

AL-TA'ASSUF ON REGULATIONS PROHIBITING FEMALE CIVIL SERVANTS FROM BEING POLYGAMOUS WIVES

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Abstrak

Problematisa poligami yang berkepanjangan, yaitu pelarangan Wanita PNS sebagai istri poligami secara mutlak di Indonesia. Hal ini menciptakan perdebatan di kalangan masyarakat terkait moralitas, keadilan, serta hak-hak perempuan dalam hubungan pernikahan. Tujuan penelitian ini untuk mengungkap indikator al-Ta'assuf pada Peraturan Pemerintah No. 45 tahun 1990 Pasal 4 ayat 2 dan solusi hukum terhadap al-Ta'assuf pada Peraturan Pemerintah No. 45 tahun 1990 Pasal 4 ayat 2. Penelitian ini merupakan penelitian kualitatif, jenis penelitian adalah library research. Metode pengumpulan data yang digunakan adalah studi literatur, dengan pendekatan teologis normatif, yuridis, dan sosiologis. Hasil penelitian menunjukkan bahwa;1) Sesuai dengan analisis al-Ta'assuf, maka Peraturan Pemerintah No. 45 tahun 1990 Pasal 4 ayat 2, seharusnya tidak melarang Wanita PNS sebagai istri poligini secara mutlak. 2) Solusi hukum terhadap al-Ta'assuf pada Peraturan Pemerintah No. 45 tahun 1990 Pasal 4 ayat 2 yaitu pemerintah sebagai otoritas yang berwenang dalam menetapkan aturan, harusnya memperhatikan kemaslahatan yang lebih besar dengan mempertimbangkan hak-hak Wanita PNS dan anak yang dilahirkan nantinya.

Kata Kunci: al-Ta'assuf, Peraturan Pemerintah No. 45 tahun 1990, Poligami

Abstract

The prolonged issue of polygamy, specifically the absolute prohibition of female civil servants from being polygamous wives in Indonesia, has sparked debate among the public regarding morality, justice, and women's rights in marriage. The purpose of this study is to identify indicators of al-Ta'assuf in Government Regulation No. 45 of 1990, Article 4, Paragraph 2, and to propose legal solutions to al-Ta'assuf in Government Regulation No. 45 of 1990, Article 4, Paragraph 2. This study is a qualitative research, specifically a library research. The data collection method used is literature review, employing a theological-normative, legal, and

sociological approach. The research findings indicate that: 1) Based on the analysis of al-Ta'assuf, Government Regulation No. 45 of 1990, Article 4, Paragraph 2, should not absolutely prohibit female civil servants from being polygamous wives. 2) The legal solution to al-Ta'assuf in Government Regulation No. 45 of 1990, Article 4, Paragraph 2, is that the government, as the authorized authority in establishing regulations, should prioritize the greater good by considering the rights of female civil servants and the children who will be born in the future.

Keywords: al-Ta'assuf, Government Regulation No. 45 of 1990, Polygamy

A. Introduction

The prolonged problem of polygamy is still one of the controversial phenomena, namely the contradiction between the legal regulations governing the issue of polygamy in Indonesia. This has created debate among the public regarding morality, justice, and women's rights in marital relationships. Some argue that polygamy can be practiced under certain conditions in accordance with religious teachings, while others reject it because it is considered detrimental to women and causes injustice in the household.

Those who oppose polygamy always consider it to cause new problems within happy marriages. Meanwhile, those who support polygamy consider it the best way to protect the interests of those involved in polygamy, especially the wives and children born from polygamous marriages.¹ Although Islam allows polygamy, there is an absolute condition that the husband must be able to treat all wives equally. Conversely, if the husband is unable to treat all wives equally, he is required to marry only one wife.²

Injustice in marriage policy among civil servants is one of the issues that often becomes a concern, especially in terms of the difference in treatment between male and female civil servants in relation to polygamy.

Where injustice to women who serve as Civil Servants (PNS) is not allowed to marry a second, third, and fourth wife in positive law as stated in Government Regulation Number 45 of 1990 Article 4 Paragraph 2. Meanwhile, male Civil Servants (PNS) may be polygamous. As for the reasons and

¹ Ahmad Abdullah Conoras et al., "Praktik Poligami Tanpa Izin Di Bacan Timur Halmahera Selatan," *Indonesian Journal of Shariah and Justice* 3, no. 1 (2023): 49-71.

² Conoras et al.

conditions for polygamy specified in Government Regulation Number 45 of 1990 Article 4 Paragraph 1 referred to in this article, it allows a husband who is a Civil Servant to have more than one wife, if he wants to get permission from a superior.³

Broadly speaking, polygamy in Indonesia can be said to be a permitted thing with several conditions that have been listed in the legislation. The legalized polygamy requirement is if you get permission from the Religious Court with the consequence that the male party meets the predetermined conditions and criteria.⁴ Polygamy is a condition where a husband marries more than one wife at the same time in a marriage. Regulated in Article 3 paragraph (2) of the Marriage Law, a husband can commit polygamy, namely having more than one wife if desired by the parties concerned and permission has been granted by the Religious Court. The provisions of this polygamy have been expressly regulated in Chapter IX articles 55 to 59 of the Compilation of Islamic Law and Article 4, Article 5 of Law Number 1 of 1974 concerning Marriage and in the article which contains the basis for granting permission for polygamy as well as the reasons as a condition and basis for someone who will carry out polygamy.⁵

It is undeniable that polygamy in Indonesia is still a hot issue and continues to invite debate. Polygamy receives various views, understandings and understandings from various groups, whether based on normative legal rules, Islamic law or subjective desires.⁶

Among the cases of dismissal of women as wives of civil servants occurred in Padang, the Padang Personnel and Human Resources Development Agency

³ Nor Hidayatullah, Fathurrahman Alfa, and Moh Murtadho, "GUGATAN TENTANG PRAKTIK POLIGAMI OLEH PARTAI SOLIDARITAS INDONESIA (Study Analisis Dalam Perspektif Hukum Islam Dan Hukum Positif)," *Jurnal Hikmatina* 1, no. 2 (2019): 43–51.

⁴ Nina Agus Hariati, "Regulasi Poligami Di Indonesia Perspektif M. Syahrur Dan Gender," *Asy-Syari'ah: Jurnal Hukum Islam* 7, no. 2 (2021): 187–208.

⁵ Ricca Anindya Putri, "Praktik Poligami Di Kalangan Pegawai Negeri Sipil Wanita Yang Menjadi Istri Kedua," *UNES Law Review* 6, no. 2 (2023): 4650–65.

