



## **The Harmonization of Polygamy Between Islamic Law and Legal Law in Indonesia**

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**Abstract:** Polygamy as a solution for married couples who have certain problems still leaves a number of problems among Indonesian Muslims. The legal norms governing polygamy have become meaningless with the rise of unrecorded polygamy by certain people who find it difficult to practice polygamy formally in Indonesia. The dichotomy of Islamic law and legal law often triggers this problem, which is always up to date, even though these two norms can be synchronized by adopting the values of benefit which are not partial to husband and wife. This article aims to describe the harmonization of polygamy between Islamic law and legal law in Indonesia. The method this research used was library research with qualitative descriptive analysis. The theory that researchers use refers to several Islamic legal rules and regulations in Indonesia regarding polygamy. The findings of this research are that together between Islamic law and legal law in Indonesia have regulated the permissibility of polygamy with the main requirement being that the husband is able to be fair. This requirement becomes a guideline for wives to allow their husbands to practice polygamy. It is the husband and wife who can measure the fulfillment of these main requirements, and this is where the harmonization of the two regulations in Indonesia lies. The researcher found that the most dominant dichotomy between the two legal norms lies in not allowing female civil servants to become second, third, or fourth wives, as regulated in Article 4 paragraph 2 PP.45/1990. This rule is not in sync with the norms of Islamic law which do not prohibit this from being done. Therefore, it is necessary to revise the state legal norms regarding polygamy for the benefit of all elements of family and society.

**Keywords:** Polygamy, Islamic law, positive law in Indonesia.

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**Abstrak:** Poligami sebagai salah satu solusi bagi pasangan suami istri yang memiliki problem tertentu masih menyisahkan sejumlah permasalahan di kalangan umat Islam Indonesia. Norma hukum yang mengatur poligami menjadi tidak bermakna dengan maraknya poligami tidak tercatat yang dilakukan sejumlah orang tertentu yang menganggap sulitnya melakukan poligami secara formal di Indonesia. Dikotomi hukum Islam dan negara sering menjadi pemicu problem yang selalu up to date ini, padahal kedua norma ini dapat disinkronkan dengan mengambil nilai-nilai kemaslahatan yang tidak parsial bagi pasangan suami istri. Artikel ini bertujuan untuk mendeskripsikan tentang harmonisasi norma hukum poligami berdasarkan hukum Islam dan hukum positif di Indonesia. Metode yang peneliti gunakan untuk menganalisis kedua sumber ini adalah library research dengan analisis deskriptif kualitatif. Adapun teori yang peneliti gunakan mengacu pada sejumlah aturan hukum Islam dan regulasi di Indonesia tentang poligami. Hasil temuan riset ini adalah secara bersama, hukum Islam dan hukum positif di Indonesia telah mengatur kebolehan berpoligami dengan persyaratan utamanya bahwa suami mampu berlaku adil. Persyaratan ini menjadi pegangan bagi istri untuk mengizinkan suami berpoligami. Pasangan suami istrilah yang mampu menakar terpenuhinya persyaratan utama ini, dan inilah letak harmonisasi kedua regulasi di Indonesia. Peneliti menemukan dikotomi yang paling dominan kedua norma hukum ini terletak pada tidak diizinkan PNS wanita menjadi istri kedua, ketiga, atau keempat, sebagaimana regulasi pasal 4 ayat 2 PP.45/1990. Aturan ini tidak sinkron dengan norma hukum Islam yang tidak melarang hal tersebut untuk dilakukan. Oleh karena itu, diperlukan revisi terhadap norma hukum negara tentang poligami demi kemaslahatan semua pihak baik keluarga maupun masyarakat.

**Kata Kunci:** Poligami, Hukum Islam, Hukum Positif di Indonesia.

## **Introduction**

Islamic law relating to marriage has been implemented since the rise of Islam in Indonesia. The implementation has been supported by the establishment of several legislations and government regulations such as, regulation number 1 / 1974, regulation number 7 / 1989, Presidential Instruction Number 1 / 1991, Government Regulation Number 10 / 1983, and Government Regulation Number 45 / 1990.

Several rules governing marriage as mentioned above become a formal reference for Indonesian Muslims in performing marriages, which starts from the registration process until the stage of registration of the marriage by the Religious Affair Office (KUA). In addition, those formal rules also regulate the practice of polygamy for civil servants in particular. For instance, in Government Regulation number 45/1990, Article 4, 1st paragraph states: "a civil servant who wants to marry more than one wife should obtain prior permission from the authorities".

This article shows that the permissibility of polygamy *for civil servants required prior permission from superiors*.

Religion (*Shari'a*) allows the practice of polygamy but a man was limited to only four wives and requires them to be fair in material things such as adequate food, clothing, and residence or in immaterial things without distinguishing between rich wives and indigent wives, which descended from the high over the bottom classes (Sabiq, 1980:171). The legal reference for the practice of polygamy as contained in the Qur'an Surat an-Nisa (4): 3 and 129, several hadith of the Prophet, and *ijma'* (consensus) of the jurists.

