

Polygamy in Hermeneutics and Maqashid Sharia Approach

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ABSTRACT

Polygamy is defined as the practice of a man who marries more than one woman, but with a maximum limit of four wives. The restriction on the number of wives in Islam is based on the consideration that more than four wives are considered deviant from the moral and beneficial principles regulated in sharia. This research uses the library research method, which is a research that focuses on written data sources, with the research results that polygamy is a form of emergency solution that is given in certain social conditions and in accordance with the purpose of sharia' if carried out in accordance with the principles of Islamic sharia.

Keywords: Polygamy, Hermeneutics, Sharia Maqashid.

ABSTRAK

Poligami diartikan sebagai praktik seorang laki-laki yang menikahi lebih dari satu perempuan, namun dengan batas maksimal empat orang istri. Pembatasan jumlah istri dalam Islam didasarkan pada pertimbangan bahwa melebihi empat istri dianggap menyimpang dari prinsip-prinsip moral dan kemaslahatan yang diatur dalam syariat. Penelitian ini menggunakan metode penelitian *library research* (penelitian kepustakaan), yaitu yang berfokus pada sumber data tertulis, dengan hasil penelitian bahwa poligami merupakan bentuk solusi darurat (*emergency solution*) yang diberikan dalam kondisi sosial tertentu dan sesuai dengan tujuan syara' jika dilakukan sesuai dengan prinsip-prinsip syariat Islam.

Kata Kunci: Poligami, Hermeneutika, *Maqashid Syariah*.

INTRODUCTION

Polygamy is a term derived from the Greek language which is two fragments of words namely poly or polus which means "many" and gamein or gamos which means "marriage" or "marriage". If these two words are combined, it will refer to the meaning of marriage of more than one partner. So it can be understood that polygamy means the practice of marriage with more than one person, potentially even an unlimited number.(Nuroniyah, 2023)

In fiqh munakahat, polygamy is defined as the practice of a man marrying more than one woman, but with a maximum limit of four wives. The limitation of this number is based on the consideration that if it exceeds four wives, it will be seen as a deviation from the principles of goodness established by Islamic law with the aim of ensuring the benefit and balance in married life between husband and wife.(Ghazaly, 2008).

In Islamic marriage law, a man is allowed to have more than one wife at the same time. However, this permission is not mutla, but is limited by a number of certain provisions and conditions. Polygamy can only be justified if it is based on legitimate objectives and is carried out in accordance with the terms and conditions set by the

Sharia. The practice of polygamy is not allowed if the motives are wrong, but must be directed towards noble goals. In addition, the perpetrators of polygamous practices are required to have sincere intentions and moral readiness to uphold justice to all of their wives both in outward and inward aspects. (Ghazaly, 2008).

The legal basis for the permissibility of polygamy is the word of Allah in Q.S al-Nisa' verse 3 which reads:

وَإِنْ خِفْتُمْ أَلَا تُقْسِطُوا فِي الْيَتَامَىٰ فَإِنْ كَحُوا مَا طَابَ لَكُمْ مِّنَ السِّنَاءِ مُنْتَهٰى وَثُلَثٌ وَرَبِيعٌ فَإِنْ خِفْتُمْ أَلَا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكْتُمْ ذَلِكَ أَدْنَى أَلَا تَعْوَلُوا

If you fear that you will not be able to do justice to (the rights of) orphaned women (when you marry them), marry any (other) woman you like: two, three, or four. But if you fear that you will not be able to do justice, (marry) only one or a female slave whom you own. That is closer to not doing injustice.

Limiting the number of wives in the practice of polygamy in Islam is done by considering the potential harm that might arise, which is considered that the mudharat will be greater than the maslahat. In the sense that humans as creatures are vulnerable to negative whispers, especially the temptation of the devil who has the potential to develop bad traits such as heart, jealousy and complaining easily, which makes these characters a source of disharmony in polygamous families. (Zuhdi, 1988)

Indonesian marriage law also provides polygamy opportunities for a husband. Although Indonesia actually adheres to the principle of monogamy in its marriage law. The principle of monogamy adopted by Indonesian marriage law is mostly said to be the principle of open monogamy which still provides opportunities for polygamy if there are reasons justified by law. The implementation must also be carried out in accordance with the applicable regulatory procedures, including the submission of an application to the court in accordance with the applicable regulatory provisions in Law Number 1 Year 1974 concerning Marriage.

