

COMPARISON OF POLYGAMY REGULATIONS IN MOROCCO AND INDONESIA

Irwan Ramadhani¹, Anas Khoirul Anam²

¹Fakultas Syariah dan Hukum, UIN Sunan Kalijaga

²Fakultas Syariah. IAIN Ponorogo

¹Email: : irwanrmdhn1@gmail.com

²Email: anasanam86@gmail.com

DOI: <https://doi.org/10.21154/antologihukum.v4i2.4033>

Received: 15-9-2024

Revised: 15-10-2024

Approved: 22-10-2024

Abstract: *The purpose of this study is to identify a comparison of the polygamy regulations in Morocco and Indonesia with regard to the fulfillment of requirements in the application, sanctions imposed and justice for a wife. and justice for the wife. This research uses comparative legal method based on a previous review of family law in Indonesia and Morocco. applicable in Indonesia and Morocco. By comparing the two countries with the majority of people are Muslim, the applicable laws have similarities and differences even though they use different legal systems. differences despite using different legal systems. Both Morocco and Indonesia allow husbands to practice polygamy with the permission of the court. court, justice is the main prerequisite for polygamy by prioritizing the fulfillment of physical, mental and spiritual needs. prioritizing physical, mental and financial fulfillment. Both countries both countries allow for the annulment of polygamy requests through a prior marriage agreement. previous marriage agreement. The differences are in the requirements that must be submitted through the court and the sanctions imposed on data falsification. Besides In addition, in Indonesia there are special rules governing the permissibility of polygamy by civil servants, while in Morocco it applies generally. civil servants while in Morocco it applies in general.*

Keywords: *Comparison of rules, Indonesia, Morocco, Polygamy*

Abstrak: *Tujuan dari penelitian ini adalah untuk mengidentifikasi perbandingan regulasi poligami yang berlaku di Maroko dan Indonesia berkenaan dengan pemenuhan persyaratan dalam permohonan, sanksi yang diberlakukan serta keadilan bagi seorang istri. Penelitian ini menggunakan metode legal komparatif berlandaskan pada telaah terdahulu terhadap hukum keluarga yang berlaku di Indonesia dan Maroko. Dengan membandingkan kedua negara dengan mayoritas masyarakat beragama muslim, hukum yang berlaku memiliki persamaan dan perbedaan meskipun menggunakan system hukum yang berbeda. Baik di Maroko maupun Indonesia membolehkan suami untuk melakukan poligami dengan melalui izin pengadilan, keadilan yang menjadi prasyarat utama terhadap poligami dengan mengedepankan pemenuhan lahir, batin dan finansial. Kedua negara tersebut membolehkan pembatalan terhadap permohonan poligami melalui perjanjian pernikahan sebelumnya. Perbedaan terdapat pada syarat yang harus diajukan melalui pengadilan dan sanksi yang dikenakan terhadap pemalsuan data. Selain itu di*

Indonesia terdapat aturan khusus yang mengatur kebolehan poligami oleh PNS sedangkan di Maroko berlaku secara umum.

Kata Kunci: *Perbandingan aturan, Poligami, Indonesia, Maroko*

INTRODUCTION

Islamic law reform in Islamic countries occurred after contact between Islam and the West during the colonial period. This reform was also carried out in some newly independent Islamic countries after colonialism.¹ The first driver of Islamic law reform was Turkey, marked by the birth of the Ottoman Family Law Act, followed by other Islamic countries. In general, the content of family law in the modern Islamic world moves away from the discourse of classical jurisprudence and seeks to solve new problems, especially the inequality of rights between men and women in the family (the right to marry) is recognized.²

Among the many areas of Islamic law reform, the legal status of polygamy is one that deserves attention. Basically, the issue of polygamy in human life is not new in the Islamic world. Long before the advent of Islam, Arab society, like other societies in most parts of the world at that time, practiced polygamy or polygyny. The scriptures and history books of the heavenly religions say that polygamy was no longer strange or unwelcome among the leaders of all nations, the general public, and even among the prophets.³

