

Justice of a Husband who Performs Polygamy in Classic, Contemporary, and Indonesian Perspectives

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Abstract

Polygamy in classical views, contemporary views and Indonesian perspectives, is an urgent matter to be known as a treasure trove of Islamic thought. The implication is clearly illustrated that in fact the problem of classic marriage terms has been experiencing developments that are considered by culture and trends to be appropriate for the times. Hadith about polygamy requires interpretation and correlation with the cultural context of marriage that has occurred in various parts of the world, especially in the Arabian Peninsula in the pre-Islamic era, past and present. Through this study, it will reveal polygamy in classic, contemporary and Indonesian dimensions. The method in this study is a literature approach, by examining classic books, books and articles related to polygamy. The results of the study indicate that the scholars agree on justice as a condition for allowing polygamy and for those who violate the terms of justice in polygamy can be subject to sanctions, but there are differences regarding the form of sanctions that can be imposed. In the classical perspective the threat is understood as a threat to morality, while in the contemporary and Indonesian perspective the threat is understood as a threat that can be subject to *ta'zir* punishment in the form of criminal or civil sanctions, it's just that the legislation governing marriage in Indonesia does not regulate sanctions for violation of the law.

Poligami dalam pandangan klasik, pandangan kontemporer dan perspektif Indonesia, menjadi hal urgen untuk diketahui sebagai khasanah pemikiran Islam. Implikasinya digambarkan dengan jelas bahwa ternyata masalah pernikahan istilah klasik selama ini telah mengalami perkembangan yang dianggap oleh budaya dan tren adalah sesuai zamannya. Hadis tentang

poligami membutuhkan interpretasi dan korelasi dengan konteks budaya pernikahan yang sudah terjadi di berbagai belahan duniam, khususnya di semenanjung Arab pada masa sebelum Islam datang, masa dahulu dan masa sekarang. Melalui kajian ini, akan mengungkapkan poligami dalam dimensi klasik, kontemporer dan keindonesiaan. Metode dalam kajian ini merupakan pendekatan kepustakaan, dengan menelaah kitab-kitab klasik, buku-buku dan ertikel yang berkaitan dengan poligami. Hasil penelitian menunjukkan bahwa para ulama sepakat tentang keadilan sebagai syarat dibolehkannya poligami dan bagi pihak yang melanggra syarat keadilan dalam poligami dapat dikenakan sanksi, namun terjadi perbedaan mengenai bentuk sanksi yang dapat dikenakan. Dalam perspektif klasik ancamannya dipahami sebagai ancaman moralitas, sedangkan dalam perspektif kontemporer dan keindonesiaan ancamannya dipahami sebagai ancaman yang dapat dikenakan hukuman ta'zir baik berupa sanksi pidana maupun perdata, hanya saja dalam perundang-undangan yang mengatur tentang perkawinan di Indonesia tidak mengatur tentang sanksi atas pelanggaran undang-undang tersebut.

Key words: *Justice; polygamy; classic; contemporary; Indonesian.*

Introduction

The institution of marriage already exists along with the existence of social interaction between two types of human beings, namely men and women. Since the time of Prophet Adam (pbuh), marriage institutions have been held to regulate the household system of their children and grandchildren. Marriage rules strive to create harmonious and just social relations between husband and wife and social relations between two families. Of course, the existence of a marriage institution is necessary in order to clarify the status of kinship relations, in which the family must be responsible for the needs of the dependent family. In addition, through the institution of marriage, the status of children can be clearly identified, so that both parents, especially the father's side, must be responsible for their survival.

Without the institution of marriage, the relationship between men and women will take place freely. And this not only creates difficulties in managing the continuity of offspring, but can also cause other negative impacts, for example the emergence of HIV disease, AIDS, and others. The legal order is also disrupted if marriage norms are not implemented. Because the laws related to marriage, for example the legal status of children, inheritance rights, rights and obligations of husband and wife and others are integrated in the institution of marriage.

