

A Sociohistorical Study of Polygamy and Justice

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ABSTRACT

Marriage is a legal contract between a man and a woman, aiming to form a harmonious family. Polygamy, at the same time, is not a strange phenomenon. In fact, it is commonly practiced in Islamic societies. However, polygamy also often becomes a source of conflict in the household, causing the main purpose of marriage becomes obsolete and not achieved. Thus, it is interesting to study polygamy, especially from historical and sociological standpoints, to find its justice values. The question is whether polygamy is advocated in Islam or has historically only dealt with excessive acts of it during the period of ignorance? The purpose of this study is to provide scientific information about the law and history of polygamy and the justice values contained. This research will contribute and treasure legal knowledge. This research is a combination of normative law and empirical (applied law research). Normative-empirical legal research is a legal research that emphasizes normative legal rules (in abstract) and their application to legal events (in concreto). By examining the philosophical, historical and sociological law values as an approach. Historically, polygamy was practiced before the advent of Islam. Man is free to do polygamy with many women. The arrival of Islamic law has regulated the practice of polygamy, fortified it, and limited the number of wives a man can have, that is, a maximum of four, with fair conditions in order to preserve the women. This is a tolerant form of Islam that corrects the ancestor's teachings before the arrival of Islam (the period of ignorance), between the shariah of Isa, as ahead of the coming to the shariah of Muhammad.

Keywords: *Polygamy, social and historical perspective, Islamic law*

1. INTRODUCTION

Dehumanization (*al-laa insaniyyah*) to women has taken place on the historical stage. Nowadays, we still witness this condition, such as women trafficking, violence, and sexual harassment, all of which were overlooked in criminal news, either through mass media or through electronic media.[1]

Islam delivers protection to women by giving their rights as given to men and eliminating discrimination between women and men in fulfilling their rights because the degree of women as equal to men, except for things which are the main function in accordance with each other.[2]

Islam has tolerated protection for women, but discrimination and the notion that women are second class structure equality inconvenient to achieve. This is caused by several prominent factors; First, patriarchal culture that has dominated society for a long period. Second, political factors, which have not fully sided with women. Third, economic factors, where the global capitalism system often exploited women workers. Fourth, the interpretation of the religious text, which has been interpreted in a patriarchal manner.[3]

One of the many *fiqh munakahat* issues discussed in our society is polygamy. Polygamy is a strongly complicated subject encountered by women and Islam. Observers outside Islam (Islamists) consider polygamy permissibility proves that Islam completely ignores the democracy

concept and human rights (women) without tolerance, and this is regarded as a discrimination against women (wives).[4] In this context, polygamy allegedly constructs the destruction of the household and the desire to establish a harmonious family is not attained.

There have been many polygamy studies and discussion, for instance, Sunaryo, Polygamy in Indonesia, (A Sociological-Empirical Analysis).[5] A. Wartini, Polygamy from Fiqih to Laws,[6] but researchers only intend to reformat and find the meaning of justice in polygamy from the sociological-historical point of view, because there is a distance between philosophical-historical and sociological-empirical related to the polygamy practice.

The question is whether polygamy is advocated in Islam or is it historically only repeating excessive attitudes during the period of ignorance which gender-biased? Thus, the purpose of this study is to provide scientific information about the law and history of polygamy and the values of justice contained, and to contribute and treasure legal knowledge particularly about polygamy and justice.

2. RESEARCH METHOD

This paper is a combination of a normative and empirical legal research (applied law research). It is legal research, in which the object study is normative legal rules (in abstract) and their application to legal events (in concreto).

This research uses the philosophical, historical and sociological values of law as an approach.