Islam allows men to practice polygamy as an alternative or solution to overcome the split in men's sexual needs or other causes that disturb inner peace, so as not to fall into the valley of adultery or other acts that are clearly forbidden by faith. Therefore, the purpose of polygamy is to prevent the husband from falling into the abyss of sin forbidden by Islam by finding a halal way, namely allowing other wives (polygamy) on condition that they can behave piously.⁴

In general, the family law provisions of modern Islamic countries regarding polygamy rules can be classified into three (3) categories: First: Countries that strictly prohibit polygamy, such as Turkey and Tunisia. Second: countries with relatively strict requirements allowing polygamy, such as Pakistan, Egypt, Morocco,

¹ Basarudin and Oyo Sunaryo Mukhlas, "Studi Perbandingan Hukum Perkawinan Islam Di Maroko Dan Aljazair," *AL-AFKAR: Journal for Islamic Studies* 7, no. 1 (2024), 623. <https://doi.org/https://doi.org/10.31943/afkarjournal.v7i1.841>.

² Basarudin and Mukhlas, 623-624.

³ Irwan Ramadhani, "Ragam Regulasi Poligami Di Negara Muslim Modern," *Jurnal Antologi Hukum* 3, no. 1 (2023), 18. <https://doi.org/10.21154/antologihukum.v3i1.2313>.

⁴ Alfaozi and Lukito, "Poligami Dalam Al-Qur'an (Studi Analisis Pendekatan Ma'Na Cum Maghza Sahiron Syamsudin Dalam Qs. an-Nisa'[4] 3).," *JIQSI-Jurnal Ilmu Al Qur'an Dan Studi Islam* 1, no. 1 (2023), 25-26.

Indonesia, Malaysia, Iran, Iraq, Syria, South Yemen, Jordan, Lebanon, and India. Third: countries with more lenient regulations allowing polygamy, such as Saudi Arabia and Qatar.⁵

In the Moroccan context, polygamy is regulated in the Moroccan Family Law (Moudawana) or Mudawwanah al-Usrah 2004 and Majmu'ah al-Qanun al-Jina'i (Moroccan Penal Code). There, polygamy is regulated by giving the wife, during the prenuptial agreement (marriage contract), the right to set conditions so that her husband is not bound to polygamy. If the husband violates these conditions, she can seek divorce in court (divorce by agreement).⁶

Meanwhile, Indonesia as a state of law addresses polygamy with a fairly detailed discussion. It is clear that there are approximately four directives as rules regarding polygamy, namely Law No. 1/1974 on Marriage, Government Regulation No. 9/1975 on Marriage, Government Regulation No. 10/1983 on Marriage and Divorce Permits for Civil Servants which was amended by Government Regulation No. 45/1990 and the Compilation of Islamic Law (KHI).⁷

The issue of polygamy has received a lot of attention by researchers by pouring various data and methods. Among them is a research conducted by Irwan Ramadhani who analyzes the regulations related to polygamy applied in modern Muslim countries in Southeast Asia and North Africa through comparative studies. There is also research conducted by Ali Trigiyatno et al. which compares polygamy regulations in Indonesia and Morocco using primary, secondary, and tertiary legal sources and content analysis as a technique for analyzing. While research conducted by Basarudin and Oyo Sunaryo Mukhlas provides an understanding of family law in Morocco and Algeria using a comparative descriptive analysis approach.

This research aims to provide an overview of the enactment of family law regulations related to polygamy in Morocco and Indonesia. How is the implementation of the rules that apply in both countries and the impact of the rules on the number of polygamy applications filed by a husband. Both Morocco and Indonesia apply the law in general and there are some specific rules that deal with it, and the role of the court in the application is a condition for granting polygamy. However, there are some differences so that the applicable laws are able to reduce

⁵ Akabrizan Akbarizan Akbarizan et al., "POLIGAMI DAN KASUS HUKUM (STUDI PERBANDINGAN ANTARA MALAYSIA, ENAKMEN ISLAM SELANGOR 2003, DAN INDONESIA, KOMPILASI HUKUM ISLAM)," *Hukum Islam* 21, no. 1 (2021), 18-19. <https://doi.org/10.24014/jhi.v21i1.9602>.

