



Judges' Considerations in the Cancellation Decision of the Marriage Establishment
(ITHBAT) of Polygamy (The Analysis of Supreme Court Decision
No.351/K/Ag/2016)

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Abstract

In Indonesia, polygamy is permissible as long as it is justified by religion and the rules of the marriage law. However, a husband who wants to have more than one wife can only be done if he fulfills various requirements decided by the Court. Based on the principle of “audi alteram partem”, the Supreme Court views that the consideration of the Jakarta Religious High Court towards the defendant's answers, evidence and witnesses submitted by the defendant is a right decision even though they are late and no trial is submitted. The Supreme Court argues that polygamy permission is a necessity. It aims to maintain the welfare of the parties bound to the marriage that have been and are still ongoing. The word "can" in Islamic Law Compilation (KHI) article 71A shows that the cancellation of marriage for a reason of polygamy without court permission is tentative (facultative). Whether or not the marriage is canceled must be submitted to the court and is very dependent on the assessment of the benefits of the wife/wives and children. The legal consequences of the stipulation of the marriage establishment (ithbat) based on the decision of the Religious Court and the refusal to cancel the marriage establishment (ithbat), the child of the second wife has inheritance rights from his father, including assets from his property with his first wife.

Keywords: Judge Considerations; Cancellation of Marriage Establishment (ITHBAT); Legal Effects

Background of the Research

There have been several different opinions on the marriage issue in Islam. Basically, many scholars affirm that marriage is the sunnah of the Prophet, which is highly recommended or sunnah muakkadah. Marriage is certainly not only about how men and women can fulfill their needs biologically but also a process of worship since there is a process of fostering a household, educating a family or children, and maintaining its harmony. For this reason, marriage is a form of worship that should be carried out with earnestly and sincerity. The unregistered marriage (henceforth-siri marriage) is supposed to be recorded in accordance with applicable regulations in order to have legal force and protection. Thus only marriage recorded in accordance with applicable regulations obtains legal protection. In a polygamous siri marriage, if the husband and wife leave enough wealth, inheritance problems will

emerge.¹ The heirs of the official wife will face the heirs of the siri wife and the issue of ratification or cancellation of the marriage is directly related to the inheritance problem.²

One of the Supreme Court's ruling on the lawsuit for the cancellation of polygamous siri marriage was Decision Number 351/K/Ag/2016.³ There is an interesting thing about the verdict that is the difference between the decision of the first court, namely the Decision of the East Jakarta Religious Court Number 2432/Pdt.G/2014/PA.JT dated April 24, 2015, which granted the claim of the applicant with the cancellation of the siri marriage. Although the marriage has been ratified through the decision of the marriage establishment (ithbat) through the Decision of the East Jakarta Religious Court No.1571/Pdt.G/2014/PAJT dated June 19, 2014, but at the appeal level, the Jakarta High Religious Court in its decision No.82/Pdt.G/2015/PTA.JK dated August 20, 2015, granted an appeal by canceling the Decision No.2432/Pdt.G/2014/PA.JT of the East Jakarta Religious Court. In the Cassation level, the Supreme Court through Decision No.351 / K / Ag / 2016 dated June 28, 2016 strengthened the Decision of the Jakarta High Court of Religion.

Syahrinal bin Dt. Siego was the person who faced the case as a plaintiff against Muhana binti Muhayar. Syahrinal was one of Animar's siblings who was the official wife of Bismardi Jamal who married on February 6, 1977. From the marriage, Animar and Bismardi Jamal did not have children, therefore Syahrinal was one of the heirs of Animar. Not having a child, Bismardi Jamal on October 4, 1987, married Muhanna binti Muhayar, but the marriage was a siri marriage. From the marriage, Bismardi Jamal and Muhanna binti Muhayar had 5 (five) children.

Bismardi Jamal passed away in Jakarta on May 17, 2008 and Animar died on May 13, 2013. During their lifetime, Bismardi Jamal and Animar had never divorced, so Bismardi Jamal had committed polygamy in siri marriage without permission from his wife.

