

## JUDGES CONSIDERATIONS IN CANCELING POLYGAMOUS MARRIAGES IN RELIGIOUS COURTS

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**Abstract:** Polygamy is allowed in Indonesia, providing the act is justified by religion and the rules of marriage law. A husband who wants to have more than one wife must fulfil various requirements of the Court. Based on the principle of “audi alteram partem,” the Supreme Court panel assesses the consideration of the Jambi Provincial Religious High Court against the answers, evidence, and witnesses presented by the defendant. This is to ensure the right decision is made, though the case was submitted late and no trial was filed. This research found that the Supreme Court deems a polygamy permit compulsory and aims to protect the welfare of the parties bound in the marriage. The word “can” in The Compilation of Islamic Law (KHI) article 71A showed that a marriage annulled due to polygamy without court permission is tentative or facultative. This indicated an annulment application must be submitted to the Court and the final decision is dependent on the assessment of the benefit of the wife and/or children. The legal consequence, based on the decision of the Religious Court to accept the marriage *itsbat* and the refusal to cancel the marriage bond, is that the children of the second wife will receive inheritance rights from the father, including property obtained with the first wife.

**Keywords:** Marriage Law, Canceling Polygamy Marriage, Religious Court, Judges

**Abstrak:** Poligami diperbolehkan di Indonesia, asalkan perbuatan tersebut dibenarkan oleh agama dan aturan hukum perkawinan. Seorang suami yang ingin beristri lebih dari satu harus memenuhi berbagai persyaratan Mahkamah. Berdasarkan asas “audi alteram partem,” majelis MA menilai pertimbangan Pengadilan Tinggi Agama Provinsi Jambi terhadap jawaban, bukti, dan saksi yang diajukan terdakwa. Ini untuk memastikan keputusan yang tepat dibuat, meskipun kasus tersebut diajukan terlambat dan tidak ada persidangan yang diajukan. Penelitian ini menemukan bahwa Mahkamah Agung menganggap izin poligami wajib dan bertujuan untuk melindungi kesejahteraan para pihak yang terikat dalam perkawinan. Kata “dapat” dalam Kompilasi Hukum Islam (KHI) pasal 71A menunjukkan bahwa batalnya perkawinan karena poligami tanpa izin pengadilan bersifat tentatif atau fakultatif. Hal ini menunjukkan permohonan pembatalan harus

diajukan ke Pengadilan dan keputusan akhir bergantung pada penilaian manfaat istri dan/atau anak. Akibat hukum berdasarkan putusan Pengadilan Agama yang menerima *itsbat* perkawinan dan penolakan pembatalan ikatan perkawinan, anak-anak dari istri kedua akan menerima hak waris dari bapaknya, termasuk harta yang diperoleh dari istri pertama.

**Kata Kunci:** Hukum Perkawinan, Pembatalan Perkawinan Poligami, Pengadilan Agama, Hakim

## Introduction

Several opinions exist concerning marriage in Islam, and many scholars affirm that the act is highly recommended (*sunnah muakkadah*) by the Prophet. Marriage is not only about fulfilling the needs of men and women biologically but also a process of worship through fostering a household, educating a family or children, and maintaining harmony. Therefore, it is a form of worship that should be performed earnestly and sincerely. The recording of unregistered marriages (henceforth, *sirri* marriage) according to applicable regulations is necessary in order to have legal force and protection. In a polygamous *sirri* marriage, the inheritance problems of a married couple will be resolved by the International Journal of Multicultural and Multireligious Understanding (IJMMU) Vol. 6, No. 2, April 2019, and the Judges' Considerations in the Cancellation Decision of the Marriage Establishment (ITH-BAT) of Polygamy 165.<sup>1</sup>

