for both social and theological critique of traditional exegetical structures. She does not merely challenge specific interpretations but also examines the power dynamics

¹⁰⁷ Shinta Tisia Azzahra, "Hermeneutika Feminis: Studi Komparasi Pemikiran Tokoh Amina Wadud dan Elisabeth Schüssler Fiorenza," *Jalsah: The Journal of Al-quran and As-sunnah Studies* 4, no. 2 (2024): 237–62.

¹⁰⁸ Munirah Munirah, "Pendekatan Hermeneutika Amina Wadud: Gender Dalam Konsep Husband And Wife," *An-Natiq Jurnal Kajian Islam Interdisipliner* 3, No. 2 (2023): h, 79.

between interpreter, text, and society. In this way, women's experience functions as an ethical mirror demanding that Qur'anic interpretation prioritize public welfare, justice, and human dignity.

In this context, Wadud asserts that the presence of women as interpreters is a crucial step toward de-patriarchalizing Qur'anic exegesis. She seeks to restore the Qur'an's original spirit: liberating human beings from all forms of oppression, including gender-based oppression. Therefore, feminist hermeneutics grounded in women's experience is not merely an academic project but also a movement of theological liberation that revitalizes the Qur'an's ethical message within contemporary social realities.

Thus, women's experience in Amina Wadud's feminist hermeneutics becomes a central pillar in constructing a gender-equitable paradigm of Qur'anic interpretation. This approach complements her holistic and contextual methods, forming an integrated methodology oriented toward justice, equality, and universal human dignity as envisioned by the Qur'an.

d. Gender Equality in Amina Wadud Muhsin's Feminist Hermeneutical Interpretation

The concept of gender equality constitutes the central foundation of Amina Wadud's feminist hermeneutical framework. For Wadud, equality and justice are not modern ideas inserted into interpretive discourse; rather, they are

theological values inherent within Islamic teachings.¹⁰⁹ The principle of *tawhid* serves as the epistemological basis of her thought, for *tawhid* not only affirms God's oneness theologically but also necessitates the ontological equality of men and women as servants and vicegerents on earth. Thus, all forms of hierarchy and gender discrimination found in classical exegesis do not originate from the Qur'anic text itself but from human interpretations influenced by patriarchal social structures.

Amina Wadud asserts that biological differences between men and women must not be construed as the basis for moral, spiritual, or social distinctions. The Qur'an consistently emphasizes the principles of *al-'adl* (justice) and *al-mīzān* (balance) as the foundation of social relations.¹¹⁰ Within this framework, gender equality does not entail the erasure of natural differences, but ensures that such differences do not result in subordination. She therefore distinguishes between "biological differences," which are inherent, and "social differences," which are culturally constructed. The rigid division of gender roles assigning men to the public sphere and women to the domestic sphere is, according to her, a product of culture, not a normative command of the Qur'an.¹¹¹

¹⁰⁹ Febriansyah Dkk., "Kesetaraan Gender Menurut Amina Wadud: Penafsiran Kontekstual Dalam Al-Qur'an," H, 343.

¹¹⁰ Syaikha Dziyaulhaq Zein, "Wacana Kesetaraan Gender dalam Islam Prespektif Muhammad Asad," *Muqaddimah: Jurnal Studi Islam* 15, no. 5 (2024): h, 75.

¹¹¹ Amina Wadud Muhsin, "*Al-Qur'an dan Perempuan*", dalam Kurzman "*Wacana Islam Liberal*" (t.t.), h, 194.

For Wadud, the Qur'an does not aim to abolish differences between men and women; rather, it envisions harmony and mutual complementarity. The Qur'an does not prescribe fixed gender roles, as social roles are flexible and context-bound. However, this flexibility has often been restricted by patriarchal cultures that rigidly construct gender roles. Accordingly, Wadud's hermeneutics seeks to restore this flexibility by re-reading the Qur'an in an egalitarian and justice-oriented spirit.¹¹²

The gender equality that Wadud envisions is not one that eliminates differences, but one that affirms equal value and status within those differences. She emphasizes that while men and women possess unique experiences, such experiences must be treated as equally valuable, without privileging one over the other.¹¹³ The dominance of male experience in classical tafsir, which has long been the mainstream perspective, has resulted in the marginalization of women. Therefore, she rejects secular feminist approaches that demand absolute uniformity between men and women, as such a stance neglects the spiritual and religious identity of Muslim women.¹¹⁴ Consequently, the feminism envisioned by Wadud is a theological feminism an interpretation of the Qur'an grounded in *tawhid*, justice, and respect for equal yet diverse experiences.

¹¹² Umi Sumbulah, *Epistimologi Pemikiran Hukum Islam Kontemporer*, h, 166.

¹¹³ Ahmad Baidowi, *Dinamika Studi Al-Qur'an* (Yogyakarta: Idea Press, 2009), h, 131.

¹¹⁴ Ahmad Baidowi, *Dinamika Studi Al-Qur'an*, h, 123.

The fundamental premise of Wadud's concept of equality is rooted in the theological doctrine that the Qur'an is the supreme source of values that places men and women in an equal position. Every command or provision in Islamic teachings, in her view, must be understood within its historical context and moral purpose.¹¹⁵ The prophetic tradition reflects this equality, as the Prophet Muhammad (peace be upon him) treated women equally in social, intellectual, and spiritual domains. Women during the Prophet's era participated actively in public life without the restrictions imposed by later patriarchal cultures.

To reinforce her argument on equality, Wadud cites categories of Qur'anic verses illustrating gender equality as formulated by Mohsen Kadivar.¹¹⁶ First, equality in creation, whereby men and women originate from the same essence and their degree before God is determined by piety (Q. 49:13). Second, equality in the hereafter, where reward is granted based on faith and righteous deeds, regardless of gender (Q. 16:97). Third, equality in social duties, whereby both men and women share collective responsibility in promoting good and preventing wrong (Q. 9:71). Fourth, equality in legal accountability, as the Qur'an applies the same legal consequences for theft, adultery, and other offenses to both genders. Fifth, equality within family life, as expressed in the verse

¹¹⁵ Kurdi, dkk, *Hermeneutika al-Qur'an dan Hadis* (Yogyakarta: eLSAQ Press, 2010), h, 181.

¹¹⁶ Mohsen Kadivar, *Meninjau Kembali Hak Perempuan dalam Islam*, dalam Ziba Mir-Hosseini, dkk., *Reformasi Hukum Keluarga Islam: Perjuangan Menegakkan Keadilan Gender di Berbagai Negeri Muslim* (Yogyakarta: LKiS, 2017), h, 314.

describing husbands and wives as “garments for one another” (Q. 2:187), and in another verse emphasizing love, mercy, and tranquility as foundations of marriage (Q. 30:21).

Thus, gender equality in Amina Wadud’s hermeneutics carries social, theological, and epistemological dimensions. Socially, it demands just and mutually supportive relationships between men and women. Theologically, it arises directly from the principle of *tawhid*, which prohibits human domination based on gender. Epistemologically, it requires the participation of women as interpreters so that the meaning of the Qur’an is no longer constructed exclusively from a masculine perspective. Therefore, Wadud’s interpretation functions as a liberatory paradigm that restores the Qur’an to its original vision: embodying justice, humanity, and gender equality as manifestations of divine oneness.

CHAPTER III

RESULTS AND DISCUSSION

A. Description of the Polygamy Permission Case in Decision Number 1135/Pdt.G/2023/PA.Gs.

The Religious Court is one of the key institutions in Indonesia's judicial system, playing a strategic role in upholding the law and ensuring justice for Muslims.¹¹⁷ According to Article 49 of Law Number 3 of 2006 on Amendments to Law Number 7 of 1989 concerning Religious Courts, this institution holds absolute authority to examine, adjudicate, and resolve cases at the first instance involving Muslims in family law matters, including requests for polygamy permission.¹¹⁸ Therefore, polygamy cases are fully under the jurisdiction of the Religious Court as part of the exercise of judicial power.

In carrying out this function, judges are not only required to uphold legal norms textually but also to enforce substantive justice. As per the principle of *ius curia novit*, judges are presumed to know the law and are obligated to determine the appropriate legal norms to apply in a given case. Judges must strike a balance between normative provisions and the social justice values that exist in society.

¹¹⁷ Mohamad Hoerurojikin, "Peran Peradilan Agama Sebagai Penegak Hukum Islam Di Indonesia," *Jurnal Ilmu Pendidikan, Sosial dan Humaniora* 1, no. 2 (2025): h,42.

¹¹⁸ Pasal 49 Undang-Undang Nomor 3 Tahun 2006 tentang Peradilan Agama (t.t.).

This aligns with Article 24(1) of the 1945 Constitution of the Republic of Indonesia, which asserts that judicial power is an independent authority to enforce the law and justice without interference from any party.¹¹⁹

In the context of judicial power implementation, polygamy cases are one of the family law areas that require both legal sensitivity and moral consideration from judges as enforcers of justice. Every ruling rendered reflects not only the application of Islamic law but also demonstrates how positive law is implemented to protect the rights of women and children. Therefore, a legally recognized polygamous marriage in Indonesia is not only subject to religious provisions but must also comply with the procedures outlined in Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 on the Implementation of the Marriage Law.¹²⁰

These provisions should not be viewed merely as administrative formalities, but as substantive legal guidelines that judges must use as a basis for ruling on polygamy cases, considering the interests of all parties, particularly the wife and children. Judges do have discretionary power to make legal *ijtihad* on matters not explicitly regulated by law, but this authority must still be exercised

¹¹⁹ Yuristyawan Pambudi Wicaksana, "Implementasi Asas Ius Curia Novit Dalam Penafsiran Hukum Putusan Hakim Tentang Keabsahan Penetapan Tersangka," *Jurnal Lex Renaissance* 3, no. 1 (2018), h,89. <https://doi.org/10.20885/JLR.vol3.iss1.art3>.

¹²⁰ Asman Asman dkk., *Pengantar Hukum Perkawinan Islam Indonesia* (PT. Sonpedia Publishing Indonesia, 2023).

within the boundaries of applicable positive law to ensure it does not deviate from the main objectives of marriage law.¹²¹

The purpose of regulating polygamy in national law is to preserve the sacred values of marriage and ensure the formation of a harmonious family, even in cases where a husband has more than one wife.¹²² This legal provision also emphasizes that the main principle of marriage in Indonesia is monogamy, and polygamy is only allowed as an exception, subject to strict requirements, such as valid reasons, the husband's ability to support the family, and the consent of the first wife.

However, in practice, the implementation of these regulations has not always been consistent. Many individuals engage in polygamy without court permission or fail to meet the justice principles required between wives, as mandated by both Islamic law and positive law. This reflects a gap between the ideal legal norms and the social reality on the ground, requiring the active role of judges to ensure that every request for polygamy not only meets the legal-formal aspects but also guarantees substantive justice for women and children.

An example of this can be seen in the case decided by the Gresik Religious Court on August 21, 2023, with case number 1135/Pdt.G/2023/PA.Gs. The panel of judges handling this case included Dr. H. M. Arufin, S.H., M.Hum.

¹²¹ Ashfa Azkia, *Problematika Hukum Pemberian Diskresi Pada Lembaga Yudikatif*, Universitas Islam Indonesia, 2021. H, 16

¹²² Tria Sita Dewi Nuriyah, *Implementasi Perkawinan Poligami Di Indonesia Dalam Perspektif Hukum Islam*, Universitas Islam Sultan Agung Semarang, 2024. H, 34.

as the presiding judge, Dra. Hj. Hamimah, M.H., and Sudiliharti, S.H.I. as panel members, and Ikhlatul Laili, S.H.I. as the substitute clerk.¹²³ The details of the case are explained as follows:

1. Identity of the Applicant and Respondent

The Applicant in this case is a husband named xxx bin xxx, aged 67 years, Muslim, holding a doctoral degree, and working as a private university lecturer. The Applicant resides at Jalan Mutiara 2L – 41 Perumnas Kota Baru Driyorejo, Desa Petiken, Kecamatan Driyorejo, Kabupaten Gresik, with his original address at Dusun Banyutami RT 005 RW 002, Desa Banyuwangi, Kecamatan Manyar, Kabupaten Gresik. The informant is xxx binti xxx, aged 58 years, Muslim, a housewife, and resides at Jalan Banyutami RT 005 RW 002, Desa Banyuwangi, Kecamatan Manyar, Kabupaten Gresik.¹²⁴

2. Case Description

This case was decided by the Gresik Religious Court with Register Number 1135/Pdt.G/2023/PA.Gs, which was registered at the Court Secretariat on July 27, 2023, and has obtained legal force. The case concerns a request for permission to practice polygamy submitted by a

¹²³ *Putusan Nomor 1135/Pdt.G/2023/PA.Gs tentang Izin Poligami. Tanggal 30 Oktober 2023. (diakses pada tanggal 22 Mei 2025)*

<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee40bd616b571681d7313432373432.html>.

¹²⁴ *Putusan Nomor 1135/Pdt.G/2023/PA.Gs tentang Izin Poligami. Tanggal 30 Oktober 2023. (diakses pada tanggal 22 Mei 2025) h, 1*

<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee40bd616b571681d7313432373432.html>.

husband named xxx, aged 67 years, a Muslim, a private lecturer, and a resident of Gresik. The request for polygamy permission is made against his wife xxx binti xxx, aged 58 years, a Muslim, and a housewife.

The Applicant and the Respondent were legally married on March 2, 1984, at the Office of Religious Affairs of Kecamatan Manyar, Kabupaten Gresik, as documented in the Marriage Certificate Number 376/17/V/1984. From this marriage, they were blessed with five children and have been living together in Kabupaten Gresik ever since.

