

## **Expansion of Functions and Role of Mediators in Polygamy Permit Cases to Enforce the Principles of Monogamy**

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### **ABSTRACT**

Indonesian marriage law adheres to the principle of non-absolute monogamy, allowing polygamy with religious court permission. Although polygamy permit cases are categorized as disputes requiring mandatory mediation, mediation becomes unnecessary when both husband and wife have mutually agreed to the polygamy, as no actual dispute exists. In such situations, the mediation process risks overriding the principle of monogamy. The purpose of this article is to conduct a legal analysis of the implementation of mediation of polygamy permit applications in religious courts and to find solutions to uphold the application of the principle of monogamy at the mediation stage of polygamy permit applications. This article employs a normative juridical method, namely a study of the principles and norms in statutory regulations with an analytical approach, by analyzing legal materials to ascertain the meaning contained in the terms used in statutory regulations conceptually. The results of this research show that in polygamy permit applications where there is no dispute between the parties, the role of the mediator needs to be expanded to act as a negotiator to prioritize the principle of monogamy, as well as to prevent polygamy permit applications that are not in accordance with legal provisions from continuing in the examination process, as an implementation of the principles of administering justice that are simple, fast, and low-cost.

*Keywords: Mediation, Poligamy, Religious Court*

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### **INTRODUCTION**

The term polygamy comes from Greek, namely from the word poly or polys, which means "many," and the word gamein, taken from the word gamos, which means "marriage," and if combined, these words can be interpreted as a marriage that has many partners. Meanwhile, in English, polygamy means having more than one wife. Polygamous marriage in Islamic marriage law is an event that is possible for all Muslim people throughout the world, including in Indonesia. The legal basis for allowing the implementation of polygamous marriages in Islamic teachings is based on the Al-Quran in Surah An-Nisa verses 3 and 129, which allows a Muslim man to marry a maximum of four women. Apart from that, there is room to implement polygamy in the marriage law in Indonesia according to the Marriage Law, which states that legal regulations regarding the implementation of marriage in Indonesia are based on provisions originating from the religious values adhered to by each citizen. When carrying out a polygamous marriage, especially for people who are Muslim, permission must be obtained from a religious court, which in the process requires justifiable reasons for carrying out a polygamous marriage, as well as approval from the wife (Fadillah & Putri, 2021).

In the perspective of regulating procedural law provisions that apply to Religious Courts, which are regulated in the guidelines for the implementation of duties and administration of Religious Courts, the application for a permit for polygamy is included in cases that are

contentious or litigious, which means that the application for a permit for polygamy is a case that contains a dispute, with the wife named as the respondent. This can be understood as an effort to uphold the principle of monogamy in the Indonesian marriage legal system and in the teachings of Islamic law. Because polygamy permit cases are categorised as contentious cases, according to the procedural law provisions in force in Indonesia, before a case examination is carried out, all cases containing disputes must first carry out a mediation process, attended by a judge or non-judge mediator. In the Kamus Besar Bahasa Indonesia (KBBI), the word mediation is defined as the process of involving a third party in resolving a dispute as an advisor.

Meanwhile, in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, what is meant by mediation is a method of resolving disputes through a negotiation process to obtain agreement between the parties with the assistance of a mediator. Moving on to the concept of mediation, the mediator's role is to act as an intermediary and advisor in a confidential negotiation process, involving only the parties involved in the dispute. However, in the case of a husband applying for permission for polygamy in a religious court, where the wife has already granted her consent, the husband and wife are essentially on the same side. This means that the mediator's role can be seen as biased, as there are no opposing parties present in the mediation process. If the purpose of having a mediator is to uphold the principle of monogamy in Indonesia, then the mediator's position, role, and function can be considered as partial. This is because the mediator brings their own interests and perspectives into the mediation process, contradicting the intended meaning of mediation as stated in Supreme Court Regulation Number 1 of 2016, which pertains to Mediation Procedures in Court.