⁶ Nurulia Shalehatun Nisa, Maulana Umar Inamul Hasan, and Arum Al Fakhri, "Menyoroti Poligami Bagi PNS Dalam Kajian Perundang-Undangan Hukum Keluarga Islam," *TAHKIM* 18, no. 1 (2022): 172–84.

(BKPSDM) is processing the dismissal of two ASNs who were reported to be second wives. The two female ASNs are considered to have violated PP 45/1990 regarding marriage and divorce permits for civil servants.⁷

Based on this reality, it is considered very important to examine the use of government rights as the authority to make Government Regulation Number 45 of 1990 Article 4 Paragraph 2, to see whether the use of these rights is categorized as ta'assuf or not, because of the pros and cons of the fate of female civil servants.

The purpose of this research is to reveal the indicators of al-Ta'assuf in Government Regulation No. 45 of 1990 Article 4 paragraph 2 and legal solutions to al-Ta'assuf in Government Regulation No. 45 of 1990 Article 4 paragraph 2. This research is qualitative research, the type of research is library research. The data collection method used is literature study, with normative theological, juridical, and sociological approaches.

The novelty of this study can be seen through a literature review, namely the results of previous relevant studies. Based on the search results, there are studies that highlight polygamy among women and civil servants, but with different focuses. Ruth Gaffney-Rhys highlighted international human rights agreements and considered the extent to which child marriage and polygamy violate their provisions.⁸ Theresia Dyah Wirastri and Stijn Cornelis van Huis focused on The second wife: Ambivalences towards state regulation of polygamy in Indonesia.⁹ Meanwhile, Nor Hidayatullah et al. highlighted a lawsuit regarding the practice of polygamy by the Indonesian Solidarity Party from the perspective of Islamic law and positive law.¹⁰ Nina Agus Hariati highlights the regulation of polygamy in Indonesia from the perspective of M.

⁷ "Jadi Istri Kedua, ASN Wanita Di Padang Dipecat," detiknews, accessed October 5, 2024, <https://news.detik.com/berita/d-5747146/jadi-istri-kedua-asn-wanita-di-padang-dipecat>.

⁸ Ruth Gaffney-Rhys, "A Comparison of Child Marriage and Polygamy from a Human Rights Perspective: Are the Arguments Equally Cogent?," *Journal of Social Welfare and Family Law* 34, no. 1 (2012): 49–61, <https://doi.org/10.1080/09649069.2012.675464>.

⁹ Theresia Dyah Wirastri and Stijn Cornelis van Huis, "The Second Wife: Ambivalences towards State Regulation of Polygamy in Indonesia," *Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (2021): 246–68, <https://doi.org/10.1080/07329113.2021.1912579>.

¹⁰ Hidayatullah, Alfa, and Murtadho, "GUGATAN TENTANG PRAKTIK POLIGAMI OLEH PARTAI SOLIDARITAS INDONESIA (Study Analisis Dalam Perspektif Hukum Islam Dan Hukum Positif)."

Syahrur and gender.¹¹ Meanwhile, Hijrah Lahaling and Kindom Makkulawuzar focus more on the impact of polygamous marriages on women and children.¹² Meanwhile, Nurulia Shalehatun Nisa et al. focus more on polygamy among civil servants in their study of Islamic family law.¹³ On the other hand, Hilmi Yusron Rofi'i, et al. highlight Article 4 Paragraph (2) of Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants from the Perspective of Islamic Family Law.¹⁴ Meanwhile, Ricca Anindya Putri focuses more on the practice of polygamy among female civil servants who become second wives.¹⁵ Meanwhile, Andi Airiza Rezki Syafa'at, et al. focused on examining the concept of polygamy according to the views of female civil servants in Makassar City on government regulation no. 45 of 1990 article 4 paragraph (2) from the perspective of Maqasid Al-Syari'ah.¹⁶ Wanpat Youngmevittaya focused on highlighting the legalization of polygamous marriage.¹⁷ Thus, the eleven regulations form a complementary framework on polygamy regulations for female civil servants, from upstream (policy) to downstream (technical implementation).

The fundamental difference between the 11 previous studies and this study is that this study specifically focuses on al-Ta'assuf in PP No. 45 of 1990, Article 4, paragraph 2, concerning the prohibition of female civil servants from being polygamous wives.

¹¹ Hariati, "Regulasi Poligami Di Indonesia Perspektif M. Syahrur Dan Gender."

¹² Hijrah Lahaling and Kindom Makkulawuzar, "Dampak Pelaksanaan Perkawinan Poligami Terhadap Perempuan Dan Anak," *Al-Mujtahid: Journal of Islamic Family Law* 1, no. 2 (2021): 80–90.

¹³ Nisa, Hasan, and Al Faki, "Menyoroti Poligami Bagi PNS Dalam Kajian Perundang-Undangan Hukum Keluarga Islam."

¹⁴ Hilmi Yusron Rofi'i et al., "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* 4, no. 1 (2022): 93–104.

¹⁵ Putri, "Praktik Poligami Di Kalangan Pegawai Negeri Sipil Wanita Yang Menjadi Istri Kedua."

¹⁶ Andi Airiza et al., "Konsep Poligami Menurut Pandangan Perempuan PNS Di Kota Makassar Terhadap Peraturan Pemerintah No. 45 Tahun 1990 Pasal 4 Ayat (2) Perspektif Maqasid Al-Syari' Ah," *Al-Ubudiyyah: Jurnal Pendidikan Dan Studi Islam* 5, no. 45 (2024): 175–202.

¹⁷ Wanpat Youngmevittaya, "Should Polygamous Marriage Be Legal?," *Philosophia (United States)*, no. August (2024): 825–44, <https://doi.org/10.1007/s11406-024-00752-2>.