3. FINDING AND DISCUSSION

3.1. Defining Polygamy

The word polygamy consists of the word poly and gamy meaning many and wife.[7] Polygamy is derived from Greek, *polos, polus*[8] or *polys* which means many and *gamein* or *gamos*, which means mating. Therefore, polygyny means to marry a lot, or a husband with a lot or a wife with many husbands at the same time.[9] In other word, a man marries more than one wife. The term polygamy means at the same time a man with many women or women with many men.[10]

Furthermore, polygamy can also be interpreted as a marriage between one or two or more people (but tends to be interpreted: the marriage of one husband with two or more wives).[11] In terminology, polygamy is divided into two, namely polygyny and polyandry. In Arabic, polygamy is called *ta' did zaujah* (number of partner), in Islam polygamy is limited to four wives. In Indonesian, it is called "*permaduan*" and in Sundanese, it is called *nyandung*. [9, p. 151]

Experts distinguish the term for a man who has more than a wife in polygamy. Polygyny for husbands who have many wives comes from the Greek, *polys* or *polus* meaning many and *gyne* or *gune* means wife (woman). In general, the reason behind polygyny is to obtain more work as a symbol of power or influence and certain lifestyle from women, in the Ghadhu Bhaga community polygyny aims to reduce *bue duge*, old virgins especially women *rank gae meze*. [10], [12]

Fundamentally, the correct term for a man who has more than one wife at the same time is called polyandry instead of polygamy. However, on daily basis what is meant by polygamy is the marriage of a man with more than one woman at the same time. [8, p. 351] Polygyny according to the society is polygamy including Indonesia and countries that use Islamic law. [13]

3.2. History of Polygamy

Before Islam, polygamy was already known by Hindus, Israelites, Persians, Arabs, Romans, Babylonians, Tunisians, and others. [8, p. 352] The Jews allowed polygamy. Prophet Moses did not forbid, not even limit how many someone's wife polygamy was. Deuteronomy 25/5 requires a brother to marry his brother's widow who died childless, even though he was married. Deuteronomy 21/10-17 mentions the permission of polygamies, such as Prophet David and Prophet Solomon. The Prophet Abraham had a two wife, Prophet Ya'qub had four wife. The Talmud, Torat interpretation restricts the number of wives in polygamy marriages. Whereas, Jews have

recently returned to polygamy indefinitely with the number of wives. Some Jewish law experts have banned polygamy, but some allow it under condition that the first wife is barren.

Zoroaster's teaching forbids the Persians from polygamy but permits the prohibition of concubines because as a war nation, the Persians need many sons who can be allowed from their wives and concubines. Finally, polygamy practice occurs among the Persians. Laws that prohibit polygamy or limit many wives do not exist.

The Romans acknowledged polygamy. Their kings conducted polygamy. The Greeks also recognized polygamy. King Silla has 5 wives, Caesar has 4 wives and Pompeius has 4 wives. Athens consents polygamy indefinitely with the number of wives. Dymosin was once proud, because he has three levels of wives, which two levels were official and semi-official wives.

In the early day of Christianity, there was no prohibition on polygamy, because the prophets did not deny Prophet Musa's sharia (Matthew 5/17). Paul's letter to Timothy First 3/2 asserts that the shepherd siding (priest of the congregation) is blameless, becomes a husband with a wife, restrains himself, conscious, behaves politely, provide a free ride, knows how to teach people.

Obviously, there was nobody among the ancient Christianity who explicated polygamy was forbidden, many of them explained that Augustine conveyed polygamy was permitted. King Valentinian in the IV century made laws that permitted polygamy. The interdict on polygamy was only held during King Justinian time. In addition, the ancient Egyptians also familiar with polygamy, as did the Indians, Babylonians, Assyrians, and others. [14]

The Arabs before Islam also identified polygamy, some people were married to ten women, even seventy people. Many of the Prophet's companions were married to more than four women after the Qur'an confine the number of wives to four, the Prophet ordered that they must select only four women among his wives and the other should be divorced. Long before Islam was born, polygamy was practiced by almost all nations, including Asia, Europe, Africa, and America. In Arab, known not to like seeing toddler and attempt to kill them, they are competing to get adult women in various ways, through wealth or power.

