

Preventing Harm or Securing Certainty? Disparities in Religious Court Rulings on Polygamy Permits Resulting from Pregnancy Out of Wedlock

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The pregnancy of a prospective second wife outside of marriage is not explicitly regulated by law as a valid reason for permitting polygamy, thus creating a legal vacuum and disparities in rulings by religious courts. This study aimed to investigate the causes of these disparities by comparing the Karangasem Religious Court (PA) Decision No. 1/Pdt. G/2018/PA.Kras, which granted the petition, and the Kaimana Religious Court (PA) Decision No. 22/Pdt. G/2019/PA.Kmn, which rejected it. This qualitative study employed a juridical-normative approach. Data collection was conducted through a document analysis of primary legal materials—namely, the two rulings—which were then analyzed using content analysis through the lens of Satjipto Rahardjo's Progressive Law. The results of the study revealed a sharp divergence in the judges' legal reasoning. The Karangasem Religious Court judge demonstrated a non-positivist and contextual approach that prioritizes substantive justice by boldly making legal innovations to protect children. The judge applied the *fiqh* principle of *dar'ul mafasid muqaddamun 'ala jalbil mashalih* (preventing harm takes precedence over seeking benefit). In contrast, the judge at the Kaimana Religious Court adopted a rigid, positivistic, and textual approach, strictly adhering to the formal requirements of Law No. 1 of 1974, without considering the sociological urgency of the pregnancy. This study concludes that a progressive legal perspective is highly relevant to this specific case, in which the law serves to protect human beings and prevent greater harm to the legal status of mothers and children.

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Public Interest Statement

This study examines the complex legal and social dilemmas surrounding requests for permission to practice polygamy based on the out-of-wedlock pregnancy of a prospective second wife. By analyzing conflicting court rulings in Indonesia, this study highlights how differing judicial interpretations—whether strictly textual or contextually progressive—directly impact the well-being of women and unborn children. These findings support the “Progressive Law” approach, which suggests that the legal system should prioritize substantive justice and human protection over strict procedural compliance. This research is important for legal practitioners, policymakers, and the general public, as it emphasizes the need for a judiciary that is responsive to social realities and capable of protecting the rights of children born out of wedlock.



Introduction

The law on polygamy has been a complex and controversial topic in various legal systems around the world, including Indonesia (Danial, 2023). In Indonesia, the practice of polygamy is strictly regulated by Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI) (Presidential Instruction (*Inpres*) No. 1 of 1991 on the Compilation of Islamic Law, 1991; Republic of Indonesia, 1974). Normatively, Articles 4 and 5 of Law No. 1 of 1974 and Articles 55 through 59 of the KHI are essentially restrictive in nature, meaning they only permit polygamy based on reasons

explicitly stated in the law (such as a wife's inability to bear children or a physical disability). Meanwhile, the case of a prospective second wife's pregnancy out of wedlock constitutes an extra-legal reason (not covered by the text of the law). ([Republic of Indonesia, 1974](#); [Utami et al., 2023](#)).

However, social dynamics have raised new legal issues not explicitly addressed in the text of the law, namely, requests for permission to practice polygamy on the grounds that the prospective second wife is pregnant out of wedlock. Textually, the pregnancy of the prospective second wife is not a valid ground for polygamy. On the other hand, Article 53 of the Compilation of (KHI) permits marriage between a pregnant woman who conceived out of wedlock and the man who impregnated her (Presidential Instruction No. 1 of 1991). It is this legal vacuum that has forced judges to engage in legal discovery (*rechtsvinding*) to respond to this humanitarian emergency—which, unfortunately, has led to disparities in rulings among religious courts.

Conflicting judicial interpretations are evident in two Indonesian religious court rulings. The Karangasem Religious Court Decision No. 1/Pdt. G/2018/PA.Kras granted a request for permission to practice polygamy, reasoning that it could serve as a fair solution to protect the rights of an unborn child and accommodate the family's interests ([Karangasem Religious Court, 2018](#)). Conversely, the Kaimana Religious Court, in Ruling No. 22/Pdt. G/2019/PA.Kmn, rejected a similar petition on the grounds that pregnancy out of wedlock violates social and moral norms and therefore cannot serve as a basis for bypassing the formal requirements for polygamy ([Kaimana, 2019](#)).

These differing judicial approaches call for an in-depth analysis using the perspective of progressive law. Progressive law, as conceived by Satjipto Rahardjo, emphasizes that the law must serve human interests, not the other way around ([Rahardjo, 2006](#)). This perspective calls for a flexible interpretation of the law—one that is adaptive to social change and oriented toward substantive justice, rather than merely the literal certainty of the text. This aligns with the view that law enforcement must involve spiritual wisdom and not merely procedural matters.

Previous studies have addressed the issue of polygamy resulting from pregnancy outside of marriage; however, most have employed the *Maqasid al-Sharia* approach or classical normative legal analyses. The studies ([Ahmad, 2023](#)) and ([Aliyun, 2021](#)) conclude that permitting polygamy in this context is valid for the sake of public interest (*maslahah mursalah*) and protection of lineage (*hifz al-nasl*). Meanwhile, ([K. Anwar & Ikamulia, 2019](#)) highlighted the use of the *contra legem* principle to avoid harm (*mudharat*). Based on the previous literature, studies on the permissibility of polygamy generally focus on administrative requirements and normative reviews of the compilation of Islamic law. There has been little research that specifically compares disparities in judicial rulings on extra-legal cases, such as out-of-wedlock pregnancy, through the analytical framework of Progressive Law (Gap/Novelty). Therefore, this study aims to conduct an in-depth investigation into the legal arguments underlying the rulings of the Karangasem Religious Court (No. 1/Pdt. G/2018/PA.Kras) and the Kaimana Religious Court (No. 22/Pdt. G/2019/PA.Kmn). This study is particularly urgent because the absence of specific guidelines from the Supreme Court for handling such cases could have systemic consequences, including the denial of the civil rights of children and women (Impact). Through this analysis, it is hoped that a conceptual framework or proposed regulatory solutions can be identified for the Supreme Court so that substantive justice can be upheld without sacrificing legal certainty.

Literature Review

This study is grounded in the theory of Progressive Law proposed by Satjipto Rahardjo, which posits the fundamental principle that “law is for humans, not humans for law.” This theory rejects the dominance of the legal positivism paradigm, which views law as a closed and autonomous system that often disregards social reality in favor of textual certainty ([Rahardjo, 1991, 2011](#)). From a progressive perspective, the law is required to be responsive to the changing times and oriented toward achieving substantive justice and human well-being ([Rahardjo, 2004](#); [Wiguna, 2021](#)).

