

Legal Analysis of the Prohibition on Female Civil Servants Becoming Second Wives in Polygamous Marriages: A Case Study of Decision No. 7/Pdt.G/2017/PA.BATG

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ABSTRACT

This research analyzes the legal basis and implications of the prohibition on female civil servants becoming second wives in polygamous marriages, with a focus on decision no. 7/pdt.g/2017/pa.batg. The study aims to explore the intersection between marital rights, gender equality, and administrative regulations within the Indonesian legal system. Using a normative legal method combined with a case approach, the research examines relevant laws including law no. 1 of 1974 on marriage, government regulation no. 45 of 1990 on amendments to regulation no. 10 of 1983 concerning marriage for civil servants, and other related legal instruments. The findings show that the prohibition is rooted in efforts to maintain professional integrity, institutional discipline, and gender equity in the public sector. However, the enforcement of such restrictions raises constitutional questions regarding equal rights and personal freedom. The case of decision no. 7/pdt.g/2017/pa.batg highlights the tension between individual marital choices and institutional norms. This research concludes that while the regulation seeks to uphold ethical standards in public service, it also requires harmonization with fundamental human rights principles to ensure justice and legal certainty.

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INTRODUCTION

Marriage is a sacred covenant that forms a family between a man and a woman. Marriage is a vital event in the shared life of two people of the opposite sex, creating a united household. According to Article 1 of Law Number 1 of 1974 concerning marriage, marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Almighty God. Therefore, marriage is a contract whose entire aspect contained in the word "marriage" is a sacred ceremonial utterance.

There are several types of marriage, one of which is polygamy. The word "polygamy" comes from the Greek words polu and gamein. "Polu" means "many" and "gamein" means

"marry." Polygamy, therefore, means multiple marriages. Polygamy is a marriage in which one party (the husband) marries more than one wife simultaneously. This means that these wives remain under the husband's care and are not divorced, and are still legally his wives.

Apart from polygamy, there is also the term polyandry, polyandry is a form of marriage characterized by one party (wife) having more than one husband at the same time. Compared to polyandry, polygamy is more common in society, but it is practiced solely for personal gain, namely to satisfy lust (lust). Therefore, most polygamy is practiced outside of all regulations, thus far from the wisdom and secrets contained within it. In the general sense prevailing in today's society, polygamy is defined as a man marrying multiple women, or vice versa. Polygamy is divided into two types:

1. Polyandry is a marriage between a woman and several men.
2. Polygyny is a marriage between a man and several women.

In its development, the term polygyny is rarely used, it can even be said that this term is no longer used among the community, so that the term polygamy directly replaces the term polygyny with the meaning of marriage between a man and several women called polygamy. Polygamy is only allowed up to 4 (four) wives, with the condition of being fair to them, namely being fair in serving wives, taking turns and all physical matters, if it cannot be fair then one wife is enough. While Polyandry is prohibited by Islam, Polyandry is contrary to human slander, even Polyandry causes negative impacts in the form of venereal diseases, namely diseases that are transmitted through sexual relations with changing partners. Thus Polyandry is forbidden by law for Muslim women. In Law Number 1 of 1974 it is expressly stated that the principle of marriage is monogamy. This is as stated in Article 3 paragraph 1 that in principle in a marriage a woman may only have one husband

Apart from the reasons for polygamy according to the law, polygamy also has conditions, these conditions according to the law, namely in Article 5 of the Marriage Law, it is explained that in order to submit an application to the Court, as referred to in Article 4 paragraph (1) of this Law, the following conditions must be met:

1. Obtain permission from the Religious Court
2. There is consent from the wife/wives.
3. There is certainty that the husband is able to guarantee the living needs of his wives and children.
4. There is a guarantee that the husband will treat his wives and children fairly.

If we consider the reasons and conditions for polygamy, we can understand that they refer to the primary purpose of marriage: to establish a happy and lasting household, known as Sakinah, Mawadah, and Rahmah, based on the One Almighty God. The word Sakinah comes from Arabic and means peace of mind. Meanwhile, in the Indonesian dictionary, Sakinah means peace, a safe and peaceful place. Then the word Mawaddah according to M. Quraish Shihab is not just love, Mawaddah is true "love plus". It's not just love that fades when the heart is upset. Meanwhile, according to M. Quraish Shihab, "Rahmah" is a psychological condition that arises within the heart as a result of witnessing helplessness, thus prompting the person concerned to seek empowerment. Then, each husband and wife

will be earnest, even striving, to bring goodness to their partner and reject anything that disturbs or destabilizes them.

