



Polygamy in Islamic Family Law in Indonesia (Comparative Study on Law Number 1 of 1974 and the Compilation of Islamic Law)

Desti Widiani^(✉) and Dwiky Bagas Setyawan

Faculty of Sharia, Raden Mas Said State Islamic University of Surakarta,
Kartasura 57169, Indonesia
destiwidi@yahoo.com

Abstract. The discourse on polygamy in Indonesia is an interesting thing to study. She has received support on the one hand, because it is legitimized by the Qur'an, and on the other hand she is criticized because it is considered detrimental to women. Based on Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law, the Indonesian government has determined to adhere to the principle of monogamy in terms of marriage arrangements. However, the Indonesian government does not close the faucet on polygamy for its citizens who want to have more than one wife. This study aims to photograph and compare the policies of the Indonesian government and Islamic law in terms of marriage, especially regarding the reasons, conditions, and procedures for polygamy. The research method used in this study is Literature Review. The findings in this study indicate that the Government of Indonesia has set three conditions for allowing polygamy. One main condition, namely the husband must be able to act fairly. And, are two additional conditions, namely the wife's consent and the certainty that the husband can guarantee the necessities of life for his wife and their children. The government requires the husband's justice in general and does not specify it. Meanwhile, Islamic law only requires two conditions for polygamy: first, the husband can act fairly in material matters such as, and second, can provide for his wife. If these two conditions are not met, then Islamic law still considers polygamy is still valid, even though the perpetrator is considered sinful. Meanwhile, the government of the Republic of Indonesia views polygamy that does not meet the reasons and requirements as "*wild polygamy*" which has legal force.

Keywords: Polygamy · Islamic Family Law · Marriage

1 Introduction

The policy of the Government of the Republic of Indonesia regarding polygamy is contained in Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, and Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (KHI). In the Act,

Government Regulation, and Compilation of Islamic Law, it is stated the principles of marriage, reasons, conditions, and procedures for polygamy.

Regarding the principle or principle of marriage, the Government of the Republic of Indonesia adheres to the principle of monogamy. Article 3 paragraph (1) of Law Number 1 of 1974 concerning Marriage states: "Basically in a marriage, a man may only have one wife. A woman can only have one husband." This article has emphasized that the principle/principle of marriage adopted in Indonesia is monogamy, not polygamy.

It seems that the controversy about polygamy is not over yet. The two main currents that are in conflict between those who support and oppose the practice of polygamy, each of which rests on arguments that are supported by arguments that are both firmly held and claimed to be true. In Indonesia, the above issues have given rise to various highly controversial styles of discussion in the early 21st century, especially regarding women leaders and polygamy. Before the marriage law became law on polygamy, various assumptions, opinions, assumptions, fatwas, and so on about polygamy were widely discussed. Especially when the Marriage Bill was proposed as a law regulating monogamous marriages because of the Indonesian marriage principle, the issue of polygamy has become the subject of a fairly lively debate in Indonesia.

The problem of polygamy itself is increasingly widespread with the practice of leaders who openly in the mass media practice polygamy. For example, well-known businessman Puspo Wardoyo who has four wives, and comedian Parto Patrio, KH. Abdullah Gymnastiar and many others. This shows its implications, encourages men to be more courageous in appearing in public, and creates a stigma in society that anyone who does not support the practice of polygamy does not support Islamic teachings. Because in the Qur'an itself there are texts that teach polygamy as if polygamy in Indonesia is very easy to do. However, Indonesia itself has a corridor of sports rules that are quite strict to restrain the practice of polygamy, and polygamy itself rarely goes through the established procedures.

As explicitly stated in Law Number 1 of 1974, the basic principle or basic principle of marriage is monogamy. However, there is still the possibility for polygamy, a maximum of four people. The possibility to practice polygamy must have court approval. On the other hand, marriage has no legal force without court approval. On the other hand, civil servants who want to have polygamy must first obtain permission from their superiors, and female civil servants may not be the second/third/fourth wife.

