# An Analysis of The Judge's Considerations in Decision Number 508/Pdt.G/2020/PA.Kjn Regarding the Rights of Persons With Mental Disabilities in Conflict With the Law

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## Abstract

Law Number 8 of 2016 concerning Persons with Disabilities regulates the rights of people with disabilities, including when dealing with the law. Judges must consider special provisions for disabled people when processing cases involving them. Decision Number: 508/Pdt.G/2020/PA.Kjn regarding the granting of polygamy where the defendant is mentally disabled, it appears that the Judge did not use this regulation, so this article aims to examine juridically the basis of the Judge's considerations in deciding this case. The type of research used in this research is library research with a juridical-normative approach. The data analysis technique used uses interactive qualitative-descriptive analysis techniques. The results of this research show that judges in formulating legal considerations use general legal provisions on evidence and do not use special legal provisions for people with disabilities. Proving an application as an ODGJ does not go through an expert examination appointed by law and the appointment of a guardian or guardian also does not go through a District Court determination. Because there are no special legal arrangements for ODGJ who litigate in the Religious Courts, it is best for judges to explore and discover the law using interpretation and construction methods.

***Keywords:*** *Mental Disabilities, Judges' Considerations, and Polygamy.*

## Introduction

Polygamy refers to the practice of a man marrying more than one woman or having more than one wife. In Islam, polygamy is limited to a maximum of four wives. In Indonesia, the regulation of polygamy permits is governed by Law Number 1 of 1974 concerning Marriage. The law stipulates that a husband who wishes to practice polygamy must fulfill several alternative and cumulative requirements. Alternative requirements refer to one of the legally recognized grounds that must be presented by a husband when applying for permission to practice polygamy (Mardani, 2016). These alternative grounds include circumstances in which the wife is unable to fulfill her marital obligations, suffers from a physical disability, or is unable to bear children. Meanwhile, cumulative requirements are mandatory conditions that must be fulfilled by a husband seeking permission to practice polygamy. These include obtaining the

wife's consent, providing a guarantee of the husband's ability to meet the family's financial needs, and ensuring that the husband can treat his wives fairly (Khaeron Sirrin, 2018). Chapter IX of the Compilation of Islamic Law also regulates permission for polygamy, in accordance with the provisions stipulated in the Marriage Law.

In practice, there have been Religious Court decisions granting applications for permission to practice polygamy on the grounds that the respondent has a mental disability or is a person with a mental disorder (Orang dengan Gangguan Jiwa, hereinafter referred to as ODGJ). One such decision is the ruling issued by the panel of judges of the Kajen Religious Court, Case Number 508/Pdt.G/2020/PA.Kjn. The decision became legally final and binding (in kracht van gewijsde) on May 4, 2020. In this case, the judges concluded that the respondent was no longer able to fulfill her obligations as a wife due to her mental disability. The respondent was considered unable to perform almost all of her marital and domestic responsibilities, including serving her husband, caring for her children, and fulfilling her role as a homemaker (Haniah, 2023).

Under Law Number 8 of 2016 concerning Persons with Disabilities, individuals with mental disabilities are defined as persons whose cognitive, emotional, and behavioral functions are impaired. The severity of mental disabilities varies; some conditions are difficult to treat, while others may be treated through medical therapy or psychotherapy (Sugiono et al., 2014). This law stipulates that, before examining a person with a disability, law enforcement officials are required to seek opinions or recommendations from a doctor or other healthcare professional regarding the person's health condition, a psychologist or psychiatrist regarding the person's mental condition, and a social worker regarding the person's psychosocial condition. If obtaining such opinions or recommendations is not immediately possible, the examination must be postponed until a specified time (Article 30(1)) (Ana Faizah, 2023).

The Kajen Religious Court Decision Number 508/Pdt.G/2020/PA.Kjn raises legal issues concerning the procedural requirements for granting permission to practice polygamy when the respondent is a person with a mental disability. In examining the decision, the author found no evidence indicating that a psychiatrist or psychologist had examined the respondent to provide an assessment of her mental condition. In this case, the respondent was represented directly by her elder sibling, and the judges did not apply the legal provisions intended to protect the rights of persons with mental disorders, as stipulated in Article 30(1) of the Law on Persons with Disabilities. From a legal standpoint, Law Number 8 of 2016 provides that a person with a mental disorder is entitled to legal guardianship when involved in legal proceedings, and an application for such guardianship may be submitted to the competent District Court (Erkham Maskuri, 2023).

