



"Assessing Government Regulation No. 45/1990 through the Lens of John Rawls' Theory of Justice: Implications of Polygamy Prohibition for Female Civil Servants"

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Abstract

Basically, regulations are made to provide benefits and guarantee the rights of individual humans. In fact, the practice of polygamy is the right of everyone, both men and women, because polygamy itself is not prohibited even though it must fulfil certain conditions. In order to create this goal, legal protection must be provided. However, this protection is still inadequate, especially for women. In Article 4 paragraph (2) of Government Regulation Number 45 of 1990, female civil servants are not given the right to choose a life partner because it is prohibited in the regulation. The purpose of this article is to analyse the extent to which the existence of the regulation really provides justice from the perspective of John Rawls' theory and what is the background of a woman who works as a civil servant is prohibited from polygamy? 2) and how does John Rawls' theory of justice review the prohibition of polygamous civil servant women based on Government Regulation Number 45 of 1990? This research uses qualitative methods, while this type of research is literature, with a normative juridical approach. The conclusion of this article is that the prohibition of polygamous female civil servants is motivated by factors of employment status, factors of disruption of work duties and responsibilities, and behaviour and actions. The existence of PP Number 45 of 1990 is actually contrary to John Rawls' theory of justice in the *Principle of Equal Liberty* aspect, as evidenced by the fact that the regulation does not allow a woman to choose a life partner even as a second wife. This proves that the regulation does not accommodate human rights because marriage is the right of every citizen. Meanwhile, in the aspect of *The Principle of Difference*, the existence of these rules is also contradictory. It is proven that the existence of these rules provides a gap for a man to be polygamous and closes the gap for women to be polygamous. This makes a difference in regulations in treating men and women. Because the *principle of difference* actually realises justice without discriminating between sexes.

Keywords: Justice, John Rawls, Civil Servants , Polygamy.

Introduction

The problem of polygamy is still a hot topic of discussion both in Indonesia and other parts of the world. The practice of polygamy is very ancient and has been running since long ago. If you want to study the practice of polygamy in every religious teaching, then there are many stories that describe the occurrence of polygamy carried out not only by kings, but also by prophets in ancient times. In the teachings of Islam, the practice of polygamy is legalised with its own rules and

mechanisms with an emphasis on elevating the dignity of women as they were created.¹

In contrast to the regulations applied by the Indonesian state which adheres to the principle of monogamy, regulated in Law Number 1 of 1974 concerning marriage has been amended by Law Number 16 of 2019 in article 3 paragraph (1) which reads "in principle in a marriage a man may only have one wife and a woman may only have one husband. However, the practice of polygamy is still allowed if it is desired and has permission from the relevant parties."²

For Indonesian people who are Muslims, it is also regulated more deeply in the Compilation of Islamic Law (KHI). Referring to KHI, a husband who wants to have more than one wife must obtain permission from the Religious Court, if polygamy is carried out without permission from the Religious Court, it is declared to have no legal force. And for people who work as civil servants have their own or special regulations that must be obeyed, namely Government Regulation Number 45 of 1990. Since the issuance of Government Regulation Number 10 of 1983 and has been amended to Government Regulation Number 45 of 1990 concerning marriage and divorce permits for Civil Servants, it is necessary to understand that this regulation has caused a lot of debate among the public, especially those who are civil servants. As stated in article 4 paragraph (2) which reads "Female Civil Servants are not permitted to become the second/third/fourth wife". in Government Regulation Number 10 of 1983 article 4 paragraph (2) still allows polygamy with men who are not civil servants. However, since the regulation was changed, female civil servants are now not allowed to be polygamous either by male civil servants or non-civil servants. So that from this regulation has implications for allowing new problems to occur, namely women civil servants being polygamous secretly or *nikah siri*.³

In this modern era, women have been able to surpass men in all aspects, rules that prohibit female civil servants from polygamy are very contrary to human rights. So on this basis, Government Regulation Number 45 of 1990 needs to be reviewed. The regulation is discriminatory towards women who work as civil servants. Meanwhile, male civil servants are still allowed to be polygamous, this is stated in article 4 paragraph (1) "Male Civil Servants who will have more than one wife. Must obtain prior permission from an official". If a female civil servant violates this provision, she will be subject to disciplinary punishment for dishonourable dismissal as a civil servant. Please note, becoming a second / third / fourth wife is not merely a personal decision without thinking about a consideration, it could be that a woman who is a second wife wants to replace the role of the first wife, for example, unable to give birth, *nusyuz*, sick wife and so on. Becoming a civil servant is the right of every human being regardless of status, everyone has the right to become a civil servant if they have followed all the procedures.

The concept of justice can also be defined as a concept that refers to equality and fairness in the rule of law and social systems. All people should be treated fairly and equally under the law. The obligation to respect human rights and ensure that all people should be treated fairly. According to John Rawls, the theory of justice emphasises that all people should be treated fairly, he also said that everyone has equal access to human rights and should benefit equally from the legal and social system. John Rawls also emphasises the importance of creating economic and social

¹ Abdul Matin Salman, *Pendidikan Poligami, Pemikiran dan Upaya Pencerahan Puspo Wardoyo Tentang Poligami*, (Solo: Bumi Wacana, 2012), p.50.

² Article 3 paragraph (1) of Law Number 1 Year 1974 concerning marriage as amended by Law Number 16 Year 2019.

³ Djoko Prakoso, *Pokok-Pokok Hukum Kepegawaian di Indonesia*, (Bogor: Ghalia Indonesia, Cet.1, 1984), p.134.

equality. The theory of justice is an interesting issue to study more deeply because there are many things related to it. Justice has also been a very serious subject of discussion since the beginning of Greek philosophy. There are still many people who think that being fair or unfair is seen from the power they have, even though being fair is very easy, but of course it is not the case in applying community life.⁴ To reveal these problems, it is necessary to detail the above problems in the form of several questions as follows. What is the background of a woman who works as a civil servant is prohibited from polygamy? How is the review of John Rawls' theory of justice on the prohibition of women civil servants from polygamy based on Government Regulation Number 45 of 1995?

Research Methods

This type of research is *Library Research* with qualitative methods. *Library research* is a method for collecting data by understanding and studying various theories from various literatures related to this research.⁵ The qualitative method in research aims to gain an understanding of reality in an inductive thinking process.⁶ The process of research and utilisation of the theoretical basis is carried out so that the research focuses on existing facts. In addition, the theoretical basis is useful for providing an overview of the background to the research as a discussion of the results of the research.⁷ Qualitative research emphasises more on meaning, reasoning, definition in certain situations and examines more about everyday life. The main purpose of using qualitative research is to develop understanding, concepts that ultimately become theories.⁸ The analysis in this research is prescriptive, which aims to be able to get various suggestions about what to do to be able to overcome or solve certain problems. Prescription has its own purpose, namely to provide arguments for the results of the research that has been carried out. Arguments that have been conveyed in order to provide a true or false judgement or what should be according to the law about legal facts or events.⁹ The approach used in this research is a normative juridical approach. Normative juridical or can be called normative legal research usually only uses studies in the form of documents, namely with sources of legal material such as legislation, court decisions, legal theories or opinions from various scholars. Normative juridical can also be called library research. According to Ahmad Mukti Fajar ND and Yulianto, normative juridical research is research that places the law as a norm. The norm in question is about principles, rules, legislation and doctrine.¹⁰ The most appropriate step in research is data collection techniques, because getting data is the main goal. If there is no data, it cannot meet the established data standards.¹¹ Data collection techniques are carried out using the documentation method, namely by searching, sorting, describing and analysing data obtained from literature or sources related to the

⁴ Muhammad Taufik, Filsafat John Rawls tentang Teori Keadilan, *Jurnal Studi Islam Mukaddimah*, Vol.19:1, 2013, p. 42.