This perspective is used to analyze the typology of judges in adjudicating cases, which are generally categorized into positivist and non-positivist typologies. Positivist judges tend to think deductively, prioritize procedural legal certainty, and treat the law as the sole reference for truth or the “voice of the law” ([Syamsudin, 2011](#); [Ulum, 2013](#)). In contrast, non-positivist judges employ inductive logic, interpret legal texts within their sociocultural context, and are willing to exercise judicial discretion or engage in legal discovery (*rechtsvinding*) in the interest of substantive justice ([Mawar, 2020](#); [Syamsudin, 2011](#)). This difference in paradigms gives rise to two styles of interpretation: a rigid textual approach and a holistic contextual approach ([Basaria, 2018](#)).

In addition to the studies at and ([Aliyun, 2021](#)), the discourse on polygamy and legal interpretation has also been extensively discussed by other scholars. For example, ([Danial, 2023](#)) uses hermeneutics to reexamine the verses on polygamy, while [Utami et al. \(2023\)](#) highlight the protection of women's rights. Other studies, such as “ and “, also enrich the body of thought on justice in polygamy (Khotim, 2019), although they have not specifically addressed the

typology of judges in emergency cases such as this. The aspect of fraud in polygamy is also a focus in contemporary Islamic family law studies ([Mat Zain et al., 2023](#)).

Studies on the permissibility of polygamy resulting from pregnancy out of wedlock have evolved into a distinct body of literature comprising several complementary clusters of research. The first cluster consists of studies of court decisions that directly assess requests for polygamy due to the pregnancy of a prospective second wife. The second section discusses disparities and judicial discretion in religious courts. The third provides a theoretical framework for legal discovery and judicial *ijtihad*, while the fourth extends the issue to the realm of the protection of women and children. Two relatively consistent lines of argumentation can be discerned throughout this body of work. The first line of reasoning interprets Article 4(2) of the Marriage Law and Article 57 of the Islamic Family Law (KHI) restrictively, such that pregnancy outside of marriage is not considered a valid reason, and the petition should be rejected or dismissed ([Shanti, 2009](#); [Aziz, 2008](#); [Khasanah, 2018](#)). This position is reinforced in studies that criticize the progressive approach to granting such petitions, as it is deemed to sacrifice substantive law and open the door to legitimizing adultery ([Mukhtar, 2015](#); [Zelyn, 2018](#); [Kurniawan Retnowulandari, 2019](#)). The second approach moves toward a contextual interpretation by prioritizing the protection of lineage, the clarity of a child's status, and the prevention of unregistered polygamy as more urgent values, and then grounds the ruling in *maslahah mursalah*, *hifz al-nasl*, and the principle of prioritizing the prevention of harm ([Aslikhan, 2014](#); [Puspita, 2015](#); [Ahmad, 2023](#); [Azis, 2016](#); [Dania et al., 2026](#)).

This division cannot be reduced to a simple conflict between obedience to and violation of the law because both judges who reject and those who grant the request speak in terms of public interest and harm, albeit with different objects of protection. Restrictive judges prioritize legal certainty, the interests of the first wife, and general moral order, whereas progressive judges prioritize the pregnant mother, the unborn child, and the need for an immediate social resolution ([Baidhowi, 2017](#); [Khasanah, 2018](#)). Some literature adopts an ambivalent stance, acknowledging the urgency of child protection while simultaneously expressing concern that overly lenient rulings might be interpreted as tolerance of adultery ([Budiawan, 2007](#); [Abda'u, 2016](#)). The same tension arises when judges use identical *fiqh* principles to reach conflicting rulings, suggesting that the issue lies in how the evidence is weighed, not in the availability of evidence itself.

More general studies attribute these disparities to judges' discretion in interpreting legal sources, which is influenced by differences in legal schools, interpretations of the status of the Islamic Family Law (KHI), and orientations toward social justice ([Maharani et al., 2019](#)). Cases involving permission for polygamy due to pregnancy out of wedlock provide fertile ground for disparity because the positive legal norms are strict, while social realities are pressing. The theoretical foundation for this is found in studies affirming that legal discovery through *rechtsvinding* or *rechtsschepping* can be pursued when rules are absent, ambiguous, or no longer adequate to satisfy the sense of justice ([Tumpa, 2015](#)). This is reinforced by the portrayal of religious court judges as practitioners of *ijtihad* when written norms fail to address societal dynamics ([Rafiahaini, 2015](#)), and a typology of judges that links formal legality with substantive justice through hermeneutic interpretation ([Taufik & Tohari, 2019](#)). Within this framework, the non-positivist typology of the Karangasem Religious Court aligns with the progressive tradition of *rechtsvinding*, whereas the textual typology of the Kaimana Religious Court aligns with the tendency to treat the requirements of Articles 4(2) and 57 of the KHI as boundaries that must not be crossed.

At a deeper level, this disparity is a symptom of legal pluralism at work in religious courts, where state law, religious norms, and local values are intertwined to form a hybrid legal structure. A study on the prevention of child marriage in East Java reveals that the misalignment between national law, local norms, and socio-religious authorities results in fragmented legal protection, particularly when inter-institutional coordination is weak and local legal instruments are not operational ([Santoso et al., 2026](#)). This interpretation explains why two courts operating under the same legal regime can produce different outcomes of justice, as both link state texts to non-uniform value horizons. Most of the available literature consists of studies of individual court decisions that are strong in analyzing the *ratio decidendi* but weak in cross-court comparisons ([Ulinnuha, 2015](#); [Mukhtar, 2015](#)), and even demonstrate that a wife's consent and the completeness of formal documents do not automatically bind judges ([Nugraha & Akbar, 2025](#)). It is at this point that this study positions itself by comparing the typologies of judicial reasoning side by side and analyzing them through the lens of progressive law, thereby shifting the focus from a judgment of right or wrong to an explanation of why these differences occur.

Mapping of previous research on the issue of polygamy, particularly in urgent situations such as pregnancy out of wedlock, has attracted the attention of many scholars of Islamic law. To map the current state of the art, a summary of relevant previous studies is presented in [Table 1](#) below.