Based on these findings, the author argues that Kajen Religious Court Decision Number 508/Pdt.G/2020/PA.Kjn raises juridical concerns regarding the legal grounds underlying the judges' considerations, making it important to conduct further research. The central juridical issue lies in the fact that the decision was rendered through judicial procedures that did not implement one of the specific legal protections afforded to persons with mental disorders, as previously explained. This juridical issue is closely related to the purpose of judicial decisions in realizing justice. Judges are required to adjudicate cases based on applicable laws and regulations.

Legal justice is a concept of justice measured against legal standards, namely justice based on criteria established by law in the form of rights and obligations enforced through legal

proceedings (Pandu Dewanto, 2020). When judges decide cases by disregarding statutory provisions, even if only certain procedural norms are set aside, the fairness of their decisions may be questioned, as may the legal justification for disregarding those provisions (Firman A. Mulingka, 2015). Therefore, the author considers this decision worthy of further examination to obtain a deeper understanding of the judicial considerations underlying the decision, particularly the reasons for disregarding specific legal provisions designed to protect the rights of persons with mental disorders.

## Methods

This study employs library research using a juridical-normative approach, drawing on an examination of legal materials from legislation, books, journal articles, and previous research findings. The data are analyzed using a qualitative-descriptive method based on the interactive model.

## Results and Discussion

### General Provisions and Procedures for Polygamy

The provisions governing polygamy in the Marriage Law are stipulated in Article 3(1), which establishes that Indonesian marriage law adheres to the principle of monogamy. This principle states that a man may have only one wife, and a woman may have only one husband. However, under certain circumstances, polygamy is permitted, as provided in Article 3(2), which stipulates that a court may grant a husband permission to have more than one wife if the parties concerned so desire. In this context, the court may grant permission for polygamy subject to the applicable legal requirements, including the wife's consent as stipulated in Articles 4(1) and 4(2) (Surjanti, 2018).

The enactment of this law represents a positive legislative response to regulating marriages in which a husband intends to marry more than one woman. Polygamy is permitted on specific grounds and subject to certain requirements and procedures that do not contradict Islamic teachings. The principal requirement for polygamy is that a husband must treat his wives fairly, including in terms of material and emotional support, attention to family needs, affection, and family protection, in order to establish harmonious family relationships. For the sake of the public interest and the prevention of harm, specific grounds are required to justify polygamous marriages (Huzaimah T, 1996).

Article 55 of the Compilation of Islamic Law (Kompilasi Hukum Islam, hereinafter referred to as KHI) stipulates that a man may have no more than four wives simultaneously. The principal requirement for having more than one wife is that the husband must be capable of treating his wives and children fairly. If this fundamental requirement cannot be fulfilled, the husband is prohibited from having more than one wife. Furthermore, Article 56 of the KHI provides that a husband intending to have more than one wife must obtain permission from the Religious Court. A marriage to a second, third, or fourth wife conducted without permission from the Religious Court does not have full legal force (Jaih Mubarok, 2015).

The procedures for practicing polygamy in Indonesia are regulated by the Marriage Law, the Compilation of Islamic Law, and Government Regulation Number 9 of 1975. In principle, both Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law adhere to monogamy, whereby a man may have only one wife and a woman may have only one husband. However, if a husband intends to have more than one wife, Article 4(1) of the

Marriage Law requires him to submit an application to the court in the jurisdiction where he resides. 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 illness, and/or is unable to bear children, as stipulated in Article 4(2) of the Marriage Law and Article 57 of the KHI (Shinta Dewi R., 2014).

As stipulated in Article 5 of the Marriage Law and Article 58 of the KHI, the principal requirements for submitting an application for permission to practice polygamy to the Religious Court include obtaining the wife's consent and providing assurance that the husband is financially capable of meeting the living needs of his wives and children (Dermawansyah, 2020). The procedure for applying for permission to practice polygamy is further regulated in Article 40 of Government Regulation Number 9 of 1975, which requires a husband intending to have more than one wife to submit a written application to the court. Meanwhile, the court's responsibilities are stipulated in Article 41 of Government Regulation Number 9 of 1975. Upon receiving an application for permission to practice polygamy, the Religious Court examines the following matters (Nuruddin et al., 2004):

a. Whether there are grounds justifying the husband's intention to marry again, as stipulated in Article 4(2) of the Marriage Law and Article 57 of the KHI.
b. Whether the wife has given her consent, either orally or in writing. If consent is given orally, it must be expressed before the court, as stipulated in Article 5 of the Marriage Law and Article 58 of the KHI.
c. Whether the husband has the financial capacity to provide for his wives and children, as stipulated in Article 5 of the Marriage Law and Article 58 of the KHI. This capacity may be demonstrated through supporting documents, including a statement of the husband's income, an income tax statement, and other documents deemed acceptable by the court.
d. Whether there is an assurance that the husband will treat his wives and children fairly, as demonstrated by a statement or undertaking made by the husband in the prescribed form, as stipulated in Article 55 of the KHI.