⁵ Muhammad Rijal Fadli, "Memahami desain metode penelitian kualitatif", *Jurnal Humanika, Kajian ilmu Mata Kuliah Umum*, Vol.21:1, 2021, p.35.

⁶ Miza Nina Adlini, dkk, "Metode Penelitian Kualitatif Studi Pustaka", *Jurnal Edumaspul*, Vol.6:1, 2022, p. 975.

⁷ Rukin, *Metodologi Penelitian Kualitatif*, (Sulawesi Selatan: Yayasan Ahmar Cendekia Indonesia, 2019), p.6.

⁸ *Ibid*, p. 7

⁹ Mukti Fajar ND, Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, cet. ke-2 (Yogyakarta: Pustaka Pelajar, 2013), p. 36.

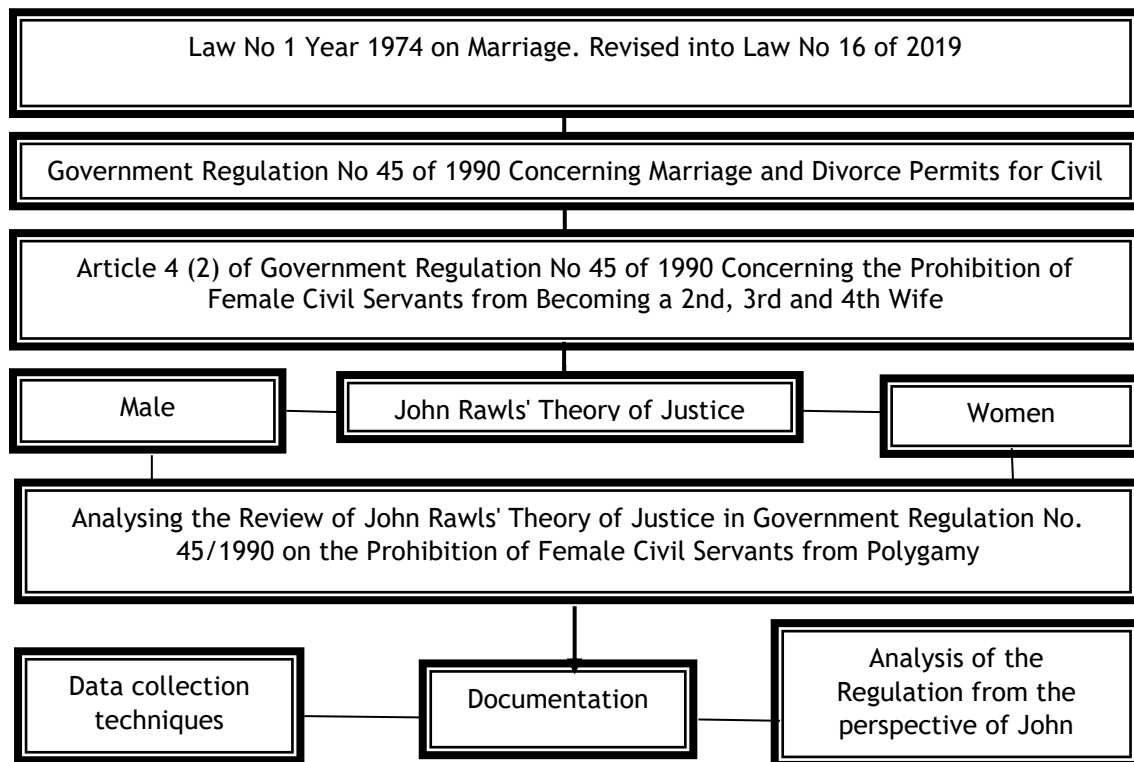
¹⁰ Muhaimin, *Metode Penelitian Hukum*, cet. ke-1 (NTB: Mataram University Press, Juni 2020), p. 45

¹¹ Sugiyono, *Memahami Penelitian Kualitatif*, cet. ke-7 (Bandung: CV. Alfabeta, Januari 2012), p. 62.

problem under study. A document is a record of an event that has passed. Documents are usually in the form of writings, pictures or monumental works (history, biography) of a person.¹²

Theoretical Framework

In this study, the flow departs from the prohibition of marriage, as regulated in Law Number 16 of 2019 concerning Marriage, does not regulate the prohibition of marriage for professional reasons, while Article 4 Paragraph (2) of Government Regulation Number 45 of 1990 regulates that female civil servants are not permitted to become second/third/fourth wives or be polygamous by men who are civil servants or non-civil servants, if there are female civil servants who are proven to be second, third and fourth wives, they will be subject to sanctions in the form of dishonourable dismissal. Then it will be analysed using the theory of gender equality to find out the extent to which justice can be applied to both male and female sexes. The theoretical framework in this research can be seen in the following framework image:



Theories of Justice According to John Rawls

In essence, justice is to consider someone or another party in accordance with the rights obtained. Every person has the right to be recognised and treated according to their dignity and status without distinguishing ethnicity, descent, and religion. Justice or the word fair is used in 4 (four) ways, namely balance, equality, non-discrimination, giving rights to the rightful, and delegating forms based on level and feasibility.¹³ An American philosopher named John Rawls came up with a theory, namely the theory of justice. John Rawls was born in Baltimore in 1921 and died in

¹² Sugiyono, *Metode Penelitian Kuantitatif, kualitatif, dan R&B*, (Bandung: CV. Alfabeta, 2010), p. 309.

¹³ Muhammad Taufik, "Filsafat John Rawls tentang Teori Keadilan", *Jurnal Studi Islam Mukaddimah*, Vol.19:1, 2013, p.43.

2002. His full name is John Borden Rawls.¹⁴ John Rawls took courses in political theory, and his greatest work was writing about justice, *A theory of Justice*, published in 1971. *A theory of Justice* became one of the most widely responded to and commented upon books of philosophy in the 20th century. This theory was born from a thought that led to progress and had a great influence on society from John Rawls. John Rawls also wrote several articles and papers to explain and defend the theory of justice. John Rawls' theory of justice is not easy to understand, and some scholars have even tried to reinterpret it, and some still find it difficult to grasp John Rawls' concept of justice.¹⁵

John Rawls describes justice as *fairness*. John Rawls seeks to emphasise the principles governing rights and obligations, therefore in order to ensure balanced rights and obligations, it is necessary to emphasise *fair* agreements for all members of society. Because only a *fair* agreement can encourage social cooperation. The key to understanding John Rawls' formulation of justice is *fair* agreement, therefore according to Rawls justice as *fairness* is "pure procedural justice".¹⁶ John Rawls has an opinion that justice in social institutions is the highest virtue and truth in the system of thought. The sentence emphasises simpler and more elegant rules. This means that if it is not in accordance or not in line with justice, it must be changed or rejected.¹⁷ Because a law or institution is a governing part to achieve justice. Laws that do not comply with or deviate from justice will act at will and do not follow the rules in a structured manner, justice cannot be negotiated with the principles of justice explained by John Rawls, because justice is absolute. John Rawls' theory of justice also contains criticism of the failure of the theory that was developed at that time, which makes this theory of justice much debated by experts.