In line with the explanation above, Yanggo said that Islam allows the practice of polygamy, with requirements to deal justly with all wives. Requirements to be fair are a part of respect for women. If he can not deal justly with all wives, he will be punished sinfully. If the husband can not treat all wives well, it means he did not do *mu'asyarah bi al-ma'ruf* to his wives, as commanded by Allah in the Qur'an Surat an-Nisa '(4): 19 "And hang out with them inappropriate".<sup>1</sup>

Based on the description above, it is understood that there is no requirement in *Shari'ah* for a husband to have permission from anyone (wife, official state, supervisor, etc.) when he wants to practice the polygamy. It is only requires a man to deal justly with his wives. Textually, this religious rules is contrary to the state rules which specifically regulates about the legal practice of polygamy for civil servants with some requirements that have to be filled (as the formulation of Clause 4, verse 1 Government Regulation number 45/1990 as mentioned above). Ironically, when a civil servant breaks the states rules, he will be severe sanctioned based on the Government Regulation number 30/1980 on civil servant disciplinary rules.

The dichotomy of religion rules and state rules above, cause the Indonesian Muslims, both civil servant sand non-civil servants still practice polygamy secretly (without taking the formal procedures that regulated by the state).<sup>2</sup> Therefore, this study becomes interesting to be investigated as inputs for academics, government, and the Muslims of Indonesia in reviewing the rules of polygamy, so that the benefit that appropriate to *syar'iah* can be realized.

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<sup>1</sup> Huzaemah Tahido Yanggo, 'Poligami Dalam Perspektif Hukum Islam', n.d., <http://www.pesantreniiq.or.id>.

<sup>2</sup> There are many cases the practice of polygamy in society (especially among civil servants) carried out without going through the procedure defined by the state, for example polygamy by some lecturers of IAIN Sunan Gunung Jati Bandung (Read: the results of research Sumpeno. A., et.al 'Kritik Poligami Dalam Kompilasi Hukum Islam; Praktik Berpoligami Dosen IAIN Gunung Djati Bandung' volume 03 nomor 01, 2004. In this regard, as has also been reported by the Ministry of Administrative Reform and Bureaucratic Reform of Personnel Advisory Board that in 2013 there were 370 civil servants who practice polygamy and 200 civil servants have gained sanctions diverse forms, from mild to severe (<http://www.rmml.co>).

Previous studies related to this research were conducted by Sam'ani et.al on Pragmatism of Polygamous Family In Muslim Society: Beyond Islamic Law<sup>3</sup>. The results suggest that “pragmatic motives exist in polygamies, such as the husband's economic stability accompanied by lust satisfaction, the woman's needs for social-economic improvement, and the need for comfort and security. The lack of power among women in relation to men of high social and economic status causes them to agree to be the second wife (selir) despite the sirri marriage status, which is officially unregistered and sometimes unknown even to their own family”. The research by Ibrahim et.al about *Prosedur Poligami di Malaysia (Analisis Akta Undang-Undang Keluarga Islam Wilayah-Wilayah Persekutuan)*<sup>4</sup>, their research show that “the differences in polygamy procedures in the federal territory and in the state of Terengganu that are regulated in this deed and amandement are the influence and authority of each state to determine requirements for polygamy procedures in each respective state. The polygamy procedure for the federal territory has strict requirements for a polygamous husband with the wife's permission before the polygamy application is carried out, while the the state of Terengganu eases the polygamy requirements and does not need the wife's permission and only needs to go to the shariah court to obtain a polygamy application form”. Another study conducted by Rismawati and Muhammad Abral on Polygamy Marriage: Legal Culture, Optional Political Identity and Marital Status Dilemma (A Case Study in Pekalongan)<sup>5</sup>, this research shows that “the legal culture of the actors in either obeying or disobeying the rules of polygamy was subjective. However, the majority is diseobedient because they tend to break the rules, for instance by doing polygamy with sirri marriage. Sirri marriage is a political identity of life choice because of various considerations on both juridical and non-juridical ones. This condition has implications for the legal status dilemma of polygamous marriages. A marital status is considered legal only when the marriage is officially held and on the contrary, it is considered illegal in sirri condition. This polygamy marriage also has an impact on the legal status of the husband, wives and children in a family”.

Meanwhile Alidar and Rauzhatul Jannah research on *Penyelesaian Poligami Ilegal melalui Jalur Hukum Pidana menurut Hukum Islam: Studi Kasus*

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<sup>3</sup> Sam'ani et.al, 'Pragmatism of Polygamous Family In Muslim Society: Beyond Islamic Law', *Jurnal Samarah* Volume 7, No. 1, March 2023 (n.d.).

<sup>4</sup> Ibrahim, et.al., 'Prosedur Poligami Di Malaysia (Analisis Akta Undang-Undang Keluarga Islam Wilayah-Wilayah Persekutuan).' *Jurnal Samarah*, Volume 2 No. 1. Januari-Juni 2018 (n.d.).

<sup>5</sup> Rismawati Shinta Dewi and Muhammad Abral bin Abu Bakar, 'Polygamy Marriage: Legal Culture, Optional Political Identity and Marital Status Dilemma (A Case Study in Pekalongan)' *Jurnal al-Ihkam*, Volume 14, Nomor 2, 2019. (n.d.).

