



Community Views On Polygamy And Polyandry Islamic Legal Perspective

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ARTICLE INFO

Keywords:

Poligamy, Poliandry, Islamic Law

Date received : 05 Sept 2023

Revision date : 15 Sept 2023

Date received : 10 Oktober 2023

ABSTRACT

Writing this article aims to determine the legal basis of polygamy and polyandry in Islamic law and positive law in Indonesia and the impact of polygamy and polyandry. In this paper using normative juridical approach with various theories of interpretation. Religious court is a judicial institution under the Supreme Court which is very important in dealing with issues regarding disputes related to the religion of Islam. Start from marriage, inheritance, wills, grants, Waqf, zakat, Infaq, Sadaqah, to sharia economy being the duty and authority of the Religious Court in accordance with articles 49 and 50 of Law No.7 Year 1989 on religious courts which has been amended by law No.3 of 2006. In Article 4 paragraph (1) of Law No. 1 of 1974 on marriage, if a husband wants to marry more of a person is obliged to apply to the court in the area of his residence (that is, the Religious Court). Also regulated in the next articles in the submission of polygamy must meet the requirements that have been determined according to the Marriage Act. Regulation on polygamy in positive law seems to make it difficult for husbands to polygamy, while Islamic law itself is not too make it difficult for a husband to polygamy. Therefore, these two laws must be in sync with each other in order to it does not cause a problem in marriage, especially polygamy and what has no rules but occurs is polyandry.

INTRODUCTION

Polygamy is a phenomenon of life that's happening all around us. Polygamy is often heard but not many people can accept this state of affairs. The word polygamy itself derived from the Greek "polygamie", IE poly means many and gamie means men, so the meaning of polygamy is a man who has more than one wife one woman in a marriage. Such a husband may have two wife or more at the same time. Many women refuse polygamy in his family

various reasons to believe. However, there are there are some women who accept the concept polygamy in his family. There are several examples of polygamous behavior supported by wife, such as choosing a future wife or even the first wife who betrothed another woman to her husband. This is usually due to because of their understanding of the dangers an increasing number of women are aging, but unmarried, as well as the negative impact caused to people's lives or a woman's sense of responsibility, her love among his sisters old maid

and widow even rising the state of the economy between make it quiet (Liani et al., 2017).

Polygamy is still a problem controversy, inviting various perceptions of pro and cons. The anti-polygamy movement a number of discrediting and identify polygamy with something negative . Their perception, polygamy is a violation of human rights, polygamy is forms of exploitation and hegemony of men against women, as a form of oppression, act zhalim, betrayal and trivialization women's rights and discrimination against women. Other accusations, polygamy is a form of abuse of dignity women, because they are considered medium to satisfy the turmoil of lust alone. A man who practices polygamy is have committed an act of violence or even suppression of women's rights in its entirety (Tafsir et al., 2022)

The ideal marriage Islam is monogamous, not polygamous. Polygamy with the provision of justice between the wives is not considered to be able to succeeded in doing because in the next verse Allah explains that justice in polygamy can not be done as mentioned in Al-Nisa' verse 129. Thus polygamy for them without denying the historical facts, is simply a " solution temporary " in Islam towards the ideal state of marriage with one wife.

According to the compilation of Islamic law (KHI) and also Law No. 1 year 1974 on marriage Amini writer, polygamy or married more than one person at the same time can be done if meet the main requirement that is able to be fair to wives and children, if it is not possible that these conditions are met then the husband it is forbidden to marry more than one. Permission from the court must also be obtained for a husband who will be polygamous if he wants the marriage has legal force.

While the law of polyandry in the Qur'an or in Islam is clear it is forbidden under Surah al-Nisa ' verse 24. This verse is in context it is lawful for a woman to marry a man who is married to her, and who is in a marriage with her husband. But if that woman is a prisoner of war or a slave woman who has a husband, she with the status of a slave breaks the bonds of marriage with her previous husband until if he has *istibra'*, he can be owned or married to his master (Maswandi, 2020).

