


**POLYGAMY AND WIFE'S RIGHTS IN POLYGAMY**

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ARTICLE INFO	ABSTRACT
<p><b>Article History</b></p> <p>Published : 29 May 2025</p> <hr/> <p><b>Keywords</b></p> <p>Polygamy, Wife's Rights, Islamic Law</p>	<p><i>This research aims to analyze the legal regulations regarding polygamy and the protection of wives' rights in polygamous marriages, both in positive law and in Islamic law. This research uses a library research method with a normative juridical approach. normative juridical approach. Data were collected through document studies of relevant legal literature, books, journals, and official documents. Data analysis was conducted using the content analysis method, with stages of source identification, analysis based on Islamic law theory and positive law, and preparation of descriptive-analytical analysis to obtain a comprehensive conclusion. The results show that in the practice of polygamy there is a dualism of legal authority, where people tend to follow the fatwas and views of the kiai rather than the provisions of state law, which has led to the prevalence of unregistered polygamy. In addition, the permission of the first wife in polygamy is an interesting issue, because positive law requires permission, while in fiqh there is no such provision. Therefore, it is important to increase public legal awareness regarding marriage registration and joint property agreements so that the rights of wives in polygamy can be protected more optimally.</i></p>
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## INTRODUCTION

Polygamy is a historical fact that cannot be denied. Polygamy is a sunnah (tradition) of the Arabs that has legitimacy in Islam. This is proven by the revelation of the rules regarding polygamy in the Quran (read Surah an-Nisa verse 3). Despite the legitimacy of the Quran, many Muslims oppose the practice of polygamy. The practice of polygamy is considered to have “degraded” the status of women. Moreover, polygamy is also considered “oppression” and a “crime against humanity” for women.

Polygamy is an unquestionable shari'a provision in Islam. The majority of scholars who have authority in the field of Islamic studies (fiqh and interpretation of the Quran), none of them forbid polygamy, except for a minority group that does not have the authority to try to forbid it.

Some time ago our society was shocked by the awarding of the “Polygamy Award” by Puspo Wardoyo, a polygamist and businessman, to around 40 people who practiced polygamy. The event was held in a star hotel in Jakarta and attended by a number of famous people, including Ebet Kadarusman, Ratih Sanggarwati, Neno Warisman, and Astri Ivo. The event did not go smoothly, as it drew many protests from some people who were against polygamy. This kind of phenomenon has never happened before in our society, where many people already practice polygamy.

In fact, polygamy is now practiced by many of our public figures. Take for example the former vice president of Indonesia, Hamzah Haz, who has three wives, Puspo Wardoyo (a well-known businessman) who has four wives, Qomar (a comedian) who also has four wives, KH. Nur Muhammad Iskandar, SQ. (Kiai caretaker of PP. Ash Shiddiqiyah Jakarta) who has three wives, Mamik Slamet, Parto Patrio, and many others. They frankly state that they have practiced polygamy. There are also those in our society who practice polygamy in secret for certain reasons. This is what many of our state officials did in the New Order era, for fear of being subjected to the provisions in PP No. 10 of 1983 which regulates the issue of polygamy for civil servants and ABRI (now: TNI). There are also people in the wider community who practice polygamy at their own will without being bound by the provisions made by the state or religion.

Different perspectives on the polygamy verse, Surah an-Nisa verse 3, and the polygamy requirement verse 129, have led to varied legal implications among Muslims. Surah an-Nisa verse 3 was revealed in connection with the Quranic protection of the rights of orphans. At that time, wealthy orphans became “the hunted item”. Besides being rich, they also did not have to bother to pay a dowry. Therefore, Allah forbade such a system of marriage.

In return, Allah offers a solution to Muslims to marry more than one, apart from orphans. This solution is emphasized by a command: *“fankihu ma thaba lakum minannisa matsna wa tsulatsa wa ruba’* *“(So marry any (other) women you please: two, three or four”*.

Surah an-Nisa verse 3 emphasizes that the requirement for a polygamous husband is to be fair to his wives. With regard to the requirement to be fair, this has often been the subject of much debate

not only among jurists but also in the community. Therefore, what is meant by being fair or the meaning of justice as a condition of polygamy.