Table 1. Comparison of Previous Research with Current Research

No	Author (Year)	Title / Focus of Study	Approach / Theory	Key Findings
1	Ahmad (2023)	Perizinan Poligami karena Hamil di Luar Nikah [Permission for Polygamy Due to Pregnancy Out of Wedlock]	<i>Maqasid al-Sharia</i>	Permission for polygamy due to pregnancy out of wedlock is valid as a <i>maslahah dharuriyah</i> to preserve lineage (<i>hifz al-nasl</i>) and avoid clandestine marriages (nikah sirri).
2	Aliyun (2021)	Analisis Permohonan Izin Poligami karena Calon Istri Kedua Hamil di Luar Nikah (Studi pada Putusan PA Nomor 1/Pdt.G/2018/P.A.Kras) [Analysis of a Request for Permission to Practice Polygamy Due to the Second Prospective Wife's Pregnancy Outside Marriage]	<i>Maslahah Mursalah</i>	The judge's ruling granting permission for polygamy in the case of an out-of-wedlock pregnancy is consistent with the principle of public interest (<i>maslahah</i>) in Islamic law.
3	Khairil Anwar & Sri Ikamulia (2019)	Perkara Izin Poligami di Pengadilan Agama Bengkalis (Analisis terhadap Putusan Hakim Nomor 0307/Pdt.G/2017/PA.Bkls) [A Polygamy Permit Case at the Bengkalis Religious Court]	Normative Jurisprudence & Islamic Law	The judge granted the petition based on the principle of <i>contra legem</i> (overriding written law) to avoid greater harm to the prospective second wife.
4	Danial (2023)	Polygamy from the Perspective of Islamic Legal Hermeneutics	Hermeneutics of Islamic Law	Through hermeneutical interpretation, the verse on polygamy (An-Nisa: 3) actually places greater emphasis on justice toward orphans and advocates monogamy.
5	Utami et al. (2023)	Protection of Women's Rights in Polygamy in Indonesia	Normative and Doctrinal Jurisprudence	Judges tend to consider social welfare and women's rights issues. Permission may be granted even if the

				optional requirements are not met —provided the first wife consents.
6	This Study	A Comparison of Permissions for Polygamy When the Prospective Second Wife Is Pregnant	Progressive Law & Judge Typology	Analyzing the disparity between two rulings (granted vs. denied) to examine judicial typologies (positivist vs. progressive) in response to legal gaps.

Analysis of Gaps and Novelty Based on [Table 1](#), it is evident that the majority of previous studies, such as the works of Ahmad (2023) and Aliyun (2021), tend to focus on justifying rulings using the analytical framework of *Maqasid Sharia* or *Maslahah* to achieve the public interest. Anwar and Ika Mulia (2019) touched upon the aspect of legal deviation (*contra legem*); however, it remained within the framework of classical normative jurisprudence.

This study fills this gap by offering novelty in terms of comparison and analytical tools. Unlike previous studies, which generally discuss a single ruling or a general concept, this study specifically compares two contradictory rulings (one granted and one rejected) side by side. More importantly, it advances an analytical tool of its own. The positivist-progressive typology here describes how each panel reads the text, and a case-sensitive *maqasid* framework for weighing conflicting harms (*mafsadah*) reconstructs the reasoning that produces the outcome. This framework explains why judges applying the same *fiqh* maxim reach opposite results: the facts of each case satisfy different conditions of harm. The approach yields a replicable standard for assessing such petitions and shows how the configuration of facts shapes the legal fate of vulnerable parties in family-law disputes.

Materials and Methods

This normative legal study uses a juridical approach. The legal materials in this study are classified as primary and secondary sources. The primary legal materials used are the Karangasem Religious Court Decision No. 1/Pdt. G/2018/PA.Kras and the Kaimana Religious Court Decision No. 22/Pdt. G/2019/PA.Kmn. Supporting or secondary legal materials were obtained from legal literature, books, and journals relevant to the discourse on polygamy and progressive law ([S. Anwar, 2009](#)).

The technique for collecting legal materials is carried out through documentary study or library research. This procedure is carried out through systematic steps, beginning with cataloging relevant court decisions and legal literature, reading and analyzing the legal materials in depth to identify key ideas, and finally compiling research notes systematically ([Nazir, 2014](#); [Zed, 2008](#)). Once the legal materials have been collected, they undergo processing through the stages of editing (checking the completeness and clarity of the legal materials) and organizing (arranging the legal materials according to the framework of the discussion). To ensure validity, the legal materials are tested for validity using source triangulation, careful observation, and the use of adequate reference materials ([Sugiyono, 2016](#)).

The analysis of legal materials was conducted qualitatively using content analysis techniques and comparative studies. This content analysis technique aims to reveal the essence, meaning, and reasoning behind the differences in judges' legal considerations in the two rulings ([Bungin, 2007](#); [Teguh, 2001](#)). Through this comparison, the analysis was conducted using a deductive-inductive approach, employing the theoretical framework of Progressive Law to dissect the sociological background and typology of the judges' reasoning ([Rahayu, 2005](#)). The final stage of the study focused on developing a conceptual framework, identifying conflicting arguments arising from the comparison of rulings, and providing a comprehensive interpretation of the findings. To classify the typology of each panel, the analysis coded the ratio decidendi of the two primary rulings along five indicators derived from the Progressive Law framework: (1) the source of authority relied upon, distinguishing exclusive reliance on the statutory text from the additional use of *fiqh* maxims and *maqasid* as substantive values; (2) the mode of interpretation, from a literal and restrictive reading to a purposive and extensive reading of the objectives of marriage; (3) the stance toward the legal gap, distinguishing treatment of the exhaustive statutory grounds as a closed boundary from a willingness to engage in legal discovery (*rechtsvinding*); (4) the treatment of the emergency fact, namely whether the out-of-wedlock pregnancy was excluded as lying outside the statutory variables or weighed as a material circumstance; and (5) the judge's self-positioning, from the "mouthpiece of the law" (*la bouche de la loi*) to an active resolver of the social dilemma. A ruling was read as positivist-textual when the first pole of these indicators predominated, and as non-positivist and progressive-contextual when the second pole predominated. Because the design compares two primary rulings, this typology functions as an interpretive characterization of judicial reasoning, rather than a statistical classification.

Results and Discussion

This study identified two contrasting patterns of legal reasoning in response to cases involving requests for permission to practice polygamy based on an emergency, specifically, the pregnancy of the prospective second wife. The following presents the analysis results for both rulings.

Karangasem Religious Court Decision No. 1/Pdt.G/2018/PA.Kras: A Progressive-Contextual Approach

In this case, the petitioner sought permission for polygamy because the prospective second wife was eight months pregnant, with the first wife providing both written and verbal consent during the hearing. Normatively, pregnancy is not listed as a reason in Article 4 of Law No. 1 of 1974 ([Karangasem Religious Court 2018](#)). However, the Panel of Judges decided to grant the petition based on considerations that went beyond the law's text.

The findings of the analysis indicate that the judge applied a non-positivistic and contextual typology with the following characteristics.