In the development of human civilization, the marriage system also experienced dynamics. The system of polyandry, polygamy and monogamy has colored the behavior of men and women in history. Polyandry and polygamy have

been practiced for a long time, even the two systems include the first system after the first generation of Adam's descendants. And the two systems have long been embraced by humans in various parts of the world, not only in the ignorant Arab region. The Romans, Greeks, Jews, Persians and others had adopted this system.¹

Because the system of polyandry and polygamy has been deeply rooted in human culture, the arrival of Islam has provided a renewal that emphasizes justice, benefit, and guarantees the continuity of dignified offspring. The arrival of Islam does not bring rigid rules, but Islam only provides clear directions, so that the relationship between men and women is always adjusted to the benefit and conditional and temporal justice. So that the marriage norms regulated in Islam are dynamic, open to reinterpretation and adapted to the justice of the masses.

Today the monogamy system tends to experience strengthening. Feminism and gender movements have played a major role in socializing the monogamy system. However, in the midst of the strengthening of the monogamy system, there have also been issues of anti-formalization of the marriage institution promoted by the liberal atheist school. According to them, the existence of the institution of marriage actually creates the shackles of human freedom in fulfilling the needs of their sexual instincts. The state does not need to interfere in marriage matters, because this matter is a personal right that cannot be disturbed.

After the polygamy committed by the famous preacher, Ust. Abdullah Gimnastiar, who is better known as AA Gim, the issues of polygamy have strengthened again, controversy has become a polemic. Therefore, the current discourse on polygamy has become actual to be studied with various approaches (points of view). One method that is no less important in dealing with polygamy is the maudhu'i hadith method.

Therefore, this study will discuss the theme of polygamy in the study of maudhu'i hadith with a classical, contemporary and Indonesian perspective. This study aims to clearly reveal the method of using the polygamy system proportionally as one of the solutions in regulating male and female relations, regulating family relations, and regulating social life.

Discussion

Definition and Purpose of Polygamy

In the Encyclopedia of Islamic Law, it is stated that "polygamy" is a marriage bond in which one party marries/has several members of the opposite sex at the

¹ Mahmud Mahdi al-Istanbuli, *Nisa' Haul al-Rasul wa al-Rad 'ala Muftarayat al-Mustayriqin*, Translated by Ahmad Sarbaini entitled, *Istri-Istri dan Putri-Putri Rasulullah serta Peranan Beliau terhadap Mereka* (2nd Print; Bandung: Irsyad Baitus Salam, 2003), p. 35.

same time. Although in the above definition the phrase "one of the parties" is found, however, because the term woman who has many husbands is known as polyandry, what is meant by polygamy here is a marriage bond, in which a husband has several wives (polygyny) as partners. his life at the same time.²

At first the term polygamy was used in the sense of the number of wives or husbands in a marriage bond. Because the term etymologically consists of the words "poly" which means many, and "gamy" which means a partner. Then the term polygamy has narrowed its meaning which means the same as polygyny. And at the same time experiencing the development of meaning, the meaning of which includes bigamy (having two people), because in Islamic legal discourse the definition of polygamy is having more than one wife (two and above).

According to Rasyid Ridha, the wisdom or purpose of polygamy is as follows:

1. To obtain offspring for husbands who are fertile and wives who are barren.
2. To maintain the integrity of the family without divorcing the wife even though the wife cannot carry out her obligations as a wife, such as having a disability or a disease that is difficult to cure.
3. To save people who are hypersexual from adultery and moral crises, such as a wife during menstruation or childbirth, the husband's wishes can still be channeled. It's another case if the wife is hypersexual, while the husband is unable, then the wife can ask for *fasakh*.
4. To save women from moral crises, such as in a country where there are more women than men. For example due to prolonged war and so on.³

Normative Foundation

1. The Qur'an Surah al-Nisa': 3

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَدْنَىٰ أَلَّا تَعُولُوا

The translation:

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

² Abdul Azis Dahlan, *Ensiklopedi Hukum Islam*, Vol. 4 (1st Print; Jakarta: Ichtiar Baru van Hoeve, 1996), p. 1186

³ Abdul Azis Dahlan, *Ensiklopedi Hukum Islam...* p. 1187

Acting fairly is proportional treatment in serving the wife, such as clothes, places, turns and others that are outward in nature. Islam allows polygamy under certain conditions. before the revelation of this verse polygamy already existed, and was also practiced by the Prophets before the Prophet Muhammad. According to the majority of scholars, this verse limits polygamy to four people.

