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THE ESSENCE OF POLYGAMY AND ITS ASSOCIATION WITH INDONESIAN MARRIAGE LAW

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Abstract

This study aims to explain the substance of the possibility of polygamy and its relevance to Indonesian marriage law. Polygamy has existed in the pre-Islamic era until today. Islam does not forbid and advocate polygamy, but Islam came to regulate and limit the rules of Polygamy. The substance of polygamy can be seen from the context or nash of polygamy as well as Arab history in the Jahiliyyah period. Contextually Nash, Polygamy is allowed for widows and orphans with a limit of four wives and conditions of fairness. This verse was revealed because many Muslims died during the battle of Uhud which affected the high number of widows and orphans left to die with worrying conditions in terms of economic, social and educational. women are the property of their own wealth. So with this response, women are likened to animals and goods that can be traded regardless of a woman's rights. Basic Law of Polygamy in Islam Qur'an which puts forward the principles of justice and welfare in emergencies. The relevance of the provisions on polygamy in Marriage and the Compilation of Islamic Law is not fully in line with the substance or nash of the ability of polygamy in Islam but has led to the basis of Qur'an with the principle of justice, creating benefits and prevent damage. The reason for the possibility of polygamy is that there are more women than men and if monogamy continues to be maintained then there will be many practices of prostitution. This study uses a qualitative approach with the type of library research, which is a series related to the methods of collecting library data, reading, taking notes and processing research materials. The approach of seeking information from the problem that is being tried to find the answer. So, the theory of approach used is the legal approach, the normative approach and the descriptive approach. The subject of this thesis research is a descriptive approach, which describes polygamy in the Marriage Law in Indonesia from the perspective of Islamic jurisprudence. Furthermore, it examines the relevance of the provisions of polygamy in the Marriage and the Compilation of Islamic Law because it is not fully in line with the substance or text of the permissibility of polygamy in Islam.

Keywords: Polygamy; Relevance; Indonesian Marriage Law

INTRODUCTION

Polygamy existed from the time of the Prophet Muhammad until the globalization era.¹ Polygamy has long been a contentious and popular topic of discussion among the public, owing to the high number of cases that frequently occur in Indonesia and the fact that there are still numerous pros and downsides from various scientists' perspectives.² Polygamy is a more familiar and often used term than polygyny. Polygamy is a more familiar and often used term than polygyny. The term "polygamy" is commonly used to refer to a husband who marries more than one wife.³

The scholars hold divergent views on the provisions of polygamy, despite the fact that they are all founded on the same verse in the Koran, notably QS. al-Nisa (4): 3. According to the majority of experts, the verse above was revealed following the conclusion of the Uhud War, during which a large number of Muslim combatants perished as martyrs. As a result, a large number of orphans and widows are abandoned by their fathers or husbands. This also leads in their lives being neglected, particularly in terms of schooling and future prospects.⁴

Imam Ath-Tabari interprets Surah An-Nisaa (4): 3 in terms of the treatment of orphans under their guardians' care, as well as other women who become their wives. He read the phrase in terms of the responsibility to treat orphans and married women fairly. Additionally, Ath-Tabari states that if a man is unable to do right to the orphans he will marry, he should marry two, three, or four additional ladies he desires. However, if "if you are concerned" cannot give them justice, then marry only one wife. If you are still concerned that you will be unable to do one wife justice, then do not marry her. However, marry your slaves, as they are your property (slaves do not demand rights as free women do). That brings us closer to deliverance from sin, suffering, and female abuse.⁵

According to Al-Zamakhsyari, the word *wa* serves as a sum (*li al-jami*) in the poem *matsna wa tsulatsa wa ruba*. As a result, he believes that the number of women who are permitted to marry males capable of justice is not four, as experts often believe, but nine. Meanwhile, Ar-Razi noted that Allah's words: "If you are concerned about your ability to

¹ Arif Sugitanata, "Product Renewal in the Field of Family Law in Indonesia," *Law and Justice* 6, no. 1 (2021): 62–79, <https://doi.org/10.23917/laj.v6i1.10699>.

² Kahfi Adlan Hafiz and Intan Lestari, "Diversity of Views on The Inequality of Men's Power Relations Over Women in The Practice of Polygamy in Indonesia," *ASEAN/Asian Academic Society International Conference Proceeding Series*, no. December 1924 (2019): 502–9.

³ Alean Al-Krenawi, "Polygamous Marriages: An Arab-Islamic Perspective," in *Couple Relationships in a Global Context*, 2020, 193–205, https://doi.org/10.1007/978-3-030-37712-0_12.

⁴ Nasution, 1996: 85

⁵ Ibn Kathir, *The Life of Propher Muhammad*, *Journal of Chemical Information and Modeling*, vol. 53, 2019.

execute justice," as a condition, and "Then marry the ladies you desire," as a permissibility.⁶

Al-Qurtubi agreed with al-Zamakhsyari to marry a slave whose master would mix him. Al-Qurtubi, on the other hand, varies from al-Zamakhsyari in his view of the maximum number of women employed as wives in polygamy. Al-Qurtubi agreed with the Prophet when he advised a friend to leave his wife with no more than four persons. Thus, al-Qurtubi limits polygamous husbands to four wives.⁷

Polygamy is not prohibited or required under Islamic law.⁸ Polygamy is permitted and may be practiced in accordance with the terms of the KHI and Marriage Law No. 1 of 1974,⁹ and there are still a number of procedures and provisions that are quite severe for husbands seeking polygamy to pass.¹⁰

Although Islamic law has come to control polygamy concerns through the KHI and the Marriage Law, many polygamous behaviors continue to violate the applicable polygamy regulations and standards. The Polygamy tradition that has been practiced in Indonesia continues to generate controversy; the article states that many wives and children are harmed as a result of husbands' inability to support their families physically and mentally, and as a result, many wives seek divorce through Religious Courts. This episode demonstrates the nature of violence towards women in an indirect manner. Particularly if the marriage or polygamy is conducted through serial marriages.