1. Application of Fiqh Principles: The judge applied the principle of “*dar’ul mafasid muqaddamun ‘ala jalbil mashalih*” (preventing harm takes precedence over seeking benefit) *. The judge argued that denying permission for polygamy would cause greater harm, namely, the loss of legal status for the unborn child and social stigma for the extended family.
2. Extensive Interpretation: The judge expands the meaning of the purposes of marriage (*sakinah, mawaddah, and rahmah*). Pregnancy outside marriage is viewed as a domestic crisis that must be resolved, not avoided. Polygamy is viewed as a curative solution to restore harmony and conceal the family's disgrace ([Christianto, 2010](#); [Karangasem, 2018](#)).
3. Sociological-Psychological Considerations: Judges consider not only formal legal aspects but also psychological impacts. There is concern that extramarital relationships—which have become “addictive”—will continue to recur if not channeled into a legitimate marital bond, which would further damage the first wife's household ([Karangasem, 2018](#)).

This decision reflects progressive law, in which the judge dared to make a legal breakthrough (rule-breaking) to protect vulnerable legal subjects (the child and mother) rather than merely adhering to formal procedures.

Kaimana Religious Court Decision No. 22/Pdt.G/2019/PA.Kmn: A Positivist-Textual Approach

In this case, the legal facts indicate that the petitioner had impregnated his prospective second wife and that his first wife had willingly consented to a polygamous marriage. However, the Petitioner's financial situation was unstable because his business stall had been demolished ([Kaimana Religious Court, 2019](#)). The Panel of Judges decided to reject the petition.

The analysis shows that the judges applied a rigid positivistic and textual approach.

1. Strict Adherence to the Text of the Law: The judge acted as the “mouthpiece of the law” (*la bouche de la loi*). The judge rejected the petition because the cumulative requirement of financial capacity, as stipulated in Article 5(1) of Law No. 1 of 1974, was deemed not convincingly met ([Kansil, 1989](#); [Republic of Indonesia, 1974](#)).
2. Ignoring the Emergency Context: Despite the facts of an out-of-wedlock pregnancy and a settlement agreement reached at the police station for the Petitioner to marry his prospective second wife, the judge adhered to the formal requirements. The judge assessed that the petition was based on “compulsion” resulting from demands for accountability, not a genuine desire to achieve the objectives of a sharia-compliant marriage ([Kaimana, 2019](#)).
3. Restrictive Interpretation: The judge did not engage in legal reasoning to accommodate emergency circumstances. The decision was based purely on the inability to meet the administrative and substantive requirements set forth in the law, without providing a legal solution for the status of the unborn child.

Comparison of Judicial Approaches from a Progressive Legal Perspective

Based on the above analysis, the differences between the two panels of judges are presented in [Table 2](#).

Table 2. Comparison of the Two Panels' Judicial Approaches

Comparison Aspects	Karangasem Religious Court (1/Pdt.G/2018)	Kaimana Religious Court (22/Pdt.G/2019)
Ruling	Granted	Denied
Main Rationale	Principles of Fiqh (Avoiding Harm) & Substantive Justice	Law No. 1 of 1974 (Financial Requirements) & Legal Certainty
Judge Typology	Non-Positivist & Contextual	Positivist & Textual
Legal Orientation	Law for people (protecting children and mothers)	People for the law (compliance with procedures)
Social Response	Responsive to a child's disgrace and lineage	Conservative/Restrictive Regarding Formal Requirements

These differences indicate that a disparity in paradigms remains within Indonesia's religious court system. The Karangasem Religious Court's ruling represents a progressive legal approach that integrates moral and sociological considerations, whereas the Kaimana Religious Court upholds the orthodoxy of legal positivism.

Comparative Rulings and Patterns of Factors Determining Disparities

The divergence between the Karangasem and Kaimana Religious Courts is not an isolated anomaly but rather a reflection of a recurring pattern of disparity in similar cases across various religious courts (as documented in the secondary literature rather than through an independent reading of each primary decision). An analysis of several rulings based on the same grounds—namely, the pregnancy of a prospective second wife out of wedlock—reveals that the courts are divided into two opposing camps, a pattern that has been mapped in the literature as two opposing categories of rulings and reflects the common causes of disparity in the religious judiciary ([Baidhowi, 2017](#); [Maharani et al., 2019](#)). On the one hand, some panels granted the petitions. The Bengkalis Religious Court's Decision No. 0307/Pdt. G/2017/PA.Bkls set aside the written provisions (*contra legem*) to avoid greater harm to the prospective second wife ([K. Anwar & Ikamulia, 2019](#)). The ruling of the Bekasi Religious Court No. 1687/Pdt. G/2019/PA.Bks granted the petition on the grounds of public interest and legal certainty for a woman who was pregnant. The ruling of the Kediri Regency Religious Court No. 3971/Pdt. G/2021/PA.Kab.Kdr granted the petition for the sake of the fetus's welfare, even though the alternative requirements were not met. The Kendari Religious Court's Decision No. 287/Pdt. G/2023/PA.Kdi granted the petition after determining that the request met the requirements and did not conflict with the principles of Islamic jurisprudence.

On the other hand, several panels rejected similar petitions based on varying considerations, and this variation demonstrates that differences in rulings cannot be entirely reduced to a conflict between positivist and progressive judges. The Kaimana Religious Court rejected the petition because the cumulative financial capacity requirement was not met. The Kediri Religious Court's Decision No. 414/Pdt. G/2022/PA.Kdr rejected the petition because the first wife's consent was proven to have been given under duress. Purwodadi Religious Court Decision No. 3090/Pdt. G/2020/PA.Pwd denied the petition after determining that the public interest actually favored denial, given that the first wife's consent was granted under family pressure. The Mungkid Religious Court's Decision No. 296/Pdt. G/2021/PA.Mkd declared the petition inadmissible (*tidak diterima*) even though the cumulative requirements had been met, with the panel weighing substantive justice, the welfare of the family, and the potential for future harm. This series of considerations demonstrates that rejections turn on a substantive weighing of each case—an unmet cumulative requirement, a defect in the first wife's consent, or a broader assessment of justice and future harm—even where the formal requirements are satisfied—rather than mere blind adherence to the text.

A comparison of these rulings reveals several variables that consistently determine their direction. First, the nature of the first wife's consent: free consent supports granting the petition, while coerced consent serves as grounds for rejection, as seen in the Kediri and Purwodadi cases. Second, the sincerity of the purpose of the marriage: the intention to form a legitimate family supports granting the petition, whereas an instrumental purpose—merely to legalize the child's status and then divorce the second wife—undermines it, as in the Mungkid case. Third, the petitioner's biological responsibility as the father of the fetus serves as the foundation for the entire argument regarding the protection of lineage. Fourth, the petitioner's ability to uphold substantive justice ensures that granting the petition does not create new injustices for the first family. These variables should serve as the foundation for the assessment, and the lack of consensus on them is the primary source of disparity.

