

More Than One Wife (Polygamy) For Members Of The Civil Service In Terms Of Government Regulation Number 94 Of 2021



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ABSTRACT

Civil Servants who will carry out polygamy must go through certain conditions, as stipulated in Government Regulation Number 94 of 2021. This type of research is normative with a legislative approach. The data used is secondary data consisting of primary, secondary and tertiary legal materials. Provisions regarding Civil Servants who will have more than one wife (polygamy) reviewed by Government Regulation Number 94 of 2021 are regulated in Article 45 of Government Regulation No. 94 of 2021 concerning Civil Servant Discipline which must comply with the provisions of Article 4 of Government Regulation No. 45 of 1990 concerning Amendments to Government Regulation No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants. For this reason, it is recommended that members of civil servants who will practice polygamy must meet the requirements as stipulated in Article 45 of Government Regulation Number 94 of 2021 concerning Civil Servant Discipline and that members of civil servants who will practice polygamy consider all aspects of the family, including the rights of children and first wives and the ability to do justice.

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1. INTRODUCTION

Marriage has a very important meaning and position in human life, because marriage can be formed with a bond of social relations between two people of different sexes officially in one family. The family can continue to develop into a community group, the goal to be achieved in marriage is to achieve happiness in this world and in the hereafter.¹ In essence, humans are individual beings who cannot live alone. In living their lives, they will always depend on other humans. Humans need each other and must socialise with other humans. This is because humans cannot fulfil their own needs.² Every human being needs other people to live life with.

Human beings who have grown up have the desire to find a life partner to jointly live the ark of life in the family. In accordance with the nature of human events, men need women and women need men in their lives, because both parties need each other, then they look for each other so that the seeds of affection, mutual love and mutual protection grow. This relationship of affection and mutual love is then realised in the bond of marriage in accordance with the norms of life and the rules of law that apply in the society in which they live.³

Marriage has a very important meaning and position in human life, because marriage can be formed with a bond of social relations between two people of different sexes officially in one family. The family can continue to develop into a community group, the goal to be achieved in marriage is to achieve happiness in this world and in the hereafter.⁴ Law Number 1 Year 1974 on Marriage (hereinafter abbreviated as Marriage Law) contained in Article 1 and Article 2 states that "Marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God". The inclusion of God Almighty is because the Indonesian State is based on Pancasila, whose first principle is God Almighty. This states that marriage has a very close relationship with religion. In Islamic law, a marriage is considered valid if it fulfils the pillars and conditions of valid marriage. Unlike the case with the applicable law in Indonesia, where if two Indonesian citizens who will enter into a marriage must follow the marriage law, namely

¹Wiriadja, Mufti, *Kitab Tata Hukum Indonesia*, Yogyakarta: Yayasan Penerbit Gajah Mada. 2015, Cet Ke-5, p. 40

²Herimanto, Winarno, *Ilmu Sosial Dan Budaya Dasar*, Jakarta: PT. Bumi Aksara. 2018, p. 43.

³Kadir, Abdul, Kadir, Muhammad, *Ilmu Sosial Budaya Dasar*, Bandung: PT. Citra Aditya, 2019, p.15.

⁴Wiriadja, Mufti, *Op. Cit*, p. 40.

the Law on Marriage and additional regulations in the form of the Compilation of Islamic Law (KHI) for those who are Muslim.

Marriage and all its legal consequences in Indonesia are regulated in Law Number 1 of 1974 concerning Marriage and its implementing regulations, namely Government Regulation Number 9 of 1975. In accordance with its form, this marriage law applies to all Indonesian people without exception. The purpose of this law is to provide legal certainty for the people of Indonesia, especially those related to marriage and all the legal consequences that arise from it. Marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God (Article 1 of Law Number 1 of 1974 concerning Marriage). Marriage is a legal relationship between a man and a woman for an indefinite period of time. The requirements and procedures regarding marriage are things that must be carried out in order to obtain ratification from the competent authorities, so that in the future a marriage can run well and be free from problems that will arise in the future, in order to create a sense of security, harmony, and comfort in the household of every community.⁵

Basically Law Number 1 of 1974 concerning Marriage also adheres to the principle of monogamy as stated in Article 3 paragraph (1), but the principle of monogamy is softened by allowing a husband to submit an application to the religious court for those who are Muslims and the district court for those who are not Muslims to have more than one wife, after fulfilling the reasons specified in the marriage law, namely:

1. The wife cannot perform her duties as a wife.
2. The wife is physically disabled or has an incurable disease
3. The wife is unable to bear offspring (Article 4 of Law No 1 Year 1974).
4. The court will grant permission for more than one wife if the following conditions are met:
 1. The consent of the wife or wives.
 2. There is certainty that the husband is able to provide for the needs of the wives and their children.
 3. A guarantee that the husband will be fair to the wives and their children (Article 5 paragraph (1) of Law No 1 of 1974 and Article 41 of Government Regulation No 9 of 1975).

