

## The Dilemma Of Polygamy In *Al-Maqashid Syari'ah* & Human Rights Perspective

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### Abstract

*Polygamy has always been a dilemma from time to time. The legalization of polygamy with religious arguments as well as the prevailing laws and regulations makes some parties feel dissatisfied. So far, in the eyes of society, polygamy is considered as discrimination against women. This study aims to determine and analyze how the position of polygamy. Both from the point of view of the Syari'ah, namely using the theory of Maqashid Syari'ah (The Purpose of the Syari'ah) and also from the point of view of Human Rights itself. This study uses a literature review with a qualitative method. While the data is presented in a descriptive-analysis. Therefore, the result of this paper, that polygamy is not a solution anymore. Because at this time, some of the reasons that are the basis for allowing polygamy can be overcome with technological advances.*

*Keywords: Polygamy; Maqashid Syari'ah; Human Rights.*

### 1. Introduction

Polygamy has always been a dilemma for some parties. Likewise what is happening today, many social media reports that women sincerely lead their husbands to remarry. In fact, when looking at history, the practice of polygamy has occurred long before the Prophet Muhammad delivered the message of Islam. At that time polygamy was often practiced by government officials or wealthy people. Therefore, various opinions began to emerge, both pro and contra, so this topic is always interesting to talk about.

Polygamy was the biggest cause of divorce in post-independence Indonesia, namely 62% which occurred in 1952 where the previous year was 60%.<sup>1</sup> In addition, Nasarudin Umar presents data that polygamy is the main cause of divorce in Indonesia, there were at least 813 divorces in 2004. Even had an increase, 879 (2005) and 983 (2006).<sup>2</sup> Currently, the practice is still being carried out even though the number has decreased from year to year, starting from 2012 as many as 995 and this number continues to shrink. Next in 2013 were 794, 691 (2014), 689 (2015), 643 (2016), this data is the latest data from the Ministry of Religion.<sup>3</sup> This is the recorded data on polygamy, of course there are still many that are not recorded, so what about them?

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<sup>1</sup> Nur Janti, *Angka Poligami dari Masa ke Masa*, HISTORIA (masa Lampau Selalu Aktual), published June 25, 2019, <https://history.id>, accessed on August 4, 2021 at 20:39 WIB

<sup>2</sup> Nasarudin Umar, *Poligami Justru Jadi Penyebab Perceraian*, <https://kemenag.go.id>, published on August 22, 2007, at 17.00 WIB, accessed on August 4, 2021, at 22:01

<sup>3</sup> Nur Janti, *Angka Poligami...*, <https://historia.id>, accessed on August 4, 2021 at 20:39 WIB

In Indonesia in recent years, a discussion forum called the "Indonesian Polygamy Forum" has emerged which appears very confident. In fact, they don't just campaign through social media and websites, they even set up a class with the theme "The Fast Way to Get Four Wives". Usually a wife or woman does not want her partner to remarry, but in this forum not a few women take a role by dedicating themselves to supporting polygamous partners.<sup>4</sup> According to Nina Nurmala, most wives experience psychological or economic suffering. In addition, there is his PhD research at the University of Melbourne, that second wives always feel marginalized.<sup>5</sup> This is because actually a woman is not willing to be seconded.

Polygamy in its implementation is not an Islamic law.<sup>6</sup> This is because when Islam came, polygamy had become a natural tradition. Centuries long before Islam the Greeks, Persians and Ancient Egyptians had been widely practiced.<sup>7</sup> There is even evidence that countries such as Russia, Belgium, the Netherlands, the Hebrews, India, China and so on, have practiced polygamy long before Islam came.<sup>8</sup> Whereas in Indonesia the practice of polygamy tends to be uncontrolled by the government even though it has been regulated by law.<sup>9</sup> The above opinion shows that the practice of polygamy is not only an internal dilemma for Islam, but non-Muslims also criticize the practice.

The dilemma of polygamy that occurs in Muslims departs from the same source, namely the texts of the Qur'an or hadith. The Qur'an says "then marry what you like, two, three, or four, then if you are afraid that it will not be fair then only one".<sup>10</sup> From this, in general, it can be seen that there is no contradiction if the fair conditions can be met. As for the hadith, there have been differences, namely the versions of the hadith of Ghailan bin Salamah and Qais bin al-Harith with the hadith narrated by Qutaibah. The three editors of the hadith, two of which are the basis for the permissibility of polygamy, "choose only four of them",<sup>11</sup> and one supports monogamy "really I don't allow it, unless Ali wants to divorce my daughter".<sup>12</sup>

In addition, it is also contained in one of the paragraphs in Article 4 paragraph 2 of Act No. 1 of 1974 (Marriage Law)<sup>13</sup> and Article 57 of the KHI, that men who want to

