

Polygami in Contemporary Muslim Feminist Paradigm in Indonesia

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Abstract. Historically, the practice of polygamy was practiced before Muslims, the arrival of Islam in terms of polygamy is more regulating, fortifying and limiting the number of wives to a maximum of four, with conditions that must be fair. This is done more to protect women. The previous community was a natural thing for this marriage to be carried out especially for the authorities, merchants or influential people with certain objectives. Law No. 1 of 1974 concerning Marriage in articles 3, 4 and 5 clearly regulates the implementation of polygamy with the principle that marriage in Indonesia based on Monogamy. Polygamy is allowed as a way out if someone has been able to meet the conditions specified, which in principle the requirement to close the door of polygamy.

Keywords: Polygamy, Justice, Sharia, Marriage Law

1. Introduction

Sex are the goal of every living being, both rational and non-rational, because biological relations are the nature of every living creature, however, specifically intelligent beings (humans) are bestowed by Allah SWT., Physical and mental strength and are also perfected by the giving of libido sexual must be maintained. Ta'aruf is one step to determine a partner, after he agreed in making a decision that is the choice of wife, then the marriage contract is an initial step to open a new page that is undergoing love and love that must be maintained with the aim of creating a sakinah family, mawaddahwarahmah. With this marriage contract, then someone has been allowed to do something that was originally forbidden, namely al-Wathu.

Polygamy is an alternative way undertaken by a husband to have more than one wife, both in a valid manner that is taught by the shari'ah or statutory regulations in Indonesia, or illegally carried out ie polygamy which is said to be normatively valid but violates the law positive, namely the statutory regulations with the correct procedures.

2. Polygamy in Islam

According to Mahmud Syaltut, the law of polygamy is permissible, as long as there is no fear of persecution of the wife. But if fear of persecution and that causes sin, then you should get just one wife. Then basically polygamy is a matter of justice, and there is no mistreatment of wives.

Islam is a religion of nature, a religion that is in line with the guidance of character, and the innate nature of human events. Therefore, Islam is concerned with human realities, then arranging them to fit the values of virtue. The effects of climate bring differences in the reality

of human life. Each individual has a trait that may be different from other individuals. Social conditions in a society at a certain time experience problems that ask for solutions.

Islam allows polygamy for up to four wives on condition that it is fair to them. That is fair in serving his wife, such as matters of living, shelter, clothing, turn and things that are lahiriyah. If you cannot do justice, then only one wife (monogamy) is enough. This is based on the word of.

Muhammad Ali Al-Shabuni in his Book Tafsir ayat al-Ahkam, distinguishes the legal status of polygamy, as follows; (fankihuumaathaabalakum) the law is mandatory (may; not be binding). The ulama jumhur agreed that the amr in the verse ibahah was like that of the amr in the other words of Allah (wakuluuwasyrabuu) and the verse (kuluu min thayyibaatiimaarazaqnaakum), while the ulah 'Dhahiriyah argued the marriage was compulsory, we adhere to the Dhahir verse because in fact amr was obligatory.

That understanding is reinforced by the sequence of words with the verse. This is proven by the absolute word nilk al-yamin. General understanding obtained from lafadzmaathaabalakum has been specified by two things. that is: 1)Mukhassis which is meaningful, the Bible on fa al-ankihuumaathaabalakum is a Muslim. Whereas Muslims do not like things that are prohibited and marrying women more than four people is something that is not halal.[1]

2)Mukhashis which is lafdzi, there is a description of the word maathaabalakummin al-nisa'I in the form of matsna number, tsulasawarubaa'a. This is a single word used to refer to numbers that are repeated. Then it means marry by you women who are lawful to you, two-two, three-three or four-four, and you may not take more than four wives

According to Quraish Shihab, "If we are afraid we will not do justice to orphaned women and you are confident that you will be fair to women other than orphans, then marry what you care about according to your taste and lawful to the other women. If necessary you can combine two, three, four, but not more, if you are afraid you will not be able to be fair in matters of wealth and physical treatment, not in love if you gather more than one wife, then marry one person, or marry a slave- the slave you have. That is, to marry other than orphans which results in injustice, and to suffice for one wife is to be closer to abuses, which is to lead you to justice or not to have many children that you have to bear for their living expenses.