The theory of justice according to John Rawls must be developed through a contractual approach, where the principles of justice chosen are based on the mutual consent of all free, rational and equal parties.¹⁸ The theory of justice requires a contractual approach to ensure that everyone enjoys fair rights and obligations. In his theory, John Rawls defines justice as fairness, with principles of rationality, freedom and equality. Therefore, John Rawls requires principles of justice that prioritise rights over interests.¹⁹

Justice as *fairness* implies that those who have better skills or talents should be entitled to greater benefits, so that these benefits provide opportunities for better life prospects. According to John Rawls, fairness should be understood as "equality of status and rights". John Rawls developed two principles of justice, namely the principle of maximum equality, which is the most basic principle and must be followed by all parties, meaning that everyone has the same right to the most basic freedoms as widely as possible. The epistemology of John Rawls' theory of justice was initiated from the theories that developed at that time, among others; *liberalism*, social contract theory, *utilitarianism*, and *intuitionism* which were then refined by Rawls through *A Theory of Justice*. Because according to him, the four theories above still have some weaknesses that need to be refined and from the

¹⁴ *Ibid*, p.48

¹⁵ *Ibid*, p.50.

¹⁶ Iqbal Hasanuddin, "Keadilan Sosial: Telaah atas Filsafat Politik John Rawls", Jurnal Refleksi, Vol.17:2, Oktober 2018, p. 195.

¹⁷ Rina Rehayati, "Filsafat Multikulturalisme John Rawls", Jurnal Ushuluddin, Vol.18:2, Juli 2012, p. 214.

¹⁸ Alifa Cikal Yuanita, "Menelaah Konsep Keadilan Hukum Teori John Rawls dalam Pemutusan Hubungan Kerja Secara Sepihak Terhadap Pekerja Migran Indonesia di Luar Negeri", Interdisciplinary Journal on law, social sciences and Humanities. Vol. 3:2, 2022, p. 134.

¹⁹ *Ibid*, p.135.

results of the refinement of the four theories above, Rawls calls it *Reflective Equilibrium*.²⁰

John Rawls is a figure who believes that ethical principles can be a strong basis for building a just society. Rawls developed his thoughts on a just society by developing a theory, Rawls was also heavily influenced by the school of Utilitarianism. The explanation of John Rawls' theory of justice is considered to be the most comprehensive theory to date, and it can be said that the theory itself departs from Utilitarianism. However, John Rawls himself is often included in the group of Legal Realism adherents. John Rawls argues that there needs to be a balance between private and collective interests. How the measure of the balance should be given is called justice. Justice is a non-negotiable value because only with justice is there a guarantee of stability in human life.

Law, in John Rawls' view, should not be perceived as an impartial referee who sympathises with others, as Utilitarianism teaches. According to John Rawls, the law must be a guide in order to take a position while still paying attention to individual interests.²¹ The meaning of the word fair in the Big Indonesian Dictionary is not one-sided, not in favour of anyone, sticking to the truth, and not arbitrary and also all citizens get the same treatment.²² Justice according to Islam is a milestone in the life of a person with a conscience, justice cannot be influenced by feelings of pleasure, force, hostility and others. Fairness if looked at from an Islamic perspective is one of the norms that shows the level of one's devotion to the teachings revealed by Allah SWT to the Prophet Muhammad SAW. The benchmark for the designation of a just person and a just government is a person who is known to have fear of Allah SWT, not for fear of humans or positions, the power he has.²³ A just government is a government that runs the wheels of government by fulfilling all the obligations contained in the constitution as well as possible. The government is the servant of the community, not the government must be served by the community. Carrying out justice is not as easy as turning the palm of the hand that states a government in society has done justice. To be able to create a fair government will certainly cause many protests from various groups who feel that their aspirations are not fulfilled.²⁴ Justice is a tool to implement the law to all people regardless of differences or positions. Al-Qur'an Surah An-Nissa verse 58 has explained "*And when establishing a law among men, let you establish it fairly*".

The Role of Justice

A law that embodies justice is necessary in the life of every human being. Without the rule of law human life becomes messy or chaotic and will lose to develop humanely.²⁵ Interpreting the meaning of justice always starts with justice as the purpose of law, namely legal certainty and expediency. Justice is not written in a text but in making laws or making legislative products must be based on justice which is the purpose of the law. As said in ethical theory that the purpose of law

²⁰ Syukron Wahyudhi dan Faza Achsan Baihaqi, Kontekstualisasi Teori Keadilan John Rawls Pada Konstelasi Kemasyarakatan di Indonesia (Studi Kolerasi antara Al-Qur'an dan Bibel), *Al-Mada: Jurnal Agama, Sosial dan Budaya*, Vol.6:2, 2023, p.159

²¹ Baso Mading, dan Lidya Resty Amalia, *Filsafat Ilmu Hukum*, (Depok: PT. RajaGrafindo Persada, 2022, p. 175.

²² Pusat Bahasa Departemen Pendidikan Nasional, *Kamus Bahasa Indonesia*, (Jakarta: Pusat Bahasa, 2008), p.12.

²³ Subhan Amin, "Keadilan dalam Perspektif Filsafat Hukum Terhadap Masyarakat", *Jurnal El-Afkar*, Vol. 8:1, Januari-Juni

²⁴ E. Fernando Manullang, *Menaggapi Hukum Berkeadilan*, (Jakarta, Buku Kompas, 2007), p. 95.

²⁵ Sewu, P, Lindawaty S, "Kegunaan Filsafat Hukum dalam Mengupas Tuntas Permasalahan Hukum Kontekstual", *Wacana Paramarta: Jurnal Ilmu Hukum*, Vol. 5:1, 2006, p.25.

itself is solely to realise *justice*. In life justice is very important, as well as the law, the most important thing in law is justice. Justice in a broad sense is not biased or impartial. Rights in law are called authority. Everyone has the same rights in obtaining legal protection and defence in law. Meanwhile, everyone's obligation is to obey and submit to the laws that apply in the country of Indonesia, and not to violate these regulations. Between the rights and obligations of each person must be fulfilled in a balanced manner so as to create justice.²⁶ Justice has a function as maintaining and protecting human rights and obligations, as well as creating a social order and welfare. In the 5th principle, "Social justice for all Indonesian people", justice is very important in the life of the nation. In social life, people must feel justice in their lives because justice is the right of every citizen. A person's justice must be guaranteed by the state. Justice today has been widely applied in the fields of law, economics, and the life of the nation and state.²⁷

The application of justice in an order of community life, various aspects must be based on the precepts listed in Pancasila including aspects of justice in the legal order so that the law can prosper the community and the continuity of the law itself can be accounted for in an existing regulation. Legal justice is a rule that cannot be changed and applies anywhere and anytime. According to natural law, justice must be able to carry out justice that can provide benefits and solve various problems.²⁸