Thenceforth, Muhanna binti Muhayyar submitted an application for the marriage establishment (ithbat) to the East Jakarta Religious Court. The request was granted by the East Jakarta Religious Court with its decision No.1571/Pdt.G/14/PAJT dated June 19, 2014 and registered it to KUA (Indonesian Religious Affairs Office) to obtain a Marriage Certificate. However, the case was initiated by an inheritance lawsuit, where on March 17, 2014, Muhanna binti Muhayyar and her children had filed an inheritance lawsuit registered with register number 0749/Pdt.G/2014/PAJS at the South Jakarta Religious Court.

Syahrinal considered that there was a legal smuggling in the application for the marriage establishment (ithbat), where Muhanna made his biological child with Bismardi Jamal (late) as the party to the petition and the marriage establishment was solely aimed at taking the inheritance of the first wife/Animar (late).

Therefore, Syahrinal filed a lawsuit for the cancellation of the marriage establishment against Muhanna Binti Muhayyar on the basis of polygamy without the permission of the first wife and based on the East Jakarta Religious Court's decision No.2432/Pdt.G/2014/PAJT on April 25, 2015. The claim was granted and the marriage establishment decision No.1571/Pdt.G/2014/PAJT was canceled by the panel of judges. Therefore, basically the cancellation claim is the form of resistance against the inheritance lawsuit. Not accepting the decision No.2432/Pdt.G/2014/PAJT, Muhanna binti Muhayat made an appeal to the Jakarta Religious Court, where the Decision of the Jakarta Religion High Court No.

¹ Razak, Muhammad Rais Rahmat, et al. "The Effect of Siri's Marriage on Government Administration." *International Journal of Sciences: Basic and Applied Research (IJSBAR)* 42.3 (2018): 171-184.

² Butt, Simon. "Islam, the state and the Constitutional Court in Indonesia." *Pac. Rim L. & Pol'y J.* 19 (2010): 279.

³ Direktori Putusan Mahkamah Agung, <https://putusan.mahkamahagung.go.id/main/pencarian/?q=pembatalan+nikah+siri+poligami>

82/Pdt.G/2014/PA.JT dated 28 April 2015 accepted the appeal from the defendant/comparator Muhanna binti Muhayyar and canceled the East Jakarta Religious Court Decision No. 2432/Pdt.G/2014/PAJT. For Syahrinal's defeat at the appeal level, then the appeal was submitted to the Supreme Court and based on the Supreme Court's cassation decision No.351/K/Ag/2016, the Supreme Court rejected the appeal of Syahrinal. Consequently, at the highest level, Muhanna Binti Muhayyar won the case for the cancellation of polygamous marriage without the wife's permission.

Based on the description above, there were differences in judges' views on polygamous siri marriage. The author intended to examine the judges' basis in deciding cases and the legal consequences for the inheritance rights of the second wife and her children entitled "Judges' Considerations in the Cancellation Decisions of the Marriage Establishment (ithbat) without Wife's Permission and its Legal Effects against the Heir of the Second Wife and the Child (The Analysis of the Supreme Court Decision No.351/K/Ag/2016)".

Research Method

The Research Approach

The researcher utilized a normative juridical research method. Normative juridical research is a research aimed at written regulations and other legal materials which are secondary data in libraries and other legal journals.⁴

The implementation of normative legal research will generally be addressed to:⁵

- a. Research on legal principles, such as research on written positive law or research on legal principles in society.
- b. Research on legal systematics. This research is conducted by examining the basic understanding of the legal system in legislation.
- c. Research on legal synchronization. This research can be done either vertical synchronization (different degrees) or horizontal synchronization (same degree / equivalent).
- d. Legal history research. This research focuses on legal developments. Each analysis employs comparisons of one or several legal systems.
- e. Research on legal comparisons. This research emphasizes and looks for changes in various legal systems.

The Type of Research

The type of research is descriptive analytical research. The analytical research is a study that describes, examines, explains, and analyzes a legal regulation, including reviewing the implementation of positive legal provisions (legislation) and contract factually on any particular legal event that occurs in the community in order to achieve the research objectives. The study aims to ascertain whether the implementation results of *in concreto* legal events are appropriate in accordance with the provisions of the Law or whether the contract has been carried out properly.

