



## POLYGAMY AS A RESPONSE TO REJECTION OF SEXUAL RELATIONS: A STUDY OF JEMBER RELIGIOUS COURT DECISION NUMBER 3066/PDT.G/2024/PA.JR, FROM THE PERSPECTIVE OF ISLAMIC FAMILY LAW

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### ABSTRACT

*This study was motivated by the emergence of a case regarding permission for polygamy based on a wife's inability to fulfill her biological obligations, as outlined in the Decision of the Jember Religious Court No. 3066/Pdt.G/2024/PA.Jr. This issue is important to examine because it relates to the construction of the judge's reasoning in interpreting a wife's obligations and its relevance to the principle of justice in Islamic family law. This study aims to analyze the judge's reasoning in granting permission for polygamy and to assess its conformity with Islamic family law. The study employs a normative legal method using a case-based, statutory, and conceptual approach. Data were obtained through a literature review of court decisions, legislation, and relevant Islamic legal literature. The results indicate that judges interpret the inability to fulfill biological obligations as part of the condition where a wife cannot perform her duties as stipulated in the Compilation of Islamic Law. However, the granting of permission for polygamy is not based solely on biological reasons but also considers the wife's consent, economic capacity, and the ability to act fairly. This study concludes that the judges' considerations have a normative basis in Islamic family law; however, their application must continue to observe the principles of justice, mu'āsyarah bil ma'rūf, and the overall welfare of the family.*

**Keywords:** *Sexual Relationships, Judicial Rulings, Islamic Family Law, Jember Religious Court*

## 1. INTRODUCTION

Marriage in Islam is an institution aimed at creating a harmonious, peaceful, and compassionate family through a relationship built on the principle of mutual benefit and mutual benefit between husband and wife (Tasyukur & Yustisi, 2024). This principle places the rights and obligations of husband and wife within a complementary framework to maintain the continuity and harmony of the household. One aspect of marital life is sexual relations, which in Islamic family law is viewed as a right and obligation that must

be fulfilled proportionally by both parties to achieve the goals of marriage (Ali, 2022). Therefore, issues related to fulfilling biological obligations have legal relevance when they affect the continuity of household life.

In Islamic law, polygamy is permitted under certain conditions. This ability is based on the words of Allah Subhanahu wa ta'ala:

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعًا ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا

*The Prophet (peace be upon him) said: "So marry women of your choice, two, three, or four. But if you fear that you will not be able to deal justly, then marry only one" (Quran, An-Nisa [4]: 3).*

This verse indicates that polygamy is not an absolute right, but rather a permissibility limited by conditions of justice and responsibility. Under Indonesian positive law, these limitations are stipulated in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law, which requires specific reasons, the wife's consent, financial ability, and guarantees of justice before the court can grant permission for polygamy (Aqil & Trigiyanto, 2023).

In religious court practice, the application of these conditions often confronts judges with issues not specifically addressed in the legislation. One example is seen in Jember Religious Court Decision Number 3066/Pdt.G/2024/PA.Jr, which granted a request for permission to practice polygamy on the grounds of the wife's inability to fulfill her biological obligations to her husband. This case is interesting to study because it demonstrates how the judge connected the trial facts with the provisions of Article 57 of the Compilation of Islamic Law concerning a wife who cannot fulfill her obligations and rights as a wife. In this context, the main issue lies not only in the legality of polygamy, but also in how the meaning of a wife's obligations is constructed in the judge's legal reasoning.

Several previous studies have examined polygamy from various perspectives. Mahendra (2024) showed that biological reasons can be accepted by judges as a basis for granting permission for polygamy under certain conditions. Netti (2020) found that judges often use analogical reasoning in connecting biological issues with existing legal provisions. Meanwhile, Rifky et al. (2024) focused more on a normative analysis of the refusal of intimate relations in positive law from an Islamic legal perspective. However, these studies generally focus on the legality of polygamy or the conformity of legal norms, so they have not specifically discussed the construction of judges' considerations in interpreting the inability to fulfill biological obligations as a basis for granting permission for polygamy.

Based on this review, a research gap remains largely unexplored, namely how judges construct the meaning of "inability to fulfill a wife's obligations" in polygamy cases based on the refusal of sexual relations, and how this construction is positioned within the framework of Islamic family law. This issue is crucial because the interpretation of a wife's obligations cannot be separated from the principle of mutual benefit (*mu'asyarah bil ma'ruf*), the protection of the parties' rights, and the purpose of marriage in Islam. Therefore, an analysis of judges' reasoning is necessary not only to assess the decision's

compliance with positive law but also to examine the extent to which the principles of justice and welfare form the basis of decision-making.