*di Pengadilan Negeri Jantho*<sup>6</sup> shows that “the cases of illegal polygamy processed through criminal law channels as long as the article in the criminal code regarding the crime of origin of marriage is not replaced by another law and regarding illegal polygamy cases that have resolved by the Jantho district court within a span of three year (2014-1016) there were five cases which consisted of two decisions husband and wife whose copy of the decision is separate and one husband. As for legal consequences of carrying out criminal proceedings in polygamy cases illegal is more physical like prison, however the legal consequences very depending on its use for example used as authentic evidence in terms of job for civil servants and the decision can be used by the previous wife as evidence divorce lawsuit. If viewed through islamic law, polygamy remains illegal considered valid according to religion as long as it fulfills the pillars and conditions marriage, it's just that the state considers it valid if it fulfills state administration.

Further research from Halim and Ariyal Hikam Pratama on *Poligami Tidak Tercatat di Pengadilan Agama di Indonesia dan Mahkamah Syariah Malaysia*.<sup>7</sup> The results suggest that “Indonesia, with its civil law system, stipulates strict conditions for polygamous marriage. However, the IDR 7,500 fines for unregistered polygamy sanction is sought to be irrelevant today. Malaysian law, with its common law system, determines illegal polygamy as a crime and subject to 1000RM fine and six months' imprisonment. This research aims at comparing the consequences of unregistered or illegal polygamy in Indonesian and Negeri Selangor, Malaysia. This is also to show the effectivity of the regulations of polygamy in both countries. This study finds that in the case of Indonesia, illegal polygamy only leads to the revocation of marriage, and there is no further sanction for the perpetrators. As a consequence, this violates women's rights, especially the rightful wives. On the other hand, those who commit illegal polygamy in Negeri Selangor - Malaysia face the sanctions of fines and imprisonment. Besides, judges will further investigate the loss suffered by the victims or the rightful wives”. Thus, when compared with this research, there are different directions and substance as the focus is more on examining harmonization of the legal norms of polygamy based on Islamic law and legal law in Indonesia, although it seems that these two norms are different in terms of the rules, even though the synchronization of the two is important to study qualitatively.

This research used qualitative research methods that employ descriptive analysis by library research. Sources of data were primary data obtained directly from the sources of norms of islamic law and legal law in Indonesia. Then data

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<sup>6</sup> EMK. Alidar and Rauzhatul Jannah, 'Penyelesaian Poligami Ilegal Melalui Jalur Hukum Pidana Menurut Hukum Islam: Studi Kasus Di Pengadilan Negeri Jantho' Jurnal Samarah. Volume 3 No. 1. Januari-Juni 2019 (n.d.).

<sup>7</sup> Abdul Halim and Ariyall Hikam Pratama, 'Poligami Tidak Tercatat Di Pengadilan Agama Di Indonesia Dan Mahkamah Syariah Malaysia' Jurnal Yuridis. Vol. 7 No. 1, Juni 2020 (n.d.).

analysis was carried out in three stages i.e: Data reduction by summarizing and selecting only the main points, then looking for themes and patterns. Data display in the form of narrative text of the research substance. And conclusions from the results of data reduction and display.

### **Polygamy Islamic Regulation Perspective**

Before the existence of Islam, polygamy<sup>8</sup> (*Ta'addud al-Zaujāt*) has been conducted all the nations. Asia, Africa, Europe, even America. Polygamy practices in some nations did not know the limitation of wives, including among the Arabs nation did not know the limitations of polygamy, when Islam comes, this perfect religious gives the restrictions of polygamy maximally four wives with the requirements a husband able to doel justly. The rise of Islamic religion gives the limitation against the practices of polygamy without limits and contradict with the humanity.

Al-Atthar stated that there are two verses of Al-Qur'an as the foundation of polygamy and Islam regulations,<sup>9</sup> there are: QS. An-Nisa verse 1-4 and QS. An-Nisa' verse 127-130 as follow:

QS. an-Nisa' ayat 1-4:

*"O mankind! Be dutiful to your Lord, who created you from a single person (Adam), and from him (Adam) He created his wife (Hawwa, Eve), and from them both He created many man and women; and fear Allah through whom you demand (your mutual rights), and (do not cut the relations of) the wombs (kinship). Surely, Allah is ever an all-watcher over you.*

*And give unto orphans their property and do not exchange (your) bad things for (their) good ones; and devour not their substance (by adding it) to your substance. Surely, this is a great sin.*

*And if you fear that you shall not be able to deal justly with the orphan girls then marry (other) women of your choice, two or three, or four; but if you fear that you shall not be able to deal justly (with them), then only one or (slaves) that your right hands possess. That is nearer to prevent from doing injustice.*

*And give to the women (whom you marry) their Mahr (obligatory bridal-money given by husband to his wife at the time of marriage) with a good heart; but if they, of their own good pleasure, remit any part of it to you,*

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<sup>8</sup> Historically, the man who first had polygamy practices is prophet Ibrahim (Abraham) who married as the first wife Sarah and Hajar (Hagar) as the second wife. Nasaruddin Umar, *Argumen Kesetaraan Jender: Perspektif Al-Qur'an* (Jakarta: Paramadina, 1999, p. 94, n.d.).

