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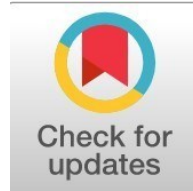
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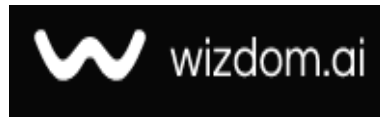
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Judicial Justice in Polygamy Permits Based on Quraish Shihab's Perspective

Achmad Aisyul Mazidi, mazidi2007@gmail.com, (1)

Pascasarjana Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, Indonesia

Muhammad Faisol, mfaisol18@gmail.com, (0)

Pascasarjana Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, Indonesia

Martoyo, martoyo78@uinkhas.ac.id, (0)

Pascasarjana Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, Indonesia

^(*) Corresponding author

Abstract

General Background: Polygamy remains a controversial issue in Islamic family law and judicial practice in Indonesia, primarily centered on the requirement of justice as mandated in Surah An-Nisa verse 3. **Specific Background:** In practice, achieving fairness in polygamy often faces challenges, particularly in judicial decisions granting polygamy permits. Quraish Shihab's interpretation of justice emphasizes balance and contextual fairness, offering a multidimensional perspective for analyzing such rulings. **Knowledge Gap:** Previous studies have not deeply examined how judges operationalize Quraish Shihab's concept of justice in actual polygamy permit decisions. **Aims:** This study aims to analyze the application of justice principles in the Jember Religious Court's Decision No. 1775/Pdt.G/2023/PA.Jr using Quraish Shihab's justice framework. **Results:** The findings reveal that the judges' considerations emphasize procedural and formal justice—such as equality before the law and compliance with legal requirements—while substantive justice, including psychological and social balance for wives and children, remains limited. **Novelty:** This study provides an integrative analysis linking Islamic theological concepts of justice with judicial reasoning in polygamy cases. **Implications:** The research highlights the need for a holistic judicial approach that not only fulfills legal formalities but also ensures equitable family welfare consistent with maqasid al-shariah principles.

Highlights:

- Examines judicial justice in polygamy permit decisions.
- Applies Quraish Shihab's concept of balanced fairness
- Reveals dominance of formal over substantive justice.

Keywords: Justice, Polygamy, Quraish Shihab, Religious Court, Islamic Law

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Introduction

Polygamy is one of the issues that always sparks debate in Islamic family law as well as in judicial practice in Indonesia [1]. Polygamy from the perspective of Islamic law is a form of marriage that is permitted with strict limitations[2]. This practice is not an absolute recommendation, but rather a solution to certain

conditions in society. In the Qur'an, polygamy is mentioned in Surah An-Nisa, verse 3, with the condition that a husband be able to act fairly towards his wives.[3] However, in practice, such justice often becomes a difficult challenge to achieve, resulting in various social, legal, and psychological issues within households. In Indonesia, regulations regarding polygamy are contained in Law No. 1 of 1974 concerning Marriage and its amendment in Law No. 16 of 2019, as well as in the Compilation of Islamic Law (KHI).[4] One of the main requirements for practicing polygamy is obtaining permission from the Religious Court after meeting certain conditions.[5] The Religious Court of Jember, as a judicial institution in the horseshoe area of East Java, is an important representation in the process of implementing polygamy permits. With a society characterized by strong Islamic values and local customs, the practice of polygamy in Jember has its own dynamics that are interesting to study.[6]

The granting of polygamy permits is one of the important aspects in the practice of Islamic family law in Indonesia, particularly within the Religious Court environment. Although Law Number 1 of 1974 on Marriage emphasizes the principle of monogamy in Article 3 paragraph 1, which states: 'In principle, in a marriage, a man may only have one wife. A woman may only have one husband.' However, certain articles still provide a limited allowance for polygamy practices under strict conditions and requirements, such as Law No. 1 of 1974 Article 4 letter c, which states: 'This law adheres to the principle of monogamy; only if agreed upon by the parties concerned and permitted by their religion and law, a husband may have more than one wife.' [7]. At the Jember Religious Court, the practice of granting polygamy permits has been ongoing dynamically over the past ten years, as reflected in the data of polygamy permit case decisions, which reached 77 rulings between 2016 and May 2025.[8]