Dr. August Forel in the book *Het Sexueele Vraag Stuk*, quoted by Nadimah Tanjung in his book *Islam dan Perkawinan* asserts that polygamy has been implemented by many nations since the primitive era. The Romans who applied strict rules to their civilians not have more than one wife, many kings, and aristocrats who maintained an unlimited number of concubines. Nadimah Tanjung continued the discussion of this issue, according to history, majority and well-known people for times to times frequently conducted polygamy. King Solomon, for example, had seven hundred wives and concubines. The king of Niger in Africa has thousands of wives, a fantastic record was reached by the King of Uganda, who has seven thousand wives.

In traditional African societies many wives related to pride, success and high social status and well-being.

Polygamy is an ancestral African heritage, not just as equitable circumstances, but also as an institution.

Polygamy comprehended by many sexology experts such as Sigmund Freud, Adler, H. Lovie, Jung, Charlotte Burler, Margaret Mead and others. In the western world, most people oppose polygamy. They assume that polygamy is the aftermath of obscene acts and considered an abnormal deed. Nevertheless, reality indicates something else, and this is surprising. Polygamy practices outside the marriage are rampant. This matter, since a long time ago, is no longer a secret Karel de Groote, Handrick, Lodewijk, Richelieu, and Napoleon Bonaparte are an example of Europeans who illegally polygamy. Even Christian priests who swear not to marry for the rest of their lives are not ashamed to do polygamy with simple permission from their bishops or church leaders.

This obviousness forces many western scholars to advocate polygamy or at least began to acknowledge polygamy. Dr. Gustav Le Bon once said: "In the future, European laws will legislate polygamy". M. Leteurbeau once said: "until now, cannot yet be believed that monogamy is the best system". [8, p. 353]

The Israelites did the similar thing long before Prophet Musa (as) was sent by God. They familiarize the marriage without restrictions. Although there were attempts by priests to confine the number of wives, it was not successful. Prophet Sulaiman and Prophet David were married to many wives. In Indonesia, many polygamous marriages were performed by great leaders such as Ken Arok, Raden Wijaya, and Airlangga.

Other facts show that polygamy is not only an Islamic monopoly because of other religions, both ancient religions, and contemporary religions also familiar with it. Prof. Wirjono Prodokoro in his book *Hukum Perkawinan di Indonesia* (Marriage Law in Indonesia), quoting Dr. VB Korn in *Het Adatrech Va Bali*, mentioned according to Putra Sarana's law book, men were only allowed to marry a person from his own caste.

Therefore, a Brahmin and Kshatriyas able to have four and three wife respectively. However, this regulation particularly applies to leaders who have three, four or five wives. As for the Kings, it is not uncommon to have eighty to one hundred wives some kings have more than one hundred wives. [12, p. 120]

VB Korn mentioned a rebuttal that polygamy was not created by Islam, and was not only known by Islam. it is evident that long before Islam came, this type of marriage had been carried out by various nations and various religions and beliefs, in almost all around the globe.

Islam's arrival restricted the number of wives that men could have and polygamy. For men who have excessive sexual libido, Islam provides rules to obstruct the arbitrary occurrence of men against women. Basically, sharia is an effort to escalate women degree as is expected in the essence of marriage. [12, pp. 119–221] Al-Qur'an surah an-Nisa verse 3 authorizes polygamy in the previous verse context, which is a settlement of the obligation to do justice against orphans. In the past, Arabs delighted to marry orphaned girls, to be able to feed and protect them without a dowry. To avoid unjust action to the orphans,

men are allowed to marry two, three or four women. But even then, with the requirement that they have to do fairness, if they are worried that they cannot apply it hence, they can marry a woman. Monogamous marriage guarantees harmonious family. [14, p. 34]

From this standpoint, the majority of intellectuals and historians, especially those from Islam, comprehend it as a blurry and apprehensive picture of life, women were seen as worthless creatures, becoming tool for men, their existence often caused problems, has no self-independence, his rights oppressed and deprived, his body traded or inherited, and placed in a marginal position. [4]

The word *jahiliyyah* (period of ignorance) comes from the word *jahlun*, which means stupidity. *Jahiliyah* is a foolish nation. According to Mu'jam al-Wasith, the word *jahiliyyah* interprets into two meanings, namely: 1. Ignorance and infidel of the Arabs before the advent of Islam. Whole ignorance and tyranny according to Muslims are ignorance. 2. A period of ignorance between the two apostles. Tradition (period of emptiness) between two apostles (Muhammad and Isa). 3. Muhammad saw. Thus, not all periods are claimed to be *jahiliyyah*.