In addition, there are also regulations governing polygamy, which are contained in the Compilation of Islamic Law. It is contained in Article 55 to Article 56 which are compiled in Chapter IX under the title "Having more than one wife".

METHODS

This research uses the library research method, which focuses on written data sources, such as manuscripts, books, articles, magazines, newspapers and other documents as the main source (Rahmadi, 2011).

RESULTS AND DISCUSSION

Polygamy Results in Hermeneutic Approach

Literally, hermeneutics means interpretation. Etymologically, the term hermeneutics comes from the Greek hermeneuin which means to interpret. This term refers to a mythological figure in Greek mythology known as Hermes (Mercurius). (Husaini & Al-baghdadi, 2007) Terminologically, hermeneutics is the science and theory of interpretation that aims to explain the text, both in terms of its objective and subjective characteristics.(Putra, Saputri, & Diana, 2021).

Among Muslims, the history of hermeneutic or tafsir thought began in the first century Hijriyah, along with the revelation of the Qur'an. The Prophet played a role as a mubayyin (explanation giver) who explained to his companions the meaning and content of the Qur'an, especially related to verses that were difficult to understand or

had vague meanings, so that the meaning of the Qur'an could be understood by the general public, including those who did not have expertise and skills in Arabic. (Mu'min, 2011).

The legal basis of polygamy in Islam is explained in Q.S. al-Nisa'/4: 3 which reads:

وَإِنْ خَفْتُمْ أَلَا تُفْسِطُوا فِي الْيَتَامَىٰ فَإِنْ كِحُوا مَا طَابَ لَكُمْ مِّنَ النِّسَاءِ مَتْنَىٰ وَثُلَّتَ وَرِبَاعَ فَإِنْ خَفْتُمْ أَلَا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكْتُمْ ذُلِّكَ أَدْنَى أَلَا تَعْوَلُوا

If you fear that you will not be able to do justice to (the rights of) orphaned women (when you marry them), marry any (other) woman you like: two, three, or four. But if you fear that you will not be able to do justice, (marry) only one or a female slave whom you own. That is closer to not doing injustice.

وَإِنْ خَفْتُمُ الْأَنْفَسْطُوا فِي الْيَتَامَىٰ فَإِنْ كِحُوا مَا طَابَ لَكُمْ مِّنَ النِّسَاءِ مَتْنَىٰ وَثُلَّتَ وَرِبَاعَ

"And if you fear that you will not be able to do justice to (the rights of) orphaned women (when you marry them), then you should marry one. rights) of orphaned women (when you marry them), then marry (other) women whom you please; two, three or four." This means that if there are orphans under the care of one of you and he fears that he will not be able to provide a fair dowry, then look for other women. For they are plentiful, and Allah will not make it difficult for him.

(وَإِنْ حِيفْتُمُ الْأَنْفَسْطُوا فِي الْيَتَامَىٰ)

"And if you fear that you will not be able to do justice to an orphan girl if you marry her," the orphan girl referred to is an orphan girl in the care of her guardian who is joined to her property." But her guardian loves her wealth and her beauty. Then, her guardian wants to marry her without being fair in the dowry. So, they are forbidden to marry her unless they can do justice to these women and provide the best dowry for them. And they are commanded to marry any women they like other than them (orphaned women).

Allah says (مَتْنَىٰ وَثُلَّتَ وَرِبَاعَ) "Two, three or four." This means that you should marry any women you like besides them. If you like two, if you like three, and if you like four.

His words (فَإِنْ خَفْتُمْ أَلَا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكْتُمْ أَيْمَانُكُمْ) will not be able to do justice, then marry only one or the slaves you own." That is, if you are afraid of having many wives and not being able to do justice to them.

His words (ذُلِّكَ أَدْنَى الْأَنْعَوْلَوْا) "That is closer to not doing wrong." The authentic meaning is that you should not do wrong (A. bin M. bin A. bin I. Al-Sheikh, 2004).

The Asbab an-Nuzul of this verse can be seen from the tradition narrated by Imam Bukhari that 'Abdul 'Aziz bin 'Abdullah told us, and Ibrahim bin S'ad narrated from Shalih bin Kaisan, from Ibn Shihab who said that 'Urwah bin Az-Zubayr once asked 'Aisha about the words of Allah: "And if you fear that you will not be able to deal fairly with orphaned women when you marry them. " 'A'ishah explained: "O my nephew, what is meant by an orphan girl in this verse is an orphan girl who is in the care of her guardian and has wealth and is physically attractive. The guardian is attracted to her because of her wealth and beauty, and wants to marry her, but does not give her a fair dowry as is customary for other women. Therefore they are forbidden to marry this orphaned woman unless they are able to do justice to her, especially in terms of dowry.