⁴ Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, Sinar Grafika, Jakarta, 2008, hlm 13

⁵ *Ibid*, hlm 15

Research Instrument

The research instrument used in this study is the data obtained from:⁶

a. Primary Legal Material

Primary legal material is an authoritative legal material in the form of regulation. In this study, the suitable materials are:

- The 1945 Constitution of the Republic of Indonesia
- Law No.1 of 1974 concerning Marriage.
- Law No.48 of 2009 concerning Judicial Power
- Government Regulation No.9 of 1975 concerning the Implementation of Law No.1 of 1974 concerning Marriage
- Presidential Instruction No.1 of 1991 concerning Compilation of Islamic Law
- Decision of East Jakarta Religious Court No. 2432/Pdt.G/2014/PA.JT
- Decision of the Jakarta High Religious Court No. 82/Pdt.G/2015/PTA.JK
- Decision of the Supreme Court No.351/K/Ag/2016

b. Secondary Legal Materials.

Legal materials in the form of materials that explain primary legal materials such as books, journals, papers, mass media, the internet, opinions of scholars, and other data related to the research title.

c. Tertiary Legal Materials

Legal material in the form of legal dictionaries that help translate legal terms used in the discussion.

Data Collection Technique

All useful data in this research are obtained by studying document or library material (documentary study), which is a technique of data collection carried out by studying library materials or written data, especially those related to the problems discussed. It is then completed by interviewing the experts who understand and deal with the problems that the author examines in order to obtain a deeper explanation that the author uses to analyze the data.

Data Processing

The data are processed systematically through the editing process, which is tidying up the data that have been processed by selecting and categorizing them according to the needs and objectives of the research so that the final conclusions in general can be accounted for according to reality.⁷

Data Analysis

The method used in analyzing the data is qualitative based on the applicable legislation and opinions of the experts. Furthermore, the data obtained will be processed, analyzed and arranged in the form of descriptions systematically.

⁶ Soerjono Soekanto, *Metode Penelitian Hukum*, UI Press, Jakarta, 2006, hlm 50

⁷ Bambang Sunggono, *Metodologi Penelitian Hukum*, Rajawali Pres, Jakarta 2003., hlm 118

Research Results and Discussion

Judges' Consideration in the Decision of the East Jakarta Religious Court No.2432/Pdt.G/2014/PA.JT, and the Decision of the Jakarta High Religious Court No.82/Pdt.G/2015/PTA.JK concerning the Claim for Cancellation of Marriage Establishment (Ithbat)

According to the Chairman of the Chamber of Religious Court of the Supreme Court of the Republic of Indonesia, Dr. H. Andi Syamsu Alam, S.H., M.H., to make good and quality decisions. a judge must find the main issues of the disputed case in examining and deciding the case. From the process of answering between the plaintiff and the defendant at the trial, a judge must be able to conclude what real events which the parties disputed. It is to know to whom the burden of proof would be given. After verification from the parties, the judge can constrict and state that the real event actually happened. There will be no constancy without any proof. After that, a judge has to analyze the evidence and consider its position one by one, whether it is proven or not, to find the law. "Then pour in the verdict, but you should remember, the decision must be implemented."⁸

According to Dr. Chairul Huda, a good and bad of a decision is not only about the format of the verdict, but also should include a legal consideration that is "detailed, constructive, and argumentative". The bad consequences of the decisions produced by the first court (if it does not clarify the case or actual facts), can make the court at the upper level unable to check it precisely.⁹

The decision to be studied in this research is the Supreme Court Decision No.351/K/Ag/2016 dated June 26, 2016 concerning the cancellation lawsuit of the marriage establishment (ithbat) which is a series of decisions of the Jakarta High Religious Court No. 82/Pdt.G/2014/PA.JT dated 28 April 2015 and the East Jakarta Religious Court Decision No. 2432/Pdt.G/2014/PAJT dated 25 April 2015.

In the case of a cancellation lawsuit of the marriage establishment (ithbat) filed by Syahrinal as a sibling of Animar binti Latif Dt. Siego, since Animar and Bismardi Jamal did not have a child, in the petitum, he appelaed to the East Jakarta Religious Court to:

- a. Declare accepting all the claims of the plaintiff.
- b. Determine canceling the marriage of the defendant (Muhana binti Muhayar) with (late) Bismardi Jamal bin Djamaluddin which has been ratified by the East Jakarta Religious Court with Determination No.1571/ Pdt.G/2014 /PA.JT on June 19, 2014, with all legal consequences.
- c. Declare that the Marriage Certificate on behalf of (late) Bismardi Jamal bin Djamaluddin and Muhana bin Muhayar in 2014, issued by the Office of Religious Affairs Kec.Kramat Jati, East Jakarta has no legal force.
- d. Command the marriage registrar of East Jakarta Religious Affairs Office to write off the marriage registration of Bismardi Jamal bin Djamaluddin with Muhana binti Muhayar.
- e. Charge according to the law to the plaintiff.