In this article, the author will discuss the issue of polygamy in some tafsir and fiqh literature as well as in the study of modern thought, reviewing various views on the issue of polygamy itself, both from normative law, and doctrinal. Some of the problems that occur in the issue of polygamy, namely the dualism of fatwa “authority” in society, polygamy of more than four, the division of joint property in polygamy, and the first wife's permission in polygamy.

## **RESEARCH METHODS**

This research uses the library research method, which is research conducted by collecting, studying, and analyzing various sources of literature relevant to the theme of polygamy and the rights of wives in polygamy. Library research was chosen because the topics discussed are normative and theoretical, so it is more appropriate if analyzed based on legal literature, books, journals, and related official documents.

The approach used in this research is a normative juridical approach, which focuses on analyzing legislation, legal doctrine, and the views of experts regarding polygamy and the rights of wives in polygamous marriages. This approach aims to understand how the law regulates the practice of polygamy and how the rights of wives are protected in the context of polygamous marriages, both in positive law and in Islamic law.

The data collection technique is carried out using the document study method, namely reviewing various relevant literature and legal documents. The data that has been collected is then analyzed using the content analysis method, with the following stages: first, identifying various literatures relevant to the research topic; second, analyzing the content of the literature with reference to the theory of Islamic law and positive law. and third, compiling the analysis in a descriptive-analytical manner to describe the results of the analysis in a systematic form to obtain a comprehensive conclusion related to polygamy and the rights of wives in polygamy.

## **RESULTS AND DISCUSSION**

### **A. Rights of Wives in Polygamy**

Some things that must be considered in the issue of polygamy, at least the rights of the wife are the rights in household justice, including in terms of joint property.

An interesting issue that often becomes a polemic is the rights of wives in polygamous marriages. Primarily regarding justice, here the author elaborates on justice in polygamy. Because the main source of this polygamy law is the Koran and in understanding the Koranic verse cannot be separated from the interpretation of the scholars of interpretation, therefore the author describes it in the

opinion of classical mufasir and modern mufasir in interpreting justice in polygamy as intended by the verse on polygamy.

## 1. The Concept of Justice According to Classical Mufasirs

### a. Ath-Thabari

Classical Mufasir, in the interpretation of verse 129 of surah an-Nisa, it can be seen that ath-Thabari states that the justice intended in verses 3 and 129 is fair in the form of: maintenance, division of overnight shifts. While fairness in lust (intercourse), and love is not possible.<sup>1</sup>

### b. Al-Qurthubi

Al-Qurthubi (Maliki) in his book *Al-Jami'* states that fairness towards wives is equalizing them in rotating and providing for them. From the opinions of the scholars above, we can observe that the most urgent justice in polygamy cannot be separated from the issue of justice in mabit (overnight), justice in traveling far, justice in having sex and justice in the distribution of maintenance to wives.

It seems simple in theory, but the implications are very difficult and certainly require justice for all. Without distinguishing between wives who are rich and those who are poor, between wives who are high-ranking and those who are low-ranking.<sup>2</sup>

### c. Ibnu Katsir

Ibn Kathir, also stated that what is meant by fairness is equal distribution of overnight stays and nafaq (clothing, food and shelter), and not being burdened to be fair in lust or love.<sup>3</sup>

## 2. The Concept of Justice According to Modern Mufasirs

### a. Muhammad Abduh dan Rasyid Ridha

While modern mufasirs, such as Muhammad Abduh and Muhammad Rashid Ridha in tafsir *Al-Manar*, state that the fairness desired in verses 3 and 129 is fairness in the form of equality in terms of maintenance (clothing, food, shelter), as well as overnight shifts. But he connects it with the reality of life today, which states that polygamy causes a lot of mudharat as seen from the many problems handled by the court as a result of polygamy, such as theft, feuds between children and children of other wives, wives with other wives, and even murder. So based on this fact, he narrowed the concept of justice, where justice could not be done. Until finally he

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<sup>1</sup> Abu Ja'far Muhammad bin Jarir ath-Thabari, *Jami'u Al-Bayan an Ta'wil Ayi Al-Quran* trans., Ahmad Abdurrazaq al-Bakri (Jakarta: Pustaka Azzam, 2008). Which was verified by Ahmad Abdurrazaq al-Bakri, et al, according to the editor Syaikh Ahmad Muhammad Syakir dan Syaikh Mamud Muhammad Syakir, yang diterjemahkan oleh Akhmad Affandi Jilid 7, p. 864.