There has not been a thorough investigation into the purpose and significance of mediators in polygamy permit applications before Indonesia's Religious Courts. By investigating the legal features of mediators' roles in the mediation process in the context of polygamy permit cases in religious courts in Indonesia, this research seeks to close this knowledge gap. It is envisaged that by carrying out this study, it will be possible to gain a better understanding of how mediation is used in cases involving polygamy permits before Religious Courts. In the context of polygamous marriages in Indonesia, it is believed that the findings of this research would help to strengthen the legal system and introduce alternative dispute resolution procedures.

## **METHOD**

This research utilised a normative approach known as Doctrinal Legal Research, which focuses on written regulations and other legal materials. Doctrinal legal research involves studying laws that are conceptualised and developed based on the doctrine followed by the conceptualiser or developer. This type of research involved library research as a method of gathering data from diverse sources such as literature, statutory regulations, expert opinions, and relevant writings. The data were subsequently analysed qualitatively and discussed descriptively to accurately depict the problem under discussion. The data used consisted of Primary Legal Materials, namely binding legal materials, and Secondary Legal Materials, namely legal materials that explain the primary legal materials.

## **RESULTS AND DISCUSSION**

### **The Principle of Open Monogamy in Marriage Law in Indonesia**

The definition of marriage according to the provisions of the marriage law is a spiritual and physical bond between a man and a woman to form a happy and eternal family (household) based on the belief in the Almighty God. To achieve this goal, there are principles or principles contained in the marriage law, one of which is the principle of monogamy, by the Marriage Law in Article 3 paragraph (1). In principle, in the provisions of marriage law in Indonesia, the principle of marriage in Indonesia is monogamous marriage, which means that a husband is only allowed to have one wife and conversely, a wife can only have one husband. However, if it is desired by a married couple, one husband can have more than one wife as regulated in the provisions of Article 3 paragraph (2) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

According to the provisions of *fiqh* or religious law in Islamic teachings, the implementation of polygamous marriages is not prohibited, and there are no sanctions whatsoever for the perpetrators. However, there are differences in family law regulations in Muslim countries which prohibit and even impose criminal threats or fines on the practice of polygamy. For example, the practice of polygamy in Saudi Arabia only provides requirements to act fairly, and a maximum of 4 (four) women can be polygamous at the same time as stated in the Qur'an and Sunnah. Meanwhile, Turkish marriage law prohibits the implementation of polygamy based on Article 130 of the Turkish Civil Code of 2001, and Tunisia prohibits the implementation of polygamy based on family law regulations in Tunisia contained in the Tunisian Personal Status Law (The Code of Personal Status) in 1956 contained in article 18.

Polygamous marriages are textually permissible according to the Al-Qur'an provided that the husband can act fairly. The law is *mubbah* or permissible, not an obligation or Sunnah, however, according to the provisions of Islamic law there are restrictions on the implementation of polygamous marriages, namely that they are limited to a maximum of only marrying four wives. Husbands are also required to be able to treat all their wives fairly. The legal basis for polygamy in the Qur'an is found in Surah An-Nisa verse 3, namely: "If you fear you might fail to give orphan women their due rights 'if you were to marry them, then marry other women of your choice—two, three, or four. But if you are afraid you will fail to maintain justice, then 'content yourselves with' one or those 'bondwomen' in your possession. This way you are less likely to commit injustice". The regulation regarding polygamy law in Islamic law does not aim to provide opportunities for men to enter into polygamous marriages based solely on sexual desire and pleasure. According to the provisions of Islamic law, polygamy is permitted in emergencies provided that it can be implemented fairly, including:

- a. To give men the opportunity to
- b. obtain offspring from a second wife if the first wife experiences infertility;
- c. To prevent men from committing
- d. adultery if the husband is unable to have sexual relations with his wife due to a long-term illness;
- e. To provide opportunities for other women who are not fortunate enough to find a husband to find a husband who can protect them, provide a living, and provide sexual needs.