Regarding various works that explored polygamy scientifically, the writers will classify them into several categories. The first series of articles, which explore polygamy from an Islamic legal perspective, is composed of Rijal Imanullah,¹¹ Andi Intan Cahyani,¹² Tofan Madu,¹³ Reza Fitra Ardhian¹⁴ and Syarifuddin Ahmad.¹⁵

⁶ Fahrudin Al-Razi, *Mafatih Al-Gaib* (Beirut, 2000).

⁷ Kathir, *The Life of Propher Muhammad*.

⁸ Dri Santoso and Muhammad Nasruddin, "Poligamy in Indonesia and Its Relevance to the Protection Od Women and Children in the Perspective of Islamic Law Philosophy," *AKADEMIKA: Jurnal Pemikiran Islam* 26, no. 1 (2021): 121-26, <https://doi.org/https://doi.org/10.32332/akademika.v26i1.2406>.

⁹ Nina Nurmila, "Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property," *Al-Jami'ah* 54, no. 2 (2016): 427-46, <https://doi.org/10.14421/ajis.2016.542.427-446>.

¹⁰ Wahyuddin Naro et al., "Shariah Assessment Toward the Prosecution of Cybercrime in Indonesia," *International Journal of Criminology and Sociology* 9 (2020): 572-86, <https://doi.org/https://doi.org/10.6000/1929-4409.2020.09.5>.

¹¹ Rijal Imanullah, "Poligami Dalam Hukum Indonesia (Analisis Terhadap Putusan Pengadilan Agama No.915/Pdt.G/2014/PA.BPP Tentang Izin Poligami)," *Al-Madzahib* 15, no. 1 (2006): 104-27.

¹² Andi Intan Cahyani, "Poligami Dalam Perspektif Hukum Islam," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 5, no. 2 (2018): 271, <https://doi.org/10.24252/al-qadau.v5i2.7108>.

¹³ Tofan Madu, "Praktek Poligami Dalam Perspektif Hukum Islam," *Jurnal Lex Privatum* 8, no. 1 (2014): 27-35.

¹⁴ Reza Fitria Ardhian, Satrio Anugrah, and Setyawan Bima, "Poligami Dalam Hukum Islam Dan Hukum Positif Indonesia Serta Urgensi Pemberian Izin Poligami Di Pengadilan Agama," *Jurnal Privat Law* 2, no. 2 (2015): 101-7.

¹⁵ Wahid Syarifuddin Ahmad, "Status Poligami Dalam Hukum Islam (Telaah Atas Berbagai Kesalahan Memahami Nas Dan Praktik Poligami)," *Jurnal Al-Ahwal* 6, no. 1 (2013): 57-70.

Additionally, the second category is composed of writers who examine polygamy from two perspectives: Islamic Law and Positive Law, those are Edi Darmawijaya,¹⁶ Reza Fitra Ardhan, Satrio Anugrah, Setyawan Bima¹⁷ along with a discussion of polygamy's difficulties and the study of polygamy through Syahrur's eyes with author Mia Fitriah Elkarimah.¹⁸

The purpose of this study is to discuss the substance of polygamy 's permissibility and its relation to the contemporary practice of polygamy as governed by the Indonesian Marriage Law.

The writing methodology begins with a brief description of the problem (polygamy as a phenomenon at the time and the laws that regulate it), followed by a brief understanding of polygamy, the concept of polygamy status in Indonesian Marriage Law No. 1 of 1974, the concept of polygamy status in KHI (Compilation of Islamic Law), the concept of polygamous status in Conventional Fiqh, and the concept of polygamous status in other Mus.

METHODS

This study takes a qualitative approach to library research by examining the strategies for obtaining library data, reading, taking notes, and processing research materials. The method of eliciting information from the problem in order to arrive at an answer. Thus, the legal approach, the normative approach, and the descriptive approach are used. The focus of this thesis research is a descriptive technique that describes polygamy under Indonesia's Marriage Law from an Islamic jurisprudential perspective.

The analytical technique is a series of operations for reviewing, grouping, systematizing, interpreting, and verifying facts in order to determine the social, academic, and scientific significance of an event. The data analysis technique employed in this study is descriptive analysis, which is a technique for describing and interpreting observed problems. This strategy is defined by the following characteristics: a) focusing on the actual problem and attempting to solve it; and b) compiling, explaining, and then analyzing the data acquired.

RESULT AND DISCUSSION

1. The Essence of Polygamy

¹⁶ Edi Darmawijaya, "Poligami Dalam Hukum Islam Dan Hukum Positif," *Jurnal Gender Equality* 1, no. 1 (2015): 27-38.