<sup>9</sup> Abdul Nasir Taufiq al-Atthar, *Poligami Ditinjau Dari Segi Agama, Sosial, Dan Perundang-Undangan* ((Jakarta: Bulan Bintang, 1976, p. 103-105)., n.d.).

*take it, and enjoy it without fear of any harm (as Allah has made it lawful)”.<sup>10</sup>*

QS. an-Nisa' ayat 127-130:

*“They ask your legal instruction concerning women, say: Allah instructs you about them, and about what is recited unto you in the book concerning the orphan girls whom you give not the prescribed portions (as regards Mahr and inheritance) and yet whom you desire to marry, and (concerning) the children who are weak and oppressed, and that you stand firm for justice to orphans. And whatever good you do, Allah is ever all-aware of it.*

*And if a women fears cruelty or desertion on her husband's part, there is no sin on them both if they make terms of peace between themselves; and making peace is better. And human inner-selves are swayed by greed. But if you do good and keep away from evil, verily, Allah is ever well-acquainted with what you do.*

*You will never be able to do perfect justice between wife's even if it is your ardent desire, so do not incline too much to one of them (by giving her more of your time and provision) so as to leave the other hanging (i.e. neither divorced nor married). And if you do justice, and do all that is right and fear Allah by keeping away from all that is wrong, then Allah is ever oft-forgiving, most merciful.*

*But if they separate (by divorce), Allah will provide abundance for everyone of them from His bounty. And Allah is ever all-sufficient for His creatures' needs, all-wise”.<sup>11</sup>*

Al-Atthar permissibility of polygamy is not the essential aims verse of al-Qur'an, there are three reasons concern about these: first, the practices of polygamy known on the historical religious before Islam (Jews and Christians) and also carried out by Arab's nation indefinitely, thus is not required specific rule allows the polygamy. Second, there was not one single verse fully and textually describes permissibility of polygamy, verse of polygamy is part of a biggest theme study about orphan problems, supposed that polygamy is one of essential provisions, perhaps specifically called on certain verse without including other biggest theme. Third, editor expressions commonly used verse of Al-Qur'an to declare permissibility of an action '*Lajunaha 'alaikum* / there is no harm for

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<sup>10</sup> Muhammad Muhsin Khan and Muhammad Taqiuddin al-Hilali, *Interpretation of the Meanings of the Noble Qur'an in The English Language*. (Riyadh-Saudi Arabia: Dar as-Salam Publications, 1996, p.115, n.d.).

<sup>11</sup> *Ibid.*, p. 139-140.

you' or '*uhilla lakum* / permitted of you, it has to put in the biggest frame for essential purposes, namely to save the orphans and widows.<sup>12</sup>

Since the downs QS an-Nisa (4), specifically on verse 2 and 3, ash-Shabuni outlines that Urwah bin Zubair asked to Aisyah concerning the words, Aisyah answered: O my nephew, these verse concern on orphan girls maintenance of his guardian, and has mixed his wealth with the guardian wealth. The guardians interesting with her wealth and the beauty, then he intends to marry her without paying a dowry justly such as paying a dowry with other women, due to dishonest intentions he banned to marry the orphan girls, except he pays a dowry justly and worthy as to the other women. Rather than he perpetuates dishonest intention, he advised to marry other women that pleased him.<sup>13</sup>

Az-Zuhaili explained the (guardian) undertakes the tyranny against the orphans such acts of unjustly in giving a dowry for them (orphans), to marry them, feel uncomfortable as a guardian fore them, and also worries to undertake the tyranny among women in general, subtract the amount of your wives, and confine only four, if you scared doing the tyranny among wives, restricted only one.<sup>14</sup>

Related with explanations above: Imam Syafi'i allows for muslim has only four wives, and banned exceeds that amount, his opinions based on QS an-Nisa (4): 3 and prophet instructions by some hadis, including hadis about a man who converted to Islam his names Gaylan ibn Salamah has ten wives, and Propeth commands to preserve the four and divorce others (t.th:131).<sup>15</sup> Further he explained to doel justly among wives related to physical affairs regarding the turn of visit and gives a monthly living, while regarding the justice, only Gods (Allah) knows, it's impossible for someone to doel justly among their wives as required by QS An-Nisa (4): 129. Means, justice in love based on feelings can not be realized or impossible to deal justly .<sup>16</sup>

Shihab described that on QS. An-Nisa (4): 129<sup>17</sup>, husbands given clearances for justice, the justice demanded is not absolute. These verses

<sup>12</sup> Al-Atthar, *Poligami ditinjau dari segi Agama*, p. 106-107.

<sup>13</sup>M.Ali Ash-Shabuni, *Tafsir Ayat-Ayat Hukum Dalam Al-Qur'an*. (Bandung: al-Al-Ma'arif, 1994, p. 734., n.d.).

<sup>14</sup> Wahbah az-Zuhaili, *Al-Fiqh al-Islamiy Wa Adillatuhu, Juz VII*. (Suriyah-Damsyik: Dar al-Fikr, 1405 H / 1985 M, p. 167., n.d.).