Exceptions regarding the application of the principle of monogamy in marriage law in Indonesia, it is opened by the Marriage Law as long as it fulfills certain conditions including the requirement for consent from the existing wife and must also be in accordance with the religion adhered to. This is stated in the Law-Marriage Law Article 3 paragraph (2) i.e. the court can grant permission to a husband to have more than one wife if desired by the parties concerned, thus, the basis contained in the Marriage Law is not the principle of absolute monogamy but the principle of Open monogamy. If examined carefully from a juridical perspective, of course, there are fundamental principles in marriage, one of which is the principle of monogamy. Monogamy Principle In this case, a man can only have one wife and a woman can only have one husband. Polygamous marriages should be made difficult so that their implementation is following the aims of marriage, especially for certain legal subjects such as Civil Servants as regulated in Government Regulation Number 10 of 1983. To carry out a polygamous marriage, the marriage law regulates alternative conditions and cumulative conditions. The alternative conditions are contained in Article 4 paragraph (2) of the Law, namely:

- a. The wife cannot carry out her obligations as a wife
- b. The wife has a disability or an incurable disease
- c. The wife cannot bear children.

Meanwhile, the cumulative requirements are contained in Article 5 paragraph (1) of the Marriage Law which states that in order to submit an application to the Court, the following conditions must be met:

- a. There is consent from the wife/wives
- b. There is certainty that husbands are able to guarantee the living needs of their wives and children.

Thus, it can be understood that marriage law in Indonesia adheres to the principle of open monogamy/limited polygamy, namely the principle which means that a husband can have more than one wife with permission from the court after obtaining permission from his wife and fulfilling strict conditions. The principle of open monogamy that exists in marriage law in Indonesia is essentially in line with the concept of marriage according to the provisions of Islamic law which is based on Surah An-Nisa verses 3 and 126, which gives confirmation to a man to marry only one woman, because there are concerns that there will be no justice in polygamous marriages. The practice of polygamy is strictly limited in the provisions of the marriage law, to prevent negative things from arising in upholding the household in polygamous marriages, such as the emergence of injustice in the household, husbands abandoning their responsibilities towards the marriage, including neglect of children's rights.

### **Polygamy Permit Application Case from the Perspective of Marriage Law and Religious Court Procedure Law**

In the marriage legal system in Indonesia, polygamy permission refers to the approval or permission given by a religious court to a husband to legally marry more than one wife. The concept of polygamy permission is based on the principles of the Islamic religion which is recognized as one of the majority religions in Indonesia. Polygamy is permitted under certain conditions established by law. Article 3 paragraph (2) of the marriage law states that a husband can remarry with permission from a religious court if he can prove that he meets the specified conditions. The legal consequences of a husband committing polygamy without permission

from the religious court according to the provisions regulated by Law No. 1 of 1974 concerning Marriage, Government Regulation No. 9 of 1975 concerning the implementation of Law No. 1 of 1974 concerning Marriage, and Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law, polygamous marriages that do not comply with the procedures, conditions and limits set by the applicable legislation can result in the cancellation of the marriage and can be subject to criminal sanctions. Cases regarding applications for polygamy permits submitted by people who are Muslim are a type of case that falls under the absolute authority of the Religious Courts. Absolute power means the power of the Court which is related to the type of case or type of court or level of court, in contrast to the type of case or court. Religious courts have power over marriage cases for those who are Muslim.

The competence of religious courts is regulated by the provisions of articles 49 to article 53 of Law number 50 of 2009 (3 of 2006 concerning amendments to Law no. 7 of 2006 concerning Religious Courts). The relative authority of religious courts refers to Article 118 HIR or Article 142 RB.g in conjunction with Article 66 and Article 73 of Law number 7 of 1989, while the absolute authority is based on Article 49 of Law number 7 of 1989, namely the authority to adjudicate civil cases in the field of (a) marriage; (b) inheritance, will, gift, which is carried out based on Islamic law; (c) *waqf*, *zakat*, *infaq*, *sadaqah*, and Islamic economics. To obtain permission for polygamy, the husband must apply to the local religious court. This request must be accompanied by clear reasons and adequate evidence showing that the husband can fulfill the obligations required in polygamy, such as finances, time, attention, and fair treatment of existing wives as mentioned in Article 55 Compilation of Islamic Law which states:

- (1) Having more than one wife at the same time, limited to only four wives.
- (2) The main condition of having more than one wife, the husband must be able to act fairly towards his wives and children.
- (3) When the main condition mentioned in paragraph (2) cannot be fulfilled, the husband is prohibited from marrying one person.