In addition to justice being one of the reasons for the creation of the legal text (Law), the purpose of the law is also the basis of reference for judges in processing or determining all decisions. A true justice is implemented in reality. Justice is a basic spiritual need in the system of community relations. Society has a picture of what is appropriate and inappropriate and what is right and wrong. Justice in the philosophy of law will remain throughout the implementation of law enforcement and will always be held firm. Understanding related to the philosophy of law will be able to explain the basis of law philosophically and it is time to be strengthened by all parties who are competent or have good abilities so that they can build real law.²⁹

Justice in the context of Islam is a principle that must be upheld, Allah SWT itself has the nature of *Maha Adil (al-'Adlu)* which a servant must also emulate. For every human being, social justice is an ideal that is expected to be felt by all. Islam requires that loyal people can feel their rights as human beings, namely by fulfilling all their needs, ensuring their religious safety, as well as the safety of their souls, bodies, and others.³⁰ The meaning of justice as defined by fiqh scholars is to carry out God's law, humans punish must be with religious law as revealed by Allah SWT to His Prophet and Messenger. Therefore, doing justice means carrying out justice ordered by Allah SWT.

Justice has the same meaning in every perspective, this is in line with the meaning of justice explained in Islam, namely:

1. Fair is equal, equal means not discriminating between one person and another. The equality in question is about rights. Because basically humans should not

²⁶ Kania Dewi Andhika Putri, Arifin, "Tinjauan Teoritis Keadilan dan Kepastian Dalam Hukum Di Indonesia, Jurnal Mimbar Yustitiam (The Theoretical of Justice and Legal Certainty in Indonesia)", Vol.2:2, Desember 2018, p. 148.

²⁷ Amad Sudiro dan Deni Bram, *Hukum dan Keadilan: Aspek Nasional dan Internasional*, (Jakarta: PT Raja Grafindo Persada, 2013, p.164-165.

²⁸ Kania Dewi Andhika Putri, Arifin, p. 150.

²⁹ Inge Dwisvimiar, "Keadilan dalam Perspektif Filsafat Ilmu Hukum", Jurnal Dinamika Hukum, Vol.11:3, September 2011, p.530.

³⁰ Fauzi Almubarak, "Keadilan Dalam Perspektif Islam", Jurnal Istighna, Vol. 1:2, Juli 2018, p.115.

be differentiated. Rich or poor, men or women, officials or people, and so on must be positioned equally.³¹

2. Fairness is being considerate of individual rights and giving each one its due. This is referred to as *wadh al-syai'fi mahallihi* (putting things in their place). The opposite is *zalim*, which is *wadh' al-syai'fi ghairi mahallihi* (putting something out of place).
3. Justice that is attributed to the divine. All beings have nothing on Allah SWT. Allah's justice is His Mercy and goodness. Allah SWT is called *qaa'iman bi al-qisth* (the one who establishes justice).³²

Principles of Justice

John Rawls believes that a just society is one in which basic rights, freedoms, powers, opportunities, and welfare are fulfilled. John Rawls states that the cause of injustice is the current social situation in society so it is necessary to re-examine the principles of justice used to form a good society.³³ In order to create justice, John Rawls uses several principles that can be used.

1. Freedom that is equal in magnitude, as long as it can benefit all parties. (*Principle of equal liberty*)

These principles implement the basic structure of society and impose rights and obligations and regulate the distribution of social and economic benefits. They categorise those aspects of the social system that define the freedoms of the people (citizens) and those aspects that serve to perpetuate social and economic inequality.³⁴ The basic freedoms of a citizen are political freedom (the right to elect and be elected to a particular office) as well as freedom of speech and association, freedom of belief, and freedom of thought, freedom of defence of (personal) property, freedom of arbitrary arrest as described in the concept of *rule of law*.³⁵ The main core of John Rawls' theory is freedom. The issue of freedom is related to constitutional or legal restrictions. In these restrictions that make a citizen lose the space to act according to what he wants. The law or constitution actually imposes restrictions that ignore human freedom or the right to self-determination. Freedom is forced to conform to the constitution and positive law. The freedoms that John Rawls refers to are the basic freedoms as described in the concept of the rule of law, which include:

- a. *Political liberty (the right to vote and to hold public office) and freedom of speech and assembly.*
- b. *Freedom of conscience and freedom of thought.*
- c. *Freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment*
- d. *The right to hold personal property and freedom from arbitrary arrest and seizure.*

³¹ Afifa Rangkuti, "Konsep Keadilan Dalam Perspektif Islam", Tazkiya: Jurnal Pendidikan Islam, Vol.6:1, Januari-Juni 2017, p.8

³² *Ibid*, p.9

³³ Darji Darmodiharjo, dan Shidarta, *Pokok-Pokok Filsafat Hukum; Apa dan Bagaimana Filsafat Hukum Indonesia*, (Jakarta: PT Gramedia Pustaka Utama, 1995), p.146.

³⁴ John Rawls, p. 73.

³⁵ Khudori Soleh, "Mencermati Teori Keadilan Sosial John Rawls", Jurnal Ulul Albab, Vol. 5:1, 2004, p. 181.

These basic freedoms must be guaranteed in the constitution as equal rights for all citizens. Basic freedoms are fundamental values for human beings, so they must be protected and opened up as much opportunity as possible in their realisation.

2. *The principle of difference*

Every human being must have inequality both in the economic and social fields, but it must be managed in such a way that this inequality can benefit everyone, especially those who are less fortunate, John Rawls does not require that all people be the same, such as in terms of wealth, status, occupation and others because it will certainly not be possible and has become natural. The inequality must be regulated so that it becomes a bond, cooperation, and mutual benefit.

³⁶

The second principle concerns the distribution of income and wealth with the design of the Komodo chain (*chain of command*), which is a formal line that outlines the legitimate power, communication and responsibilities between positions in a company or agency. It is depicted like a chart to tell who is responsible and reports to whom. So that you can know or identify the relationship between superiors and subordinates in the organisational structure.³⁷

Both principles can be applied to various Institutions. Firstly, all the rights and freedoms referred to by these principles are rights and freedoms defined by the public rules of the basic structure. The first principle states that a certain set of rules, which are applied to everyone equally. Every principle must mention a person, and state that all people gain something from inequality, as a reference is a person who holds a social position or position, which is confirmed by the basic structure.³⁸ In applying the second principle, John Rawls assumes that it is possible to give hope of welfare to every individual who holds such a position. This indicates the future of their lives in terms of their social status. The first of these two principles can be understood as an efficient and customisable principle that can be applied to various social institutions or to the basic structure of society, and the second can be understood as an open social system where jobs (careers) are open to everyone who has talent.³⁹

Fair Equality

In searching for the meaning of the concept of *fairness*, John Rawls invites us to understand an important idea in his theory, namely the idea of *the original position*, through which *the original position* can show the meaning of *fairness* and how it can be produced.⁴⁰ *Justice as Fairness* does not demand that everyone involved and going through the same procedure will get the same result. It says that unequal outcomes must be accepted as *fair* to everyone. This can only be done through an agreement that ensures the *fair* distribution of rights and obligations. Therefore, John Rawls asserts that all parties involved in the agreement on the principles of justice must be in the *original position*. The characteristics of the original position are as follows:

³⁶ Ibid, p.181.