The heirs of the official and the *sirri* wives may engage in contests regarding inheritance, leading to issues of ratification or cancellation of the marriage.<sup>2</sup> One of the Supreme Court's rulings on the lawsuit for the cancellation of polygamous *sirri* marriage was Decision Number 351/K/Ag/2016.<sup>3</sup> This interestingly differed from the verdict of the first court, namely the Decision of the East Jakarta Reli-

gious Court Number 2432/Pdt.G/2014/PA.JT dated April 24, 2015, which granted the applicant's claim to cancel the *sirri* marriage. Therefore, the marriage establishment (*itsbat*) by the Decision of the East Jakarta Religious Court No. 1571/Pdt.G/2014/PA.JT dated June 19, 2014, was legalized by the Jakarta High Religious Court, following the appeal in Decision No. 82/Pdt.G/2015/PTA.JK dated August 20, 2015, to cancel Decision No. 2432/Pdt.G/2014/PA.JT of the East Jakarta Religious Court.<sup>4</sup>

This is an example of a cassation, where the Supreme Court, through Decision No. 351/K/Ag/2016 dated June 28, 2016, strengthened the Decision of the Jakarta High Court of Religion. Syahrinal bin Dt. Siego was the plaintiff against Muhanna binti Muhayyar and one of Animar's siblings. Animar officially married Bismardi Jamal on February 6, 1977,<sup>5</sup> and since the union bore no children, Syahrinal became one of the heirs of Animar. Subsequently, Bismardi Jamal married Muhanna binti Muhayyar on October 4, 1987, through a *sirri* marriage that produced had 5 (five) children. Bismardi Jamal passed away in Jakarta on May 17, 2008, and Animar died on May 13, 2013, and since the official marriage was not dissolved, Bismardi Jamal had committed polygamy by engaging in a *sirri* marriage without permission from the first wife. Following these events, Muhanna binti Muhayyar applied for

<sup>1</sup> R. Soeroso, *Procedures and Trial Process* (Jakarta: Sinar Graphic, 2011), p. 15.

<sup>2</sup> Mukti Arto, *The Discovery of Islamic Law for Realizing Justice* (Yogyakarta: Pustaka Pelajar, 2017), pp.77-78.

<sup>3</sup> *Ibid.*, p. 78.

<sup>4</sup> Aulia Muthiah, *Islamic Law on the Dynamics of Family Law* (Yogyakarta: Pustaka Baru Press, 2017), p. 50.

<sup>5</sup> Satria Effendi M. Zein, *Contemporary Islamic Family Law Problems* (Jakarta Group, 2010), p. 25

marriage establishment (*itsbat*) to the East Jakarta Religious Court, which was granted through Decision No. 1571/Pdt.G/14/PAJT dated June 19, 2014, and registered with the KUA (Indonesian Religious Affairs Office) to obtain a Marriage Certificate.<sup>6</sup>

However, the case was initiated by an inheritance lawsuit registered as No. 0749/Pdt.G/2014/PAJS at the South Jakarta Religious Court that was filed by Muhanna binti Muhayyar and her children on March 17, 2014. The application for the marriage establishment (*itsbat*) was considered legal smuggling by Syahrinal, as Muhanna's biological child with Bismardi Jamal (late) was made a party to the petition, which was solely aimed at taking the inheritance of the first wife/ Animar (late). Therefore, Syahrinal filed for the cancellation of the marriage against Muhanna Binti Muhayyar on the basis of polygamy without the permission of the first wife through the East Jakarta Religious Court's Decision No. 2432/Pdt.G/2014/PAJT on April 25, 2015. The claim was granted and the Decision No. 1571/Pdt.G/2014/PAJT was cancelled by the panel of judges, thereby becoming a form of resistance against the inheritance lawsuit.