<sup>15</sup> Muhammad ibn Idris as-Syafi'i, *Al-Umm, Juz.5*, Beirut: Dar al-Fikr, t.th p.131. The history illustrates polygamy practiced by some companions, read books of tafseer (commentary) of Ibn Kathir, *Tafsir Al-Qur'an al-Azhim, Juz.III* (Ghazah: Mu'assasah Qurtubah, 2000, p. 341., n.d.).

<sup>16</sup> *Ibid.*, p.172.

<sup>17</sup> QS.an-Nisa (4): 129 down regarding the prophet fears his treatment among his wives, mentioned in history of Aisyah: Prophet divided in turn among his wives, he deal justly,and pray: O God, this is the appropriate division that I was able to (master), theThou denounced what you are good at, while I did not overcome it " Abu Dawud Sulaiman bin al-Asy'as as-Sijistani, *Sunan*

explained; husbands nowise be justly, namely can not realized in your heart continuously on term of loves among wives, due to love beyond human capabilities to arrange it. Hence, deal justly his best on material things, when your heart loves among one of your wives, arranged as well as possible your feelings, do not inclined only for wife loves, then let others, did not treated as a wives and not divorced through free to marry and doing what is desired.<sup>18</sup>

Jurist (*fuqaha*) agreed the permissibility of polygamy to deal justly, having ability to feed among wives, and only for wives<sup>19</sup> not exceed. Suggested by Imam Malik bin Anas, Imam Syafi'i, as-Sarakhsi, Ibnu Mas'ud al-Kasani, scholars Hanafiyah, and Ibnu Qudamah (scholars of Hanabilah). Al-Jaziri outlined the equal right on sexual needs and affection among wives not an obligation who conduct the polygamy, due as a human kind, capable to deal justly on sharing of loves and affections is instinctive (human natures), something reasonable when someone interesting only ones, such a things beyond the limit of human control.<sup>20</sup>

Qardhawi permissibility of polygamy, Muslims have to deal justly among wives, both in foods, beverages, dresses, livelihoods. For those who did not convinced the requirements, banned to conduct polygamy, (as a clue QS. An-Nisa: 3).<sup>21</sup> In line with this arguments, Shihab states: these verses is not make the regulation of polygamy, due to polygamy known and implemented among religious, and costume of communities prior the down of this verse, and did not obligate the polygamy and recommended it, he talked the permissibility of polygamy is a small door and may only be passed by highly needs and complicated requirements.<sup>22</sup>

Az-Zuhaili describes that shari'a set two conditions to do polygamy, first: justice among wives. means in term of the form of material, a mountly living, favorable treatment, and stays, it's based on QS an-Nisa: 3. Allah commands for

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*Abi Dawud, Juz.IV* (Beirut-Libanon: Dar al-Kutub al-Ilmiyah, 1416/1996, p. 648), n.d.). By declined inverse 129 QS. an-Nisa, then the Prophet felt calm.

<sup>18</sup> M. Quraish Shihab, *Tafsir Al-Misbah, Volume 2*, Jakarta: Lentera Hati, 2002 p. 606-607. n.d.

<sup>19</sup> Banned to have more than four wives can be seen in al-Mahdi al-Wafi, *Fiqh al-Fuqaha al-Sab'ah*, Juz II, Kairo: Maktabah at-Turath al-Islamiy, 1419 H/1999, p. 91). Related to this, Abu Habieb explained that Muslims agreed that a Muslim of an independent, puberty, intelligent, 'affif (guard of honor), healthy, and not mahjur' alaih, permitted to get married along with four independent woman, not adulterers, and healthy, And are not lawful for man to marry more than four wives, without a mistake of anyone among Ahlul-Islam Sa'di Abu Habieb, *Ensiklopedi Ijmak* (Jakarta: Pustaka Firdaus, 2006, p. 554, n.d.). Translated by: K.H.A. Sahal Machfudz and K.H. Mustofa Bisri.

<sup>20</sup> Abdurrahman Al-Jaziri, *Kitab Al-Fiqh 'Ala al-Madhahib al-Arba'Ah. Juz.IV* (Beirut-Libanon: Dar al-Kutub al-Ilmiyah, 1410 H/1990 M, p. 213., n.d.).

<sup>21</sup> Yusuf Qardhawi, *Halal Dan Haram Dalam Islam* (Surabaya: Karya Utama, t.th, P.220., n.d.).