Islam does not close the possibility of certain men to polygamy like; 1) The maximum number of wives to polygamy are four women. If there is a wife who dies or is divorced, the husband can find another substitute provided that there are four people at the same time, 2) The man can do justice to his wives and children, which involves outward issues such as the division of time in the distribution of income, and matters relating to birth interests. As for the inner problems, of course, forever humans cannot do justice forever.[2]

According to Zamaksyari, polygamy according to Islamic sharia is a rukhsah (leeway) during an emergency, as is rukhsah for travelers and sick people who are allowed to break their fast during the month of Ramadan while traveling. However, there are several reasons for the permissibility of polygamy, as the opinion of Shaykh Shahih bin Fauzan bin Abdullah, a woman who marries a man who is fully responsible, guarantees his life, provides protection, and can bring many offspring, even though she is the fourth wife, still more better than he remains single.

Muhammad Abduh even said that it is forbidden to practice polygamy, for someone who is worried that he cannot do justice. Because basically, polygamy does not bring benefits, even polygamy is just looking for fun. Ibn Abd al-Salam stated; "In the days of Shari'ah Musa (as), women were married without limits for the benefit of men. In the days of Shari'a 'Isa (as), no marriage was allowed except one for the benefit of women. During the Shari'ah of our

Prophet, the two maslahahs were preserved. So, basically the Islamic Shari'ah is to limit the four wives in marriage (polygamy) to give benefit to their followers, that is, to correct the previous Ummahs (the Shari'ah of the previous Ummah).

3. Polygamy Law in Indonesia

In history, many modern Islamic countries forbid or regulate polygamy issues, such as Turkey, Jordan, Syria, and others. In Iran, the 1975 Family Protection Act requires men who want polygamy to ask permission from the Court, and there must be permission from the first wife who is proven unable to fulfill his responsibilities as a wife due to illness, imprisonment or infertility.[3]

In Islam there are no detailed requirements that must be taken regarding the conditions of polygamy, in addition to being fair. But the fair order is general. Therefore, Islamic legal experts in Indonesia understand the messages contained in al-Qur'an surah al-Nisa 'verse 4. Regarding polygamy, and from the results of the ijtihad it was formulated in the 1974 Law and Government Regulation Number 9 1975 and the Compilation of Islamic Law (KHI).

In Indonesia, the issue of polygamy is regulated in Law Number 1 of 1974 concerning Marriage Article 3, 4 and 5 which stipulates that marriage is monogamous, but opens up the possibility of a court permit on the grounds that the wife cannot carry it out as a wife, disabled wife or have an incurable disease or infertile wife, and with the condition of getting permission from previous wives / wives, are able to provide a living and can be fair. [4]

Then the Republic of Indonesia Government Regulation Number 9 of 1975 is concerning Rules for Implementing Law Number 1 of 1974. For Civil Servants, the rules are separated through Government Regulation (PP) Number 10 of 1983 concerning Marriage Permits and Divorce for Civil Servants. As for material law for Muslims, there are provisions in the Compilation of Islamic Law (KHI).

The provisions contained in the Marriage Law related to the rules of implementation, in principle in harmony with Islamic law. According to the Act, in principle the system adopted by the Indonesian Marriage Law is the principle of monogamy, one husband for one wife. In certain cases or reasons, a husband is given permission to have more than one wife. For certain reasons or reasons, a husband is given permission to have more than one wife. This is explained in a series of heavy requirements. Can or not a husband with more than one wife is determined by the religious court based on whether or not the requirements are met

In article 3 paragraph (1) Marriage Law No. 1974, it read: "In principle a marriage of a man may only have a wife. A wife can only have a husband. "The provisions of this article are heavily transferred from the legal lines contained in the QS. al-Nisa verse 3 above which lays down the monogamy foundation for a marriage. The request for permission is in the form of case filings that are contingency / dispute. In order for the court to grant the request for polygamy permit, the case must fulfill the reasons stated in Law Number 4 of 1974.

These reasons are facultative and not imperative cumulative, meaning that any of these are used as reasons for petition for judicial polygamy and the request can support the reason for the petition with sufficient evidence, so his request for more than one wife can be granted by the court. Then other requirements that must be fulfilled by men who apply for permission to polygamy (more than one person) to the court as stipulated in article 5, are: 1) There must be agreement from the wife; 2) There must be certainty that husbands are able to guarantee the needs of their wives and children; 3) There must be guarantees that husbands will be fair to their wives and children.

The requirements contained in article 5 are cumulative, meaning that the Religious Court / Syar'iyah Court can only grant polygamy to a husband if all of the requirements have been met, if one condition is not fulfilled, the Religious Court / Syar'ayah Court must refuse the request.

Furthermore, in Book II of the Indonesian Supreme Court Guidelines it is explained that, when applying for a polygamy permit from a husband, an application for the determination of assets together with his previous wife must also be submitted. If the request to determine the joint property is not submitted, there are two things that can happen.