In his application, the Applicant expressed his desire to legally marry again with a woman named xxx binti xxx, aged 46 years, a Muslim, and a private school teacher. The Applicant stated that their relationship had lasted a long time, and even since 2011, they had conducted a religious marriage (nikah sirri), from which they were blessed with a son named xxx, born on December 12, 2013.

The application for polygamy permission was primarily made due to the Applicant's high biological needs, while the Respondent was considered no longer able to fulfill these needs adequately. Additionally, the Applicant expressed concerns about the possibility of committing acts forbidden by religious norms if his relationship with the future second wife was not immediately legalized.

The Applicant also stated that the Respondent had given her permission for the polygamy plan and provided a direct statement in court expressing her willingness to accept the marriage. The Respondent declared that she was willing for the Applicant to marry his second wife and that they would live harmoniously. The second wife of the Applicant also attended the hearing and stated that the marriage would take place by mutual consent, without any coercion. She further emphasized that there were no familial or legal obstacles between her, the Applicant, and the Respondent that would invalidate the marriage according to Islamic law or applicable regulations.

To support his claims, the Applicant submitted official documents and testimony from two witnesses, xxx bin xxx and xxx bin xxx, who essentially confirmed the Applicant's reasons for seeking polygamy, including his financial capability and his ability to treat his wives justly. The Applicant is known to have a steady income of approximately IDR 20,000,000 per month from his role as a lecturer at several universities in Gresik and Surabaya. Additionally, the Applicant submitted an asset determination (gono-gini) obtained during the marriage with the Respondent, consisting of two houses located in Dusun

Banyutami and Desa Sukomulyo, Kecamatan Manyar, Kabupaten Gresik.¹²⁵

3. Petition

Based on the information provided above, the Applicant requests to be examined and adjudicated with a ruling in line with his request as stated in the petition:¹²⁶

- 1) Primary Petition: To grant the Applicant's request, allowing the Applicant (xxx bin xxx) to marry again (polygamy) with his future wife xxx binti xxx, to determine shared property, and to charge the Applicant with the court fees.
- 2) Subsidiary Petition: To request that the Honorable Court issue a ruling that is as just as possible in accordance with the applicable legal provisions.

The Applicant, Respondent, and the future second wife of the Applicant attended the scheduled hearing, and the panel of judges first attempted reconciliation between both parties, but this was unsuccessful. Subsequently, the Honorable Court ordered both parties to undergo mediation as stipulated in Articles 3(1), 4, and 7 of the Supreme Court

¹²⁵ *Putusan Nomor 1135/Pdt.G/2023/PA.Gs tentang Izin Poligami. Tanggal 30 Oktober 2023. (diakses pada tanggal 22 Mei 2025) h, 1-3*

<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee40bd616b571681d7313432373432.html>.

¹²⁶ *Putusan Nomor 1135/Pdt.G/2023/PA.Gs tentang Izin Poligami. Tanggal 30 Oktober 2023. (diakses pada tanggal 22 Mei 2025) h, 4-10*

<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee40bd616b571681d7313432373432.html>.

Regulation No. 1 of 2016 on Mediation Procedures in Court; however, mediation was unsuccessful.

After the above procedures, the panel of judges began the examination process. The Religious Court summoned and heard the statements from both parties, reading out the Applicant's petition and giving the Respondent an opportunity to respond in the hearing, where the Respondent essentially acknowledged all of the Applicant's claims without any significant objections and had agreed to polygamy.

During the hearing, the future second wife of the Applicant also provided testimony, stating that she xxx binti xxx, had known the Applicant for approximately twelve years and had entered into a religious marriage on July 28, 2011, by mutual consent and without any coercion from any party. She also acknowledged that she knew the Applicant was already married and had five children, affirmed that there were no blood relations or breastfeeding relations between herself, the Applicant, and the Respondent that would invalidate the marriage under Islamic law or the applicable regulations, and confirmed her readiness to become the second wife and live harmoniously with the Applicant and his children.

To strengthen the claims made in the main case and avoid legal loopholes, the panel of judges required the Applicant to provide evidence for all the claims made. The Applicant submitted written evidence, duly

stamped, which matched the original documents, as well as witness testimony to support the Court's decision-making, including the following:

- a. Photocopy of the Applicant's ID Card (P.1)
- b. Photocopy of the Respondent's ID Card (P.2)
- c. Photocopy of Marriage Certificate (P.3)
- d. Photocopy of Divorce Certificate of the Applicant's second wife (P.4)
- e. Photocopy of Statement Letter (P.5)
- f. Photocopy of Family Card under the Applicant's name (P.6)
- g. Photocopy of Marriage Certificate Extract (P.7)
- h. Photocopy of Property Ownership Certificate No. 02780 (P.8)
- i. Photocopy of Property Ownership Certificate No. 00273 (P.9)
- j. Photocopy of Vehicle Registration Certificate for Honda Motorcycle No. W 3548 CA (P.10)
- k. Photocopy of Vehicle Registration Certificate for Honda Motorcycle No. W 3641 MI (P.11)
- l. Photocopy of Vehicle Registration Certificate for Motor Vehicle No. 6784 LY (P.12)

To further support his request for permission to marry polygamously, the Applicant also presented two witnesses. The first witness,

xxx bin xxx, is the Applicant's younger sibling. The second witness, xxx bin xxx, is the Applicant's brother-in-law. Both witnesses swore an oath according to their respective religious practices before their testimony. The witnesses stated that during their marriage, the Applicant and Respondent were blessed with five children, all of whom are now adults and living independently.

The witnesses explained that they were aware of the Applicant's plan to marry a woman named xxx binti xxx, whom the Applicant had known for approximately twelve years. According to the witnesses, the reason for the Applicant's request for polygamy was that the Respondent could no longer meet the Applicant's biological needs, thus unable to fulfill her duties as a wife effectively.

Furthermore, the witnesses affirmed that there was no blood relationship, in-law relation, or breastfeeding relationship between the Applicant, Respondent, and the second wife that could prevent the marriage from being valid according to Islamic law or the applicable regulations. The witnesses also clarified that the Applicant worked as a lecturer and had a stable income of approximately IDR 20,000,000.00 (twenty million rupiah) per month, and with such income, the Applicant was deemed capable of being just to his wives and children in terms of support and family responsibility.

Additionally, the witnesses confirmed that during the marriage to the Respondent, the Applicant had acquired shared property, including a plot of land with a house on it, located in Sukomulyo Village, Kecamatan Manyar, as well as land and a house in Dusun Banyutami, Desa Banyuwangi, Kecamatan Manyar, Kabupaten Gresik. Finally, the witnesses emphasized that the Applicant, Respondent, and the future second wife were all well-acquainted, and there were no objections or obstacles from any party to the Applicant's marriage plan with his second wife.

Upon consideration, the panel of judges granted the Applicant's request for polygamy, allowing him to marry his second wife. The ruling includes the following:¹²⁷

1. Granting the Applicant's request
2. Allowing the Applicant to marry again (polygamy) with a woman named xxx binti xxx.
3. Determining the shared property between the Applicant and Respondent as follows:
 - 1) One unit of house in Banyutami measuring 101 m² with a width of 5 m² x 22 m²
 - 2) One two-story unit in Sukomulyo measuring 145 m²

¹²⁷ *Putusan Nomor 1135/Pdt.G/2023/PA.Gs tentang Izin Poligami. Tanggal 30 Oktober 2023. (diakses pada tanggal 22 Mei 2025) h, 17-18*
<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee40bd616b571681d7313432373432.html>.

4. Charging the Applicant to pay the court fees amounting to IDR 2,050,000 (two million fifty thousand rupiahs)

Based on the case description above, the approval of the polygamy request in Decision Number 1135/Pdt.G/2023/PA.Gs has gone through considerations that the panel of judges deemed sufficient before issuing the ruling. However, the decision to grant polygamy with an improper procedure in other word, conducting a religious marriage (nikah sirri) before obtaining court approval and the Applicant's reason of high biological needs may potentially cause public controversy, as it does not fully align with the provisions of the Marriage Law and the Compilation of Islamic Law.

B. Research Results

1. Analysis of the Ratio Decidendi of the Judge in the Polygamy Permit Case for a Religious Marriage (Nikah Sirri) in Decision Number 1135/Pdt.G/2023/PA.Gs.

One of the important parts of making a decision in court is how the ratio decidendi, or the judge's reasoning, is applied to achieve an ideal legal goal. A judge thus has the freedom to argue and explore the issues at hand according to their conscience or beliefs, without interference from other parties.¹²⁸

¹²⁸ Mochamad Reza Fahmianto, "Kebebasan hakim dalam memutus suatu perkara," *Paper. Diakses dari https://pnsumedang.go.id/file_lama/Paper* 3 (2014).

A ruling must bring about justice, utility, and legal certainty. A judge must deeply scrutinize the truth of the event they are facing, then make an evaluation and correlate it with the applicable law. Following this, the judge can make a decision on the case.

As explained in the previous chapter, polygamy has a legitimate legal framework under the Marriage Law and Islamic law. Therefore, it cannot be practiced arbitrarily, as there are certain conditions that must be met. In practice, however, there remains discretion for judges when granting polygamy requests, and many in society still do not fully understand the requirements and conditions that must be met.

One such case is in the decision of the Gresik Religious Court, Case Number 1135/Pdt.G/2023/PA.Gs, which primarily involves a request for a polygamy permit for a religious marriage (nikah sirri) that had been conducted since 2011, with the underlying reason being the husband's high biological needs. The panel of judges granted the petitioner's request after reviewing the case and hearing the statements from the involved parties in the trial, with several legal considerations.¹²⁹

¹²⁹ *Putusan Nomor 1135/Pdt.G/2023/PA.Gs tentang Izin Poligami. Tanggal 30 Oktober 2023. (diakses pada tanggal 22 Mei 2025)*
<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee40bd616b571681d7313432373432.html>.

Based on the legal facts presented in the decision outlined above, the author can detail several ratio decidendi or legal considerations of the judge, including:

The panel of judges believed that this case is relevant to the verse from the Qur'an that is commonly used by judges when considering polygamy cases, which is Surah An-Nisa' (4): 3, which reads:¹³⁰

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبْعَ ۚ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَٰلِكَ أَدْنَىٰ أَلَّا تَعُولُوا ۚ

“And if you fear that you will not be just to the orphans (when you marry them), then marry those that please you of other women: two, three, or four. But if you fear that you will not be just, then marry only one, or those whom your right hands possess. That is more suitable, that you may not incline to injustice.”

Based on this verse, it can be understood that Islam indeed provides room for the practice of polygamy, but with strict limitations and conditions. One of the main requirements emphasized in the Qur'an is the obligation to be just toward the wives. This justice is not merely a formality, but a crucial standard in determining the moral and legal validity of the practice of polygamy in Islam. In this context, Quraish Shihab, as cited by Anshori Fahmie, asserts that this verse is not intended as an encouragement for polygamy but rather as an "emergency exit" or an emergency solution that

¹³⁰ Tim Penerjemah, *Al-Quran dan Terjemahannya* (CV. Diponegoro, 2015).

should only be taken when there is no better alternative.¹³¹ In other words, polygamy in Islam is not the ideal norm but a last-resort solution in critical circumstances.

Furthermore, in the phrase "khiftum," which means "fear" or "worry," there is an implication of moral caution. Anyone who feels uncertain about their ability to be just is automatically prohibited from practicing polygamy.¹³² Therefore, polygamy is only permitted for those who have full confidence and the actual ability to maintain justice in marital relationships.

When viewed in the context of the petitioner's request for polygamy in decision number 1135/Pdt.G/2023/PA.Gs, it clearly deviates from the legal regulations regarding the procedures for polygamy, as the religious marriage (nikah sirri) was conducted first before obtaining permission from the court. This directly contradicts Article 2, paragraphs (1) and (2) of Law Number 1 of 1974 on Marriage,¹³³ and also Articles 5 (1) and 6 (2) of the Compilation of Islamic Law (KHI), which state that a marriage is only valid if it is conducted according to religious law and registered according to the prevailing regulations.¹³⁴ Therefore, the petitioner's actions show a violation

¹³¹ Fahmianto, "Kebebasan hakim dalam memutus suatu perkara," h,28.

¹³² Tria Amanda Putri, *Takut (Rabbah) dalam Al-Qur'an kajian terhadap kitab tafsir Al-Jami'li Ahkamil Al-Qur'an karya Imam Al-Qurthubi*, UIN Sunan Gunung Djati Bandung, 2023.

¹³³ Pasal 2 ayat (1) dan (2) Undang-Undang nomor 1 tahun 1974 tentang Perkawinan, (t.t.).

¹³⁴ Instruksi Presiden RI Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam Pasal 5 (1) dan 6 (2) (t.t.).

of the legal principles and administrative order of marriage, which are fundamental requirements for the legal implementation of polygamy in the eyes of the state.

Nevertheless, in its considerations, the panel of judges did not address the procedural violation. Instead, the judges focused on the reason that the petitioner had a high biological need, and that the relationship with the second wife had been ongoing for a long time and was "difficult to separate." This aligns with the *ratio decidendi* of the judge who stated:

“Considering that the relationship between the petitioner and the second wife has been ongoing for a long time and is difficult to separate, and the petitioner’s desire to engage in polygamy is very strong, even though the panel of judges had advised and explained the responsibilities that a man undertaking polygamy must bear”

“Considering that the petitioner’s relationship with the second wife, as described above, is very concerning and may lead to various negative effects if the petitioner is not allowed to marry the second wife”

The panel concluded that if polygamy was not permitted, it would result in greater harm (*mudharat*), and thus, granting permission for polygamy was seen as a lighter solution (*irtikab al-akhaff*). To support its view, the panel cited a fiqh maxim from the book *al-Asbah wa An-Nadhair* (Volume 1, page 188) that reads: ¹³⁵

¹³⁵ *Putusan Nomor 1135/Pdt.G/2023/PA.Gs tentang Izin Poligami. Tanggal 30 Oktober 2023. (diakses pada tanggal 22 Mei 2025)*
<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee40bd616b571681d7313432373432.html>,
 h, 14-15.