In rejection of Decision No. 2432/Pdt.G/2014/PAJT, Muhanna binti Muhayyar appealed to the Jakarta Religious Court, which accepted the appeal of the defendant/comparator through No. 82/Pdt.G/2014/PA.JT dated 28 April 2015 and nullified the previous decision. The verdict was submitted to the Supreme Court and based on the cassation decision No. 351/K/Ag/2016, Syahrinal's appeal was rejected. Consequently, Muhanna Binti Muhayyar won the case for the cancellation of a polygamous marriage without the wife's permis-

sion at the highest level.<sup>7</sup> The description above shows that the judges had different views on polygamous *sirri* marriage. Therefore, this research entitled "Judges' Considerations in the Cancellation Decision of the Marriage Establishment (*itsbat*) without the Wife's Permission and Its Legal Effects on the Heirs of the Second Wife (The Analysis of the Supreme Court Decision No.351/K/Ag/2016)" was conducted. It intended to examine judges' perceptions in deciding related cases and the legal consequences for the inheritance rights of the second wife and her children.

### Method

This research used qualitative methods to explain phenomena, uncover social aspects, describe events, and identify important occurrences. The focus was the Judges' Considerations in the Cancellation of polygamous marriages in Religious Courts. Data collection techniques involved literature excavation, interviews, and the identification of reports, journals, and various documents related to the research focus.

### Research Results and Discussion

This research examined the Judges' Considerations in the Decisions of the East Jakarta Religious Court No. 2432/Pdt.G/2014/PA.JT and the Jakarta High Religious Court No. 82/Pdt.G/2015/PTA.JK concerning the Claim for the Cancellation of Marriage Establishment (*itsbat*) According to the Chairman of the Chamber of the Religious Court in the Supreme Court of the Republic of Indonesia, Dr.

<sup>6</sup> Abdul Wahab Abd. Muhaimin, *Adoption of Islamic Law in the Legal System National* (Jakarta: Echoes Persada Press, 2010), p. 74.

<sup>7</sup> I. Maharani, "Basic Appropriateness and Consideration of Judges in Granting and Rejecting the Cancellation of *Itsbat* Marriage Related to Polygamy (Analysis of Decisions of the East Jakarta Religious Court Number 2432/Pdt. G/2014/Pa.Jkt and Disconnect," *Doctoral Dissertation* (Malang : Universitas Brawijaya, 2016) .

H. Andi Syamsu Alam, S.H., M.H.,<sup>8</sup> judges must determine the main issues of a dispute when examining and deciding a case in order to make good and quality decisions. During the process of rebuttal between the plaintiff and the defendant at the trial, the real cause of the dispute and the party to give the burden of proof must be determined. After verification, judges can constrict the evidence and describe the real event that occurred, as there is no constancy without proof. Regardless of the provision of proof, the position of the evidence must be analyzed and considered independently to find the stance of the law. "Subsequently, pour in the verdict, but remember that the decision must be implemented."

According to Chairul Huda, a good or bad decision is not only determined by the format of the verdict, but should also include a "detailed, constructive, and argumentative" legal consideration. The negative consequences of the decisions produced by the first court, supposing they fail to clarify the case or facts, can impair the precision of the court at the higher level.<sup>9</sup> The decision examined in this research was the Supreme Court Decision No. 351/K/Ag/2016 dated June 26, 2016, concerning the cancellation lawsuit of the marriage establishment (*itsbat*), following a series of Decisions of Jakarta High Religious Court No. 82/Pdt.G/2014/PA.JT dated 28 April 2015 and East Jakarta Religious Court No. 2432/Pdt.G/2014/PAJT dated 25 April 2015. In this case, a marriage establishment (*itsbat*) cancellation lawsuit was filed by Syahrinal as a sibling and heir of Animar binti Latif Dt. Siego, whose marriage to Bismardi had no children. In the petitum, the appeal to the East Jakarta Religious Court contained the following:

a. Accept all the claims of the plaintiff.

<sup>8</sup> Parjaman, Mira Ariyana, "Cancellation of Child Adoption (Juridical Review of East Jakarta District Court Decision Number: 130/Pdt. G/2017/PN Jkt. Tim)," Diss. General Sudirman University, 2020.

<sup>9</sup> Ibid., p 79.