But maintaining a marriage is not easy. In reality, no marriage is without disputes. Unresolved disagreements or differences of opinion can lead to conflict within a household, and disharmony can also lead to infidelity between partners. To support a harmonious and prosperous family life, the presence of children is necessary to complement the family's presence, bringing blessings to the household. A child can be defined as someone born through a legal marriage between a man and a woman. However, disharmony and conflict within the family can arise, one of which is domestic conflict, one example of which is polygamy.

The position of Civil Servants (PNS) as an element of the State apparatus whose duty is to provide services to the public in a professional, honest, fair and organized manner in the implementation of state, government and development duties. for that as a Civil Servant must follow the applicable Law to carry out polygamous marriages. a Civil Servant who wants to practice polygamy is permitted but must meet the conditions specified in the law. The conditions for Civil Servants to carry out polygamous marriages are in Law No. 1 of 1974 and Government Regulation No. 45 of 1990. Article 4 of the Marriage Law states that a husband who will have more than one wife, then he is required to submit an application to the Court to obtain permission from the head of the court. In the letter requesting permission to have more than one wife.

Article 4 of Government Regulation No. 45 of 1990 states that male Civil Servants who will have more than one wife must obtain prior permission from officials / superiors, how important the meaning of an official or superior's permission to practice polygamy. Without permission from the official / superior, the Civil Servant will not carry out polygamy, if it is still done, sanctions will be imposed. Civil Servants who do not report their second / third / fourth marriage within a period of no later than one year from the date of the marriage or do not obtain prior permission from officials to have more than one wife, will be subject to one of the severe disciplinary penalties based on Government Regulation No. 30 of 1980 concerning Civil Servant disciplinary regulations.

Literature Review

Legal Understanding Of Polygamy In Indonesia

The meaning of polygamy is a marriage system that allows a person to have more than one wife. The law on polygamy in Indonesia is regulated in the Marriage Law No. 1 of 1974. The legal basis for polygamy in Indonesia, Article 3 paragraph (2) of the Marriage Law, clearly stipulates that:

"The court may grant permission to a husband to have more than one wife if the parties concerned wish." Specifically for those who are Muslim, the legal basis for polygamy is also regulated in Article 56 paragraph (1) of the KHI which explains:

"A husband who wishes to have more than one wife must obtain permission from the Religious Court."

Referring to the legal basis for polygamy above, it can be concluded that polygamy in Indonesia is essentially permissible, as long as it is carried out in accordance with the applicable Indonesian laws and meets the requirements for polygamy. The following are the requirements for polygamy:

1. Religious Court Permit.
2. Wife's Consent.
3. Financial Capability.
4. Justice.

Law Number 1 of 1974 is the law that regulates marriage in Indonesia. This law defines marriage as a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Almighty God. This law also regulates various aspects of marriage that are valid under state law, for both Muslim and non-Muslim Indonesian citizens. Here are some key points from Law Number 1 of 1974:

1. Purpose of marriage (Articles 1 and 3)

Marriage is a physical and spiritual bond between a man and a woman as husband and wife whose aim is to form a happy and eternal family (household) based on the belief in the Almighty God. In principle, a man can only have one wife and a woman can only have one husband.

2. Conditions for Marriage (Articles 6-9)

Must be based on the agreement of both prospective bride and groom. There must be permission from parents if the age does not meet certain requirements. The minimum age for marriage is 19 years for men and 16 years for women.

3. Polygamy (Articles 3, 4, and 5)

Under certain conditions, a husband can have more than one wife but must fulfill the following conditions:

- a. Wife cannot carry out her duties
- b. Wife has a physical disability or incurable disease
- c. Wife cannot give birth to offspring
- d. There must be permission from the wives and the court.

4. Dissolution of marriage (Article 38)

A marriage can end due to:

- a. Death
- b. Divorce
- c. Court Decision

5. Roles and obligations of husband and wife (Articles 30-34)

Husband and wife must love each other, be faithful, and provide physical and spiritual support. The husband is the head of the family, and the wife manages household affairs.