¹⁷ Ardhan, Anugrah, and Bima, "Poligami Dalam Hukum Islam Dan Hukum Positif Indonesia Serta Urgensi Pemberian Izin Poligami Di Pengadilan Agama."

¹⁸ Mia Fitria Elkarimah, "Telaah Poligami Perspektif Syahrur; KHI Dan Undang-Undang Perkawinan Indonesia," *Jurnal Hukum Islam* 18, no. 1 (2018): 133-46.

Polygamy is derived from the Greek words poly or polus, which means numerous, and gamein or gomos, which means marriage or marriage. Polygamy is a term that refers to the marriage of more than one individual, either male or female.¹⁹

Polygamy, according to the Indonesian Dictionary, is a marriage system in which one person has or marries multiple members of the opposite sex concurrently.²⁰ Polygamy is classified by specialists into two categories: polygyny and polyandry. Polygyny (polud-gune) refers to a man who has multiple wives, whereas polyandry (polus-andros) refers to a woman who has multiple spouses. From the preceding phrase, it may be determined that the problem that frequently happens is polygyny, also known as polygamy, because incidences of polyandry are quite rare.²¹

Polygamy is defined in Fiqh Munakahat as a husband who marries more than one woman, with a maximum of four persons, because if the limit is exceeded, the sign has disobeyed God's commandment.²²

At the moment, the term polygyny is rarely used in casual conversation. The term polygamy, which has the same meaning as polygyny, is more well known. Additionally, the Ministry of Cultural Education recognized the term polygamy, which is the inverse of polyandry, which means a husband may marry multiple wives concurrently.

2. The Status of Polygamy in the Indonesian Marriage Law No. 1 of 1974

Polygamy is highly regulated in Indonesia. The Marriage Law No. 1 of 1974 regulates polygamy by stating in article 3 paragraph (1) that the principle of marriage in Indonesia is open monogamy, which means a husband may marry only a wife and vice versa. However, Article 3 paragraph (2) states that monogamy is not an absolute characteristic but is subject to legal exceptions allowing a husband to have more than one wife with court authorization.²³

Polygamy is controlled in detail in Law No. 1 of 1974, from the procedure for submitting, the reasons for the husband to engage in polygamy, through the conditions under which a person may be granted permission to engage in polygamy. The procedure for submitting polygamy in Indonesia is outlined in article 4 paragraph (1), which states that if the husband chooses to have polygamy, he is required to apply to the Court in his

¹⁹ Syamsuddin Syamsuddin, Zainal Abidin, and Syahabuddin Syahabuddin, "Polygamy from Quraish Shihab's View in the Tafsir Al-Mishbah," *International Journal of Contemporary Islamic Law and Society* 3, no. 2 (2021): 1-18, <https://doi.org/10.24239/ijcils.vol3.iss2.31>.

²⁰ *Kamus Bahasa Indonesia*, (Jakarta : Departemen Pendidikan Nasional, 2008), pp.892.

²¹ Miriam Koptvedgaard Zeitzen, "Polygamy (Polygyny, Polyandry)," *The International Encyclopedia of Anthropology*, 2018, <https://doi.org/https://doi.org/10.1002/9781118924396.wbiea1377>.

²² Mrs Nurcahaya, Mr Akbarizan, and Mrs Sri Murhayati, "Punishment for Polygamy Doer in The Perspective of Islamic Law in Indonesia," in *International Conference on Culture and Language in Southeast Asia* (, vol. 154, 2018, 47-50, <https://doi.org/10.2991/icclas-17.2018.12>.

²³ Law Number 1 of 1974 concerning Marriage, Article 3 paragraphs (1) and (2)

place of residence for a polygamy permit. Religious Court applications are considered critical because they can provide legal certainty, order, protection, and legal assurances for the marriage.²⁴ Article 4 paragraph (2) states that a husband may have more than one wife:

- 1) If the wife is unable to fulfill her wifely responsibilities
- 2) The woman is disabled or suffers from an incurable ailment.
- 3) The wife is unable to bear children.

If one of the grounds or alternative requirements specified in Article 4 paragraph (2) applies, the court may permit the husband to petition to the court for polygamy. And, before presenting an application to the court, the husband must bear in mind the cumulative circumstances set forth in article 5 paragraph (1), including the following:

- 1) Consent is obtained from the wife/wives
- 2) There is certainty that the husband will be able to meet his wife's and children's requirements.
- 3) There is an agreement or promise that all spouses and their children will be treated fairly.

Polygamy's norms apply to every Indonesian citizen who is required to respect them, even civil workers (PNS). Polygamy rules for Civil Servants appear to be considerably tighter than those already in existence, as Civil Servants are state apparatuses dedicated to the State and willing to set positive examples for all levels of society backed by harmonious living. As a result, there are particular restrictions regarding polygamy for Civil Servants (PNS) as specified in Government Regulation No. 10 of 1983, which was later amended to Government Regulation No. 45 of 1990, which governs marriage and divorce permits for Civil Servants.²⁵

According to the provisions of PP No. 45 of 1990, article 4 explains several rules regarding polygamy for civil servants, including the following: first, if a male civil servant (PNS) desires polygamy, he must obtain permission from the official; second, if a male civil servant (PNS) desires polygamy, he must obtain permission from the official; and third, if a male civil servant (PNS) desires polygamy, he must obtain permission from the official. Second, a female Civil Servant (PNS) may not be a husband's second, third, or fourth wife; Third, a female Civil Servant (PNS) seeking to marry her second, third, or fourth husband must receive approval from the official and her husband, not the Civil Servant (PNS); Fourth; The request for permission is made in writing; Fifth, when requesting written permission, the husband or wife who want to be polygamous must offer a comprehensive and compelling justification.²⁶

²⁴ Ardhian, Anugrah, and Bima, "Poligami Dalam Hukum Islam Dan Hukum Positif Indonesia Serta Urgensi Pemberian Izin Poligami Di Pengadilan Agama."