- b. Cancel the marriage of the defendant (Muhanna binti Muhayyar) to (late) Bismardi Jamal bin Djamaluddin, which was ratified by the East Jakarta Religious Court through Determination No. 1571/ Pdt.G/2014 /PA.JT on June 19, 2014, with all legal consequences.
- c. Declare that the Marriage Certificate on behalf of (late) Bismardi Jamal bin Djamaluddin and Muhanna bin Muhayyar in 2014, issued by the Office of Religious Affairs Kec. Kramat Jati, East Jakarta, had no legal force.
- d. Command the marriage registrar of East Jakarta Religious Affairs Office to terminate the marriage registration of Bismardi Jamal bin Djamaluddin and Muhanna binti Muhayyar.
- e. Charge according to the law to the plaintiff. The fairest decision was also sought based on applicable legal provisions supposing the Panel of Judges of the East Jakarta Religious Court had another opinion.

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

- a. Refuse all claims of the Plaintiff.
- b. State that the Decision No. 1571/PdLG/2014/PA.JT dated 19 June 2014, had permanent legal force.
- c. Impose all costs incurred in this case to the Plaintiff.

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

- a. Grant the claim of the Plaintiff in part.
- b. Cancel the defendant's marriage (Muhanna binti Muhayyar) to (late) Bismardi Djamil bin Djamiludin, which was ratified by the Decision of the East Jakarta Religious Court No. 1571/Pdt.G/2014/PA.JT dated 19 June 2014.
- c. Reject the acceptance of any other ruling for the case.

d. Charge the costs of IDR 966,000 (nine hundred sixty-six thousand rupiahs) to the Plaintiff.

However, the Jakarta High Religious Court, through its decision No.2/Pdt.G/2015/PTA.JK., dated 20 August 2015, cancelled the Decision of the East Jakarta Religious Court No. 2432/Pdt.G/2014/PA.JT. dated 28 April 2015 by:

- I. Accepting the appeal submitted by the defendant/comparator.
- II. Canceling the Decision of the East Jambi Religious Court No.2432/Pdt.G/2014/PA.JT. dated 28 April 2015/ 9th of Rajab1436 Hijri: Judging for Themselves
- III. Refusing all the claims of the Plaintiff.
- IV. Charging the case fees of IDR 966,000.00 (nine hundred sixty-six thousand rupiahs) incurred in the first level to the Plaintiff.
- V. Charging the defendant to pay the appeal case fee of IDR 150,000.00 (one hundred fifty thousand rupiahs).

In the Cassation Decision, the Supreme Court rejected the appeal filed by the Plaintiff/Applicant in cassation through Decision No.351/K/Ag/2016. It stated, "Refuse the request from the Cassation Appellant: Syahrinal Bin Latif Dt. Siego and Charge the Cassation Plaintiff/Applicant to pay a court appeal fee of IDR 500,000.00 (five hundred thousand rupiahs)." Based on these three verdicts, namely East Jakarta Religious Court Decision No. 2432/Pdt.G/2014/PA.JT, Jakarta High Religious Court Decision No. 82/Pdt.G/2015/PTA.JK, and the Supreme Court Decision No. 351/K/Ag/2016, the considerations of the panel of judges can be classified into 4 (four) groups. These are the Consideration of 1) the authority of the East Jambi Religious Court, 2) the Plaintiff's capacity, 3) the Trial Event, and 4) the case.<sup>10</sup>

### *The Authority of the East Jambi Religious Court*

In this section, the panel of judges explained that "Considering the provisions of Article 49 paragraph (1) of Law No. 3 of 2006 and Law No.50 of 2009, as amendments to Law No.7 of 1989, this case falls under the authority of the Religious Court." According to Article 1(1) of Law No. 50 of 2009 concerning the Second Amendment to Law No. 7 of 1989 concerning the Religious Courts, Moslems are under the jurisdiction of the Religious Court. Article 49 of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning the Religious Courts ("Law 3/2006") states that Religious Courts have the authority to hear first-level cases between Moslems in the fields of marriage, inheritance, will, grants, endowments, *zakat*, *infaq*, *sadaqah*, and Islamic/sharia economy. Based on the previous description, marriage cases are subject to the absolute competence of the Religious Courts, while the relative competence of the East Jakarta Religious Court was because the defendant, Muhanna Binti Muhayyar, resided in Jambi.