Apart from the *jahiliyyah* effect on Islam, there is clearly a different treatment on women between the *jahiliyyah* era and after Islam's arrival. Syafiq Hasyim defines several characteristics of *jahiliyyah* that are rejected by Islam. Every tradition and culture in accordance with this characteristic regarded as *jahiliyyah*, whereas it did not occur before *the jahiliyyah* period: a. Women are unknown by law. b. Women perceived as property. c. Women do not have divorce rights. d. Women do not have inheritance rights but instead are inherited as land, animals and other assets. e. Women do not have the right to nurture their children. f. Women do not have the right to spend their possession.

Infants girls were buried alive. This is a disgrace tragedy in the history of pre-Islamic women. These babies were directly cited in the Koran. [4, pp. 28–30] Islam is a religion intended for all humans regardless of gender, ethnicity, race, group or religion. The spirit of Islam lies in its liberating ethics, as reflected in the fundamental Islamic teachings, namely monotheism. Monotheism is a sincere acknowledgment of human equality and unity. All humans are equal and come from a single origin, which is God. What distinguishes between humans is the achievement and strength of their piety, moreover, only Allah knows the measurement of peatiness. This concept become the foundation for placing women's positions in Islamic law. [15]

Ideally, Islam has a fairly firm view of equality regarding the relations and duties between men and women. This view of equality can be seen in several verses of the Qur'an, for example, related to the origin of human events, both men and women. [16] It states that both originated or were created from the same element, therefore, they have equal rights. In al-Qur'an, Allah confirms in the surah an-Nisâ verse 1.

The dissent biological functions between men and women do not mean to distinguish status and position. Regarding the last thing hinted in the Qur'an that God has glorified

the son of Adam. Those who were attached to Adam's children were entire male and female human beings.[17]

3.3 Polygamy in Islam

According to Mahmud Syaltut, polygamy amercement is permissible (*mubah*), as long as there is no persecution possibility of the wife.[18] Nevertheless, if fear of persecution and that causes sin, then simply marry one wife. Basically, polygamy is a matter of justice.

Islam is a religion that is fitrah, in line with the guidance of character, and human nature.[14, p. 35] Islam allows polygamy for up to four wives on condition that it is fair to them. This verse comes down (*asbabun nuzul*) related to the attitude of Ghillan, a husband who intends to marry beautiful and rich orphans under his guardianship without the dowry. According to the custom that prevailed in the *jahiliyyah* society, the orphan guardians preserves of his and orphaned property, if by chance the girl is beautiful and has enormous wealth, the guardian marries her without a dowry, or with a small dowry, but if the child is not beautiful, the guardian is reluctant to marry him to someone else. That is why the verse states that if the guardian is worried about not doing justice to the orphans, then the guardians are encouraged to marry another woman, maybe two, three or four.[19]

Muhammad Ali Al-Shabuni in his book *Tafsir Ayat al-Ahkam*, distinguishes the legal status of polygamy, as follows; (*fankihuu maa thaaba lakum*) the law is mandatory. The majority of scholars agreed that the order (*amr*) in the verse *ibahah* was like the *amr* in the other of Allah commandment (*wa kuluu wasyrabuu*) and the verse (*kuluu min thayyibaatii maa razaqnaakum*), while the Dhahiriyah scholars argued that the marriage was compulsory, they adhere to the Dhahir verse because actually, the *amr* was obligatory.