2. Hadith of the Prophet (pbuh):

2262 - أَخْبَرَنَا عَمْرُو بْنُ عَاصِمٍ حَدَّثَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْخَطَمِيِّ عَنْ عَائِشَةَ قَالَتْ : كَانَ رَسُولُ اللَّهِ -صلى الله عليه وسلم- يَقْسِمُ فَيَعْدِلُ وَيَقُولُ : « اللَّهُمَّ هَذِهِ قِسْمَتِي فِيمَا أَمْلِكُ فَلَا تُلْؤَمْنِي فِيمَا تَمْلِكُ وَلَا أَمْلِكُ » (سنن الدارمي ج 6 / ص 484)

The meaning:

It was narrated from 'Amr bin 'Ashim from Hammad bin Salamah from Ayyub from Abi Qilab from Abdullah bin Yazid al-Khathamiy from Aisha, he said: The Messenger of Allah (pbuh) divided the rations (for his wives) fairly and prayed, "O Allah, this is my share of what what I have, do not torture me with what You have, while I do not have "(narrated from al-Darimiy).

This hadith is in line with the verse above, which shows the need to treat wives fairly. Thus, the Prophet Muhammad pbuh prayed to Allah SWT to be given the ability to be fair in distributing wealth to his wives to the extent of their ownership ability.

3. Legislation

In the laws in force in Indonesia, relating to marriage, it explicitly legalizes (allows) polygamy. As regulated, among others, as follows:

a. Law Number 1 of 1974 concerning Marriage.

Article 3 paragraph 2

"The court can give permission to a husband to have more than one wife if the parties concerned wish."

b. Presidential Instruction Number 1 of 1991 concerning KHI

Article 55

- 1) Having more than one wife at the same time is limited to four wives.
- 2) The main requirement is to have more than one wife, the husband must be able to treat his wives and children fairly.

c. Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants.

Article 4.paragraph 1

"A male civil servant who will have more than one wife must first obtain permission from the official."

Classical, Contemporary and Indonesian Perspectives

1. A threat to an unjust husband against his wife

Imam Abu Dawud narrated the following hadith:

حَدَّثَنَا أَبُو الْوَلِيدِ الطَّيَالِسِيُّ حَدَّثَنَا هَمَّامٌ حَدَّثَنَا قَتَادَةُ عَنْ النَّضْرِ بْنِ أَنَسٍ عَنْ بَشِيرِ بْنِ نَهْيَكٍ عَنْ أَبِي هُرَيْرَةَ: عَنْ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ كَانَتْ لَهُ امْرَأَتَانِ فَمَالَ إِلَى إِحْدَاهُمَا جَاءَ يَوْمَ الْقِيَامَةِ وَشِقْقُهُ مَائِلٌ

The meaning:

It was narrated from Abu al-Walid al-Thayalisiy from Hammam from Qatadah from al-Nadhr bin Anas from Basyir bin Nahik from Abi Hurairah from the Prophet SAW said: whoever has two wives, then he is more inclined to one of them, then he will come on the Day of Resurrection with sloping shoulders.

The hadith was narrated using eleven channels of *sanad* in 6 books of hadith, some of which are the same and some are different. Thus, it means that the hadith has been narrated *bi al-ma'na*, *gairu bi al-lafzi*.

After criticizing the *sanad*, it was found that the continuation of the *sanad* was clearly visible from *mukharrij* (Abu Dawud) to Rasulullah (pbuh). The continuation of the *sanad* is marked by a meeting between the student and the teacher. The narrators also have good personality and intellectual capacity.

There are eleven hadiths that are similar to the hadith criticized in Sunan Abu Dawud. All the chain paths meet at Hammam - Qatadah - al-Nadhr bin Anas - Basyir bin Nuhaik - Abu Hurairah. Thus, it can be stated that the *sanad* is authentic, so that it can be used as a guide or proof.