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<sup>4</sup>Putri Jannatur Rahmah., dkk, Praktik Poligami dalam Komunitas Poligami Indonesia Perspektif CEDAW, *at-Thullab: Jurnal hasiswa Studi Islam*, Vol. 2, No. 1, September-January 2021, 284

<sup>5</sup> ABC, *Kelas Poligami di Indonesia Ajarkan "Cara Kilat Dapat Istri Empat"*, published April 5, 2019 at 09.23 WIB, <https://www.abc.net.au>, accessed on August 4, 2021 at 22.28 WIB

<sup>6</sup>Ali Imron, menimbang Poligami dalam Hukum Perkawinan, *Jurnal Ilmiah Ilmu Hukum QISTI*, Vol. 6, No. 1, January 2012, 12

<sup>7</sup>Musdah Mulia, *Islam Menggugat Poligami* ed. 1; (Jakarta: Gramedia Pustaka Utama, 2004), 45

<sup>8</sup>Cahyani, A. I. (2018). Poligami dalam Perspektif Hukum Islam. *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam*, 5(2), 271. <https://doi.org/10.24252/al-qadau.v5i2.7108>

<sup>9</sup> A. Wartini (2013), Poligami: Dari Fiqh Hingga Perundang-Undangan, *In HUNafa: Jurnal Studi Islamika* (Vol. 10, Issue 2). <https://doi.org/10.24239/jsi.v0i2.29>. 237-286

<sup>10</sup> Depag RI, *al-Qur'an dan Terjemahnya* (Surakarta: Media Insani Publishing, 1999), 115

<sup>11</sup>Hadits narrated Ibn Umar see. Muhammad Ibn Isa al-Tirmidzi, *Sunan al-Tirmidzi*, Vol. 3 (Mesir: Musthafa al-Baby al-Falaby, 1968), 426. While the hadith narrated by Qais see. Abu Dawud al-Sijistani, *Sunan Abi Dawud*, Vol. 2 (Beirut: Daar Ibn Hazm, 1997), 470

<sup>12</sup>Hadits riwayat Ibn Umar lihat. Muhammad Ibn Isa al-Tirmidzi, *Sunan al-Tirmidzi*, Vol. 3 (Mesir: Musthafa al-Baby al-Falaby, 1968), 426.

<sup>13</sup> Tim Redaksi, *Kompilasi Hukum Islam*, (Bandung: Nuansa Mulia, 2012), 76

have more than one wife are based on at least one of three reasons, namely: (1) the wife cannot carry out her obligations; (2) the wife is sick or has a disability that is difficult to heal; (3) the wife cannot give birth.<sup>14</sup> Some of the things above at a glance are a solution for husbands or men. But now if it's the other way around, a woman whose husband has one of the three things above is there a solution for women. This then becomes a big dilemma, in fact polygamy is a solution or ambition.

This paper aims to find out and analyze the nature of *Maqashid Syari'ah* and human rights in assessing polygamy, so that polygamy is no longer a dilemma in the eyes of society.

## 2. Research Methods

The approach method used is normative juridical. This study uses a qualitative research type, while the approach uses a study method or commonly called library research (library study).<sup>15</sup> The author examines Polygamy which is still a dilemma based on *Maqashid Syari'ah* and also based on HAM (Human Rights). The data will be taken from various literatures in the form of books, journals, articles, verses of the Qur'an and Hadith.

The type of study used by the author in compiling this research is descriptive-analysis,<sup>16</sup> where the author describes by means of a dialogue with the existing data so as to produce a comprehensive, systematic and objective research on the dilemma of polygamy.

Data collection techniques are carried out by recording data from various written sources and then identifying contextual evidence, namely by looking for the relationship between the data and reality. Data processing is carried out through critical analysis, namely comparing and interpreting various research results, both primary and secondary data. As for the process of data analysis, the authors select the collected data. Then coding is done according to the topic and discussion.

## 3. Results and Discussion

### 3.1. *Maqashid Syari'ah*

In language *Maqashid* is derived from a combination of compound words (*idhafah*) which consists of the words *Maqashid* and *Syari'ah*. *Maqashid* is the jama' of qashda which means intention, will or goal.<sup>17</sup> While *Syari'ah* means the straight path.<sup>18</sup> In the past, the Arabs used this word as a way to get to a place to get drinking water, so

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<sup>14</sup> Ibid, 17

<sup>15</sup> A series of activities related to the method of collecting library data. See, Sugiono, *Metode Penelitian Pendidikan*, (Bandung: Alfabeta, 2013), 1

<sup>16</sup> Research is carried out by reporting and describing an object of certain circumstances, symptoms, habits or behaviors which are then analyzed sharply. See, Nanang Martono, *Metode Penelitian Kuantitatif*, (Jakarta: Rajawali, Pers, 2012), 46