²⁵ Zetria Erma, "Penegakan Hukum Terhadap Pelanggaran Beristri Lebih Dari Satu (Poligami) Bagi Pegawai Negeri Sipil (PNS)," *Ready Star*, 2019, 389-93, <http://ptki.ac.id/jurnal/index.php/readystar/article/view/81>.

²⁶ Nur Khoirin, "Menyoal Izin Poligami Bagi PNS," *Jurnal Studi Gender Dan Anak* 5, no. 2 (2010): 232.

Civil servants who violate the polygamy rules, namely without the official's permission, may face one of five penalties: (1) a three-year reduction in rank, (2) removal from office, (3) honorable dismissal at his own request, (4) dishonorable dismissal as a civil servant, or (5) transfer to the lowest level.

Thus, the concept of polygamy under Indonesia's Marriage Law No. 1 of 1974 is relaxed or permitted by the Court based on the judge's policy, namely the wife's consent, the ability to act fairly, and ensuring the lives of wives and children. Thus, approval by the wife is a way of recognizing and honoring the status of polygamous women or wives; additionally, the judge's policy is believed to be significant in this rule, which allows the Court Judges to analyze the judgment as thoroughly as possible.

3. The Concept of the Status of Polygamy in the Compilation of Islamic Law

Polygamy, according to Islamic law, is a marriage comprised of a husband and numerous wives, with a maximum of four wives. The original purpose of polygamy was to aid orphans and widowed women who had been abandoned by their husbands during the conflict. However, this statute remains in existence today in emergency conditions.

In essence, the principle of marriage in Islamic law is the 15th-century notion of monogamy. This principle serves as the cornerstone for the construction of the Sakinah household ark, *Mawaddah Warohmah*. Because monogamous marriage can eliminate jealousy, envy, and complaining, polygamous living is more likely to generate domestic conflict as a result of the emergence of jealousy toward other spouses, jealousy or envy, and frequently grumbling that results in household rifts.

Islamic law really permits, rather than advises or prohibits, polygamy on the condition that the persons involved can follow the prescribed standards, which include treating their wives and children properly and promoting the common welfare. The legal basis for polygamy is derived from Surah An-Nisa verse (3)'s *mafhumul* verse, which states that if you are incapable of acting fairly, marry only one woman; if you are capable of acting fairly, marry two, three, and four. Acting equitably is not a demand, but an obligation that a polygamous husband must perform.²⁷

Islamic law is a source of law that uses the Qur'an and Sunnah as normative sources to resolve the Muslim community's concerns. As the difficulties increased and the religious courts need a reference that conformed to legal certainty to serve as recommendations or instructions to religious court judges, the Compilation of Islamic Law (KHI) was legally created in 1991 on the directions of the President of the Republic of Indonesia. KHI is a mechanism for the Muslim community in Indonesia to overcome

²⁷ Ardhian, Anugrah, and Bima, "Poligami Dalam Hukum Islam Dan Hukum Positif Indonesia Serta Urgensi Pemberian Izin Poligami Di Pengadilan Agama."

the legal vacuum, which includes the formation of fiqh-based legal standards from the four madhhabs compiled in the Act's language.²⁸

Additionally, the Compilation of Islamic Law regulates polygamy in accordance with the provisions of article 55, namely:

- 1) Having more than one wife concurrently, with a maximum of four wives.
- 2) While having more than one wife is the primary qualification, the husband must also be capable of treating his wives and children decently.
- 3) If the husband is unable to meet the primary standards outlined in paragraph (2), he is forbidden from having more than one wife.

Thus, the conclusion taken from the Compilation of Islamic Law's polygamy restrictions is that if a husband is incapable of treating his wives and children decently, he is not permitted to practice polygamy. However, if the contrary occurs, a husband may engage in polygamy, as defined in Article 56, namely:

- 1) Husbands desiring more than one wife must get authorization from the Religious Courts.
- 2) The procedure for applying for the permit referred to in paragraph (1) shall be as specified in chapter VIII of Government Regulation No. 9 of 1975.
- 3) Without the authorization of the Religious Court, marriage to a second, third, or fourth wife has no legal force.

By comparing the law regulated by the KHI in article 55 above to the 1974 marriage statutory law, it ensures that the legal principles governing marriage are similar, namely the principle of monogamy (marriage to a wife), but it also allows for a limited amount of polygamy with the permission of the Religious Court. The following permits for polygamy may be accepted, as specified in Article 57 of the KHI.