Furthermore, pursuant to Article 42 of Government Regulation Number 9 of 1975, during the examination process, the Religious Court must summon and hear the wife who is to be joined in a polygamous marriage by her husband. The court must conduct the examination no later than 30 (thirty) days after receiving the application and its accompanying documents. If the court determines that sufficient grounds exist to justify the husband's intention to have more than one wife, it shall issue a decision granting permission for polygamy, as stipulated in Article 43 of Government Regulation Number 9 of 1975. In addition, marriage registration officers are prohibited from registering a marriage involving a husband who intends to have more than one wife before the court's permission has been obtained, as stipulated in Article 44 of Government Regulation Number 9 of 1975.

**Polygamy Case Procedures in Decision Number 508/Pdt.G/2020/PA.Kjn**

In the factual circumstances of the case, the Applicant’s reason for seeking permission to practice polygamy was that the Respondent was unable to fulfill her duties as a wife and homemaker in meeting the Applicant’s rights as a husband and head of the household. This was attributed to the Respondent’s mental health condition, which had deteriorated while she was the first wife. Consequently, the Applicant intended to marry another woman in the hope of restoring the normal functioning of the marital relationship. Following their marriage, the

Applicant and the Respondent had been blessed with three (3) children who remained under their joint care. The Applicant and the Respondent also owned marital property in the form of a plot of land with a house and building measuring 56 m², which constituted their joint property acquired during the marriage.

The Applicant's prospective second wife was a divorcee. Based on the facts of the case, there was no blood relationship, relationship by marriage, or relationship through breastfeeding between the prospective second wife and the Applicant that would constitute a legal impediment to their marriage. Economically, the Applicant earned IDR 1,000,000 per month and worked as a laborer, with additional work as a *mubaligh* (Islamic preacher) or Qur'anic teacher. The Applicant also declared that he was capable of treating his wives and children fairly, including the Respondent, who had a psychosocial disability.

In general, the statutory grounds for permitting polygamy are stipulated in Article 4 paragraph (2) of Law No. 1 of 1974 concerning Marriage. The court referred to in paragraph (1) of that article may grant permission to a husband who wishes to have more than one wife only if his wife is unable to fulfill her duties as a wife, suffers from a physical disability or an incurable disease, and/or is unable to bear children.

Article 57 of the Compilation of Islamic Law (*Kompilasi Hukum Islam* or KHI) also regulates this matter for Muslim married couples. The Religious Court may permit a husband to marry more than one wife only if the existing wife is unable to perform her duties as a wife, has a physical disability or an incurable disease, or is unable to bear children (Jaih Mubarok, 2015). In this case, the Respondent, as the Applicant's lawful wife, was experiencing a mental health disorder that prevented her from fulfilling her duties as a wife and homemaker.

1. Requirements for Polygamy

a. Alternative and Cumulative Requirements

In Decision No. 508/Pdt.G/2020/PA.Kjn, one of the alternative requirements for granting permission to practice polygamy that was fulfilled by the Applicant was the condition that the wife was unable to perform her duties because she had a mental disorder or was classified as a person with a mental disorder (*Orang dengan Gangguan Jiwa* or ODGJ). This fact was stated in paragraph 2 of the Applicant's statement of claim (*posita*). In paragraph 5 of the *posita*, the Applicant also argued that he was unable to achieve the objectives of marriage, namely establishing a happy and lasting household (family) based on belief in the One Almighty God. Consequently, these objectives could not be achieved or, at the very least, had been disrupted.

Meanwhile, the cumulative requirements fulfilled by the Applicant were set out in paragraph 7 of the *posita*, which stated that the Applicant had discussed his intention to practice polygamy with the Respondent, his lawful wife, and that the Respondent had expressed her consent and raised no objection to his intention. Furthermore, paragraph 10 stated that the Applicant was capable of providing for the living expenses of his wives, while paragraph 11 stated that the Applicant was willing and able to treat his wives fairly. In factual terms, both the alternative and cumulative requirements were stated in the Applicant's petition.

b. Fulfillment of Administrative Requirements as Documentary Evidence

The administrative requirements in the form of authentic documentary evidence submitted in support of the Applicant's petition in Decision No. 508/Pdt.G/2020/PA.Kjn can be outlined as follows:

1. A photocopy of the Applicant's Identity Card (*Kartu Tanda Penduduk* or KTP), Number 3326140111650001, dated March 22, 2012;
2. A photocopy of the Respondent's Identity Card (*Kartu Tanda Penduduk* or KTP), Number 3326441027900001, dated March 22, 2013;
3. A photocopy of the Marriage Certificate Extract issued by the Office of Religious Affairs (*Kantor Urusan Agama* or KUA), Buaran District, Pekalongan Regency, Number 275/24/III/1995, dated March 17, 1995;
4. A photocopy of the Family Card (*Kartu Keluarga* or KK) in the name of Anas Shodikun (the Applicant), Number 3326142209051431, dated May 14, 2007;
5. A photocopy of the Applicant's Income Certificate, Number 046/110, dated March 17, 2020, issued by the Head of Simbang Wetan Village, Buaran District, Pekalongan Regency;
6. A photocopy of the Applicant's Wealth Certificate, Number 046/111, dated March 17, 2020, issued by the Head of Simbang Wetan Village, Buaran District, Pekalongan Regency;
7. A photocopy of Freehold Land Title Certificate (*Sertifikat Hak Milik* or SHM) Number 00902, registered in the name of XXXX (the Respondent), together with Survey Map Number 00296/Simbangwetan/2019, dated May 17, 2019, issued by the Pekalongan Regency Land Office;
8. A photocopy of the Identity Card of Nur Fitriyah (the prospective second wife), Number 3326185408790001, dated November 23, 2012;
9. A photocopy of the Divorce Certificate in the name of Nur Fitriyah, Number 0249/AC/2019/PA.Kjn, dated February 14, 2019, issued by the Kajen Religious Court;
10. A photocopy of the Declaration of Ability to Act Fairly, dated March 12, 2020, signed by the Applicant;
11. A photocopy of the Statement of Consent to Polygamy, signed by the Respondent using her thumbprint, dated March 12, 2020;
12. A photocopy of the Statement of Consent to Polygamy, signed by the Applicant's prospective second wife, dated March 12, 2020.

2. Procedures for Examining the Case

The duties of the Religious Court are regulated in Article 41 of Government Regulation No. 9 of 1975. Upon receiving an application for permission to practice polygamy, the Religious Court examines the case, including the following matters:

a. Whether Grounds Exist That Permit a Husband to Marry Again

In Decision No. 508/Pdt.G/2020/PA.Kjn, the Applicant's grounds were presented in paragraphs 5 and 6 of the *posita*, concerning the Respondent's mental health disorder, which was described as ODGJ.

b. Whether the Wife Has Given Her Consent

The court examines whether the wife has given her consent, either orally or in writing. If consent is given orally, it must be expressed before the court. In Decision No. 508/Pdt.G/2020/PA.Kjn, the Applicant submitted a Statement of Consent to Polygamy signed by the Respondent using her thumbprint.

c. Whether the Husband Is Financially Capable of Providing for His Wives and Children and Can Guarantee Fair Treatment

The court examines whether the husband has the financial capacity to provide for the living needs of his wives and children and whether he can guarantee fair treatment toward them. In Decision No. 508/Pdt.G/2020/PA.Kjn, the Applicant submitted a Declaration of Ability to Act Fairly, dated March 12, 2020, signed by the Applicant.

3. Evidence Presented by Witnesses

The first witness in Decision No. 508/Pdt.G/2020/PA.Kjn was a neighbor of the Applicant and the Respondent. The first witness confirmed that the Applicant and the Respondent had been married for a long time and had three children. The witness also confirmed that the Applicant wished to marry another woman because the Respondent was considered less capable of meeting the Applicant's needs due to her physical and mental health conditions, which were described as including a degree of psychological distress.

Furthermore, the Respondent, through her guardian, had consented to the Applicant's application for permission to practice polygamy. The Applicant's prospective second wife was a divorcee and had no blood relationship with the Applicant. The first witness stated that the Applicant worked as a laborer, earning IDR 1,000,000 per week, and also worked as a *mubaligh* and Qur'anic teacher, although the witness did not know how much the Applicant earned from these additional occupations. The Applicant and the Respondent jointly owned property consisting of a plot of land and the house built on it.

The second witness was also a neighbor of the Applicant and the Respondent. Most of the second witness's testimony was substantially the same as that of the first witness. However, the second witness gave a different statement regarding the Applicant's income from his work as a laborer, stating that it amounted to IDR 1,000,000 per month.