Someone who chooses to practice polygamy generally has certain reasons that form the basis for applying for polygamy permission to the Religious Court.[9] In this case, the role of the judge is very crucial because they must assess and consider various aspects objectively before rendering a decision that will affect all parties involved, including the husband, wife, and children.[10] In deciding whether the polygamy application will be granted or rejected, the judge does not solely rely on positive law provisions, but must also consider the legal ideals, namely [11]: First, the aspect of certainty, to ensure that the decisions made comply with the applicable laws and do not create legal ambiguities. Second, the aspect of justice, which is to ensure that the rights and interests of all parties, especially the wife and children, are considered and protected fairly. Third, the aspect of usefulness, which is to consider how far the decisions made will bring goodness and welfare to the family and not cause harm in the future.

Thus, legal reasoning (the basis of legal consideration) used by judges becomes very important as a guide in issuing decisions on polygamy permit applications, so that the results are not only legally valid but also fair and beneficial for all parties.[12] Quraish Shihab explains that justice does not only mean equality in terms of material or treatment, but rather balance in placing something in its proper place, according to the context and the needs of each party.[13] Therefore, justice in polygamy must be understood comprehensively,

covering both physical and spiritual aspects, as well as considering the welfare of all family members. In the context of Indonesia, the implementation of polygamy is regulated in Law Number 1 of 1974, the amendment under Law Number 16 of 2019, and the Compilation of Islamic Law, which requires permission from the Religious Court.[14] Based on the above description, this study focuses on analyzing judges' justice in granting polygamy permits, with a study of Decision No. 1775/Pdt.G/2023/PA.Jr at the Jember Religious Court. This study is expected to provide both academic and practical contributions, both in the development of Islamic family law theory and in the practice of religious courts, particularly regarding the application of the principle of justice in polygamy cases.

Method

This research uses a qualitative approach, which is an approach aimed at understanding phenomena in depth through data collection without using quantification or statistical techniques.[15] This approach is considered relevant because the research focuses on understanding the processes, meanings, and context of decisions granting polygamy permits in the Jember Religious Court. In data analysis, this study applies content analysis, a technique used to systematically, objectively, and thoroughly examine the content of information. This technique was first pioneered by Harold D. Lasswell, who introduced the symbol coding method, which involves recording symbols or messages in a structured and systematic way to be then interpreted in depth. Although initially developed to analyze mass media, content analysis is now widely applied in research whose main objects are texts, documents, or collections of narratives.[16]

Result and Discussion

The Judge's Ruling on the Polygamy Permission Request in Decision Number 1775/Pdt.G/PA.Jr contains several points, namely:

First, the Identity of the Parties, concerning the identities of several parties in the Polygamy Permission Decision analysis, according to the author, consists of the Petitioner who holds the status of the lawful husband of the Respondent, and the Petitioner had previously married the Respondent on November 10, 2006, at the Religious Affairs Office of Cilandak District. From this marriage, the Petitioner and the Respondent have been blessed with three children, aged 15, 11, and 3 years respectively.[17].

Second, the Main Point of the Case is that the petitioner, with his petition dated May 2, 2023, has been registered at the registry of the Jember Religious Court under Register Number 1775/Pdt.G/PA.Jr. The core of the case is that the Petitioner in this matter is a husband who has been married to the Respondent since November 10, 2006, at the Office of Religious Affairs in the Cilandak District, South Jakarta. From this marriage, three children were born, aged 15, 11, and 3 years old, respectively. [18]. Since January 2022, the Applicant has submitted an application for polygamy permission on the grounds that the Respondent cannot fulfill the Applicant's biological needs twice a day; and because the Respondent is unable, she always refuses

the Applicant's desires. As a wife, as expected, it is feared that the Applicant might fall into actions that contradict religious law. The Applicant intends to marry a 29-year-old woman, Muslim, with a Diploma 3 education, and unemployed. Regarding this request, the Respondent has stated both verbally and in writing that she is willing and sincere to be in a polyandrous marriage.[19] In addition, the Applicant states his willingness to act fairly toward his wives and meet their living needs. This is supported by the Applicant's stable financial condition, as he is the owner of a restaurant in Jakarta with an average income of IDR 20,000,000 per month, plus additional income from boarding houses. The Applicant also has certain joint assets with the Respondent, namely a 2007 Kijang Innova G AT car and a house in the Robani Housing Complex, Jember.[20] In the trial process, the Petitioner stated that they were willing to bear all court costs. The panel of judges then considered the evidence, the Petitioner's willingness to be fair, the Respondent's consent, and adequate financial capacity. Finally, the panel of judges granted the Petitioner's request, gave permission to remarry the intended wife, and determined the joint property between the Petitioner and the Respondent. [21].