If the Panel of Judges of the East Jakarta Religious Court has another opinion, he is asking for the fairest decision based on applicable legal provisions.

Whereas Muhanna binti Muhayyar as the defendant appealed to the panel of judges to:

- a. Refuse all claims of the Plaintiff;
- b. Stating that the Decision No.1571/PdLG/2014/PA.JT dated 19 June 2014 has permanent legal force;

⁸ Ibid

⁹ <https://nasima.wordpress.com/2013/08/22/format-putusan-pengadilan/>

- c. Imposing all costs incurred in this case to the plaintiff;

The East Jakarta Religious Court in its Decision No. 2432/Pdt.G/2014/PAJT dated 25 April 2015 decided to:

- a. Grant the claim of the Plaintiff in part;
- b. Cancel the defendant's marriage (Muhana binti Muhayar) with the late Bismardi Djamal bin Djamaludin, which was ratified by the Decision of the East Jakarta Religious Court No. 1571/Pdt.G/2014/PA.JT. dated 19 June 2014;
- c. Declare cannot accept for other than the case;
- d. Charge all costs to the Plaintiff in the amount of IDR 966,000 (nine hundred sixty-six thousand rupiahs);

The Jakarta High Religious Court, by its decision No.2/Pdt.G/2015/PTA.JK., dated 20 August 2015, cancels the Decision of the East Jakarta Religious Court No. 2432/Pdt.G/2014/PA.JT. dated 28 April 2015 with the following rules:

- I. Declaring an appeal submitted by the defendant / comparator is acceptable
- II. Canceling the Decision of the East Jakarta Religious Court No.2432/Pdt.G/2014/PA.JT. dated 28 April 2015/ 9th of Rajab1436 Hijri:

Judging for Themselves

1. Refuse all the claims of the plaintiff;
 2. Charge the case fees in the first level to the plaintiff in the amount of IDR 966,000.00 (nine hundred sixty-six thousand rupiahs);
- III. Charging the defendant to pay the case fee in the appeal rate of IDR 150,000.00 (one hundred fifty thousand rupiahs);

In the Cassation Decision, the Supreme Court with Decision No.351/K/Ag/2016, rejects the appeal filed by the Plaintiff / Applicant in Cassation with his decision:

“Refuse the cassation request from the Cassation Appellant: SYAHRINAL bin LATIF DT. The SIEGO; Charge the Cassation Plaintiff/ Applicant to pay court fees in the appeal rate of IDR 500,000.00 (five hundred thousand rupiahs);”

From the three East Jakarta Religious Court Decision No.2432/Pdt.G/2014/PA.JT, the Decision of the Jakarta High Religious Court No.82/Pdt.G/2015/PTA.JK and the Supreme Court Decision No.351/K/Ag/2016 in the consideration section, the consideration of the panel of judges can be classified into 4 (four) groups, namely: 1) Consideration of the authority of the East Jakarta Religious Court, 2) Consideration of the Plaintiff's capacity, 3) Consideration of the Trial Event and 4) Consideration of the case.

The Authority of the East Jakarta Religious Court

In this section, the panel of judges explained: "Considering the provisions of Article 49 paragraph (1) and Article Law No.7 of 1989 which have been amended by Law No.3 of 2006 and Law No.50 of 2009, this case becomes the authority of the Religious Court."

The Religious Court is a court for moslem (see Article 1(1) of Law No.50 of 2009 concerning the Second Amendment to Law No.7 of 1989 concerning the Religious Courts). The Religious Courts carry

out judicial powers for people who are moslem regarding certain cases. According to Article 49 of Law No.3 of 2006 concerning Amendments to Law No.7 of 1989 concerning the Religious Courts ("Law 3/2006"), the religious courts have the authority to hear cases in the first level between moslems in the fields of:

- marriage;
- inheritance;
- will;
- grants;
- endowments;
- zakat;
- infaq;
- sadaqah;
- Islamic/sharia economy

Based on the previous description, the marriage cases are included as the absolute competence of the Religious Courts, while the relative competence of the East Jakarta Religious Court was the defendant, Muhanna Binti Muhayyar, living in Cililitan Besar Street, Gg.Ikhlas No.3 RT .001 / RW. 003, Cililitan, Kramat Jati District, East Jakarta.