The Religious Courts will only grant authorization to husbands who intend to have more than one wife provided the following criteria are met:

- 1) Husbands desiring more than one wife must get authorization from the Religious Courts.
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²⁸ Abdul Mu'in and Ahmad Khotibul Umam, "Eksistensi Kompilasi Hukum Islam Dalam Hukum Positif," *Jurnal Risalah* 1, no. 1 (2016): 69.

The Religious Courts will only grant authorization to husbands who intend to have more than one wife provided the following criteria are met:

- 1) In addition to the primary requirements mentioned in Article 55 paragraph (2), the conditions specified in Article 5 of Law No. 1 of 1974 must be completed in order to acquire a permit from the Religious Courts.
- 2) Without prejudice to the provisions of Article 41 letter b of Government Regulation No. 9 of 1975, the wife's or wives' approval may be granted in writing or orally, but even if written consent is given, this agreement is verified verbally during the Religious Court session by the wife.
- 3) The approval needed by paragraph (1) letter an is waived for a husband if it is impossible for his wife or wives to obtain their consent and become a party to the agreement, or if they have not heard from their wives in at least two years, or for any other reason. others who should be judged.

In the absence of a wife's consent, Article 59 of the KHI emphasizes the following: If the wife refuses to consent and the application for permission to marry more than one person is based on one of the reasons specified in Article 55 paragraphs (2) and 57, the Court Religion may determine whether to grant permission after examining and hearing the wife in question at the Religious Court trial, and against this determination.²⁹

In essence, the KHI and Law No. 1 of 1974's regulations and norms on polygamy are consistent with the principles of Islamic legal requirements that depart from traditional fiqh. The similarities between the Marital Law No. 1 of 1974 and the Compilation of Islamic Law about the marriage principles, methods, stages, and circumstances that must be followed are striking. The Compilation of Islamic Law has also controlled the laws and requirements of polygamy, stating that the primary requirement for a husband is to be kind to his wives and children and to seek agreement from the wives concerned, which is also transmitted verbally directly before the Religious Courts. With the meaning that certain requirements must be met in order for the husband to be prepared to provide physical and spiritual support for his wife and children in the future, most notably in the acceptance of the wives, which is deemed critical and influences the judge's policy.

Additionally, it was emphasized that all issues pertaining to the legitimacy of polygamy licensing will be resolved by the authorized institution, namely the Court in the location or area in question, as specified in Article 4 paragraph (1) of the 1974 Marriage Law No. 1 or the Religious Courts for Muslims, as listed in the Compilation of Islamic Law Article 57 paragraph (3). Because without permission from the Religious Court, the document is deemed invalid or without legal power. Thus, a court's policy must be evaluated, as whatever the judge chooses appears to be capable of protecting a wife and husband's rights and obligations.

4. The Concept of Polygamy Status in Conventional Fiqh View

Jumhur Ulama agree that polygamy is lawful or permissible with the provision of physical and spiritual support. Meeting physical and spiritual expenditures is a difficult

²⁹ Seri Pustaka Yustisia, *Kompilasi Hukum Islam*, pp.32

task that must be undertaken by a spouse, according to Allah SWT's command in the Qur'an.³⁰

Meaning : *And if you're afraid you won't be able to do justice to orphaned women's (rights) if you marry her, marry (other) women you like: two, three, or four. However, if you are concerned about your ability to do justice, (marry) only one, or the female slave you own. That is closer to ensure that you do not make a mistake.*

Although the Legal Basis for the Four Madzhab refers to Surah An-Nisa (4): 3, Imam Shafi'i connects two passages, specifically QS.An-Nisa (4): 3 and QS.An-Nisa (4): 129. According to the content of Surah An-verse Nisa's 3, the obligation of polygamous husbands is to be able to behave fairly toward all wives and children in terms of birth and mind, but it is explained in the content of verse 129 that a person cannot act fairly in terms of love or anything related to the inner self.³¹

Fiqh scholars such as Imam Maliki, al-Shafi'i, Hanafi, and Hanbaliy schools³² believe that the permissibility of polygamy can be determined by the zhahirah (what is seen) in the preceding verse, specifically in the sentence that contains the word command to marry a woman with the limitations stated in the verse above, namely two, three, or four. Thus, the Ulama agreed on the subject of polygamy's limit, namely four spouses concurrently.³³

Several of the justifications advanced by scholars in support of polygamy's permissibility include the following:

- 1) There are more women than men
- 2) A wife who is infertile based on a laboratory declaration
- 3) A wife suffers from an illness that renders her husband unable to meet his spiritual requirements.

From the standpoint of fiqh and madhhab scholars, polygamy is permissible provided there are compelling reasons, such as those outlined above, and the husband treats his women fairly. The permissibility of polygamy relates to the zharirah sentence in Surah An-Nisa verse 3 of the command sentence (Marriage), with the Qur'an's declared limitations of four spouses. There is only one woman who can avert injustice.

When examined more closely, Islamic family law in Indonesia, as regulated by the Compilation of Islamic Law (KHI) and Law No. 1 of 1974, is consistent with the perspective of fiqh and madhhab scholars and has the same legal basis as QS. An-Nisa: 3 the same as allowing polygamy on the legal basis of husband's justice to his wives and children, except that the KHI and the law tighten other rules such as obtaining court permits, obtaining wife's approval.