<sup>17</sup> Ahmad Warson Munawwir, *al-Munawwir: Kamus Arab Indonesia*, (Yogyakarta: Pondok Pesantren al-Munawwir, 1984), 1208

<sup>18</sup> Muhammad Ali al-Sais, *Nasy'at al-Fiqhi al Ijtidady wa Atwaruhu*, (Qahirah: majma al Buhuts al-Islamiyah, 1970), 8

the *Syari'ah* could be interpreted as the main road with a clear direction.<sup>19</sup> Meanwhile, in the KBBI, *Syari'ah* is defined as a religious law that determines the rules of human life both with Allah SWT, with others and the natural surroundings based on the Qur'an and hadith.<sup>20</sup> Therefore, simply *Maqashid Syari'ah* can be interpreted with the aim of enforcing a law or regulation.

The essence of the initial implementation of the *Syari'ah* is none other than the realization of the five main elements, namely, the maintenance of religion, soul, lineage, reason and property in every human being.<sup>21</sup> Judging from the aspect of its influence on human life, the benefit is divided into three levels, namely; *dharuriyat*, *hajiyyat* and *tahsiniyyat*.<sup>22</sup> Where the three cannot be separated because all three complement each other. The level of *hajiyyat* will perfect *dharuriyat* and *tahsiniyyat* to be perfect for *hajiyyat*. Meanwhile, *dharuriyat* is the point of maintaining *hajiyyat* and *tahsiniyyat*.<sup>23</sup> The following is an explanation of the levels of benefit required by the *Syari'ah*:<sup>24</sup>

*Dharuriyat*, is the primary benefit. Where human life is very dependent on it, both in religious and worldly aspects. So if this aspect is abandoned, human life will be destroyed.

*Hajiyyat*, is a secondary benefit, which is something that humans need to make their lives easier. So its absence will only make it difficult.

*Tahsiniyyat*, is benefit in the form of demands that aim to increase goodness and glory. So that by not achieving it will not be difficult or even damaging. In the category of meeting needs, this *tahsiniyyat* benefit is classified as a tertiary need.

The following are the five main missions of *Syari'ah* according to needs and priority scale,<sup>25</sup>

- 1) *Hifdz Din* (maintaining religion/religious rights), this right is not only to maintain the sanctity of religion but also to create a pattern of healthy relationships in carrying out religious teachings, both between fellow religions or different religions.
- 2) *Hifdz Nafs* (to protect the soul/right to life), this right should not only be used as a tool for self-defense but is directed at maintaining a better quality of life for each individual as a whole.
- 3) *Hifdz 'Aql* (maintaining reason/right to education). In fact, the orientation of guarding reason does not only keep him from going crazy. But more than that, it is a guarantee of security for each individual's intellectual work such as copyrights, works and someone's creations.

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<sup>19</sup> Ahmad Hasan, *The Early Development of Islamic Jurisprudence*, (Islamabad: Islamic Research Institute, 1970), 7

<sup>20</sup> Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia, edisi IV*, (Jakarta: PT. Gramedia Pustaka Utama, 2008), 1368

<sup>21</sup> Al-Syatibi, *al-uwafaqat fi Ushul al-Syari'ah*, (Kairo: Mustafa Muhammad, t.th), 8

<sup>22</sup> Wahbah al Zuhaili, *ushul al-Fiqh al-Islami*, (Beirut: Darr al-Fikr, 1986), 1020-1023

<sup>23</sup> Al-Syatibi, *al-uwafaqat...*, 11

<sup>24</sup> Ghofar Shidiq, *Teori Maqashid al-Syari'ah dalam Hukum Islam, Sultan Agung, Vol. XLIV, No. 118, Juni-Agustus, 2009*, 123-124

<sup>25</sup> Ridwan Jamal, *Maqashid al-Syari'ah dan Relevansinya dalam Konteks Kekinian, Jurnal Ilmiah al Syir'ah 8 (1), 2016*, 8-9

- 4) *Hifdz Nasl* (maintaining offspring/honor), each individual is guaranteed lineage-offspring so as not to be tarnished.<sup>26</sup> Therefore, marriage is prescribed, because if this does not happen, the existence of the offspring will be threatened.<sup>27</sup> Therefore, a person has the full right to determine his marriage and have children.
- 5) *Hifdz Maal* (maintaining property/right to work), this right is not only an effort to protect property from interference from others. But it also guarantees every individual to get halal sustenance by working. Thus everyone can maintain the quality of their welfare with the property rights they have.