⁵Rohman, Miftakur R, Prohisibi Wanita PNS Menjadi Istri Ke Dua/Ke Tiga/Ke Empat Dalam Tinjauan Hukum Islam, *Jurnal Studi Islam Miyah*. 14(2), 2018, p. 34-44. <https://doi.org/10.33754/miyah.v14i2.363>.

The problem of having more than one wife (polygamy) is a common problem faced by every layer of Indonesian society without exception, including civil servants. Basically, the regulations on marriage that apply to all citizens are those stipulated in Law No. 1 of 1974 concerning Marriage, whose implementing regulations are stipulated in Government Regulation No. 9 of 1975. However, because Civil Servants are an element of the state apparatus and as servants of the community, they must set an exemplary example in their behaviour, actions and obedience to applicable laws, including in organising family life. To carry out the obligations of civil servants must be supported by a harmonious, prosperous and happy life, so that every civil servant in carrying out their duties will not be disturbed by family problems.

In practice, on the one hand, polygamy is rejected by women's rights fighters with a variety of arguments both normative and psychological and even always associated with gender injustice. They argue that polygamy is allowed only under certain conditions with fairly difficult requirements in the form of justice for all wives.⁶

This is also the case with civil servants who practice polygamy. In this context, the law regulates that for civil servants who will carry out polygamy, they must go through certain conditions. Government Regulation No. 45 of 1990 on the Amendment to Government Regulation No. 10 of 1983 on Marriage and Divorce Permits for Civil Servants, requires that if a male Civil Servant is to have more than one wife, he must first obtain permission from an Official. The latest regulation governing the discipline of civil servants is Government Regulation Number 94 of 2021.

Based on these reasons, the regulation of Civil Servants who will have more than one wife (polygamy) is specifically regulated. The provisions in the regulation are very different and even counter-productive both with Islamic law and with positive law (Marriage Law) in Indonesia. The existence of this specialisation is because civil servants and officials are elements of the state apparatus and public servants who must be good examples for the community in behaving, acting, and obeying the applicable laws and regulations. officials who do not obey or violate the provisions regarding marriage and divorce permits for civil servants will be subject to disciplinary

⁶Sudiyanto, *et al*, Efektifitas Penerapan Larangan Poligami Bagi Anggota Polri Berdasarkan Peraturan Kepala Kepolisian Nomor 6 Tahun 2018, *Jurnal UIR Law Riview*, 6(2), 2022, pp. 51-57.

punishment. In addition, the specialisation of laws and regulations for civil servants and officials is for the purpose of implementing a personnel information system, as an effort to further improve and enforce civil servant discipline and provide legal certainty and a sense of justice.⁷ The civil servants referred to here do not include members of the Indonesian National Police because they have their own rules.

2. METHODS

This type of research is normative, which is research aimed at finding and formulating legal arguments through analysis of the subject matter.⁸ Normative legal research, also known as library legal research, is legal research conducted by examining library materials or secondary data only.⁹ The approach in this research is statutory and conceptual and the nature of the research is descriptive analytical, namely research that explains and describes civil servants who will have more than one wife (polygamy) in terms of Government Regulation Number 94 of 2021.

3. DISCUSSION

Islam basically allows a man to have more than one wife (polygamy), on the condition that the husband must be able to do justice to all his wives. Polygamy in Islam, both in law and practice, is applied variably in each country with a majority Muslim population. The maximum limit is four, but without this condition, the husband can only have one wife, as stated in Surah An Nisa verse 4. The limit is a maximum of four wives and is only permissible if one is able to do justice, if the condition is not met then it is forbidden to do so.¹⁰ The reasons for a husband wanting more than one wife are:

1. If the husband has a strong lustful urge, so that the wife is no longer able to fulfil his desires.
2. The wife is so ill that she can no longer serve her husband.
3. Aiming to defend women who have become widows because their husbands died.