The Religious Court only permits a husband who will have more than one wife if the wife is unable to fulfill her obligations as a wife, the wife has a physical disability or incurable illness, or. the wife cannot give birth to offspring, as contained in the provisions of Article 57 of the Compilation of Islamic Law which states: "The Religious Court only permits a husband who will have more than one wife when" :

- a. the wife is unable to fulfill her obligations as a wife;
- b. the wife has a physical disability or an incurable disease;
- c. the wife cannot give birth to offspring.

Apart from these provisions, there is also a requirement for permission from the wife to be conveyed verbally or in writing, which is stated in Article 59 of the Compilation of Islamic Law which states

- (1) Apart from the main requirements mentioned in Article 55 paragraph (2), to obtain permission from the Religious Court, the conditions specified in Article 5 of Law No.1 of 1974 must also be fulfilled, namely: a. the wife's consent; b. there is certainty that the husband can guarantee the living needs of his wives and children.
- (2) Without prejudice to the provisions of Article 41 letter b Government Regulation no. 9 of 1975, the consent of the wife or wives can be given in writing or verbally, but even

if there is written consent, this consent is confirmed by the wife's verbal consent at the Religious Court hearing.

- (3) The consent referred to in paragraph (1) letter a is not required for a husband if his wife or wives cannot be asked for their consent and cannot be a party to the agreement or if there is no news from his wife or wives for at least 2 years or for other reasons which need to be evaluated by the Judge.

Based on Book II of Guidelines for the Implementation of Duties and Administration of Religious Courts published by the Directorate General of Judicial Bodies Religion of the Supreme Court, which is a special guideline in the process of examining and making decisions in polygamy permits cases so that it does not conflict with the principle of monogamy adopted in the marriage law. The main specific guidelines include:

1. The application for permission for polygamy must be substantive, the wife is seated as the Respondent.
2. The reasons for permitting polygamy as regulated in Article 4 paragraph (2) of Law Number 1 of 1974 are facultative, meaning that if one of these requirements can be proven, the Religious Court/*Syar'iyah* Court can grant permission for polygamy.
3. The requirements for a polygamy permit as regulated in Article 5 paragraph (1) of Law Number 1 of 1974 are cumulative, meaning that the Religious Court/*Syar'iyah* Court can only grant polygamy permission if all of these requirements have been fulfilled.

Based on these guidelines, polygamy permit cases are categorized and considered as contentious cases, which are lawsuit cases that contain disputes between the parties. The husband is the applicant and the wife is the respondent. In the Religious Court environment, especially in marriage cases, the use of the terms "petitioner", "respondent" and "petition" is unlimited and used in voluntary cases or petition cases as per the general theory in civil procedural law. To understand what types of cases are: contentious cases or voluntary cases must be seen in their context. Another example of this can be seen in divorce cases, where the husband is the applicant and the wife is the respondent even though the case is a dispute, as well as the case of a request for annulment of the marriage, which although uses the term petition, the applicant must be called the plaintiff and the respondent must be called the defendant, while the product of the Religious Court must be a decision.

The consequence of the existence of a polygamy permit application case which is categorized as a contentious case or in which there is an element of dispute, according to Article 4 paragraph (1) of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court, the polygamy permit application case is included in the case who must go through a mediation process before entering the case examination at trial.

### **Implementation of Mediation in Religious Court Procedural Law as an Implementation of the Principles of Providing Justice in a Simple, Fast, and Low-Cost manner.**

Mediation in court is a dispute resolution process involving disputing parties with the help of a neutral and trained mediator. Mediation serves as an alternative or complement to formal court proceedings, which involve a hearing before a judge or arbitrator. Mediation or alternative dispute resolution in Indonesia's Culture or the culture of the Indonesian nation itself, both in traditional society and as the basis of the Pancasila state, namely the fourth principle known as deliberation for consensus. Meanwhile, the Black's Law Dictionary states

that Mediation is “the act of a third person who interferes between two contending parties with a view to reconcile them or persuade them to adjust or settle their dispute. In international law and diplomacy, the word denotes the friendly interference of a state in the controversies of others, for the purpose, by its influence and by adjusting their difficulties, of keeping the peace in the family of nations.”

