

Research/Review

Asset Division Agreement as a Condition for Polygamy Permission

Reformulation of Law Number 1 of 1974

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Abstract: This study aims to analyze the importance of regulating property division agreements as a requirement in polygamy permit applications, using the approach of Aristotle's theory of justice, as well as maqāṣid al-syarī'ah in Islamic law. The type of research is normative, which includes conceptual and philosophical analysis of law, as well as comparative research on property regulation practices in the family law system. The study shows that the practice of polygamy tends to result in economic inequality, neglect of the rights of the first wife and children, and legal conflicts related to the ownership and division of joint property. There are two approaches to property division: equal distribution of property and division of property based on contribution. The results indicate that the contribution-based approach is fairer and more relevant to modern society, especially since women are increasingly involved in household expenses. The principle of sadd al-dzari'ah also states that this agreement is very important as a preventive measure against possible damage that occurs in the household. Practically, this study proposes the implementation of regulations in state law to require property division agreements as a formal requirement in polygamy permit applications. Combining western and Islamic values of justice within a socially just family law framework is the main focus of this research.

Keywords: Agreement; Maqāṣid Al-syarī'ah; Polygamy; Reformulation of Law; Sadd Al-dzari'ah.

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1. Introduction

Humans are social creatures, as described by the term “*zoon politicon*.” (Soekanto, 1989) They always strive to fulfill their needs and interests, even though they cannot always achieve them alone. This shows that humans are born with limited conditions and often experience deficiencies, so they always feel the need to gather with others. Because of this, relationships arise between individuals and between groups who cooperate and make agreements. One form of this is through marriage.

Marriage is recommended in religion because it is part of human nature, requiring individuals to channel their human instincts. If these instincts are not properly channeled, they will find ways or paths that are disapproved of by God, ultimately leading to sin. Marriage is considered a sacred and holy moment, and therefore should not be entered into carelessly. Therefore, certain conditions must be met for a marriage to be considered valid. Building a peaceful, loving, and blessed home is one of the goals of marriage.

There are two terms in marriage: monogamy and polygamy. Polygamy is a long-established practice in various cultures and legal systems, including Indonesia. Within the context of national law, polygamy is strictly regulated and permitted only under certain conditions through licensing mechanisms stipulated in the Marriage Law and its implementing regulations. However, the reality of its implementation often raises issues, particularly concerning the protection of the rights of women and children directly affected by the practice.

In Indonesia, the practice of polygamy is one of the most controversial family law issues, both from a legal, social, and ethical perspective. Under certain conditions, polygamy is indeed permitted. However, in reality, some polygamists neglect the conditions that permit polygamy. This leads to the emergence of abuses or neglect of the rights that wives and children from previous marriages should receive. According to Marriage Law Number 1 of 1974 and the Compilation of Islamic Law (KHI), the requirements for obtaining permission for polygamy must be based on justice. However, these laws do not explicitly state that a property division agreement must be made beforehand to prevent the neglect of the rights of wives and children from previous marriages, thus creating a mismatch of norms that could have a detrimental effect on the practice of polygamy.

Polygamy comes from the Greek words *polus*, meaning many, and *gamos*, meaning marriage. A man who marries more than one woman at the same time is called a polygamist (Mursalin, 2007). In *Islamic jurisprudence*, polygamy means *ta'addud al-zanajat*, meaning many wives. Therefore, the majority of scholars limit polygamy to only four women (Mursalin, 2007). Polygamy can basically provide an alternative solution to household problems if it can be implemented ideally. This is because it is to save women's self-esteem. The story of the Prophet and his companions is an example of the implementation of ideal polygamy and can solve household problems.

First verse Article 3 of Law Number 1 of 1974 concerning Marriage states that "Basically a man is only allowed to have one wife, and a woman is only allowed to have one husband." This verse provides an understanding that this marriage actually adheres to the principle of monogamy. Meanwhile, paragraph (2) of the same law states that "The court can grant permission to a husband to have more than one wife if the parties concerned wish."

Polygamy, recognized by Indonesian law and permitted by Islamic law, is a legitimate practice. Within the context of Indonesian positive law, specifically as regulated by Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI), polygamy is permitted provided several requirements are met. One important requirement that is increasingly prioritized is an agreement on the division of assets, both for assets owned by each partner before marriage and assets to be acquired during the marriage.