<sup>22</sup> Shihab, *Tafsir Al-Misbah*, p. 341.

muslims to have only one. Second: gives a living. Syari'a banned marriage except capable to facilitate the marriage and cost, it's based on hadith.<sup>23</sup> "O youth, whoever among you capable to get married, then he should to get married".<sup>24</sup>

Syaltut stated, command for husband to deal justly is a moral-personal. It's mean, husband measures the capability to deal justly, and this case can not be intervened by anyone to prevent his desire conduct the polygamy.<sup>25</sup> Further, he stated polygamy regulation is permissible (*Mubah*), polygamy allowed when the absence of prosecution among wives, recommended for husbands to have ones, it's clear, permissibility of polygamy assured the justice and absences of prosecution among wives.<sup>26</sup>

Related with explanation above, Philips and Jones stated: the importance to deal justly regarding time and prosperity can not be stressed due to main requirement specified in marriage. In general a man weighs and assesses daily interaction among his wives. unfortunately, modern Muslims under influence of foreign culture misunderstood Al-Qur'an verses on monogamy and abolition of polygamy, the equivalence referred in surat an-Nisa' (4): 3, "...If you fear that you will not be able to deal justly with them then only one...". Related time and money, the equivalence referred in surat an-Nisa' (4): 129; "you never to deal perfect justice among wives although it is your greatest desire".<sup>27</sup>

### Polygamy States Regulation Perspective

The rules of polygamy found in Republic Indonesia regulations number 1/1974 on marriages. RI government regulations number 9/1975 concerning the rules of implementation UU number 1/1974, president RI instruction number 1/1991 on Islamic laws compilation in Indonesia. Subsequent, the relevant rules on polygamy for civil servants has been arranged specifically in the government regulation number 10/1983 on marriage permits and divorces for civil servants. Government regulations number 45/1990 the change of government regulation 10/1983.

Essentially, the principle of marriages in Indonesia is monogamy. Polygamy justified based on the wife permissions and court.<sup>28</sup> As stated in clause 3 verse 1 and 2, constitutions number 1/1974: (1). A husband may only has one

<sup>23</sup> az-Zuhaili, *al-Fiqh al-Islamiy...*, p. 168.

<sup>24</sup> Abu Husain al-Qusyairy an-Naisaburi Muslim bin Hajjaj, *Shahih Muslim, Syarah an-Nawawi, Juz II*, (Beirut: Dar Ihya at-Turas al-'Arabi, 1415 H /1995 M, p. 1018., n.d.).

<sup>25</sup> Mahmud Syaltut, *Al-Islam, Aqidah Wa Syari'ah*, (Kairo: Dar al-Qalam, 1966, p. 192., n.d.).

<sup>26</sup> *Ibid.*, p. 269.

<sup>27</sup> Abu Ameenah Philips, *Polygamy in Islam* (Riyadh: International Islamic Publishing House, 2005, p. 62., n.d.).

<sup>28</sup> The polygamy procedures are: husband proposes the application to the court, then awaiting trial for question and answer process, investigation of evidences, witness, wife and future wife agreed nothing to lose. Hereafter, wait for the garanted adjudications by court.

wife. A wife may only have a husband. (2) The court gives the clearance for husbands to have more than one if desired the parties concerned.

In this case, the court gives the clearance for husbands to have more than one, when a wife could not carry out its obligation, disability of a wife or an incurable disease. A wife could not give birth. ( Clause 4 verse 2 UUP and clause 57 KHI ). Hereafter, Clause 5UUP provides the requirement for husband to have more than one wife as follow: (1). Submit the applications to the Islamic court as refererd on clause 4 versus 1 UUP have to be met the requirement: (a) wives approval. (b) husband assurance to ensure life necessities wives and their children. The requirement a and b encapsulated on clause 58 KHI. However, the requirement for Cregulated on KHI clause 55 verse 2 namely: the main requirement possess than one wife, a husband deal justly for their wives and childrens. On clause 3 added, when the first requirement does not carried out, a husband forbidden to have more than one.

Specifically for the civil servants the rules of polygamy refers to PP number 10/1983 marriage permits divorces and PP number 45/1990 the changes on PP number 10/1983. On clause 4 PP 45/1990 is formulated: (1) a men (civil servants) which will take more than one wife, have to obtain a permission from official governments. (2). A women (civil servant) did not allowed be second, third,forth. (3) a permission as defined on versus 1 submitted in writing. (4) a permission as defined on verse 3, have to publish detailed reason underlying a permit to have more than one wife.

For the civil servant against the rules on clause 4 verse 1 PP.45/1990 as mentioned above, did not report his second,third,fourth, within a period of one year, included the marriage were held, then penalties based on PP number 30/1980 and PP number 53/2010 regarding of the civil servant disciplines<sup>7</sup>. Female civil servant violation the provisions clause 4 verse 2, discipline penalties dishonorable suspension as a civil servants (clause 15 verse 1 and 2 PP. 45/1990).

Reffering to the polygamy which are contained on UUP and implementation of the rules, and listed on KHI. Government regulations number 10/1983 and number 45/1990 comfort with Islamic law regulations. Some of these regulations above did not contained of syara' provisions both in Al-qur'an and hadis, and opinion of the jurists.

Comprehending the comparison between Islamic laws and sate regulation of polygamy contained in the table below:

Islamic regulations	State regulations
1. The principle of marriage is monogamy (QS. An-Nisa: 3)	1. The principle of marriage is monogamy (UUP article 3 paragraph 1).