However, Law No. 1 of 1974 has been changed to Law No. 16 of 2019. The following are the main points of change:

1. Minimum age for marriage

Law No. 16 of 2019 sets the minimum age for marriage at 19 years for men and women.

2. Marriage dispensation

Parents can apply for a marriage dispensation to the court if the prospective bride and groom are under 19 years old for urgent reasons and accompanied by supporting evidence.

The purpose of the amendments to the law is to implement 12 years of compulsory education and prevent the negative impacts of early marriage, such as health risks and socioeconomic problems. These changes are expected to provide better protection for children and adolescents who are about to marry and reduce the number of early marriages that have negative impacts.

The Compilation of Islamic Law is a legal guideline used in the Religious Courts in Indonesia, especially for Muslims. The Compilation of Islamic Law does not directly amend or replace Law No. 1 of 1974 or Law No. 16 of 2019, but rather complements and outlines how Islamic law is applied to marriage in accordance with Islamic principles in Indonesia. The relationship between the Compilation of Islamic Law and Law No. 1 of 1974 and Law No. 16 of 2019.

1. Law No. 1 of 1974

This law is the national law on marriage that applies to all Indonesian citizens, regardless of religion. The articles in this law are general and religion-neutral (for example, regarding the rights and obligations of husband and wife, age of marriage, etc.).

2. Compilation of Islamic Law (KHI)

KHI is Islamic material law which is used as a basis by Religious Courts to resolve cases submitted by Muslims. Established through Presidential Instruction No. 1 of 1991, it includes 3 books:

- a. Book I: Marriage Law
- b. Book II: Law of Inheritance
- c. Book III: Law of Endowments

3. Law No. 16 of 2019

This is a change to Article 7 of Law No. 1 of 1974 which raises the minimum age of marriage for women from 16 years to 19 years so that it is the same as for men.

The conclusion is:

- a. Law Number 1 of 1974 is the basis for national marriage.
- b. Law Number 16 of 2019 strengthens protection for children by equalizing the marriage age.
- c. KHI is a complement to Islamic Law, serving as a guideline for Religious Courts for Muslims, including in matters of marriage, divorce, talaq and family rights.

Government Regulation Number 45 of 1990

Government Regulation Number 45 of 1990 is a regulation regarding changes to Government Regulation Number 10 of 1983, which regulates marriage and divorce permits for Civil Servants. This Government Regulation stipulates the rules and obligations that must be fulfilled by Civil Servants regarding marriage, including permits for having more than one wife and divorce Factors and Legal Consequences of Polygamous Marriage for Civil Servants, Factors influencing polygamous marriages among civil servants can be categorized into two categories: internal and external. Internal factors, in the context of polygamous marriages among civil servants, are personal reasons within the household itself that drive the desire for polygamy. These factors stem from internal family conditions or problems, not external social or cultural pressures. Here are some examples of internal factors:

1. Wife cannot give birth to children

The husband wants to have children, while the wife is medically declared infertile. This is one of the legitimate reasons according to Islam and religious courts to apply for polygamy.

2. Wife has an incurable disease

For example, if the wife has a mental disorder, is totally paralyzed, or has a chronic illness that makes her unable to carry out her functions as a wife.

3. Disharmony in the household

There was constant tension, although it did not reach the stage of divorce. The husband wants to keep his first wife but feels he needs another partner.

4. Husband's personal wishes

Due to religious beliefs or personal views on polygamy even though there are no serious problems in the household.

However, this reason is not strong enough if it is not supported by other conditions, as mentioned above, both according to law and civil servant ethics. Although these internal factors may be personally or religiously understandable, civil servants must still comply with official regulations, namely:

1. Obtain permission from the authorized official.
2. Meet the requirements of the Religious Court.
3. Get the first wife's approval.

Meanwhile, external factors in the context of polygamous marriages for civil servants are influences or pressures from outside the household that encourage a civil servant to remarry, either consciously or indirectly. These factors originate from the social environment and conditions outside the marital relationship itself. Here are some examples of external factors:

1. Extended family encouragement

Parents, in-laws, or extended family encourage the husband to remarry, for example, because the first wife has not yet produced children.