Based on this background, this study aims to analyze the construction of judges' reasoning in Jember Religious Court Decision Number 3066/Pdt.G/2024/PA.Jr and evaluate its compliance with Islamic family law principles. Technically, this research is expected to enrich Islamic family law studies regarding judges' reasoning in polygamy cases. This research is practically expected to become a basis for reflection for legal practitioners and judges in formulating legal considerations that do not solely prioritize legal certainty, but also pay attention to the values of justice, welfare, and protection for all parties involved in family life.

## 2. RESEARCH METHOD

This research is a normative legal study employing three approaches: a case study, a statutory study, and a conceptual study. The primary focus of this study is the Jember Religious Court Decision Number 3066/Pdt.G/2024/PA.Jr, which granted a request for permission for polygamy on the grounds that the wife was unable to fulfill her obligations as a wife biologically. The legal materials used in this study are divided into two: primary legal materials, which include court decisions, Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law, and various relevant sources of Islamic law. Meanwhile, secondary legal materials include books, scientific journal articles, previous research results, tafsir books, and hadith commentaries related to the themes of polygamy, the rights and obligations of husband and wife, and Islamic family law.

Data collection in this study was conducted through literature review by reviewing and compiling various legal materials related to the research object. All collected data were then analyzed using normative-argumentative analysis techniques, namely by examining the extent to which the judge's considerations were consistent with the provisions of Article 4 and Article 5 of Law Number 1 of 1974, Article 57 of the Compilation of Islamic Law, and the principles contained in Islamic family law. In addition, the analysis was also carried out by integrating the concept of *mu'āsyarah bil ma'rūf*, the value of justice contained in QS. An-Nisa [4]: 3 and QS. An-Nisa [4]: 129, and the *maqāṣid al-syarī'ah* approach to assess whether the construction of the judge's considerations was in line with the objectives of protection and benefit in Islamic family law. To maintain the validity of the research, the dependability technique was used by ensuring the integration and consistency between the legal sources used, the analysis process carried out, and the arguments developed throughout the research.

## 3. RESULT AND ANALYSIS

### **The Judge's Consideration in Granting a Polygamy Permit**

The Jember Religious Court's decision, Number 3066/Pdt.G/2024/PA.Jr, stated that the primary reason cited by the applicant for a polygamy permit was the wife's inability to fulfill her biological obligations to her husband. The trial revealed that the husband and wife's relationship was not harmonious because the wife frequently refused sexual intercourse. The applicant viewed this situation as disrupting their marital life, thus providing the basis for his application for a polygamy permit.

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In addition to these reasons, the panel of judges also considered the applicant's relationship with a second spouse and the child from that relationship. This fact demonstrates that the application for a polygamy permit is not solely concerned with biological issues but also relates to the need for legal certainty regarding the established family relationship. In this context, the judge not only assesses the reasons for the application normatively but also considers the social realities that exist between the parties.

Another important aspect that deserves attention is the first wife's consent to the husband's application for polygamy. This agreement serves as one of the criteria used by the judge to determine whether the formal requirements under Law Number 1 of 1974 and the Compilation of Islamic Law are met. However, this agreement should not be interpreted merely as fulfilling procedural requirements, but rather as a concrete form of recognition and protection of the wife's rights in every decision-making process that directly impacts the continuity of her household life.

The panel of judges then connected the trial facts to Article 57 of the Compilation of Islamic Law, which permits polygamy if the wife is unable to fulfill her duties as a wife. In this case, the judge interpreted the fulfillment of biological obligations as part of the obligations related to household harmony. Based on this construction, the inability to fulfill biological obligations is seen as a condition that can be used as a basis for consideration in granting permission for polygamy. This interpretation demonstrates the judge's active role in linking general norms with the concrete facts presented in the trial.

In addition to the fulfillment of legal grounds, the judge also considered the applicant's financial situation and his ability to treat his wives and children fairly. Based on the evidence presented by the applicant at trial, the panel of judges concluded that the applicant had sufficient capacity to fulfill his maintenance obligations and responsibilities to his family. Therefore, the granting of the polygamy request in this case was not solely based on biological grounds, but also based on the fulfillment of various other requirements stipulated by both positive law and Islamic family law. Therefore, the judge's reasoning in this case was based on a combination of the facts revealed at trial, applicable normative provisions, and an assessment of the actual circumstances of the parties involved.

### **Analysis of the Judge's Considerations from an Islamic Family Law Perspective**

From an Islamic family law perspective, the relationship between husband and wife is based on the principle of *mu'āsyarah bil ma'ruf*, which refers to a relationship built on good treatment, a balance of rights and obligations, and shared responsibility for maintaining the integrity of the household (Anwar, 2024). This principle is affirmed in the words of Allah, the Most High:

وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ

*"And associate with them in a proper manner"* (Quran, An-Nisa [4]: 19).