⁶ Janeko, "Studi Eksplorasi Hukum Poligami Di Berbagai Negara Muslim," *Ummul Qura Jurnal Institut Pesantren Sunan Drajat (INSUD) Lamongan* 10, no. 2 (2017), 59.

⁷ Atik Wartini, "POLIGAMI: DARI FIQH HINGGA PERUNDANG-UNDANGAN," *HUNafa: Jurnal Studia Islamika* 10, no. 2 (2013), 238. <https://doi.org/10.24239/jsi.v10i2.29>.

the number of polygamy applications and are expected to strictly strengthen the principle of monogamy in each country.

CONCEPTUAL DISCUSSION

THE CONCEPT OF POLYGAMY IN ISLAMIC LAW

Polygamy or marriage with more than one wife is not a new issue. Polygyny has existed in human life since ancient times in various social groups around the world. Arab society was already diverse long before the advent of Islam, just like other societies in most parts of the world at that time. In the scriptures and historical books of the Samawi religions, it is mentioned that among the leaders and commoners of every nation, even the prophets, polygamy was neither foreign nor unheard of. In the Jewish and Christian scriptures, polygamy is an accepted way of life. All the prophets mentioned in the Talmud, Old Testament and Quran had more than one wife except Jesus (peace be upon him).⁸

But when viewed from history, polygamy is not a practice that only occurred during the time of the Prophet Muhammad SAW, but is a long historical event. History shows that long before the Prophet Muhammad SAW appeared, polygamy was already widely known by the general public, including prophets such as Prophet Ibrahim AS. who married Siti Hajar in addition to his wife Siti Sarah. So it is absolutely not correct if polygamy is included in the sunnah fi'liyyah (true example) of the Prophet Muhammad SAW, considering that some other prophets of God were also polygamous.⁹

The legal basis for the permissibility of polygamy is in Al-Qur'an Surah An-Nisa verse 3 which means:

“And if you will not do justice to the rights of orphaned women (when you marry them) then marry any woman you like, two, three, or four. Then if you are unable to do justice, then marry only one, or the slaves you own. That is closer to not being unjust.”

The verse in Surah An-Nisa indicates that if a man is unable to provide justice to an orphaned woman, then it is better for him to marry two, three, or four wives at once. Tafsir Al-Quran Surat An-Nisa verse 3 explains that in ancient times, men tended to marry orphans who were only interested in their beauty and wealth. His interest was only in the orphan's wealth and beauty, so he married her without giving the same or fair dowry as his other or fourth wife, so as not to oppress the

⁸ Alex Kusmardani et al., “Faktor-Faktor Penyebab Perceraian Dalam Perspektif Hukum Keluarga Antar Madzhab Islam Dan Realita Sosial,” *JURNAL SYNTAX IMPERATIF: Jurnal Ilmu Sosial Dan Pendidikan* 3, no. 3 (2022), 184, <https://doi.org/10.36418/syntax-imperatif.v3i3.168>.

⁹ Abdillah Mustari, “Poligami Dalam Reinterpretasi,” *Journal.Uin-Alauddin.Ac.Id* 1 (2014), 254-255.

orphan. The Qur'anic verse Surah An-Nisa shows that Allah never complicates the affairs of His servants, allowing a man to marry one to four wives at the same time, forbidding the exploitation of orphans. but if a man fears that he cannot be fair, then he is allowed to marry only one wife..¹⁰

The meaning of fairness is fair treatment of women in their services, such as clothing, place, turn and other external matters. Islam allows polygamy under certain conditions. But the fact is that it is difficult for husbands to be fair to their wives.