There is encouragement from the extended family to matchmake or arrange a second marriage.

2. Work environment

Personal relationships in the workplace, for example between a superior and a subordinate, can lead to attachments that can lead to polygamy. This constitutes an ethical violation if done without official permission.

3. Economic factors or social status

Some people practice polygamy to show their economic ability, even though there are no pressing household needs.

Even though external factors can be the trigger, the legal rules for Civil Servants remain unchanged, Civil Servants must still ask for written permission from their superiors, still need permission from the Religious Court and a valid reason, and without this, it is still considered a violation of Civil Servant discipline regardless of the external reason.

Legal consequences can be defined as the result of an action carried out to obtain a result desired by the perpetrator and which is regulated by law. The action carried out is a legal action, namely an action carried out to obtain a result desired by law. In the legal context in Indonesia, polygamous marriages by civil servants have quite serious legal consequences because they are subject to special regulations.

The special regulations referred to are those that regulate marriage permits for Civil Servants to have more than one wife, which are contained in Government Regulation Number 45 of 1990 concerning amendments to Government Regulation Number 10 of 1983 concerning marriage and divorce permits for Civil Servants, specifically in Article 4 of Government Regulation Number 45 of 1990, which reads:

1. Male civil servants who wish to have more than one wife must first obtain permission from an official.
2. Female civil servants are not permitted to become second, third, or fourth wives.
3. The request for permission as referred to in paragraph (1) must be submitted in writing.
4. In the letter requesting permission as referred to in paragraph (3), complete reasons must be included which underlie the request for permission to have more than one wife.

If a Civil Servant does not report his/her polygamous marriage within a period of one year from the date of the marriage and does not obtain prior permission from the official, one of the severe disciplinary penalties will be imposed based on Government Regulation Number 30 of 1980 concerning Civil Servant Discipline Regulations. The severe disciplinary penalties are:

1. Demotion to one lower rank for 3 years.
2. Transfer in the context of demotion to a lower level position.
3. Release from office.
4. Honorable dismissal not at one's own request as a Civil Servant.
5. Dishonorable dismissal as a civil servant.

Civil Regulation

The intersection between civil service regulations and marital rights has been a recurring topic in Indonesian legal scholarship. Law No. 1 of 1974 on Marriage establishes the foundational legal framework for marriage in Indonesia, emphasizing monogamy as the principle while permitting polygamy under specific legal and procedural conditions. Meanwhile, Government Regulation No. 10 of 1983—amended by Government Regulation No. 45 of 1990—specifically addresses the conduct of civil servants in marriage, explicitly prohibiting female civil servants from becoming second wives in a polygamous marriage. Scholars such as Nurul Qomariah (2020) and M. Nasir (2018) have examined the implications of these regulations, particularly in the context of gender discrimination and administrative law. Their studies argue that the prohibition reflects a structural bias embedded in the civil service system, which does not impose equivalent restrictions on male civil servants.

From a human rights perspective, authors like Yuliandri (2015) highlight the tension between institutional regulations and constitutional rights, especially the right to marry and to be free from discrimination. Similarly, studies in gender and law (e.g., Nurjannah, 2021) critique the policy for reinforcing patriarchal norms and limiting women's autonomy in personal decisions.

Additionally, jurisprudential analysis of family court decisions—such as Decision No. 7/Pdt.G/2017/PA.BATG—has been used as a reference in understanding how courts interpret and apply these regulations. These decisions show the judiciary's support for maintaining public service ethics while also raising questions about consistency and fairness in implementation.

This literature provides a critical foundation for analyzing the case in question and evaluating whether the legal norms align with principles of justice, equality, and human rights in contemporary Indonesia.

METHOD

This research uses a normative juridical approach, focusing on the analysis of legal norms, statutes, and court decisions relevant to the prohibition on female civil servants becoming second wives in polygamous marriages. The study emphasizes doctrinal legal research, which involves examining legal principles, legislation, and relevant jurisprudence.

The primary legal materials include:

1. Law No. 1 of 1974 on Marriage,
2. Government Regulation No. 10 of 1983 and its amendment in Government Regulation No. 45 of 1990,
3. Law No. 5 of 2014 on State Civil Apparatus,
4. and the Constitutional provisions related to human rights and equality.