<sup>2</sup> Syaikh Imam al-Qurthubi, *Al-Jami' Li Al-Ahkam Al-Quran, Yang Ditahqiq Oleh Muhammad Ibrahim Al-Hifnawi Serta Ditakhrij Oleh Mahmud Hamid Usman*, trans., Ahmad Rijali Kadir (Jakarta: Pustaka Azzam, 2008). Jilid 5, p. 50-51.

<sup>3</sup> Al-Imam al-Jalil al-Hafizh 'Ima al-Diin Abi al-Fida' Ismail bin Katsir al-Qarsy al-Dimsyaqi, *Tafsir Al-Quran Al-Azhiim* (ttp: Dar Ihya al-Kutub al-Arabiyah, tth). Jilid I, p. 449-450.

gave a fatwa on the prohibition of polygamy for someone who was clearly afraid of not being able to do justice to his wives, to do polygamy. He saw that polygamy contains more mudharat than benefits, so he proposed a fiqh rule which states that preventing harm takes precedence over achieving benefit.<sup>4</sup>

b. Al-Maraghi

Ahmad Musthafa al-Maraghi states that the desired fairness is as interpreted by his teacher above, so he also argues that polygamy as seen today has caused a lot of harm, so it is better to be prohibited. And he states that polygamy is permissible, subject to many conditions, which put a person in an emergency position, allowing him to engage in polygamy. He also stated that polygamy is forbidden if a person is afraid of being able to do justice to his wives.<sup>5</sup>

c. M. Quraish Shihab

M. Quraish Shihab does not explain in detail the justice of polygamy in the distribution of mabit (overnight), traveling, love and nafkah. However, if polygamous marriage is correlated with the three concepts of justice, namely; al-Adl, Qisth, and Mizan. So, it will be increasingly evident that a husband who has more than one wife is required not to take sides (one-sided) with one of his wives, basically a just person always sides with the truth, thus a just husband will not do arbitrary things.

For example, with regard to clothing needs, namely the wife's clothes. It is impossible for a husband to buy clothes for his wives with the same size, the same color, the same fabric and the same everything. Of course, this is disproportionate, the husband must adjust his wife's taste and body size. What is appropriate and what is not. Indeed, Islam does not impose a very heavy burden on polygamous husbands. Islam instructs husbands to be as fair as they can. As happened to the Prophet Muhammad SAW, until he prayed to Allah SWT. Aisha said:

حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ ، حَدَّثَنَا حَمَّادٌ ، عَنْ أَيُّوبَ ، عَنْ أَبِي قَلَابَةَ ، عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْخَطْمِيِّ ،  
عَنْ عَائِشَةَ ، قَالَتْ : كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقْسِمُ فَيَعْدِلُ ، وَيَقُولُ " : اللَّهُمَّ هَذَا قَسَمِي فِيمَا  
أَمْلِكُ ، فَلَا تَلْنِي فِيمَا تَمْلِكُ وَلَا أَمْلِكُ " قَالَ أَبُو دَاوُدَ : يَعْنِي الْقَلْبَ . (رواه ابو داود)

<sup>4</sup> Muhammad Abduh dan Muhammad Rasyid Ridha, *Tafsir Al-Quran Al-Hakiim* (Beirut: Dar al-Fikr, tth). Jilid 4, p. 344-345.

<sup>5</sup> Ahmad Mustafa al-Maragi, *Tafsir Al-Maragi* (Mesir: Mustafa al-Babi al-Halabi, 1974). Jilid II, p. 178-179. See Ahmad Musthofa al-Maraghi, *Tafsir Al-Maraghi, Yang Diterjemahkan Dengan Judul, Terjemah Tafsir Al-Maraghi*, trans., Bahrun Aboe Bakar (Semarang: CV Thoha Putra, 1993). Jilid 4,5,6, cet ke-2, p. 324.