³⁷ Nuraida Pohan, dkk, "Gambaran Sistem Penataan Kelembagaan dan Pengembangan Sumber Daya Manusia Mendukung Kinerja Pegawai di Lembaga Penilaian Kesesuaian Provinsi Sumatera Utara", Jurnal potensi, Vol.2:1, September 2022, p. 60.

³⁸ John Rawls, p. 76.

³⁹ Ibid, p. 79.

⁴⁰ Sunaryo, "Konsep Fairness John Rawls, Kritik dan Relevansinya (*John Rawls's Concept of Fairness, Criticism and Relevance*)", Jurnal Konstitusi, Vol.9:1, Maret 2022, p.7.

1. A veil of ignorance

John Rawls argues that the default position is a guarantee that *fair* procedures will take place, and the outcome will be accepted as *fair*.⁴¹ The problem with human nature is that each side tends to defend and fight for itself. This leads to conflict. Therefore, the parties involved in the agreement must be in a state of a *veil of ignorance*. John Rawls explains that a state of ignorance is a condition that:

- a. Everyone involved in the deal has no knowledge of the alternatives that could affect the formulation process as well as the deal process.
- b. They must be able to make judgements or formulations based on general considerations.
- c. They are guided only by formal boundaries, regardless of their personal interests.
- d. They are guided by understanding and a sense of justice.

2. Principles of Rationality, Freedom and Equality

- a. The principle of Rationality (*the rational*) is the ability of an individual or a person to make an inviolate and well-conceived decision. This means that rationality in the default position is entirely dependent on procedures, which all parties have agreed and accepted as fair procedures.⁴² Meanwhile, the result may not be satisfactory. However, the result must still be considered fair and must not be rejected by any party.
- b. The Principle of Freedom is a condition that no longer requires external authority to determine what is good and bad, just or unjust, because the principle of justice has become part of the way of life of the community itself and is also able to see itself as an independent person.⁴³
- c. The Principle of Equality is a principle that treats all parties equally. With this principle, all parties involved in the original position are recognised as having the same rights and obligations. Thus the real case is that everyone has the same moral ability to understand what is good, what is just, as well as the fact that everyone has different talents

3. Maximin Strategy

Maximin stands for *Maximum Minimorum* which means the maximum among the minimum.⁴⁴ This is a form of strategy where the fate of the disadvantaged group (minimum) is used as a *benchmark* to ensure the fulfilment of all basic human rights. The advantages obtained by the fortunate (*maximum*) must also benefit those who are less fortunate. After that, it will result in prosperity for both.⁴⁵

Problems related to justice and injustice have been the longest debate in human history and remain interesting to analyse. This is because human life has always been about achieving justice. In addition, the term justice has a broad meaning, and is one of the important concepts in political philosophy. John Rawls states that every human being is entitled to equal rights with very broad basic freedoms in accordance with similar freedoms towards others. This principle strongly guarantees concern for human rights. Government institutions should be able to use

⁴¹ Koerniatmanto Soetoprawiro, "Keadilan Sebagai Keadilan (Justice as Fairness)", Jurnal Hukum Pro Justitia, Oktober 2010, Vol.28:2, p.238.

⁴² *Ibid*, p. 239.

⁴³ Andre Ata Ujan, *Keadilan dan Demokrasi: Telaah Filsafat Politik John Rawls*, (Yogyakarta: Kanisus, 2001), p.63

⁴⁴ Koerniatmanto Soetoprawiro, p.241.

⁴⁵ Andre Ata Ujan, "Keadilan Sosial Dalam Tantangan Ekonomi Pasar Mencermati Gagasan Keadilan Sosial Hayek", Jurnal Ledalero, Vol.12:2, Desember 2013, p.351.

this principle as a guideline to determine basic rights, such as the right to life, the right to acquire the means of life, and the right to choose one's religion. Human rights are closely related to the characteristics of human beings as individuals, that is, individuals who have freedom.⁴⁶

Justice, according to John Rawls' perspective, must be upheld and become the basic spirit of various basic social institutions of society. *"Justice is the first virtue of social institutions, as truth is of systems of thought; being the first virtues of human activities, truth and justice are uncompromising"* (John Rawls, 1999). Justice is the first and foremost virtue of social institutions, as truth is of systems of thought, and the first virtue of every human action, hence truth and justice are uncompromising.⁴⁷

The concept of justice expressed by John Rawls is basically the principle of justice in a public perspective. However, what needs to be understood is that in matters related to marriage, it basically also contains public elements because the state also participates in regulating marriage.⁴⁸ Related to Government Regulation Number 45 of 1990 concerning amendments to Government Regulation Number 10 of 1983 concerning marriage and divorce permits for Civil Servants. The regulation is still in use today, but there has been no change or revision from the government. Problems discussed regarding article 4 paragraph (2) *"Female Civil Servants are not permitted to become a second/third/fourth wife"*. also in article 15 paragraph (2) *"Female Civil Servants who violate the provisions of article 4 paragraph (2) shall be subject to disciplinary punishment of dishonourable dismissal as Civil Servants"*.

Some of these regulations stipulate that men are allowed to practice polygamy under certain conditions, while women are prohibited for unclear reasons. John Rawls' concept of justice will answer these questions. Civil servants are state apparatus, and become public servants who are expected to be good examples or role models for the people of Indonesia both from all behaviour, actions as well as obedience to legislation. Justice is very synonymous with law, the law through laws and regulations that are made can regulate and make equal distribution of justice for the community. Therefore, the role of law through regulations is very important in creating justice. All ways and efforts to be able to achieve justice require the seriousness of the intention of all elements of the formation of these regulations to consider various kinds of interests and determine decisions wisely.⁴⁹ If the law is in the hands of the right and civilised people, it will be able to achieve this justice. An important thing to form a good legal product requires to fulfil a sense of justice in society. In the process of forming a regulation, it is necessary to refer to guidelines so that the legal products that are born later become valid and authoritative, and can be applied in the future.⁵⁰

Background of Government Regulation No. 45/1990 on Marriage and Divorce Permits for Civil Servants

Government Regulation Number 45 of 1990 amending Government Regulation Number 10 of 1983 which regulates marriage and divorce permits for civil servants. Law Number 1 of 1974 which has now been revised into Law Number 16 of 2019 concerning marriage and its implementing regulations, namely Government

⁴⁶ Raimundus Bulet Namang, *Analysis of John Rawls Perspective Of Justice Value On Barter Maret in Lamalera Village*, Social Sciences, Humanities and Education Journal, Vol.1:3, September 2020, p.68.

⁴⁷ *Ibid*, p.70

⁴⁸ Zakki Adhlyati, Achmad, "Melacak Keadilan dalam Regulasi Poligami: Kajian Filsafat Keadilan Aristoteles, Thomas Aquinas, dan John Rawls", *Jurnal Hukum*, Vol.2:2, 2019, p.421.

⁴⁹ Bernard L. Tanya, *Teori Hukum, Strategi Tertib Manusia Lintas Ruang dan Generasi*, (Yogyakarta: Genta Publishing), p.20.