Third, Evidence. As for the evidence submitted by the applicant in their Petition in Decision Number 1775/Pdt.G/PA.Jr to support the petition in the trial process, it consists of documentary evidence and witness evidence.

- a. Evidence In the case of polygamy permit Number 1775/Pdt.G/2023/PA.Jr, the Petitioner submitted evidence including personal identity documents such as photocopies of the Petitioner's and Respondent's Identity Cards (KTP), Residence Certificates, Marriage Certificate excerpts, and Family Cards as the basis for proving the legal status and residence of the parties. In addition, supplemental administrative documents were also submitted, including a statement of no objection to polygamy from the first wife, a statement of willingness to act fairly, a statement of income and ability to provide support, and a statement of joint assets. These documents indicate the Petitioner's good faith and readiness to comply with the provisions of Article 5 and Article 9 of Law Number 1 of 1974 on Marriage as well as Article 58 of the Compilation of Islamic Law (KHI). [22].
- b. Witness I and Witness II explained that they know the Applicant, the Respondent, as well as the Applicant's prospective wife. They know that the prospective wife is single and has no familial or breastfeeding relationship with the Applicant. The witnesses also stated that the Applicant and the prospective wife have known each other for about a year through religious study activities. The reason the Applicant filed for polygamy, according to the witnesses, is due to a high biological need that the first wife cannot fulfill. Additionally, the witnesses explained that the Applicant runs a car trading business and a restaurant in Jakarta with an income of approximately IDR 20,000,000 per month. Both witnesses also emphasized that the prospective wife is aware of the Applicant's married status and that he has three children. The Applicant and the first wife have joint assets, including a two-story house still under credit and a 2007 Innova car. The witnesses assess that the Applicant is capable of providing for both of his wives.[23] In

addition, the Panel of Judges also conducted an on-site inspection (descente) to verify the conditions of the Petitioner's residence and shared assets. The results of the descente reinforced the judges' belief that the Petitioner has sufficient financial capability to practice polygamy.[24] Our decision grants the Applicant's request in part, determines, and permits the Applicant to remarry (polygamy) with the Applicant's prospective second wife named NUR HUDA APRILIA BINTI ALIMAN, determines the Joint Property between the Applicant and the Respondent consisting of a plot of land along with a house and one motor vehicle, declares that no other claims are accepted, and orders the Applicant to pay court fees amounting to Rp 1,905,000 (one million nine hundred five thousand rupiah).[25]

Judge's Consideration The judge's consideration is the most important part of a ruling because it reflects the judge's juridical and moral reasoning in upholding law and justice. In the polygamy permission case between the Petitioner and the Respondent at the Jember Religious Court, the panel of judges outlined several layers of considerations, which include aspects of positive law, trial facts, as well as moral considerations and public interest in accordance with Islamic law principles. In the copy of the PA judge's ruling available in Jember No 1775/Pdt.G/PA.Jr concerning the application for polygamy permission, there are several legal considerations.[26] That is:

- a. Mediation peace efforts, considering that the Panel of Judges first affirmed that before examining the main case, peace efforts had been carried out in accordance with Article 82 of Law Number 7 of 1989 concerning Religious Courts jo. Article 4 PERMA Number 1 of 2016 concerning Mediation Procedures in Court. However, the mediation process conducted on February 3, 2021, did not succeed in reaching an agreement, so the case examination proceeded to the evidence stage.
- b. Considering that the judge assessed that the reason the Petitioner applied for polygamy permission was due to having a high sexual desire that could not be fulfilled by the Respondent. This condition, according to the judge, had caused the Petitioner to almost succumb to actions contrary to religious teachings, hence choosing to pursue a legitimate marriage with a prospective wife. The Respondent also acknowledged and did not object to the reasons presented by the Petitioner, as evidenced in the statement and signature on evidence P.9.
- c. Considering that to strengthen the grounds of the petition, the Petitioner submits documentary evidence and witness statements. Based on Article 165 HIR, the submitted documents (P.1 to P.14) are deemed valid as they have been legalized and properly stamped. Meanwhile, the two witnesses presented provided testimony based on their direct knowledge, in accordance with Article 164 HIR in conjunction with Articles 170–172 HIR.
- d. Considering that the facts revealed in the trial have met the reasons as stipulated in Article 4 paragraph (2) of Law Number 1 of 1974 in conjunction with Article 57 of the Compilation of Islamic Law (KHI), namely that a husband may have more than one wife if the wife cannot fulfill her obligations or for other valid reasons. In addition, the Petitioner has also met the objective requirements in Article 5 paragraph (1) of

the Marriage Law in conjunction with Article 58 paragraph (1) KHI, which are the consent of the first wife, the ability to be fair, and the ability to provide both material and spiritual support. The judge also emphasized that there are no obstacles to the marriage between the Petitioner and the prospective second wife as regulated in Articles 8–10 of Law Number 1 of 1974 in conjunction with Articles 39–44 KHI, because both are Muslims, are not closely related, and the prospective wife is single.

- e. Considering that the judge decides from the perspective of *maslahah* and *maqasid al-shari'ah*. In his decision, the judge cites Surah An-Nisa verse 3 as the normative basis for the permissibility of polygamy in Islam, with an emphasis on the condition of justice. The judge also cites the *fiqh* principle: 'Repelling harm should take precedence over acquiring benefits.'
- f. Considering that the joint property between the Petitioner and the Respondent consists of a plot of land with a two-story building and a 2007 Kijang Innova car. The Respondent acknowledges the existence of this property as joint property. Based on the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number KMA/032/SK/IV/2006 concerning Guidelines for the Implementation of Book II of Guidelines for the Duties and Administration of Religious Courts, the judge determines that the property is joint property and is stated in the verdict *ex officio*.

1. Analysis of Judicial Justice and the Concept of Judicial Justice

Justice comes from the Arabic word 'Adl, which means balance in attitude and behavior.[27] This concept of balance not only encompasses the relationship between rights and obligations, but also emphasizes harmony in interactions with other beings. Essentially, justice means treating a person in accordance with the rights inherent to them, including fulfilling promises that have been made. Etymologically, Justice comes from the Arabic word 'Adl, which means a state of the soul that makes a person upright. The word 'Justice' in Arabic has a very deep and fundamental meaning. Justice is not only about visible actions, but more about the condition of a person's heart and soul that makes them always want to act rightly and fairly.[28]

Just means being balanced, impartial, fulfilling rights according to their due, and placing everything in its proper place. In Islam, justice is one of the principles that must be upheld. Allah Himself possesses the attribute of Being Most Just (al-'Adl), which His servants should emulate. Even every country often explicitly states the purpose of its establishment, including to uphold justice. Many commands to uphold justice are found because Islam desires that every person enjoys their rights as a human being by fulfilling their basic needs, namely the protection of their religion, safety of their self (soul, body, and honor), safety of their intellect, safety of their property, and safety of their lineage. The main means to guarantee the realization of these matters is the upholding of justice (al-'Adl) in the social order.[29] The concept of justice in Islam is not limited to the individual aspect alone, but also encompasses a broader social dimension. For individuals, justice means realizing the rights of every person, regardless of social status, ethnicity, or religion. The Qur'an emphasizes that all individuals have the right to be treated fairly, and justice is not only about material possessions but also includes feelings and the way people are treated.[30]

2. The Concept of Justice According to Quraish Shihab

Law is basically a set of regulations based on the principle of justice. Justice becomes an essential element in every definition of law; only rules that reflect justice can rightfully be called law. Law holds a higher position than the state itself. Therefore, the government should not create or enforce laws that contradict the principles of justice. In this respect, greater trust is given to the moral values enshrined in legislation, rather than to human subjective judgment reflected in judges' decisions. Generally, society views law as a reflection of moral life or an ideal norm upheld collectively.[31] According to the Great Dictionary of the Indonesian Language, "adil" is defined as an attitude that sides with the truth, does not favor any party, and is impartial. Meanwhile, "keadilan" is understood as an attitude and quality that maintains a balance between rights and obligations.[32]