The criteria that the author uses to assess the authenticity of the hadith are as formulated by Salahuddin al-Adabiy, as quoted by Bustamin M. and Isa H.A. Salam, namely:

- 1) Does not contradict the instructions of the Qur'an
- 2) Does not conflict with stronger hadith instructions
- 3) Does not conflict with common sense, senses, history and
- 4) The arrangement of the statements shows the characteristics of the prophetic word.⁴

This hadith is not found to be in conflict with any of the criteria for the validity of the hadith mentioned above, instead it is relevant to other *naqli* arguments, including:

The Qur'an Surah al-Nisa': 3

⁴ Bustamin M and Isa p. A. Salam, *Metodologi Kritik Hadis* (1st Print; Jakarta: Raja Grafindo Persada, 2004), p. 63-64

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ
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Likewise with the arguments of *aqli*, there is no contradiction with the content of the hadith's *matan*. Even today's social phenomena and humanistic facts prove the truth of the contents of the hadith, so that the hadiths about actual polygamy return to further explore their meaning in solving household and social problems.

In the book '*Aun al-Ma'bud Syarah Sunan Abi Dawud*' it is explained that what is meant by two wives in this hadith is more than one, two, three or four. What is meant by leaning towards one side is unfairness between his wives. It discriminates against them. This hadith is the argument for the obligation of husbands to equate their wives and discriminate against them. As the word of Allah SWT in QS. al-Nisa': 129. what is meant by *fa lā tamil* in this verse is in terms of the distribution of birth and giving infaq not in terms of love, because the issue of love cannot be controlled by humans.⁵

Threats to husbands who do not act fairly to their wives in terms of fulfilling their wife's needs other than love from the classical perspective are more of a threat to morality. Sanctions that are threatened against husbands who commit injustice are more filled with reprimands that result in sin, not yet clearly directed to the loss of part of the husband's rights to his wife as compensation for the violation of the wife's rights. This statement can be proven by looking at the reviews of books written in the classical period.

Justice in a household revolves around fulfilling equal and balanced mutual rights and obligations between husband and wife. Thus, the threat of sanctions for husbands or wives who are unfair should be the same and balanced. This should not only be focused on one party. In fact, the discourse on this issue in the classical books is not yet balanced. Practical threats, both material and physical, against *nusyuz* wives are extensively discussed in classical books, while threats to *nusyuz* husbands are not found to be discussed, let alone threats.

⁵ Muhammad Syamsu al-Haq al-'Azim Abadiy Abu al-Thib, *Aun al-Ma'bud Syarah Sunan Abi Dawud*, Chapter 3 (2nd Print; Beirut: Dar al-Kitab al-Ilmiyah, 1415 H), p. 241

As an example of this imbalance, it is mentioned in the classic book *Kitab Badai'u* written by al-Kasani, that the wife's rights which are the sumi's obligations are 3 (three), namely; 1) get a dowry, 2) get a living and a place to live, 3) get fair treatment from a polygamous husband. Meanwhile, there are 6 (six) rights which are the obligations of the wife, namely; 1) seeing and touching his wife from head to toe, 2) getting pleasure from all members of the wife's body, 3) keeping the wife to stay at home, 4) being a lineage of children born to his wife, 5) obeying the wife if the husband wants fulfilled his biological needs, 6) give teaching (material or physical sanctions) if his wife violates the prohibition.⁶

Ibn Taimiyah as quoted by Umm Salamah, explains that classical scholars are still debating whether the husband is obligated or only sunnah in providing a living (birth) and turn (inner) for his wives.⁷ This statement proves the existence of a discriminatory perspective in the classical era.

In a contemporary perspective, it is clear that there is a shift in understanding, interpretation and orientation when discussing the issue of polygamy. There has been an emphasis on the need to prioritize the balance of fulfillment of rights and obligations. For example, the contemporary cleric, Yusuf Qardhawi, in explaining the hadith mentioned above, stated that what is meant by tending or leaning which is threatened by the hadith is to underestimate the rights of the wife, not merely the inclination of the heart. Because justice in the inclination of the heart cannot be carried out.⁸ Yusuf Qardhawi in his statement used the term "wife's rights" which implies an obligation for the husband. Even though in such a classical period, some scholars considered it not an obligation for husbands.