Table 3. Overview of First-Instance Religious Court Decisions on Polygamy Permits Resulting from Pregnancy Out of Wedlock

Ruling (Number)	Ruling	Decisive Considerations
Bengkalis Religious Court 0307/Pdt.G/2017/PA.Bkls	Granted (dikabulkan)	<i>Contra legem</i> ; to avoid greater harm to the prospective second wife
Bekasi Religious Court 1687/Pdt.G/2019/PA.Bks	Granted (dikabulkan)	The welfare and legal certainty of the pregnant woman
Kediri Regency Religious Court 3971/Pdt.G/2021/PA.Kab.Kdr	Granted (dikabulkan)	The welfare of the fetus even though the alternative requirements were not met
Kendari Religious Court 287/Pdt.G/2023/PA.Kdi	Granted (dikabulkan)	Meets the requirements; does not conflict with the principles of Islamic jurisprudence
Kaimana Religious Court 22/Pdt.G/2019/PA.Kmn	Denied (ditolak)	No valid statutory ground under Art. 4(2); financial capacity not proven under Art. 5(1)(b)–(c)
Kediri Religious Court 414/Pdt.G/2022/PA.Kdr	Denied (ditolak)	The first wife’s consent was given under duress
Purwodadi Religious Court 3090/Pdt.G/2020/PA.Pwd	Denied (ditolak)	Greater harm would result from granting the request; consent was given under family pressure
Mungkid Religious Court 296/Pdt.G/2021/PA.Mkd	Not accepted (tidak diterima)	Cumulative requirements met, yet the petition was refused on grounds of substantive justice and potential future harm

The Dialectic of Progressive Law and Positivism: Between Humanitarian Protection and Procedural Compliance

An analysis of the Karangasem Religious Court Decision No. 1/Pdt. G/2018/PA.Kras reveals the panel of judges’ boldness in engaging in legal discovery (*rechtsvinding*) that goes beyond the literal text of the law (Akbar, 2020; Aliyun, 2021). In this case, the judges were confronted with a gap in positive law, as Articles 4 and 5 of Law No. 1 of 1974 do not explicitly list “the pregnancy of a prospective second wife” as a valid reason for polygamy (Republic of Indonesia, 1974). If the judges had adopted a rigid positivist perspective, this petition would have been rejected because it did not meet the law’s exhaustive grounds.

However, the panel of judges opted for a non-positivist approach characteristic of progressive law. Satjipto Rahardjo asserts that law is for humanity, not humanity for the law. This principle is clearly evident when the judges refused to act as a “mouthpiece of the law” (*la bouche de la loi*) and instead chose to interpret the purpose of marriage broadly (Rahardjo, 2006). The judge ruled that denying the request for permission to practice polygamy would actually cause greater harm (*mudharat*) to humanity—namely, uncertainty regarding the paternity of the unborn child and the social stigma (*aib*) that would be borne by the mother and her extended family. This decision by the Karangasem Religious Court judge was not a violation of the law, but rather a legal breakthrough (rule-breaking) achieved through creative legal reasoning (*rechtsvinding*). The judge set aside the literal rigidity of the statutory text in order to achieve a higher legal purpose: substantive justice and the best interests of the child to be born.

The progressive nature of this ruling is reinforced by using *fiqh* principles as a source of moral values to address the rigidity of the state law. The judge used the principle “*dar’ul mafasid muqaddamun ‘ala jalbil mashalih*” (preventing harm takes precedence over promoting benefit) as the basis for justification. The legal logic established is as follows: although polygamy has the potential to cause problems, allowing a child to be born without a legitimate father and allowing an adulterous relationship to continue (because it has become an “addiction”) constitutes far more fundamental harm and must be prevented.

Furthermore, the judge adopted a contextual approach by analyzing the sociological and psychological realities of the parties involved. The judge did not merely examine administrative requirements (the wife’s written consent) but delved into the inner state of the first wife, who granted her consent to preserve the integrity of the household from

the upheaval caused by social disgrace caused by polygamy. Thus, this ruling represents a responsive face of the law—a law that does not shackle but rather serves as a concrete solution (social engineering) to safeguard the social structure of society from moral degradation and legal uncertainty ([Wiguna, 2021](#)).

In contrast, an analysis of the Kaimana Religious Court Decision No. 22/Pdt. G/2019/PA.Kmn reveals a very different face of the judiciary, where the hegemony of legal positivism operates dominantly. In this case, the panel of judges rejected the request for permission to practice polygamy, even though the trial evidence demonstrated a clear urgency: the prospective second wife was pregnant as a result of her relationship with the petitioner, and the first wife had given her consent to spare the family from disgrace ([Syamsudin, 2011](#)).

In this ruling, the judge positioned himself as the “mouthpiece of the law” (*la bouche de la loi*), a key characteristic of the positivist and textualist typology of judges. The grounds for the denial were twofold: the panel found that an out-of-wedlock pregnancy is not among the alternative grounds for polygamy listed in Article 4(2) of Law No. 1 of 1974; therefore, the petition rested on no statutory reason and read to the court as compelled by the demand for accountability rather than by the purpose of marriage, and it found the petitioner’s income insufficient to guarantee maintenance under Article 5(1)(b) and (c). The judge ruled that the petitioner’s income was unstable because his place of business was in the process of being demolished by the local government, raising concerns that he would be unable to treat his wives fairly in material terms in the future.

Read against Progressive Law, this reasoning holds two legitimate concerns within a too narrow frame. The panel found no valid ground for polygamy in Article 4(2), since an out-of-wedlock pregnancy is not among the reasons the statute lists, and it found the petitioner’s income too unsettled to guarantee maintenance under Article 5(1)(b) and (c). Both findings protect real interests, the integrity of the statutory grounds, and the material welfare of the wives and children. A progressive reading takes them seriously and sets them beside the harm that rejection imposes on the unborn child and the mother, which the panel left out of the scale. Satjipto Rahardjo pressed adjudication to carry through from procedural sufficiency to the fundamental purpose of law, namely justice and human welfare ([Rahardjo, 2009](#)).

The Kaimana Religious Court’s rigid approach has created new social wounds in the community. The refusal to validate a marriage under the emergency circumstances of pregnancy is fully in line with the adage “Justice delayed is justice denied.” By rejecting the petition on administrative and financial grounds, the judge consciously chose to uphold legal certainty while sacrificing its utility and justice issues. This ruling leaves a serious sociological problem: the legal status of an unborn child is neglected. The judge seems to turn a blind eye to the fact that denying permission for polygamy does not automatically eliminate the reality of the pregnancy; rather, it exacerbates the situation by allowing the child to be born without a father who is legally recognized by the state ([Rahardjo, 2009](#)).