The practice of polygamy is actually intended to improve the status of women. As conveyed by the Prophet Muhammad (peace be upon him), who set an example of the proper implementation of polygamy, with the proviso that the husband must be fair both physically and mentally. However, recently, polygamy has been practiced without regard for the established provisions. The concept of justice, as stipulated in the Qur'an, hadith, and other norms, is no longer heeded by husbands, so they are free to marry up to four wives even though they do not meet the requirements. (Dian septiandani, Ani Triwati, 2023)

In many cases, the first wife does not receive adequate information or consent, while children born of polygamous marriages face the risk of legal and social uncertainty. This

demonstrates that existing legal provisions are not fully capable of guaranteeing equal justice and security for all parties involved. Therefore, reformulating the requirements for permitting polygamy is urgently needed to align with evolving values of gender justice, human rights, and child protection within the Indonesian legal system.

This article will discuss the urgency of reformulating polygamy permit requirements, emphasizing the protection of the rights of wives and children. Through normative research and a justice perspective, it is hoped that this study will contribute to the development of legal policies that are more responsive to social realities and the protection needs of vulnerable groups within the institution of marriage.

The purpose of this study is to understand the importance of a property division agreement as a requirement for a polygamy permit application. This will provide a philosophical, legal, and sociological basis for the need to reformulate the law on permit applications for polygamy practices. An integrative approach connecting Aristotle's theory of justice, *maqasid al-syari'ah*, and *sadd al-dzari'ah* is used. This approach aims to provide legal and philosophical evidence that this regulation is not only necessary as a practical solution but also has strong moral and legal legitimacy in the context of protecting family rights. This study positions the property division agreement as a means of justice to address differences in polygamous household relationships.

The success and role of wives in acquiring joint property have not received sufficient attention or legal protection in polygamous marriages, so this arrangement is considered crucial. Without clear arrangements, the first wife is very likely to lose her economic rights and have them transferred to the new wife. This will result in economic instability, which could also impact her children. Therefore, establishing an agreement on the division of property before the application for permission to polygamy is included in the implementation of *the Maqasid al-Shari'ah* (the principle of safeguarding property) and preserving lives. (*hifd nafs*). This is also part of *sadd al-dzari'ah*, namely preventing damage caused by ownership conflicts and injustice in the household.

Several previous studies on permit applications and restrictions on polygamy and premarital marriage agreements, including by Wahidullah, resulted in the requirements for the permissibility of polygamy not reflecting the values of justice between the two parties, so it is undeniable that there is a possibility of *harm being found* when living in a household (Wahidullah, 2019). Research by Dri Santoso, resulted in there being no absolute prohibition on polygamy in Indonesia, because there is greater (Santoso, 2020). Research by Dedi Sumanto, resulted in premarital agreements made by Indonesia having more *benefits* than *harms*, and this applies in reverse to Malaysia. In addition, in Indonesia there are two marriage agreements, while in Malaysia there is only a *tal'iq* agreement (Sumanto, 2020). Based on the results of several studies above, there has not been any research that talks about the regulation of property division agreements in polygamy permits, so the researcher conducted this study.

This study uses three approaches: the theory of justice (Aristotle), *the maqashid al-Shari'ah*, and *sadd dzari'ah*. These approaches attempt to develop normative and contextual arguments regarding the need for regulation of property division agreements as a requirement for polygamy permit applications. Moral considerations and the consent of the first wife are the primary focus. However, there is no method or way that comprehensively combines Islamic legal values with Western justice theory to regulate the economy after polygamy. Therefore,

it is hoped that this research will make a significant contribution to the development of justice in Islamic family law, responsive and able to adapt to the complexities of today's society.

Every human being has the right to their basic rights, both men and women. In the legal treasury, regulations on human rights can be found in several legal systems. These systems consist of several legal instruments and their implementing instruments. These systems not only include recognized rights but also how to guarantee and access to these rights (Jamil, 2014). As a form of guaranteeing respect and security for women in human rights, it is necessary to include legal principles, principles, and norms. The law has the highest supremacy to be obeyed and complied with. From an Islamic legal perspective, child protection means guarding the rights of children from anything that could harm them. All of this has been explained in detail and clearly both in the Qur'an and the hadiths of the Prophet Muhammad SAW.