B. Polygamy Regulation and Prohibition of Civil Servant Women as Polygamous Wives

1. Polygamy Regulation

Polygamy in legal science terms is called double huwelijk which means a marriage bond in which one party marries several members of the opposite sex at the same time. Meanwhile, in fiqh terms polygamy is known as *rojulun yatazaywaju aksar min imraatin ila arba'ah niswah*, which means that a man marries more than one woman. The jurists agree on the law regarding the permissibility of polygamy in Islamic law based on the text contained in surah an-Nisa [4] verse 3 and also polygamy is a maslahah in family life.¹⁸

In this case, polygamy in Indonesia is closely related to the history of Law No. 1 of 1974 concerning Marriage. Since the law is the basis for the unification of family law in Indonesia, its regulation is very important and considered absolute. Thus, it is clear that Law No. 1/1974 plays an important role in the regulation of polygamy in Indonesia and its prospects are closely related to the history and effectiveness of the Law.¹⁹

UU No. 1/1974 Article 3 paragraph (1) explicitly states that the basis/principle of marriage is monogamy. The article states: "Basically in a marriage a man may only have one wife. A woman may only have one husband". However, there is still the possibility of polygamy, with a maximum of four people. This can be done if it is done through the courts. So it is clear that if polygamy is not or without permission from the court, the marriage has no legal force. In this case the court gives consideration to the wife's condition in terms of morality and health conditions, especially reproduction. Another thing to consider is the consent of both parties before the court orally and or in writing. In addition, there are other things that are important, namely the existence of financial guarantees that must be given as physical support and

¹⁸ Suud Sarim Karimullah, "Poligami Perspektif Fikih Dan Hukum Keluarga Negara Muslim," *MADDIKA: Journal of Islamic Family Law* 2, no. 1 (2021): 7-20.

¹⁹ Irwan Ramadhani, "Ragam Regulasi Poligami Di Negara Muslim Modern," *Jurnal Antologi Hukum* 3, no. 1 (2023): 17-32.

there must be a guarantee of justice in polygamy. If these conditions are not met, the husband is prohibited from practicing polygamy.²⁰ Polygamy is also an alternative solution for certain conditions within the family, therefore, the principle of monogamy in Indonesian Marriage Law is not absolute monogamy but open monogamy, where polygamy may be practiced under conditions permitted by law.²¹ Polygamy is permitted if it meets the requirements specified in Article 3 paragraph (3), Article 4, and Article 5 of the UUP. If these provisions are violated, the perpetrator of illegal polygamy is subject to criminal penalties under the category of offenses as regulated in Article 45 of Government Regulation No. 9 of 1975.²²

In the marriage law, polygamy is not a matter legalized by law, but polygamy is regulated in positive law. Polygamy as a practice permitted under the law can provide legal protection for all parties involved. With clear regulations, justice can be guaranteed and relationships between family members can be well-regulated. However, injustice in polygamy also arises in the provision of conditions. Article 4 of the Marriage Law, which gives husbands the opportunity to commit polygamy, is a gender injustice. Article 4 of the Marriage Law stipulates that the court can grant a polygamy request submitted by the husband if the wife is unable to carry out her obligations, has a disability, and cannot produce offspring, whereas naturally the inability to produce offspring or disability is a condition that can not only occur in women, but also in men. On the other hand, it should also be remembered that marriage is basically a relationship and a physical one, so it does not only focus on the physical or bodily. Therefore, the reason for polygamy due to physical

²⁰ Ramadhani.

²¹ Rugaya Alkatiri and Abu Sanmas, "Pembatalan Izin Poligami Di Pengadilan Tinggi Agama Maluku Utara," *Indonesian Journal of Shariah and Justice* 1, no. 1 (2021): 55–88.

²² Muhammad Zaber Wahid and Baharuddin Hi M A Hi Abdullah, "Batal Demi Hukum: Poligami Tanpa Persetujuan Isteri: Studi Kasus POLDA Provinsi Maluku Utara," *Indonesian Journal of Shariah and Justice* 1, no. 1 (2021): 89–121.

disability denies the nature of marriage outlined in Article 1 of the Marriage Law, that marriage is a physical and mental relationship.²³

Government Regulation No. 9 of 1975 is specifically a continuation of Law No. 1 of 1974 which contains the procedures for implementing Law No. 1 of 1974 concerning Marriage. The rules on polygamy are summarized in article 43 which states that “if the court is of the opinion that there is sufficient reason for the applicant to have more than one wife, the court shall give its decision in the form of permission to have more than one wife.”²⁴

Meanwhile, in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (1991), the issue of polygamy is regulated in Article 55, Article 56, Article 57, Article 58, and Article 59. The regulation on polygamy refers to the Compilation of Islamic Law (KHI). The KHI provisions regarding polygamy are not much different from the Marriage Law. It's just that in KHI it is explained, among others, that men with more than one wife are given restrictions, namely that a man cannot have more than 4 wives. In addition, the main requirement for a man to have more than one wife is that he must be able to be fair to his wives and children (Article 55 KHI).

According to KHI, a husband who is entitled to more than one wife must obtain permission from the Religious Court. If a subsequent marriage is conducted without the permission of the Religious Court, the marriage has no legal force (Article 56 KHI).

Article 58 KHI also refers to Article 41 letter b of Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage (PP 9/1975), which says that the consent of the wife or wives can be given in writing or orally, but even if there is written consent, this consent is confirmed by the wife's oral consent at the Religious Court hearing.²⁵

²³ Zakki Adlhiyati and Achmad Achmad, “Melacak Keadilan Dalam Regulasi Poligami: Kajian Filsafat Keadilan Aristoteles, Thomas Aquinas, Dan John Rawls,” *Undang: Jurnal Hukum* 2, no. 2 (2019): 409–31.

²⁴ “Republik Indonesia, Peraturan Pemerintah Nomor 9 Tahun 1975 Pasal 43” (n.d.).

²⁵ Rachmat Hidayat, Muh Saleh Ridwan, and Musyifah Ilyas, “IZIN POLIGAMI BAGI PEGAWAI NEGERI SIPIL (PNS) DI PENGADILAN AGAMA MAKASSAR DALAM

MUI's fatwa on polygamy does not provide definitive confirmation related to the principle of marriage. Based on Fatwa Number 17 of 2013, MUI allows polygamy up to a maximum limit of four wives. MUI only believes that it is forbidden to have more than four wives at the same time. This fatwa shows that the practice of polygamy is permissible and valid if the marriage with the first to the fourth wife is carried out according to the terms and conditions.²⁶

2. Prohibition of Civil Servant Women as Polygamous Wives

Article 4 paragraph (2) of Government Regulation Number 45 of 1990 related to the prohibition of female civil servants who accept polygamy to become the second/third/fourth wife will be analyzed one by one using five forms of Maqashid Sharia. Maqashid Sharia is an important element in realizing the benefits of religion and the world. Maqashid Sharia is divided into five parts, namely *hifzh al-din* (protecting religion), *hifzh al-nafs* (protecting the soul), *hifzh al-'aql* (protecting the intellect), *hifzh al-nasl* (protecting offspring) and *hifzh al-mal* (protecting property).²⁷

UU No. 1 of 1974 concerning Marriage paragraph 1 states that's valid if performed according to the laws of each religion and belief. It can be understood that this regulation makes religious law the validator of the validity of a marriage. Meanwhile, in Islamic law, marriage is originally not limited to monogamy, but also includes polygamy, namely polygyny. The Government Regulation can be said to be contrary to Islamic law because Islam alone gives its people the right to worship, and marriage is one of lifelong worship, besides that, Article 39 of the Compilation of Islamic Law does not mention that it is prohibited to marry a female civil servant, there are only three prohibitions on

PERSPEKTIF HUKUM ISLAM," *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam* 4, no. 2 (2023): 518-29.