³⁰ QS : An-Nisa (4) : 3

³¹ Khoiruddin Nasution, *Status Wanita di Asia Tenggara*, pp. 107

³² Nanda Arisqa Lapatantja and Muammar Bakry, "Comparative Analyses of Maliki and Hanbali Thought on Waqf Istibdal," *Mazahibuna: Jurnal Perbandingan Mazhab* 3, no. 1 (2021): 49-60, <http://journal.uin-alauddin.ac.id/index.php/mjpm/article/view/21129>.

³³ Muhammad Jawad Mughniyah, *Fiqh Lima Madzhab*, (Jakarta : Lentera Basritama, 201), pp. 332

5. The Concept of the Status of Polygamy in Other Muslim Countries

a. Countries that have a strict prohibition on polygamy

Turkey and Tunisia are two countries that strongly prohibit polygamy and penalize those who violate polygamy laws. According to Cyprus Thaun 1951's Turkish Family Law, articles 8-9, it is not permissible to have a new marriage while the first one is still going on, but it is permissible to have a new marriage if the wife has died, divorced, or for other reasons. This shows that the Turkish government's regulations forbid polygamy. Men who wish to engage in polygamy will face sanctions or fines. Individual regulations (The Code of Personal Status) underline that polygamy is a criminal crime punishable by a year in prison. The Qur'an Surah An-Nisa verse 3 is the reason for the prohibition of polygamy, as it instructs a husband to be just to his wife, yet the prerequisites for fairness are difficult to fulfill. As a result, Turkey chooses a medium path in prohibiting polygamy.³⁴

Additionally, Tunisia is the third country that strictly outlaws polygamy, citing the Qur'an verse Surah An-Nisa verse 3 and a variety of additional reasons, including Tunisia's belief that polygamy is permitted only during the Islamic transition period. fair but it is impossible for a human being to be just because only the Prophet is capable of doing justice, aside from the social factor of seeing many neglected children becoming the power of the Tunisian government to act on the principle of Saad Adzariah in prohibiting polygamy for the sake of the Indonesian people's future. youngsters for the purpose of advancing public and domestic objectives. Thus, anyone who violates the polygamy restrictions faces a year in prison or a fine of 240.00 malim, or both.³⁵

b. Countries that allow polygamy with Strict Conditions

Iraq, Malaysia, Indonesia, Somalia, and Syria all permit polygamy on an emergency basis or under tight conditions, while Pakistan and Bangladesh must additionally acquire approval from the arbitration board or face fines.³⁶

The Iraqi Regulations (The Iraqi Law Of Personal Status) say that polygamy is not permitted without court approval. There are three provisions regarding polygamy: a. Husbands can pay for their wives' needs; b. Husbands can be fair to their wives. c. The presence of legal interests and the attainment of a benefit.

Iraqi civilization is dominated by the Hanafi and Shafi'i schools of thought, which prohibit polygamy beyond four spouses.

³⁴ Janeko, "Studi Eksplorasi Hukum Poligami Di Berbagai Negara Muslim," *Jurnal Ummul Qura* 10, no. 2 (2007): 58.

³⁵ Miftahul Huda, Potret Keragaman Perundang-Undangan di Negara-Negara Muslim Modern, pp.12

³⁶ Janeko, "Studi Eksplorasi Hukum Poligami Di Berbagai Negara Muslim."

Malaysia's polygamy rules are also nearly identical to those in a number of other nations, namely allowing polygamy on the condition that they apply to the Religious Courts for authorization and the conditions that the husband must meet, namely the principle of fairness and the ability to polygamy. benefit generation. It is analogous to the Syrian state, which permits polygamy upon application to a religious court.³⁷

Indonesia permits polygamy with the authorization of the court, subject to the judge's policy and consideration of the conditions provided in the 1974 Marriage Law No. 1 and the Compilation of Islamic Law, namely that it is fair, ensures the lives of all wives and children, and has the wives' consent. Particularly for Civil Servants (PNS) who wish to practice polygamy, they must seek authorization from the appropriate official.

According to Somali law, polygamy may be practiced with the consent of the court if one of the legal reasons specified is met, namely the wife is barren with evidence of a doctor's letter, the wife is imprisoned for more than two years, the wife leaves the house without permission for more than a year, or social needs.

Article 11A of the Egyptian Law, as revised by Law No. 100 of 1985, says that polygamy might be a reason for divorce because it is believed to complicate economic necessities, making polygamous existence ineffective.³⁸

c. Countries that categorically permit polygamy

Polygamy is not officially regulated or prohibited in Muslim countries such as Saudi Arabia, Qatar, Kuwait, Oman, and Bahrain. Because all choices are made on an individual basis in accordance with recognized fiqh principles.³⁹

In other Muslim countries' laws regulating polygamy, there are prohibitions and constraints that make polygamy difficult, because the fundamental principle of marriage in Islamic law is monogamy, however Islam modifies the norms of polygamy in an emergency. The author will next thoroughly classify the notion of polygamy in Muslim countries according to the rationale for the establishment of polygamy laws and regulations.

Prof. Khoiruddin Nasution attempts the following summary of the patterns and justifications for forbidding or complicating polygamy:

- a) Polygamy is strictly outlawed in Tunisia; Tunisians believe it is impossible for a husband to act fairly, despite the fact that fairness is a necessary condition for polygamy. This justification is based on Tunisia's recent reform of family law, which is now more in line with Islamic precepts.