Secondary sources consist of legal textbooks, journal articles, expert opinions, and prior research that discusses gender equality, marriage law, and public service ethics.

The case study method is applied to analyze Decision No. 7/Pdt.G/2017/PA.BATG from the Religious Court of Batang. The case is examined to understand the court's legal reasoning, interpretation of existing regulations, and its alignment with principles of justice and human rights.

Data is collected through literature study and document analysis, without involving field research. The data is then analyzed qualitatively using descriptive and evaluative techniques, to provide a comprehensive understanding of the legal issues and implications of the policy.

RESULT

Analysis Decision.

The analysis of Decision No. 7/Pdt.G/2017/PA.BATG reveals that the Religious Court upheld the prohibition on female civil servants becoming second wives in a polygamous marriage. The court based its judgment on Government Regulation No. 45 of 1990, which strictly forbids female civil servants from entering into such marital arrangements, regardless of religious justification or consent from the first wife. The decision emphasized that as a state employee, the petitioner must adhere to the ethical standards and regulations governing civil servants. The court argued that allowing the marriage would contradict the principles of discipline, professionalism, and moral conduct expected within the public service sector.

Additionally, the court considered the broader implications of such a marriage on public perception and institutional credibility. It reaffirmed the government's stance that female civil servants are held to a higher standard of conduct, particularly in matters that could affect gender equality and workplace dynamics. However, the decision also highlights a legal inconsistency: the regulation applies disproportionately to women, while male civil servants are allowed to pursue polygamous marriages under certain conditions. This disparity has been criticized by legal scholars and human rights advocates for violating constitutional guarantees of equality before the law and non-discrimination. In summary, the court's decision aligns with the prevailing regulatory framework but raises important questions about gender bias and the need for legal reform to harmonize administrative rules with constitutional rights.

Judge's Considerations In Decision Number 7/Pdt.G/2017/Pa.Batg.

That based on the arguments of the lawsuit, the applicants request that the Head of the Bantaeng Religious Court, the Panel of Judges who examined and tried this case, be pleased to decide with the following verdict:

PRIMARY:

1. Grant the applicant's request
2. Granting permission to the applicant to remarry
3. Charging legal fees

SUBSIDIARY:

That today the trial has been set, the applicant and the respondent came to the trial, in the trial the applicant and the respondent reiterated their purpose in submitting a request

for permission for polygamy, while in the trial each party explained that they are in the position of Civil Servant Teacher, including (the prospective second wife) who works as a Civil Servant Teacher in Bone Regency. That in short the description of this decision, then all matters contained in the minutes of this trial are an inseparable part of this decision.

Considering that in the examination at the trial, each of the interested parties, namely the applicant and the respondent, each have the position of Civil Servant, therefore in relation to the application for permission for polygamy, the parties are related to Government Regulation Number 10 of 1983 concerning marriage and divorce permits for Civil Servants and in Government Regulation Number 45 of 1990 concerning amendments to Government Regulation Number 10 of 1983, in Article 4 paragraph 1 which reads as follows:

- a) Male civil servants who wish to have more than one wife must first obtain permission from an official.
- b) Female civil servants are not permitted to become the second, third or fourth wife of a civil servant.

Therefore, the applicant is a Civil Servant, as is the case with the party who will be made the applicant's second wife, also a Civil Servant, which in the regulations expressly prohibits a Civil Servant from becoming a second wife. Considering that the current condition of the applicant and the respondent is a married couple who have been blessed with 7 (seven) children, while the respondent has not been proven to have a physical disability or an incurable disease,

Regarding the respondent's job as a Civil Servant teacher at SMP 1 Bantaeng, which of course requires a healthy physical and mental condition in carrying out the profession. Based on these matters, the Panel of Judges considers that the position of the applicant and respondent and the related parties are parties who cannot be given permission to practice polygamy, so that the petition of the applicant and respondent is unclear or vague, so the Panel of Judges considers that the case should be rejected.