<p>2. A husband who has more than one wife did not apply the applications to everyone.</p>	<p>2. A husband who has more than one wife, he must apply the application to the court in local areas.</p>
<p>3. Polygamy is permitted with the requirements: the justice existent for wives and provides for a monthly living (QS. An-Nisa:3, Hadis Nabi Muhammad SAW, and jurist opinions</p>	<p>3. Polygamy is permitted with the requirements: a. Alternative term. A wife is unable to carry out its obligation, disability, or an incurable disease. Doesn't have a child (childbirth). UUP clause 4 verse 2 and KHI clause 57.</p>
<p>4. Takes more than one wife in equal time. Limited to fourth. (QS. An-Nisa: 3 and prophet commands to Gaylan ibnu Salamah has ten wives, the commands to maintain the fourth and separated others.</p>	<p>4. Takes more than one wife in equal time limited to fourth. (KHI clause 55 verse 1).</p>
<p>5. Permissibility of polygamy applies to the human kinds (Muslims).</p>	<p>5. permissibility of polygamy applies to the Muslims, but for the civil servants have to asks permission to the court. Female civil servant is not permitted be second, third, fourth. (clause 4 verse 1 and 2 PP.45/1990)</p>
<p>6. Disciplinary penalties formulated on clause 6 PP.30/1980, level of penalties comprise of: 1. Mild disciplinary punishments consist of: oral reprimand, written reprimand, unsatisfied statement in writing. 2. Medium disciplinary penalties consist of: postponement regularly salary increases for one year, salary reduction amounted to one regular</p>	<p>6. Civil servants who will conduct the polygamy and did not get permission for his marriages a maximum period one year. Then charged one of the penalty based on PP number 30/1980. Female civil servant is second/third/fourth wives. Then charged of the discipline penalties dishonorable discharge.</p>

<p>salary for one year, postponement promotion for one year. 3. Three severe disciplinary penalties consist of: lower demotion for one year, exemption from positions, and honorable discharge as a civil servant and dishonorable discharge as a civil servant. 6. There are no penalties for Muslims conducting the polygamy as long as is able to deal the justly. (QS. An-Nisa: 3 and Hadis.)</p>	
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### Measuring the Wisdom of Polygamy

Islam as a religion (*Rahmatan lil' alamin*) arranged various rule of the human kinds. The rules related the lives of human beings, the purpose is security, and peace for the human kinds. Asy-Syatibi outlined that Syaria's is legal laws from Allah which binds *Mukallaf* basis the action, expression and *i'tiqad* overall. According to him, the syari'at degradation to obtained welfare and avoid the ugliness of human kinds. (*jalbul mashahih wa dar'ul mafashid*) means: the overall of Allah legal laws is welfare for human kinds. Asy-Syatibi outlines three of provisions namely: (essence/primer) instead of (essence/seconders) and (complement).<sup>29</sup>

The essential significant (*al-mashlahah ad-dharuriyah*) is the significant human need. Will not standing tall without protection. Including these groups are: religious preservation (*hifdz ad-din*), Souls (*hifdz an-nafs*), Mind (*hifdz al-aql*), offspring (*hifdz an-nasl*), and Wealth (*hifdz al-mal*), Asy-Syatibi (t.th: 10). Preserve the descent (*hifdz an-nasl*). Islam offers the way out for men delivering of his desire conduct the marriages. Through marriage then the descent will preserve and care its holiness.

According to Az-Zuhaili, syari'at offers polygamy due to various general and specific causes. The general cause is: to overcome the amount of women than men. Event in usual conditions. Increasing amounts of women. as it happened in South Europe. Since world wars, occurred in German since the first world

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<sup>29</sup> Imam Abu Ishaq Asy-Syatibi, *Al-Muwafaqat Fi Ushul al-Syari'ah, Juz.II* (Beirut: Dar al-Kutub al-Islamiyah, t.th, p. 6-8., n.d.).

wars. Polygamy system required socially and morally which contained the benefits and mercies. And maintain of the women from degradation and deviation, social needsto get kinships and spread of da'wah. Meanwhile, the specific cause of polygamy is: Sterility and disease or misbehavior. Amount of hatred and increase sexual ability in a few of men.<sup>30</sup>

Appropriate with the description above. Philips and Jones outlined: women exceeds the number of men in the level of birth, and live longer than men. Today women in America able to survive on level of 77.9 years old, and men only reached 70.9 years old. Based on the record center of health statistics, crimes and wars is the highest level among men, and the highest level of sexuality. Explains that: insufficient of men have only one wives, and many of women who be a mistresses, friends and girlfriends only to meet the psychological needs (sexual desire), leave their psychological needs to deviate in a relationship debase.<sup>31</sup>

According to Qardhawi, Islam has already measure the human needs. both individually and socially, and relevant causes. Existing some of people who want a children but their wives are barren (reproductive organs) or another reason. Glories for wives and better for husbands to get married for second time who able to give him children (offspring) without undermining his first wife? And some of men who have a great biological desire found the frigid wife or another factor. It would be better he marriages for second time and obtain sexual satisfying in a religiously permitted than engaging in prostitution.<sup>32</sup>

Sabiq states that the lesson of polygamy isa gift from Allah and his grace for the human kinds and restrict only four wives. Islam as a religion of humanity obligated for Muslims conduct the development of healthy communities. The power of men to produces the larges children than women. Somestimes of the barren wife, and the pain there are no hope a cure. The existent slogan of men who has a huge sexual urges, dissatisfied only one.<sup>33</sup>

Regarding the lesson of polygamy, Al-Jurjawi outlines that there are some lesson of polygamy: first; permissibility of polygamy and restrict only four wives indicated that human kind consist of four components. Second: the four restrictions appropriate with four kinds of livelihoods (administrations, trades, agricultures, and industries). : Third a husband who has four wives implies that he has leisure of time three days a moment of affectionate.<sup>34</sup>

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<sup>30</sup> Az-Zuhaili, *al-Fiqh al-Islamiy...*, p. 169.