إذا تعارض مفسدتان روعي اعظمهما ضررا بارتكاب اخفهما

“If you are faced with two harmful things, then take the one that causes the lesser harm, so that you do not commit the greater harm”

Theoretically, the application of this principle can be justified within Islamic law when an emergency situation demands a pragmatic solution. However, in this case, the application of this rule appears disproportionate because the justification for urgency does not meet objective criteria. The petitioner’s biological needs do not fall under the category of "valid reasons" for polygamy as stipulated in Article 4, paragraph (2) of Law Number 1 of 1974 in conjunction with Article 57 of the Compilation of Islamic Law (KHI), which only permits polygamy under the following conditions: (1) the wife is unable to fulfill her duties, (2) suffers from an incurable disability or disease, or (3) is unable to bear children.¹³⁶ Therefore, the judge's consideration of the biological reasons and personal relationship of the petitioner lacks strong legal foundation and could potentially undermine the integrity of the national marriage law.

Furthermore, the panel of judges believed that the petitioner had fulfilled the cumulative requirements as regulated in Article 5, paragraph (1) of the Marriage Law, which include the consent of the first wife, financial

¹³⁶ Instruksi Presiden RI Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam Pasal 57.

capability, and the ability to treat all wives fairly.¹³⁷ This is in line with the judge's ratio decidendi, which states:

“Considering that the respondent has no objection to polygamy and has given permission to the petitioner to marry again, this is in accordance with the provisions of Article 3, paragraph (2) and Article 5, paragraph (1), letter (a) of Law No. 1 of 1974 in conjunction with Article 58, paragraph 1, letter (a) of the Compilation of Islamic Law”

“Considering that, according to the testimony of the witnesses, the petitioner has a monthly income of about IDR 20,000,000 (twenty million rupiah) as a private lecturer, and the respondent's acknowledgment shows the petitioner's ability to provide for his wives and children, thus complying with the provisions of Article 5, paragraph (1), letter (b) of Law No. 1 of 1974 in conjunction with Article 41, letter (c) of Government Regulation No. 9 of 1975 in conjunction with Article 58, paragraph (1), letter (b) of the Compilation of Islamic Law”

“Considering that the petitioner's statement that he is capable of treating his wives fairly and responsibly toward his children fulfills the requirements of Article 5, paragraph (1), letter (c) of Law No. 1 of 1974 in conjunction with Article 41, letter (d) of Government Regulation No. 9 of 1975. Therefore, based on the above considerations, the panel of judges deems the petitioner eligible for polygamy”¹³⁸

In this case, the respondent explicitly gave consent to the petitioner to marry again, and the petitioner has a monthly income of IDR 20,000,000 from his profession as a lecturer at several universities. However, this assessment is only formal and administrative, as it is not accompanied by a

¹³⁷ Pasal 5 ayat (1) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

¹³⁸ Putusan Nomor 1135/Pdt.G/2023/PA.Gs tentang Izin Poligami. Tanggal 30 Oktober 2023. (diakses pada tanggal 22 Mei 2025)
<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee40bd616b571681d7313432373432.html>,
 h, 13-14.

more in-depth analysis regarding whether this income is truly sufficient to support two households and their children.

On the other hand, the aspect of justice is also understood merely as declarative, based solely on the petitioner's statement that he would be fair. However, justice in the context of polygamy is not just a promise or intention; it requires concrete proof of psychological, moral, and social readiness to treat the wives equitably. When the judge does not explore this substantive aspect, the legal reasoning becomes shallow in sociological and ethical terms, potentially leading to imbalances in the family life in the future.

The ratio decidendi of the judge stated:

“Considering that the second wife of the petitioner has stated that she has known the petitioner and the respondent well, and that she willingly agrees to marry him and be the second wife, this complies with the provisions of Article 6, paragraph (1) of Law No. 1 of 1974 in conjunction with Article 16, paragraph (1) of the Compilation of Islamic Law”

“Considering that there are no obstacles preventing the marriage between the petitioner and the second wife according to the provisions of Article 8 of Law No. 1 of 1974 in conjunction with Articles 39-44 of the Compilation of Islamic Law”¹³⁹

From this consideration, the panel affirmed that, legally, there is no barrier to the marriage (*mawāni‘ al-nikāh*) between the petitioner and the second wife, either according to positive law or Islamic law. This complies

¹³⁹ *Putusan Nomor 1135/Pdt.G/2023/PA.Gs tentang Izin Poligami. Tanggal 30 Oktober 2023. (diakses pada tanggal 22 Mei 2025)*
<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee40bd616b571681d7313432373432.html>,
 h, 14.

with the provisions of Article 6, paragraph (1) of the Marriage Law and Article 16, paragraph (1) of the Compilation of Islamic Law, which emphasize the importance of consent from both parties, as well as Article 8 of the Marriage Law in conjunction with Articles 39-44 of the Compilation of Islamic Law, which regulate prohibitions due to relationships of blood, marriage, breastfeeding, or other legal impediments..¹⁴⁰

With the second wife's statement affirming her willingness to marry of her own volition, and no prohibited relationships between the parties, the marriage is not in violation of either positive law or Islamic law. This reasoning is also in line with the hadith of Prophet Muhammad (PBUH), narrated by Abu Hurairah r.a.:¹⁴¹

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ الْقَعْنَبِيُّ حَدَّثَنَا مَالِكٌ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ قَالَ
قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَا يُجْمَعُ بَيْنَ الْمَرْأَةِ وَعَمَّتِهَا وَلَا بَيْنَ الْمَرْأَةِ وَخَالَتِهَا

"It has been narrated to us by Abdullah bin Maslamah Al Qa'nabi, who narrated from Malik from Abu Az Zinad from Al A'raj from Abu Hurairah who said, the Messenger of Allah ﷺ said, 'Do not marry two women who are related to each other (whether on the father's side or mother's side). (Narrated by Bukhari and Muslim)."

This hadith forms the normative basis for the prohibition of marrying two women who are mahram (related by blood or marriage). Therefore, since

¹⁴⁰ Undang-Undang Perkawinan No. 1 Tahun 1974, Pasal 6 ayat (1) dan Pasal 8; Kompilasi Hukum Islam, Pasal 16 ayat (1), Pasal 39–44. (t.t.).

¹⁴¹ Sahih Muslim, Kitab An-Nikah, No. Hadis 2514, dalam "Ensiklopedi Hadits Kitab 9 Imam", diakses pada tanggal 12 November 2025. (t.t.).

the second wife of the petitioner does not have a relationship that is prohibited by the mentioned hadith, there are no *mawāni* ‘*al-nikāh* (legal obstacles) that prevent the marriage from being carried out in accordance with Islamic law.

However, an analysis of this consideration shows that the panel of judges only evaluated the absence of a prohibition on marriage from a formal aspect, without delving into the moral and social context behind the relationship between the petitioner and his second wife, which had already been established prior to the approval of the polygamy. In fact, the principle of justice and the sanctity of marriage, as stipulated in Articles 1 and 3 of Law Number 1 of 1974, require moral propriety and legal order in every marriage.¹⁴²

Therefore, although the judge’s reasoning aligns with Articles 6 and 8 of Law Number 1 of 1974 in conjunction with Article 16 and Articles 39–44 of the Compilation of Islamic Law (KHI), substantively, this approach remains legal-formal and does not fully reflect the principle of substantive justice in Islamic family law, which emphasizes the balance between the legality of the marriage and the social welfare.

In considering the request for the determination of the joint property acquired between the petitioner and the respondent, and to avoid potential future conflicts between the two, the panel of judges found that the

¹⁴² Pasal 1 ayat (3) Undang-Undang nomor 1 tahun 1974 tentang Perkawinan (t.t.).

petitioner's request was in line with the applicable legal provisions and had a valid legal basis, as it aimed to protect the rights of the respondent as the first wife.

*“Considering, based on KMA/032/SK/IV/2006 regarding the Implementation of Book II of the Guidelines for Judicial Duties and Administration, Revised Edition 2014, that when filing a request for polygamy, the husband is also required to submit a request for the determination of the joint property of the petitioner and respondent. This request aims to protect the respondent's rights and simplify the division of joint property in case of future disputes”*¹⁴³

The panel also considered that the petitioner had submitted a request for the determination of joint property supported by the respondent's acknowledgment and the results of the onsite inspection (descente) conducted on August 18, 2023. From this inspection, the panel obtained the legal fact that the property in question was acquired during the marriage between the petitioner and the respondent. Therefore, the petitioner's claims were considered proven and in accordance with the prevailing legal provisions.

The panel then based its consideration on Article 35, paragraph (1) of Law Number 1 of 1974 on Marriage, which states that *“Property acquired during marriage becomes joint property.”*¹⁴⁴ Based on this provision, the

¹⁴³ Putusan Nomor 1135/Pdt.G/2023/PA.Gs tentang Izin Poligami. Tanggal 30 Oktober 2023. (diakses pada tanggal 22 Mei 2025) h, 16

<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee40bd616b571681d7313432373432.html>.

¹⁴⁴ Pasal 35 ayat (1) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan (t.t.).

panel believed that all property acquired by the petitioner and respondent during their marriage should be determined as joint property.

This legal reasoning shows that the judge applied the principle of protecting the economic rights of the wife as regulated in the applicable laws and administrative guidelines for religious courts. The determination of joint property in this case also has a preventive function, to minimize potential disputes over property between the first wife and second wife in the future, especially after the polygamy is legally recognized.

Thus, the judge's reasoning in determining joint property met the requirements for legal certainty and formal justice, as it was based on the trial facts and the provisions of Article 35, paragraph (1) of Law Number 1 of 1974. However, in this ruling, the panel of judges did not explicitly include limitations on the second wife's rights regarding property acquired during the first marriage. Nevertheless, systematically, this limitation is covered within the marriage law doctrine, where joint property only arises during the duration of a legally valid marriage between the husband and the first wife.

Based on the analysis above, it can be concluded that the ratio decidendi of the panel of judges in this case shows a dominance of moral-religious approaches and classical fiqh principles placed above national positive law principles. Formally, the judges have applied the provisions of Articles 3, paragraph (2), 4, and 5 of Law Number 1 of 1974 in conjunction

with Articles 55, paragraph (2), and 58 of the Compilation of Islamic Law. However, materially, the decision has not fully reflected substantive justice, either from the perspective of national law or the values of social justice that prevail in society.

The panel seems to prioritize the personal benefit of the petitioner over the protection of the respondent's rights as the lawful wife. This is despite the fact that the principle of justice, as mandated by Article 5 of Law Number 48 of 2009 on Judicial Power, requires judges to explore, follow, and understand the legal values that prevail in society.¹⁴⁵ Therefore, while this ruling is legally valid, it still raises ethical and legal issues, as it places more emphasis on the legal-formal aspect rather than true justice in family relationships.

2. Analysis of the Decidendi of the Judge in the Case of the Polygamy Permission Request for a Sirri Marriage in Decision Number 1135/Pdt.G/2023/PA.Gs from the Perspective of Amina Wadud Muhsin's Feminist Hermeneutics.

The legal adage "*Het recht hinkt achter de feiten aan*" (the law lags behind facts) illustrates that law often falls behind the dynamic social changes. Positive legal norms often struggle to adapt to evolving values, morality, and societal needs. As a result, a gap emerges between written law (law in the books) and the law that lives in society (law in action). This

¹⁴⁵ Pasal 5 Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman (t.t.).

condition demands the active role of judges to bridge the gap between legal texts and social realities through legal discovery (*rechtsvinding*).¹⁴⁶

In Indonesia's civil law system, judges are obligated not only to uphold legal certainty but also to explore the values of justice and social utility that prevail in society.¹⁴⁷ Based on the principle of *ius curia novit*, judges cannot reject a case simply because there is no clear rule; they must interpret and vivify the law in line with the spirit of justice.¹⁴⁸ Therefore, law should not just be confined to the letter of the statute but must be capable of providing meaningful and substantive justice to the people it governs.

This idea aligns with the progressive legal thought of Satjipto Rahardjo, who emphasizes that law should serve to humanize humanity. According to him, law is not merely a set of rigid rules or texts but a tool to achieve social justice and public happiness. Satjipto rejects the positivist view that law is a closed and absolute entity. He argues that law must be dynamic, flexible, and responsive to social change. In the progressive legal view, a judge should not merely be the "mouthpiece of the law" but should actively

¹⁴⁶ Moh. Syaeful Bahar, "Legal Gap: Pertentangan Hukum Masyarakat dan Hukum Negara", *Al-Daulah: Jurnal Hukum dan Perundangan Islam*, 10, no. 1 (2020): h, 57

¹⁴⁷ Ribut Baidi dan Aji Mulyana, "Peran Hakim Memperkokoh Integritas Peradilan sebagai Benteng Penegakan Hukum dan Keadaban Publik," *Jurnal Hukum Mimbar Justitia* 10, no. 1 (2024): h,54

¹⁴⁸ Yuristyan Pambudi Wicaksana, "Implementasi asas *ius curia novit* dalam penafsiran hukum putusan hakim tentang keabsahan penetapan tersangka," *Lex Renaissance* 3, no. 1 (2018): h,3.

play the role of a justice creator (law creator) who dares to interpret the law contextually and advocate for human values.¹⁴⁹

In the context of marriage law in Indonesia, especially in polygamy cases, Satjipto Rahardjo's progressive legal thought becomes highly relevant. Polygamy, which is legally permitted under certain conditions, often creates a dilemma between legal certainty and substantive justice. In this case, the progressive legal approach reminds us that law enforcement should not only focus on the legal-formal aspects but also consider the moral, social, and human dimensions, particularly the protection of women's rights and family welfare.¹⁵⁰

In line with this progressive legal concept, feminists have also raised serious concerns regarding the practice of polygamy, particularly its relation to justice and gender equality in the modern era. One key figure who has contributed significantly to this discourse is Amina Wadud Muhsin, whose feminist hermeneutical approach provides a framework for analyzing the ratio decidendi of the Gresik Religious Court's decision in Case Number 1135/Pdt.G/2023/PA.Gs.

