

## PROBLEMS OF POLYGAMY IN INDONESIA (Analysis of Law No. 1 of 1974 and KHI)

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**Abstract:** *Polygamy is permissible in Islam. However, an absolute requirement of polygamy applies for a husband. It is allowed only if the husband could deal justly with his wives. If he is unable to act justly, then he is obliged to have only one wife.*

*The provisions on polygamy in Indonesia have been regulated by Law No. 1 Year 1974 on marriage, and as a form of positive response to regulate a man who wants to marry more than one woman. Likewise, Compilation of Islamic Law (Kompilasi Hukum Islam-KHI) also regulates the polygamy's terms and conditions for Muslims.*

*Ideally, the two regulations - Law No. 1/1974 and KHI-- aim to provide terms and conditions of a man who wants to have next marriage. The provision is aimed to reduce men's (husbands) arbitrariness on women (wives). Also, it helps in the creation of happy, prosperous, and peaceful family.*

**Keywords:** *polygamy's regulations, Act No. 1, 1974, KHI*

### Introduction

Polygamy's issue in Indonesia always raises two contradictory opinions, pro and con. For the cons, polygamy is always considered to raise issues such as the omission of sexual desires (*hypersexual*), domestic violence, affairs and infidelity, until the divorce. For the pros, they consider polygamy as the best way to protect the parties involved in polygamy. The pros and cons related to polygamy are still discussed among scholars of Islamic law.

Although in Islam there is a way to practice polygamy, but it applies an absolute requirement, namely the permissibility of

polygamy only if a man can be fair, and if he is unable to do justice then he obliged to marry one wife only. However, this absolute requirement of justly is often overlooked by most people.

In Indonesia, provisions on polygamy have been regulated by Law No. 1 Year 1974 on Marriage, and as a form of positive responses to a man who wants to marry more than one woman. Likewise, the birth of the Compilation of Islamic Law t regulates the provision of polygamy for Muslims.

Ideally, the two regulations - Law No. 1/1974 and KHI-- aim to provide rules, conditions, and requirements of a husband who wants to marry another woman. The regulation is to protect women (wives) and to minimize arbitrariness of men (husbands). It is regulated to achieve the purpose of marriage to create happy, peaceful and merciful family. This paper will attempt to analyze further legal approach of polygamy through Law No. 1 1974 and KHI.

### **Understanding the Basic Law of Polygamy**

Polygamy comes from the Greek words, *Polus* means a lot and *gamein* means mating. So, polygamy is a man who has several wives at the same time. In Arabic it is called *ta'diiduz-zaujaat* (having more than one couple). While in Bahasa Indonesia, polygamy is known as *permaduan*.<sup>1</sup>

According to Islamic teachings, polygamous marriages are allowed based on An-Nisa verse 3:

*And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your*

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<sup>1</sup> Rahmat Hakim, *Islamic Marriage Law*, (Bandung: Pustaka Setia, 2002), p: 113.

*right hand possesses. That is more suitable that you may not incline [to injustice].*

The interpretation of the verse above describes permissibility of polygamy until 4 (four) wives. Furthermore, the verse states the permit applies with a condition "to be fair to them (wives and children)". Fair means justice in serving wives and children, providing basic needs, clothing, and shelter for them. But if you cannot do justice, then just one wife (monogamy).

Justice means fair treatment to his wives serve as clothing, shelter, turn and others basic and physical needs. Islam allows polygamy with certain conditions.<sup>2</sup>

In fact, a husband will find it difficult to do justice to his wives. It is pointed out in the An-Nisa` verse 129, Allah says:

*And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so]. So do not incline completely [toward one] and leave another hanging. And if you amend [your affairs] and fear Allah - then indeed, Allah is ever Forgiving and Merciful.*

In line with the interpretation of those verses, At-Tabari narrated from Ibn Abbas, Said ibn Jubir, Qatadah, As-Sauidi and others: there are groups of people who are afraid of making arbitrary or injustice to orphans, but they are not afraid treating their wives unfairly. Then they were told that "if you are afraid to be unfair and injustice to the orphans, then you also should be afraid if you are unfair or injustice to your wives. You should marry a woman until four women only. If you feel fear to be injustice when practicing polygamy, then a man should marry only

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<sup>2</sup> Abd Rahman Ghazaly, *Fiqh Munakahat*, (Jakarta: Kencana, 2000) p. 129.

one. You should not get married unless you are sure that there will be no injustice against your woman or your slave<sup>3</sup>

The classical scholars have many interpretations of the verse that allows polygamy. Their opinions about polygamy are as follows:

1. It is a command of Allah, "*marry those that please you of [other] women*", is understood as a command of *ibahah* (allowed/permissible) and it is not a mandatory order. A Muslim may choose monogamous or polygamous. Majority of *mujtahid* of different times and era agrees this view.
2. Prohibition to marry more than four wives at the same time, as states in the Koran, "*then marry those that please you of [other] women, two or three or four.*" According to scholars, opinions allowing polygamy more than four based on the verse above, are those who misunderstand the style of the Koran and its Arabic rhetoric language.
3. Polygamy should be based on principles of justice, as the word of God, "*But if you fear that you will not be just, then [marry only] one or those your right hand possesses.*" One does not allowed marrying more than one wife if he is not confident to his polygamy action. Although his marriage is legal, but he is sinful to his action.
4. Also, as mention in the verse: "*And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so].*" Treating wives all the same could be impossible. It is because the husband has limited ability to it. However, the husband must try his best to share his love and affection equally among his wives.

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<sup>3</sup> M. Haitsam al-Khayyath, *Muslim Problems in the Modern Era* (Publishing, 2007), p. 227.

5. Some *ulama`* or scholars of Syafii's *madzhab* require a husband to be able to provide and support all wives if a man would practice polygamy. This requirement based on the understanding of Imam Syafi'I to the verse: "*That is more suitable that you may not incline [to injustice]*" which means that you will not add family members. In the book "*al-Qur`an akhikam*", Imam Baihaqi also quote this view to support his opinion about polygamy. According to Imam Syafi'I, the ability and assurance to support wives' basic needs as a polygamy's requirement is a religious requirement (*syarat diyana*). It means that if a man considers himself unable to provide and support his family needs, then it is not a requisite of legal verdict.<sup>4</sup>

Based on occasions of revelation (*asbab nuzul*), the context of the verse/revelation allowing polygamy actually aims to save orphaned children so they can live in dignity. Therefore, marrying the orphans' mother is not the main goal, so the crucial issue in the Koran about the polygamy is justice to mother's orphans.<sup>5</sup>

In many classical *fiqh* (Islamic Jurisprudence) literatures, all scholars agreed with the existence and permissions of polygamy in the Koran. The scholars, both classical and modern, will always agree on the existence of polygamy based on the framework of the Koran. Although scholars depart from similar sources of legal thought, their conclusions tend to vary and often contradict each other. The scholars have written numbers of books about polygamy. However, each of the books reflects a certain tendency and various descriptions from one author to another. In addition,

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<sup>4</sup> Fada Abdul Razak Al-Qoshir, *Syari`At Muslim Women Between Islam And Western Culture*, (Yogyakarta: Offset Darussalam, 2004) p. 42-45.

<sup>5</sup> Kutbuddin Aibak, *Fiqh Contemporary Studies*, (Surabaya: eLKAF, 2006), p 61.

in many cases their conclusions often contradict each other. In fact, when noticing its legal aspect, polygamy is simply a legal and a permissive action (*ibahah*). The polygamy is neither *Sunnah* (advised) nor *wajib* (compulsory). In addition, verses discussing about the permissibility of polygamy are also very limited.

### **The Conditions of Polygamy as established in Law No. 1, 1974 and the explanation of Government Regulations (Peraturan Pemerintah) 1975**

Polygamy issue in Indonesia is stated in Law no. 1, 1974 about Marriage and further the laws are supported with the Government Regulation No. 9, 1975 on the Implementation of the Law No. 1 / 1974. As for civil servants, rules or conditions regarding polygamy are explained in the Government Regulation (PP) No. 10/1983 on Marriage and Divorce regulations for Civil Servants.

The provisions contained in the Marriage Law No. 1 of 1974 and its procedures, in principle, in line with the provisions of Islamic law. According to the Law, in principle, the system adopted by the Marriage Law in Indonesia is monogamy. However, in some conditions, a husband is given permission to marry more than one wife.

The complete provisions on polygamy, licenses, terms and conditions contained in Articles no. 3, 4, and 5 of Law No. 1, 1974. The explanations of Article no. 3, paragraph 1 and 2 of Law 1 of 1974, are as follows:

1. In marriage principle, a man can have only one wife. A woman can have only one husband.
2. The court may grant a permission to a husband to marry more than one if the concerned parties desire it.

Furthermore, the terms and conditions of polygamy are explained in article 4 and article 5 of Law No. 1, 1974. A husband who was given permissions to marry more than one should have strong reasons that can be used as a basis for polygamy especially if the reasons cause disharmony in domestic life. This is reflected in Article 4, namely:

1. In case a husband will marry another woman as referred to article 3 paragraph (2) of this Act, he should apply to the court his area.
2. The court referred to in paragraph (1) of this article only gives permission to a husband who will marry more than one wife if:
  - a. The wife could not carry out his duty as a wife.
  - b. The wife has a disability or incurable illness.
  - c. The wife cannot be pregnant.