This is mentioned in the Qur'an. As stated in Surah An-Nisa verse 129, Allah SWT says:

Meaning: And you will never be able to be fair among your wives, even though you are eager to do so, So do not be too inclined (to the one you love), so that you leave the other stranded. and if you make amends and keep yourselves (from cheating), Then surely Allah is Forgiving, Most Merciful.

In the context of the interpretation of these two verses, At-Tabari narrated from Ibn Abbas, Said ibn Jubir, Qatadah, As-Sauidi and others: There was a group who feared the injustice of orphans' wealth, but did not fear injustice against their wives. Then someone told them: "Just as you fear not being able to do justice to the orphans, so too should you fear not being able to do justice to your wives. You should not marry but one woman until you have four and not more. If you are still afraid of not being able to do justice in polygamy."¹¹

The prerequisite for polygamy is, of course, the fulfillment of justice. Namely, the ability to behave proportionally with the woman he married. There are several aspects that must be considered properly, including that a man is truly able to provide for his wife physically and mentally. But of course there must be inclinations towards one of the wives, especially in terms of love or affection. This is a human trait that is so difficult to change, it is human nature in general.¹² Verse 24 of QS Al-Anfal explains that Allah controls the human heart.

¹⁰ Dewi Ulfa Lailatul Fitria and Fitri Ariani, "Problematika Poligami Di Negara Turki," *Islamic Law: Jurnal Siyasah* 6, no. 1 (2021), 49.

¹¹ Ahmad Yofi Al-fatikh, "ANALISIS NIKAH POLIGAMI DITINJAU DARI HUKUM ISLAM (Syarat Yang Ketat Dan Dalam Keadaan Tertentu)," *HOKI: Journal of Islamic Family Law* 2, no. 1 (2024), 47-48. <https://doi.org/https://doi.org/10.55352/hki.v1i1>.

¹² Muhammad Farid Zulkarnain, "ADIL DALAM POLIGAMI MENURUT IMAM MADZHAB (Metode Istinbath Hukum Dan Argumentasinya Masing-Masing)," *AL-WATHAN: Jurnal Ilmu Syariah* 01, no. 01 (2020), 12.

“O you who believe, heed the call of Allah and the call of the Messenger when he calls you to that which gives you life, and know that verily Allah limits between man and his heart, and verily it is to Him that you will be gathered”.

Regarding this explanation, the Prophet also said that an explanation of this fact can be seen in a hadith narrated by Aisha, where he said: The Messenger of Allah would divide his time equally among us and then pray, “O Allah, this is my share of what I have, so do not blame me for the share (of love) that only you have”.¹³

There is a stigma that people cannot control their love for someone. And in this case the prophet was also like that. In QS.Surat Al-Anfal verse 63 clearly proves that Allah is the one who regulates the affection of His creatures. *“And who unites their hearts (the believers). Even if you spent all that is in the earth, you could not unite their hearts, but Allah has united their hearts. Verily, He is the Mighty, the Wise”.*¹⁴

POLYGAMY IN MOROCCO AND INDONESIA

1. Regulation of Polygamy in Morocco

Basically, the Moroccan state intends to limit polygamy in the hope that the principle of justice can also be applied to women. The 1958 Family Law states that polygamy is not allowed if there is a fear of injustice among women. However, there is no article in the law that authorizes an investigation into a man's fitness or ability to act justly with respect to polygamy.¹⁵

In addition, Morocco also regulates polygamy in its laws, including the following: First, if a man wants to be polygamous, he must inform his future wife that he is already a man. Secondly, during the marriage contract, a woman can include taqlid talak, which prohibits her future husband from practicing polygamy. If this is violated, the woman has the right to sue for divorce. Third, even if the wife does not provide the above information, if the second marriage is detrimental to the first wife, the court can dissolve the marriage, although the situation is very difficult, that men who want to practice polygamy, it is very difficult to practice polygamy in Morocco. Moroccan citizens are already polygamous and have two wives. In addition, polygamy (which was the absolute right of the husband under the

¹³ Sayyidah, Rahman, and Ramly, “KONSEP KEADILAN DALAM POLIGAMI MENURUT AGAMA ISLAM, 35.”