According to Amina Wadud, the interpretation of the Qur'an cannot be separated from social contexts and human experiences, including those of

¹⁴⁹ Satjipto Rahardjo, *Penegakan hukum progresif* (Penerbit Buku Kompas, 2010).

¹⁵⁰ Wildan Nafis dan Noor Rahmad, "Hukum Progresif Dan Relevansinya Pada Penalaran Hukum Di Indonesia," *El Ahli: Jurnal Hukum Keluarga Islam* 1, no. 2 (2020): h,12.

women. The feminist hermeneutics she developed rejects literal and patriarchal interpretations and promotes a contextual reading that focuses on values of justice, equality, and humanity. In her view, the Qur'anic text must be understood dynamically, in accordance with the moral objectives of Islam (*maqāṣid al-syarī'ah*), which are to uphold justice and preserve human dignity, free from gender discrimination.¹⁵¹ The following is an analysis of the writer's findings in the Gresik Religious Court's Decision Number 1135/Pdt.G/2023/PA.Gs:

1. Holistic-Tauhidi Analysis of Decision Number 1135/Pdt.G/2023/PA.Gs in the Perspective of Amina Wadud Muhsin's Hermeneutics

The holistic-tauhidi approach in Amina Wadud's hermeneutics emphasizes that all verses of the Qur'an, including the verses on polygamy in QS. An-Nisa' (4): 3, must be understood comprehensively and in conjunction with fundamental Islamic principles such as justice (*al-'adl*), compassion (*rahmah*), and equality (*musawah*). The principle of tawhid (oneness of God) serves as the foundation that affirms the equal dignity of all humans before Allah. Therefore, every social relationship, including marriage, should reflect spiritual balance and humaneness.¹⁵²

As previously explained in the case details of Decision Number 1135/Pdt.G/2023/PA.Gs, which involves a request for polygamy permission

¹⁵¹ Aspandi, *Hermeneutik Amina Wadud; Upaya Pembacaan Kontekstual Teks Keagamaan*. h, 75.

¹⁵² Ni'ami dan Irfan, *Hermeneutika Tauhid: Interpretasi Amina Wadud Terhadap Gender*. H, 71.

filed by the Petitioner against the Respondent, the Petitioner had previously entered into a sirri marriage with his second wife without obtaining court approval. This request was later filed to legalize the marriage status based on the Petitioner's high biological needs, accompanied by written consent from the first wife.¹⁵³

When viewed through the holistic-tauhidi approach formulated by Amina Wadud Muhsin, this decision seems to evaluate the formal and material aspects of justice without considering the spiritual, moral, and psychological dimensions, which are integral to divine justice. In Wadud's view, the principle of tawhid is the highest moral foundation that rejects any form of imbalance or subordination, including male dominance over women in social and legal structures.¹⁵⁴ Therefore, every legal action must reflect the unity of justice (*al-'adl*), compassion (*rahmah*), and equality (*musawah*), as emphasized in QS. An-Nisa' (4): 3, Ar-Rum (30): 21, and Al-Hujurat (49):13.

In the excerpt from the Qur'an Surah An-Nisa' (4): 3, it states:¹⁵⁵

... فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً ...

“However, if you fear that you will not be able to act justly, then marry only one.”

¹⁵³ Putusan Nomor 1135/Pdt.G/2023/PA.Gs tentang Izin Poligami. Tanggal 30 Oktober 2023. (diakses pada tanggal 22 Mei 2025)

<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee40bd616b571681d7313432373432.html>.

¹⁵⁴ Amina Wadud Muhsin, *Wanita di dalam Al-Quran*. H, 17

¹⁵⁵ *Al-Quran dan Terjemahannya* (CV. Diponegoro, 2015). An-Nisa' (4):3

This verse, according to Wadud, is not interpreted as a legitimization of polygamy, but rather as a moral warning that justice is an absolute condition that is nearly impossible to achieve in the practice of polygamy. Therefore, monogamy better reflects the value of tawhid, as it maintains the balance in the relationship between humans, God, and one another. In the context of this case, the biological reasons used by the Petitioner do not fulfill the essence of tawhidi justice, as they are driven by mere physical impulses, rather than moral-spiritual responsibility. This could lead to imbalances in the relationship and emotional suffering for the first wife. Amina Wadud emphasizes that any form of injustice towards women violates the principle of tawhid because it infringes upon the unity of human values derived from Allah.

Furthermore, the fact that the Petitioner entered into a sirri marriage before obtaining court approval highlights a violation of the moral responsibility principle in tawhid. QS. An-Nahl (16): 90 emphasizes that:¹⁵⁶

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَائِ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ

يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ

¹⁵⁶ *Al-Quran dan Terjemahannya* (CV. Diponegoro, 2015). Qs. An-Nahl (16):90.

“Indeed, Allah commands justice, the doing of good, and liberality to kith and kin; He forbids all shameful deeds, injustice, and rebellion; and He instructs you, that ye may receive admonition.”

The principle of justice in this verse is not only understood within the context of positive law but also refers to justice born of sincerity, trustworthiness, and respect for human dignity. In this case, the legalization of a sirri marriage without ethical reflection actually legitimizes an action that, from the outset, is unjust and incompatible with the spiritual values of Islam.

In the ratio decidendi, the judge also cites a fiqh maxim that states:¹⁵⁷

إذا تعارض مفسدتان روعي اعظمهما ضررا بارتكاب اخفهما

The meaning of this is that when faced with two harmful outcomes, one should choose the lesser harm. In this case, the court indeed attempted to balance the benefits. However, from a holistic tauhidi perspective, this approach is still insufficient. Tauhidi justice demands a legal resolution that not only minimizes harm but also restores the spiritual and moral balance of humans as servants of Allah. Therefore, the legalization of polygamy based on a sirri marriage cannot be considered as the “lesser harm,” as it actually

¹⁵⁷ *Putusan Nomor 1135/Pdt.G/2023/PA.Gs tentang Izin Poligami. Tanggal 30 Oktober 2023. (diakses pada tanggal 22 Mei 2025)*
<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee40bd616b571681d7313432373432.html>,
 h, 15.

legitimizes actions that go against divine values regarding loyalty, honesty, and respect for women.

Furthermore, the holistic-tauhid approach also requires the judge to assess the first wife's (Termohon) consent not just as administrative evidence, but as a form of spiritual choice a moral decision free from emotional, economic, or social pressures. In this case, even though Termohon gave written consent, the judge did not conduct a thorough examination of the first wife's inner freedom. This contradicts the spirit of tauhidi justice, which emphasizes the spiritual and psychological integrity of women as part of the values of divine justice.

Amina Wadud understands tauhid as a system of values that unites all dimensions of life, between the outward and inward, the worldly and the afterlife, the legal and the moral. Therefore, justice in Islamic family law should not stop at the legal-formal level, but must ensure the integrity and well-being of the inner self of all parties. Polygamy that is legally justified but causes emotional wounds, psychological pressure, and relational imbalance, essentially violates the principles of tauhidi justice because it does not reflect *rahmah* (compassion) and *musawah* (equality), which are at the core of the teachings of the Qur'an.¹⁵⁸

¹⁵⁸ Ulum, *Amina Wadud Muhsin Dan Pemikirannya Tentang Poligami*. H, 14

2. Contextualization in Amina Wadud Muhsin's Hermeneutic Interpretation of Decision No. 1135/Pdt.G/2023/PA.Gs

The Gresik Religious Court's Decision Nomor. 1135/Pdt.G/2023/PA.Gs, which granted the request for polygamy, was based on the consideration that the Applicant had met the cumulative requirements as stipulated in Article 5 paragraph (1) of Law No. 1 of 1974 and Article 58 of the Compilation of Islamic Law, namely the approval of the first wife, economic capacity, and the ability to act justly.¹⁵⁹ However, when analyzed through Amina Wadud Muhsin's contextual hermeneutic approach, this consideration seems to inadequately take into account the social context and gender realities surrounding this case.

In this case, the fact that the Applicant had previously conducted a sirri marriage with his second wife since 2011, and even had a child from that relationship, indicates a violation of legal norms and social ethics. This practice of sirri marriage illustrates a clear gender imbalance, where men use social and religious authority to justify relationships outside the formal legal framework, while women are placed in vulnerable positions, unprotected both legally and socially. When the court later legalizes this relationship by granting permission for polygamy, it indirectly normalizes a practice that was unjust to women from the outset.

¹⁵⁹ Pasal 5 ayat (1) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

According to Amina Wadud, the interpretation of the verses on polygamy, particularly QS. An-Nisa' (4): 3, must always be linked to the social context in which the verse was revealed, namely the post-Badr period, where many women and orphaned children lost their protectors.¹⁶⁰ Thus, polygamy at that time was intended to protect vulnerable groups, not as a means of fulfilling men's biological desires. In the modern context, practices such as sirri polygamy in this case move away from that social purpose, as they result in women losing legal guarantees, respect, and a sense of security. Therefore, the legalization of such polygamy contradicts the spirit of social justice that is the core message of the Qur'an.

The judge's reasoning in this case reflects a legal-formalist tendency, where the court focuses more on fulfilling the administrative and formal requirements as prescribed by law, without considering the social reality at hand. However, in Amina Wadud's hermeneutics, the interpretation of Islamic law should not be separated from the concrete realities of human life, particularly the experiences of women, who are often the most affected by legal decisions.¹⁶¹ By disregarding the social context that sirri marriages are often rooted in patriarchal practices and power imbalances, the judge's

¹⁶⁰ Harahap dan Zulkarnaen, "Hermeneutika Feminisme dalam Tafsir Al-Qur'an: Kajian Metodologi Amina Wadud," 2024.

¹⁶¹ Muhammad Adnan Assyahibi, *Poligami Sebagai Bentuk Ketidakadilan Gender Terhadap Perempuan: Analisis Komparatif Pemikiran Yusuf Al-Qaradawi Dan Amina Wadud*, Universitas Islam Negeri Sultan Syarif Kasim Riau, 2025.

reasoning in this case loses the dimension of social and moral justice, which should be the basis for applying Islamic law.

Moreover, in contemporary society, the practice of polygamy often leads to the marginalization of women economically, emotionally, and socially.¹⁶² The first wife's consent, which was used as the basis for the judge's justification, should be re-examined in this context. In many cases, women provide consent not because of their free will, but because of social pressures, economic dependence, or fear of losing their marital status. From Wadud's perspective, such a condition does not reflect true consent, as taught in Islam, because true justice must arise from freedom and equality. Therefore, the court should not only assess the consent documents formally, but also explore the meaning of justice in spousal relationships in a contextual and humanistic manner.

Furthermore, Amina Wadud emphasizes that the justice of the Qur'an is dynamic and responsive to social contexts.¹⁶³ This means that every application of law, including polygamy, must consider the universal values of the Qur'an such as justice (al-'adl), compassion (rahmah), and public benefit (maslahah). In this ruling, the judge seems not to have reinterpreted the polygamy legal norms in line with the social dynamics of modern

¹⁶² Roki Hardi Dan Ilyas Husti, "Dinamika Sosial Dan Ekonomi Keluarga Istri Kedua Pada Pernikahan Poligami Di Pekanbaru," *Jurnal Psikososial Dan Pendidikan* 1, No. 2 (2025): H, 76.

¹⁶³ Amina Wadud Muhsin, *Quran Menurut Perempuan: membaca kembali kitab suci dengan semangat keadilan*. H,27.

society, where gender equality and the protection of women's rights are recognized as important values by both national and Islamic law.

3. Gender Equality in Amina Wadud Muhsin's Hermeneutic Interpretation of Decision No. 1135/Pdt.G/2023/PA.Gs.

In the Gresik Religious Court Decision No. 1135/Pdt.G/2023/PA.Gs, the panel of judges granted the request for polygamy on the grounds that the Applicant had met the cumulative requirements as stipulated in Article 5 paragraph (1) of Law No. 1 of 1974 and Article 58 of the Compilation of Islamic Law, namely the approval of the first wife, economic ability, and the ability to act justly. The panel of judges mentioned that the Applicant worked as a lecturer at a private university with an income of Rp20,000,000 per month, which was deemed sufficient to support two wives and their children. Additionally, the judges considered that the Applicant's reason for seeking polygamy, namely a high biological need and the fear of committing sin if he did not marry again, was a legally and religiously valid reason. The judges then emphasized that granting this polygamy request was a form of prevention against greater harm, based on the fiqh principle *idza ta'aradhat mafāsidadātān ru'īya*

a'dzamuhumā dhararan bi irtikābi akhaffihimā (“when faced with two harms, choose the lesser harm”).¹⁶⁴

When this ratio decidendi is analyzed from the perspective of justice and gender equality according to Amina Wadud Muhsin, the court’s reasoning still appears formalistic and patriarchal, as it centers the male as the main subject of legal consideration, while the female is positioned as a party that simply adjusts to the husband’s decision. In Wadud’s view, the principle of equality (*musawah*) is a fundamental aspect of Qur’anic justice, where men and women are seen as equal in moral, spiritual, and social terms. She stresses that true justice is not only formal justice, but also relational justice, which acknowledges the experiences, needs, and dignity of women in every legal and social decision.¹⁶⁵

In the context of this case, the reason for polygamy based on biological needs does not reflect the substantive justice that Amina Wadud envisions. The panel of judges did state that the Applicant had obtained the approval of the first wife and had the financial means, but did not deeply explore whether that consent was given freely, without emotional pressure, economic dependence, or the fear of losing marital status. From a feminist hermeneutic perspective, Amina Wadud argues that consent arising from an

¹⁶⁴ *Putusan Nomor 1135/Pdt.G/2023/PA.Gs tentang Izin Poligami. Tanggal 30 Oktober 2023. (diakses pada tanggal 22 Mei 2025)*

<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee40bd616b571681d7313432373432.html>.