**Judicial Considerations and the Operative Part of Decision No. 508/Pdt.G/2020/PA.Kjn**

The alternative requirement concerning the grounds for the Applicant's application was that the Respondent was unable to fulfill her duties as a wife, as established during the court proceedings through the statement of the Respondent's guardian, who confirmed that the Respondent was ill. In this regard, the Panel of Judges considered that the wife could be classified as unable to fulfill her obligations in meeting the Applicant's physical and emotional needs. If these needs were not adequately fulfilled, this could result in adverse consequences and potentially lead to immoral conduct. Therefore, a solution needed to be sought through the practice of polygamy. Accordingly, the relevant requirement submitted by the Applicant was deemed to have been fulfilled.

The cumulative requirement of the wife's consent was also proven, as the Respondent had agreed to the Applicant's intention to marry again, both during the court proceedings and in writing. The Applicant assured the court that he would treat his wives and children fairly. The Respondent also stated that she believed the Applicant would act fairly. Regarding the husband's financial ability to provide for his wife and children, the evidence established that the Applicant earned IDR 1,000,000 (one million rupiah) per month from his work as a laborer, in addition to income from his activities as a *mubaligh* (Islamic preacher) and Qur'anic teacher. Therefore, the Panel of Judges concluded that the cumulative requirements submitted by the Applicant had been satisfied.

Regarding any legal impediments to the Applicant's marriage to his prospective wife, the facts established during the proceedings revealed no prohibition against the marriage arising from blood relationships, relationships by marriage, breastfeeding relationships, or other prohibited kinship relationships. The prospective second wife was also not the Respondent's

sibling, parent, descendant, or niece. Furthermore, the prospective second wife was a divorcee who had completed her *iddah* (waiting period).

In addition to the aforementioned requirements, it was established that the Respondent's guardian understood and accepted the Applicant's proposed marriage to Nur Fitriyah. The evidence also indicated that there was no family dispute between the Applicant and his prospective second wife in connection with the proposed marriage. The Applicant's second marriage was therefore considered beneficial (*maslahah*) for the Applicant, the Respondent, and the prospective second wife. Accordingly, the proposed marriage was deemed consistent with Article 3 paragraph (2) of Law No. 1 of 1974 concerning Marriage and the Qur'anic injunction in Surah al-Nisa, verse 3, which states:

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

In accordance with the provisions of Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia No. KMA/032/SK/IV/2006, a husband applying for permission to practice polygamy is also required to submit an application concerning the determination of marital property jointly owned by the Applicant and the Respondent. The determination of such joint property is intended to protect the Respondent's rights and facilitate the division of the marital assets should a dispute arise in the future.

As mentioned above, the Applicant had submitted a request for the determination of the joint property owned by the Applicant and the Respondent. The Panel of Judges considered that this request could be examined and further assessed because it would safeguard the joint property rights of the Applicant and the Respondent. Exhibit P.7, namely Freehold Land Title Certificate (*Sertifikat Hak Milik* or SHM) No. 00902, was corroborated by witness testimony establishing that, during their marriage, the Applicant and the Respondent had jointly owned a plot of land located in Simbang Wetan Village, Buaran District, Pekalongan Regency, on which a residential building had been constructed.

In conclusion, the Applicant's petition was considered well-founded and consistent with Articles 40 and 41 of Government Regulation No. 9 of 1975, as well as Articles 55 through 58 of the Compilation of Islamic Law (*Kompilasi Hukum Islam* or KHI). Therefore, the petition was deemed appropriate to be granted.

During the proceedings, it was established that the Respondent had attended the initial conciliation hearing. However, at subsequent hearings up to the delivery of the judgment, the Respondent neither appeared in person nor appointed a representative to appear on her behalf, despite having been ordered to attend and having been duly summoned. Consequently, the Panel of Judges considered it appropriate to adjudicate the case in the Respondent's absence. This decision was based on Article 212 of the *Reglement op de Rechtsvordering* (Rv).

Based on these legal considerations, the Panel of Judges decided to grant the Applicant's petition for permission to marry another woman, namely Nur Fitriyah, and to determine the joint property between the Applicant and the Respondent, consisting of land and a building.

The judgment was delivered on Monday, May 4, 2020, by a panel of judges consisting of Drs. Hj. Hani'ah, Drs. H. Saefudin, M.H., and Drs. H. Sapari, M.Si.