⁷Yusron, Hilman, Rafi'i, Analisis Hukum Keluarga Islam Terhadap Pasal 4 ayat (2) Peraturan Pemerintah Nomor 45 Tahun 1990 Tentang Izin Perkawinan dan Perceraian Bagi Pegawai Negeri Sipil, Jurnal Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam, 4(2), 2022, p. 93-104. <https://doi.org/10.37680/almanhaj.v4i1.1576>

⁸Ali, Zainuddin, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, 2009, p.14.

⁹Peter, Mahmud, Marzuki, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, 2017, p. 34.

¹⁰Amir, Syamsuddin, *Hukum Perkawinan Islam Di Indonesia*, Kencana: Jakarta, 2006, pp. 82.

4. To save women who still do not have the opportunity to marry, so that they do not fall into sin.¹¹

The wisdom behind polygamy and the maximum limit of having 4 wives are:

1. The provisions of verse 3 in surah an-Nisa' provide a limit for a husband to have a maximum of 4 (four) wives at one time. If it exceeds 4 (four) wives, it is beyond human ability, resulting in the non-performance of the husband's obligations towards his wives and children.
2. Because it is beyond human ability, it is feared that a husband may commit injustice against his wives or himself.
3. Human nature is dominated by lust and desire, and due to his inability to do so, a man will tend to commit deviant acts, so that he will not be able to give equal rights to his wives.¹²

Sometimes a wife suffers from a severe illness that is difficult to cure or experiences infertility, but she still has a desire to build a household with her husband, while the husband has a desire to have smart and healthy children that he can be proud of and also have a wife who can take care of his household. Wives who experience illnesses that are difficult to cure and also experience infertility will have difficulty fulfilling their obligations as wives and the husband's desire to have children is difficult to fulfil because of his wife's infertility, while she still wants to live side by side with her husband, so the best solution that a husband can do is to commit polygamy, on the one hand the desire of the first wife who still wants to be side by side with her husband can be fulfilled, on the other hand the husband's desire to have children can be fulfilled. Some of the men have more sexual desires than other men who cannot be satisfied sexually with just one wife, so the main solution that can be given is polygamy, because it is feared that he has relations with other women in the wrong way.

In addition, at this time there are several factors that cause a man to be polygamous, namely:

1. Young women look more beautiful than wives.
Men are known to easily like women. Most men practice polygamy on the grounds that younger women tend to be more beautiful and attractive. This physical advantage is the most basic reason someone chooses polygamy.
2. Difficulty in getting offspring.

¹¹*Ibid*, p. 34.

¹²Ali, Moh,Wafa, *Hukum Perkawinan di Indonesia*, Yasmi: Tangerang, 2018, pp.188.

For some people, having offspring is an accomplished task in life. In some cases, there are women who are willing to be married when they are unable to give offspring to their husbands. This is the reason for men to practice polygamy.

3. High desire but not served

Many men are satisfied with their wife's performance in bed. As a result, the only way to satisfy sexual appetite is by polygamy. Apart from being safer, this method is also legal and religious.

4. Lack of attention from the old wife.

Some men argue that a lack of attention from their previous wife makes them want to become polygamous. Logically, new wives usually tend to be more attentive than old wives. This reason is also often used to get the blessing of polygamy.

5. Feels cool and challenged

Some men consider polygamy to be cool and a challenge. Without hesitation, a man decides to become a polygamist without thinking about his old wife's feeling.¹³

The reasons for polygamy for civil servants are the same as those stipulated in Islamic law and positive law applicable in Indonesia, the difference in polygamy requirements that must be fulfilled by civil servants is the permission of the Court and permission from superiors. Applications for polygamy permits for civil servants can be granted by the Panel of Judges if the reasons and requirements are in accordance with applicable regulations. Applications for polygamy permits for civil servants can be rejected by the Panel of Judges because the reasons and requirements are not met.¹⁴

The background of the birth of Government Regulation Number 10 of 1983 which was amended by Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants. This regulation is a regulation regarding marriage issues where Civil Servants are obliged to set a good example to their subordinates and become role models as good citizens for the community, including in organising family life. In addition, the aim is to improve the discipline of Civil Servants. This provision is also regulated in Circular Letter of the Head of the State Personnel Administration Agency No. 08 /SE/1983 dated 20 April 1983 which also sets out guidelines

¹³<https://lifestyle.okezone.com/read/2019/07/12/196/2078249/kenapa-pria-ingin-poligami-jawaban-nomor-pertama-paling-terkejut?page>, (2024, Mei 12).