¹⁴ Muhammad Farid Zulkarnain, “ADIL DALAM POLIGAMI MENURUT IMAM MADZHAB (Metode Istinbath Hukum Dan Argumentasinya Masing-Masing), 12-13.”

¹⁵ Nasiri Nasiri, “PRAKTIK PERKAWINAN DI NEGARA MAROKO (PRAKTIK UNDANG-UNDANG MUDAWWANATUL USROH DI BUMI PARA WALI),” *Jurnal Keislaman* 1, no. 2 (2021), 179. <https://doi.org/10.54298/jk.v1i2.3362>.

previous law) requires court approval and most importantly, is only allowed under strict legal requirements, making it almost impossible to practice.¹⁶

According to the latest regulations, polygamy is still allowed under the Moroccan Family Law of 2004, but under strict conditions.¹⁷ A husband who wants to remarry must prove that he can be fair to all his wives. Otherwise, Moroccan marriage law prohibits polygamy. The wife can also stipulate in the marriage contract that her husband may not commit polygamy in the future.

This is defined in Article 40 of the Moroccan Family Law of 2004: if there is more than one wife, if extraordinary objective reasons cannot be proven, and if the applicant does not have sufficient resources to support both families and to guarantee all living expenses and equality in all areas of life, the court does not authorize polygamy.

If the wife does not include the conditions in the divorce agreement, then the husband who wants to be polygamous must apply to the court for the recognition of polygamy, which must be accompanied by the objectively excluded conditions and his property. A polygamous marriage cannot take place before the second wife knows that her husband has a wife. Remarriage is possible if the second wife knows and accepts that her husband is married to someone other than her.

Morocco's marriage laws limit a couple's ability to engage in polygamy. These relatively strict rules are so complex that polygamy is theoretically almost impossible in Morocco. Any man who wishes to engage in polygamy must obtain his wife's permission under certain conditions.¹⁸

2. Regulation of Polygamy in Indonesia

Indonesia's provisions on polygamy cannot be separated from Law No. 1/1974. This is necessary because the starting point of all family law in Indonesia begins with the harmonization of marriage law. The legal process itself enforces marriage law quite effectively. Law No. 1/1974, Article 3(1) explicitly states that the basis/basis of marriage is monogamy. The article states: *"Basically in a marriage a man may only have one wife. A woman may only have one husband"*.

¹⁶ Bian Ambarayadi and Andi Molawaliada Patodongi, "Poligami Dalam Negara-Negara Islam," *As- Syar ' I: Jurnal Bimbingan & Konseling Keluarga* 6, no. 2 (2024), 1774-1775. <https://doi.org/10.47476/assyari.v6i2.6663>.

¹⁷ Basarudin and Mukhlas, "Studi Perbandingan Hukum Perkawinan Islam Di Maroko Dan Aljazair," 632.

¹⁸ Basarudin and Mukhlas, 633.

However, the option of polygamy remains, with a maximum of four people. This can be done through the courts. So it is clear that if polygamy does not exist or is not allowed by the court, then the marriage has no legal force. In this case, the court considers the condition of women in terms of morality and health, especially reproduction. The oral and/or written agreement of both parties in court must also be considered. In addition, it is important that there are financial guarantees to be given as alimony and guarantees about the fairness of polygamy. If these conditions are not met, the husband may not engage in polygamy.¹⁹

On the other hand, if the person applying for polygamy is a civil servant, they must obtain permission from an official, and female civil servants are not allowed to be the second/third/fourth wife. Government regulations are even stricter in this regard. In addition to the husband meeting the requirements of Law No. 1 of 1974, Government Regulation No. 9 of 1975 and the Compilation of Islamic Law, special regulations still apply, namely Government Regulation No. 10 of 1983 and Government Regulation No. 1990. Polygamy in civil servants is very strictly regulated, because civil servants are a reflection of state institutions that should be an example in society.²⁰