The Kaimana panel confined its analysis to the letter of the cumulative requirements and stopped short of legal discovery into the moral and social dilemma before it. On the facts, the finding of inadequate material capacity was a substantive ground, and a concrete weighing of the competing harms settled whether rejection was the sounder outcome. Where a reading stops at procedural sufficiency and leaves out the harms that rejection visits on the child and the mother, the law treats the parties as objects bound by the rules and loses sight of the subjects those rules exist to protect.

A Comparison of Judge Typologies and Sociological Implications

An analysis of the rulings by the Karangasem Religious Court and the Kaimana Religious Court reveals a wide “paradigmatic divide” within Indonesia’s religious judiciary. This disparity is not merely a technical difference in the application of legal provisions but a fundamental difference in judges’ perspectives on the very nature of the law itself. The following is an in-depth elaboration of this clash of typologies and its sociological implications.

1. Paradigm Dichotomy: Legalistic-Formalism vs. Progressive-Activism

Theoretically, the differences between the two panels of judges can be mapped onto two extreme poles on the spectrum of legal discovery.

a. Positivist-Textualist Typology (Kaimana Religious Court)

The PA Kaimana panel of judges represents staunch adherents of legalistic formalism. In this paradigm, justice is reduced to “compliance with procedures.” Judges operate using rigid deductive-syllogistic logic: the major premise (Article 5 of Law No. 1 of 1974 regarding financial requirements) is combined with the minor premise (the fact that the petitioner’s business is currently being dismantled), resulting in the conclusion of dismissal. From a progressive standpoint, the human dimension enters this reasoning only weakly. The judge

refuses to consider the “context of urgency” (pregnancy) because that fact does not fall within the variables of the provision being applied. For judges of this type, the law is a closed, autonomous system; thus, social realities (pregnancy out of wedlock) that do not fit within the framework of the law must be set aside in order to preserve the authority of the legal text.

b. The Idealist-Contextual Typology (Karangasem Religious Court)

In contrast, the judges’ panel at the Karangasem Religious Court demonstrated a progressive form of judicial activism. They did not merely read the text but sought to understand its “spirit” When faced with a conflict between formal legal rules (the requirements for polygamy) and humanitarian concerns (the fate of the fetus), the judges chose to violate the rules. This typology is characterized by the use of spiritual intelligence (SI). The judges recognized that allowing a child to be born without a legitimate father constitutes a form of state injustice. Therefore, they employed the principles of *Maqasid al-Sharia* and the *fiqh* maxim (*dar’ul mafasid*) to break through the impasse of positive law. This demonstrates that in progressive law, legal order (rules) may be set aside if social and moral order (the fate of the family) is threatened with collapse.

2. Disparities in Sociological Implications: Protection vs. Neglect

The choice of the above paradigms gives rise to contrasting sociological consequences for those seeking justice (*justiabelen*) and the broader society ([Rahayu, 2005](#); [Suryabrata, 1993](#); [Koentjaraningrat, 1984](#)).

a. Implications of Progressive (Solution-Oriented and Integrative) Rulings: The Karangasem Religious Court’s ruling serves as an effective form of social engineering.

1) Protection of a Child’s Status

By permitting polygamy, a child conceived automatically obtains the status of a “legitimate child” (article 42 of the Marriage Law). This guarantees the child’s civil rights, ranging from the right to lineage, inheritance, and guardianship ([Ahmad, 2023](#)).

2) Resolution of Moral Issues

This ruling breaks the cycle of adultery (i.e., cohabitation). The judge recognized that the relationship between the petitioner and his prospective wife had progressed so far (she was eight months pregnant) that rejecting the marriage would perpetuate sin and moral corruption in the community. Polygamy serves as an “emergency exit” to guide them back onto a path that is both sharia-compliant and socially respectable. The judge’s account—polygamy as a “curative solution” that “conceals the family’s disgrace” and absorbs an “addictive” relationship—belongs in the analysis as the reasoning of the panel, and it carries a real cost: it places the husband’s conduct and the family’s reputation at the center and the women’s autonomy at the margin, cutting against the protection of women’s rights that the article affirms elsewhere. The incentive objection is sharper than the ruling. Treating out-of-wedlock pregnancy as an emergency ground invites a petitioner to secure permission by first creating the fact, and the cumulative thresholds hold that incentive in check: permission follows only from free spousal consent, proven paternity, a sincere intention to build a family, and assured material justice for the first family. Thus, the framework ties relief to the responsibility of a child already conceived. In these terms, the court secures the child’s status without ratifying the conduct that produced the pregnancy.

b. Implications of a Positivist (Passive-Destructive) Ruling: Conversely, the Kaimana Religious Court’s ruling has the potential to cause social injury.

1) Neglect of Legal Status

The denial of permission for polygamy results in the child being born with the status of a “child born out of wedlock” (Article 43 of the Marriage Law), who has only a civil relationship with his or her mother. The judge indirectly contributes to the neglect of the child’s constitutional right to have a legitimate father, simply because the father failed to meet the financial administrative requirements.

2) Social Stigmatization

In the absence of a legal marriage, the mother and child bear the stigma of “shame” for the rest of their lives within the community. Furthermore, this rejection often drives the parties to enter into a *nikah siri* (unregistered marriage), which is not recognized by the state and further weakens the legal standing of women and children in the future ([K. Anwar & Ikamulia, 2019](#); [Syamsudin, 2011](#))

c. Law as a Means of Liberation

This comparison reinforces the central thesis of Progressive Law that “the quality of the law is determined by the quality of its judges.” The Karangasem Religious Court’s ruling demonstrates that the law can serve as a means of liberation—freeing people from the shackles of shame and uncertainty regarding lineage. The Kaimana ruling shows what happens when a reading halts at procedural sufficiency: a sound concern about material capacity crowds out competing harms, and legal certainty is secured while the wider question of justice goes unaddressed.

A Comparison of the Harms of Rejection and Granting from the Perspective of *Maqasid al-Sharia*

The principle of *dar’ul mafasid muqaddamun ‘ala jalbil mashalih*, upon which the Panel of Judges of the Karangasem Religious Court relied, merely establishes that preventing harm takes precedence over seeking benefit. The same principle is also used by some panels to deny petitions to maintain legal order, meaning that the principle itself does not determine the direction of the ruling (Abda’u, 2016). This principle does not address the actual problem faced by judges, namely, that both granting and denying a petition entails harm. For such situations, Islamic jurisprudence provides a supplementary principle: *idza ta’aradat mafsadatani ru’iya a’zamuha dararan bi irtikabi akhaffihima* (when two harms conflict, the greater harm is mitigated by opting for the lesser one), which aligns with the principle *al-darar al-asyaddu yuzalu bi al-darar al-akhaff* (the greater harm is removed by the lesser harm) (As-Suyuthi, 1990). These principles require judges to weigh the severity of each harm before making a decision, rather than simply declaring one to be more harmful than the other.