Instead, they are encouraged to marry another woman of their choice if they are unable to do so.(A. bin M. bin A. bin I. Al-Sheikh, 2004).

Polygamy existed long before Islam came and was a common practice in various ancient civilizations such as Greece, China, India, Babylon, Assyria, and Egypt. In those days, there was no limit to the number of wives, with some kings having hundreds to tens of thousands of wives. In the teachings of earlier prophets such as Prophet Moses, polygamy was not prohibited, and holy books such as the Torah and the Gospels do not explicitly prohibit the practice. Abbas Al-'Aqqad states that Judaism and Christianity allow polygamy as practiced since the time of Prophet Abraham. Some early Christian figures, including St. Augustine and King Valens, supported polygamy, and after the time of King Justinian there was a ban.

In Persia, although the teachings of Zoroaster prohibited polygamy, the practice of keeping concubines was allowed in order to produce male offspring. The Romans and Greeks also practiced polygamy extensively, and in Athenian society, women had low status and could be married without limit. Even in Sparta, women could have more than one husband. Similar practices were also found in pre-Islamic Arab culture, including among Prophet Muhammad's companions who had multiple wives.

In Islamic history, the verse on polygamy was revealed after the Battle of Uhud, where about 70 of the 700 Muslim soldiers died. This left many women widowed and many children without a father. To respond to this social crisis, Islam allows polygamy as a solution to protect widows and orphans, provided that it can be fair.(Aldin, 2023)

According to Musdah Mulia, the verse that is often used as a basis to justify the practice of polygamy should actually be understood in a broader context, namely as an effort to protect women's rights and achieve gender justice. She emphasized that polygamy is not a normative teaching recommended by Islam, but rather a form of emergency solution given in certain social conditions, especially in the early days of Islam when many women were widowed due to war. In this situation, polygamy was allowed as a form of social responsibility to protect women who were economically and socially vulnerable.

Thus, according to Musdah, the verse cannot be used to legitimize the practice of polygamy in social conditions that have changed significantly like today. She also emphasized that the essence of Islamic teachings is justice, and if polygamy has the potential to cause injustice, then the practice is contrary to the basic principles of Islamic law itself.(Mulia, 2007).

It can be concluded that the revelation of Q.S. al-Nisa' verse 3 which is used as the legal basis for polygamy, when viewed from its asbab al-nuzul, it can be understood that this verse was revealed to limit the number of wives in ancient times, which initially a husband could have more than four wives then after the revelation of this verse the number of wives allowed for polygamy is only up to four wives and it is given the condition that the husband is required to be fair, both outwardly and bathiniyah.

Polygamy in the Maqashid Sharia Approach

Etymologically, the term Maqashid Sharia consists of two words, namely Maqshid is the plural form of Maqshad, which means intention or purpose. In a terminological sense, Maqashid is the noble goals contained in every command of Allah and Sharia which means the path to the source of water. Sharia essentially means a straight path or a path traveled by a waterfall. Based on these various explanations, it can be concluded that Maqashid Sharia is the purpose or intention behind the proscription of a law in Islam.(Suhaimi, Rezi, & Hakim, 2023).

Maqashid Sharia is the main objective of the application of Islamic law aimed at protecting and improving human welfare. (Aqil & Trigiyatno, 2023) The purpose of shara' in determining its laws has 5 objectives, namely:

1. Maintaining religion (hifz al-din)

Adhering to a religion is a specialty for every human being that must be fulfilled because it is religion that can touch the human conscience. The more religious values are maintained, the more civilization is maintained and vice versa, the further away from religious values, the more civilization will be destroyed (Sikti, 2019).

Polygamy can be positioned as an instrument that serves to maintain and protect Muslimah's faith. Contemporary phenomena show that there is a tendency for some Muslim women to marry men who have low religious quality, or even different religions, for reasons of love and worldly lust. Such marriages are prone to various problems, ranging from differences in principles in practicing religious teachings to disagreements in child education methods. This has the potential to threaten the purity of the faith of the wife and her next generation (Auda, 2015).

Therefore, if polygamy is practiced by men who have moral integrity and adequate scientific competence, it will be one of the shar'i solutions in maintaining the spiritual resilience of Muslim families and ensuring the continuity of Islamic values in the midst of the challenges of the times.(Al-Badawi, 2011).