### *The Plaintiff's Capacity*

A marriage establishment (*itsbat*) stipulated by a court against *sirri* or unregistered marriage is religiously valid but not legally recorded except performed before an authorized official. This means a *sirri* marriage can then be registered and recorded. The marriage book can be issued by the Office of Religious Affairs to ensure the legal protection, consequences, and rights stipulated in Act No. 1 of 1974 concerning marriage are obtained. In the case examined, the plaintiff filed for the revocation of the Decision of Marriage Establishment (*itsbat*) No. 1571/Pdt.G/14/PAJT dated 19 June 2014, which legalized the *sirri* marriage between Bismardi Jamal and Muhanna binti Muhayyar. This was performed with the expectation that the marriage would be cancelled and declared illegitimate, thereby preventing the second

<sup>10</sup> A. Mukti Arto, *Practice of Civil Cases in Religious Courts* (Yogyakarta: Pustaka Student, 1996), p. 231

wife and children from obtaining inheritance rights like legitimate heirs.<sup>11</sup>

According to Law No.1 of 1974 concerning Marriage No.1 Article 23 letter (a) stipulates that the persons authorized to apply for marriage cancellation are "family members in a straight line up from a husband or wife." This refers to the father, mother, grandfather, grandmother, etc., of the husband or wife. However, the plaintiff, in this case, was the sibling of the first wife, which was a third party. The absence of interest in the lawsuit due to the lack of a legal relationship with the defendant was expressed, and the children of the defendant's husband were stated to be more interested in the case. Since there was no legal interest, the defendant requested that the plaintiff's claim be deemed unacceptable. This was countered, as a connection existed between the plaintiff and the defendant regarding the inherited property. The connection concerned the legalization of the *sirri* marriage between Bismardi Jamal and the defendant, which led to a reduction in inheritance rights of the heirs of Animar binti Latif Dt. Siego.<sup>12</sup>

Generally, submissions in the Court are accepted from individuals or legal entities with either direct or indirect interests. Parties with supposed rights that wish to pursue or defend their interests are authorized to act as plaintiffs or defendants (*legitima persona standi in iudicio*). The absolute requirement to submit an application is the existence of a direct/inherent interest from the plaintiff. This means not everyone who has an interest can file a claim, as only appropriate interests and legal bases can be accepted. The plaintiff is the

party entitled to file a claim, else, the case will be declared unacceptable (*Niet onvankelijk Verklaard*). Regarding the plaintiff's capacity, the East Jakarta Religious Court Judges accepted the claim because "the plaintiff was the sibling and one of her heirs of Animar binti Latif Dt. Siego, who had an interest, and was not a party in the marriage establishment (*ithbat*) case submitted by the defendant."

### *The Judicial Session*

In Indonesia, Religious Courts refer to Civil and Islamic Courts, denoting that state legislation and Islamic law must be considered simultaneously. Therefore, the Procedure Law for the Religious Courts stipulates that "All regulations sourced from state laws or Islamic law govern the actions of people as well as the completion of cases in the Religious Courts". The proceedings in Religious Courts comprise several stages, namely a. Trial Phase, b. Peace efforts, c. Reading the claim/petition of the plaintiff/applicant, d. The defendant's answer, e. Replica of applicant/plaintiff, f. Duplicate of respondent/defendant g. Proof (applicant/plaintiff and respondent/defendant), h. Conclusion (applicant/plaintiff and respondent/defendant), and i. Reading decision/determination. In East Jakarta Religious Court Decision No.2432/Pdt.G/2014/PAJT dated 25 April 2015, the panel of judges ignored the answers, legal arguments, and testimonies submitted by the defendant. This was due to their lateness in answering the plaintiff's claim. Therefore, the response from the defendant was deemed non-existent, and the proof was ignored by the panel of judges, except those that confirmed the plaintiff's argument. The panel stated that "Considering upon the plaintiff's claim, the defendant was given three opportunities and failed to answer until after the plaintiff's proof of the letter was provided, the defendant's response passed the answer stage and must be ruled out". Judges also affirmed that the defendant's failure to re-