Under the New Order state power, the enforcement and application of Islamic law were regulated by the state. The state has a monopoly right to enforce the law in people's lives. The justification of state power is a central tool for the application of the law. Legislation against the rule of Islamic law is believed to be a necessity and chooses its existence in the archipelago.

In addition to the above laws, the polygamy law is also confirmed in the Sharia Compilation (KHI) which has been given positive legal instruments, although it is still in the form of an Inpres (Presidential Instruction). The position of sharia law in the New Order state administration, especially in the last decade, is not only used as an authoritative source (a source of law that has legal force) but its existence is fully recognized, even partially proven through legislation.

The Compilation of Islamic Law (KHI) which President Suharto instructed to distribute on June 10, 1991, is said to be the highest achievement of Indonesian Muslims in making several legal substances (*ahwal syakhshiyah*, the family law) and positive law. In this paradigm, KHI legislation is not merely a successful collaboration of the Indonesian Ulema Council (representing Indonesian Muslims), the Indonesian Ministry of Religion (representing the government), and also the Supreme Court of the Republic of Indonesia (representing the Indonesian Ulema Council). Holders of judicial power, but thanks to the “green light” of the legal politics and political will of the state. The “interference” of the state in this matter is noticeably greater.

The provisions of polygamy contained in the KHI become a reference in determining the law of judges in the Religious Courts, but it seems that it still requires harmonization with what is stated in Law no. 1 of 1974 Regarding Marriage. Especially if we explore further the number of requests in various Religious Courts with the emergence of several cases regarding polygamy.

The results of Esther Masri’s research that examined “Polygamy in the Perspective of Law No. I of 1974 concerning Marriage and the Compilation of Islamic Law (KHI)” revealed that the purpose of KHI and the Marriage Law is to provide terms and conditions for husbands who want to remarry so that they do not behave arbitrarily against women (wives) to create a happy, eternal and harmonious family. In addition, research by Dickson T. Yasin who also researched polygamy in the compilation of Islamic law revealed that related to the terms of polygamy there were many pros and cons ranging from scholars, the community, academics, and also scholars. Musdah Mulia is one of those who oppose the requirement of polygamy. He stated that there was an imbalance in the terms of polygamy contained in the Compilation of Islamic Law, especially on the position of the wife, because if the wife wanted to permit polygamy, the PA could decide to give the permit as regulated in Article 59 of the KHI.

Departing from the uncertainty surrounding the issue of polygamy to expand the wealth of Islamic intellectual treasures and to find a foothold for the polygamy controversy, it is very interesting to conduct research on comparative polygamy in the Compilation of Islamic Law and Law No. I of 1974.

2 Method

This type of research uses qualitative field research. The method used in this research is the analytical-descriptive method with a sociological juridical approach, to describe a phenomenon, factual and actual event or incident at the time the research was conducted, then analyze the data by organizing the data in the form of reports, biographies, articles, manuals or so on. So it is expected to gain knowledge and in-depth interpretation of the meaning of the reality found in the field.

3 Result and Discussion

3.1 Polygamy in Indonesian Family Law

Polygamy as a variation of marriage between many wives and one husband has been known for a long time. Polygamy, in contrast to polyandry, or sexual communism, is probably the more common and comparatively accepted status. Polygamy is not only found among nomadic tribes who do not know civilization, but also in many civilized nations that practice it.

In Law Number 1 of 1974, it is expressly stated, the basis/principle of marriage is monogyny/monogamy. However, there is still the possibility for polygamy, a maximum of four people. Opportunities for polygamy must get permission from the Court. Meanwhile, civil servants who wish to have polygamy must first obtain permission from officials, and female civil servants cannot become second/third/fourth wives.