Of the two laws of polygamy and polyandry in the Qur'an above at first glance there is inequality in the law between men and women. If polygamy is possible, why can't polyandry be?, this question arises a lot also due to the rapid flow of feminism which demands equality in everything between men and women.

The Prohibition of polyandry is it is a duty imposed by the Shari'ah. If polyandry allowed to occur will make the benefit of the primary level related to the care of the threatened. This is because one woman will relate to many men until there will be mistrust of lineage and lineage his son. Other benefits related to heredity will also be threatened because it poses a risk of bloodshed between men fight over one woman and close the possibility of *kemaslahatannya* others are also threatened. It is also argued that polygamy prone to threaten the benefit of polyandry, then at least benefits associated with polygamy is not so threatened with evidence is not threatened by the existence of polygamy. With the word another benefit *terancamnya* ratio between the practice of polygamy and polyandry, more common in polyandry.

This paper aims to know the legal basis of polygamy and polyandi in law islam and positive law in Indonesia. Because polygamous actors prefer doing it secretly which in turn has implications undesirable and pollute the image of the sublime polygamous marriage itself. polyandry is more *haram* because it destroys offspring .

METHOD

This research is a normative research that uses primary and secondary legal materials, in the form of legislation, literature, and research results relevant to this research. The Data is studied and analyzed through the study of literature to further draw conclusions. Approach taken is the approach of legislation, historical approach and approach to the case. Data analysis is done using descriptive analytical and historical approaches.

RESULTS AND DISCUSSION

A. Polygamy in Islamic law and positive law

In Article 49 of Law No. 7 In 1989, which was amended by law- law No. 3 year 2006 and the second change with Law No. 50 of 2009 states that "the religious court is in charge and authorized to inspect, disconnect, and settle things on the first floor between people who are Muslims in the field: marriage, inheritance, wills, grants, Waqf, zakat, infaq, Sadaqah, and the Shari'ah economy (Reza Fitra Ardhan et al., 2015)

In the explanatory note to Article 49 of the second paragraph explained also that what is meant by "among the people of Islam" are "including persons or legal entities with it self submits itself

willingly the Islamic law on matters be the authority of religious Justice in accordance by the provisions of this article". Later on explanation letter a of this article stated that what is meant by "marriage "is" thing-matters set forth in or under the act law on marriage in force according to the Shari'ah, " among others "permission to marry more than one".

Permission to have more than one wife commonly used is polygamy permit), in elucidation of Article 49 second paragraph as the above stated included in the scope understanding of marriage, and of course be absolute authority of religious courts throughout his subjects were Muslims and marriage according to Islamic law. On the basis of the authority granted by law act as described above, the Religious Court is absolutely authorized to examine and deciding the case of polygamy permit application submitted to him.

What are the reasons and polygamous relationships are defined by the law can be found in Article 4 paragraph (2) and Article 5 Paragraph (1) of the Act Number 1 of 1974, namely: Article 4 paragraph (2) The court referred to in Paragraph (1) of this article only give permission to a husband to be married to more than one:

- a) The wife cannot perform her duties as a wife ;
- b) a person has a disability or illness which can not be cured;
- c) The wife cannot give birth to offspring.

Article 5 Paragraph (1) - to submit appeal to the court as referred to in Article 4 paragraph (1) of the act it must be met the following conditions :

- a) The consent of the wife / wives;
- b) Make sure your spouse is able to meet the needs of women's lives- their wives and children;
- c) There is a guarantee that the husband will apply fair to wives and children them.

Polygamy permit by the Religious Court can when a man's reasons are met alternative reasons in accordance with Article 4 paragraph (2) and the cumulative conditions contained in Article 5 Paragraph (1) of the law No. 1 of 1974 as it is in top.