**A Juridical Review of the Rights of Persons with Psychosocial Disabilities in Legal Proceedings: A Study of Decision No. 508/Pdt.G/2020/PA.Kjn**

Where an application for permission to practice polygamy involves a person with a mental disability as a legal subject, additional procedural legal requirements must be fulfilled. Several important provisions of Law No. 8 of 2016 concerning Persons with Disabilities are relevant to this matter, as follows:

a. Article 5 paragraph (3)(c) provides that persons with disabilities have the right to have their interests protected in decision-making processes.
b. Article 9(h) stipulates that persons with disabilities have the right to choose and appoint a person to represent their interests in civil matters, both inside and outside the court.
c. Article 28 provides that the Central Government and Regional Governments are obliged to guarantee and protect the rights of persons with disabilities as legal subjects to perform legal acts on an equal basis with others.
d. Article 29 stipulates that the Central Government and Regional Governments must provide legal assistance to persons with disabilities during examinations before law enforcement institutions in civil and/or criminal matters, in accordance with the applicable laws and regulations.
e. Article 30 provides that, before examining a person with a disability, a law enforcement officer must seek consideration or advice from a doctor or healthcare professional regarding the person's health condition, a psychologist or psychiatrist regarding their mental condition, and a social worker regarding their psychosocial condition.
f. Article 32 stipulates that a person with a disability may be declared legally incapable on the basis of a determination issued by a District Court. Such a determination may be sought from the District Court within whose jurisdiction the person with a disability resides.
g. Article 33 paragraph (1) provides that the determination of legal incapacity must be based on clear grounds and supported by evidence from a doctor, psychologist, and/or psychiatrist.
h. Article 33 paragraph (2) provides that the family of a person with a disability has the right to appoint someone to represent that person's interests when the person is declared legally incapable by a District Court, as further stipulated in Article 33 paragraph (3).
i. Other relevant legislation includes Article 433 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*), which stipulates that adults who are persistently in a state of mental incapacity, mental illness, or impaired consciousness must be placed under guardianship, even if they are occasionally capable of exercising their reasoning. Furthermore, Article 434 of the Civil Code provides that an application for guardianship may be submitted by a blood relative, while Article 436 stipulates that such an application must be submitted to the District Court within whose jurisdiction the person for whom guardianship is sought resides (Puspaningtyas Panglipurjati, 2019).

In Decision No. 508/Pdt.G/2020/PA.Kjn, the application for permission to practice polygamy was granted despite the fact that the Respondent, as the Applicant's existing wife, was a person with a mental disability, described in the case as a person with a mental disorder (*Orang dengan Gangguan Jiwa* or ODGJ). Based on the author's analysis of the judicial considerations underlying the granting of permission for polygamy in Decision No. 508/Pdt.G/2020/PA.Kjn, several matters require further examination (Nuruddin et al., 2004), as follows:

a. Whether grounds existed to permit the husband to marry again, as stipulated in Article 4 paragraph (2) of the Marriage Law and Article 57 of the Compilation of Islamic Law (KHI). According to paragraph 2 of the *posita* in Decision No. 508/Pdt.G/2020/PA.Kjn, the Applicant sought permission to practice polygamy because his lawful wife was experiencing a mental disorder and was therefore considered unable to fulfill her duties as a wife. This condition was supported by the testimony of two witnesses, who stated that the Respondent was suffering from a psychological or mental health condition described as being somewhat distressed.

b. Whether the wife had given her consent, either orally or in writing, as stipulated in Article 5 of the Marriage Law and Article 58 of the Compilation of Islamic Law.
According to paragraph 7 of the *posita* in Decision No. 508/Pdt.G/2020/PA.Kjn, the Applicant's lawful wife, in this case the Respondent, had expressed her willingness and raised no objection to the Applicant's intention to practice polygamy. As documentary evidence, the Applicant submitted a Statement of Consent to Polygamy signed by the Respondent using her thumbprint (Exhibit P.11). Furthermore, the testimony of two witnesses indicated that the Respondent had consented to the Applicant's intention to practice polygamy through her guardian.

c. Whether the husband had the financial capacity to provide for his wives and children, as stipulated in Article 5 of the Marriage Law and Article 58 of the Compilation of Islamic Law.
This requirement may be demonstrated through documents such as a certificate of the husband's income, an income tax certificate, and other documents acceptable to the court. According to paragraph 10 of the *posita* in Decision No. 508/Pdt.G/2020/PA.Kjn, the Applicant declared that he was willing and able to provide for the living needs of his wives and children.
In this regard, the Applicant submitted a Certificate of Income, Number 046/110, issued by the Head of Simbang Wetan Village, Buaran District, Pekalongan Regency (Exhibit P.5), and a Certificate of Wealth, Number 046/111 (Exhibit P.6). The Applicant also submitted a land ownership certificate, identified in the case as Exhibit P.7, concerning land and a residential building constituting joint marital property acquired during the Applicant's marriage to the Respondent. The documentary evidence and witness testimony indicated that the Applicant worked as a laborer, Qur'anic teacher, and *mubaligh* (Islamic preacher), earning approximately IDR 1,000,000 per month.