1. His previous wife may submit a claim for reconciliation over the determination of joint assets.
2. If the previous wife does not submit a reconvention, the Religious Court must declare that the request for polygamy cannot be accepted (Neitonvanclijkverklaard)

The purpose of polygamy according to the Law is permitted, the severity of the very heavy requirements, not only the ability of the data to do justice, but also the consent of the previous wife, this implies that the implementation of polygamy in the Religious Courts adheres to the principle of "closing open doors". This means that polygamy is not open, if you don't need it, and only in certain circumstances is the door open.

Basically, polygamy is only an alternative; it must be proven by the husband who submitted the polygamy in court. If it is true that his previous wife could not carry out his obligations as a wife, or suffer from disability or incurable disease, or infertility. The first reason is almost indistinguishable from the second reason, namely, the wife is disabled or has an incurable disease. These reasons are equally unable to carry out his obligations as a wife, while for the third reason, the proof is required *visum et repertum* from a specialist / obstetrician. A request for polygamy that does not meet the above mentioned reasons and conditions is very reasonable if the case is rejected by the judge.

Article 40 Government Regulation No. 9/1975 states: "If a husband intends to have more than one wife, he must submit a written application to the court" on the Compilation of Islamic Law Article 56: 1) Husbands who have the right to marry more than one person must obtain permission from the Religious Court, 2) Submission of a permit application referred to in paragraph (1) is carried out according to the procedure as regulated in Chapter VIII of Government Regulation Number 9 of 1975, 3) Marriage conducted by the second, third or fourth wife without permission from the Religious Court, has no legal force.

Article 57 of the Compilation of Islamic Law states: The Religious Court only gives permission to a husband who will have more than one wife if: 1) A wife cannot fulfill her obligations as a wife; 2) The wife has a defect or an incurable disease; 3) Wives cannot produce offspring.

The Religious Court after checking the application for a permit for polygamy, then check: 1) There is or does not excuse the reason for a husband to remarry (article 41 a) is to cover conditions such as (article 57) KHI above, 2) Whether or not there is an agreement from the wife, both oral and written consent, the agreement must be said before the court, 3) The presence or absence of the husband's ability to guarantee the necessities of life of his wives and children, by showing: 1) Certificate of husband's income signed by the treasurer of the workplace; or 2) Income tax certificate,3). Other certificates which can be accepted by the court.

In KHI Article 58 paragraph (2) it is emphasized *Without prejudice to the provisions of paragraph 42 letter b PP. No. 9 of 1975, the agreement of the wife or wives can be given in writing or verbally, but even though there has been written agreement, this agreement is affirmed by the wife's oral agreement in the religious court.*[5]

Regarding technical inspection, Government Regulation Number 9 of 1975 Article 42 regulates:1). In conducting hearings on matters contained in articles 40 and 41, the court must summon and hear the wife concerned.2). The court examination shall be carried out by the Judge no later than 30 (thirty) days after the receipt of the application along with the attachments. If for one reason or another the wife or wives cannot be asked for approval or cannot be a party to the agreement, Law Number 1 Year 1974 article 5 paragraph (2)

If the court is of the opinion that there is sufficient reason for the applicant to have more than one wife, the court will issue a decision in the form of permission to take more than one wife (Article 43 PP No. 9 of 1975). So basically the court can give permission to a husband to have more than one wife if desired by the parties concerned (article 3 paragraph (2) of Law No. 1 of 1974).

In the event that the wife does not want to give consent, and the application for permission to have more than one wife is based on one of the reasons stipulated in articles 55 paragraph (2) and 57, the Religious Court may determine the granting of permission after examination and hear the granting of permission from the wife in the trial The Religious Courts, and against this determination the wife or husband can submit an appeal or appeal (article 59 KHI).

If a legal decision has permanent legal force, no court permission is obtained, then according to the determination of article 44 PP No. 9 of 1975, Registrar is prohibited from recording the marriage of a husband who will have more than one wife before a court permit as referred to in article 43 (PP. No. 9 of 1975).

Legal provisions governing the implementation of polygamy as described above are binding on all parties, parties that will carry out polygamy and marriage registrar. If they violate the provisions of the articles above are subject to criminal sanction. This problem is regulated in Chapter IX article 45 PP No. 9 of 1975.1). Unless otherwise specified in the applicable laws and regulations, then:a). Anyone who violates the provisions stipulated in article 3, 10 paragraph (3), 40 this Government Regulation shall be punished with a maximum fine of 7500 (seven thousand and five hundred thousand rupiah). B). Registrar who violates the provisions as stated in Article 6,7,8,9,10 paragraph (1), 11,12,44. This Government Regulation shall be punished with a maximum sentence of 3 (three) months or a maximum fine of Rp. 7500, - (seven thousand five hundred rupiah).2). The criminal act referred to in paragraph (1) above is a violation.