²⁶ Dede Nuryayi Taufik et al., "Perkembangan Dan Kontribusi Fatwa Dalam Hukum Keluarga Islam Di Indonesia," *As-Sakinah: Jurnal Hukum Keluarga Islam* 1, no. 2 (2023): 123-35.

²⁷ Ridwan Jamal, "Maqashid Al-Syari'ah Dan Relevansinya Dalam Konteks Kekinian," *Jurnal Ilmiah Al-Syir'ah* 8, no. 1 (2016): 1-12, <https://doi.org/10.30984/as.v8i1.34>; Salmaa Al Zahra Ramadhani, "Analisis Pasal 4 Ayat (2) Peraturan Pemerintah Nomor 45 Tahun 1990 Terkait Larangan PNS Wanita Menerima Poligami Prespektif Maqashid Syariah," *Isti'dal: Jurnal Studi Hukum Islam* 11, no. 1 (2024), <https://ejournal.unisnu.ac.id/JSHI/article/view/6117>.

marriage between men and women, namely because of family ties, relatives, and sibling ties.²⁸ So that the regulation containing the prohibition of female civil servants as polygynous wives is considered legally flawed. Because it violates higher rules.

There is no gender equality and human rights that prohibit polygamy for female civil servants. Government Regulation No. 45/1990 is not in accordance with the Law Article 3 Paragraph (1) which reads "In principle, in a marriage a man may only have one wife/monogamy. A woman can only have one husband" and Article 3 Paragraph (2) which reads 'The court can give permission to a husband to have more than one wife if desired by the parties concerned.'. In this article it is clear that there is no prohibition for a husband who will commit polygamy.

Although the ban on female civil servants becoming wives in polygamous marriages should also be supported, among other reasons because of its negative impacts, including the negative impacts of female civil servants as wives in polygamous marriages. Regarding the prohibition of female civil servants to become second, third and fourth wives, it is feared that it will have a negative impact on family life so that intra-personal conflicts are very likely to occur and it is difficult to develop into a harmonious and happy family.²⁹

Women who are second, third and fourth wives will experience greater psychological pressure, so that they will experience more inner pressure, and always conflict with the wives of their husbands, so that it affects the nature and attitude that can cause the duty obligations given as state servants to be disrupted.³⁰ A study related to the prohibition of female civil servants as wives in polygamous marriages shows that 14 civil servants agree with Government

²⁸ Ramadhani, "Analisis Pasal 4 Ayat (2) Peraturan Pemerintah Nomor 45 Tahun 1990 Terkait Larangan PNS Wanita Menerima Poligami Prespektif Maqashid Syariah."

²⁹ Rofi'i et al., "Analisis Hukum Keluarga Islam Terhadap Pasal 4 Ayat (2) Peraturan Pemerintah Nomor 45 Tahun 1990 Tentang Izin Perkawinan Dan Perceraian Bagi Pegawai Negeri Sipil."

³⁰ Rofi'i et al.; Airiza et al., "Konsep Poligami Menurut Pandangan Perempuan PNS Di Kota Makassar Terhadap Peraturan Pemerintah No. 45 Tahun 1990 Pasal 4 Ayat (2) Perspektif Maqasid Al-Syari' Ah."

Regulation No. 45 of 1990 Article 4 Paragraph 2, while 10 disagree with the regulation.³¹ When viewed from the considerations in Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants, in its consideration Point C states that in order to be able to carry out such obligations, the lives of Civil Servants must be supported by a harmonious, prosperous and happy life, so that each Civil Servant in carrying out his duties will not be much disturbed by problems in the family.³²

In connection with welfare considerations, civil servants are government employees who are given salary rights by the State based on statutory provisions. If the salary received by the woman is used to live, the woman's life will be prosperous and away from things that harm women who are civil servants. However, if they violate the rules of polygamy, then civil servant women will be fired and automatically will not get a salary. So that the welfare of the woman concerned is likely to be disrupted. Moreover, depending on a man who has two or more wives and the man is not financially ready.³³ But again all of that is only a possibility, it can happen if welfare is not guaranteed. But it cannot be the reason for the absolute prohibition of civil servant women as polygamous wives.

The prohibition of female civil servants to become the second, third and fourth wives as stipulated in Article 4 Paragraph (2) of Government Regulation No. 5 of 1990 concerning Marriage and Divorce Permits for Civil Servants, that the reasons and causes for the prohibition of female civil servants to become the second, third and fourth wives are preventive measures to prevent women who are civil servants from family disputes that have an effect on their performance as public servants, then to prevent women from psychological

³¹ Airiza et al., "Konsep Poligami Menurut Pandangan Perempuan PNS Di Kota Makassar Terhadap Peraturan Pemerintah No. 45 Tahun 1990 Pasal 4 Ayat (2) Perspektif Maqasid Al-Syari' Ah."

³² Rofi'i et al., "Analisis Hukum Keluarga Islam Terhadap Pasal 4 Ayat (2) Peraturan Pemerintah Nomor 45 Tahun 1990 Tentang Izin Perkawinan Dan Perceraian Bagi Pegawai Negeri Sipil."

³³ Rofi'i et al.; Airiza et al., "Konsep Poligami Menurut Pandangan Perempuan PNS Di Kota Makassar Terhadap Peraturan Pemerintah No. 45 Tahun 1990 Pasal 4 Ayat (2) Perspektif Maqasid Al-Syari' Ah."

pressure caused by polygamy, which has an impact on changes in attitude so that it can interfere with their performance as civil servants, to prevent children from psychological pressure which results in the future growth of children, and to protect the rights of wives and children regarding civil rights in the event of divorce in a polygamous marriage which can harm women who are civil servants and result in incomplete child support rights.³⁴

Based on this description, that the prohibition of civil servant women as the first, second, third, or fourth polygamous wife, this cannot be fully justified because it can become a gap or opportunity for possibilities that are not desired or expected by the civil servant women concerned by the government and the public in general. For example, infidelity, free sex, out-of-wedlock marriage, cohabitation, and underhand marriage. These possibilities can pose a serious threat to the benefit of women civil servants in particular and civil servants in general.