¹⁶⁵ Amina Wadud Muhsin, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*.

unequal power relationship cannot be considered morally valid, as it does not stem from genuine free will (*ikhtiyar*). Therefore, the judge's decision to base the justification for polygamy on the wife's written consent only reflects formal justice, not substantive justice.

Moreover, in this decision, the judges seem to place greater emphasis on the Applicant's financial ability as the basis for assessing fairness in polygamy. However, from Amina Wadud's perspective, financial ability cannot be the sole measure of justice, because true justice must also encompass psychological, emotional, and spiritual dimensions. Justice that is only measured by material aspects perpetuates male domination and disregards the emotional experiences of women, who may suffer emotional wounds as a result of polygamous practices.¹⁶⁶

In *Qur'an and Woman*, Amina Wadud interprets QS. An-Nisa' (4): 3 as a restrictive, not permissive, verse regarding polygamy. Specifically, the part of the verse that reads:¹⁶⁷

... فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً ...

“...And if you fear that you will not be just, then marry only one...”

¹⁶⁶ Bahri dan Fiqria, *Pengarusutamaan Gender dalam Penafsiran Al-Qur'an Menurut Amina Wadud* Muhsin. H, 57.

¹⁶⁷ *Al-Quran dan Terjemahannya* (CV. Diponegoro, 2015). Qs. An-Nisa'(4): 3

According to Wadud, this part of the verse represents a moral boundary, indicating that full justice between wives is almost impossible to achieve, which is why monogamy is considered the most ideal form of marriage and aligns with the principles of equality in Islam.¹⁶⁸ Therefore, the court's decision to consider polygamy as a solution to the biological needs of the husband contradicts the spirit of justice in the Qur'an, as it overlooks the emotional and spiritual rights of the first wife, who is also a rational and dignified being. From a gender justice perspective, polygamy in this case reflects an imbalance in the relationship between men and women. The judge focuses on the interests of the petitioner in avoiding sin, but fails to consider the potential emotional and social suffering experienced by the respondent.

4. The Role of Women's Experience in Amina Wadud Muhsin's Hermeneutical Interpretation of Decision No. 1135/Pdt.G/2023/PA.Gs.

The decision of the Gresik Religious Court Number 1135/Pdt.G/2023/PA.Gs concerns a polygamy petition where the petitioner had previously married his second wife in a sirri (unregistered) marriage before obtaining permission from the court. The panel of judges granted the petition with the consideration that the second wife was well-acquainted with both the petitioner and the first wife and willingly agreed to become the second wife. The first wife (respondent) also gave written consent for the

¹⁶⁸ Amina Wadud Muhsin, *Quran Menurut Perempuan: membaca kembali kitab suci dengan semangat keadilan*. H, 76.

petitioner to remarry. Based on these facts, the judges concluded that the requirements outlined in Article 5 (1) of Law No. 1 of 1974 in conjunction with Article 58 of the Compilation of Islamic Law had been fulfilled, and the polygamy request was legally justified.¹⁶⁹

However, when analyzed through the feminist hermeneutical approach of Amina Wadud Muhsin, the judges' consideration does not fully reflect justice that prioritizes the experiences and realities of women. In Wadud's thinking, women are not objects of law, but moral subjects who have awareness, experience, and dignity equal to men.¹⁷⁰ Therefore, in cases involving spousal relationships, the experience of the woman, as the party most affected, must be an integral part of the justice evaluation process.

In this case, the panel of judges did not deeply consider the emotional and psychological experience of the respondent (the first wife), who had been with the petitioner for decades. The fact that the petitioner first entered into a sirri marriage demonstrates a violation of the respondent's rights and dignity. However, this aspect was not used as the basis for the judges' analysis. The written consent provided by the respondent was treated merely as administrative evidence, without further investigation into whether

¹⁶⁹ *Putusan Nomor 1135/Pdt.G/2023/PA.Gs tentang Izin Poligami. Tanggal 30 Oktober 2023. (diakses pada tanggal 22 Mei 2025)*

<https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee40bd616b571681d7313432373432.html>.

¹⁷⁰ Fitriani dan Hidayatuzzahra, "Amina Wadud's Method of Interpreting the Qur'an in the Problem of Polygamy: Metode Penafsiran Al-Qur'an Amina Wadud dalam Permasalahn Poligami." H, 54.

the consent was freely given or under emotional or social pressure. In Amina Wadud's interpretive framework, consent that does not account for a woman's inner freedom cannot be regarded as relational justice, as it remains rooted in a patriarchal power structure.

Furthermore, the judges justified polygamy by emphasizing the petitioner's economic ability and the biological reasons considered valid. This consideration shows that the emotional needs and experiences of the first wife were disregarded. According to Amina Wadud, justice in marital relationships is not merely about material fulfillment or legal formalities, but also about spiritual balance and respect for a woman's dignity. By placing the man's needs as the primary basis for legitimizing polygamy, the court indirectly reinforced patriarchal views, positioning women as passive parties who must conform.

From the perspective of hermeneutics focused on women's experiences, this ruling fails to show empathy and sensitivity to the moral suffering of the woman resulting from the polygamous practice that began with a sirri marriage. In many cases, women give consent not out of free will, but due to social pressures or a desire to preserve their family status. The judge should have considered these psychological and social conditions as part of substantive justice analysis, rather than simply assessing the legal formalities.

Here is a brief classification of the analysis of Decision No. 1135/Pdt.G/2023/PA.Gs from the perspective of Amina Wadud Muhsin's hermeneutics in table form:

Table 1.2

Results of the Analysis

Amina Wadud Muhsin's Hermeneutics	Analysis Results of Decision Number 1135/Pdt.G/2023/PA.Gs
Holistic Tauhidi Interpretation	▪ The judges' considerations remain partial and formalistic, as they only assess the legal and economic aspects without taking into account the spiritual, moral, and psychological dimensions that constitute the core of divine justice. ▪ The judges did not thoroughly examine the inner condition and emotional freedom of the Respondent (the first wife) in giving her consent, even though in tauhidi justice, genuine willingness must arise from moral and spiritual freedom, not from social or economic pressure. ▪ The biological need used as the basis for the polygamy request contradicts tauhidi values because it does not reflect moral responsibility toward the lawful spouse and disregards the principles of compassion and relational balance within the household. ▪ The practice of <i>nikah sirri</i> conducted by the Petitioner demonstrates a violation of the principles of honesty and trustworthiness (<i>amanah</i>) as emphasized in QS. An-Nahl (16):90, yet this was not taken into account as a moral consideration by the panel of judges. ▪ The panel of judges cited the fiqh maxim <i>idza ta'āradhat mafsadatān ru'īya a'dzamuḥumā dhararan bi irtikābi akhaffihimā</i>, but its application in this case actually legitimizes a new form of harm namely, injustice toward the first wife and a breach of the spiritual values of Islam.
Contextual Analysis	▪ A crucial fact in this case is that the Petitioner had engaged in an unregistered (<i>sirri</i>) marriage since 2011 with his prospective second wife and had even fathered a

	child from the relationship, indicating a violation of legal norms and social ethics. ▪ By legitimizing this relationship through the granting of a polygamy permit, the court indirectly normalizes a practice that is inherently unjust toward women, thereby contradicting the social protection objectives embedded in Islamic teachings. ▪ From Amina Wadud's perspective, QS. An-Nisa' (4):3 was revealed in a post-Uhud context to protect orphaned women and other vulnerable groups, not as a justification for fulfilling the biological desires of men.
Gender Equality Analysis	▪ The judges regarded the Petitioner's biological needs and his fear of committing sin as a valid justification for polygamy, without conducting an in-depth assessment of the psychological and social impacts on the first wife. ▪ From Amina Wadud's perspective, such reasoning is patriarchal, as it positions the man as the central subject of legal consideration, while the experiences and vulnerabilities of women are not treated as the primary basis for evaluating justice. ▪ The written consent of the first wife, which served as the legal foundation, was not examined in terms of her internal freedom, even though, according to the principle of <i>musawah</i> (equality), genuine justice must arise from consent free of emotional or economic pressure. ▪ The judges' emphasis on the Petitioner's financial capability as an indicator of justice neglects the relational and spiritual dimensions of justice central to Wadud's framework, in which marital justice must encompass emotional balance, moral integrity, and equality between the parties.
Woman's Experience	▪ The panel of judges granted the polygamy petition on the basis that the prospective second wife was deemed willing and the first wife had provided written consent. However, this consideration remained purely formal-administrative and failed to account for the inner experience and emotional condition of the first wife as the party most affected by the decision. ▪ Within Amina Wadud's framework of justice, a woman's consent that emerges from emotional, social, or economic pressure cannot be regarded as genuine justice (<i>relational</i>

	<i>justice</i>), as it disregards the woman's internal freedom as a moral subject. ▪ The judges placed greater emphasis on the Petitioner's economic capability and biological needs, while the emotional and spiritual experiences of the first wife were not taken into account in assessing justice.
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Based on the four aspects above, it can be concluded that the Decision of the Gresik Religious Court Number 1135/Pdt.G/2023/PA.Gs has not fully reflected the principles of justice advocated by Amina Wadud Muhsin. Although the panel of judges has fulfilled the formal aspects of Islamic law and statutory regulations, the decision has not yet touched upon the moral, spiritual, and social dimensions that constitute the core of Qur'anic justice. Wadud's feminist hermeneutical approach requires that the interpretation of family law should not rely solely on textual and procedural grounds, but must also be oriented toward humanity, gender equality, and the protection of women as subjects of justice.

CHAPTER IV

CONCLUSION

A. Summary

1. In Decision Number 1135/Pdt.G/2023/PA.Gs, the judges' ratio decidendi rests upon the effort to legalize the unregistered (*sirri*) marriage that the Petitioner had conducted since 2011, as well as the acceptance of the Petitioner's biological needs as a legitimate basis for polygamy. The panel considered that because the Petitioner had already fathered a child from this *sirri* marriage, the formalization of the polygamous union was necessary to prevent greater harm (*mafsadah*), even though such practice contradicts Article 2(2) of the Marriage Law, which mandates registration as an administrative requirement for the validity of a marriage. Furthermore, the judges viewed the cumulative requirements under Article 5(1) of the Marriage Law in conjunction with Article 58 of the Compilation of Islamic Law namely the wife's consent, financial capability, and the ability to act justly as fulfilled, thereby accepting the Petitioner's biological reasons despite the fact that such a reason is not included in the alternative grounds for polygamy as stipulated in Article 4(2) of the Marriage Law in conjunction with Article 57 of the Compilation of Islamic Law.
2. Based on the analysis of Decision Number 1135/Pdt.G/2023/PA.Gs, it may be concluded that the ruling does not align with the principles of justice

formulated by Amina Wadud Muhsin through her hermeneutical approach.

(a.) From the perspective of holistik tauhidi interpretation, the judges assessed only the formal requirements of polygamy without considering the moral and spiritual dimensions that emphasize justice, equality, and respect for women's dignity. (b.) From the aspect of contextualization, the panel failed to link the fact that the Petitioner had previously engaged in an unregistered marriage violating legal procedures and socially disadvantaging women to the broader gender inequality underlying such practices, resulting in the normalization of an inherently unjust situation. (c.) From the perspective of gender equality, the Petitioner's biological reasons were accepted without examining the position of the first wife as the more vulnerable party, and her consent was treated as a mere administrative requirement without probing whether such consent was influenced by unequal power relations. (d.) And from the perspective of women's experiences, the judges did not examine the emotional condition, social pressures, or psychological impact faced by the informant as a result of a polygamy process initiated through a legal violation by the Petitioner. Therefore, this decision does not fulfill the substantive justice envisioned in Amina Wadud's hermeneutics, as it prioritizes the Petitioner's interests over the protection of women's rights, dignity, and lived experiences as the most affected party.

B. Recommendations

Based on the analysis of Decision Number 1135/Pdt.G/2023/PA.Gs concerning the granting of permission for polygamy following an unregistered (*sirri*) marriage, several important recommendations may be put forward to achieve an ideal judicial decision and more comprehensive future research, as follows:

1. For the general public, it is essential to enhance understanding of marriage law provisions, including the requirements and procedures for polygamy, so that every action taken is in accordance with legal regulations and does not generate adverse consequences for the parties involved. The public is advised to exercise caution regarding unregistered marriages, as such practices may result in legal uncertainty and social vulnerability, particularly for women and children.
2. For the writers and academics, it is important to deepen knowledge and critical understanding of marriage law, including the legal requirements and procedures governing polygamy. This will enable academic discussions and research outputs to contribute meaningfully to public awareness and legal development, especially in addressing the risks associated with unregistered marriages that often produce legal insecurity and social disadvantages for vulnerable groups.
3. For the judges within the Religious Courts, In adjudicating polygamy cases especially those based on reasons outside the normative legal criteria judges

are encouraged to place greater emphasis on moral considerations, social ethics, and human values prevailing in society. Judicial decisions should be examined not only from a legal-formal perspective but also in terms of potential social impacts on the family concerned and the wider community. Therefore, judges should thoroughly evaluate all arguments, evidence, and testimonies objectively, while prioritizing justice, protection, and the welfare of all family members, particularly vulnerable parties. Attention must also be given to potential conflicts, emotional instability, and relational inequalities that may arise in polygamous arrangements.