If examined closely, the requirements for polygamy in marriage law are different from the requirements of classical Islamic law as in the previous discussion. This difference is evident when analyzing the conditions that allow polygamy. Originally, the conditions for polygamy were emphasized solely for the sake of justice, but the UUP emphasizes polygamy on more tangible issues, such as women who are disabled or seriously ill, so that they cannot act as wives. The difference is also that the permission for polygamy is very strict because the UUP adheres to the principle of monogamy.²¹

¹⁹ Nina Agus Hariati, "REVITALISASI NILAI MITSQAAN GHALIDZA KELUARGA POLIGAMI DALAM PLURALISME HUKUM KELUARGA DI ERA DISRUPSI," *JURIH: Jurnal Ilmu Hukum* 2, no. 1 (2023), 32.

²⁰ Nina Agus Hariati, "Regulasi Poligami Di Indonesia Perspektif M. Syahrur Dan Gender," *Asy-Syari'ah : Jurnal Hukum Islam* 7, no. 2 (2021), 190. <https://doi.org/10.55210/assyariah.v7i2.597>.

²¹ Dyah Ayu Vijaya Laksmi, "Perspektif Filsafat Hukum Islam Dalam Poligami," *JiIP - Jurnal Ilmiah Ilmu Pendidikan* 5, no. 2 (2022), 598. <https://doi.org/10.54371/jiip.v5i2.460>.

DISCUSSION ANALYSIS

A. COMPARISON OF POLYGAMY RULES IN MOROCCO AND INDONESIA

1. Vertical Comparison

a. Similarities

1) Able to be fair

In Morocco, the fairness requirement for husbands who want to be polygamous is contained in Article 40 of the Mudawwanah al-Usrah of 2004. It states that polygamy is prohibited if you are worried that you cannot be fair between your wives. Meanwhile, the provisions of legislation in Indonesia that regulate justice as a condition for polygamous husbands/wives are found in Article 5 paragraph (1) letter c of Law No. 1 of 1974 which states that the husband can provide for his wife with certainty and the lives of his children. This is also contained in Article 55 paragraph (2) KHI which states that in the case of polygamy, the main requirement is that the man must be able to treat his wife and children fairly.

2) Limitation on the number of wives

The Moroccan marriage law limits polygamy in Chapter II Section Three, which deals with temporary obstacles (marriage). Paragraph 2 of Article 39 provides: Marriage with more than the number of wives authorized by sharia (law). At the same time, Indonesian law has a provision regarding the prohibition of polygamy in Article 55(1) of the Compilation of Islamic Law, which stipulates that more than one person may be married at the same time and is limited to four wives.

b. Differences

1) Polygamy requirements

Morocco is a Muslim-majority country that almost one hundred percent follows the Maliki school of thought. However, this does not mean that the regulations implemented there are entirely based on the Maliki school of thought. There are several provisions in the law that differ from the Maliki school of fiqh, one of which is the provision on polygamy. A man who wishes to engage in polygamy must first obtain court permission in accordance with Articles 41 and 42 of the 2004 Mudawwanah al-Usrah Law. The court does not allow polygamy: *If it is not proven that there are exceptional objective reasons. If the applicant does not have sufficient*

resources to support both families and guarantee all rights of maintenance, residence and equality in all aspects of life.