The Plaintiff's Capacity

The marriage establishment (ithbat) is stipulated by the court against siri (unregistered) marriage which is religiously valid but it is not carried out before an authorized official and has not been legally recorded. Thus, based on the verdict of marriage by the court, a siri marriage can then be registered and recorded. The marriage book can be issued by the Office of Religious Affairs so that the marriage will receive legal protection as well as the consequences of law and rights stipulated in Act No. 1 of 1974 concerning marriage.

In the case examined by the author, the plaintiff sued was the decision of marriage establishment (ithbat) in the form of a revocation suit on the Decision of Marriage establishment (ithbat) No. 1571/Pdt.G/14/PAJT dated 19 June 2014 which legalized the siri marriage between Bismardi Jamal and Muhanna binti Muhayyar expecting that if the decision of marriage establishment is canceled, the marriage is illegitimate and the second wife along with her children become illegitimate children, so they do not have inheritance rights like the legal children. The claim, in other words, aims to cancel the marriage.

The plaintiff was a sibling of the first wife, while in Law No.1 of 1974 concerning Marriage No.1 Article 23 letter (a) stipulates that the one authorized to submit the marriage cancellation is "families in a straight line up from a husband or wife". Based on these rules, those who have the right to file a marriage cancellation lawsuit are the father, mother, grandfather and grandmother (and so forth) of the husband or wife. However, in this case, the sibling of the first wife filed a cancellation suit which was actually the third party. In the defendant's response, the plaintiff stated that he was not an interested party in the lawsuit because there was no legal relationship and interest between the plaintiff and the defendant. Furthermore, the party who was more interested in this case was the defendant's husband's siblings. Since there is no legal interest, the defendant requests that the plaintiff's claim is unacceptable.

However, there is actually a connection between the plaintiff and the defendant, regarding the inherited property. It is about the legalization of the siri marriage between Bismardi Jamal and the defendant that can result in changes in inheritance rights and reduced inheritance that can be possibly accepted by the heirs of Animar binti Dt. Siego.

The submissions in the Court are basically individuals or legal entities that have interests: direct interests or indirect interests. People who feel that they have rights and want to sue them or defend them are basically authorized to act as parties, both as plaintiffs and as defendants (*legitima personae standi in judicio*).¹⁰ The absolute requirement to submit is the existence of a direct / inherent interest from the plaintiff. It means that not everyone who has an interest can file a claim. Only appropriate interests and legal basis can be accepted as the basis of the claim. Before filing a lawsuit, it has been highly considered, whether the Plaintiff is truly the person entitled to file a claim. If it is not, then the claim will be declared unacceptable (*Niet onvankelijk Verklaard*).

Regarding the Plaintiff's capacity in the case, the East Jakarta Religious Court Judges in its legal considerations stated that "because the plaintiff was the sibling of Animar binti Latif dt. Siego (also one of her heirs) and Animar binti Latif Dt. Siego had an interest in which the plaintiff was not a party in the marriage establishment (ithbat) case submitted by the defendant, the plaintiff had the capacity to file the case".

The Judicial Session

Religious Courts are Civil and Islamic Courts in Indonesia. It should consider state legislation and Islamic law at the same time. Therefore, the formulation of the Procedure Law for the Religious Courts is proposed as follows: "All regulations sourced from the laws of the state or from Islamic law regulate the way people act before the Religious Courts and regulate how the Religious Courts complete their cases in order to realize Islamic material law which became the authority of the Religious Courts".

The Religious Court proceedings are carried out in several stages:

Trial Phase

- a. Peace efforts
- b. Reading the claim/petition of the plaintiff/applicant
- c. The defendant's answer
- d. Replica of applicant/plaintiff
- e. Duplicate of respondent/defendant
- f. Proof (applicant/plaintiff and respondent/defendant)
- g. Conclusion (applicant/plaintiff and respondent/defendant)
- h. Reading decision/determination