Permission to have only one wife, including civil servants, can only be granted if it fulfils at least one of the optional conditions as well as three cumulative conditions. The proposed options are: (a) the wife cannot carry out her obligations as a wife; (b) the wife has an incurable disability or disease, or (c) the wife cannot give birth to children. While the cumulative conditions are: (a) there is written consent from the wife; (b) there is the certainty that the husband is ready to provide for the living needs of his wife and children, and (c) there is a written guarantee that the husband will treat his wife and children fairly. The wife's consent must be confirmed in court. Except it is impossible for his wife or wife to invite his approval and cannot be a celebration of the agreement, or if there is no news from the wife for at least 2 (two) years, or for other reasons that need to be assessed. by the Court Judge, then the wife's or wife's consent is not required.

To prove the husband's ability to guarantee the needs of family life is to show the husband's income statement signed by the treasurer of the place of work, a tax certificate, or other certificates that can be accepted by the court. While the guarantee that the husband will treat his wife fairly is usually made in the form of an agreement.

If there has been a polygamous marriage, then (1) the husband is obliged to provide the same guarantee to one or all of his wives and children, (2) the second wife and so on are not entitled to the joint property that has occurred since then. They are respective marriages unless there are other provisions. Previously agreed, then this provision does not apply.

The mechanism in the practice of polygamy is that the husband who will be polygamous then applies to the Religious Court. Before deciding whether or not a polygamy permit is granted, and to ensure the validity of the existing data, the Court examines the fulfilment of these conditions. On the other hand, if there is sufficient reason to practice polygamy, the court issues a permit for it. Meanwhile, those who violate the principle of polygamy, violate the applicable provisions and can be punished with a maximum fine of IDR 7,500.

From the reasons above, it is often concluded that the Indonesian Marriage Law on polygamy seeks to control that men who practice polygamy are true men: (1) economically capable and provide all their needs (clothing, food, and housing). Family (wife and children), and (2) able to deal fairly with the wife. so that the wives and children of polygamous husbands are not wasted. Likewise, the laws in Indonesia seem to have

to respect the wife as the husband's life partner. Apparently, for polygamy, the husband must first get the wife's approval. To achieve this goal, all Indonesian Laws place great trust in judges in the Religious Courts. Thus, the role of judges in the Religious Courts is very important in implementing this polygamy rule.

3.2 Comparison of Polygamy in KHI and Law No. 1 of 1974 Concerning Marriage

1. Reasons for Permit Polygamy in Law no. 1 of 1974 and KHI

Permission from the Religious Courts will not be granted unless there are specific reasons. Article 4 of Law No. 1 of 1974 states:

- a. (1) If a husband will have more than one wife as referred to in Article 3 paragraph (2) of this Law, then he is obliged to submit an application to the Court in the area where he resides.
- b. (2) The court as referred to in paragraph (1) of this text only grants permission to a husband who will have more than one wife if:
 - 1) The wife cannot carry out her obligations as a wife;
 - 2) The wife has an incurable disability or disease;
 - 3) Wife cannot give birth to children

This is in line with what is stated in Article 57 of the Compilation of Islamic Law which reads: "The Religious Court only permits a husband who will have enough wives if:

- 1) The wife cannot perform her obligations as a wife;
- 2) The wife suffers from an incurable disability or disease;
- 3) Wife cannot give birth to children.

Quoting the writings of Zainuddin Ali and Ahmad Rafiq, if we look at the three reasons above for granting polygamy permission, then we refer to the main purpose of marriage, to create a harmonious family, or in terms of KHI called *sakinah*, *mawaddah*, and *rahmah* families.

2. Terms of Polygamy in Law no. 1 of 1974 and KHI

The government's policy regarding the granting of polygamy permits, unless it has to fulfill the three (three) reasons above, must also fulfill the three (three) conditions. These three conditions are contained in Article 5 of Law number one of 1974 concerning Marriage, as follows:

- a. To be able 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) there is the consent of the wife;
 - 2) there is a certainty that the husband is in a position to ensure the necessities of life for his wife and children;

- 3) there is a guarantee that the husband will treat his wife and children fairly.
- b. The permission as referred to in paragraph (1) letter a of this text is not required for a husband if it is impossible for his wife/wives to generate her consent and cannot be a celebration of the agreement, or if there is no news from her husband. Wife for a minimum of 2 (two) years, or for other reasons that need to be assessed by the Court Judge.