Mediation is an informal process aimed at allowing disputing parties to discuss their differences "privately" with the help of a neutral third party. A mediator in mediation should remain neutral, always build good relationships, speak the language of the parties, listen actively, emphasize potential benefits, minimize differences, and emphasize similarities. The goal is to help the parties better negotiate a settlement. Meanwhile, what is meant by Dispute is a situation where a party feels disadvantaged by another party, who then conveys this dissatisfaction to the second party. If the situation shows a difference of opinion, then what is called a dispute occurs. Disputes can be caused by various factors, including internal factors or external factors. Internal factors that cause disputes are differences in interests or disputes between one party and another. Meanwhile, the cause of disputes from external factors can be caused by the existence of written or unwritten rules or procedures whose implementation is rigidly implemented which are considered as obstacles and obstacles to achieving the goals of each party. From this definition, it can be understood that a dispute can be public or private or between individuals, which is then known as a civil case. What is meant by a civil case is a civil case that occurs between one party and another party in a civil relationship or interpersonal relationship. Civil cases can be divided into two types based on whether there is a case or not, namely, lawsuit cases containing disputes, where at least in the case there are at least two parties (contentious or contentious case), and petition cases that do not contain disputes, where there is only one party in the case (volunteer case).

Mediation based on the procedure, is divided into two, as follows:

1. Mediation carried out outside the court (regulated in the provisions of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution) is mediation carried out outside the court by the parties without any court proceedings, the results of the agreement obtained from the mediation process outside the court can be submitted to the court to obtain confirmation as a deed of peace which has the force of a court decision which has permanent legal force (*inkracht van gewijsde*).
2. Mediation carried out in court (Article 130 HIR/154 RBg Jo. PERMA No. 1 of 2008). This mediation was carried out as a result of a civil lawsuit before the court. By referring to the provisions of article 130 HIR/154 RBg every dispute examined in court must take peace efforts first, and then if a peace agreement is obtained then a peace agreement will be made *Acta van dading* or peace deed. *Acta van dading* regulated in Article 1851 of the Civil Code and Article 130 HIR, is a deed made by the parties to a dispute to end a case that is being examined by the court or prevent a case from arising.

Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts is in practice used as a basis and guideline for judges in judicial institutions at the Supreme Court, which is a further basis for implementing Article 130 *Het Herziene Inlandsch Reglement, Staatsblad* 1941:44 (HIR) and Article *Reglement Tot Regeling Van Het Rechtswezen In De Gewesten Buiten Java En Madura, Staatsblad* 1927:227 (RB.g) as a source of civil procedural law in Indonesia which aims to encourage the parties to pursue a peace

process that can be utilized through mediation by integrating it into litigation procedures in court.

The Supreme Court Regulations are also used as guidelines for rules and regulations for judges in courts of first instance in mediation efforts for litigants, and based on Article 4 of Supreme Court Regulation no. 1 of 2016 concerning Mediation Procedures in Court, the types of cases that are required to undergo mediation are all civil disputes submitted to the Court including cases of opposition (*verzet*) to the *verstek* decision and resistance of litigants (*partij verzet*) and third parties (*derden verzet*) including cases application for a polygamy permit. The implementation of the mediation process is carried out during the trial process at the court of first instance and is imperative or must be carried out. In the case examination process at the first level, the judge is obliged to reconcile the disputing parties. By understanding the provisions of these regulations, mediation in polygamy permit application cases must be carried out as an action by procedural law procedures so that the decision is not null and void.

According to the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court, Mediation is a method of resolving disputes through a negotiation process to obtain agreement between the Parties with the assistance of a Mediator. Meanwhile, a Mediator is a Judge or other party who has a Mediator Certificate as a neutral party who assists the Parties in the negotiation process to find various possibilities for resolving the dispute without resorting to deciding or forcing a resolution. The mediator has a role in helping the disputing parties understand each party's perspective in the dispute, helping to find things that are considered important to the parties, being a party that helps exchange information, encouraging discussions regarding differences in interests, perceptions and interpretations of the situation, and the issues in dispute, and regulate the expressions and emotions of both parties. The mediator must also help the parties to prioritize issues and promote understanding among the parties regarding common goals and interests. By being between the disputing parties, the mediator will have more information about the dispute from both parties which can be used as a consideration as to whether it is possible to create a peace agreement between the two parties.