Al-Ṭabarī explains that the meaning of *mu'āsyarah bil ma'ruf* includes treating one's wife well in all aspects of domestic life, including sustenance, communication, and biological relations, as appropriate (Al-Tabari, 2008). Thus, fulfilling biological needs is

indeed part of the rights and obligations of marriage. However, this principle also emphasizes that the husband-wife relationship cannot be reduced solely to biological aspects but must be understood as a relationship encompassing moral, social, and emotional dimensions (Syariful & Hasan, 2020).

The judge's consideration of the inability to fulfill biological obligations as one of the grounds for permitting polygamy has a normative basis in Article 57 of the Compilation of Islamic Law. However, the interpretation of the phrase "the wife is unable to fulfill her obligations" must be proportionate. In Islamic family law, a wife's obligations encompass not only the fulfillment of biological needs but also various forms of cooperation in building family life. Therefore, an overly narrow interpretation has the potential to shift the meaning of a wife's obligations to only one specific aspect, even though the purpose of marriage in Islam is far broader than simply fulfilling biological needs (Kinasih & Huda, 2024).

From a sharia perspective, the permissibility of polygamy is recognized in Islam, as affirmed in QS. An-Nisa [4]: 3:

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعًا ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً

*"So Marry women of your choice, two, three, or four. But if you fear that you will not be able to deal justly, then marry only one."*

According to Ibn Kathir (1999), this verse indicates that the permissibility of polygamy is limited by the ability to treat wives fairly in aspects that humans can afford, such as maintenance, housing, and time allocation. Al-Qurṭubi (2006) also emphasized that the permissibility of polygamy is strictly bound by the sharia of justice and the ability to shoulder the responsibilities of being in charge, so it cannot be practiced without considering its impact on all family members. Thus, the primary focus of sharia in polygamy is not simply fulfilling the reasons for polygamy, but also ensuring justice after polygamy is practiced (Kabir & Wulandari, 2025).

As emphasized by the words of Allah Subhanahu wa Ta'ala, in QS. An-Nisa [4]: 129:

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ

*"And you will never be able to do justice between your wives, even if you ardently desire to do so."*

The above verse shows that doing justice in polygamy is not a simple matter. Therefore, even though the judge has assessed the applicant's financial capacity and ability to do justice, this assessment is essentially a legal prediction based on the facts available at trial. The realization of justice after polygamy remains a moral and legal responsibility that must be carried out by the husband (Oktaria et al., 2025).

In the hadith literature, fulfilling a spouse's rights is also considered a crucial part of married life. The Prophet Muhammad (peace be upon him) said:

إِنَّ لِرَوْحِكَ عَلَيْكَ حَقًّا

*"Indeed, your wife has rights over you."* (Narrated by Bukhari).

Ibn Hajar al-'Asqalani explains that this hadith demonstrates a balance of rights and obligations between husband and wife, so that each party is obliged to protect their partner's rights proportionally (Al-Asqalani, 1390). In the context of this case, the hadith demonstrates that biological issues do have a legal dimension, but they must be placed within a broader framework of balancing rights and obligations (Himah, 2023).

Thus, from the perspective of Islamic family law, the judge's considerations in Jember Religious Court Decision Number 3066/Pdt.G/2024/PA.Jr essentially have a justifiable normative basis. Nevertheless, the interpretation of a wife's inability to fulfill her obligations must be carried out carefully and cautiously, so as not to narrow the meaning of marital obligations to a purely biological dimension. Within the framework of *mu'āsyarah bil ma'rūf* (consultation of good deeds), the principle of justice, and the purpose of marriage in Islam, the assessment of the reasons underlying a request for polygamy should be conducted by considering the entire household situation comprehensively and comprehensively, rather than relying solely on one specific aspect (Anwar, 2024).

### **Implications for Justice, Protection of Wives' Rights, and Analysis of the Maqāsid al-Syarī'ah**

One crucial aspect that requires attention in this case is the status of the wife's consent in a polygamy application. Under Indonesian positive law, the wife's consent is a requirement that must be met before the court can grant permission for polygamy, as stipulated in Article 5 of Law Number 1 of 1974 (Ramadhan & Yamani, 2025). In this case, the panel of judges stated that the first wife had given her consent to the applicant's request for permission for polygamy. Normatively, fulfilling this requirement further strengthens the legality of the polygamy application. However, from the perspective of family law protection, the consent granted must not be assessed solely on a formal basis; it must also be examined substantively, namely, to what extent the consent was given consciously, without coercion, and free from any form of psychological or social pressure that might influence the wife's decision (Saputra et al., 2025).