In the Sharia Law Compilation (KHI), these three conditions are explained because of the main requirements and additional conditions. Most of the conditions contained in Article 55 paragraph (2): "The main condition is to have a wife, the husband must be willing to be fair to his wives and children". Two other conditions are stated in Article 58 and Article 59. Article 58 of the KHI states:

- 1) In addition to most of the conditions stated in Article 55 paragraph (2), to obtain a spiritual Court permit, the conditions stipulated in Article 5 of Law no. 1 of 1974 must even be fulfilled, namely:
 - a) wife's consent;
 - b) There is a certainty that the husband can produce for the living needs of his wife and children.
- 2) Without prejudice to the provisions of Article 41 letter g of State Regulation Number 9 of 1975, the wife's or wife's consent will be given in writing or verbally, but whether there is written consent or not, this agreement is confirmed with the wife's consent. Verbal approval at the Religious Court trial.
- 3) The permission as referred to in paragraph (1) letter a is not required for a husband if it is not possible for his wife or wives to raise the consent and cannot be a celebration of the contract, or if there is no news from her husband. Wife or wives for a minimum of two years. or for other reasons that need to be assessed by the Judge.

Meanwhile, Article 59 of the Compilation of Islamic Law (KHI) confirms that:

"If the wife does not want to give consent, and also the application for a marriage permit is sufficient for one person based on one of all the explanations provided for in Article 55 paragraphs (2) and 57, the Religious Courts may determine the granting of permission after examining and hearing the wife concerned at the court. The trial of the Religious Courts, and against this determination the wife or husband can file an appeal and cassation".

Based on the three conditions above, it can be said as the spirit of limiting polygamy permits. So if someone wants to be polygamous and does not fulfill these three reasons, his marital status is not recognized by the law, and also has no power in the eyes of the law. In this case, the government will only recognize registered marriages (Article 2 paragraph (1) of Law No. 1 of 1974 and Article 5 paragraph (1) of the KHI) carried out under the supervision of the Marriage Registrar (Article 6 paragraph (1) of the KHI). If it

is not recorded and carried out outside the supervision of the Marriage Registrar, then the marriage has no legal force (Article 6 paragraph (2) KHI) Based on the three conditions above, it is said that this can be a spirit to limit polygamy permits. So if someone wants to be polygamous and does not fulfill these three reasons, his legal status is not recognized by law, and also has no power in the eyes of the law. In this case, the government will only recognize marriages that are registered (Article 2 paragraph (1) of Law No. 1 of 1974 and Article 5 paragraph (1) of the KHI) and stipulated under the supervision of the Registrar (Article 6 paragraph (1) of Law No. KHI). If it is not recorded and disbursed outside the supervision of the Marriage Registrar, then the marriage has no legal force (Article 6 paragraph (2) KHI).

Marriage registration is still strengthened by the provisions of Article 7 KHI, as follows:

- (1) Marriage can only be proven by a Marriage Certificate made by PPN.
- (2) If the marriage cannot be proven by a Marriage Certificate, the marriage certificate can be submitted to the PA (Table 1).

Displayed equations are centered and set on a separate line. From the outline above, it can be seen that marriage in Indonesia adheres to the principle of monogamy, namely that a person may only marry a woman so that at one time he cannot take over a wife. The consent of the wife applies and must also comply with accepted religious rules and procedures, which must be followed.

The main requirement of polygamy is that the husband must be fair. There is the permissibility of polygamy which is an absolute requirement for a husband. The absolute condition is that a husband may marry only four wives and treat his wives fairly. If the conditions of justice cannot be fulfilled by the husband, then he is obliged to marry only one wife.