<sup>11</sup> Nurhadi, "Cancellation of Marriage Due to Mahram Relationship: From a Legal Perspective Islam" ([ejournal-stain-tulungagung.ac.id/index.php/Eksyar](http://ejournal-stain-tulungagung.ac.id/index.php/Eksyar), 2015), p. 3.

<sup>12</sup> Ramadani, Mutia. "Legal Consequences of Cancellation of Mixed Marriages by the Court for Using Unauthorized Documents (Study of South Jakarta District Court Decision No. 586/pdt. g/2014)." *Premise Law Journal* 3 (2017): 165059.

spond to the plaintiff was deemed an acknowledgement of the claim.

As a result, the panel granted the claim proven by the plaintiff and ignored the objection of the defendant without considering the interests and arguments of both parties, and the marriage establishment (*itsbat*) filed by the defendant was deemed legal smuggling. This led to the verdict that "Considering there has been a violation and legal smuggling of the marriage establishment petition filed by the defendant, the claim of the plaintiff against the cancellation of the decision of the East Jakarta Religious Court ratifying the defendant's marriage with (late) Bismardi Djamal bin Djamaluddin is justified. Consequently, the plaintiff's claim could be granted and the defendant's marriage with the late Bismardi Djalum bin Djamaluddin by the East Jakarta Religious Courts No. 1571/Pdt.G/2014/PA.JT. dated 19 June 2014 must be cancelled." However, the ruling of the Jakarta High Court was different from the decision of the East Jakarta Religious Court due to different opinions towards the answers submitted late by the defendant. The Jakarta High Court reflected on the defendant's answers, and judges mentioned that "The purpose of summoning the defendant/comparator on December 30, 2014, was to fulfil Article 121 paragraph (2) HIR concerning her right to answers the plaintiff's claim to defend his interests". Therefore, the action to override the response of the defendant by the Panel of Judges of the Religious Court was contrary to the legal purpose of summoning the defendant according to the letter dated December 22, 2014, as well as the provisions of Article 121 paragraph (2) HIR. It also contradicted the principle of "audi et alteram partem," which means "listening to two parties" before making a decision to ensure the judiciary is equalized. Consequently, the Panel of Judges of the Jakarta High Religious Court argued that the legal considerations of the East Jakarta Religious Court Judges (page 12 paragraph 1) a quo could not be justified. The de-

fendant's response, which was ruled out at the hearing on January 27, 2015, had to be considered. Based on the facts of the trial at the proceedings, the East Jakarta Religious Court Judge Council applied the formal law and ignored the legal purpose of seeking justice, thereby sacrificing justice in the process.

### *The Main Case Materials*

The disparity between the Decisions of the East Jakarta Religious Court and the Jambi High Religious Court was the difference in response to the trial. During the judgment at the East Jakarta Religious Court, the defendant was late in responding and answered when the trial had entered the stage of evidence submission by the plaintiff. The defendant had been called 3 times, causing the panel of judges to ignore the late answer and accept all the arguments of the plaintiff. As a result, the plaintiff was simply allowed to prove the arguments and answers, while the objection and witnesses submitted by the defendant were ignored, except those that reinforced the plaintiff's argument. This implied that the verdict from the East Jakarta Religious Court seemed biased. Conversely, the Jakarta High Religious Court considered and listened to all the answers, legal reasons, and witnesses submitted by both parties. The East Jakarta Religious Court accepted the argument from the plaintiff that the polygamous marriage between the defendant and Bismardi Jamal was *sirri* without legal permission from the first wife, but ignored the legal fact that the defendant was unaware because a marriage certificate was provided by the late Bismardi Jamal to obtain the birth certificate of the children. Unfortunately, the forgery of the marriage certificate was found during the trial of inheritance disputes. The Court also emphasized that permission from the first wife was a mandatory condition in determining the legality of a polygamous marriage, and ignored the defendant's answers and witnesses stating that the first wife, the late Animar binti Latif Dt. Siego, had no children, unlike Muhanna binti Muhayyar.