Meaning: *Musa ibn Ismail reported to us, Hamad reported to us, from Ayub from Abu Qilabah, from Abdullah ibn Yazid al-Khathmi, from Aisha rah, who said: "The Messenger of Allah (peace and blessings be upon him) always divided his wives fairly. And he used to pray: O Allah, this is my share that I can do. So do not reproach me for what You are good at and I am not good at."* (H.R. Abu Daud, Tirmidzi, Nasa'i dan Ibnu Majah).<sup>6</sup>

M. Quraish Shihab's thinking about fairness in polygamy uses one of the Ushul Fiqh methods "Saddu Dzari'ah". Which means clogging up everything that becomes a path of damage. Basically, the object of dhari'ah is all actions in terms of their consequences which are divided into four, namely:

- a. Actions that result in damage or harm.
- b. Conduct that rarely results in damage or harm.
- c. Actions that are strongly suspected of causing damage.
- d. Actions that cause more damage, but have not yet achieved the strong purpose of causing the damage.

The same applies to fairness in polygamy. When a person is hesitant about polygamy, he should not do it. Because intention and conviction are the most important things before acting. Otherwise, it will cause damage or harm. If a person is sure that he cannot be fair in polygamy then it must be prevented, for the sake of generating benefit. There are several scholars who use Saddu Dzari'ah as a legal istinbath. Among them are Imam Malik and Imam Ahmad Ibn Hanbal. While the Hanafiyyah, Shafi'iyyah and Shi'ah scholars accept Saddu Dhari'ah as evidence for certain issues only. From this it can be understood that dhari'ah is a basis in Islamic fiqh that is held by all fuqaha, but they only differ in its restrictions.

According to Shafi'i and Abu Hanifah, dzari'ah is included in the basis they have already established, namely qiyas according to Shafi'i and istihsan according to Abu Hanifah. It should be noted that adhering to dhari'ah should not be too much, because people who are immersed in it may prohibit actions that are actually permissible, mandub and even obligatory, for fear of falling into the abyss of injustice.

So although M. Quraish Shihab uses the term emergency door for people who want to practice polygamy, he does not close the door to polygamy for anyone who needs it. Because

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<sup>6</sup> This hadith has 29 takhrij hadiths, all of which come from Aisyah r.h. See <http://www.islamweb.net/hadith/hadithServices.php?type=1&cid=3057&sid=4049>. Lihat Abu Daud as-Sijistani, *Sunan Abu Daud* (Beirut: Maktabah al-Ashriah: tth). Ibnu Majah Abu Abdullah Muhammad bin Yazid al-Qazwaini, *Sunan Ibnu Majah* (Beirut: Dâr al-Ihya al-Kutub al-Arabiah: tth). Muhammad bin Isa bin Surah bin Musa ad-Dhahak at-Tirmidzi, *Al-Jami'al-Shahih Wa Huwa Sunan Tirmidzi* (Kairo: Darul Hadits, 2005).

basically neither the Qur'an nor the hadith prohibit it. Furthermore, if polygamy is prohibited, it will have a tremendous shock effect. Especially in the social order of society.

Apart from the ushul fiqh method, M. Quraish Shihab's thoughts on fairness in polygamy also use the Quranic interpretation method. Because various methods and interpretations are proposed as a way to dissect the deepest meaning of the Qur'an. So, it is not an exaggeration if M. Quraish Shihab's work is seen as an ijihad effort in the development of interpretation in the contemporary era in order to respond to the challenges of the times. Of course, the results of his thinking are inseparable from the thoughts of other scholars.

From some of the above analysis, it is increasingly clear that the use of these two methods, M. Quraish Shihab's thinking about fairness in polygamy is not contrary to Islamic Law. However, there is a note from the author. The use of the Saddu Dzari'ah method must be more proportional. So as not to allow the permissibility in the nash to be prohibited by an ijihad of thought.

As has been explained, M. Quraish Shihab positions "sure fairness" in polygamy as the main thing that must be fulfilled before someone enters into a polygamous marriage. If in doubt, it is better not to engage in polygamy. Believing in fairness is not enough, this must be proven. After introspection on oneself, the effort to prove one's belief in fairness in polygamy is that it must cover three things. First, the economic aspect, the physical aspect, and finally the mental aspect. If all three have been fulfilled, then it is permissible for him to be polygamous, and must fulfill justice towards his wives. Both the problem of rotating distribution and provision of maintenance. According to him, justice takes precedence over welfare.<sup>7</sup>

According to M. Quraish Shihab, there is a series of verses of Allah SWT, surat Al-Maidah: 8, then Surah Al-A'raf: 96, followed by Surah Noah: 10-12 which explains that justice will lead to piety, and piety produces prosperity. So, justice in polygamy here is in terms of material according to the husband's ability. Not in the justice of love and affection. In the distribution of justice to wives, M. Quraish Shihab's thoughts on this are global without detailing justice one by one. He argues that justice here is equalizing the justice of wives by not favoring other wives and not being arbitrary in treating wives. So, the measure is suitability or balance for his other wives.