4. For the government and relevant institutions, There is a need to strengthen legal education and public outreach regarding the importance of marriage registration and the legal provisions governing polygamy within national law. Furthermore, regulatory reinforcement and supervisory mechanisms must be developed to ensure that any practice of polygamy is carried out in accordance with the principles of justice, equality, and the protection of women's and children's rights.

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PUTUSAN

Nomor 1135/Pdt.G/2023/PA.Gs

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA

Pengadilan Agama Gresik yang memeriksa dan mengadili perkara tertentu pada tingkat pertama dalam persidangan Majelis Hakim, telah menjatuhkan putusan dalam perkara "poligami" yang diajukan oleh:

Penggugat, umur 67 tahun, agama Islam, pendidikan S3, pekerjaan Swasta, tempat tinggal di Jalan Dusun Banyutami RT. 005 RW. 002 Desa Banyuwangi Kec. Manyar, Kab. Gresik. Saat ini berdomisili di Jl. Mutiara 2L – 41 Perumnas Kota Baru Driyorejo Desa Petiken Kec. Driyorejo, Kab. Gresik, dalam hal ini memberi kuasa kepada Rudi Wijiandoko, S.H. Advokad/ Pengacara, berkantor di Jl. Biduri Pandan I No. 18 Kota Baru Driyorejo Gresik, berdasarkan surat kuasa khusus tanggal 22 Juli 2023 selanjutnya disebut sebagai "Pemohon".

MELAWAN

Siti Ruqoiyah Binti Abd, Rouf, umur 58 tahun, agama Islam, pendidikan , pekerjaan Mengurus Rumah Tangga, tempat tinggal di Jalan Banyutami RT.005 RW. 002, Desa Banyuwangi, Kec. Manyar, Kabupaten Gresik., selanjutnya disebut sebagai "Termohon".

Pengadilan Agama Gresik;

Setelah membaca surat permohonan Pemohon dan mempelajari surat-surat yang berhubungan dengan perkara ini;

Setelah mendengar keterangan Pemohon, Termohon, calon isteri kedua Pemohon dan saksi-saksi dimuka persidangan;

DUDUK PERKARA

Bahwa Pemohon dalam surat permohonannya tertanggal 27 Juli 2023 yang terdaftar di Kepaniteraan Pengadilan Agama Gresik, Nomor 1135/Pdt.G/2023/PA.Gs, telah mengemukakan hal-hal sebagai berikut:

1. Bahwa, pada tanggal 2 Maret 1984 Pemohon telah melangsungkan pernikahan yang sah dengan Termohon pada Kantor Urusan Agama (KUA)



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Kecamatan Manyar, Kabupaten Gresik dengan Akta Nikah No : 376/17/V/1984 sebagaimana Surat Keterangan Nomor : B-0042/Kua.13.19.03/PW.01/06/2023 yang dikeluarkan oleh Kantor Urusan Agama (KUA) Kecamatan Manyar Kabupaten Gresik ;

2. Bahwa, Pemohon berniat hendak menikah lagi secara sah (poligami) melalui Kantor Urusan Agama (KUA) dengan seorang perempuan yang bernama Siti Chumaidah Binti Abd. Chanan umur 46 tahun, agama Islam, pekerjaan Guru Swasta, yang beralamat di Tlogogede RT. 002 RW. 001 Desa Ngasin Kec. Balong Panggang Kab. Gresik yang sekarang berdomisili di Jl. Mutiara 2L – 41 Perumnas Kota Baru Driyorejo Desa Petiken Kec. Driyorejo, Kab. Gresik ;
3. Bahwa, sebelumnya Pemohon dengan Siti Chumaidah telah melangsungkan perkawinan secara agama pada tanggal 28 Juli 2011 yang bertempat di rumah Jl. Kalimaya 2 Perumnas Kota Baru Driyorejo Desa Petiken, Kec. Driyorejo Kab. Gresik dengan wali nikah bapak Abd. Chanan (ayah Siti Chumaidah) sebagaimana Surat Keterangan Nikah tertanggal 28 Juli 2011 yang dihadiri oleh 2 orang saksi yang masing – masing bernama Dwi Sutrisno dan Suryana ;
4. Bahwa, pada saat Siti Chumaidah menikah secara agama dengan Pemohon pada tanggal 28 Juli 2011 tersebut, Siti Chumaidah berstatus janda yang telah bercerai dari suami sahnya pada tanggal 27 April 2011 sebagaimana Akta Cerai Nomor : 0570/AC/2011/PA/Msy/Gs yang dikeluarkan oleh Pengadilan Agama Gresik ;
5. Bahwa, dalam perkawinan secara agama yang dilakukan oleh Pemohon dengan Siti Chumaidah pada tanggal 28 Juli 2011 tersebut, pemohon telah dikarunia seorang anak laki – laki yang bernama Muhammad Zam Zami Purnama Faishal lahir di Gresik pada tanggal 12 Desember 2013 sebagaimana Surat Keterangan Anak Kandung Nomor : 475/23/437.107.25/2022 yang dikeluarkan oleh Kantor Desa Ngasin Kec. Balongpanggang Kab. Gresik tertanggal 11 Maret 2022 ;
6. Bahwa, dalam hal ini Pemohon hendak mengajukan ijin untuk menikah lagi/poligami dengan seorang perempuan yang bernama Siti Chumaidah Binti Abd. Chanan umur 36 tahun, agama Islam, pekerjaan Guru Swasta,

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yang beralamat di Tlogogede RT. 002 RW. 001 Desa Ngasin Kec. Balong Panggang Kab. Gresik yang sekarang berdomisili di Jl. Mutiara 2L – 41 Perumnas Kota Baru Driyorejo Desa Petiken Kec. Driyorejo, Kab. Gresik ;

7. Bahwa, menyatakan rela dan tidak keberatan apabila Pemohon menikah lagi dengan calon istri Pemohon yang kedua tersebut serta Termohon bersedia dimadu oleh Pemohon ;
8. Bahwa, Termohon juga telah membuat surat pernyataan bersedia memberikan ijin kepada Pemohon untuk menikah lagi/poligami dengan Siti Chumaidah yang ditanda tangani sendiri oleh Termohon pada bulan Juli 2011 ;
9. Bahwa, Pemohon sanggup berlaku adil dan mampu memenuhi kebutuhan hidup stri – istri beserta anak – anak pemohon ;
10. Bahwa, Pemohon mampu memenuhi kebutuhan hidup Termohon dan anak – anaknya karena Pemohon bekerja sebagai :
 1. Dosen UNKAFA Gresik.
 2. Dosen STAI Raden Santri Gresik.
 3. Dosen AI Risyid Surabaya.Dengan penghasilan sebesar Rp. 20.000.000,- (dua puluh juta rupiah) perbulan ;
11. Bahwa, antara Pemohon, Termohon dan calon istri Pemohon tidak ada larangan melakukan perkawinan, baik menurut syari'at islam maupun peraturan perundang – undangan yang berlaku ;
12. Bahwa, selama menikah antara Pemohon dan Termohon memperoleh harta bersama berupa :
 1. 1. (satu) unit rumah di Banyutami.
 2. 1. (satu) unit rumah di Sukomulyo.
 3. 1. (satu) unit rumah di Laren.
 4. 2. (dua) kavling tanah di Sidayu.
 5. 3. (tiga) unit sepeda motor.

M a k a :



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Berdasarkan hal-hal serta alasan-alasan tersebut di atas, Pemohon mohon kepada Ketua Pengadilan Agama Gresik Cq. Majelis Hakim Pengadilan Agama Gresik untuk memeriksa, mengadili, serta memutuskan yang amar putusannya sebagai berikut :

PRIMER :

1. Mengabulkan Permohon Pemohon ;
2. Memberikan ijin kepada Pemohon (Drs. Sholeh Faishol, M.Si Bin Miskan.) untuk menikah lagi (poligami) dengan seorang perempuan bernama Siti Chumaidah Binti Abd. Chanan ;
3. Menetapkan harta berupa :
 1. (satu) unit rumah di Banyutami.
 2. 1. (satu) unit rumah di Sukomulyo.
 3. 1. (satu) unit rumah di Laren.
 4. 2. (dua) kavling tanah di Sidayu.
 5. 3. (tiga) unit sepeda motor.

adalah harta bersama Pemohon dan Termohon ;

4. Membebaskan biaya perkara kepada Pemohon ;

SUBSIDER :

Dan/atau Bilamana Majelis Hakim berpendapat lain, Mohon Putusan yang seadil-adilnya (*ex aequo et bono*).

Bahwa pada hari dan tanggal persidangan yang telah ditentukan, Pemohon dan Termohon datang secara pribadi menghadap ke persidangan, dan Majelis Hakim telah berusaha mendamaikan kedua belah pihak, namun tidak berhasil;

Bahwa Majelis Hakim telah memerintahkan kepada Pemohon dan Termohon untuk menempuh mediasi, namun berdasarkan surat pemberitahuan dari Hj. MILACHAH, S.Ag, Mediator Pengadilan Agama Gresik tertanggal 11 Agustus 2023 yang menyatakan mediasi antara para pihak tidak berhasil damai;

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Bahwa kemudian pemeriksaan perkara ini dilanjutkan **pembacaan** surat permohonan Pemohon yang isinya tetap dipertahankan oleh Pemohon dengan tambahan penjelasan, bahwa selain alasan sebagaimana tersebut diatas, juga karena kebutuhan biologis Pemohon lebih kuat, sedang Termohon kurang bisa mengimbangi dan untuk posita point 12 yang benar adalah hanya dua (2) obyek yaitu:

1. 1 (satu) unit rumah di Banyutami.
2. 1. (satu) unit rumah di Sukomulyo.

Bahwa atas permohonan Pemohon tersebut, Termohon telah memberikan **jawaban** secara lisan sebagai berikut:

- Bahwa Termohon membenarkan semua alasan dalil permohonan Pemohon dan Termohon menyatakan menyetujui atas permohonan Pemohon tersebut;

Bahwa atas jawaban Termohon tersebut, Pemohon tidak menyampaikan **replik** karena telah dibenarkan oleh Termohon;

Bahwa hadir dipersidangan calon isteri kedua Pemohon bernama: Siti Chumaidah Binti Abd. Chanan, umur 46 tahun, agama Islam, pekerjaan Guru Swasta, yang beralamat di Tlogogede RT. 002 RW. 001 Desa Ngasin Kec. Balong Panggang Kab. Gresik yang sekarang berdomisili di Jl. Mutiara 2L – 41 Perumnas Kota Baru Driyorejo Desa Petiken Kec. Driyorejo, Kab. Gresik, memberikan keterangan sebagai berikut:

- Bahwa calon isteri kedua Pemohon kenal dengan Pemohon sudah cukup lama kurang lebih 12 tahun yang lalu, bahkan kami telah melangsungkan perkawinan secara agama pada tanggal 28 Juli 2011.
- Bahwa calon isteri kedua Pemohon akan melangsungkan perkawinan dengan Pemohon secara negara atas dasar kehendak calon isteri kedua Pemohon sendiri dan tidak ada paksaan dari pihak manapun;
- Bahwa calon isteri kedua Pemohon tahu bila Pemohon telah beristeri dan mempunyai 5 (lima) orang anak;
- Bahwa calon isteri kedua Pemohon bersedia hidup rukun dengan dengan isteri dan anak-anak Pemohon;

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- Bahwa antara calon isteri kedua Pemohon, Pemohon dan Termohon tidak ada hubungan sesusuan atau hubungan lainnya yang dapat menghalangi sahnyanya suatu perkawinan;
- Bahwa calon isteri kedua Pemohon sanggup menanggung semua akibat dimadu tersebut;
- Bahwa Pemohon akan dapat berlaku adil terhadap isteri-isteri dan anak-anaknya;

Bahwa untuk memperkuat dalil-dalil permohonannya, Pemohon telah mengajukan bukti sebagai berikut:

A. **SURAT:**

1. Fotokopi Kartu Tanda Penduduk atas nama Sholeh Faishol (Pemohon), Nomor: 3525100510560003, yang dikeluarkan oleh Pemerintah Kabupaten Gresik, bukti surat tersebut telah diberi meterai cukup dan telah dicocokkan dengan aslinya yang ternyata sesuai, lalu oleh Ketua Majelis diberi tanda (P.1);
2. Fotokopi Kartu Tanda Penduduk atas nama Siti Ruqoiyah (Termohon), Nomor: 3525106605650003, yang dikeluarkan oleh Pemerintah Kabupaten Gresik, bukti surat tersebut telah diberi meterai cukup dan telah dicocokkan dengan aslinya yang ternyata sesuai, lalu oleh Ketua Majelis diberi tanda (P.2);
3. Fotokopi Surat Keterangan Telah Menikah, Nomor: 474/23/437.107.25/2022, tanggal 11 Maret 2022, yang dikeluarkan oleh Kepala Desa Ngasin, Kecamatan Balongpanggang, Kabupaten Gresik, bukti surat tersebut telah diberi meterai cukup dan telah dicocokkan dengan aslinya yang ternyata sesuai, lalu oleh Ketua Majelis diberi tanda (P.3);
4. Fotokopi Akta Cerai, Nomor: 0570/AC/2011/PA.Gs, tanggal 27 April 2011, yang dikeluarkan oleh Pengadilan Agama Gresik, bukti surat tersebut telah diberi meterai cukup dan telah dicocokkan dengan aslinya yang ternyata sesuai, lalu oleh Ketua Majelis diberi tanda (P.4);
5. Fotokopi Surat Pernyataan, bukti surat tersebut telah diberi meterai cukup dan telah dicocokkan dengan aslinya yang ternyata sesuai, lalu oleh Ketua Majelis diberi tanda (P.5);