This type of research is normative legal research, which is research that studies how positive legal provisions (statutes) and written documents regarding certain legal events or incidents are found in society (Abdulkadir, 2004). Using a statutory approach (*statute approach*) and a conceptual approach (*conceptual approach*). Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and books or articles related to marriage and polygamy are the legal materials used.

2. Preliminaries or Related Work or Literature Review

Islamic Law and Positive Law Regarding Polygamy.

Islam is a religion with comprehensive teachings, as evidenced by the various laws surrounding polygamy, which offer solutions to all worldly problems. All of this is intended to provide a solution that, hopefully, leads to happiness in this world and the hereafter. Islam encourages its followers to marry and not remain single. Of course, such marriages must meet the requirements and pillars of validity according to religion and law.

The rise of polygamy throughout human history has been influenced by how society views women. Polygamy thrives when society views women as inferior, and declines when society views women as honorable. Therefore, polygamy declines as society lowers women's status (Mulia, 2004).

Etymologically, the word polygamy comes from Greek, *polus* meaning many, and *gamos* meaning marriage. With these words combined, polygamy means marriage to more than one person (Mursalin, 2007). A marriage where a husband has more than one wife at the same time is also called polygamy (Tihami, 2013). According to the Big Indonesian Dictionary, polygamy is a marriage where one party has/marries several members of the opposite sex at the same time (Bahasa, 1993). Meanwhile, in terms of terminology, polygamy is defined as the ability of a man to marry two, three, or four women, if he has the ability to act fairly.

Ta'addud al-zanajat, which means many wives, is the definition of polygamy in Islamic jurisprudence. Therefore, the majority of scholars limit polygamy to only four women (Mursalin, 2007). From an Islamic perspective, polygamy is considered a solution to various problems, one of which is maintaining women's dignity. The Prophet Muhammad and his companions demonstrated effective examples of polygamy, an Islamic concept.

Islam legalizes the practice of polygamy with certain limitations and conditions. Among Muslims, debates regarding polygamy always end without agreement, so this can give rise to

several views. These views include: 1) The permissibility of loose polygamy practices, some of which condemn *the sunnah* in polygamy. 2) Polygamy is permissible as long as there are several strict conditions, such as the requirement of justice and permission from the previous wife. 3) The strict prohibition of polygamy practices (Muhammad, 2020).

Information in *the Fiqh al-Islam* book Wa Adillatuh, Wahbah Zuhaili provides an understanding that polygamy in a household is permitted by fulfilling several "capable" requirements (Al-Zuhaili, 2004). In the book it is explained that religion sets two conditions that allow a husband to practice polygamy, including: 1). Being fair. This means that the justice given by the husband to his several wives must be equal, both in terms of physical and spiritual sustenance. 2). Providing sustenance. According to Islamic law, this condition shows that marriage cannot be carried out if the husband cannot pay for his wife's living needs. In this case, the husband is responsible for providing his wife with food, clothing, a house, and other basic needs. This sustenance is considered obligatory according to the Qur'an, the Sunnah, and the ijma' (agreement) of scholars (Al-Zuhaili, 2004). The husband must be able to fulfill all the needs of his wives, including basic and additional needs. In addition, the needs of the children of the wives must also be met by the husband. This is the obligation of a husband who practices polygamy.

According to the views of several other *jurists*, it is explained that there are several conditions that make polygamy a step that must be taken immediately, including strong sexual desires that are not fulfilled when having one wife, an illness suffered by the wife that cannot be cured so that it becomes a barrier to intercourse or causes unavoidable discomfort, and the husband in question has not decided to divorce his wife. He does not want their long marriage to end in divorce. This is not a good feeling, but it does not make his wife happy. However, it is important to remember that all of this is not permissible in the sight of Allah SWT and can lead to divorce if the wife asks for it (Abud, 1999).