There is an asasiyah rule which was originally called the ushul rule, which is the main rule of all existing fiqhiyah rules. Every furu'iyah problem can be solved by the sentence of the rule. The five rules are extracted from legal sources, both through the Qur'an and As-Sunnah and

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<sup>7</sup>Shihab, p. 111.

istinbath arguments. Therefore, each rule is based on the main texts that can be considered as a standard of fiqh law, so that the text can be represented from a population of ahkam texts.

As for the forms of the five rules, among others: rules relating to the function of purpose, belief, difficult conditions, harmful conditions, and customs. Of the five rules mentioned above, of course, the author does not take all the rules to be used in this paper. So there are only a few that are considered necessary and in accordance with the implications of M. Quraish Shihab's thoughts about fairness in polygamy implicitly. One of them is the *ushuliyah* rule relating to belief, namely:

اليقين لا يوزل بالشك<sup>8</sup>

Meaning: *“Conviction cannot be removed by doubt.”*

As explained above, M. Quraish Shihab's thinking about fairness in polygamy is based on the prior belief for people who want to practice polygamy. He is sure that he can be fair to his wives. If at the beginning he is hesitant then most likely later he will not be fair.

3. According to him, what must be the benchmark before being fair is conviction. If he is absolutely sure that he can be fair to his wives, then he can be polygamous. Even this is not more than four people, because there are rules. So that the above rules are very much in accordance with M. Quraish Shihab's thoughts about fairness in polygamy. If a belief has been embedded in a person, then that belief cannot be erased by the emergence of doubts.

## B. Some Issues Regarding Polygamy

### 1. Dualism of “Authority” in Polygamy Fatwa

There is a dualism of fatwa in the issue of polygamy, between the rules of legislation and the version of *kiayi* or *ulama*. In Indonesian society, there are several laws that coexist but influence each other, both influences that support the application of state law and vice versa. Customary law is one of them, this law has existed before the Indonesian state law was formed, as well as religious law. Both are older than existing state law, so their existence should be preserved. However, when the transformation and adoption of customary law and religious law into state law, it will more or less affect the application of state law.<sup>9</sup> For example, the state law on marriage stipulated in Law Number

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<sup>8</sup> Abdul Hamid Hakim, *Mabadi Awalliah* (Jakarta: Maktabah Saadiah Putra, tth), p. 25.

<sup>9</sup> The atmosphere of religious life and Islamic law in various parts of the archipelago continues to grow and develop. There are customs that are older than Islam, for example, as in Banten, so that customary law often adapts to Islamic law. In Banten during the reign of Sultan Agung Tirtayasa, customary law and religious law were no different. In Sulawesi, in Wajo, inheritance law is resolved using Islamic law and customary law, both are

1 Year 1974, in which more Islamic religious law is adopted, also customary law. However, when the law is applied to non-Muslim customary areas, it has different legal consequences.

The community's recognition of the ulama in a community is greater than its obedience and recognition of the rules issued by the state. Likewise, when the community encounters a legal issue such as polygamy that is rampant, various issues are asked to the ulama, then the ulama have an answer that is different from what has been regulated by the state, then the community is more likely to follow the opinion or fatwa of the ulama.

Some examples of research that examines polygamy practiced by ulama. Hegemony and Polygamy, written by Benni Setiawan, emphasizes that religious elites (kiai, ustadz, community role models) have the authority and ability to teach Islamic values in a community. The research-based paper on the views of Islamic boarding school leaders in Sukoharjo on polygamy and the configuration of their thoughts in influencing the social life of the community, provides a finding that; Polygamy carried out by kiai in Sukoharjo is divided into 2: 1). Public Polygamy where kiai have obedience to the rules of law and religion. The kiai's position is getting stronger in society and the community will obey all the kiai's orders, because he is considered to have scientific quality. In this hegemony theory, obedience is able to hegemonize others. 2). Private polygamy. Where Kiai only has one obedience, namely obedience to his religious orders. This model will not be able to influence society. Gramsci-style hegemony is moral and intellectual submission. The pattern of power relations between pesantren that both apply the concept of polygamy in their clerics' families will establish a relationship that causes the view of polygamy as part of Islam to be strengthened. Benni uses Gramsci's hegemony theory which says that kiai as the center of the intellectual and moral