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6. Fotokopi Kartu Keluarga atas nama Sholeh Faishol (Pemohon), Nomor: 3525101111089022, tanggal 04 Januari 2023, yang dikeluarkan oleh Kepala Dinas Kependudukan dan Pencatatan Sipil, Kabupaten Gresik, bukti surat tersebut telah diberi meterai cukup dan telah dicocokkan dengan aslinya yang ternyata sesuai, lalu oleh Ketua Majelis diberi tanda (P.6);
7. Fotokopi Kutipan Akta Nikah, Nomor: 376/17/V/1984, tanggal 02 Maret 1984, yang dikeluarkan oleh Pejabat Pencatat Nikah KUA Kecamatan Manyar, Kabupaten Gresik, bukti surat tersebut telah diberi meterai cukup dan telah dicocokkan dengan aslinya yang ternyata sesuai, lalu oleh Ketua Majelis diberi tanda (P.7);
8. Fotokopi Sertifikat Hak Milik no, 02780, tanggal 13 November 2019, yang dikeluarkan oleh Kepala Kantor Pertanahan Kabupaten Gresik, bukti surat tersebut telah diberi meterai cukup dan telah dicocokkan dengan aslinya yang ternyata sesuai, lalu oleh Ketua Majelis diberi tanda (P.8);
9. Fotokopi Sertifikat Hak Milik no, 00273, tanggal 17 Desember 2020, yang dikeluarkan oleh Kepala Kantor Pertanahan Kabupaten Gresik, bukti surat tersebut telah diberi meterai cukup dan telah dicocokkan dengan aslinya yang ternyata sesuai, lalu oleh Ketua Majelis diberi tanda (P.9);
10. Fotokopi BPKB Motor Honda Nopol W 3548 CA, tanggal 15 November 2000, yang dikeluarkan oleh Kepala Kepolisian Resort Gresik, bukti surat tersebut telah diberi meterai cukup dan telah dicocokkan dengan aslinya yang ternyata sesuai, lalu oleh Ketua Majelis diberi tanda (P.10);
11. Fotokopi BPKB Motor Honda Nopol W 3641 MI, tanggal 07 Desember 2012, yang dikeluarkan oleh Kepala Kepolisian Resort Gresik, bukti surat tersebut telah diberi meterai cukup dan telah dicocokkan dengan aslinya yang ternyata sesuai, lalu oleh Ketua Majelis diberi tanda (P.11);
12. Fotokopi Surat Tanda Nomor Kendaraan Bermotor Nopol 6784 LY, yang dikeluarkan oleh Direktorat Lalu Lintas Kapolda Jawa Timur, bukti surat tersebut telah diberi meterai cukup dan telah dicocokkan dengan aslinya yang ternyata sesuai, lalu oleh Ketua Majelis diberi tanda (P.12);

B. **SAKSI:**



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1 : Masna'im Bin Miskan, umur 54 tahun, agama Islam, pekerjaan swasta, alamat di Dusun Banyutami, RT 003, RW 002, Desa Banyuwangi, Kecamatan Manyar, Kabupaten Gresik, memberikan keterangan di bawah sumpah sebagai berikut:

- Bahwa saksi kenal dengan Pemohon.
- Bahwa hubungan saksi adalah adik kandung Pemohon.
- Bahwa saksi kenal dengan Termohon.
- Bahwa selama perkawinan Pemohon dan Termohon telah dikaruniai anak 5 (lima) orang anak;
- Bahwa saksi mengetahui Pemohon akan menikah lagi dengan seorang Perempuan yang bernama Siti Chumaidah Binti Abd. Chanan.
- Bahwa Pemohon dan calon istri keduanya, sudah kenal sejak 12 tahun yang lalu.
- Bahwa saksi mengetahui, Pemohon akan berpoligami karena Termohon dalam keadaan kurang biasa memenuhi kebutuhan biologis Pemohon, sehingga tidak dapat menjalankan kewajibannya sebagai seorang istri dengan maximal.
- Bahwa antara Pemohon, Termohon dan calon istri keduanya tidak ada hubungan nasab atau hubungan lainnya yang dapat menghalangi sahnyanya suatu perkawinan;
- Bahwa Pekerjaan Pemohon adalah Dosen dan Penghasilan Pemohon setiap bulannya kurang lebih Rp. 20 juta.
- Bahwa Pemohon bisa berlaku adil terhadap isteri-isteri dan anak-anaknya tersebut.
- Bahwa selama menikah, Pemohon dan Termohon mempunyai harta bersama berupa Sebidang Tanah yang berdiri diatasnya sebuah rumah di Desa Sukomulyo, Kecamatan Manyar, dan tanah dan Bangunan rumah di Dusun Banyutamai, Desa Banyuwangi, Kecamatan Manyar.
- Bahwa antara Pemohon, Termohon dan calon isteri kedua Pemohon sama-sama kenal dan tidak ada halangan untuk menikah;



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2 : Sueb Bin Rebo, umur 63 tahun, agama Islam, pekerjaan swasta, alamat di Dusun Banyutami, RT 003, RW 002, Desa Banyuwangi, Kecamatan Manyar, Kabupaten Gresik, memberikan keterangan di bawah sumpah sebagai berikut:

- Bahwa saksi kenal dengan Pemohon.
- Bahwa hubungan saksi adalah adik ipar Pemohon.
- Bahwa saksi kenal dengan Termohon.
- Bahwa selama perkawinan Pemohon dan Termohon telah dikaruniai anak 5 (lima) orang anak;
- Bahwa saksi mengetahui Pemohon akan menikah lagi dengan seorang Perempuan yang bernama Siti Chumaidah Binti Abd. Chanan.
- Bahwa Pemohon dan calon istri keduanya, sudah kenal sejak 12 tahun yang lalu.
- Bahwa saksi mengetahui, Pemohon akan berpoligami karena Termohon dalam keadaan kurang biasa memenuhi kebutuhan biologis Pemohon, sehingga tidak dapat menjalankan kewajibannya sebagai seorang istri.
- Bahwa antara Pemohon, Termohon dan calon istri keduanya tidak ada hubungan nasab atau hubungan lainnya yang dapat menghalangi sahnyanya suatu perkawinan;
- Bahwa Pekerjaan Pemohon adalah Dosen dan Penghasilan Pemohon setiap bulannya kurang lebih Rp. 20 juta.
- Bahwa Pemohon bisa berlaku adil terhadap isteri-isteri dan anak-anaknya tersebut.
- Bahwa selama menikah, Pemohon dan Termohon mempunyai harta bersama berupa Sebidang Tanah yang berdiri diatasnya sebuah rumah di Desa Sukomulyo, Kecamatan Manyar, dan tanah dan Bangunan rumah di Dusun Banyutamai, Desa Banyuwangi, Kecamatan Manyar.
- Bahwa antara Pemohon, Termohon dan calon isteri kedua Pemohon sama-sama kenal dan tidak ada halangan untuk menikah;

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Bahwa atas permohonan Pemohon tentang Harta Bersama tersebut, Majelis Hakim telah melakukan pemeriksaan setempat pada hari Jum'at tanggal 18 Agustus 2023 diperoleh fakta selengkapnya sebagaimana dalam berita acara pemeriksaan di tempat, maka hasil pemeriksaan tersebut telah sesuai dengan dalil permohonan Pemohon point 12 dan perubahannya yang selengkapnya sebagai berikut :

A.1 (satu) unit rumah di Banyutami. Dengan batas-batas:

- sebelah utara : Jalan Kampung
- sebelah Timur : Rumah Bapak Yudi
- sebelah Barat : Rumah Ibu Qoyyumi
- sebelah Selatan:Rumah Ibu Aroyati

Ukuran bangunan : Lebar 5 m² x 22 m² = luas : 101m²

B. 1. (satu) unit rumah di Sukomulyo.

- sebelah utara : Jalan Kampung
- sebelah Timur : Jalan Kampung
- sebelah Barat : Rumah Bapak Abdul Hamid
- sebelah Selatan:Rumah Bapak Suparlan

Ukuran bangunan : lantai dua (2) luas : ±145m².

Bahwa Pemohon dan Termohon telah mencukupkan bukti yang diajukan dan tidak akan mengajukan bukti lagi;

Bahwa selanjutnya Pemohon memberikan kesimpulan secara lisan yang pada pokoknya tetap pada permohonannya, sedangkan Termohon juga tetap pada jawabannya, kemudian kedua belah pihak mohon putusan;

Bahwa selanjutnya untuk mempersingkat uraian putusan ini, maka ditunjuk berita acara persidangan perkara ini, yang merupakan bagian yang tidak terpisahkan dari putusan ini;

PERTIMBANGAN HUKUM

Menimbang, bahwa maksud dan tujuan permohonan Pemohon adalah sebagaimana terurai di atas;



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Menimbang, bahwa berdasarkan Pasal 49 Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama, sebagaimana telah diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan dengan Undang-Undang Nomor 50 Tahun 2009 beserta penjelasannya, maka perkara *a quo* menjadi kewenangan *absolut* Pengadilan Agama;

Menimbang, bahwa pada hari dan tanggal persidangan yang telah ditentukan, para pihak datang secara pribadi menghadap ke persidangan, dan Majelis Hakim telah berusaha mendamaikan kedua belah pihak, namun tidak berhasil;

Menimbang, bahwa sesuai dengan peraturan Mahkamah Agung RI Nomor 1 Tahun 2016 tentang Mediasi, kepada Pemohon dan Termohon telah diperintahkan untuk melakukan Mediasi, dengan mediator Hj. MILACHAH, S.Ag dari Pengadilan Agama Gresik, akan tetapi dalam pelaksanaan mediasi tersebut juga gagal (tidak berhasil);

Menimbang, bahwa berdasarkan bukti surat P.7 sebagai suatu akta otentik yang telah memenuhi syarat formil dan materil pembuktian, yang juga telah diakui oleh Termohon, karenanya sesuai ketentuan Pasal 2 ayat (2) Undang-Undang Nomor 1 Tahun 1974, jo Pasal 2 ayat (1) Peraturan Pemerintah Nomor 9 Tahun 1975 jo. Pasal 5 dan 7 ayat (1) Kompilasi Hukum Islam, maka terbukti antara Pemohon dan Termohon masih terikat oleh hubungan perkawinan yang sah dan mempunyai kepentingan langsung dalam perkara ini (*persona standi in judicio*);

Menimbang, bahwa alasan pokok permohonan Pemohon adalah bahwa Pemohon mengajukan izin poligami disebabkan Pemohon sangat tinggi kebutuhan biologisnya, sedang Termohon kurang bisa memenuhinya. Oleh karenanya Pemohon sangat khawatir akan melakukan perbuatan yang dilarang oleh norma agama apabila Pemohon tidak melakukan poligami;

Menimbang, bahwa di muka persidangan Termohon telah menyampaikan jawaban secara lisan bahwa Termohon membenarkan semua dalil-dalil permohonan Pemohon dan menyatakan menyetujui keinginan Pemohon tersebut dan memberi izin kepada Pemohon untuk menikah lagi dengan perempuan bernama: Siti Chumaidah Binti Abd. Chanan (*calon istri kedua Pemohon*);



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Menimbang, bahwa Pemohon juga telah menghadirkan calon istrinya yang kedua tersebut, yang pada pokoknya menyatakan bersedia dan siap untuk menjadi istri kedua Pemohon, dan berjanji akan berlaku baik terhadap Termohon, selain itu antara ia dengan Pemohon maupun Termohon tidak terdapat larangan atau hubungan tertentu yang dapat menghalangi sahnya pernikahan baik menurut ketentuan syariat Islam maupun peraturan perundang-undangan yang berlaku;

Menimbang, bahwa untuk meneguhkan dalil-dalil permohonannya, Pemohon telah mengajukan alat bukti surat P.1 s/d P.12, serta 2 (dua) orang saksi masing-masing bernama: Masna'im Bin Miskan dan Sueb Bin Rebo;

Menimbang, bahwa alat bukti surat P.1 s/d P.12, telah bermeterai cukup sesuai Undang-Undang Nomor 13 Tahun 1985 yang diperbarui dengan Undang-Undang Nomor 10 Tahun 2020 tentang Bea Meterai jo. Peraturan Pemerintah Nomor 24 Tahun 2000 tentang perubahan tarif Bea Meterai, dan fotokopi tersebut cocok dengan aslinya, maka alat bukti tersebut merupakan akta otentik, mempunyai nilai pembuktian yang sempurna dan mengikat sesuai Pasal 165 HIR. Jo. Pasal 1870 BW, dengan demikian bukti tersebut dapat diterima sebagai alat bukti yang sah dalam perkara ini;

Menimbang, bahwa 2 (dua) orang saksi yang dihadirkan oleh Pemohon adalah orang yang memenuhi syarat sebagai saksi dan masing-masing saksi dibawah sumpahnya telah memberikan keterangan atas pengetahuannya sendiri yang satu sama lain saling bersesuaian dan ada relevansinya dengan permohonan Pemohon, karenanya keterangan para saksi tersebut baik secara formil maupun materiil sah untuk dipertimbangkan sebagai alat bukti dalam perkara ini sebagaimana ketentuan Pasal 171 ayat (1) dan Pasal 172 HIR;

Menimbang, bahwa berdasarkan dalil permohonan Pemohon, jawaban Termohon, keterangan calon istri kedua serta para saksi, maka Majelis Hakim telah menemukan fakta-fakta sebagai berikut:

- Bahwa pada tanggal 2 Maret 1984 Pemohon telah melangsungkan pernikahan yang sah dengan Termohon pada Kantor Urusan Agama (KUA) Kecamatan Manyar, Kabupaten Gresik dengan Akta Nikah No : 376/17/V/1984 sebagaimana Surat Keterangan Nomor : B-0042/Kua.13.