Therefore, justice can be understood as actions that provide equal treatment to every individual in similar situations. This stems from the principle that every human being holds equal status and value as fellow creatures. However, under certain conditions, justice may require different treatment to achieve truly fair outcomes according to the context and needs. Justice is a fundamental right and a principle that must be upheld on this earth. The correct practice of Islam will realize a sense of justice. Conversely, deviations from Islamic teachings will result in corruption or oppression. The Qur'an expresses the concept of justice using various terms, such as al-'adl, al-qisth, and al-mizan. The term Al-'Adl refers to the concept of 'equality' or 'equivalence,' which requires at least two parties, while Al-Qisth means 'a fair and proper portion' and is broader because it does not have to create equality; it can even be applied to a single party, such as being fair to oneself. [33]. The word al-qisth is used by Allah SWT in His revelation to indicate the meaning of justice, namely:

قُلْ أَمَرَ رَبِّي بِالْقِسْطِ

Meaning: Say, "My Lord commands justice (al-qisth) to be carried out." (Q.S Al – A'raf : 29).

Meanwhile, the term al-mizan is mentioned in the Qur'an, Surah Ar-Rahman, verse 7, which states:

وَالسَّمَاءَ رَفَعَهَا وَوَضَعَ الْمِيزَانَ

Meaning: He has raised the sky, and He has created the balance (justice and equilibrium)" (Q.S Ar-Rahman: 7).

Quraish Shihab understands justice based on the Qur'an, so his concept is not only formal law, but also moral, spiritual, and social. Allah created and manages this universe with justice, and requires that justice encompass all aspects of life, including faith, Sharia or law, ethics, even love and hate. Just actions should not be influenced by desires, emotions, or the interests of groups. As explained in Surah Al-Maidah verse 8, Allah SWT says:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَا نُ الْقَوْمِ عَلَىٰ أَلَّا تَعْدِلُوا أَعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ

Meaning: *O you who believe, be steadfast in upholding justice for the sake of Allah and be witnesses with fairness. Do not let hatred for a people make you act unjustly. Act justly, as justice is closer to piety. Fear Allah. Indeed, Allah is well-acquainted with what you do.*

According to Quraish Shihab, the concept of justice must be understood holistically, encompassing four main spheres: the individual, the family, society, and the relationship with God. Justice within the family is realized through proportional treatment of each family member, including the wife, husband, and children. This includes the distribution of rights and responsibilities, nurturing affection, and making decisions impartially. In this context, justice becomes the foundation of household harmony, as stated in Surah An-Nisa': 3 & 129.[33]. In this case, there are at least four meanings explained by Quraish Shihab [33]:

Fair means the same. A judge can be considered fair if they are able to treat the parties equally, without discriminating against one party over another. However, the equality referred to is not absolute sameness, but equality in the rights of the parties. This aligns with Allah's word in QS. al-Nisa' [4]:58, which states: "When you judge between people, judge with justice." The word "fair" in this verse, when interpreted as "equal," only covers the attitude and conduct of the judge during the decision-making process. In polygamy permit cases at the Religious Court, this principle requires the judge to ensure that both the petitioner (husband) and the respondent (wife) receive equal treatment in the presentation of arguments, protection of rights, and legal consideration before a decision is made.

Just in the sense of "balanced". Balance within a community or group is achieved when each element within it performs its role according to the necessary conditions and proportions. If these conditions are met, the group will be able to survive and move towards the set goals. The Qur'an touches upon this concept of balance in QS. al-Infithâr [82]: 6–7, when Allah says: "O mankind, what is deceiving you concerning your Lord, the Most Generous? He who created you, perfected your creation, and made your bodily structure balanced." [33]. Here, justice is synonymous with proportion (appropriateness), not the opposite of 'injustice'. It should be noted that balance does not require equal amounts and conditions for all parts of a unit in order to be balanced. One part can be small or large, while the size is determined by its expected function. Justice in this sense gives rise to the belief that Allah, the Most Wise and All-Knowing, creates and manages everything with specific measures, proportions, and timing to achieve a purpose. This belief eventually leads to the understanding of Divine Justice.