³⁷ Lilik Andaryuni, "Poligami Dalam Hukum Keluarga Di Dunia Islam," *Jurnal Sipakallebi* 1, no. 1 (2013): 107.

³⁸ Andaryuni.

³⁹ Janeko, "Studi Eksplorasi Hukum Poligami Di Berbagai Negara Muslim."

- b) Restricting polygamy in countries where economic capacity is a concern, such as Syria, Iraq, and Egypt
- c) Polygamy can be a cause of divorce in certain countries, such as Iraq, Algeria, and Egypt.
- d) The taklik talak idea is used to demarcate irresponsible polygamy.
- e) As evidenced by a doctor's note, the husband's cause for polygamy is his wife's infertility.

Polygamy's regulations will be classified as follows:

- a) Polygamy is strictly forbidden in Turkey and Tunisia.
- b) Polygamy requires court approval; Indonesia, Malaysia, Pakistan, Bangladesh, Iraq, Somalia, and Syria
- c) Polygamy may be grounds for divorce; Iraq, Algeria, and Egypt
- c) Sanctions against countries that violate polygamy laws; Tunisia, Iraq, Iran, Egypt, Pakistan, Indonesia, and Malaysia Saudi Arabia, Qatar, Kuwait, Oman, and Bahrain all permit polygamy.

Thus, it may be inferred that in Muslim countries, the concept of status prevents, permits, or complicates the route of polygamy. This rule is based on the unique societal issues that each country faces and the state's efforts to reduce corners in order to help spouses and children. Almost all laws enacted in Muslim countries are consistent with Islamic law's polygamy rules.

6. The Nash of Polygamy

a. The Text and The Context of Nash

Polygamy is acceptable in Islam, as stated in the following verse from the Koran :

Meaning : *And if you're afraid you won't be able to do justice to orphaned women's (rights) if you marry her, marry (other) women you like: two, three, or four. However, if you are concerned about your ability to do justice, (marry) only one, or the female slave you own. That is closer to ensure that you do not make a mistake.*⁴⁰

The interpretation of Surah An-Nisa verse 3 is also connected to the preceding verse, which explains that the treasures of the guardians must properly manage the property of orphans and abstain from actions prohibited by Allah SWT, such as eating the property of orphans and exchanging it for bad property. The interpretation of paragraph 2 is related to paragraph 3, which urges guardians of female orphans who wish to marry the orphans to act honestly and appropriately while providing dowries and other rights. And it is not authorized to marry the child solely for the purpose of obtaining or consuming his property.⁴¹

⁴⁰ QS : An-Nisa (4) : 3

⁴¹ Rahmi, "Poligami : Penafsiran Surah An-Nisa 4 : 3," *Jurnal Ilmiah Kajian Gender* 5, no. 1 (2015): 117.

Nash in QS. An-Nisa verse 3 established the legal basis in the past for preserving the dignity and property of orphans and widows through marriage. However, this legal basis continues to apply to the present day and is still practiced by Muslims worldwide in terms of the permissibility of polygamy on an emergency basis with a maximum of four wives and reasonable conditions for wives and children. If a husband is uncertain or unable of acting fairly in terms of birth (economic necessities) and inwardly (love and affection), Allah commands that he marry only one lady to prevent evil.

b. Asbab an-Nuzul

Surah An-third Nisa's verse was revealed following the battle of Uhud in Medina. Because this verse was revealed in response to the high number of Muslims who perished in the battle of Uhud. The defeat resulted in an increase in the number of widows and orphans who were left behind by their husbands or dads in substandard living, social, and educational situations, but many of them got inheritance from their parents.

From the above account, it is clear that throughout the period of jahiliyyah, a number of guardians had negative intents toward female orphans, intending to marry them in order to exploit and consume the orphans' fortune. As a result, the verse came to prohibit Muslims from marrying orphans unless they were capable of treating everyone equitably, along with a restriction on marrying women, specifically four women.⁴²

According to Bukhari, Muslim, Nasa'i, and Baihaqi, the reason for the revelation of Surah an-third Nisa's verse is that Urwah bin Az-Zubeir asked Ayesha why this verse was revealed, and Aisyah responded and explained that this verse was revealed regarding orphans who are in their care or care of their guardians. And then intend to marry her without a dowry in order to gain control of her property.

According to Fazlur Rahman, the Qur'an teaches the moral ideal of monogamy, not polygamy. This scripture contains no encouragement for Muslims to engage in polygamy. This passage was revealed solely to prohibit polygamy, which was a prevalent practice among the Arabs throughout the Jahiliyyah period.⁴³

According to Rasyid Rida, the phrase was revealed to warn against bad habits and to condemn the practices of uneducated people who treat widows and orphans arbitrarily and inhumanely.

Thus, the revelation of this verse is not an encouragement for polygamy, but rather offers some room for it on the grounds of safeguarding widows and orphans and restricting polygamy's regulations. and the Prophet's compassion for orphans and widows whose husbands perished in combat.

⁴² Agus Hermanto, "Islam, Poligami Dan Perlindungan Kaum Perempuan," *Kalam: Jurnal Studi Agama Dan Pemikiran Islam* 9, no. 1 (2015): 165–86, <https://doi.org/https://doi.org/10.24042/klm.v9i1.326>.