¹⁴Yani, Yuli, Analisis Alasan Poligami Bagi Pegawai Negeri Sipil, Jurnal Tama Mana, 3(1), p. 12-23, DOI: <https://doi.org/10.33648/jtm.v3i1.220>

for officials in resolving marriage and divorce issues for Civil Servants in their respective environments.

Government Regulation No. 10 of 1983 as amended by Government Regulation No. 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants, actually regulates two matters for which permission must be obtained from an authorised official. The permits in question are:

1. Permission for Civil Servants who will have more than one wife.
2. Divorce permit for civil servants.

Thus, the marriage permit referred to in this regulation is a permit for Civil Servants to marry more than one person (polygamy). Since marriage is based on religion and belief, the only religion that allows polygamy is Islam. So the polygamy provisions in question apply specifically to those who are Muslims. According to Government Regulation No. 45/1990, Civil Servants who will have more than one wife (polygamy) must obtain permission from their officials/superiors (Article 4 paragraph (1)). This request must be submitted in writing by stating the complete reasons underlying the request for permission (Article 4 paragraphs (3) and (4)) which states that:

A permit may be granted by an official if at least one alternative condition and all three cumulative conditions are fulfilled, namely:

1. Alternative conditions are:
 - a. The wife is unable to perform her duties as a wife.
 - b. The wife is physically disabled or has an incurable disease.
 - c. The wife cannot give birth to offspring after at least ten years of marriage.
2. The cumulative requirements are:
 - a. There is a written consent made sincerely by the wife of the Civil Servant concerned.
 - b. The male civil servant concerned has sufficient income to support more than one wife and children.

A written guarantee from the male civil servant concerned that he will be fair to his wives and children. Furthermore, we can see this provision in the articles of Government Regulation Number 10 of 1983, namely Article 4 which states that:

- 1) Male Civil Servants who will have more than one wife, must obtain prior permission from the Official.
- 2) Female Civil Servants are not permitted to become the second/third/fourth wife of a Civil Servant.
- 3) Female Civil Servants who will become the second/third/fourth wife of a non-civil servant, must obtain prior permission from an Official.
- 4) Request for permission as referred to in paragraph (1) and paragraph (3) shall be submitted in writing.

- 5) The letter requesting permission as referred to in paragraph (4), complete reasons must be stated underlying the request for permission to be married to more than one person or to become a second/third/fourth wife.

Government Regulation Number 45 of 1990 Concerning the Amendment of Government Regulation Number 10 of 1983 Concerning Marriage and Divorce Permits for Civil Servants, eliminates point 3 of Article 4 of Government Regulation Number 10 of 1983 and replaces it with Article 4 which states that:

- 1) Male Civil Servants who will have more than one wife, must obtain prior permission from the Official.
- 2) Female Civil Servants are not permitted to become a second/third/fourth wife.
- 3) Request for permission as referred to in paragraph (1) shall be submitted in writing.
- 4) In the letter of request for permission as referred to in paragraph (3), complete reasons must be stated underlying the request for permission to be married to more than one person."

Furthermore, Article 5 of Government Regulation Number 10 Year 1983 stipulates that requests for permits as referred to in Article 3 and Article 4 shall be submitted to the Official through written channels. Every superior who receives a request for permission from a Civil Servant within his/her ranks, either for divorce or to be married to more than one person, or to become a second/third/fourth wife, must give consideration and forward it to the Official through hierarchical channels within a period of no later than 3 (three) months starting from the date he/she receives the request for permission.

Government Regulation No. 45 of 1990 amends the provisions of paragraph (2) of Article 5 by removing the words second, third and fourth wife so that it reads as follows: "Every superior who receives a request for permission from a Civil Servant in his/her environment, either to divorce and/or to have more than one wife, must give consideration and forward it to the Official through hierarchical channels within a period of no later than three months starting from the date he/she receives the request for permission".