The East Jakarta Religious Court in its Decision No.2432/Pdt.G/2014/PAJT dated 25 April 2015 revealed that the panel of judges ignored the answers, legal arguments and testimonies submitted by the defendants. The reason was because the defendant was late in submitting the answer to the defendant's claim which meant that the response from the defendant was deemed non-existent, so that the testimony and proof of the defendant was also ignored by the panel of judges, except those that confirmed the plaintiff's argument. Regarding this matter, in consideration it is stated: "Considering that: Upon the plaintiff's claim, the defendant has been given three opportunities and did not give the answer and the defendant gave the answer after the plaintiff's proof of the letter, so the defendant's answer that has passed the answer stage must be ruled out. The panel of the judges also affirmed that the Defendant is deemed not to provide a response / answer to the Plaintiff's claim; defendant is deemed not to have submitted an answer to the plaintiff's claim, the Panel of Judges is of the opinion that the Defendant is deemed to have acknowledged the Plaintiff's claim. Considering that: since the defendant was deemed not to have submitted an answer to the plaintiff's claim, the panel of the judges concluded that the defendant was deemed to have acknowledged the plaintiff's claim.

¹⁰ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty Yogyakarta., 2009) halaman 52

As a result, the panel of judges granted a claim that could be proven by the plaintiff, while the objection of the defendant party was ignored by the panel of judges so that they only saw the interests and arguments of the plaintiff without consider both parties.

The panel of judges argued that the marriage establishment (ithbat) filed by the defendant was a legal smuggling as stated in the consideration of the panel of judges: "Considering that: there has been a violation and legal smuggling of the marriage establishment petition filed by the defendant, therefore the claim of the plaintiff against the cancellation of the decision of the East Jakarta Religious Court ratifying the defendant's marriage with the late Bismardi Djamal bin Djamaluddin was justified. Consequently, the plaintiff's claim could be granted and subsequently the defendant's marriage with the late Bismardi Djalam bin Djamaluddin by the East Jakarta Religious Courts No. 1571/Pdt.G/2014/PA.JT. dated 19 June 2014 must be canceled."

The decision of the Jakarta High Court was different from the decision of the East Jakarta Religious Court due to the different opinion towards the answers that were late submitted by the defendant. It made the Jakarta High Court consider the answers of the defendants, as in the consideration of the judges mentioned that: "Considering that: the purpose of summoning the defendant/comparator on December 30, 2014 was in order to fulfill Article 121 paragraph (2) HIR. That was to fulfill the defendant's right to be able to provide responses/answers to the plaintiff's claim to defend his interests. Therefore, the action to override the response of the defendant by the Panel of Judges of the Religious Court was contrary to the legal purpose of calling the defendant according to the summon letter of December 22, 2014, and contrary to the provisions of Article 121 paragraph (2) HIR. It also contradicted the principle of "*audi et alteram partem*" which means "listening to two parties" before making a decision so that the judiciary could be equalized.

Therefore, the Panel of Judges of the Jakarta High Religious Court argued that the legal considerations of the East Jakarta Religious Court Judges (page 12 paragraph 1) a quo could not be justified. Thus, the response to the defendant that was ruled out at the January 27, 2015 hearing had to be considered.

Based on the facts of the trial at the proceedings, the East Jakarta Religious Court Judges Council tended to apply the formal law and ignore the legal purpose of seeking justice even though the application of the formal law could sacrifice justice.

The Main Case Materials

The difference between the Decision of the East Jakarta Religious Court and the Decision of the Jakarta High Religious Court is caused by the difference in responding to the trial event. In submitting the response, the defendant was late in giving an answer. The response was given by the defendant when the trial had entered the stage of submitting the evidence by the plaintiff. The truth was that the defendant had been called 3 times.

The panel of judges of the East Jakarta Religious Court continued to accept the late answer, but ignored it and considered the defendant's answer never existed. The defendant is also considered to accept all the arguments of the plaintiff and the plaintiff only has an opportunity to prove their arguments and answers, while the objection and witnesses submitted by the defendant were ignored, except those that reinforce the plaintiff's argument. Therefore, the verdict from the East Jakarta Religious Court seemed biased.

On the other hand, the Jakarta High Religious Court considered the answers and all legal reasons and listened to witnesses submitted by both parties. The East Jakarta Religious Court Judges accepted the argument from the plaintiff that polygamous marriages between defendants and Bismardi Jamal were siri marriages without legal permission from the first wife, but ignored the legal fact that the defendant did not know that the marriage was siri marriage because Bismardi Jamal gave a marriage certificate to the defendant. It was also used to obtain the birth certificate of the children. Unfortunately, in the trial of inheritance disputes, it was found that the marriage certificate was fake.