In the contemporary era, the trend of women's and gender's emancipation appears to rectify this discriminatory classical perspective. Contemporary scholars no longer dispute that the meaning of rights for a wife is an obligation for a husband that must be fulfilled and has implications for sanctions if neglected. Sanctions are also understood not to be limited to morality, but can be both material and physical, for example imposing fines on husbands who violate the rights of their wives, or prosecuting husbands who commit abuse.

From an Indonesian perspective, it is almost the same as in other countries where the majority of the population is Muslim, where violations of the rights of

⁶ Alauddin Abi Bakar bin mas'ud al-Kasaniy, *Kitab Badai'u al-Shanai'u fi Tartib al-Shara'i*, Chapter 2 (1st Print; Beirut: Dar al-Fikr, 1417 p. /1996 M.), p. 490

⁷ Ummu Salamah binti Ali al-Abbas, *al-Intishar li Huquq al-Mu'minat* (1st Print; Yaman: Dar al-Atsarm 1423 p. /2002 M), p. 137-138

⁸ Muhammad Yusuf Qardhawi, *al-Halal wa al-Haram fi al-Islam* translated by Muammal Hamidy entitled Halal dan Haram dalam Islam (1st Print; Jakarta: Bina Ilmu, 1993), p. 261

one party, the husband or wife, are threatened with strict, clear and formally regulated sanctions (in legislation). If one examines the history of marriage legislation that regulates the rights and obligations of husband and wife, it appears that there has been a continuous development of strengthening the rights of wives, as a response to balance the position of husband and wife in a household.

To prevent unfair treatment by husbands and to balance the rights and obligations of both parties, the legislation tends to complicate the way polygamy is carried out. In Law No. 1 of 1974 concerning Marriage, Presidential Instruction No. 1 of 1991 concerning KHI and Government Regulation No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, explicitly indicates that polygamy is permissible in Indonesia, but with tough conditions to fulfill.

However, none of the articles in the legislation regulates (stipulates) the threat of legal sanctions for parties who violate or act unfairly to their partners. So that in improving the legal order of marriage in Indonesia, especially regarding polygamy, the threat of sanctions needs to be included in the legislation. Because without the threat of formal legal sanctions, people will not be afraid to violate.

2. Conditions of justice in polygamy

Aisyah ra said, a female orphan who is in the care of her guardian, then her guardian wants to marry her because of her beauty or because she wants to control her property even though she is unfair in giving the dowry and managing the orphan's property, and being bad in dealing with her, then the QS. al-Nisa': 3.⁹ He added an explanation in Sahih Muslim, narrated by al-Zuhri that his guardian was reluctant to marry an orphaned woman who was in his care if she had little wealth and beauty.¹⁰

In the book of *Fath al-Bariy* it is explained that what is meant by justice in the hadith is to equalize the distribution of income, clothing and turns between wives, not in terms of love.¹¹ With respect to QS. al-Nisa': 129, in the book *'Umdah al-Qariy*, it is explained that the husband will not be able to be fair in terms of love to his wife before the husband is first fair in terms of outward treatment and property.¹²

M. Quraish Shihab explained, the mention of two, three or four in QS. al-Nisa': 3 in essence is in the framework of the demand to be fair to orphans. This

⁹Abdullah Muhammad Ibn Ismail al-Bukhariy, *Shahih al-Bukhari*, Chapter 4 (t.c.; Indonesia: Maktabah Dahlan, nd.), p. 494

¹⁰ Abi Husain Muslim bin Hajjaj al-Qusyairiy al-Naisaburiy, *Shahih Muslim* Chapter 3 (t.c.; Beirut: Dar al-Kitab al-Ilmiyah, 1992 M - 1413 H), p. 305

¹¹ Ahmad bin Ali bin Hajar al-Asqalani, *Fath al-Bariy bi Syarh Shahih al-Bukhari*, Chapter 10 (t.c.; np.: al-Maktabah al-Salafiyah, nd.), p. 13