Unlike Morocco, Indonesia is a country where the majority of Muslims follow the Syafi'i school of fiqh. However, this does not mean that all of Indonesia's legal provisions, including those on polygamy, adhere to Syafi'i and Hanafi, Maliki and Hambali. It appears that practicing polygamy has an additional condition, which is that you must obtain permission from the court. You must also fulfill one alternative condition and all cumulative conditions to obtain court permission for polygamy. Article 3(2) of Law No. 1/1974 explains that: *(a) The court may grant permission to a husband to have more than one wife, if desired by the parties concerned; (b) There is certainty that the husband will be able to provide for the living needs of his wives and their children; (c) There is a guarantee that the husband will be fair to his wives and their children.*

Article 40 of Government Regulation No. 9/1975 also states that if a man wishes to marry more than one woman, he must submit a written request to the court. This provision is further emphasized in Article 56 paragraph (1) of the *Compilation of Islamic Law*, which states that *a husband who wishes to marry more than one wife must obtain permission from the Religious Court. Specifically for civil servants, the provision of polygamy is regulated in Article 4 of Government Regulation No. 45 of 1990 concerning the amendment of Government Regulation No. 10 of 1983 which states: (1) Male civil servants who will have more than one wife must obtain prior permission from the Religious Court.*

2) Sanctions for polygamy

Provisions regarding sanctions for violators of Moroccan polygamy rules are contained in Article 43 of *Mudawwanah al-USrah 2004*. Spouses who falsify certificates or other identities to organise polygamy are subject to criminal sanctions under Article 361 of the *Al-Qanun Al-Jina-i (Criminal Code)*. Violators face a prison sentence of 3 months to 3 years or a fine of 200 to 300 dirhams.

The provisions in Indonesia regarding polygamy sanctions are regulated in Government Regulation No. 1, Article 45 Paragraph 1.9 of 1975. Couples who violate the polygamy provisions mentioned above will be subject to a fine of up to Rp7,500 (seven thousand five hundred). Meanwhile, officials who commit

polygamy without permission will be subject to a one-time sanction of severe disciplinary action in accordance with PP No. 30/1980 concerning disciplinary regulations for civil servants. Female officials who become second wives are honourably dismissed from public office. Meanwhile, PP No. 30/1980 is declared invalid and replaced by PP No. 53/2010 on Civil Servant Discipline. The severe disciplinary sanctions as referred to in Article 7 paragraph 4 read as follows: Severe disciplinary sanctions as referred to in paragraph 1 letter c consist of: a) lower level reduction for 3 (three) years, b) level with respect to reduction c) leaving the office.

2. Horizontal Comparison

a. Equation

1) The principle of non-absolute monogamy

The principle of monogamy is not absolute in both Morocco and Indonesia. There are exceptions in certain circumstances and spouses can participate in polygamy by fulfilling the requirements and following all the procedures specified in the rule of law. This relates to a husband's reasons for committing polygamy. The regulations governing the permissibility of polygamy in both Morocco and Indonesia broadly provide room for husbands to apply for polygamy in situations where a wife is unable to fulfil her obligations and roles, suffers from an incurable disease/mental disability, cannot bear offspring. Both in Morocco and Indonesia, *fasakh* (cancellation) can be requested by the wife if the husband commits polygamy as a preventive measure with the agreement at the beginning of the marriage not to remarry.

2) Obtaining court permission

In Morocco, following the reform of family law in the 2004 *Mudawwanah Al-Usroh*, polygamy applications must be granted by the court upon fulfilment of the applicable requirements. In this regulation, the court has the authority to approve the marriage and the process is regulated in articles 40 - 46, specifically in article 41, which provides a prerequisite for a husband to guarantee all rights of maintenance, accommodation and equality in all aspects of life. If this is not fulfilled, the polygamy requested is prohibited because there is a risk of injustice that will be experienced by the wives later. In 2020,

statistics on polygamy in Morocco showed that around 0.3% of all marriages were polygamous.

The same thing is also applied in Indonesia with the regulation of Article 4 paragraph (1) of Law No. 1 of 1974, Article 40 of Government Regulation No. 9 of 1975, Article 58 paragraph (1) letter a KHI, which is the authority of the court as a prerequisite for granting polygamy for a husband. As of 2022, based on the mediation recapitulation of polygamy licence cases, there were 502 mediations recorded in Indonesian religious courts, with 373 cases that were not successfully resolved through mediation. This proves that the role of the court as an authorised catalyst in civil cases relating to polygamy in Indonesia is low.