C. The Concept of al-Ta'assuf and Indicator of al-Ta'assuf in Government Regulation No. 45 of 1990 Article 4 paragraph 2

1. The Concept of al-Ta'assuf

The definition of al-Ta'assuf in the use of rights as a term is, contrary to the intention of al-Shari' (Allah swt.) on actions that are basically permitted by Shari'ah.³⁵ Al-Ta'assuf is an action that is done in accordance with the right, but not in accordance with sharee'ah.³⁶ Some other western jurists also translate it in a different context, but the meaning is the same, The use of the right to something that is not justified by sharee'ah.³⁷

The validity of the prohibition of al-Ta'assuf is explained in The word of Allah swt. in QS al-Baqarah/2: 280. This first proof illustrates that in every right that exists in every human being there is also the right of Allah, which will function when personal rights are oriented towards things that bring harm.

³⁴ Rofi'i et al., "Analisis Hukum Keluarga Islam Terhadap Pasal 4 Ayat (2) Peraturan Pemerintah Nomor 45 Tahun 1990 Tentang Izin Perkawinan Dan Perceraian Bagi Pegawai Negeri Sipil."

³⁵ Fathi Al-Duraini, *Nazariyyah Al-Ta'assuf Fi Isti'mal Al-Haq*, III (Damaskus: Mu'asasah al-Risalah, 2008).

³⁶ Majlis al-a'la li al-Syu'un Al-Islamiyah, *Kitab Usbu' Al-Fiqh Al-Islami* (Kairo, n.d.).

³⁷ Al-Islamiyah.

When such a situation occurs, Allah swt. gives an example of how human action should be to solve problems that bring harm.³⁸ In addition, the prohibition of al-Ta'assuf is mentioned in the hadith of the Prophet namely, It has been narrated from al-Saltu b. Muhammad, it has been narrated from 'Abd al-Wahid, it has been narrated from Ma'mar, it has been narrated from 'Abdullah b. Tawus, it has been narrated from his father, it has been narrated from Ibn 'Abbas (ra), it has been narrated from the Messenger of Allah (saw) said: Do not go to the merchants who bring merchandise and do not let the villagers buy from those who come. So I asked Ibn 'Abbas (may Allah be pleased with him) what the Prophet meant by saying, "Do not let the villagers buy from those who come", Ibn 'Abbas (may Allah be pleased with him) replied 'Do not become brokers for those who come'.³⁹

This Hadīth implies that a person living in a village should not approach merchants coming from other places before entering the market to buy their wares. The prohibition of buying goods from traders before entering the market is to prevent a sudden increase in the price of goods. Another point revealed in the Hadīth is the prohibition for traders to control a certain commodity and wait for a certain time to increase the price of goods. All the meanings of the Hadīth are prohibitions that have been established by the Shari'ah as forbidden because they are a form of al-ta'assuf in the use of the right to buy and sell goods.⁴⁰

Determining an action in syari'ah in order to assess the degree of violation in it is not an easy thing. Because the assessment of an act in sharia must have a definite benchmark, so that the assessment of the act becomes real and does not create doubts. Determination of the act of al-ta'assuf must also have a clear

³⁸ Ahmad Arief, "Al-Ta'assuf Dalam Penggunaan Hak Perspektif Hukum Islam (Analisis Putusan MK No 46 Tahun 2010 Tentang Anak Luar Nikah)" (Universitas Islam Negeri Alauddin Makassar, 2013).

³⁹ Muḥammad bin Isma'īl Al-Bukhārī, "Ṣaḥīḥ Al-Bukhārī," 1st ed. (Beirut: Dār Ṭūq al-Najāh, 1422).

⁴⁰ Arief, "Al-Ta'assuf Dalam Penggunaan Hak Perspektif Hukum Islam (Analisis Putusan MK No 46 Tahun 2010 Tentang Anak Luar Nikah)."

benchmark, so that ownership of one's rights is not reduced by arbitrariness and does not cause harm. The benchmarks used in determining the value of al-ta'assuf in the use of rights are divided into two indicators:

1. Internal indicators: This indicator measures the internal value of the use of the right granted, whether it causes harm or realizes a maslahat that is contrary to sharia.
2. External indicators: The assessment of this indicator is carried out through consideration between the benefits obtained by the user of the right and the damage caused by the use of the right. If the damage and benefits caused are balanced or actually cause harm to the user of the right, then in this case Sharia stipulates the prohibition of such actions.⁴¹

The existence of internal indicators through intention emphasizes the concern of Islamic law for the soul of the perpetrator in every action. The existence of intention in sharia also affects the value and quality of worship that will be done. The influence of intention on every act of worship results in two sides; the afterlife, such as rewards or punishments due to deviant intentions. Meanwhile, the worldly side results in the perfection of worship and the destruction of worship.⁴² The foundation of intention becomes a key thing to recognize the form of an act of worship, and if the step affects the form of implementation of an act of worship. So the use of intention as one of the key indicators to assess the act of al-ta'assuf is a certainty.

The considerations made in looking at the external indicators of the act of al-ta'assuf cannot be separated from three important standards:

- a. Monopolization of maslahat, which results in injustice to others.
- b. General harm that will befall the Islamic community, or certain groups in society due to the use of rights.
- c. The harm arising from the exercise of a person's or group's right is equal to the maslahat arising, and may even be greater than the mafsadah.⁴³

⁴¹ Al-Duraini, *Nazariyyah Al-Ta'assuf Fi Isti'mal Al-Haq*.

⁴² Zain al-Din bin Ibrahim, *Al-Asybah Wa Nazair*, I (Beirut: Dar al-Fikr, 1983).

⁴³ Al-Duraini, *Nazariyyah Al-Ta'assuf Fi Isti'mal Al-Haq*.

The three standards of consideration are used in considering the use of rights obtained by a person. The external indicators in assessing al-ta'assuf emphasize that the assessment is primarily based on the outcome of an action. The effect of any action that is justified on the face of it, should not be the cause of new societal problems. Two indicators in assessing al-ta'assuf emphasize that what is prohibited is an act that only brings harm.