The weighing of harm is conducted using several established parameters in *fiqh* tradition. Harm is weighed according to its ranking among the *maqasid al-sharia*, such that harm affecting matters of *daruriyyat*—such as the preservation of lineage (*hifz al-nasl*) and the clarity of lineage—is considered more severe than harm affecting procedural order, which is of *tahsiniiyyat* nature. Harm is also weighed according to its degree of certainty; thus, harm that is certain to occur (*mubaqqaq*) is considered more severe than a suspected harm (*mutawahham*). Furthermore, harm is weighed according to its scope; thus, harm that affects third parties and the broader social order is considered more severe than harm limited to a single formal aspect, in accordance with the principle of *yutahammalu al-darar al-kebass li daf’i darar ‘amm*. Finally, harm is weighed according to its permanence and the likelihood of recovery; thus, permanent and difficult-to-remedy harm is considered more severe than temporary harm (As-Suyuthi, 1990; Meidina, 2022).

Applying the case of the second prospective wife’s pregnancy, rejecting the petition causes severe harm across all these parameters. The child born from the pregnancy is classified as a child born out of wedlock, thereby losing rights to lineage, inheritance, and guardianship; this harm touches upon matters of necessity (*daruriyyat*), is certain to occur once the pregnancy becomes a fact, affects an innocent third party, and is permanent. Rejection also drives the parties to enter into unregistered “*nikah sir*” marriages, thereby further weakening the legal standing of women and children. Conversely, the harm feared from granting the petition—namely, the perception that polygamy becomes easily accessible—is largely speculative and can be controlled through strict requirements. When the first wife’s consent is freely given, the petitioner is proven to be the father, and the purpose of the marriage is sincere, the harm resulting from granting the petition remains at the level of a manageable risk, while the harm resulting from rejection is certain and permanent. In this scenario, rejection actually becomes the greater harm and must therefore be avoided by granting the petition as the lesser of two evils. Constitutional Court Decision No. 46/PUU-VIII/2010 gives the child born outside marriage a civil relationship with the biological father wherever a blood tie is established through science, technology, or other lawful evidence. A determination of the child’s origin (*asal-usul anak*) activates that relationship and secures the child’s maintenance and legal recognition from the father through a route that stands apart from the polygamy petition. Nasab, guardianship, and inheritance belong to a different order of protection: classical *fiqh* ties them to a valid marriage, and the Compilation supplies that legitimating effect under Articles 53 and 99. Denial of the petition leaves the child’s civil relationship intact through the constitutional route while withholding the nasab, guardianship, and inheritance the marriage alone confers, and this *fiqh*-status is what enters the scale against the harms of granting.

However, this reasoning does not serve as an automatic justification for all petitions. The principle of “*al-darar la yuzalu bi muthlibi*” (harm shall not be removed by its equivalent) affirms that harm must not be eliminated by a harm that is equal to or greater than it. When the first wife’s consent stems from coercion, granting the petition actually causes injustice to the first family of equal weight; when the petitioner’s sole purpose is instrumental—to legalize the child’s status and then divorce the second wife—granting the petition turns the court into a means of fulfilling a fleeting desire that contradicts the purpose of marriage; and when the clarity of lineage can still be achieved through other means, the urgency of granting the petition diminishes. In the Kaimana, Kediri, and Purwodadi cases, rejection was appropriate precisely because the weighing of harm pointed in different directions. The harm test thus functions

as a case-sensitive assessment, and its outcome depends on whether the conditions that would make granting the petition truly the lesser of two evils are satisfied.

Table 4. Comparison of the Weight of Harm Between Rejection and Granting

Weighing Parameters	Harm of Rejection	Harm of Granting	Greater Weight
Ranking of <i>maqasid</i>	<i>Daruriyyat</i> (preservation of lineage and descent)	<i>Tabsiniyyat-hajjiyyat</i> (procedural order)	Reject
Degree of certainty	<i>Muhaqqaq</i> (certain to occur)	<i>Mutawabham</i> (presumed, managed)	Reject
Scope	Wide-ranging: children, mothers, social structure	Limited and can be limited	Reject
Sustainability	Permanent (lifetime status)	Temporary and reversible	Reject
Reversibility conditions	—	Coerced consent / instrumental intent / inadequate support	Reversal to Rejection

Guidelines for Case Assessment and the Role of the Supreme Court in Reducing Disparities

In response to disparities in rulings rooted in this legal vacuum, it is not enough to rely solely on the individual discretion of judges. This study offers a concrete solution: the need for the Supreme Court (MA) to formulate a clearer regulatory framework, for example, through a Supreme Court Circular (SEMA) or a Supreme Court Regulation (Perma). These regulations are not intended to relax the requirements for polygamy but rather to provide specific guidelines for judges in handling “extra-legal” cases with an emergency dimension, such as pregnancy out of wedlock. These guidelines must ensure that progressive legal rulings can be made under strict conditions: the petitioner must be proven to be the biological father; the first wife must give her consent without coercion; and there must be guarantees to protect the rights (maintenance and inheritance) of the first wife and the children from the previous marriage. Thus, a balance between procedural legal certainty and the protection of human rights can be achieved without creating disparities that harm those seeking justice.

The necessary guidelines must not merely list requirements but must take the form of an assessment framework that can be applied sequentially by every judge. This framework operates in two stages. The first stage is a cumulative threshold review to ensure that the case is indeed eligible to be considered an emergency. The petitioner must be proven to be the biological father of the fetus, because without this responsibility, the entire argument for protecting lineage loses its foundation. The first wife’s consent must be given freely and knowingly, because coerced consent would transform the granting of relief into an injustice against the first family. The purpose of the marriage must be a sincere desire to form a family, not merely to legalize the child’s status only to later divorce the second wife. The petitioner must also demonstrate the ability to fulfill substantive justice so that granting the petition does not result in new neglect. The second stage is only carried out if all thresholds are met—namely, a concrete assessment of harm using the parameters of *maqasid* (objectives), certainty, scope, and sustainability; permission is granted only if the harm of denying the petition is proven to be more severe and more certain than the harm of granting it.