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united. See Ahmad Rofiq, *Hukum Islam Di Indonesia* (Jakarta: RajaGrafindo Persada, 1995), h. 58. See also Teuku Ibrahim Alfian, *Wajah Aceh Dalam Lintasan Aceh* (Banda Aceh: Pusat Dokumentasi dan Informasi Aceh, 1999), p. 229-248. Teuku Ibrahim Alfian, *Perang Di Jalan Allah*. (Jakarta: Pustaka Harapan, 1987), p. 38. The explanation above is a form of the Receptio in Complexu theory. Furthermore, this theory was about to be destroyed by the Dutch with Snock Hurgronje who put forward a recepti theory, which was applied to the legislation at that time (see article 134 paragraph (2) of the Indische Staatsregeling (IS) 1925, also its amendments). The essence of this theory is to hinder and eliminate the role of religious law (Islam) in legal issues in the archipelago. Until finally this theory was attacked by Hazairin's Receptie Exit Theory, which in essence rejects the receptie theory which is considered to be contrary to the Qur'an and Sunnah, so that Islamic law is not only exclusive but can also color or become an inseparable part of national law. Furthermore, this theory was developed by Sajuti Thalib with the Receptie a Contrario theory, which in essence is that for Muslims, Islamic law applies, customary law applies to Muslims if it does not conflict with the Islamic religion and Islamic law. Next is the theory of syncretism, the main idea of which is that both customary law and Islamic law do not exclude each other, both apply and have equal binding power. However, this theory has a weakness where the statement of equality cannot always be accepted, because it is possible that there will be a dispute between customary law and Islamic law, such as what happened in Mingkabau, where in the inheritance system. For the inheritance part, customary law applies, but for sepenacarian property (harata suarang or partner property) namely wealth obtained from the results of the efforts of both husband and wife during the marriage, Islamic law applies, namely the division of inheritance that the man gets two parts, the woman. See Ter Haar, *Asas-Asas Dan Susunan Hukum Adat* (Jakarta: Pradnya Paramita, 1983), p. 233. See also Hilman Hadikusuma, *Hukum Waris Adat* (Bandung: Alumni, 1983), p. 48-52. See also Dominikus Rato, *Hukum Perkawinan Dan Waris Adat Di Indonesia*, 2 ed. (Jakarta: LaksBang PRESSindo, 2015). Dominikus Rato, *Hukum Adat Kontemporer*, (Surabaya: LaksBang Justitia, 2015).

cluster, is able to realize the extension of the mindset that is even applied in real life, namely polygamy. Here the community will capture that polygamy is a necessity and rules applied by Islam and allowed by the state.

Roibin's research from IAILM Suryalaya, Tasikmalaya on the Practice of Polygamy among Kiai (Study of the Social Construction of Polygamy of Islamic Boarding School Kiai in East Java) says that although on the one hand polygamy generally does not get a positive response, on the other hand polygamy is actually considered a symbol of social status for a kiai. A kiai, especially in East Java, who has not practiced polygamy is considered imperfect in his level of kiai. The results of his research found that there are three typologies of kiai understanding of polygamy based on socio-religious classification, namely: First, there are two patterns of understanding of the elite pesantren kiai about polygamy, namely normative and sociological understanding; Second, from this understanding, the socio-religiosity classification pattern is known, namely normative-theological and normative-humanist classification; Third, the impact of the kiai's understanding and practice of polygamy cannot be separated from the socio-religiosity classification pattern. For the normative-theological kiai classification, it will have a static impact on the institutions they lead, while for the normative-humanist kiai classification, it will have a forward and dynamic impact on the institutions they lead. The assessment of data arising from this research cannot be separated from cultural elements, traditions and ways of religious community in an area which in this case is in the East Java region.<sup>10</sup>

## 2. Division of Property in Polygamy

Marital property is property contained in a marriage, which is a combination of the husband's original property, the wife's original property and joint property. Article 35 of Law Number 1 Year 1974 concerning Marriage states that property obtained during marriage becomes joint property. The innate property of each husband and wife and the property obtained by each as a gift or inheritance, is under the control of each as long as the parties do not determine otherwise, while Article 36 of Law Number 1 Year 1974 concerning Marriage states that regarding joint property, the husband or wife can act on the consent of both parties. Regarding their respective assets, husband and wife have the full right to take legal actions regarding their property.