He further explained verse 4 of Surah al-Nisa "*fankihuu maa thaaba lakum min al-nisaa'i matsa wa tsulaasa wa ruba'a*." which means "And give the women [upon marriage] gifts graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease", this verse is a command particularly to a man marrying a woman he adores.[20]

Ali al-Sayis explicated that "*matsa wa tsulaasa wa rubaa'a*" is a matter of a count sentence that indicates the amount of number. General understanding obtained from sentence *maa thaaba lakum* has been specified by two things. that is 1. *Mukhassis* which is meaningful, the *khitaab* on *fa al-ankihuu maa thaaba lakum* is a Muslim, 2. *Mukhashis* which is *lafdzi*, there is a description in the sentence *maa thaaba lakum min al-nisa'i* which is the number of *matsna, tsulasa wa rubaa'a*.

To conclude, the main purpose of the verse is the prohibition of marrying more than four to preserve orphans' possession and used by their guardians. There was a narration that a *qurays* man has ten women if he experiences financial hardship, he exerts the orphan possession who is in his guardianship or married.[21]

According to Quraish Shihab, "If we feel you may not be able to deal justly to orphaned women and you believe that you will be fair to women other than orphans, then marry what you like according to your sense and permissible for the other women.[22]

Al-Juzairi in his Book al-Fiqh 'ala Madzahid al-Arba'ah, revealed about polygamy status, the polygamy principle resides in the matter of fairness. Therefore, fair conditions are mandatory. Although in certain cases, upholding justice in terms of polygamy can be sterile (*sunnah*).[21, pp. 82–83] Rasyid Ridha said Islam point that the potential dangers of polygamy are more significant than the possible advantages because human nature has jealous and complaining character.[7, p. 130]

Islam allows polygamy men as an alternative or a way out to overcome the distribution of male sexual needs or other causes that disturb his inner calm so as not to fall under the foundation of adultery or lessons that are clearly forbidden by religion.[7, pp. 357–358]

According to Zamaksyari, polygamy in sharia is a *rukhsah* (leeway) during emergency circumstances, as is *rukhsah* for travelers (*Musafir*) and sick people who are approved to break their fast during Ramadan while traveling.[23, p. 42] The notion of Sheykh Shahih bin Fauzan bin Abdullah, a woman who marries a man who is fully responsible, guarantees his life, presents protection, and can deliver many descendants, even though she is the fourth wife, still better than remains single.[24]

Muhammad Abduh asserted that forbidden to practice polygamy, for someone worried may not be able to deal justly.[23, p. 45] Because ultimately, polygamy does not present benefits, in some cases polygamy is a tool for pleasure.[25] During the time of the Prophet, there was a companion named Ghilan al-Tsaqafi who has ten wives. Moreover, this was reported to the Holy Prophet, and he asked him to take four out of ten wives.[4, p. 160] Concerning the justice of the husband to his wife, the Prophet said:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: مَنْ كَانَتْ لَهُ امْرَأَتَانِ فَمَالَ إِلَى إِحْدَهُمَا جَاءَ يَوْمَ الْقِيَامَةِ وَثِقْلُهُ مَائِلٌ (رواه ابو داود والترمذي والنساء وابن حبان).

This means: "When a man has two wives and he is inclined to one of them, he will come on the Day of resurrection with a side hanging down". Regarding fairness to wives in matters of love and affection, Abu Bakr bin Araby mentioned that this is something beyond human ability because love is in the God Almighty hands, who is able to flip through according to His will. Likewise, sexual relations, sometimes the husband is passionate about the other wife.[7, pp. 132–133]

4. CONCLUSION

Historically, polygamy was practiced before the advent of Islam. Men were free to do polygamy with many women. The arrival of Islamic law emphasizes the regulation,

fortification, and limitation of the number of wives a man can have, that is, a maximum of four. And polygamy is only allowed to do under fair conditions, in order to protect the women. This is a tolerant form that corrects the ancestors' teachings of polygamy before the arrival of Islam (the period of ignorance), and in between the shariah of Isa (peace upon him), ahead of the coming of the shariah of Muhammad saw

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