⁵⁰ Yogi Prasetyo, "Urgensi Pembentukan Peraturan Perundang-Undangan Yang Berkeadilan", *Jurnal Legislasi Indonesia*, Vol.20:2, Juni 2023, p.35

Regulation Number 9 of 1975⁵¹, these legal products apply to all Indonesian citizens. For Civil Servants, in addition to these two regulations, they must also comply with Government Regulation Number 10 of 1983 jo Government Regulation Number 45 of 1990. It is intended that Civil Servants can be a good example and be a good role model for the community, including the matter of fostering family relationships. Law No. 8 of 1974 on Civil Service Principles explains that in achieving the national goal of creating a just and prosperous society that is equitable and balanced materially and spiritually, it is necessary to have Civil Servants as state servants who are full of loyalty and obedience to Pancasila, the 1945 Constitution, the State, the Government, high quality, responsible for carrying out their duties. Therefore, it is necessary to have a law regulating Public Servants which is implemented based on a career and merit system.⁵² The enactment of Government Regulation No. 45/1990 concerning marriage and divorce permits for Civil Servants was based on Circular Letter No. 48/SE/1990 which was also signed by the government, namely at that time the President of the Republic of Indonesia Mr Soeharto and his Secretary Mr Moerdiono.⁵³

Civil Servants or State Civil Apparatus are servants of the state who are good examples and role models, in behaviour or obedience to laws and other regulations. The lives of civil servants are also supported by a harmonious family life, so that in carrying out their duties the civil servants are not much disturbed by family problems. At the time of the implementation of PP number 10 of 1983 (before the revision) some of the provisions in it were still unclear. At that time, officials were unable to take decisive steps due to the unclear formulation of the provisions of PP No. 10 of 1983, giving rise to different interpretations. Therefore, the government looked at and made improvements by adding or changing some of the provisions in PP No. 10 of 1983. Some of the changes include clarity regarding submitting a request for permission in the event of divorce, the prohibition for female civil servants to become a second/third/fourth wife, salary distribution due to divorce which is expected to ensure justice for both parties.

Implementation of the Provisions of Article 4 of Government Regulation Number 45 of 1990

The birth of legal products is a means of legitimisation by the state. Often, the birth of regulatory products always goes beyond the regulations and laws themselves. In terms of utility, the existence of law is a balance in people's lives. The law is present to provide guidelines, instructions to the community in living life. In the needs of the state, the existence of law can be pursued for the development dimension. In this context, the law can carry out supervision of human behaviour. Thus, the law as an adhesive to human behaviour as an effort to control the state towards society itself.⁵⁴

Government Regulation Number 45 of 1990 in article 4 paragraph (1) reads *"Male civil servants who will have more than one wife must obtain prior permission*

⁵¹ Hilmi Yusron Rofi'I, H. Muhammad Zaki, dkk, "Analisis Hukum Keluarga Islam Terhadap Pasal 4 Ayat (2) Peraturan Pemerintah Nomor 45 Tahun 1990 tentang Izin Perkawinan dan Perceraian Bagi Pegawai Negeri Sipil", Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam, Vol.4:2, Desember 2022, p.97.

⁵² Law of the Republic of Indonesia Number 8 of 1974 concerning Principles of Civil Service.

⁵³ Sylviah, "Penerapan Filsafat Hukum Islam Dalam Poligami (Studi Analisis terhadap PP No 10 Tahun 1983 jo. PP No. 45 Tahun 1990)", Jurnal Ar-Risalah, Vol.2:2, 2022, p.67.

⁵⁴ Siska Putriana, "Kontrol Negara Terhadap Pegawai Negeri Sipil (Studi Atas Peraturan Pemerintah No 10 Tahun 1983 jo No 45 Tahun 1990 tentang perkawinan)", *Indonesian Journal of Religion and Society*, Vol.3:2, 2021, p. 83.

from the official" then continued in article 4 paragraph (2) "*Female civil servants are not permitted to become second / third / fourth wives*".⁵⁵ this very clearly illustrates that female civil servants are not allowed to become second wives and so on, while male civil servants are allowed to have more than one wife. If examined, PP No. 45 of 1990 has an element of injustice because male civil servants are allowed to polygamy while female civil servants are prohibited from polygamy, even coupled with the threat of dishonourable dismissal listed in PP No. 45 of 1990 Article 15 paragraph (2).⁵⁶ Whatever is the consideration for not allowing a female civil servant to become a second / third / fourth wife is because it considers dignity as a state servant then what about male civil servants who practice polygamy having more than one wife, the dignity of the man will also be damaged as happens with female civil servants.⁵⁷ Then another consideration is that if a female civil servant becomes a second wife and so on, it can interfere with her work as a civil servant because there is a dispute in her household. Then what about male civil servants who have more than one wife, this will also cause problems in his family, because a marriage based on polygamy will not necessarily be harmonious, it will certainly not be far from other problems. Basically, to determine the direction of life is from oneself. Related to marriage, which is believed to be worship so that there is no interference from any party and cannot be measured by anyone. When viewed from the vertical relationship, marital life is a way for a person to get closer to God, while the horizontal relationship is only an action and in life.

Analysis of Justice from the *Principle of Equal Liberty Aspect*

This most important principle explains that freedom is equal and can benefit all parties. These freedoms include political freedom, freedom of opinion and expression, personal freedom, freedom to own wealth and freedom from arbitrary action. These are the most basic rights that all people must have. In other words, only with the guarantee of equal freedom for all people will justice be realised. If justice is to be achieved, then according to John Rawls, it must benefit all parties, namely both men and women.⁵⁸ Government Regulation No. 45/1990 contains inequality and there are still many parties who do not accept it and are even disadvantaged. In the regulation, there are several conditions that must be met by a man if he wants to have a second wife and so on, unlike the case with women who are written to be completely prohibited or not allowed. For men, among others, in the form of alternative requirements and cumulative requirements. Among the alternative requirements for male civil servants who want to be polygamous can be seen in article 10 paragraph (2) of PP No. 10 of 1983, among others:

1. The wife is unable to fulfil her duties;
2. The wife is physically disabled or has an incurable disease;
3. The wife could not bear children after 10 years of marriage.⁵⁹

Then there are cumulative conditions that must be fulfilled if a male civil servant wants to be polygamous, namely:

1. The valid and written consent of the first wife;

⁵⁵ Article 4 paragraphs (1) and (2) of Government Regulation Number 45 of 1990.

⁵⁶ Article 15 paragraph (2) of Government Regulation Number 45 Year 1990

⁵⁷ Awaliyah Musgamy, "Menakar Batas Kesetaraan Gender Poligami dalam PP. No. 45 Tahun 1990 tentang Izin Perkawinan dan Perceraian bagi PNS", Al Daulah: Jurnal Hukum Pidana dan Ketatanegaraan, Vol.6:2, 2017, p.402.

⁵⁸ Karen Lebacqz, *Teori-Teori Keadilan (Six Theories of Justice)*, terj. Yudi Santoso, (Bandung: Penerbit Nusa Media, t.t., p.65.

⁵⁹ Government Regulation Number 10 Year 1983, Article 10 (2)

2. Have sufficient income;
3. A written declaration that he will be fair to his first wife and children.

Article 4(1) and (2) explain that:

- (1) Civil Servants who will be married to more than one person, must obtain prior permission from the Official;
- (2) Female civil servants are not permitted to become second/third/fourth wives.