Article 113 of the Compilation of Islamic Law (KHI) states that marriage can be broken due to death, divorce and by a court decision. The breakup of a marriage caused by divorce can occur due to divorce or based on a divorce lawsuit. This is in accordance with Article 114 of the Compilation of Islamic Law (KHI).

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<sup>10</sup> Vita Fitria Nurus Sa'adah, Kurnia Widiastuti, "Poligami Dalam Lintas Budaya Dan Agama: Meta-Interpretation Approach," *Asy-Syir'ah Jurnal Ilmu Syari'ah dan Hukum* 49, no. 2 (2015): p. 492-493.

With this divorce, it will automatically affect the joint property of husband and wife during the marriage. Based on the provisions of Article 37 of Law Number 1 of 1974 concerning Marriage, it can be said that the consequences of divorce on joint property according to Law Number 1 of 1974 concerning Marriage, the joint property is regulated according to their respective laws. This means that if a divorce occurs, the joint property is divided between the husband and wife. The meaning of the words “their respective laws” here is including the statutory provisions applicable to their religion and belief group as long as it does not conflict or is not otherwise specified in Law Number 1 Year 197 concerning Marriage.

The breakdown of marriage due to divorce, of course, will greatly affect the joint property of husband and wife during the marriage. The effect of divorce on joint property according to the Compilation of Islamic Law (KHI) is that the joint property between husband and wife is divided by 2 (two) or each husband and wife gets half. This half is an inseparable part (*onverdeeld aandeel*), meaning that it is impossible for each husband or wife to ask for the division of wealth, unless the marriage is broken up (including breaking up due to divorce). This provision is strengthened by Article 97 of the Compilation of Islamic Law (KHI) which states that divorced widows or widowers are each entitled to one-half of the joint property as long as it is not specified otherwise in the marriage agreement.

Based on Article 65 paragraph (1) Letter b of Law Number 1 of 1974 concerning Marriage, it can be said that the division of common property due to divorce in a polygamous marriage according to Law Number 1 of 1974 concerning Marriage is the position of the second, third and fourth wives in a polygamous marriage due to divorce have no rights to the common property of the husband's marriage with the first wife, the third and fourth wives have no rights to the common property of the husband's marriage with the first and second wives, while the fourth wife has no rights to the common property of the husband's marriage with the first, second and third wives. In Supreme Court Decision Number 37 K/AG/1995 dated September 28, 1995, it was stated that if there is an agreement between the parties to settle a joint property case amicably, then the settlement must be based on an equal division of the agreement and is amicably binding on the parties who entered into it.

Joint property from the marriage of a husband who has more than one wife, each separate and independent. Ownership of joint property in a polygamous marriage is calculated at the time of the second, third, or fourth marriage contract. The first wife of a polygamous husband has the right to the gono-gini property that she shares with her husband. The second wife and so on are entitled to their joint property with their husbands since their marriage took place. All wives have equal rights to the gono-gini property. However, the second wife and so on are not entitled to the gono-gini property of the first wife. The division of joint property in polygamous marriages for cases of death

divorce is divided into 50:50. Based on Article 97 KHI, it is stated that, widows or widowers of divorce are each entitled to one-half of the joint property as long as it is not specified otherwise in the marriage agreement.

Based on the above, it can be concluded that the division of joint property for polygamous wives. In polygamous marriages, the form of joint property is not separated between the husband and each wife. The first wife still gets a portion of the distribution of joint property even though her husband has married for the second, third or fourth time. So the proposition of the division is that the ownership of joint property of the first wife is greater than the second wife, the second wife is greater than the third wife, and the third wife is greater than the fourth wife.