The two indicators used become a very clear benchmark in assessing an act including al-ta'assuf. The determination process can be seen from fiqh cases such as punishment given to people who are unable to pay their debts. The request to punish is the right of a lender, but if it is proven that the borrower is in a difficult situation so that he is unable to pay his debt. The lender no longer has the right to punish in collecting the debt, because the Shari'ah gives other options according to the arguments mentioned earlier. The option is to wait or give the borrower's debt in charity. The condition of hardship creates a limitation for the lender in exercising his rights, if the lender continues to insist on his rights then the Shari'ah defines this action as al-Ta'assuf.⁴⁴

2. Indicator of al-Ta'assuf in Government Regulation No. 45 of 1990 Article 4 paragraph 2

The position of polygamous wives according to Islamic law as legal wives, because Islamic law regulates monogamous and polygamous marriages. This provision can also be understood in Law of the Republic of Indonesia No. 1 of 1974 concerning Marriage in article 2 paragraph 1 that "Marriage is valid, if it is carried out according to the laws of each religion and belief.". This provision is understood that the provisions for the validity or legality of marriage are determined by each religion and belief. Meanwhile, in Islamic law, not only monogamous marriages are regulated, but also polygamous marriages. Therefore, a polygamous wife cannot be annulled as a legal wife. The government has harmed the rights of civil servant women as polygamous wives and resulted in legal uncertainty, because the prohibition of civil servant

⁴⁴ Al-Duraini.

women as polygamous wives opens up opportunities for the widespread practice of siri marriage. These marriages have implications for the unclear status of polygamous wives and children born. Civil rights cannot be obtained as long as the marriage is not recorded. Especially if the siri husband dies before isbat nikah.

It is very clear in the prohibition of civil servant women as polygamous wives in Government Regulation No. 45 of 1990 Article 4 paragraph 2 that the government through this regulation has injured the religious rights of Muslim civil servant women and is very discriminatory against women. Because in this regulation, male civil servants are allowed to be involved in polygamous marriages. The government has the authority to set a rule. But keep in mind that the use of this right must not lead to al-ta'assuf, especially not against al-syari' by legalizing the haram and vice versa. Proving whether Government Regulation No. 45 of 1990 Article 4 paragraph 2 does not violate the rules of al-ta'assuf according to sharia needs to be done, considering that the Republic of Indonesia is a country with a majority of Muslims, which indirectly the effect of the decision will have a real impact on the Muslim community. The proof of al-ta'assuf is carried out by using each indicator that exists and is tested in Government Regulation No. 45 of 1990 Article 4 paragraph 2. Through the indicators and reasons for the decision, the extent of the benefits and deviations that occur will be tested, so as not to produce a decision that wants to realize justice but instead brings more harm.

a. Internal Indicators

Allegations of al-ta'assuf on internal indicators can be proven by looking at two things: goals that are only oriented towards evil and the use of rights that are not in accordance with sharia maslahat.⁴⁵ If civil servant women and the government do not violate the two things contained in the personal indicator

⁴⁵ Al-Duraini.

of al-Ta'assuf, it means that the justice carried out from these rules will bring mutual benefit to the people of Indonesia.

The analysis done to reveal the intentions of a person, institution or group is very difficult to do if it is not done with the help of the factors that underlie these intentions.

The first factor by looking at the intention does not produce any purpose except harm to others. The government has stipulated and enforced Government Regulation No. 45 of 1990 Article 4 paragraph 2 will harm female civil servants and violate the 1945 Constitution of the Republic of Indonesia concerning the right of everyone to form a family and continue offspring through legal marriage and Indonesian Law No. 1 of 1974 concerning Marriage in article 2 paragraph 1. In fact, the government through Government Regulation No. 45 of 1990 Article 4 paragraph 2 has also violated human rights and gender equality. *Isti'dal: Journal of Islamic Legal Studies*. Vol. 11, No.1. Analysis of Article 4 Paragraph (2) of Government Regulation No. 45 of 1990 Regarding the Prohibition of Female Civil Servants Accepting Polygamy from the Maqashid Syariah Perspective In addition, the religious rights of female civil servants through polygyny marriages are eliminated, while Islam accommodates polygyny.

More details can be analyzed in the considerations of the enactment of Government Regulation No. 45 of 1990 Article 4 paragraph 2. First, that marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family based on the Almighty God, so that more than one wife and divorce should be avoided as far as possible. Second, that civil servants are elements of the state apparatus, servants of the state and servants of the community who must be good examples for the community in their behavior, actions and obedience to applicable laws and regulations, including organizing family life. Third, to be able to carry out such obligations, the life of a Civil Servant must be supported by a harmonious, prosperous, and happy life, so that each Civil Servant in

carrying out his/her duties will not be much disturbed by problems in his/her family. Fourth, that in order to further improve and enforce the discipline of Civil Servants as well as to provide legal certainty and a sense of justice, it is deemed necessary to amend several provisions in Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants. These considerations can be concluded that Government Regulation No. 45 of 1990 Article 4 paragraph 2 is stipulated in order to form a happy and lasting family religiously, to be a good example in family life in the community, so that women civil servants are not much disturbed by family life in carrying out state duties, and to provide a sense of justice and legal certainty to women civil servants. These considerations can be oriented towards harm. The absolute prohibition of civil servant women as polygynous wives cannot be considered as a justified option, for whatever purpose. Polygynous marriages do not absolutely annul or prevent the formation of a happy and eternal family religiously and become a good example in family life in society.

The prohibition on being a second, third or fourth wife aims to prevent instability in the family structure that could add to the emotional burden on women civil servants.⁴⁶ This cannot be justified by the absolute prohibition of civil servant women as polygynous wives. Because *nikah siri* and even *kumpul kebo* will be the worst alternative if the polygynous wife option is closed absolutely. Of course the implications of these two options are fatal. So it is certain that it will be oriented towards badness by giving birth to very fatal implications. Potentially hindering the formation of a happy and eternal family religiously, being a good example in family life in the community, and civil servant women are not much disturbed by family life in carrying out state duties, and providing a sense of justice and legal certainty for civil servant women. Legal restrictions on polygamy - and even tighter restrictions for civil servants, police, and military who are all subject to special permission from

⁴⁶ Airiza et al., "Konsep Poligami Menurut Pandangan Perempuan PNS Di Kota Makassar Terhadap Peraturan Pemerintah No. 45 Tahun 1990 Pasal 4 Ayat (2) Perspektif Maqasid Al-Syari' Ah."

their superiors to marry, divorce, and polygamize - have led to polygamous marriages being conducted clandestinely: they are conducted informally and kept secret from the public - in many cases, even from their own families (Suryakusuma, 1996). Therefore, we follow Nurmila's (2009) observation that, although the number is unknown, it is likely that the number of unregistered polygamous marriages is much higher than registered polygamous marriages.⁴⁷