Settlement of cases using mediation, which ultimately ends the case, is a faster and relatively cheaper dispute resolution compared to continuing the examination process at trial in court. This is in line with the Principle of Providing Justice that is Simple, Fast, and Low Cost as intended in Law Number 48 of 2009 concerning Judicial Power which in Article 4 paragraph (2) states, "That the judiciary helps seekers of justice and tries to overcome all obstacles and obstacles to achieving simple, fast and low-cost justice." The provisions of this article can be interpreted as meaning that the examination and resolution of cases must be carried out efficiently and effectively, must be carried out simply so that it can be understood by the parties to the case in court and the trial process should not be protracted and carried out quickly without compromising on accuracy and accuracy. accuracy in seeking truth and justice.

Mediation not only speeds up the process of resolving disputes, apart from creating peace between parties and ending disputes, but also eliminates resentment and strengthens friendship and harmony in the lives of ethnically diverse, pluralistic, and heterogeneous communities with different cultures and norms. The mediation process not only has benefits for the parties to the dispute but is also beneficial for the implementation of the trial process and the world of justice. The dispute resolution process carried out through the mediation process will automatically

stop the case resolution process, and will not continue with the case examination process at trial. If the majority of cases registered with the Court of First Instance can be resolved through a mediation process, it will reduce the number of cases in the Court of First Instance, and reduce the burden on the judiciary.

Analysis of the function and role of the mediator in the mediation process in polygamy permit application cases where there is no dispute.

In the Religious Courts, polygamy cases are included in contentious cases. A contentious case is a lawsuit which contains a dispute between the parties. Even though the divorce and polygamy vows are permitted in terms of requests, they contain disputes.

This is confirmed in Book II of the Guidelines for the Implementation of Duties and Administration of Religious Courts. There are two important things in carrying out mediation in polygamy permit application cases. First, it aims to strengthen the principle of Islamic marriage, namely the principle of monogamy. Secondly, it is hoped that a polygamous marriage carried out by a Muslim should be able to bring goodness and justice to the wives and children in a polygamous household. In the mediation process for a polygamy permit application case where the husband and wife have agreed to enter into a polygamous marriage, where there is no dispute or conflict, the mediation process is essentially unnecessary. because the husband and wife are on the same side and have the same interests or understanding, namely wanting a polygamous marriage. The role of a mediator who is neutral and cannot take sides and does not have the authority and power to impose his will on the parties ultimately results in the principle of monogamy in marriage being overridden by the parties in the mediation. Apart from that, due to the neutral role of the mediator, it is possible for the process of applying for a polygamy permit which is not by the provisions of the statutory regulations to be continued in the examination process at trial, which formally according to the provisions of the procedural law of religious courts can result in the submitted application being rejected by the court judge. religion, so it is better to prevent it from continuing by terminating or canceling the application for a polygamy permit.

In these circumstances, to uphold the principle of monogamy in marriage, the role and function of the mediator would be better expanded to become a negotiator and the mediation process expanded to negotiation, so that the process becomes a combination of mediation and negotiation. According to the Big Indonesian Dictionary, the meaning of negotiation is:

1. Bargaining process by negotiating to reach a mutual agreement between one party (group or organization) and another party (group or organization)
2. Peaceful settlement of disputes through negotiation between disputing parties. Negotiation is a way of resolving disputes through direct discussion or deliberation between the disputing parties if both parties agree on something that resolves the dispute. Negotiations can be a means for parties to discuss dispute resolution without the involvement of another party as a mediator, the process can be carried out informally by the agreement of the parties to the dispute.