The formal juridical provisions what is the legal basis for granting permission polygamy is regulated in law Number 1 1974 on marriage, juncto regulation Government Number 9 of 1975, juncto instruction President Number 1 of 1991 on compilation Islamic Law. Law Number 1 year 1974 Article 3 Paragraph (2) juncto Article 43 regulations Government No. 9 of 1975, stating that "The court

may grant permission to man who is married to more than one desired by the parties concerned". In addition, in Article 4 paragraph (1) stated "if a man has more wives of one, as in the case of 3 Paragraph (2) of this law, it is mandatory apply to the court at area where he lives."

Government Regulation No. 9 Of 1975 regulate the provisions of the implementation of polygamy permit in Article 43 states that "if the court finds that sufficient reasons for the applicant to marry more of one, then the court gives permission to marry more from one".

Presidential Instruction No. 1 of 1991 about the compilation of Islamic law provides the legal basis for granting polygamy permits through Article 56 paragraph (3) which states that "Marriage to a second wife, third or fourth without the permission of the court Religion, has no force of law".

Provisions contained in the compilation Islamic law in essence is Islamic law, which in the narrow sense as local Fiqh characterized to-Indonesia an. It is said thus, because the compilation of Islamic law extracted from sources and postulates of Islamic law through an ijtihad and contemporary legal thought.

The purpose of the compilation of Islamic law is the unification of Islamic law Muslims according to legal conditions and needs Indonesian Islamic Society. Legal unification Islam is based on the views of the Islamic jurists on the need for transformation of Islamic law into positive law, so as to create uniformity implementation of Islamic law in overcoming the problems of Islamic life in MUA'amalah field (Achmad Asfi Burhanudin, 2019).

While the principle of marriage in Islam is monogamous. This can be understood from Surah an-nisa ' verse (3), although Allah SWT the opportunity to marry up to four people, but it is subject to conditions the conditions are severe enough to except for certain people. Allah SWT with the phrase "If you are afraid or anxious it's not fair, get married one woman only". The word of Allah SWT Surah verse (3) is always understood as the basis of polygamy. In it's just for the sake of simplicity required to be fair. It is understood contrary to what the Qur'an says, if reveal the complete will be "if you're not sure you can be fair enough only one person, but when you I'm sure it will be fair, marry two or three women four as his wife. "

The Qur'an allows polygamy, but does not specify the requirements anything strictly, except to

give warning: "are you sure you want to will be able to be fair, because fair that is very heavy, Allah as the creator of mankind is well aware that you will not be able be fair, but be careful do not let you be more modest loving some of your wife and ignoring the other".. Thus justly declared Surah an-Nisa ' verse 3 129 polygamy, but the husband's obligation when they're polygamous (Tafsir et al., 2022).

The truth of the Qur'an Surah an-Nisa ' verse 3 and verse 129 is fair religion is not a requirement of law polygamous abilities. Therefore on the basic principle of polygamy is absolute and fair it is an obligation for husbands against their wives and children because of religious demands. In this fair, whether the Single Wife in a monogamous marriage is not required to be fair, just fair capacity in polygamous marriages more heavy, because that's what Allah SWT gives warning to be careful and not intentionally easier or tend to behave more loving a woman by ignoring her the others (Islam & Nurjaman, 2023).

Terms and legal grounds the inner workings that we find in Islamic law today is the result of ijthad students in the field of Ph. D., So they don't closed possibility to be transformed into positive law as Islamic law locally patterned and adapted to conditions and legal needs of Islamic Society local, as in Indonesia, the birth of a compilation Islamic law in order to establish unification Islamic law that applies to Indonesian Muslims.

B. Polyandry in Islamic law and its impact on life.

Mentioned in the book of Fath Al-Mu'in Syarh Qurratil ' Ain, the harmony of marriage is there five, namely: male candidates, candidates woman, Guardian, two witnesses, and shighat (ijab-qabul). As known, when only one rule is broken, then it will cause invalid a charity. In every church, too there are a number of necessary conditions to be fulfilled. As for one of the conditions the woman to be married to is must be free from the bonds of marriage nor has completed the period of ' iddah (Lahaling & Makkulawuzar, 2021).