⁴³ Rahmi, "Poligami : Penafsiran Surah An-Nisa 4 : 3."

c. Arabic history as it relates to polygamy in the asbabun nuzul verse

Polygamy is not a new phenomenon; it has occurred in various levels of society around the world since ancient times or prior to the coming of Islam, including the Indies, Israel, Persia, Arabia, Rome, Babylon, and Tunisia. Prior to the establishment of Islam in Arabia, the Arab community and other communities knew and practiced polygamy; some individuals married as many as ten women, and many of the Prophet's companions married more than four people. Polygamy is not a new phenomenon among leaders, lay people, and prophets, as stated in the heavenly books and historical books. The Prophet approved polygamy because it had been practiced in Greek civilization, where wives could be freely transferred and traded. This practice has also been adopted by a number of countries, including Africa, Australia, and the Mormons in America.

The Arabs' tradition during the Jahiliyya period believed marrying numerous women to be a form of property ownership. Because women may be owned and traded arbitrarily at the time without regard for women's true rights.

Prophet Muhammad was Allah's final messenger to Arabia. Since then, Islam has prohibited different forms of adultery and rejected the notion that individuals are property or animals that may be possessed or exchanged. Islam does not forbid polygamy; but, Islam has come to control and limit polygamy and the requirements that must be satisfied in order to protect women's rights and elevate women's position.⁴⁴

Polygamy is not prohibited by Islamic law, but flourished in the pre-Islamic Jahiliyyah era, when women were viewed as commodities and animals and there were no prohibitions on polygamy. Islam's text, the Qur'an, came to control and limit polygamy in order to preserve women's and orphans' honor.

Thus, it can be concluded that the legal basis for polygamy in QS. An-Nisa: 3 can be studied contextually in the text by delving deeper into the causes of the verse's revelation and the historicity of Arabic relating to the verse's revelation. This verse came to create benefit and protect the honor of children - orphans or widows as a result of the treatment of society during the jahiliyyah era, when the government treated women arbitrarily as goods and animals without regard for shari'i norms. As a result, Islam came to restrict and limit in order to raise women's status.

7. The Legality of Polygamy and Its Implications for Indonesian Marriage Law

The substance of the Qur'anic text's permissibility of polygamy can be deduced from the micro and macro contexts. The micro context refers to the cause of the verse's revelation, and the macro context refers to the socio-cultural factors surrounding Arabia, which include culture, interaction patterns, geography, and politics.

The context in which the verse in QS. An-Nisa: 3 was revealed, as well as the Arabic historicity surrounding the revelation of this verse. Within the context of the Uhud

⁴⁴ Hermanto, "Islam, Poligami Dan Perlindungan Kaum Perempuan."

conflict, this passage came to defend, protect, and improve the position of orphans and widows who were abandoned by their fathers or husbands who died during the war. Throughout the jahiliyyah period, the Arab community's custom was to treat women arbitrarily, marrying or owning women without constraint and treating women as if they were animals or commodities worth purchasing and selling. The Arabs' tradition during the Jahiliyya period believed marrying numerous women to be a form of property ownership. Thus, the substance studied in the macro and micro contexts of polygamy tries to safeguard and raise women's positions while abstaining from forms of adultery according to the principles of benefit and fairness.

Polygamy is possible in QS. An-Nisa: 3 for a variety of reasons, conditions, and circumstances, depending on the necessities of the period. Polygamy is still permitted in Arab society, particularly in Indonesian society. Essentially, the provisions for polygamy in the 1974 Marriage Law No. 1 and the Compilation of Islamic Law are inconsistent with the substance or text of the permissibility of polygamy, but have resulted in the establishment of QS. An-Nisa: (3) with a review of the principles of justice, benefit, and avoiding harm or damage. Polygamy is permissible since there are more women than males, and if monogamy is maintained, several prostitution activities will occur.

CONCLUSION

Islam came to prohibit polygamy by examining the cultural factors of the jahiliyyah period. The macro and micro contexts of a text reveal the essence of polygamy. The macro setting for the revelation of the polygamy verse in QS. An-Nisa: 3 is the large number of widows and orphans who were abandoned by their husbands or dads after the Uhud conflict. The micro setting involves marrying or having women without restriction, seeing women as animals and products worth purchasing and selling, and assuming that marrying numerous women equals property held. Thus, the substance studied in the macro and micro contexts of polygamy tries to safeguard and raise women's positions while abstaining from forms of adultery according to the principles of benefit and fairness.

Thus, QS. An-Nisa: 3 permits polygamy in specific circumstances, conditions, or circumstances linked to the goal of marriage and the demands of society, and provides reasons why polygamy is preferable to divorce. Thus, the reason for polygamy arises, namely if the wife is unable to fulfill her obligations as a wife due to a disability or incurable disease, or if the wife is unable to bear children due to societal needs, namely the fact that women outnumber men, and if the monogamous marriage system is maintained, there will be an abundance of prostitution practices.

While the relevance of polygamy provisions in the 1974 Marriage Law No. 1 and the Compilation of Islamic Law is not yet fully consistent with the substance or text of Islam's

permissibility of polygamy, it has resulted in the establishment of QS. An-Nisa: (3) with the principle of justice, promoting benefit, and avoiding harm or damage.

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