The dispute referred to in this situation is the desire of the parties to carry out a polygamous marriage which in principle is contrary to the principle of monogamy. In the process, the husband and wife are on the same side, namely the party who intends to carry out a polygamous marriage, while the role and function of the negotiator are on the party who seeks to uphold the principle of monogamy, as well as preventing requests for polygamy permits that

are not by the provisions of statutory regulations. The expanded role and function of the mediator to become a negotiator ultimately provides space to more actively provide the parties with an understanding of the potential negative consequences of a polygamous marriage, as well as negotiate about the readiness of the parties to carry out a polygamous marriage, as well as the fulfillment of the conditions. The intended negotiation process model can be carried out in the following stages:

1. Preparation and Planning, at this stage the negotiator must understand the problem to be resolved, as well as understand the perspective of the husband and wife who have agreed to apply for a polygamy permit. This aims to make it easier for the negotiator to carry out the negotiation process to achieve the goal of upholding the principle of marital monogamy.
2. Defining the Basic Rules, at this stage both parties agree and unite their understanding of the main rules for carrying out negotiations, such as things that may or may not be done, limits on carrying out negotiations, and limits on the negotiator's role in seeking to prevent polygamous marriages, and agreed that the main aim of carrying out negotiations is that the main aim is not to hinder the desire of the husband and wife to carry out a polygamous marriage, but to prevent attempts to apply for a polygamous permit that are not by the provisions of statutory regulations, and prevent unfair polygamous marriages and negative impact. This needs to be done so that the implementation of negotiations can be directed and run effectively and efficiently.
3. Clarification and Justification In this process the parties explain their respective perspectives on the dispute at hand. The husband and wife provided explanations and clarifications regarding the reasons that were the basis for applying for a polygamy permit, and the negotiator provided an explanation of the principle of monogamy in marriage law in Indonesian marriage law about the case at hand. In this stage, information will be obtained from both parties, and the negotiator can obtain information on whether the application for a polygamy permit submitted is by applicable legal provisions. Based on the information obtained from the clarification process, it can be continued by justifying (justification) by both parties regarding the matters being negotiated, which in the negotiator's perspective is preventing the implementation of applications for permits for polygamous marriages. In this case, negotiators are required to be able to utilize the information obtained in the clarification process to be able to refute the arguments and justifications presented by the husband and wife, which will increase their position in the implementation of bargaining.
4. Offering and Problem Solving, is the most essential process in carrying out negotiations. This is the most essential process in carrying out negotiations. In this process, a bargaining process is carried out, to make a concession and find an understanding. Make offers and solve problems with husband and wife based on the perspective of the negotiator. After an offer is made and the problem is resolved, a result can be obtained, namely: agreeing to cancel the application for a polygamy permit or negotiations to prevent the application for a polygamy permit from failing.
5. Closing Negotiations and Implementation: The negotiation process can be closed with two approaches, namely a formal approach and an informal approach. Because it is related to the provisions of religious court procedural law, what is used is a formal

approach that emphasizes the legality aspects of agreements determined because of the negotiation process, regulated to be made in the form of a peace deed or *acta van dading*.

1. The combined process of mediation and negotiation can be ended when the parties agree to cancel the application for a polygamy permit or remain in their position to continue the application for a polygamy permit for the case examination stage at the religious court trial. Based on the description that has been presented, a combined process of mediation and negotiation, and expanding the role of the mediator as a negotiator in applications for polygamy permits would be ideal in efforts to uphold the monogamous principle of marriage law, and prevent attempts at polygamous marriages that are not by statutory provisions.

## **CONCLUSION**

Indonesian marriage law operates on the principle of open monogamy, or limited polygamy, permitting a husband to take more than one wife only upon obtaining court approval, spousal consent, and fulfilling the conditions set out in the Marriage Law. Applications for polygamy permits are classified as contentious cases in religious courts and must undergo mediation prior to the main examination; however, where both parties already consent to the polygamous marriage, the mediator's role becomes limited and largely neutral, with the responsibility of upholding the principle of monogamy resting primarily with the couple themselves. To address this limitation, it is proposed that the mediator's function be expanded to incorporate that of a negotiator within a combined mediation-negotiation framework, affording the mediator greater latitude to provide guidance and considerations to both parties, thereby reducing the likelihood of applications being rejected at trial due to non-compliance with the law and better realising the principles of justice that are simple, fast, and low-cost. Future research could explore the practical implementation of such an expanded mediator role within Indonesia's religious courts, examining its effectiveness in balancing the protection of individual rights with the broader legal principle of monogamy, as well as its potential applicability to other dispute resolution contexts within Indonesian family law.

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