Basically, Muhammad Abduh, known as a modern scholar who opposed polygamy, made a strong argument about justice in favor of polygamy. A person's ability to be fair to his wives is the problem. We often encounter people today who are unable to fully provide justice to their wives. Polygamists usually neglect their wives and children. Their love is more inclined towards the younger wife. As a result, they give more attention and affection to their younger wives. Because husbands do not pay enough attention to their older wives, the wives choose to move to other areas to raise and educate their children. They cannot be fair even in cases of sexual needs. They are clearly attracted to young wives because of their more enthusiastic service compared to the older wife. This also causes material needs. Husbands will always give their younger wives extra "service". In a situation like this, the older wife clearly feels disadvantaged and does not have the ability to show the desired justice (Realitas, 2005).

Quraish Shihab found justice in QS. An-Nisa verse 129, indicating that justice from the heart's inclination is something that cannot be achieved by humans. Before limiting polygamy, it is necessary to know that polygamy with negative consequences such as violation of the law is not a good reason to cancel the provision. This cancellation also has a negative impact on society. Underhand marriages and mistresses have a negative impact on society, especially on women. If polygamy is based on good intentions according to the applicable conditions, then the husband can do it if it is more beneficial for both parties (Shihab, 2005).

In the Indonesian legal system, Law No. 1 of 1974 and Government Regulation No. 9 of 1975, as well as the Compilation of Islamic Law (KHI), provide an explanation of marriage in Indonesia. The fact that the initial marriage law caused controversy makes it considered a regulation that falls into the "sensitive" category. Although they did not succeed in eliminating polygamy, the law only stipulates that a man in marriage may only have one wife (the principle of monogamy), according to Article 3 Paragraph (1) (Subekti, 1990).

Article 4 paragraphs 1 and 2 of Law Number 1 of 1974 concerning Marriage. This article states that a husband must submit an application to the court in the area where he lives and based on reasons justified by the laws in force in Indonesia. These reasons include: 1). The wife cannot carry out her duties as a wife. 2). The wife has a physical disability or an incurable disease. 3). The wife cannot bear children (Kemenag, 1974).

Meanwhile, Article 5 of Law Number 1 of 1974 concerning Marriage also outlines several requirements that a husband must meet when applying for permission to have polygamy with the court. These requirements include: 1) Consent from all previous wives. 2) Certainty that the husband is able to guarantee the living expenses of his wives and their children. 3) Guarantee that the husband will treat his wives and children fairly.

Division of Assets in Marriage.

The role of property in a household is not only to meet daily living needs but also to serve as a bond between the marriage. However, property is often a factor that leads to disputes and even divorce. Husband and wife earn a joint income as a result of their efforts to meet household needs. This income is known as joint wealth, or the wealth owned by both partners since the completion of the marriage ceremony.

Linguistically, treasure is *al-maal* which means leaning, tending and tilting. Wahbah al-Zuhaili is of the opinion that, in terms of language, wealth is every item that is truly owned and controlled by humans, whether in the form of *'ain* (gold, silver, animals and plants), as well as benefits (riding vehicles, wearing clothes and occupying a house). (Fihri, 2017)

Article 36 paragraphs 1 and 2 state: "Husband and wife can act or do anything in joint property with the consent of both parties." and "Each partner has the full right to carry out legal actions regarding the property they own." Meanwhile, Article 37 reads: "If the marriage ends due to divorce, the property is regulated according to the respective laws." Then Article 85 of the Compilation of Islamic Law (KHI) explains "Joint property owned in marriage, does not rule out the possibility of also originating from the property brought by each party" (Supriatna, 2009).

This property division agreement not only provides legal protection for the first wife and children, but also serves as a benchmark for the court in granting permission for polygamy. As the authorized institution, the Religious Court will assess whether the prospective husband is capable of acting justly, both physically and spiritually, including in economic matters and fulfilling the wife's rights. Therefore, the property division agreement is an integral part of efforts to create justice in the practice of polygamy.

Agreement and Legal Conditions .