This clearly has a difference between the two, which means that in this regulation a male civil servant out there is still given a way or space to be able to carry out polygamy, while female civil servants out there are not allowed or prohibited. This difference is what makes one party disadvantaged. The disadvantaged in this regulation are women, so women, whether they work as civil servants or not, are free to express their voices to be able to uphold their human rights. because these problems are still unresolved. The existence of a rule prohibiting female civil servants from becoming second, third and fourth wives in article 4 paragraph (2) of government regulation No. 45 of 1990 has occurred inequality in women among civil servants. The rule on the prohibition of female civil servants becoming second, third and fourth wives deprives women among civil servants of the right to determine their careers, determine their lineage and also deprives women among the State Civil Apparatus of the right to determine who to marry . The differentiation of opportunities between male civil servants and female civil servants in the licensing of polygamy includes discrimination against female civil servants. Discrimination is more differentiated treatment to one party, either the male party only or the female party including a form of injustice or inequality

Based on Government Regulation Number 45 of 1990 which is stated in Article 4 paragraph (1) and paragraph (2), it can be concluded that the regulation is contrary to the *Principle of Equal Liberty* initiated by John Rawls, this is evident that the regulation does not give freedom to women to build a household even as a second wife. Since marriage is essentially the right of every individual human being, the regulation should accommodate the individual rights of the community. Ironically, this regulation does not accommodate the rights and prohibits a female civil servant from choosing a life partner even as a second wife.

Analysis of Fairness from the Aspect of *The Principle of Difference*

In this principle, John Rawls explains that every human being has inequality in any aspect. Likewise, in terms of male and female gender, these differences are indeed based on physical or biological conditions destined by God Almighty. However, these differences are not intended to glorify one and humiliate the other. John Rawls argues that this principle must be based on the statement of what is considered true as its highest interest, and must have two moral strengths, namely, First, the ability to propose and act on principles of justice that are acceptable to all people. The second power is the ability to defend, revise, and pursue good conceptions. Therefore, the principles of justice that regulate social inequality must be acceptable to everyone and help every citizen to realise prosperity.⁶⁰ John Rawls also invites us to understand one of *the* ideas, namely the idea of *the original* position. John Rawls asserts that in the original position we must let go of all knowledge about social position. In the original position, everyone is under a *veil of ignorance*. They do not know whether the deal they

⁶⁰ John Rawls, *A theory of Justice*, (Cambridge, MA: Belknap Press of Harvard University Press, 1971), p. 202

make benefits them personally or not. Their ignorance is that they do not know their social position, gender, religion or beliefs and so on. This is likened to an institution or government that has compiled and issued Government Regulation No. 45/1990, where the compiling parties must be under the curtain of ignorance, a regulation produced using the idea of default position is not a regulation that considers profit and loss for individuals or groups, but rather what should be a rule that can be accepted and supported by all people who are sane and rational and have equal freedom. Government Regulation No. 45/1990 which regulates marriage and divorce permits for civil servants has essentially treated women with equal rights, namely being allowed to develop their talents and abilities to become civil servants, but the regulation also prohibits female civil servants from becoming second/third/fourth wives, which means that it has taken away the right of civil servants to choose a spouse. If the rule is violated, it will get a sanction that is not playing games, namely being dismissed dishonourably. The position of women in society's thinking is always in a weak position, or still thinking about the patriarchal culture that makes women disadvantaged. Especially in PP No. 45 of 1990, which prohibits women from becoming a second/third/fourth wife on the grounds that it does not interfere with their duties as a State Civil Apparatus. If you pay attention to men who will be polygamous, it is not necessarily that they will live happily and prosperously, but it will cause new conflicts which are feared to interfere with their work process as civil servants. So what distinguishes between the two, if the regulation still favours one of them. Differences in opportunities between male civil servants and female civil servants regarding polygamy permits are included in discrimination against female civil servants, namely by differentiating treatment to one party, this is a form of injustice. According to John Rawls, this inequality is in an unfortunate position that must get greater benefits or opportunities.⁶¹ Efforts in legal protection of civil servants are still inadequate, the regulation has unclear provisions that lead to different assessments. In the future, perhaps something should be addressed or reviewed for revision that can reinforce the principle of monogamy for both men and women. Researchers themselves do not say that being a second/third/fourth wife is good or allowed, but if you want to achieve the principle of justice, something even this regulation must be able to position men and women equally or equally. Regulations must be firm, because in making a regulation it is not only how to formulate a sentence, but also the essence of the material contained in it to what extent the regulation can encourage community change. One of them is by understanding the issues or probelamatics that exist in society so that it can produce good regulations and create justice.⁶² There are many perspectives on justice, not only referring to the principles of experts, but also in terms of religions, psychology and others. A provision or regulation that does not uphold justice is time to make improvements or replace the existing provisions in Government Regulation Number 45 of 1990 so that no one party feels disadvantaged because they are placed unequally or inequality occurs. Based on Government Regulation Number 45 of 1990 stated in article 4 paragraph (1) and paragraph (2), it can be concluded that the regulation is contrary to *The Principle of Difference* initiated by John Rawls, this is evident that the regulation gives more room for men to be polygamous and closes the gap for women to be polygamous. Of course, this regulation does not establish equal rights between men and women. This is reinforced in article 3 of Law Number 1 of 1974 which explains that the

⁶¹ John Rawls, A Theory of Justice, p. 78.

⁶² Lutfil Ansori, *Legal Drafting: Teori dan Praktik Penyusunan Perundang-Undangan*, (Depok: Rajawali Press, 2019), p. 11.

Indonesian state adheres to the *principle* of monogamy where a husband can only have one wife and vice versa.

Factor Analysis of the Prohibition of Polygamous Female Civil Servants

Some of the factors that prohibit women who work as civil servants from being polygamous include:

1. Employment Status Factor

Becoming a civil servant is not easy, you have to go through several very long stages. Starting from administration (files), Basic Competency Selection, (SKD), as well as Field Competency Selection (SKB), must also have good knowledge in order to carry out all these requirements. When you have become a Civil Servant or also called ASN, there is a work agreement that is appointed by the civil service official and assigned duties in a government position or assigned other state duties and paid based on statutory regulations.⁶³ Employment status is a condition that distinguishes employees from one another in a company or agency.⁶⁴ Employment status has different levels, of course this can be seen from their performance and commitment while carrying out all their duties. Employment status is divided into two parts, namely permanent employees (Civil Servants and Work Agreements (PPPK)), and Non-Permanent Employees (Honorary Employees or Casual Employees).⁶⁵ The performance of a Civil Servant can be seen from the quality and quantity of work achieved by the employee in carrying out their duties and how much they contribute to the institution or agency. If a civil servant, especially a woman, is dragged into the conflict of being a second, third, fourth wife, it will give a bad quality and be considered a low woman in front of other civil servants and in the eyes of the agency as well as officials. And if the woman has been proven to be the second / third / fourth wife then the person concerned will be given sanctions or punishment in the form of dismissal. Therefore, employment status greatly influences the factor that civil servant women are prohibited from polygamy so that they can maintain their status which is already bound by agreements and oaths and can maintain their performance which plays a role in achieving the goals of the Government Agency.