In addition, it should be noted that not all studies have found that children from polygamous families are more likely to experience poor outcomes than children from monogamous families. For example, some studies found that there was no significant relationship between family type (monogamous and polygamous) and students' academic achievement (Onongha, 2015). Some studies found that while there are children from polygamous families who experience domestic violence, there are also children from polygamous families who are quite happy with their families (Slonim- Nevo et al, 2008). Other studies have found that many child-related problems are not only found from polygamous families, but also from divorced, adopted, widowed families, single-parent families, or even "children living with one biological parent or one step-parent" (Elbedour et al, 2002: 255). If one wants to criticize polygamy by relying on empirical research, one must realize that there is no consensus on this topic. The problem with criminalizing polygamy is that it would ban all polygamous families, including those that have no negative impact on children, and even those that do not plan to have children at all.⁴⁸ The fact is that many monogamous families are detrimental to children. As Ronald Den Otter (2015: 148) observes: "Almost anyone can practice polygamy without abusing or neglecting children... furthermore, nationally, the vast majority of abused and neglected children do not grow up in polygamous households."⁴⁹ Treating

⁴⁷ Wirastri and van Huis, "The Second Wife: Ambivalences towards State Regulation of Polygamy in Indonesia."

⁴⁸ Youngmevittaya, "Should Polygamous Marriage Be Legal?"

⁴⁹ Youngmevittaya.

polygamy as if it is the only problem can make many people overlook the problems in monogamous families. Therefore, the discourse that polygamous families cause harm to children will make people forget that “the overwhelming majority of abused and neglected children do not grow up in polygamous households.” (Den Otter, 2015: 148). As Song (2007: 143) comments on the movement against Mormon polygamy by noting that “condemnation of polygamy helps divert attention from patriarchal norms in the majority culture. Criminalizing polygamy will not solve anything. Instead, the state should investigate on a case-by-case basis rather than banning every polygamous marriage. For example, if the goal is to protect children, then it makes no sense to ban polygamous families who don't even plan to have children at all. In addition, the welfare of children can be protected in other ways, for example, the state and schools can provide help and support for the students. Thus, this is the third condition for legalizing polygamy: the state must protect and promote the welfare of children.”⁵⁰

The second factor used by the scholars in assessing the internal indicators of al-ta'assuf is the use of rights that do not produce the desired maslahat. Imam Malik cited the example of a guardian who wants to marry off his daughter to a prospective husband who does not have anything, Imam Malik's answer is that it is permissible but tends to prohibit it because of the real harm.⁵¹ Such considerations should be used by the government, which is authorized to create justice for the community.

In accordance with the considerations in order to form a happy and lasting family religiously, to be a good example in family life in the community, so that civil servant women are not much disturbed by family life in carrying out state duties, and to provide a sense of justice and legal certainty for civil servant women. These considerations, which are the basis for the enactment of Government Regulation No. 45 of 1990 Article 4 paragraph 2, in the view of the

⁵⁰ Youngmevittaya.

⁵¹ Malik bin Anas, “Al-Mudawanah Al-Kubra” (Kairo: Matbu’ah al-Sa’adah, 1323).

Shari'a, have true benefits. But it can also be ascertained that it is inappropriate and unfair because the prohibition is determined absolutely, without giving women or women civil servants the right to exercise religious rights in the form of polygynous marriage. The *maslahat* that the government wants is the welfare of the body and soul for women civil servants and is not disturbed by family problems in carrying out their duties. But the government violates the rules of the 1945 Constitution of the Republic of Indonesia concerning the right of everyone to form a family and continue offspring through legal marriage and Indonesian Law No. 1 of 1974 concerning Marriage in article 2 paragraph 1. In addition, gender equality is denied in treating civil servant women in carrying out religious life.

Looking at the two factors carried out to assess the internal indicators of the act of *al-ta'assuf* in the use of government rights according to the view of Sharia can be prohibited to determine the decision to be a rule that is legally flawed and the applicable law is *inkracht van geswijde*.

b. External Indicators

Determination of an action or word included in the category of *al-ta'assuf* is not only seen from internal indicators contained within the perpetrator. So in the external indicator of *al-ta'assuf* assessment, what we want to know is how the consideration between the two benefits. The considerations used in assessing external indicators are three, namely:

- 1) An obvious flaw between the two *maslahat*, which does not allow for their absolute compatibility.
- 2) Generalized harm that will befall the Islamic community, or a particular group within the community, due to the exercise of a right.
- 3) The harm arising from the exercise of a person's or group's right is equal to the benefit that arises, and may even be greater than the benefit, even though there is no compatibility between the two benefits.⁵²

⁵² Al-Duraini, *Nazariyyah Al-Ta'assuf Fi Isti'mal Al-Haq*.

The consideration that occurs from Government Regulation No. 45 of 1990 Article 4 paragraph 2 is a consideration between the *maslahat* of allowing civil servant women as polygynous wives and the *maslahat* of prohibiting civil servant women as polygynous wives absolutely, if the two *maslahat* are weighed then produce rules as desired by the government through Government Regulation No. 45 of 1990 Article 4 paragraph 2, namely the Prohibition of civil servant women as polygynous wives absolutely. This rule will contradict the basics of sharia which are classified in *al-daruriyat*,⁵³ the issue of polygynous marriage which covers the aspects of *hifz al-Nafs*, *al-Din*, *al-'Aql*, *al-Mal*, and *al-Nasl*. Included in *maqasid al-syari'ah* which must be maintained and its benefits are prioritized over any problems. Government Regulation No. 45 of 1990 Article 4 paragraph 2 does not provide care for *hifz al-Nafs*, *al-Din*, *al-'Aql*, *al-Mal*, and *al-Nasl* which are an important part of *al-daruriyat al-khamsah*. In the maintenance of the soul, namely the potential for infidelity which leads to marriage outside marriage and the worst potential is the practice of abortion. Another bad potential is the implication of the loss of *hifz al-'Aql*, namely that psychological health is disturbed due to underhand marriage or even the loss of work as ASN. So that it has implications for the financial capacity concerned and leads to depression. The loss of work as ASN can also have implications for financial stability which has the potential to affect *hifzh al-mal* which cannot be carried out properly. As for *hifzh al-Din*, it cannot be carried out absolutely with the prohibition of civil servant women as polygynous wives.

Polygynous marriage is a marriage option in Islam. So that the prohibition of civil servant women as polygynous wives absolutely annuls *hifzh al-Din*. Even the worst potential with the loss of office or underhand marriage, namely the potential to force civil servant women to make a living through prostitution.

⁵³*Al-Daruriyat* is something that must exist in order to realize the *maslahat* of life in this world and in the hereafter, and if these provisions are not maintained, no *maslahat* will be realized in the world, even bringing real damage and resulting in loss. See, Abu Ishaq al-Syatibi, *al-Muwafaqat fi Usul al-Syari'ah* commentary by Abdullah Dirraz, Juz 2 (Cairo: Dar al-Ma'rifah, 1997).