As an effort to fulfill interests, many ways will be done by humans, one of which is by using an agreement. According to R. Subekti, an agreement is when someone makes an agreement with another person. According to Yahya Harahap, an agreement is a legal relationship between two or more people, each of whom conveys the rights of each party to

achieve an achievement and requires the other party to do so as well (Haraha, 1986). There are three elements of the basic purpose of an agreement, including: 1) . Enforcing a promise and protecting the hopes that arise from it reasonably. 2) . Prevention of efforts to enrich oneself without considering justice and truth. 3) . Prevention from certain types of danger (Sinaga, 2018).

Article 1320 of the Civil Code (KUHPerdata) outlines several requirements needed to determine whether an agreement is valid or not, including: 1). Their binding agreement. 2). The ability to make an agreement. 3). A specific problem. 4). A reason that is not prohibited.

3. Proposed Method

The type of research used in this study is normative legal research. This research focuses on the examination of positive legal norms, legal principles, and legal doctrines related to the regulation of property division agreements as a requirement for polygamy permit applications. Normative legal research was chosen because the object of study is related to regulatory reconstruction, interpretation of legal norms, and doctrinal analysis regarding the harmony between positive law, values of justice, and the principles of *maqāṣid al-syarī'ah*.

4. Results and Discussion

Aristotle's Justice in the Division of Marital Property

theory can be used to study the concept of justice in the division of marital property, especially in the context of distributive and corrective justice. In the *Nicomachean Ethics*, Aristotle states that the principle of geometric proportionality governs distributive justice, meaning that each party receives according to the value or service he or she provides (Poama, 2017). These principles in the context of marriage include direct financial contributions, career sacrifices, household maintenance, and the expenditure of energy and time to build family assets. In contrast, corrective justice or commutative justice seeks to restore the disturbed balance in the ownership relationship. The potential for financial conflict with the first wife is great during marriage, especially when the husband intends to practice polygamy. Therefore, corrective justice provides the basis for an agreement on the division of property, which serves as a means to correct mistakes. This agreement can include the establishment of joint property that guarantees rights that have been acquired during the marriage and compensation for financial losses experienced by the first wife (Englard, 2009).

theory of justice also provides a strong philosophical basis for protecting the first wife in polygamy. Establishing joint property can be seen as a specific application of justice to prevent inequality in polygamy. Theoretically and practically, a pre-polygamy agreement can protect the first wife's rights. This is crucial because the first wife's insignificant role and contribution are often overlooked during the property division process. In addition to their significant economic and social value, domestic contributions such as household management, supporting the husband's career, and caring for children should be recognized proportionately.

However, a numerical division of assets (e.g., 50:50) does not always guarantee true justice. The concept of substantive justice requires deeper consideration, including the first wife's historical contributions, economic sacrifices, and future financial and social needs. Therefore, in practice, judges have the latitude to adjust the division of assets to achieve a more substantively just outcome. In this context, substantive justice provides a stronger

foundation than formal justice, particularly in cases involving polygamy and historical inequalities in domestic relations.

To ensure real protection, some practices show that the determination of joint property before polygamy can limit the second wife's claim to assets that have been built by the first wife. This is in line with Gustav Radbruch's idea that there are three main pillars of law, namely: justice, benefit, and legal certainty (Satjipto Rahardjo, 1996).

contribution in the form of domestic work and emotional support should also be the basis for the principle of proportionality. In a reformist approach to family law, non-monetary contributions such as home care, childcare, and support for the husband's career should be taken into account in the division of property. Aristotelian distributive justice requires the recognition of all contributions that have economic value, even if they are not directly recorded. The challenge is how to measure these non-monetary contributions. Several progressive jurisdictions have begun developing domestic work standards, career sacrifice assessment methodologies, and indicators of joint asset building to support a more equitable division of property.

provisions must be made regarding economic and non-economic contributions in pre-polygamy agreements. For agreements to truly meet Aristotle's principle of justice, contribution elements and evaluation mechanisms, such as periodic assessments and dispute resolution processes, must be included. Administrative or numerical agreements are not sufficient; a broader approach and legal instruments that can address complex household dynamics are needed.

In conclusion, Aristotle's theory of justice provides a strong basis for using property-division agreements before polygamy as a sound and ethical means of protecting the rights of all parties. While corrective justice addresses potential inequalities caused by polygamy, distributive justice demands distribution based on proportional contributions, including non-monetary contributions. Therefore, there is a legal and moral obligation for couples contemplating polygamy to establish a fair property-division agreement before remarrying. Furthermore, the legal system must recognize and protect such agreements as valid and binding instruments of justice.