¹²*'Umdah al-Qariy* Syarah Shahih al-Bukhariy, Chapter 21, p. 483

verse does not make regulations regarding polygamy, because polygamy has been known and implemented by adherents of various religious laws and customs before this verse was revealed. This verse does not oblige polygamy or recommend it, it only talks about the permissibility of polygamy, it is also a small door that can only be passed by those who really need it and with conditions that are not light.¹³

Justice must be upheld, although not absolute justice, especially in the case of polygamy. Through QS. al-Nisa': 129, husbands are given leniency so that the justice demanded is not absolute justice. This verse emphasizes that you, husbands, will never be able to act fairly, that is, you will not be able to manifest justice in your heart continuously in matters of love between your wives, even though you really want to do so, because love is beyond your capacity. humans to manage. Therefore, be as fair as you can in material matters, wealth and outward treatment.¹⁴

The view of the Qur'an regarding polygamy should not be viewed in terms of ideal or bad, but must be seen from the point of view of establishing laws in various conditions that may occur. It is natural for a law, let alone a religion, that is universal and applies to any time and place to prepare legal provisions that may occur at one time.¹⁵

The need for the ability to be fair to husbands as a condition for polygamy, there is substantially no difference between classical, contemporary and Indonesian perspectives. What is different is the description of the application of justice, in a more detailed contemporary perspective and paying attention to the inner peace or happiness of the wife. However, both classical and contemporary perspectives have not questioned the justice factor seen from the condition of the wife's behavior.

Whether the wife is able to act fairly, if her husband has another wife or not, should also be considered before the husband is given permission to polygamy. This means that justice is not only measured from one party (husband) alone, but must be from two parties (husband and wife).

The Indonesian perspective has made formal legal regulations as contained in Law No. 1 of 1974 concerning Marriage, Presidential Instruction No. 1 of 1991 concerning KHI, and PP No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants. In this legislation, strict requirements are made in order to achieve justice in a household.

In KHI Article 55 paragraph 2 it states:

¹³ M. Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan dan Keserasian Al-Qur'an* (1st Print; Jakarta: Lentera Hati, 2000), p. 324

¹⁴ M. Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan...* p. 321.

¹⁵ M. Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan...* p. 325.

"The main requirement is to have more than one wife, the husband must be able to treat his wives and children fairly."

Article 56 paragraph 1 states:

"A husband who wants to have more than one wife must get permission from the Religious Court."

This licensing regulation was made in order to maintain the interests of the wife and uphold justice. Before giving permission, of course, the Religious Court judge will consider various possibilities that will occur, especially regarding the justice of the husband in meeting the needs of his wife.

Article 57 of KHI states:

"The Religious Courts only give permission to husbands who will have more than one wife if:

- a. The wife cannot carry out her obligations as a wife.
- b. The wife has a physical disability or an incurable disease
- c. The wife cannot bear children.

3. The division of inner living between a virgin wife and a widowed wife

In Sahih al-Bukhari and Sunan al-Darimi it is stated that if the person being married is a girl, the husband may stay with her for seven days, whereas if the person being married is a widow, the husband may stay with her for three days, only then gave a turn to his other old wives.

It is explained in the Sahih al-Bukhari that the period of seven days/night for a virgin wife and three days/night for a widowed wife is *jaiz* (permissible), not to be done. This explanation is reinforced by a hadith that shows the history of Imam al-Nasa'i which in his eyes there is an additional "*in syi'ta*" meaning if the husband wants it like that.¹⁶

Logically, the statement above is acceptable, because sexual arousal for a wife who is still a virgin is of course higher than for a wife who is a widow. However, the rationality depends on the age and beauty of the wife. Instinctively, a young and beautiful wife is of course very attractive to her husband. So it is natural that he is given the opportunity to linger with his wife. A virgin wife, but old and not beautiful, is no more attractive than a widowed wife, but young and beautiful, especially if the widow is beautiful.

Therefore, the meaning of the hadith above can be interpreted in the sense that a wife who has just been married by her husband and is more attractive to him, is given the opportunity to stay with him for seven days, in order to fulfill his biological needs.

¹⁶ *Ibid.* Chapter 7, p. 34

The above interpretation has not yet been found and may not be accepted in a classical perspective, but it is very logical in a contemporary perspective. In the Indonesian context, this issue has not received the attention of Indonesian scholars.