d. Whether there was a guarantee that the husband would treat his wives and children fairly, supported by a declaration or undertaking in the prescribed form, as stipulated in Article 55 of the Compilation of Islamic Law.
According to paragraph 11 of the *posita* in Decision No. 508/Pdt.G/2020/PA.Kjn, the Applicant declared that he was capable of treating his wives and children fairly. This undertaking was supported by a written Declaration of Ability to Act Fairly (Exhibit P.10).

In the Panel of Judges' considerations, the alternative ground relied upon by the Applicant was that the Respondent was unable to fulfill her duties as a wife. This was established during the proceedings through the statement of the Respondent's guardian, who confirmed that the Respondent was ill. In this regard, the Panel of Judges considered that the wife could be classified as unable to fulfill her obligations in meeting the Applicant's physical and emotional needs. The Panel reasoned that the inadequate fulfillment of these needs could result in adverse

consequences and potentially lead to immoral conduct. Therefore, the Panel considered that a solution should be sought through the practice of polygamy. Accordingly, the Panel concluded that the alternative requirement for granting the Applicant's petition had been satisfied.

During the examination of Decision No. 508/Pdt.G/2020/PA.Kjn, the Applicant and the Respondent's guardian participated in mediation proceedings, which were unsuccessful because the Applicant maintained his intention to practice polygamy. The Applicant's reason for seeking permission was that his lawful wife, the Respondent, was experiencing a mental disorder, described in the case as ODGJ. The Applicant expressed difficulty in continuing his marital life under these circumstances because his lawful wife was considered unable to fulfill her duties as a wife. At the same time, the Applicant had developed romantic feelings for another woman, who was a divorcee, and wished to marry her promptly.

During the process of summoning the parties, efforts were made to secure the attendance of both the Applicant and the Respondent. However, the Respondent was reportedly unable to attend the proceedings, prompting the Applicant to request that the Respondent's guardian represent her interests. In this situation, the Panel of Judges proceeded in accordance with the circumstances surrounding the parties' attendance, while the Respondent was experiencing a mental disorder or psychosocial disability.

Nevertheless, Article 30 of Law No. 8 of 2016 concerning Persons with Disabilities stipulates that, before examining a person with a disability, a law enforcement officer must seek consideration or advice from a doctor or healthcare professional concerning the person's health condition, a psychologist or psychiatrist concerning their mental condition, and a social worker concerning their psychosocial condition. This provision is particularly relevant to the examination of the Respondent in Decision No. 508/Pdt.G/2020/PA.Kjn. Accordingly, the extent to which the court complied with these procedural safeguards warrants further legal analysis, particularly regarding the protection of the Respondent's rights and interests as a person with a mental disability involved in judicial proceedings.

Table 1.

Judicial Consideration Instruments in Decision No. 508/Pdt.G/2020/PA.Kjn

| **Legal Facts** | **Evidence** | **Legal Basis Cited** | **Legal Basis That Should Have Been Applied** |
|---|---|---|---|
| The Respondent had a mental disorder (referred to in the case as ODGJ). | Testimony from two witnesses. | The evidence was assessed with reference to Article 1902 of the Indonesian Civil Code, which permits proof by witness testimony unless the relevant legal fact must be established through written evidence. | Evidence concerning the Respondent's mental condition should have been provided by a qualified medical professional, whereas the witnesses in this case were the Applicant's neighbors, as considered in light of Article 30 of Law No. 8 of 2016 concerning Persons with Disabilities. |