According to this analysis, legal reform is needed to explicitly recognize the existence and legal force of pre-polygamy agreements, standardize the assessment of non-monetary contributions, increase public awareness of the importance of justice in marriage, and train judges to be able to apply the principles of distributive and corrective justice proportionally and contextually. Therefore, an asset division agreement is an implementation of the principle of substantive justice that protects the dignity, rights, and well-being of each member of the marriage, especially in complex situations such as polygamy. An asset division agreement is also a legal technical solution.

Property Distribution Agreement Based on *Maqasid al-Syari'ah*.

According to al-Syatibi in *al-Mumafakat*, sharia aims to maintain social stability and close the gaps of potential slander in community life. This can cause structural damage in family units and society (Al-Syatibi, 2004). As the basis of Islamic legal thought, *maqāṣid al-syarī'ah* seeks to bring goodness and avoid evil in human life. Historically, *maqāṣid* is divided into five main categories that must be protected by sharia: religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-nafs*), reason (*ḥifẓ al-'aql*), descendants (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). *Maqā*

Ṣid as a legal and social protection tool is very important in the context of property division agreements before implementing polygamy, especially for women and children, who are structurally in a risky position.

First, *ḥifẓ al-nafs* (protection of the soul), physical and psychological safety is the most important thing. The agreement on the division of property before polygamy prevents conflict and tension in the household. Injustice, jealousy, and psychological problems for the first wife often arise from polygamy that is not accompanied by a clear division of property. This can even develop into domestic violence (KDRT), depression, divorce, or all of the above. Consequently, this agreement can be understood as a form of protection of the soul in the *maqāṣid*. According to Jasser Auda, *maqāṣid* is not only theoretical but must also be realized in policies and regulations that prevent social damage (Auda, 2008).

Second, *ḥifẓ al-nasl*. Protecting offspring is fundamental for families with more than one spouse. Clarity and stability of the household economy are crucial for the well-being of children, both from the first wife and subsequent ones. Children from the first wife risk being deprived of their rights to sustenance, education, and emotional protection if a complex family structure such as polygamy does not have a fair and transparent system of property distribution. An agreement on the distribution of property before polygamy creates legal certainty that prevents conflict between offspring. This is in accordance with the *maqāṣid*, which emphasizes the formation of a generation that is socially, physically, and mentally healthy (Kamali, 2003).

Third, *the law of division of property demonstrates the importance* of managing and distributing wealth fairly according to sharia. Often, in polygamous practices, joint property is transferred or spent without the consent or protection of the first wife. This violates the principle of financial responsibility in Islamic law, as well as distributive justice, which is the basis of the *maqāṣid*. The purpose of the property division agreement is to protect the economic rights of the first wife legally and normatively and prevent bad actions that can cause financial loss. Property is very important to maintain because it concerns the stability of human life and the continuity of social functions (Al-Shāṭibī, 1997).

From these three *maqāṣid*, it is clear that the property division agreement prior to polygamy is a concrete representation of the values of justice and protection in Islamic law in addition to being a legal administrative tool. The regulation of this agreement demonstrates the principle of *ta'ālī*, or the rationality of Islamic law, which prioritizes the good of the family over the harm that can occur due to social and economic inequality in the household. Therefore, a strategic step to incorporate *maqāṣid al-sharī'ah* into the modern family law system is to include a property division agreement clause into marriage policies, especially in cases of polygamy.

As stated in QS. al-Nisā': 3, "If you fear that you will not be able to do justice, then (marry) only one." In this context, justice encompasses both economic and emotional aspects. Therefore, the agreement on the division of property before polygamy effectively translates into *the maqāṣid al-sharī'ah*. It improves the governance of polygamous families by protecting the lives, descendants, and wealth of the family.

Asset Distribution Agreement Based on *Sadd al-Dzari'ah*.