According to the Marriage Law No. 1 of 1974, whether a man can marry more than one wife or not is determined by the Religious Courts decision based on the fulfillments of the requirements of polygamy. Therefore, although a husband has clear reasons to perform polygamy, he still needs to meet the requirements that have been determined in Article 5, that:

1. To be able to apply to the court, as intended in article 4 paragraph (1) of this Act, must meet the following requirements:
  - a. Approval of his wife/s
  - b. The husband is able to support his wives and children basic needs and necessities.
  - c. The husband would be fair to his wives and children.
2. Approval referred to paragraph (1), letter (a) of this article is not required by the husband if his wives are unable to give

consent, cannot be a part of the agreement, if there is no news from the wife for at least 2 (two) years, and because of other reasons need to be assessed by the Court of Justice.

Without deteriorating the provisions of Article 41 letter b of the Government Regulation No. 9, 1975, the approval of his wife or wives may be given in written or oral form. However, written approval from the wife should be confirmed by her verbal agreement on trials at Religious Court. The procedures for this technical inspection are in accordance with Article 42 of Regulation No. 9 of 1975, as follows:

- (1) During an investigation on matters in Articles 40 and 41, the Court has to hear the wife/wives' concerned and explanation.
- (2) The court's examination was conducted by a judge no later than 30 (thirty) days after the court receives the request letter and its annexes.

When something or other situation happen, the wife or wives may not be asked for her/their consent or cannot be a party in the agreement, Act No. 1 of 1974 Article 5 (2) states:

"The agreement referred to in paragraph (1) letter (a) of this article is not necessary for a husband if his wife/s cannot be asked for their approval, cannot be parties to the agreement. Also, if there is no news of his wife/s for at least 2 (two) years, and for any other causes that require a legal decision from the judges of the Court."

However, if the Court found sufficient reasons for the applicant to marry more than one, the court will give a decision in the form of permission to it (its explanation is in the Article 43 of the Government Regulation No. 9 of 1975)



If the judge's decision has a permanent legal force and if the court's permission is not obtained, according to the provisions of Article 44 of Government Regulation No. 9 of 1975, a Marriage Registrar person is forbidden to process the application until the court's permission is released as referred to Article 43 of the Government Regulation No. 9, 1975.

The legal provisions governing the implementation of polygamy as described above binds all parties, including the parties who will involve in polygamy and the marriage registrar person. Violating to the provisions of the articles above is subject to criminal actions.

The issue' rules and conditions are described in Chapter IX Article 45 of Government Regulation No. 9 of 1975:

- (1) Except it is specified in other legislation, then: (a) Person violating the provisions in Article 3 and Article 10 paragraph (3) 40 of the government regulations will be fined. The maximum fine is Rp. 7.500,00 (seven thousand five hundred rupiah); (b) Marriage Registrar who is violating the provisions in Articles 6, 7, 8, 9, 10 paragraph (1), 11, 12 and 44 of this Government Regulation will be imprisoned for a maximum 3 (three) months or a maximum fine Rp.7.500,00 (seven thousand five hundred rupiahs).
- (2) The criminal acts referred to paragraph (1) above, is an offense. The polygamy is allowed after receiving legal permission from the Religious Court after considering the polygamy benefit conditions. The conditions mean the marriage ideals and purpose, to create happy, peaceful, and harmonious family based on love and affection. Therefore, any possible issues that would hinder the realization of the marriage purposes should be eliminated or at least reduced

## **Polygamy in the provision of the Islamic Law Compilation (KHI)**

In Islamic law, the legal status of polygamy is *mubah* (permissible). However, its permissible status allows a man to a married up to four wives only. In KHI, the provisions to marry more than one wife are regulated in Chapter IX from article no. 55 to 59.<sup>6</sup> KHI stated that a husband is restricted to marry up to four wives only. In addition, the man or husband must meet some other requirements. Article 55 KHI confirmed this condition, as follows:

1. Having more than one wife at the same time is limited only up to four wives.
2. The main requirement to marry more than one woman, the man or husband should be able to do justice to all his wives and children.
3. If the main requirements referred to in paragraph 2 are impossible to be fulfilled, the husband cannot marry more than one.

The KHI basic consideration is the hadith of the Prophet Muhammad narrated by Ahmad, At-Tirmidhi, and Ibn Hibban that discusses about Gailan Ibn Salamah who converted into Islam and had 10 (ten) wives. All his wives also converted into Islam. Therefore, the Prophet Muhammad ordered him to choose only four of them and divorce the other.