In the context of Islamic family law, voluntary consent is part of an effort to safeguard the interests of all parties (Musiyati, 2024). Therefore, judges are not only required to ensure that administrative requirements are met but also to consider the circumstances underlying the consent. This approach is crucial to ensure that the judicial process is not solely oriented toward upholding legal certainty but also provides equal and adequate protection for all family members directly affected by the decision.

Furthermore, research shows that the judge's considerations in this case stemmed from the inability to fulfill biological obligations that persist for a specific period. This consideration has a legal basis in Article 57 of the Compilation of Islamic Law. However, a wife's obligations under Islamic family law cannot be understood solely from a biological dimension. Marital relations in Islam are built on the principles of cooperation, mutual assistance, and safeguarding the family's interests. Therefore, the interpretation of the phrase "unable to fulfill obligations as a wife" needs to be interpreted proportionally and balanced, so as not to narrow the understanding of the wife's role and position in the household as a whole.

From the perspective of the *maqāṣid al-syarī'ah* (Islamic principles), every legal policy must aim to achieve benefits and prevent harm (Akhmadi, 2022). In this regard, granting permission for polygamy can be understood as a legal measure to maintain the continuity of existing family relationships, including providing legal certainty regarding the applicant's relationship with his prospective second wife and any children born from that relationship. From this perspective, the judge's considerations are closely related to the goals of protecting offspring (*ḥifẓ al-nasl*) and protecting honor (*ḥifẓ al-'ird*), as resolving disputes through legal mechanisms is seen as providing more certainty than relationships that persist without clear legal status (Rangkuti et al., 2026).

Nevertheless, the *maqāṣid al-syarī'ah* also requires protection for parties potentially affected by a legal decision (Mala et al., 2025). Therefore, the granting of polygamy is not solely based on the fulfillment of legal grounds and administrative requirements, but also requires consideration of the ongoing protection of the rights of the wife and children after the decision is implemented (Putri et al., 2024). In this context, the principle of justice, a primary requirement for polygamy, must be understood as an ongoing obligation, not merely a requirement examined during the trial (Musiyati, 2024).

The analysis shows that the Jember Religious Court Decision Number 3066/Pdt.G/2024/PA.Jr is essentially aimed at integrating positive legal provisions with the principles of Islamic family law. However, this case also underscores the importance of formulating more comprehensive and measurable parameters for assessing biological grounds for polygamy. This is deemed necessary so that legal considerations are not solely focused on fulfilling formal requirements but also include a balanced consideration of justice, welfare, and protection for all affected family members.

Thus, the primary contribution of this decision lies in recognizing that biological matters can be part of the legal considerations in polygamy cases. However, this research demonstrates that the application of these grounds must remain within the framework of Islamic family law, which emphasizes justice, mutual understanding (*mu'āsyarah bil ma'ruf*), and welfare. This perspective is crucial so that religious court practices serve not merely as a means of granting permission for polygamy but also as an instrument for protecting and resolving family problems, oriented toward achieving the goals of marriage.

#### 4. CONCLUSION

This research demonstrates that the judge's considerations in Jember Religious Court Decision Number 3066/Pdt.G/2024/PA.Jr were based on the relationship between the trial facts, positive legal provisions, and the principles of Islamic family law. The judge interpreted the inability to fulfill biological obligations as part of the condition where "the wife is unable to carry out her obligations" as stipulated in Article 57 of the Compilation of Islamic Law. The determination of permission for polygamy is not based solely on this reasoning, but also takes into account the wife's consent, the applicant's economic capacity, and the ability to act fairly. From an Islamic family law perspective, this consideration construction essentially has a justifiable normative basis. However, the interpretation of a wife's obligations needs to be placed proportionally so that they are not reduced solely to biological aspects, but rather are understood within the framework of *mu'āsyarah bil ma'ruf*, justice, and the purpose of marriage in Islam.

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Theoretically, this research contributes to the advancement of Islamic family law studies by revealing how judges construct legal meaning in polygamy cases motivated by the rejection of sexual relations. This study also emphasizes the urgency of integrating positive law, the principles of justice, and the *maqāṣid al-syarī'ah* approach in the assessment process for polygamy permit applications. From a practical perspective, the results of this study can serve as material for evaluation and reflection for judges in formulating legal considerations that are not solely oriented towards fulfilling formal requirements, but always pay attention to protecting the rights of all family members involved. The limitation of this study lies in its scope, which only analyzes one court decision, so it is not able to describe the pattern of judges' considerations in a broader and more representative manner. Therefore, further research is needed in the form of a comparative study of various polygamy case decisions in the religious courts, in order to gain a deeper and more comprehensive understanding of the development of legal thought in the practice of Islamic family law in Indonesia.

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