In a methodological perspective, the legal regulations regarding polygamy that may be carried out on the will of the person concerned through the permission of the Religious Court, after permission from the wife, or wives, is intended to realize benefit. That is realizing the goals and ideals of marriage itself, which is an eternal and everlasting household blessed by Allah Almighty, which is based on love and affection (mawaddahwarahmah). Therefore, the problems that are possible will become a barrier to the realization of the purpose of the marriage must be eliminated or at least reduced. In accordance with the rule "avoiding mudharat (damage) must take precedence over taking benefits (benefit)".

According to Rahmat Hakim, this regulation is not anticipatory. Against this possibility, We even agree that biological needs belong to all living creatures, let alone a woman who in the case of a marriage partner is waiting, depending on who comes, she cannot choose and only waits for choice. Then that unfortunate fate will befall the woman, and it may exist and must be anticipated by the regulators. Or this may be a weakness, human-made rules, which are subjective and not anticipatory.

4. Reintegration of Polygamy Version of Indonesian Muslim Feminists

Nowadays religion is often accused as a source of injustice in society, including the injustice of relations between men and women which is often referred to as gender injustice. Gender is a formed gender constructed by culture and customs, such as men who are strong, brave, intelligent, controlling, while women are weak, timid, less intelligent (stupid), controlled, etc. The issue of gender strengthens when it is realized that gender differences between men and women have given birth to injustice in various forms such as marginalization or economic impoverishment, subordinate or perceived insignificance in political affairs, stereotypes or negative imagery for women; kitchens, wells, mattresses, violence, and double burden on women who lead to unjust acts hated by Allah Almighty.

Khaled offers five requirements that must be fulfilled by each reader so that they do not apply arbitrarily in determining an opinion, namely; 1) ability to control or self restraint, 2) really diligence, 3) consider aspects related (comprehensiveness), 4) prioritize reasonable action (reasonableness), and 5) honesty (honesty) .7 The statement of Khaled Abou el Fadl above, is relevant for understanding the phenomenon of the many interpretations of polygamy verses.

Since centuries ago the problem of polygamy has always been a controversy. Many books and articles have been written by experts, but each opinion expressed always reflects certain associations, as well as a diverse picture of emotions between one reader and another. In fact, when viewed from the legal aspect, polygamy is only a legal act in the category of *ibahah* (allowed), not *sunnah* let alone mandatory.

Of the three schools, the writer tends to agree more with the second school than the others. In addition, the laws governing marriages in Indonesia also seem to hold opinions in this genre. Regardless of the author's tendencies, the flow which aggravated the requirements of polygamy has always been attributed to the scholars of the modern age, especially after the Islamic reform efforts propagated by Muhammad Abduh and his friends. Polygamy is an exception, not a rule of origin or general rule. Its implementation is very dependent on the sociological conditions of a society, not on religious dogmas or doctrines that must be enforced at all times and regions. This is indicated by the number of cases of Domestic Violence (KDRT) that have emerged¹⁰ and the still many practices of *Sirri* polygamy with more than four wives.

Creative efforts in order to restore the position of polygamy as a problem solver for some of the problems that occur in people's lives is to strengthen the requirements of polygamy as practiced by scholars of the modern age and several Muslim countries. In this context, Islam offers problem solving in the form of polygamy skill, in addition to Islam allowing a husband to divorce (*talaq*) his wife. It's just that, for this last solution, it seems less favored by Islam. Some facts on the ground show that the practice of polygamy actually brings a lot of harm to women. This is the reason that polygamy is contrary to the spirit of equality between men and women.

5. Conclusions

In principle, Islamic law does not matter polygamy, because polygamy has historically been carried out by the people before the arrival of Islam. the arrival of Islamic law in the case of polygamy is more regulating, fortifying and limiting the number of wives 2, 3 and four, with the condition that it must be fair. This is done more to protect women. Because the

previous community was a natural thing this marriage was carried out especially for the authorities, merchants or influential people with certain goals.

Law Number 1 of 1974 concerning marriage in articles 3,4 and 5 strictly regulates the implementation of polygamy on the principle that marriage in Indonesia is based on Monogamy. Polygamy is allowed as a way out if someone has been able to meet the specified conditions, which in principle the requirement to close the door of polygamy.

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