Furthermore, in Article 56 describes the permission from the court for the husband who applies to have polygamous life. As contained in Article 56 KHI:

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<sup>6</sup> Abdurrahman, *Compilation of Islamic Law in Indonesia* (Jakarta, Academy Pressindo: 1992). H. 126-127.

- 1) A husband who wants to marry more than one woman must obtain permission from the Religious Court.
- 2) The application for permission referred to in subsection (1) shall be conducted according to the procedure stipulated in Chapter VIII of the Government Regulation No. 9 of 1975.
- 3) Marrying the second, third and or the fourth wife without permission from the Religious Court, does not have legal law.

Furthermore, Article 57 KHI explains the reason for polygamy, as follows:

Religious Court only gave permission for a husband to marry more than one wife if:

1. His wife is unable to perform its obligations as a wife;
2. The wife has got a disability or illness that is not curable;
3. The wife is infertile.

If the Religious Courts have received the husband's application of polygamy, then the court will examine the application according to Article 57 KHI:

1. Whether or not any reasons allowing a husband to marry again;
2. Whether or not the wife's consent both oral and written. If consent was a verbal agreement, the agreement must be expressed in the courtroom;
3. Whether or not the husband has abilities to ensure the necessities of his wives and children, by showing: (1) A certificate of the husband's income, which was signed by the treasurer, or (2) Certificate of income tax, or (3) other certificates that can be accepted by the court.

Further Polygamy technical rules contained in Article 58 paragraph (2) KHI:

- 1). In addition to the primary requirements referred to in article 55 paragraph (2), to obtain the court's permission, it must also be met the conditions specified in Article 5 of the Law 1 of 1974, namely:
  - a. The wife's consent or approval;
  - b. the certainty that the husband is able to support his wife and children's the necessities.
- 2). Without abating to the provisions of article 41 b of Government Regulation No. 9 In 1975, the approval of the wife or wives may be given in writing or orally, but even after written approval, verbal confirmation should be made by the wife at the court hearing.
- 3). Approval referred to in paragraph (1) letter a is not necessary for a husband if the wife or wives may not be asked for consent and cannot be parties to the agreement or if there is no news of his wife or wives of at least two years or because others that need to get votes Judge.

Furthermore, Article 59 KHI states that: "In the case of the wife does not want to give consent and permission to her husband to marry another woman based on any reasons as stated in the Article 55 paragraph (2) and Article 57, the Religious Court can assign a permission letter after checking and hearing the wife's concerned in front of the Religious Court. The court's decision can be rejected by wives or husband's appeal or cassation".

### **Polygamy Relevance provisions in Law No. 1/1974 and KHI**

These two provisions are directed to the principle of monogamy. Therefore, it is only when in a specific circumstance the polygamy is allowed after fulfilling all the requirements. The Act no. 1/1974 does not limit a man who wants to marry more

than one wife. On the contrary, the KHI only allows a man to have maximum four wives.

There is no difference between these two regulations if a husband wants to marry another woman. Both the regulations will refer to the wife's conditions. Likewise, the requirement of polygamy application to be authorized by the Court, there must be a consent from the wife/wives. However, the KHI regulates that the wife's consent should be proved orally in a hearing at the Religious Court.

In Law No. 1/1974 and KHI also state that when the wife cannot provide a permission for certain circumstances that prevent her or because of other reasons that need to be assessed by the judge. However, in the case where the wife does not want to give permission to a husband who will marry, then the husband or wife can have an appeal or cassation. In contrast to Law No.1/ 1974, there is no chance for an appeal or cassation. Therefore, if the wife does not allow her husband then there will be no chance for him to marry.

### **Wisdom and Benefit of polygamy**

Regarding wisdoms and permission of polygamy (in an emergency situation and a man can act fairly to his family), are as follows:<sup>7</sup>

- To have children for a potential husband who have unhealthy wife.
- To maintain family's integrity without divorce, although the wife is unable to play her roles as a wife because of physical impairment, disability or critical illness.

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<sup>7</sup> Abd Rahman Ghazaly, *Fiqh Munakahat*, p: 136.

- To rescue the husband from adulteration and other moral crisis.
- To save the women from moral crises because of over women population, for example after a war.

The permissibility of polygamy up to four wives is a gift and grace to human from the God. However, there are still requirements if a man wants to marry more than one wife, i.e. treating all wives and children justly, as explained above.