Table 1. Comparison of Law No. 1 of 1974 and (KHI)

Law No.1 of 1974	KHI
<p>A. Permit Polygamy In Law No. 1 of 1974</p> <p>(1) If a husband will have more than one wife as referred to in Article 3 paragraph (2) of this Law, then he is obliged to submit an application to the Court in the area where he resides.</p> <p>(2) The court as referred to in paragraph (1) of this text only grants permission to a husband who will have more than one wife if:</p> <p>a.The wife cannot carry out her obligations as a wife;</p> <p>b.The wife has an incurable disability or disease;</p> <p>3) Wife cannot give birth to children</p>	<p>A. Permit Polygamy in KHI</p> <p>Article 57 of the Compilation of Islamic Law reads: “The Religious Court only permits a husband who will have enough wives if:</p> <p>1) The wife cannot perform her obligations as a wife;</p> <p>2) The wife suffers from an incurable disability or disease;</p> <p>3) Wife cannot give birth to children</p>

(continued)

Table 1. (continued)

Law No.1 of 1974	KHI
<p>B. Terms of Polygamy in Law no. 1 of 1974</p> <p>a. To be able to submit an application to the Court as referred to in Article 4 paragraph (1) of this Law, the following conditions must be met:</p> <ol style="list-style-type: none"> 1) there is the consent of the wife; 2) there is a certainty that the husband is in a position to ensure the necessities of life for his wife and children; 3) there is a guarantee that the husband will treat his wife and children fairly. 	<p>B. Terms of Polygamy in KHI</p> <p>Article 55 paragraph (2): “The main condition is to have a wife, the husband must be willing to be fair to his wives and children”. Two other conditions are stated in Article 58 and Article 59. Article 58 of the KHI states:</p> <ol style="list-style-type: none"> 1) In addition to most of the conditions stated in Article 55 paragraph (2), to obtain a spiritual Court permit, the conditions stipulated in Article 5 of Law no. 1 of 1974 must even be fulfilled, namely: <ol style="list-style-type: none"> a) wife’s consent; b) There is a certainty that the husband can produce for the living needs of his wife and children. 2) Without prejudice to the provisions of Article 41 letter g of State Regulation Number 9 of 1975, the wife’s or wife’s consent will be given in writing or verbally, but whether there is written consent or not, this agreement is confirmed with the wife’s consent. Verbal approval at the Religious Court trial. 3) The permission as referred to in paragraph (1) letter a is not required for a husband if it is not possible for his wife or wives to raise the consent and cannot be a celebration of the contract, or if there is no news from her husband. Wife or wives for a minimum of two years. or for other reasons that need to be assessed by the Judge

Ideally, the two laws and regulations aim to produce terms and conditions for husbands who will remarry. This provision aims to reduce the arbitrariness of men (husbands) against women (wives). So that a *sakinah, sakinah, mawaddah, and rahmah* family can be realized so that the purpose of marriage can be achieved.

4 Conclusion

The relevance of polygamy requirements as stipulated in Law no. 1 of 1974 concerning Marriage and KHI are mutually compatible. There are 3 conditions for polygamy in Law no. 1 of 1974 contained in Article 5. It’s just that in KHI 3 the provisions on polygamy conditions describe the main conditions and additional conditions. The main conditions are stated in Article 55 paragraph (2) while the additional conditions are in articles 58

and 59. In principle, there is no difference in the provisions of polygamy in the KHI with the provisions in Law no. 1 of 1974, because the provisions in the KHI only take over the provisions in Law no. 1 of 1974. Only KHI makes “the ability to act fairly” the main requirement.

So if someone wants to be polygamous and does not fulfill these three reasons, his legal status is not recognized by law, and also has no power in the eyes of the law. In this case, the government will only recognize marriages that are registered (Article 2 paragraph (1) of Law No. 1 of 1974 and Article 5 paragraph (1) of the KHI) and stipulated under the supervision of the Registrar (Article 6 paragraph (1) of Law No. KHI). If it is not recorded and disbursed outside the supervision of the Marriage Registrar, then the marriage has no legal force (Article 6 paragraph (2) KHI).

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