2. Preserving the soul (hifz al-nafs)

The human soul reflects the combination of values and the reality of life. Actions that endanger the soul and have an impact on social order must be prevented immediately. Protection of the soul is guaranteed by sharia m, local and international law.(Sikti, 2019)

Polygamy, which is prescribed in Islam, can be used as a form of prevention to prevent a person from deviant behavior such as adultery. Within the framework of maqasid al-syari'ah, efforts to avoid adultery are included in the category of protection of the soul (hifz al-nafs), because adultery has the consequence of damaging the emotional stability, health, and social structure of the people. Adultery is a highly reprehensible act in Islamic law, because it not only violates sharia norms, but also has serious social and moral damage. This action can undermine honor and eliminate the self-esteem of the perpetrator, both individually and in the context of family and society.(Auda, 2015)

If polygamy is practiced in accordance with sharia and with high moral responsibility, then polygamy can serve as one of the shar'i solutions to maintain personal honor and prevent wider moral damage.

3. Preserving the mind (hifz al-'aql)

The preservation of reason in this context is in the form of educational aspects and intellectual development that can be obtained through the husband's role as an educator in the family. If the husband has sufficient financial resources and adequate understanding of Islamic education, then he can guide his wives in obtaining correct knowledge. So that polygamy can play a role in maintaining the mind. Moreover, polygamy that is carried out responsibly and in accordance with Sharia can improve the intellectual quality of Muslim women and at the same time realize the objectives of Islamic law in maintaining the function of human reason and rationality (Auda, 2015).

4. Preserving offspring (hifz al-nasl)

One of the essential functions of polygamy is to prevent adultery, which often leads to the birth of children without a nasab relationship with their biological father. This lack of nasab can cause various problems, both from social, psychological, and

administrative aspects. Thus, through polygamy, Islam provides a way to maintain lineage and maintain family order in accordance with the sharia principle of preserving offspring (Auda, 2015).

5. Maintaining property (hifz al-mal)

Within the framework of maqasid al-syari'ah, polygamy can also be understood as a mechanism to preserve and manage property (hifz al-mal) wisely. A husband who has the luxury of sustenance can share his excess wealth through a form of social responsibility such as marrying women in need, especially widows who have dependent children.

Social phenomena show that economic pressure often pushes some women with such conditions to fall into deviant practices such as prostitution. So that in this context, polygamy can function as a preventive and rehabilitative alternative, provided that the husband is able to be fair and fulfill physical and mental maintenance fairly.(Auda, 2015).

The discussion in the research article explains the results obtained from the research. The author compiles, analyzes, evaluates and interprets and compares the latest findings with the findings of existing research (at least 5 references). Avoid repetition of sentences from the introduction, methods and results. The number of discussion paragraphs should be longer than the introduction. The consistency of the article from the title to the discussion must be considered. Research weaknesses and suggestions for further research development are described in this section.

CONCLUSIONS

In a hermeneutical perspective, surah al-Nisa' verse 3 which explains the permissibility of polygamy is not an absolute command, but a contextual response to the social conditions at that time, especially to protect the rights of orphans and women. The verse begins with the importance of justice towards orphans, then continues with the permissibility of marrying up to four women if they are able to do justice. However, if it is feared that it cannot be fair, then the command is to marry only one person.

With a hermeneutical approach, it can be understood that the main purpose of this verse is not to encourage polygamy, but to emphasize justice and protection of the weak. Polygamy is not a normative teaching recommended by Islamic teachings, but a form of emergency solution given in certain social conditions, especially during the early days of Islam when many women were widowed due to war. In this situation, polygamy was allowed as a form of social responsibility to protect women who were economically and socially vulnerable.

In the perspective of maqasid al-syari'ah, polygamy can function as a strategic means to safeguard five main principles of sharia. First, from the aspect of hifz al-din (safeguarding religion), polygamy plays a role in protecting the faith of Muslim women, as long as it is practiced by men who have sufficient integrity and religious knowledge capacity. Second, polygamy can prevent the practice of adultery and maintain personal chastity, so it is included in hifz al-nafs (guarding the soul). Third, in the context of hifz al-'aql (preservation of reason), a knowledgeable and well-established husband can provide good education to his wives. Fourth, in terms of hifz al-nasl (preservation of offspring), polygamy helps prevent adultery which can give birth to generations without a clear lineage. Fifth, polygamy is also relevant in hifz al-mal (preservation of wealth), because it can be a means of channeling excess sustenance to women in need, such as widows with children.

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