<sup>31</sup> Abu Ameenah Philips and Jones, *Polygamy in Islam*, p. 48.

<sup>32</sup> Qardhawi, *Halal dan Haram...*, P. 222.

<sup>33</sup> Sayyid Sabiq, *Fikih Sunnah, Jilid 6* (Bandung: al-Ma'arif, 1980, p. 179., n.d.).

<sup>34</sup> Ali Ahmad al-Jurjawi, *Hikmah Al-Tasyri' Wa Falsafatuhu* (Beirut: Dar al-Fikr, t.th, p. 10., n.d.).

Based on the explanation above, comprehending of polygamy is a problem solution for men and women. The increasing women populations. A men who has a huge sexual urges, women menopause occurrence, and other problem. Supposed to overcome which do not contradict with religious values. For women, the legal marriage by polygamy will raise the dignity of women and the glory of life, and he gain the right legally. In addition, polygamy contained the element of graces as well as maintains a woman from deterioration and deviation.

### The Polygamy Analysis

When a man conducts the polygamy, then his business is not just a private affair but it's would be religion and state matter. Due to the religion and states has been arranged polygamy permission. Syari' (legislator) arranged polygami permission which are contained on QS. An-Nisa (4); 3, and relevant hadis, provided that not exceeding than four wives. Meanwhile the state arranges polygamy through marriage constitution, KHI (Compilation of Islamic law in Indonesia), and several government rules.

Religion allows polygamy for men with strict requirement namely deal justly and sharing of his times, and when he capable of doing justice then he able to marriage only one. As stated on holly Qur'an, QS. An-Nisa (4): 3 "...*If you fear that you should not able to do justly (with them), then only one....*". Related with sharing of times for wives as stated on hadis. Nabi (prophet) actually when he wants to travel, then hold a draw among his wives.<sup>35</sup>

State regulations on polygamy, the state allows polygamy with the strict requirement than religion through court procedures and eligible on state regulation, the requirement on clause 5 verses 1 UUP and clause 55 verses 2, clause 58 verses1 KHI (see chapter 10 and 11), notonly a husband willing to deal justly, but also wife agreement and the court permission for civil servant. Thereby, when one of these conditions are not fulfilled, then the states will not register the wedding event. Ironically, on clause 4 verse 2 PP.45/1990 formulated: female civil servants not allowed serve as second, third, fourth wives.

The analysis between religion and state rules and even the practice of polygamy community, it's could be said dichotomy between religion and state rules. Implicated to the polygamy secretly, inflicted to the family problems and even troubling the community. The existing problems related to the polygamy state rules in Indonesia must be revised and changed appropriate with religious norms, reality context and recent communities. By carrying out this revision, the harmonization of two legal norms (Islamic law and legal law) related to polygamy is a solution that brings beneficial values to families and society.

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<sup>35</sup> Abi Abdillah Muhammad bin Ismail al-Bukhari, *Shahih Al-Bukhari, Juz VI* (Beirut: Dar al-Kutub al-'Ilmiyah, 1412/1992, p. 916., n.d.).

Polygamy's is an option for husband depending on the situations and conditions. In case he able to do justly and sharing of times, gives of a monthly living and house and other material things. When he unable and does not have the capability on the material things, he banned to do the polygamy. Therefore, state rule complicates for someone to do the polygamy have to be reformulated, so that the religious rules are not overlooked, and the benefit values could be realized.

In this case, the society have to change the mindset against Allah and Prophet regulations through permissibility of polygamy in Islam, due to basically everything's has been set, either in the prohibition, instruction, permissibility to do something's and other regulations. Implicated that (*maqhasid syari'ah*) for the human kinds it's self. The jurist (*fuqaha*) agreed Allah set and bring syari'at regulations for the human kinds, certainly has a purpose and comprise the favor for human kinds in the word and hereafter.

## Conclusion

Polygamy is an option for a man (husband). He is allowed to do it if he wishes too. As long as he is able to be fair in providing for his family, sharing time, and things related to the material, then the religion allows polygamy. The state (Indonesia) allows a husband to marry more then one wife with the requirements of being fair, getting the consent of his wife, having official permit, and through the procedures in court. If we compare between religious and the state rules on polygamy, it can be said that the state rules are stricter than the rules of religion. Therefore, the rules related to polygamy in the state law needs to be revised by promoting the values of religion which are full of mercy and welfare for all (husband, wife, and the community). *Maqhasid Shari'ah* concerning the permissibility of polygamy should be considered by the government in formulating the rules of polygamy. In this case, the implications of various formulations of clauses related to the rules of polygamy for Muslims in Indonesia should be considered by lawmakers (regulators) to create harmonization of the two applicable legal norms in Indonesia.

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