Furthermore, Article 10 stipulates that:

- 1) Permission to have more than one wife may only be granted by an Official if at least one of the alternative conditions and the three cumulative conditions as referred to in paragraphs (2) and (3) of this Article are fulfilled.
- 2) The alternative conditions as referred to in paragraph (1) are

- a. The wife is unable to perform her duties as a wife;
 - b. The wife is physically disabled or has an incurable disease; or
 - c. The wife is unable to bear offspring.
- (3) The cumulative conditions as referred to in paragraph (1) are:
- a. There is written consent from the wife;
 - b. The male Civil Servant concerned has sufficient income to support more than one wife and children as evidenced by an income tax certificate; and
 - c. There is a written guarantee from the Civil Servant concerned that he will be fair to his wives and children.
- (4) Permission to have more than one wife shall not be granted by the Official if:
- a. Contrary to the teachings/regulations of the religion adhered to by the Civil Servant concerned;
 - b. Contrary to the teachings/regulations of the religion adhered to by the Civil Servant concerned;
 - c. Does not fulfil the alternative requirements as referred to in paragraph (2) and the three cumulative requirements in paragraph (3);
 - d. Contrary to the prevailing laws and regulations;
 - e. The reasons stated are contrary to common sense; and/or

Furthermore, Article 11 stipulates that:

- 1) Permission for a female Civil Servant to become a second/third/fourth wife, as referred to in Article 4 paragraph (3), may only be granted by an Official if:
 - a. There is written consent from the prospective husband's wife;
 - b. The husband has sufficient income to support more than one wife and children as evidenced by an income tax certificate; and
 - c. There is a written guarantee from the prospective husband that he will be fair to his wives and children.
- 2) Permission for a female Civil Servant to become a second/third/fourth wife, as referred to in Article 4 paragraph (3), shall not be granted by an Official if:
 - a. Contrary to the religious teachings/regulations adopted by the female Civil Servant concerned or her prospective husband;
 - b. Does not fulfil the requirements as referred to in paragraph (1);
 - c. Contrary to the prevailing laws and regulations;
 - d. There is a possibility of interfering with the implementation of official duties.

Amended based on Government Regulation Number 45 of 1990 Article I point 7 to become the Head of State-Owned Banks and the head of State-

Owned Enterprises, must seek prior permission from the President, while the Head of Regionally-Owned Banks and the Head of Regionally-Owned Enterprises must seek permission from the Head of the region concerned.

The provisions regarding polygamy for members of the Civil Service are regulated in Article 45 of Government Regulation No. 94 of 2021 concerning Civil Servant Discipline which reads that civil servants who violate the provisions of Government Regulation No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants (State Gazette of the Republic of Indonesia of 1983 No.13, Supplement to the State Gazette of the Republic of Indonesia Number 3250 as amended by Government Regulation No. 45 of 1990 concerning Amendments to Government Regulation No.10 of 1983 concerning Marriage and Divorce Permits for Civil Servants. Government Regulation No. 45 of 1990 regulates the provisions for civil servants who will carry out marriage or divorce. One of the provisions also regulates polygamy for civil servants. Where polygamy is regulated in Article 4 of PP No. 45 of 1990 which contains the following:

1. A male Civil Servant who wishes to have more than one wife shall obtain prior permission from an Official.
2. Female Civil Servants are not permitted to become a second/third/fourth wife.
3. Request for permission as referred to in paragraph (1) shall be submitted in writing.
4. In the letter of request for permission as referred to in paragraph (3), complete reasons must be stated underlying the request for permission to be married to more than one person.
5. All of these requirements must be fulfilled by members of civil servants who will have more than 1 (one) wife or polygamy.

4. CONCLUSION

The provisions regarding civil servants who will have more than one wife (polygamy) in review of Government Regulation No. 94 of 2021 are regulated in Article 45 of Government Regulation No. 94 of 2021 concerning Civil Servant Discipline which reads that civil servants who violate the provisions of Government Regulation No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants (State Gazette of the Republic of Indonesia of 1983 No.13, Supplement to the State Gazette of the Republic of Indonesia Number 3250 as amended by Government Regulation No. 45 of 1990 concerning Amendments to Government Regulation No.10 of 1983 concerning Marriage and Divorce Permits for Civil Servants civil servants. Civil servants who will be polygamous must fulfil the conditions as stipulated in Article 45 of Government Regulation No. 94 of 2021 concerning Discipline

of Civil Servants and civil servants who will be polygamous should consider all aspects of the family including the rights of children and the first wife and the ability to be fair.

5. LIMITATION

In order for this research to be directed, it is necessary to make a limitation, namely the discussion in this study is a problem that has been determined, namely the regulation of Civil Servants who will have more than one wife (polygamy) regulated in marriage law in terms of Government Regulation Number 94 of 2021. This research can be used as expected to provide insight, especially in understanding the law of marriage related to more than one wife (polygamy) for members of Civil Servant employees and can be used as a guide for relevant officials and Civil Servants who face problems related to permits for Civil Servants who will have more than one wife (polygamy).

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