According to Law No. 1 of 1974 concerning marriages, the inability of a wife to produce children is a reason for a man to apply for polygamy. The Religious Court may grant a polygamy permit, supposing the wife was unable to give children or had an incurable disease that prevented the execution of her obligations without the need for permission.<sup>13</sup>

The Jakarta High Religious Court made this fact the basis of its decision, though The East Jakarta Religious Court ignored the legal fact that polygamy had occurred for decades and the first wife had not filed a marriage cancellation lawsuit against the second marriage. Both wives also cared for Bismardi Jamal when fell ill until death.<sup>14</sup> In summary, the East Jakarta Religious Court ignored the answers, arguments, and witnesses of the defendant and accepted the lawsuit due to the violation of the law, despite the attendance of the trial by both parties to the dispute. This was the basis for granting the plaintiff's petition and canceling the Decision of the East Jakarta Religious Court No.1571/Pdt.G/2014/PAJT regarding the establishment of the second marriage<sup>15</sup>through Decision No. 2432/Pdt.G/2014/PAJT. However, the Panel of Judges of the Jakarta High Religious Court granted appeal Decision No. 82/Pdt.G/2015/PAJT, which overturned Decision No. 1571/Pdt.G/2014/PAJT of the East Jakarta Religious Court and confirmed the marriage establishment (*itsbat*) between Bismardi Jamal and Muhanna Binti Muhayyar as legal. Finally, the ruling of the Jakarta High Religious Court was strengthened by Supreme Court Decision No. 351/K/Ag/2016, which rejected the cassation of the plaintiff.

<sup>13</sup> Abu Ishaq al-Syatibi, *Al-Muwafaqat fi Usûl al-Syari'ah*, Jilid II. (Beirut: Dar Kutub al- 'Ilmiyyah, 1424 H/2003 M), Cet. III. p. 5.

<sup>14</sup> Ahmad Qorib and Isnaini Harahap, "Application of Masalah Mursalah in Economics Islam," *Journal: Analytica Islamica*, Vol. 5, No. 1, 2016). Thing. 57.

<sup>15</sup> Taufiq Hamami, *Position and Existence of Religious Courts in the Tata system Law in Indonesia* (Bandung: PT. Alumni), p. 180.

## Conclusion

The Supreme Court considers permission to engage in polygamy a necessity that aims to maintain the welfare of the parties bound in a marriage. The word "can" in the Compilation of Islamic Law (KHI) article 71 letter A indicates that the cancellation of marriage for reasons of polygamy without court permission is tentative or facultative. Therefore, the request for annulment must be submitted to the Court and is dependent on the assessment of the benefit of the wife and/or the children born from the marriage. As a legal consequence of accepting the *itsbat* and the refusal to annul the marriage bond, the children from the second wife obtain inheritance rights from the father, including properties and assets from the first marriage. In the Decision No.1571/Pdt G/2014/PAJT of the East Jambi Religious Court, the marriage cancellation was rejected through the High Jambi Religious Court No. 82/Pdt.G/2015/PTAJ and strengthened by the Cassation Decision in the Supreme Court Agung No.351/K/A/2016. This signified that the children of Bismardi and Muhanna Binti Muhayyar obtained rights from the father's inheritance, including from the assets of the first marriage with Animar binti Latif Dt. Siego.

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