The East Jakarta Religious Court Judges pointed out that permission from the first wife is a mandatory condition in determining the legality of a polygamous marriage by ignoring the answers and witnesses from the defendant who revealed the legal fact that the first wife, the late Animar binti Latif Siego, apparently did not have children, while Muhanna binti Muhayyar and Bismardi Jamal had children. Law No. 1 of 1974 concerning marriage stipulated that a wife who could not give children was one of the main reasons for a man to apply for polygamy. The Religious Court could grant a polygamy permit if the wife could not give children or had a disease that could not be cured which made the wife unable to carry out the obligation as a wife, even though the wife did not give polygamy permission. The Jakarta High Religious Court made this fact as the basis of the decision.

The East Jakarta Religious Court Judges ignored the legal fact that polygamy had been going on for decades and the first wife had not filed a marriage cancellation lawsuit against the second marriage when she found out that her husband had remarried. Likewise, when their husbands got sick, they both took care of them until he passed away. In summary, although the trial was attended by both parties to the dispute from the beginning to the end, the East Jakarta Religious Court Judges ignored all answers, arguments and witnesses of the defendant and accepted the lawsuit for reasons of violating the law. It was the basis for the panel of judges to grant the plaintiff's petition and cancel the decision of the East Jakarta Religious Court No.1571/Pdt.G/2014/PAJT regarding the marriage establishment (which decided to ratify the second marriage). Therefore, based on the decision No. 2432/Pdt.G/2014/PAJT, the marriage was illegal.

However, the Panel of Judges of the East Jakarta High Religious Court gave appeal decision No. 82/Pdt.G/2015/PAJT which overturned the decision of the East Jakarta Religious Court so that the decision of the East Jakarta Religious Court No. 1571/Pdt.G/2014/PAJT concerning the marriage establishment (ithbat) between Bismardi Jamal and Muhanna Binti Muhayyar was legal. Last but not least, the decision of the East Jakarta High Religious Court was strengthened by the decision of the Supreme Court which rejected the cassation of the plaintiff based on the Supreme Court decision No. 351/K/Ag/2016.

Conclusion

- a. The basis for the consideration of the judge in the Decision of the East Jakarta Religious Court No. 2432/Pdt.G/2014/PAJT that canceled the marriage establishment (ithbat) was because the defendant is late in submitting the answer at the trial so that the trial does not match the order of the ordinary trial. Therefore, the defendant's answer is deemed to have never existed and the defendant was deemed to have accepted the plaintiff's arguments, so that the Religious Court Decision No.1571/Pdt.G/2014/PAJT granted the request for the polygamous marriage establishment (ithbat) without wife's permission between Bismardi Jamal and Muhanna binti Muhayyar must be canceled. While the Jakarta High Court of Justice argues that the purpose of the judiciary is to seek justice and benefit so that the answers and witnesses of the parties must be heard as long as they are delivered during the trial even though it is late (the principle of *audi alteram partem*) the judge must hear both parties, so the case becomes clear and can provide the

fairest decision. Accordingly, the Jakarta High Religious Court overturned the decision of the East Jakarta Religious Court No.2432/Pdt.G/2014/PA.JT.

- b. The Supreme Court argues that permits in polygamy are a necessity that aims to maintain the welfare of the parties bound to the marriage that have been and are still ongoing. The word "can" in Islamic Law Compilation (KHI) article 71 letter A shows that the cancellation of marriage for reasons of polygamy without court permission is tentative (facultative). Whether or not the marriage is canceled must be submitted to the court and is very dependent on the assessment of the benefits of the wife/wives and children born from the marriage.
- c. The legal consequences of the stipulation of the marriage establishment (ithbat) based on the Decision of the East Jakarta Religious Court No.1571/Pdt G/2014/PAJT and the refusal of the cancellation of the Marriage in the appeal decision at the Jakarta High Religious Court No.82/Pdt.G/2015/PTAJ and the Cassation Decision at the Supreme Court No.351/K/A/2016, the child of Bismardi and the second wife, Muhanna Binti Muhayyar has inheritance rights from the inheritance from Bismardi Jamal, including assets from his property with his first wife, Animar bint Dt. Siego.

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