Islam is a sublime religion of humanity. Muslims are required to preach and explain the Islamic teachings to all humankind. However, Muslims will not be able to take charge of these duties unless they have strong countries with all criteria of ideal states and nation, such as strong army, science, industry, agriculture, commerce, etc. During the development of a country, certainly it needs a lot productive workers in business and services fields. A German scientist, Paul Eshmied, has discussed Muslims population and high birth rate among Muslims. He concluded that these facts are the power of Islamic society. In his book "*Islam A Strength in Time Coming*" which was published in 1936, he wrote that the eastern power (Islam) is in the following three factors:

1. Islam as a religion in terms of faith (*Aqidah*), noble guidelines, brotherhood across nations, skin colors and cultures
2. It has natural resources stretching from the Atlantic Ocean and Morocco to the east, including Caspian sea and Indonesia
3. A higher birth rate among Islam community can grow as a powerful strength.
4. The state is a supporter of the religion. When a country should involve in a war, its people would be victims and died, especially men who were sent to fight for the country. Therefore, there should be an agency focusing

martyrs' widows. The best solution is to marry them. In this way, at least they will be protected and amused after losing their husbands.

5. Helping women. It is because sometimes population of women is bigger than population of men especially after wars end. Moreover, the population of women in some countries could also be higher even there was no war. Generally, it is because men do heavy work, therefore their ages are shorter than women.
6. Men's ability for reproduction is larger than women. It is because men have sexual readiness since puberty to old age, while women have menopause.
7. Sometimes a wife suffers from uncured illness, but she is still keen to live with her husband or the husband wants to have healthy children and a wife who can manage household.
8. There are men who have high sex desires. This is due to the condition of their bodies and psychological conditions that they are unsatisfied with a single wife, especially in the tropical areas. It is better for them to have legal marriages of polygamy rather than committing adultery.
9. Good system of polygamy and its implementation in the Islamic world is a great gift for the unity of Muslims in order to avoid social bad and low moral actions. In a society which prohibits polygamy, there are several social problems that can be clearly noticed as follows: rampant crimes and prostitutions so number of prostitute women are higher than married women, single parents' children were born, a variety of physical and sexual diseases, mental disorders and problems, unhealthy relationship between husband and wife.

10. Sometimes there is a mature woman (and still unmarried), or have disabilities and physical impairment. Therefore, the man who has a wife is much possible to marry her.<sup>8</sup>

Justice is an absolute requirement for the polygamy. The absence of justice and an emergency will destruct the future of a polygamous family. In fact, humans tend to love and care one among many, especially a young and beautiful wife. Then this condition will lead a husband to act injustice, arbitrary, and suffering wives. Therefore, it contradicts with the main purpose of marriage to create a peaceful, happy and prosperous family.

## Conclusions

Polygamy always raises pros and cons among Indonesians. Islamic scholars are still debating the pros and cons related to polygamy. Although in Islam practicing polygamy is allowed, it applies absolute requirements, such as the polygamy must be fair or marrying one wife only. However, these requirements are often neglected by people practicing polygamy.

In Indonesia provisions on polygamy has been regulated by Law No. 1 Year 1974 on Marriage, and as a form of positive responses to arrange a husband who wants to marry more than one. In addition, the Compilation of Islamic Law also regulates the provision of polygamy for Muslims.

The provisions contained in the Marriage Acts including rules, procedures, in principle, are in line with the provisions of Islamic law. According to the Acts, the marital system adopted by the Indonesian Marriage Law is monogamy marriage. However, in

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<sup>8</sup> Poligami, <http://id.wikipedia.org/wiki/Poligami>, accessed on 18 December 2016



a special case and circumstance, a husband was given permission to marry more than one wife.

### BIBLIOGRAPHY

- Ghazaly, Abd Rahman, *Fiqh Munakabat*, Jakarta: Kencana, 2000.
- Abdurrahman, *Kompilasi Hukum Islam di Indonesia*, (Jakarta, Akademi Pressindo: 1992.
- Fada, Abdul Razak, *Wanita Muslimah Antara Syari`At Islam Dan Budaya Barat*, Yogyakarta: Darussalam Offset, 2004.
- al-Khayyath, M. Haitsam, *Problematika Muslimah di Era Modern* Erlangga, 2007.
- Hakim, Rahmat, *Hukum Perkawinan Islam*, Bandung: Pustaka Setia, 2002.
- Satria Effendi, M. Zein, *Problematika Hukum Keluarga Islam Kontemporer*, Jakarta: Kencana, 2010.
- Aibak, Kutbuddin, *Kajian Fiqh Kontemporer*, Surabaya: eLKAF, 2006.
- Poligami, <http://id.wikipedia.org/wiki/Poligami>, accessed on 18 December 2016.