This worst potential can also annul hifzh al-Din. As for hifz al-Nasl, it potentially cannot be carried out. This can happen if there is an underhand marriage or an extramarital marriage. The implications of these worst potentials are that children's civil rights are not obtained, neglected children, and abortion. Departing from these bad potentials, the objectives of Government Regulation No. 45 of 1990 Article 4 paragraph 2 are set, namely to form a happy and eternal family in accordance with religion, to be a good example in family life in the community, so that women civil servants are not much disturbed by family life in carrying out state duties, and to provide a sense of justice and legal certainty for women civil servants. These goals have the potential to be disregarded by the potential for infidelity, extramarital marriages, and under-aged marriages. The implications of these bad potentials can have fatal implications.

The position of Government Regulation No. 45 of 1990 Article 4 paragraph 2 in the view of Sharia clearly meets the three factors used in assessing the external indicators of al-ta'assuf in the use of rights. The first factor is the consideration between the maslahat of allowing civil servant women as polygynous wives and the maslahat of prohibiting civil servant women as polygynous wives absolutely, if the two maslahats are weighed then produce rules as desired by the government through Government Regulation No. 45 of 1990 Article 4 paragraph 2, namely the Prohibition of civil servant women as polygynous wives absolutely. Both options, which are on the permissibility and prohibition of polygyny, can be maslahat but have the potential to create harm. The second factor, namely the prohibition of civil servant women as polygynous wives, will provide real harm to the Indonesian Muslim community. With the potential for the rise of extramarital marriages, infidelity, and underhand marriages. Meanwhile, the third factor is that the harm that will befall civil servant women and their children in the future is far greater than the maslahat obtained.

The two indicators used to identify an action both in the form of words and deeds as al-ta'assuf in the use of rights, have been used to analyze Government Regulation No. 45 of 1990 Article 4 paragraph 2. In accordance with the analysis of al-ta'assuf, Government Regulation No. 45 of 1990 Article 4 paragraph 2, should not conclude its provisions by prohibiting civil servant women as polygynous wives absolutely. Because the absolute prohibition will always be understood in any condition and however, without any conditions.

The conclusion of the law that was decided to provide protection to women civil servants but forgot about religious rights, the right to form a family and continue offspring through legal marriage, human rights in general, and legal certainty over the status of children, in the event of extramarital marriages, infidelity, and underhand marriages. This is the main reason why Government Regulation No. 45 of 1990 Article 4 paragraph 2 is a form of al-ta'assuf. The assessment of al-ta'assuf against these rules does not mean that Islam does not provide protection for women civil servants and their family welfare and a smooth career as a civil servant. However, these things must still be given and protected but not by mixing the welfare of civil servant women and their families and the smooth career of ASN with the absolute prohibition of polygyny.

C. Legal solution to al-Ta'assuf in Government Regulation No. 45 of 1990 Article 4 paragraph 2

Based on this maslahat view, the purpose of Government Regulation No. 45 of 1990 Article 4 paragraph 2 really has a maslahat goal by providing protection to women civil servants, but with an absolute prohibition, so that the maslahat achieved will not be realized because on the other hand greater harm will arise. Determination of al-Ta'assuf in Government Regulation No. 45 of 1990 Article 4 paragraph 2 with the first indicator focuses on the government which has the right or authority to establish a rule to implement legislation. If the ownership of the rights that Sharia has given is used to cause mafsadah and harm, then the action will be considered as al-ta'assuf with a clear prohibition. In this case,

the government has set a rule prohibiting civil servant women as polygynous wives absolutely without exception. Absolutely this causes greater harm to civil servant women. Furthermore, the second indicator provides an explanation that in determining al-ta'assuf in must always be based on consideration between the harm caused and the benefits obtained. The consideration is carried out so that the value of the action is in accordance with what the Sharia wants, not the other way around backfiring on the owner of the right. In Government Regulation No. 45 of 1990 Article 4 paragraph 2 shows that it has the potential to cause greater harm. For example, infidelity, free sex, out-of-wedlock marriage, cohabitation, and underhand marriage. These possibilities will not only have implications for the loss of protection for women civil servants, but also for children who are born later. For example, children's civil rights will be the next big problem.

The legal solution to al-Ta'assuf in Government Regulation No. 45 of 1990 Article 4 paragraph 2 which is indicated by internal and external indicators, namely the government as the competent authority in establishing rules, should pay attention to the greater good by considering the rights of civil servant women and children who are born later. The prohibition of civil servant women as polygynous wives should be enforced with conditions, namely the permission of the first wife, the permission of one of the civil servant women's nuclear family, the knowledge of the superior, the prospective husband guarantees justice to the civil servant woman, protects and improves the welfare of civil servant women as polygynous wives and their children. If one of these conditions cannot be met, then the prohibition of civil servant women as polygynous wives automatically applies. Furthermore, if these conditions are violated by the husband and detected after the marriage, then the civil servant woman has the right to choose, continue or sue the husband for divorce and child custody is given to the civil servant woman. In addition, the government must provide legal sanctions against the husband, if he violates

the conditions of polygyny of civil servant women. For example, with fines and punishment.

Categorizing al-Ta'assuf PP No. 45 of 1990 Article 4 paragraph 2 as a decision that contains al-ta'assuf, does not state that the series of processes and results of the decision is a perpetual prohibition. Keep in mind that from the definition previously explained, al-ta'assuf occurs in actions that are originally permitted by Sharia, but then there is a conflict with the intention of Sharia in the process and results of these actions. Conversely, if the indicator that causes al-ta'assuf is removed, the action returns to its original nature, which is permissible.

E. Epilogue

The two indicators of al-ta'assuf in the exercise of rights have been used to analyse PP No. 45 of 1990, Article 4, paragraph 2. Based on the analysis of al-Ta'assuf, PP No. 45 of 1990, Article 4, Paragraph 2, should not conclude its provisions with an absolute prohibition on female civil servants as wives in polygamous marriages. An absolute prohibition is always understood under any circumstances and in any manner, without any conditions whatsoever. The legal solution to the al-Ta'assuf in PP No. 45 of 1990, Article 4, Paragraph 2, is that the government, as the authority responsible for establishing regulations, should consider the greater public interest by taking into account the rights of female civil servants and the children who may be born in the future. By addressing existing legal ambiguities, the study helps bridge the gap between traditional social norms and modern bureaucratic standards.

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