### 3. Wife's Permission in Polygamy

In Law Number 1 of 1974 concerning Marriage article 4 and article 5, in essence the principle of marriage is monogamy but polygamy is allowed if it fulfills the conditions specified by law. A married man who wishes to practice polygamy must submit an application to the court in the area where he lives by bringing an extract of his previous marriage certificate and the necessary licenses.

This application can be submitted if the following conditions are met:

#### a. Consent of the wife

This request will be granted by the court if the following conditions are met:

1. The wife is unable to fulfill her duties as a wife.
  2. The wife is physically disabled or has an incurable disease.
  3. The wife is unable to bear offspring.
- b. There is certainty that the husband is able to provide the necessities of life for his wives and their children.
- c. There is a guarantee that the husband will be fair to the wives and their children.

Meanwhile, the polygamy procedure is regulated in the Compilation of Islamic Law (KHI) chapter IX, namely articles 56-59. As follows:

1. Having more than one wife at the same time is limited to four wives.
2. The main requirement for having more than one wife, the husband must be able to be fair to his wives and children.
3. The wife is unable to perform her duties as a wife
4. The wife is physically disabled and cannot be cured.
5. Wife is unable to produce offspring
6. Husbands who wish to have more than one wife must obtain permission from the Religious Court.

7. Marriages conducted with a second, third or fourth wife without permission from the Religious Court, have no legal force.

According to Sayuti Talib, the conditions for polygamy in Islamic law are:

1. Aiming to take care of orphans fairly
2. If the husband is able to be fair to his wives
3. May be polygamous only to four wives
4. There is material ability
5. If the wife is no longer functioning as a wife

The problem in social life is whether the first wife's permission is needed in a polygamous marriage. In state law, a husband who wants to be polygamous must obtain the first wife's permission either in writing or verbally before a religious court. But on the other hand, in the same issue, scholars with their fiqh state that polygamy does not require the first wife's permission. The conditions for a husband to be allowed to undergo polygamy are that he must be fair and able to provide a living, outside of these provisions there are no other requirements (including having to ask permission from the wife).

However, it is not without reason why the legislation requires a husband to obtain written and verbal permission from the first wife. Regardless of the legal politics at the time of the emergence of the article on polygamy, the most important thing is to avoid future problems when polygamy does not get the first wife's permission.

The law governing polygamy was once tested by the Constitutional Court, but was ultimately rejected.<sup>11</sup> The consideration of the Constitutional Court in rejecting the petition for judicial review on polygamy permits has two considerations. First, the consideration according to Islamic law. According to the Constitutional Court, polygamy in Islam is not a creation or a new thing in Islamic teachings, because polygamy was practiced by the community before Islam. Islam intends to regulate polygamy gradually, which aims, among others, to prevent male arbitrariness in its implementation, and in order to maintain the dignity of women. For this reason, in order to prevent such arbitrariness, Islam stipulates the law of polygamy on the condition of fairness as stated in Surah an-Nisa verse 129. The permissibility of polygamy in Islam is not due to its substance, but to the conditions of the perpetrator, the time, and the circumstances behind it. Thus, it is actually the principle of marriage adopted by Islamic teachings. Second, the constitutional consideration of the articles in question. According to the Constitutional Court, the State is obliged to regulate the orderliness of marriage. The Marriage Law, which contains the reasons, conditions, and procedures for polygamy, is actually solely an effort to ensure that the rights of wives and prospective wives can be fulfilled, which is the obligation of a polygamous husband in

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<sup>11</sup> *Putusan Mahkamah Konstitusi Nomor 12/PUU-V/2007*

order to realize the purpose of marriage. Thus, this cannot be interpreted as negating the provisions that allow polygamous marriages.

## CONCLUSION

In the issue of polygamy there are several things related to the practice of polygamy, in practice there is dualism in the authority of the fatwa or rule of law that must be chosen by the community, and the community relies more on the words, actions, and taqirir of the *kiayi*. Therefore, it should be suspected that there are many unrecorded and recorded polygamy occurring in the community, even though the law has expressly regulated it. In the matter of division and agreement of joint property when polygamy will occur, it should be done to prevent problems in the future. The first wife's permission in polygamy is an interesting issue in its development in society, the state regulations regulate polygamy must obtain permission from the first wife, while the *fiqh* states that there is no requirement to obtain the first wife's permission, because it is not found that in the terms and conditions of marriage it is mandatory to obtain permission from the first wife.

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