2. Duty and Responsibility Factor

Civil Servants have a role in the Indonesian state, namely as an important element in assisting the government and running the wheels of government and the success of the government is inseparable from the role of the Civil Servants themselves in carrying out their duties as State Servants.⁶⁶ Civil Servants as an element of Abdi Negara can carry out their duties properly then he must have loyalty and obedience to Pancasila, the 1945 Constitution, and other regulations. The responsibility of a Civil Servant is required to always perform dedication and must use all the power and

⁶³ Law of the Republic of Indonesia Number 5 Year 2014 on State Civil Apparatus, Article 1 paragraph (2).

⁶⁴ M Riko Hendrajana, dkk, "Analisis Hubungan Status Kepegawaian, Komitmen Organisasi Nasional dan Kinerja Karyawan", Jurnal Ekonomi dan Bisnis Universitas Udayana, Vol.6:1, 2017, p. 357.

⁶⁵ Gunawan Manalu, "Analisis Pengaruh Status Kepegawaian dan Motivasi Kerja Terhadap Kinerja Pegawai, Jurnal Ilmu Manajemen Terapan", Vol. 2:3, Januari 2021, p. 294

⁶⁶ Yudha Manggala Putra, "PNS Harus Menjadi Contoh Bagi Masyarakat", <https://news.republika.co.id/berita/nq3kdg/pns-harus-menjadi-contoh-bagi-masyarakat>, akses 18 September 2023.

energy to organise the government. Every civil servant has full responsibilities and obligations that must be carried out both in organising the government at the centre and in small areas in Indonesia. So every civil servant has the responsibility to carry out their duties as well as possible. Civil servants have the obligation and responsibility to prioritise the interests of the community over personal or group interests, every civil servant is obliged to help, serve and work for the benefit of all people or the community, every civil servant must be able to maintain self-neutrality so as not to take sides, treat citizens fairly, and other duties and responsibilities that have been determined by the agency.⁶⁷ The position and role of civil servants in government is very decisive because civil servants are likened to the backbone of the government in carrying out national development.⁶⁸ For this reason, every Civil Servant must obey the laws and regulations and carry out their official duties with full devotion and responsibility. For female civil servants who are second/third/fourth wives, there will be a clash between family conflicts and the duties or responsibilities they hold. Which makes them (female civil servants) not focused on carrying out their duties so that they will create chaos in the institution. Because civil servants themselves are a very important element in the wheels of government. When a female civil servant has the status of a second wife and so on, it will not be separated from new problems in the family which will certainly interfere with a person's physical and mental health. When this happens, all duties and responsibilities will not run well due to their unstable emotional condition due to external conflicts, namely from the marriage. Therefore, duties and responsibilities become a factor in the prohibition of female civil servants to be polygamous because it will actually have a bad impact in the future.

3. Factors Maintaining Behaviour and Action

In article 5 paragraph (2) of Law Number 05 of 2014 concerning State Civil Apparatus that the civil servant profession is based on a code of ethics and code of conduct, it aims to maintain the dignity and honour of civil servants. The code of ethics and code of conduct as intended contains rules of behaviour for civil servants:

- a. Carry out their duties honestly, responsibly, and with high integrity;
- b. Carry out their duties with care and discipline;
- c. Serve with respect, courtesy, and without pressure;
- d. Carry out its duties in accordance with statutory provisions;
- e. Carry out their duties in accordance with the orders of superiors or authorised officials to the extent that they do not conflict with statutory provisions and government ethics;
- f. Maintain confidentiality concerning state policy;
- g. Use state assets and property responsibly, effectively, and efficiently;
- h. Guard against conflicts of interest in carrying out their duties;

⁶⁷ Muzayanah, "Pemahaman Terhadap Tanggungjawab, Hak, dan Kewajiban Pegawai Negeri Sipil Terhadap UU No 5 Tahun 2014 Tentang Aparatur Sipil Negara", Jurnal Komunikasi Hukum (JKH) Universitas Pendidikan Ganesha, Vol.6:1, Februari 2020, p. 234.

⁶⁸ Fitri Rahmadhani Muvariz, "Analisis Aspek Keadilan Dari Pemberhentian Tidak Dengan Hormat Sebagai Pegawai Negeri Sipil di Indonesia", Jurnal Legislasi Indonesia, Vol. 16:2, Juni 2019, p. 191.

- i. Provide correct and not misleading information to other parties who need information related to official interests;
- j. Not misuse internal state information, duties, status, power, and position to obtain or seek profit or benefit for oneself or for others;
- k. Uphold the basic values of ASN and always maintain the reputation and integrity of ASN;
- l. Implement the provisions of laws and regulations regarding ASN Employee discipline.⁶⁹

Every Civil Servant must always maintain their honour to work honestly and with integrity, so that they can carry themselves well and have authority.⁷⁰ Civil Servants must also be honest because being honest will lead us to the right responsibility, when a Civil Servant maintains his behaviour or behaviour, the civil servant is in the trust of the community which is very proud of, there are no deviant actions from a civil servant, so that the Indonesian people become confident in achieving the expectations that will be achieved. One of the reasons why female civil servants are prohibited from polygamy is to maintain all behaviour (actions) and actions. Because in fact the existence of civil servants is also very much considered by the community. Civil servants must be a good example for the community.⁷¹ The relationship between society and civil servants is also very bound. That is what makes female civil servants prohibited from polygamy because it is feared that it can become a negative example, when she violates a code of ethics it will have an impact on the future of her employment status as regulated in the legislation, the most fatal impact is that she will be dishonorably dismissed as a civil servant which results in loss of employment status and her employment rights will also be lost.

Conclusion

Based on the description above, the following conclusions can be drawn: that the prohibition of female civil servants in polygamy is motivated by several factors, namely as follows: Civil Servants have an employment status that must be maintained, must also carry out their duties and responsibilities properly, focus without any conflicts that make the task messy, and also maintain behaviour or behaviour as state servants who must be an example for the community and not do negative things. The existence of Government Regulation No. 45/1990 is actually contrary to John Rawls' principles of justice. Based on the *principle of equal liberty* aspect, the existence of this regulation does not accommodate a woman's right to choose a life partner even if she is only the second wife. Of course, this is a concern in itself because marriage is a right that everyone has. The regulation also contradicts the *Principle of Difference* aspect, it is proven that the existence of the regulation provides a gap for a man to be polygamous and closes the gap for women to be polygamous. This makes a difference in the regulations in treating men and women. Because the *principle of difference* actually realises justice without discriminating between sexes.

⁶⁹ Law of the Republic of Indonesia Number 5 of 2014 concerning State Civil Apparatus, Article 5 paragraph (2)

⁷⁰ Muzayanah, p. 236.

⁷¹ Shafira Cendra Arini, "BKN Jelaskan PNS Pria Boleh Dipoligami dan PNS Wanita Dilarang Jadi Isteri Kedua", <https://finance.detik.com/berita-ekonomi-bisnis/d-6753130/bkn-jelaskan-pns-pria-boleh-poligami-dan-pns-wanita-dilarang-jadi-istri-kedua>, akses 18 September 2023.

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