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| The Respondent consented to the Applicant's intention to practice polygamy and declared her willingness to accept the Applicant's marriage to another woman. | A written statement of consent bearing the Respondent's signature or thumbprint, together with testimony from two witnesses. | The evidence was assessed with reference to Article 1874 of the Indonesian Civil Code, which recognizes the use of a thumbprint in place of a signature under the applicable legal requirements. | Representation of a person with a mental disability should be examined in accordance with the applicable guardianship provisions, including Article 436 of the Indonesian Civil Code, where legally relevant, to determine whether a court-appointed guardian was required and whether the person's interests were adequately represented. |
| The Applicant was able to provide for the living needs of his wives and children. | A Certificate of Income, evidence of assets, and testimony from two witnesses concerning the Applicant's occupation and income. | The evidence was assessed with reference to Article 1868 of the Indonesian Civil Code, which defines an authentic instrument as one made in the form prescribed by law by or before an authorized public official. Article 1902 was also cited concerning proof by witness testimony, subject to applicable evidentiary requirements. The witnesses in this case were the Applicant's neighbors. | The evidentiary requirements were considered consistent with Article 1868 of the Indonesian Civil Code insofar as the documents qualified as authentic instruments and satisfied the applicable formal requirements. |
| The Applicant was capable of treating his wives and children fairly. | A written declaration by the Applicant affirming his ability to act fairly. | The evidence was assessed with reference to Article 1868 of the Indonesian Civil Code, which defines the requirements for an authentic instrument. | The legal basis was considered consistent with Article 1868 of the Indonesian Civil Code, provided that the document met the statutory requirements for classification as an authentic instrument. |

Based on the table above, the process by which the judges aligned the legal facts, evidence, and statutory provisions was consistent with the general provisions of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUHPerdata), rather than specific legal provisions designed to protect the Respondent as a person with a mental disability (Nur Iftitah I., 2017).

In Decision No. 508/Pdt.G/2020/PA.Kjn, the Panel of Judges applied different approaches to the legal assessment of each factual issue. In examining the Respondent's mental condition, the judges considered the testimony of two witnesses, both of whom were neighbors

of the Applicant, sufficient to establish that the Respondent had a mental disorder. However, the court should have sought supporting documentation or an assessment from a healthcare professional, psychologist, or psychiatrist, as relevant to the requirements of Article 30 of Law No. 8 of 2016 concerning Persons with Disabilities.

In examining the Respondent's consent to the Applicant's intention to practice polygamy, the Panel of Judges considered the written evidence and testimony from the two neighbors sufficient. However, the Respondent's legal capacity, the validity of her consent, and the authority of any person representing her interests should have been examined in accordance with the applicable legal safeguards. Where legally required, representation should have been based on a guardianship determination issued by the District Court.

In assessing the Applicant's financial capacity to provide for his wives and children, the Panel of Judges relied on documentary evidence and the testimony of two witnesses. Similarly, in assessing the Applicant's ability to treat his wives and children fairly, the judges relied on documentary evidence in the form of a written declaration. The latter evidentiary approach was considered consistent with Article 1868 of the Indonesian Civil Code, provided that the document satisfied the legal requirements for classification as an authentic instrument.

In the author's view, Decision No. 508/Pdt.G/2020/PA.Kjn required a more specific legal approach because the Respondent's mental health condition necessitated particular consideration of her rights and legal interests. General provisions governing the rights of persons with disabilities before the law are already established under Law No. 8 of 2016 concerning Persons with Disabilities, particularly Article 5 paragraph (3)(c), Article 9(h), and Articles 28–33, as discussed above. However, neither the Marriage Law nor the Compilation of Islamic Law (*Kompilasi Hukum Islam* or KHI) specifically regulates applications for permission to practice polygamy before the Religious Courts when one of the parties is a person with a mental disability.

The absence of specific procedural provisions governing such cases may explain why judges resort to methods of legal interpretation and legal construction to identify and develop the applicable law (Ahmad Zaini, 2010). The interpretive method involves construing statutory texts while remaining anchored to their wording. By contrast, the constructive method allows judges to employ logical reasoning to develop the meaning and application of statutory provisions beyond their literal wording, provided that they do not disregard the law as an integrated legal system (Abdul Manan, 2013).

## CONCLUSION

The judges' considerations in granting the application for polygamy in Decision No. 508/Pdt.G/2023/PA.Kjn were based on general legal provisions rather than specific legal provisions concerning persons with psychosocial disabilities, despite the fact that the Respondent was a person with a disability. The Panel of Judges' considerations in the decision focused on the Applicant's interests, particularly his inability to exercise his rights as a husband because his wife was experiencing a mental disorder. However, the Panel of Judges had not taken into account other legal provisions specifically governing persons with psychosocial disabilities who are involved in legal proceedings.

In this case, the Respondent, who was described as a person with a psychosocial disability, had not been afforded the right to be represented by a legally appointed guardian whose appointment had binding legal force. An application for such an appointment could be submitted to the District Court having jurisdiction over the Respondent's place of residence.

Furthermore, the Respondent's mental condition had not been formally verified through a medical certificate confirming that she was indeed experiencing a mental disorder. Accordingly, the legal considerations in the decision had not adequately addressed the specific legal provisions applicable to persons with psychosocial disabilities as subjects of law.

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