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19.03/PW.01/06/2023 yang dikeluarkan oleh Kantor Urusan Agama (KUA)
Kecamatan Manyar

- Bahwa selama perkawinan tersebut Pemohon dan Termohon, telah dikaruniai 5 orang anak;
- Bahwa Pemohon akan poligami dengan seorang wanita bernama (Siti Chumaidah Binti Abd. Chanan), disebabkan Pemohon sangat tinggi kebutuhan biologisnya, sedang Termohon kurang bisa memenuhinya. Oleh karenanya Pemohon sangat khawatir akan melakukan perbuatan yang dilarang oleh norma agama apabila Pemohon tidak melakukan poligami ;
- Bahwa rencana pernikahan Pemohon dengan calon isteri keduanya tersebut adalah atas kehendak berdua dan tidak ada paksaan dari siapapun;
- Bahwa calon istri kedua Pemohon tidak dalam pinangan orang lain, tidak ada hubungan nasab dengan Pemohon dan Termohon, serta tidak ada hubungan lain yang dapat menghalangi sahnyanya suatu perkawinan antara Pemohon dengan calon istri keduanya;
- Bahwa Termohon telah menyetujui dengan rela mengizinkan Pemohon menikah lagi tanpa ada paksaan dari siapapun;
- Bahwa Pemohon memiliki pekerjaan sebagai (Dosen Swasta) dengan penghasilan tiap bulan sebesar Rp.20.000.000,- (dua puluh juta rupiah);
- Bahwa Pemohon mempunyai sifat dan prilaku yang baik dan bisa berlaku adil terhadap istri-istri dan anak-anaknya;
- Bahwa selama dalam ikatan perkawinan, Pemohon dan Termohon telah memperoleh harta bersama sebagaimana posita poin (12) yang dirubah sebagaimana dalam berita acara sidang;

Menimbang, bahwa dalam *petitum* angka 2 Pemohon menuntut agar diberi izin untuk menikah lagi (poligami) dengan calon istri kedua, akan dipertimbangkan sebagai berikut;

Menimbang, bahwa Termohon tidak keberatan dipoligami dan telah memberi izin kepada Pemohon untuk kawin lagi (poligami), hal ini telah sesuai dengan ketentuan Pasal 3 ayat (2) jo Pasal 5 ayat (1) huruf (a) Undang-Undang Nomor 1 Tahun 1974 jo. Pasal 58 ayat 1 huruf (a) Kompilasi Hukum Islam;



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Menimbang, bahwa calon isteri kedua Pemohon bernama: (Siti Chumaidah Binti Abd. Chanan) menyatakan telah kenal baik dengan Pemohon dan Termohon, dan atas kemauannya sendiri dan sepakat untuk kawin dan rela menjadi isteri kedua Pemohon, maka hal ini telah memenuhi ketentuan Pasal 6 ayat (1) Undang-Undang Nomor 1 Tahun 1974 jo Pasal 16 ayat (1) Kompilasi Hukum Islam;

Menimbang, bahwa antara Pemohon, Termohon dan calon isteri kedua Pemohon tidak terdapat halangan yang menyebabkan dilarangnya perkawinan antara mereka berdua sebagaimana ketentuan Pasal 8 Undang-Undang Nomor 1 Tahun 1974 jo Pasal 39 sampai 44 Kompilasi Hukum Islam;

Menimbang, bahwa untuk mempertimbangkan permohonan Pemohon melakukan poligami adalah sebagai berikut;

Menimbang, bahwa sebagaimana bukti keterangan para saksi bahwa penghasilan Pemohon sebagai (Dosen Swasta) memiliki penghasilan tiap bulan sekitar sebesar Rp.20.000.000,- (dua puluh juta rupiah) disamping pengakuan Termohon, menunjukkan adanya kemampuan Pemohon untuk menjamin keperluan hidup istri-istri dan anak-anak mereka, dengan demikian hal ini telah sesuai dengan ketentuan Pasal 5 ayat 1 huruf (b) Undang-Undang Nomor 1 Tahun 1974 jo. Pasal 41 huruf (c) Peraturan Pemerintah Nomor 9 Tahun 1975 jo. Pasal 58 ayat 1 huruf (b) Kompilasi Hukum Islam;

Menimbang, bahwa keterangan Pemohon yang menyatakan sanggup berlaku adil terhadap istri-istri Pemohon dan anak-anak telah memenuhi ketentuan Pasal 5 ayat 1 huruf (c) Undang-Undang Nomor 1 Tahun 1974 jo. Pasal 41 huruf (d) Peraturan Pemerintah Nomor 9 Tahun 1975 sehingga berdasarkan pertimbangan tersebut di atas, maka Majelis Hakim menilai Pemohon layak melakukan poligami;

Menimbang, bahwa hubungan antara Pemohon dan calon istri kedua Pemohon telah berlangsung lama dan sulit dipisahkan serta keinginan Pemohon untuk melakukan poligami sangat tinggi meskipun oleh Majelis Hakim telah memberi nasehat dan penjelasan mengenai kewajiban yang harus ditanggung oleh seorang pria yang melakukan poligami;

Menimbang, bahwa kondisi hubungan Pemohon dengan calon istri keduanya sebagaimana diuraikan di atas, sangat mengkhawatirkan akan dapat



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menimbulkan berbagai efek negatif apabila Pemohon tidak diijinkan untuk menikah dengan calon istri keduanya tersebut;

Menimbang, bahwa diijinkan atau tidak Pemohon melakukan poligami tentu Pemohon dan Termohon akan menanggung *mudharat* (resiko) bahkan dampak negatif, namun Majelis Hakim menilai bahwa resiko yang dihadapi oleh Pemohon dan Termohon lebih besar jika Pemohon tidak diizinkan melakukan poligami, dan jika ada dua hal yang sama-sama mengandung *mudharat* (resiko), maka dipilih *mudharat* (resiko) yang lebih ringan, hal mana sesuai dengan kaidah fikih dalam kitab al-Asbah An-Nadzair Juz I halaman 188 yang berbunyi;

إذا تعارض مفسدتان روعي أعظمهما ضررا بارتكاب أخفهما

Artinya: “Apabila dihadapkan pada dua mafsadah maka supaya dijaga jangan sampai mengerjakan yang lebih besar mafsadahnya dengan cara mengerjakan mafsadah yang lebih ringan”

Menimbang, bahwa Majelis Hakim perlu mengutip firman Allah dalam Qs. An-Nisa' ayat 3 yang berbunyi:

فَانكحُوا ما طاب لَكُمْ مِنَ النِّسَاءِ مَثْنً وَثُلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَنْ لَا تَعْدِلُوا فَوَاحِدَةً

Artinya: “Dan jika kamu takut tidak akan dapat berbuat adil terhadap (hak-hak) perempuan yang yatim (bilamana kamu mengawininya), maka kawinilah wanita-wanita (lain) yang kamu senangi dua, tiga, empat kemudian jika kamu takut tidak akan dapat berlaku adil, maka (kawinilah) seorang saja”;

Menimbang, bahwa berdasarkan fakta-fakta tersebut tersebut di atas, permohonan Pemohon telah memenuhi syarat kumulatif untuk beristri lebih dari seorang sesuai ketentuan Pasal 5 ayat (1) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan Jo. Pasal 55 ayat (2) dan Pasal 58 Kompilasi Hukum Islam, dan telah memenuhi syarat alternatif untuk beristri lebih dari seorang sebagaimana diatur dalam Pasal 4 ayat 2 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan jo Pasal 57 Kompilasi Hukum Islam;



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Menimbang, bahwa berdasarkan pertimbangan-pertimbangan hukum di atas, Majelis berpendapat permohonan Pemohon cukup beralasan dan telah memenuhi maksud Pasal 3 ayat (2), Pasal 4 dan Pasal 5 ayat (1) Undang-Undang Nomor 1 Tahun 1974 jo Pasal 40 dan Pasal 41 huruf (b, c, dan d) Peraturan Pemerintah Nomor 9 Tahun 1975 jo Pasal 55 ayat (2) Kompilasi Hukum Islam, oleh karenanya *petitum* angka 2 permohonan Pemohon **patut dikabulkan**;

Menimbang, bahwa terhadap *petitum* angka 3 Pemohon menuntut penetapan harta bersama antara Pemohon dan Termohon, akan dipertimbangkan sebagai berikut;

Menimbang, bahwa berdasarkan KMA/032/SK/IV/2006 tentang Pemberlakuan Buku II Pedoman Pelaksanaan Tugas dan Administrasi Pengadilan Edisi Revisi 2014 bahwa pada saat permohonan izin poligami suami wajib pula mengajukan permohonan penetapan harta bersama Pemohon dan Termohon, permohonan ini bertujuan untuk melindungi hak Termohon serta untuk mempermudah pembagian harta bersama jika terjadi perselisihan dikemudian hari;

Menimbang, bahwa Pemohon juga mengajukan permohonan penetapan harta bersama dengan dalil bahwa Pemohon dan Termohon selama dalam pernikahan sampai dengan diajukannya permohonan izin poligami ini telah memperoleh harta bersama sebagaimana telah diuraikan dalam permohonan Pemohon pada posita 12 yang di rubah sebagaimana dalam berita acara sidang;

Menimbang, bahwa atas permohonan Pemohon tersebut, Termohon telah mengakui dan membenarkannya, serta Majelis Hakim telah melakukan pemeriksaan setempat pada hari Jum'at tanggal 18 Agustus 2023 diperoleh fakta sebagaimana dalam berita acara pemeriksaan di tempat, maka hasil pemeriksaan tersebut telah sesuai dengan dalil permohonan Pemohon point 12 dan perubahannya, sehingga dengan demikian dalil permohonan tersebut menjadi fakta yang tetap dan menjadi fakta hukum dalam persidangan bahwa harta bersama tersebut merupakan harta yang diperoleh Pemohon dan Termohon selama dalam perkawinan;



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Menimbang, bahwa sesuai ketentuan Pasal 35 ayat (1) Undang-Undang Nomor 1 Tahun 1974 bahwa harta benda yang diperoleh selama perkawinan menjadi harta bersama, dengan demikian harta tersebut dapat ditetapkan sebagai harta bersama Pemohon dan Termohon;

Menimbang, bahwa berdasarkan pertimbangan-pertimbangan tersebut di atas, Majelis Hakim berpendapat permohonan Pemohon tentang penetapan harta bersama dinyatakan terbukti dan beralasan hukum, oleh karenanya *petitum* angka 3 permohonan Pemohon **patut pula dikabulkan**;

Menimbang, bahwa berdasarkan Pasal 89 ayat (1) Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama, sebagaimana telah diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan dengan Undang-Undang Nomor 50 Tahun 2009, biaya perkara dibebankan kepada Pemohon;

Mengingat ketentuan-ketentuan hukum islam serta pasal-pasal perundang-undangan yang bersangkutan dalam perkara ini;

MENGADILI

1. Mengabulkan permohonan Pemohon;
2. Memberi ijin kepada pemohon (Penggugat) untuk menikah lagi (Poligami) dengan seorang perempuan bernama (Siti Chumaidah Binti Abd. Chanan);
3. Menetapkan harta benda berupa :
 - 3.1. 1 (satu) unit rumah di Banyutami. Dengan batas-batas:
 - sebelah utara : Jalan Kampung
 - sebelah Timur : Rumah Bapak Yudi
 - sebelah Barat : Rumah Ibu Qoyyumi
 - sebelah Selatan:Rumah Ibu AroyatiUkuran bangunan : Lebar 5 m² x 22 m² = luas : 101m²
 - 3.2. 1. (satu) unit rumah di Sukomulyo.
 - sebelah utara : Jalan Kampung
 - sebelah Timur : Jalan Kampung
 - sebelah Barat : Rumah Bapak Abdul Hamid



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- sebelah Selatan:Rumah Bapak Suparlan

Ukuran bangunan : lantai dua (2) luas : $\pm 145\text{m}^2$.

adalah harta bersama Pemohon dan Termohon;

4. Membebankan kepada Pemohon untuk membayar biaya perkara ini sebesar Rp.2.050.000,00 (Dua juta lima puluh ribu rupiah);

Demikian putusan dijatuhkan dalam sidang permusyawaratan Majelis Hakim pada hari Senin tanggal 21 Agustus 2023 Masehi. bertepatan dengan tanggal 4 Safar 1445 Hijriyah, yang dibacakan dalam sidang terbuka untuk umum pada hari itu juga oleh Dr. H. M. ARUFIN, S.H.,M.Hum. sebagai Ketua Majelis, Dra. Hj. HAMIMAH, M.H. dan SUDILIHARTI, S.H.I. masing-masing sebagai Hakim Anggota, dibantu oleh IKHLATUL LAILI, S.H.I. sebagai Panitera Pengganti, dengan dihadiri secara elektronik oleh Kuasa Pemohon dan Termohon;

Hakim Anggota,

Ketua Majelis,

Dra. Hj. HAMIMAH, M.H.

Dr. H. M. ARUFIN, S.H.,M.Hum.

SUDILIHARTI, S.H.I.

Panitera Pengganti,

IKHLATUL LAILI, S.H.I.

Perincian Biaya Perkara:

Pendaftaran	Rp	30.000,00
PNBP Surat Kuasa	Rp	10.000,00
Proses	Rp	100.000,00
Panggilan	Rp	20.000,00
PNBP Panggilan	Rp	20.000,00
PS	Rp	1.840.000,00
PNBP PS	Rp	10.000,00
Redaksi	Rp	10.000,00
Meterai	Rp	10.000,00

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Jumlah Rp 2.050.000,00
(Dua juta lima puluh ribu rupiah)

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CURRICULUM VITAE



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Educational Background

2008 - 2010	TK Aisyiyah Bustanul Athfal Padangbandung
2010-2016	SD Muhammadiyah 2 Dukun
2016-2019	MTS YKUI Maskumambang Gresik
2019-2022	MA YKUI Maskumambang Gresik
2022-2025	Universitas Islam Negeri Maulana Malik Ibrahim Malang