3) Certainty of financial security

Referring to the family law in Morocco, a husband who wants to commit polygamy must consider the fairness of his wife, in this case the financial compensation that must be given to support more than one family. Article 41 and Article 42 of Mudawwanah Al- Usrah 2004 require the husband's material ability to fulfil his wife's needs fairly.

This also applies in Indonesia, in article 5 paragraph (1) of Law No. 1 of 1974, Article 58 (1) letter b KHI, explicitly states that for husbands who apply for polygamy must ensure the ability to guarantee the needs of their wives and children. Meanwhile, civil servants provide cumulative requirements regarding the adequacy of income to support more than one wife as evidenced by an income tax certificate as stated in Article 10 paragraph (3) letter b of Government Regulation No. 10 of 1983.

b. Differences

The first difference is that according to the Moroccan Family Law of 2004, polygamy rules apply to all Moroccans. However, in addition to the generally applicable polygamy rules in Indonesia, there are rules that specifically apply to civil servants. While civil servants who want to commit polygamy must get permission from civil servants or their superiors. And female officials are strictly prohibited from becoming a second wife.

The second difference is that a woman in Morocco, who enters into a marriage contract, has the explicit right to make an agreement with her husband-the right to include in the taklik talak

the prohibition of polygamy by her future husband. If the man violates it, the woman has the right to sue for divorce. At the same time, there is no specific regulation on the matter in Indonesia.

The final difference is the form of punishment imposed on those guilty of violating the rules regarding polygamy. In Morocco, perpetrators who violate the rules of polygamy by falsifying information to commit polygamy are punished according to Article 361 of the Criminal Code. If the perpetrator is punished with imprisonment of 3 months to 3 years or a fine of 200-300 dirhams according to Article 43 of Mudawwanah al-Ussrah 2004.

Meanwhile, violators of polygamy rules in Indonesia, except for civil servants, are regulated in Article 45 of PP No. 9 of 1975 which provides criminal sanctions for couples who violate the provisions of polygamy, namely a maximum fine of Rp7,500 (seven thousand five hundred rupiah). And employees of the registration department who violate the storage provisions shall be punished with imprisonment for a maximum of 3 (three) months or a maximum fine of Rp7,500 (seven thousand five hundred rupiahs). As for officials who violate the polygamy rules mentioned above, they will be subject to one of the severe disciplinary sanctions of PP No. 30/1980 concerning disciplinary regulations for civil servants. Separate disciplinary actions can be in the form of demotion, transfer, dismissal, honourable dismissal, to dishonourable dismissal. Female officials who become the second/third/fourth wife are punished with dishonourable dismissal from the civil service.

CONCLUSION

Polygamy is allowed in Islam because it is based on Q.S. Ayat 3 An-Nisa shows that when applied, not all countries apply it. In Morocco and Indonesia, polygamy rules are very careful and even strict. In Morocco, polygamy is regulated in the 2004 Mudawwanah al-Ussrah and Majmu'ah al-Jina'i. Meanwhile, polygamy in Indonesia is regulated in Law No. 1 of 1974, Government Regulation No. 9/1975, Compilation of Islamic Law, Government Regulation No. 45 of 1990. Based on the results of the vertical comparison, the polygamy rules of both countries changed from the provisions of classical fiqh. These changes include the granting of court permission for polygamy, wife's consent and the application of sanctions for violators of polygamy provisions. Meanwhile, based on the results of horizontal comparison,

there are the following similarities: First, the principle of monogamy is not absolute. Both must obtain permission from the court. Third, considering the husband's financial situation so that he can provide fairly for his wife and children. Although the differences are: Firstly. Indonesia has special rules that apply to civil servants who wish to practice polygamy. Meanwhile, polygamy rules are generally applied in Morocco without special rules for civil servants. Second, in Moroccan divorce agreements, the wife has the right to refuse her husband's polygamy, while in Indonesia there is no such provision. And the third is the form of punishment for violating the rules of polygamy.

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