One important principle in the legal *istinbath* method is *sadd al-dzari'ah*, which serves to prevent damage (*mafsadah*) or greater harm. The principle of *sadd al-dzari'ah* is used to reject

an action that is basically permissible but can cause damage or violate sharia law if carried out freely without supervision. This term comes from the word "closing the means that lead to damage" (Al-Jawziyyah, 1991). *Sadd al-dzari'ah* is very relevant for use in the context of polygamy, especially in terms of property division agreements.

Without an agreement on the division of assets, there are several risks that may arise, including: *First*, after the husband remarries, the first wife's joint property rights may be neglected because there is no legal guarantee that the joint property portion remains the property of the first or previous wife. *Second*, the husband may transfer family resources to the second wife in the form of assets, property, or financial liabilities, which will impact the financial stability of the first wife and her children. *Third*, over time, there is a greater possibility that legal disputes regarding joint property will arise, which will burden the religious court system and increase family conflict that can lead to divorce or inheritance disputes (Khasanah, 2022).

According to *the sadd al-dzari'ah* approach, the division of joint property before a husband practices polygamy must be regulated and established as a legal and formal requirement. As the institution tasked with enforcing marriage law, religious courts must require an agreement on the division of property as part of the application for permission to polygamy. This aligns with the precautionary principle in Islamic law (*fiqh al-ih̄tiyāt*) and aims to provide preventative protection before conflicts actually arise. This method will ultimately strengthen the Islamic family law system, which is not only legalistic but also intelligent in building a just and stable social order.

The Concept of Asset Division in the Context of Polygamy Permission.

There are two alternative models for the division of assets in marriage, especially in cases of polygamy, which can be used as a solution model, namely: equal division and division based on contribution. The concept of corrective justice proposed by Aristotle is applied in the first alternative, equal division. This concept describes justice as restoring an equal position between two parties after an unbalanced economic or social relationship (England, 2009). The second alternative is distributive justice, which emphasizes the proportionality of distribution based on the services, roles, and real contributions provided by each party in forming joint wealth.

Normatively, the second alternative is more in line with the evolving gender roles in modern society, where women are now more involved in the economy. In addition, the principle of *maqasid al-shari'ah*, which focuses on safeguarding wealth (*ḥifẓ al-māl*) and offspring (*ḥifẓ al-naṣl*), is fulfilled by a contribution-based approach. Proportional distribution of wealth based on each person's contribution will create financial stability, prevent conflict after polygamy, and ensure equitable childcare and education within the family (Kamali, 2003).

Consequently, the contribution-based approach produces substantive justice that is more in line with Sharia values and is clearer and simpler than equal distribution. Consequently, to better protect the rights of all parties, courts and policymakers should consider the second alternative as the primary normative framework when drafting property division agreements, both before and after polygamy.

5. Conclusions

A property division agreement as a requirement for permitting polygamy is a pressing legal requirement from a normative perspective and has philosophical and sociological consequences. If not addressed through a fair property division system, conflicts within a polygamous household, such as financial instability, conflict between wives, and neglect of children's rights, are likely to arise. This agreement is crucial to safeguard the joint assets of husband and wife before polygamy is implemented, ensuring the rights of the first wife and children are properly fulfilled. A husband is not permitted to practice polygamy if there is no guarantee of the fulfillment of the first wife's rights, including material ones.

According to an integrative approach based on Aristotle's theory of justice, this arrangement can serve as a tool for the distribution and improvement of justice, where the rights of each party are considered proportionally and fairly based on their real contributions during the marriage. Furthermore, according to the *maqāṣid al-syarī'ah* approach, protection of the soul (*ḥifẓ al-nafs*), offspring (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*) can only be achieved through preventive measures such as the application of the principle of *sadd al-dzarī'ah*. As the original purpose of *sadd al-dzarī'ah* itself is to prevent damage that can be caused by the immoral practice of polygamy. Something that was initially permissible in law, with some theoretical studies of *sadd al-dzarī'ah* can be prohibited. Therefore, making an agreement on the division of property a legal requirement for applying for polygamy is not only legally valid, but also in line with morality, justice, and the protection of family law in the contemporary era. Thus, the reformulation of Law Number 1 of 1974 which integrates the terms of the property division agreement can strengthen the aspect of justice in polygamous marriages, but must be accompanied by technical details of implementation so that it is not merely rhetoric.

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