Analysis of Judge's Decision Decision Number 7/Pdt.G/2017/PA.BATG

Decision Number 7/Pdt.G/2017/PA.BATG is a concrete example of how judges in the Religious Courts strictly apply legal norms to polygamy requests filed by Civil Servants (PNS). In this case, a man with the status of a Civil Servant filed a request to the Bantaeng Religious Court to remarry (polygamy), with his prospective second wife also being a female Civil Servant. This request was submitted based on the consent of the first wife, as well as religious reasons and the financial ability to support more than one wife.

However, in its decision, the Panel of Judges rejected the application with strong legal considerations and based on Government Regulation Number 45 of 1990 concerning amendments to Government Regulation Number 10 of 1983 concerning marriage and divorce permits for Civil Servants. Article 4 paragraph (2) clearly states: "Female Civil Servants are not permitted to become the second, third, or fourth wife of a Civil Servant."

Thus, even though the requirements stipulated in Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law had been met, such as the first wife's consent, a justifiable reason according to Islamic law, and the husband's financial ability, the

application was still denied because the prospective second wife was a civil servant. This fact automatically made the application for polygamy contrary to civil service regulations.

In its consideration, the Panel of Judges also emphasized that both the applicant (husband) and the respondent (first wife) are active Civil Servants, as is the prospective second wife who has the status of a Civil Servant teacher in Bone Regency. Therefore, all parties involved are subject to the provisions of Civil Servant discipline, including the prohibition for female Civil Servants to become a second wife as stated in Government Regulation Number 45 of 1990.

Furthermore, the judge also rejected the husband's claim that he followed Islamic law. Although Islam permits polygamy under certain conditions, in the context of a constitutional state like Indonesia, all forms of religious practice must comply with applicable positive law, including civil service administration law. Polygamy in Islam is not obligatory, but rather a form of *rukhsah* (leniency) that only applies if certain conditions are met. In the context of the Civil Service, this *rukhsah* is further restricted by civil service regulations.

Based on these considerations, the Panel of Judges declared the applicant's application unclear (*obscuur libel*) because it contradicted expressly established legal norms. Therefore, the decision declared the application inadmissible (*niet ontvankelijk verklaard*).

This ruling demonstrates that judges not only consider religious arguments or domestic circumstances, but also consider compliance with civil service disciplinary regulations. This means that as part of the civil service, a civil servant is not only subject to family or religious law, but also has administrative legal responsibilities and professional ethics as a civil servant.

Furthermore, this case also demonstrates how aspects of civil service administration and family law can conflict, particularly in personal matters such as marriage. However, in a state governed by the rule of law, which prioritizes legal certainty and compliance with regulations, administrative regulations (in this case, Government Regulation No. 45 of 1990) restrict individual rights, including the right to practice polygamy.

Thus, it can be said that decision Number 7/Pdt.G/2017/PA.BATG has important value as jurisprudence that strengthens the principle that:

1. Civil servants cannot ignore administrative legal provisions even in personal matters like marriage.
2. Female civil servants cannot become second wives, because this is contrary to personnel regulations and can be subject to severe disciplinary sanctions as regulated in Government Regulation Number 53 of 2010 concerning Civil Servant Discipline.
3. Judges not only act as interpreters of religious law, but also as guardians of the upholding of state law and ethical norms of the state apparatus profession.

Thus, this decision reflects the integrity of religious courts in upholding laws that are not only normative-religious, but also administrative and ethical-professional.

CONCLUSION

This study concludes that the prohibition on female civil servants becoming second wives in polygamous marriages, as upheld in Decision No. 7/Pdt.G/2017/PA.BATG, is legally grounded in existing administrative regulations—specifically Government Regulation No. 45 of 1990. The decision reflects the state's commitment to maintaining professional discipline, ethical standards, and institutional integrity within the civil service. However, the enforcement of this regulation also exposes a legal and constitutional dilemma. While male civil servants are permitted to engage in polygamous marriages under certain legal procedures, female civil servants are categorically prohibited from doing so. This asymmetrical treatment raises serious concerns about gender equality and non-discrimination, which are fundamental principles protected by the Indonesian Constitution and international human rights instruments. Therefore, although the regulation is valid within the current legal framework, it warrants critical re-evaluation. Harmonization between administrative law, marriage law, and constitutional rights is necessary to ensure justice, eliminate gender bias, and uphold the rights of all citizens—regardless of gender—in both public and private spheres.

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