Just, in the sense of "granting rights and giving due rights." Justice can be understood as an effort to place something in its proper position or to give rights to those who deserve them in an appropriate manner. The opposite is injustice, which is the act of taking away or violating the rights of others. In a simple analogy, giving water to a plant is a form of justice, while watering thorns is the opposite. Similarly, in a game of chess,

chaos would occur if the bishop is placed in the king's position. Understanding justice in this sense gives rise to the broader concept of social justice in society. Thus, the concept of justice according to Quraish Shihab can be seen as a coherent and relevant framework for understanding Islamic family law. A holistic, humanistic, and practical approach to justice aligns with the goals of maqasid al-shariah, which emphasize the welfare and protection of fundamental human rights.

3. Analysis of Court Decision No. 1775/Pdt.G/PA.Jr Reviewed from the Basic Concept of Justice by Quraish Shihab

The Religious Court of Jember Decision Number 1775/Pdt.G/PA.Jr originated from the petition of a husband who had been married since 2006 to his wife (Respondent) and they were blessed with three children. In 2023, the Petitioner requested permission for polygamy on the grounds that his wife could not meet his biological needs. The Petitioner expressed his desire to marry another woman, along with a commitment to be fair, financial readiness, and with the consent of the first wife. After considering the evidence and facts presented at the trial, the panel of judges approved the request and established the division of joint property. When analyzed based on the concept of justice according to Quraish Shihab, there are several important dimensions that need to be considered:

a. Justice as Equality Justice in terms of equality means that everyone has the same standing before the law. In this case, the judge has given equal opportunity to the Petitioner and the Respondent to present their arguments and consent. The Petitioner was given the chance to present reasons, while the Respondent also expressed willingness to be co-married, both orally and in writing. From a formal perspective, this reflects the principle of equality before the law.

b. Justice as Balance Justice also means balance, which is placing something in its proper place proportionally. Judges indeed weigh the husband's right to meet his biological needs against the wife's right to receive sustenance and legal protection. The Petitioner's economic considerations are also seen as a requirement to maintain balance. However, in this case, the judge tends to emphasize the husband's biological needs over the balance of the children's interests and the wife's psychological condition. In fact, according to Quraish Shihab, balance should not favor only one party, but must consider the broader impact on the entire family.

c. Justice as Fulfillment of Rights The final aspect is granting everyone their rights according to their respective portions. In this ruling, the judge has determined joint property and the Applicant's obligation to provide for the children, which means there is legal fulfillment of rights.

In this case, Quraish Shihab emphasizes that justice in polygamy does not encompass immaterial aspects such as love and affection, because it is impossible to equate them in human terms. Therefore, the justice that is required is justice in matters that can be measured and realized concretely, such as fulfilling life's needs, protection, and the economic rights of wives and children. [34].

Conclusion

Based on the analysis of the Jember Religious Court Decision Number 1775/Pdt.G/PA.Jr using Quraish Shihab's concept of justice, it can be concluded that the decision emphasizes formal justice more than substantive justice. From the perspective of justice as equality, the judge has fulfilled the basic principle of equality before the law by providing space for the Petitioner and Respondent to present arguments and reach agreements. This reflects procedural equality. However, from the perspective of justice as balance, the judge's considerations still tend to favor the husband's interests, particularly regarding the fulfillment of biological needs, while the psychological aspects of the wife and the interests of the children are less proportionally considered. In fact, according to Quraish Shihab, balance requires that all parties receive a fair share in accordance with their impact on family life as a whole. As for the aspect of justice as the fulfillment of rights, the judge has established the husband's obligation to provide for the children and consider economic aspects. This aligns with Quraish Shihab's principle of justice, which emphasizes measurable aspects, such as provision and legal protection. However, this justice is still superficial because it does not encompass the fulfillment of immaterial rights, such as love and a sense of security for the wife and children. Therefore, it can be concluded that the decision only reflects formal and partial justice and has not fully achieved substantive justice, which demands balance and the fulfillment of the rights of all parties comprehensively, as emphasized by Quraish Shihab.

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