Such instinctive issues are not issues that need to be addressed and raised as contemporary problems. This discourse does not or has not yet had a place in contemporary discourse. Even in classical discourse, the issue of the turn of a virgin wife and a widowed wife is not criticized by classical scholars.

4. Limitation of the number of wives to four

In the hadith narrated by Abu Dawud, Imam Malik, Daruquthniy and Ibn Hibban it is stated that when Gailan bin Salamah converted to Islam he had 10 wives, then the Messenger of Allah ordered him to hold four of them and divorce the rest. This hadith is used as evidence by classical scholars in addition to the QS. al-Nisa': 3 concerning the maximum limit of polygamy to four.

The opinion of the classical ulama was agreed upon by contemporary scholars and accommodated in the legislation in force in Indonesia, as clearly stated in article 55 paragraph 1 of the KHI, as follows:

"The wife of more than one person at the same time is limited to only four wives."

Article 42 of KHI states that:

"A man is prohibited from marrying a woman if the man has four (4) wives, all four of whom are still bound by marital ties or are still in the iddah of divorce *raj'i* or one of them is still bound by marital ties while the other is in *raj'i* divorce period.

In a contemporary and Indonesian perspective, the limitation of the number of wives to a maximum of four is supported by the majority of Islamic scholars. There are only a handful of opinions that allow or interpret QS. al-Nisa': 3 with nine wives on the grounds that the letter *wau* in the verse is the letter *ataf* which means plus, so the total is nine (9).¹⁷ However, this opinion does not have strong arguments and arguments, and does not have the support of formal legality (legislation), so it cannot be used as a guideline.

Husband and Wife Justice in Polygamy

Polygamy carried out by parties who do not meet the requirements carries more risks/harms than benefits. Humans according to their nature (human nature) have the character of jealousy, envy and envy. These traits easily arise with high levels if living in a polygamous family. Thus, polygamy can be a source of conflict in

¹⁷ Muhammad Ali al-Shabuni, *Rawa'iu al-Bayan Tafsir Ayat al-Ahkam min Al-Qur'an* (Beirut: Dar al-Fikr), p. 362

family life, both with husbands and with wives and children of their wives. Therefore, the law of origin of marriage is monogamy, because monogamy will easily neutralize the jealousy, envy and envy of the family.

On the basis of these considerations, polygamy should only be justified in emergencies and by parties who meet the requirements, for example because the wife is infertile while the husband is fertile. Meanwhile, the existence of children in the family is very important in order to continue the business of their parents and take care of the inheritance left behind, and most importantly to look after, care for and fulfill the parents' needs when they are old.

Justice in polygamy today should not only be seen from the ability of the husband. However, justice must also be seen from the ability of the wife. If the wife is not able to be fair to her husband or her honey when polygamous, the husband should not be polygamous, even though the husband feels he is able to act fairly. Thus, polygamy permits must first meet the requirements of justice for both parties, not just one party.

In order to maintain the rights of husband and wife and for the sake of upholding justice in the household, the law on marriage must be revised to include provisions for sanctions for husbands or wives who violate the rules that have been set.

Conclusion

Justice in polygamy is that the husband must be fair to his wives in terms of meeting their physical needs and treatment. For example, a living, a place to live, clothes, spending money, and the like. And husbands must behave and treat their wives fairly. Justice referred to in the hadith is not in terms of love, because love cannot be controlled by humans. There is a common view among classical, contemporary and Indonesian scholars that justice is the main requirement in polygamy. However, the justice referred to in the view of classical scholars rests on the husband. Meanwhile, contemporary scholars impose the conditions of justice on husbands and wives. In Indonesia, the terms of justice for husbands who want to be polygamous have been explicitly regulated in the legislation. The maximum number of wives is 4 people, agreed upon by classical, contemporary, and Indonesian clerics. In Indonesia, these limits have been strictly regulated in legislation. There is a difference in the views of classical and contemporary Islamic scholars regarding the division of spiritual livelihood between a virgin wife and a widowed wife. Classical scholars understand it textually, while contemporary scholars understand it contextually.

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