This formulation is appropriate for four mutually reinforcing reasons: it transforms substantive justice—which has traditionally been open-ended—into a set of verifiable requirements, thereby reducing disparities not by eliminating judicial discretion but by providing a uniform standard for that discretion. This formulation preserves the restrictive nature of the law, as granting the request is limited to cases that meet cumulative thresholds and pass the *mafsadah* assessment, thereby addressing concerns highlighted in several studies that polygamy might become too easily accessible to men. This formulation aligns with the Islamic legal reasoning already employed by the courts, as each parameter is grounded in the *maqasid*: establishing biological paternity safeguards *hifẓ al-nasl* and lineage, free consent and the ability to provide financial support preserve the integrity of the first family, while sincerity of intent prevents abuse through *sadd al-dzari’ah*. This formulation is also evidence-based, as its parameters are derived from considerations that clearly distinguish rulings that grant the petition from those that deny it; thus, these guidelines standardize the best judicial practices, rather than imposing new policies. In terms of contemporary *maqasid* scholarship, each parameter carries a *maqasid* into observable form: biological paternity evidences *hifẓ al-nasl*, free consent and assured maintenance evidence the integrity of the first family, and sincerity of intent evidences the closing

of the door to abuse. This is the move Ibn ‘Ashur begins and Jasser Auda’s systems approach develops—the objectives of the law worked out as concrete purposes that a judge can test based on the facts of a case (Akbar, 2020; Ayu Kamsi, 2022).

The most appropriate instrument for incorporating this framework is a resolution adopted by the plenary session of the Religious Chamber, which is then enforced through a Supreme Court Circular. The chamber system and plenary sessions were established to maintain uniformity in the application of the law and reduce disparities in rulings (Manan, 2007), as mandated by the 2010–2035 Judicial Reform Blueprint, and the guidelines produced serve as a guide for judges in first-instance and appellate courts when handling cases. The Religious Chambers have produced numerous rulings, including those regarding permission for polygamy for foreign nationals, but have not yet addressed cases of pregnancy out of wedlock; thus, it is this gap in guidance that needs to be filled. Plenary rulings by the chamber are appropriate because the issue at hand is the uniformity of reasoning regarding recurring case patterns, rather than the structuring of court procedures—which are better regulated through Supreme Court Regulations; should a stronger binding force be desired, the same parameters could also be incorporated into Supreme Court Regulations without altering their substance. This approach does not alter the exhaustive grounds set forth in Law No. 1 of 1974—which falls within the purview of the legislature—but rather provides interpretive guidance to address the existing gap. This approach aligns with the finding that legal protection is often fragmented precisely when inter-institutional coordination is weak and guidelines are not operational, so that standardization through a single binding instrument closes that gap in fragmentation (Santoso et al., 2026). Beyond procedural uniformity, such standardization also serves a substantive purpose: it anchors judicial reasoning in a *maqasid*-based orientation that treats the protection of the child and the family as a primary objective of the law (Ayu & Kamsi, 2022), while preserving the judge’s discretion—including the ex-officio protection of the more vulnerable party—in giving effect to those rights (Damayanti & Haniyah, 2021). Thus, legal certainty and the protection of human rights can be reconciled without sacrificing either. Comparison with other Muslim-majority jurisdictions shows that judicial control rests on substantive conditions. Malaysia treats permission to practice polygamy as a public matter granted through the Syariah Court under Section 23 of the Islamic Family Law legislation: approval follows from the husband’s proven capacity to maintain and treat the wives justly and from the absence of harm to the existing family, and the courts refuse a substantial proportion of applications, most often on financial grounds (Mat Zain et al., 2023). Morocco’s 2004 reform of the Moudawana makes monogamy the governing principle and admits polygamy only on cumulative conditions—prior judicial authorization, an exceptional and objective justification, sufficient means, and notification of the first wife, who may object and may foreclose polygamy through a clause in her marriage contract. Both systems keep out-of-wedlock pregnancy outside the grounds for polygamy and place the decision in a weighing of maintenance, justice, and harm. A standardized set of cumulative thresholds gives the religious courts the same footing and locates the disparity analyzed here in the absence of structured criteria to discipline judicial discretion. The same protection carries constitutional and human-rights weight: the best-interests-of-the-child standard in the Convention on the Rights of the Child and in Indonesia’s child-protection legislation makes the child’s nasab, maintenance, and civil status an obligation the state owes directly, and it grounds the proposed guidelines in a foundation that extends past polygamy doctrine.

Table 5. Operational Parameters of the Proposed Formulation/SEMA

Parameter	Verification Indicators	<i>Maqasid</i> /Principle Basis	Function of Reducing Disparities
Biological Paternity	Evidence that the petitioner is the father of the fetus (acknowledgment/statement/evidence)	Preservation of lineage and descent	Establishing the basis for the protection of lineage
Free consent of the first wife	Written and verbal consent without any indication of coercion	The integrity of the first family; <i>al-darar la yuzalu bi mithlihi</i>	Preventing new injustices
Sincerity of the purpose of marriage	Commitment to building a family; no intention to divorce after childbirth	The objectives of marriage; <i>sadd al-dzari'ah</i>	Preventing abuse

The Requirement of Material Justice	Sufficient financial support for wives and children	Preservation of family wealth; justice in polygamy	Maintaining cumulative conditions
Weighing harm	The harm of rejecting is greater than that of granting based on four parameters	<i>Dar'ul-mafasid</i> , the greater of the two evils	Standardizing judicial discretion

Conclusion

Disparities in judges' rulings regarding permission for polygamy resulting from out-of-wedlock pregnancy reflect a sharp clash between the paradigms of substantive justice and procedural-legal certainty. Handling these extralegal cases, which involve humanitarian emergencies, cannot rely solely on rigid statutory texts but demands spiritual wisdom from a judge. This was demonstrated by the Panel of Judges at the Karangasem Religious Court, who dared to adopt a non-positivist stance through a legal breakthrough (rule-breaking) via a creative legal discovery (*rechtsvinding*). The decision to grant the polygamy request represents a form of progressive legal interpretation that prioritizes the welfare and future safety of the child over mere administrative compliance.

Conversely, the interpretation by the judges of the Kaimana Religious Court—who rejected the petition on the grounds of the absence of formal financial requirements—shows that a reading confined to the formal financial requirements, one that leaves the harms of rejection out of the scale, produces outcomes that the parties experience as legal discrimination. This rejection does not address social realities; rather, it exacerbates the vulnerability of women and children by leaving them to live without recognition and legitimate civil rights from the state.

In conclusion, the law was created to serve people, not the other way around. To prevent uncertainty and disparities that could harm those seeking justice in the future, the Supreme Court must immediately formulate policy instruments or specific guidelines for judges in handling similar cases. In this way, the balance between legal certainty and the protection of human rights can be achieved precisely without having to sacrifice either one.

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