Islam forbids women to have more than one husband. Law polyandry is also illegal based on the Qur'an and Sunnah. Proposition of the Qur'an, is the word of Allah SWT in QS. In verse 24, the verse reads, "wal muhshanaat min al-nisaa'illa maa malakat aymaanukum " shows that wrong a class of unmarried women by men are women who have married, which in the above verse is called al-muhshanaat.

The meaning of the verse is that when the Prophet (peace and blessings of Allaah be upon him) many prisoners of war have been have a husband, while the people Muslims who fought in the war did not dare to fuck her. Thus the people the Prophet (peace and blessings of Allaah be upon him) asked down with this sentence. In this verse also talk about a child who can married by his master. However, Women married to a slave status decide on the status of her husband and woman it's already broken, so you can married by his master.

Shaykh Taqiyuddin an-Nabhani said in an-Nizham al-Ijtimai Islam forbids marrying women-married woman'. Allah the exalted they are with al-muhshanaat because they are in the care of the Pharisees (pubic) they are by marriage.

From a political point of view, it is clear it is illegal for a woman to remarry, while he is still in a state have a husband. When he married again, the second marriage and so on cannot be justified. Clear a married woman is haram married by another man.

Marriage this polyandry cannot be justified because wife's peace of mind can be disturbed, it is also the honor of a women (wives) will fall. This opinion that peace of mind of wife will be shaken because he must serving more than one husband. From the point of view of any one the wife is the one who should be protected, guarded and respected.

CONCLUSION

Polyandry practice in Indonesia to now this is still happening in various regions of Indonesia. Polyandry in Indonesia itself is influenced by several factors such a lack of understanding of applicable legal process, factors economy, away from the husband, carried away passions the high etc. In view of the law Islam and state law, polyandry it is not compatible with the built-in QS. 24 and in the law. Law No. 1 of 1974 in Article 3 Paragraph (1). Prohibition of poliandri of course, because it brings problems in moral values, health, and psychological impact for polyandrous women, husband, son to society (Syarif, 2016).

In other words, the Qur'an allows polygamy, but does not specify the requirements anything strictly, except to give warning: "are you sure you want to will be able to be fair, because fair very heavy. In the meantime, the conditions polygamy according to Law Number 1 Year 1974 contained in Article 4 paragraph (2) and Article 5 Paragraph (1). The formal juridical provisions what is the legal basis for granting permission polygamy is regulated

in law Number 1 1974 on marriage, Article 3 paragraph (2) juncto Article 43 PP No. 9 of 1975, instruction President No. 1 of 1991 on KHI article 56 verses (3) (Rohbaniah & Muliya, 2011).

In a sociological perspective, polyandry can be cause a lot of problems, especially with family and community, in the environment family, a wife who has more than a husband will get of his family, because he could not be an example for children and families in general, so in the eyes of the husband it doesn't have a price, because she is considered a woman (wife) who can not maintain the dignity of the family, so that it can so by the family will be isolated. Thus case in the community, a a woman who has more than one husband will be judged by society despicable, will even be considered a woman (wife) useless cheapness, because by society he is seen like commercial sex workers (prostitutes), namely women she likes to sell herself to men.

In addition, in terms of relationship / lineage when a woman has a few husband (polyandry), then the relationship or the child's fate will be unclear, namely only the mother of the child can known, while the father did not, though Islam introduces both of them, so that in society it would be a shame if asked where's the father.

Based on the picture/example above it is clear that society does not can accept polyandry, even very I hate it, because next to the in the name of Islam, polyandry also contrary to human nature, law (norm) in force and be conflict with the existing values in society.

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International Asia Of Law and Money Laundering

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