### 3.2. Human rights

Human rights are basic human rights that have been obtained and brought along with his birth.<sup>28</sup> Therefore, the government and the state are obliged to fully protect every citizen. Human rights as an international human problem that does not recognize barriers between countries and nations. This is due to the general and universal nature of human rights. Basically, the core issue in human rights is the same, namely protecting a person from threats, disturbances, obstacles and challenges from other parties. Therefore, one of the cornerstones in discussing human rights is the concept of equality or justice.

Ronald Drowkin and John Rawls are figures who developed a theory of justice in human rights. Drowkin's theory is based heavily on the obligation to treat citizens equally. Therefore, human rights are intended as a bulwark of the individual against the will of the public which makes him not receive the same treatment. However, it can be violated if it is based on the reason that there is a greater public interest.<sup>29</sup>

Another idea was conveyed by John Rawls who then introduced the concept of distributive justice, where there are two important things, namely fairness and equality. According to Rawls, in society every individual has the same rights and freedoms, but these rights and freedoms are often not enjoyed equally, for example: the right for everyone to obtain education, but this right cannot be enjoyed by everyone because of poverty. To overcome this, Rawls introduces the difference principle. This principle states that equitable distribution of resources should be prioritized, unless it is proven that an unequal distribution will make the situation of disadvantaged people better.<sup>30</sup>

December 10, 1948 became a milestone in the history of human rights in the world with the ratification of the UDHR (Universal Declaration Of Human Rights)<sup>31</sup> which is located in Paris France.<sup>32</sup> There are at least 30 basic rights that must be guaranteed,

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<sup>26</sup> Ali Yafie, *Merintis Fiqh Lingkungan Hidup*, (Jakarta: Ufuk Press, 2006), 186

<sup>27</sup> Ainul Yakin, Urgensi Teori Maqashid al-Syari'ah dalam Penetapan Hukum Islam dengan Pendekatan Masalah Mursalah, *Jurnal at-Turas*, Vol. 2, No. 1, January-June, 2015, 31

<sup>28</sup> Meilanny Budiarti Santoso, LGBT dalam Perspektif Hak Asasi Manusia, *Share: Social Work Jurnal*, Vol. 6, No. 2, p: 154-272, ISSN: 2339-0042 (p), 224

<sup>29</sup> Pranoto Iskandar, *Hukum HAM Internasional* ed. I, 2012, Jakarta: IMR Press, pp. 57-58

<sup>30</sup> John Rawls, *Teori Keadilan*, ed.III, 2019 Yogyakarta: Pustaka Pelajar, p.72-77

<sup>31</sup> Mahrus Ali, *Membumikan HAM di Indonesia*, <https://law.uii.ac.id>, published May 21, 2020, accessed on August 5, 2021 at 08.08

<sup>32</sup> <https://international.kompas.com>, accessed on August 5, 2021 at 07.22

one of which is “the right to marry and have a family” as stated in Article 16 (1-3). In Indonesia, the regulations regarding human rights are contained in Act No. 39 of 1999 which consists of 11 chapters and 106 articles.<sup>33</sup> After the declaration of human rights was ratified, every civilized country must fulfill, protect and respect every citizen, including Indonesia as a member country that participated in ratifying it.

On December 18, 1979, the United Nations passed a regulation on the elimination of all forms of discrimination against women known as CEDAW (The Convention the Elimination of all Forms of Discrimination against Women). Meanwhile, the Indonesian government ratified and ratified in 1984, namely Act No. 7 of 1984, although so far there has not been much progress.<sup>34</sup> The paradigm used by CEDAW is gender equality where women must be given rights as given to men.<sup>35</sup> So it can be concluded that the emphasis on this convention is equality and justice, namely the feeling of rights and opportunities in all fields of activity.

### 3.3. Polygamy within the framework of Maqasid *Syari'ah* and Human Rights

In general, polygamy can be interpreted as a marriage in which one party (husband) marries more than one wife in carrying out domestic life.<sup>36</sup> While in Arabic, polygamy is called *ta'did zaujah* (number of partners).<sup>37</sup> In addition, if drawn from the root language, polygamy comes from the word poly which means many and gamien which means to marry.<sup>38</sup> Therefore, it is not linguistically distinguished whether it is men or women who marry a lot at the same time. However, in general, polygamy is defined as a man having many wives or marrying more than one at the same time. This is done not at the time of *ijab qabul* but in carrying out domestic life.

Polygamy is still a matter of debate, including the opinion of the majority of classical and medieval scholars. They argue that polygamy is absolutely permissible with a maximum limit of four.<sup>39</sup> Meanwhile, contemporary scholars and modern Muslim legislation allow it on conditions that are not easy. Even more than that, contemporary thinkers have come up with a bolder opinion that polygamy is haram because it is not in accordance with the basic principles of Islam.<sup>40</sup> In fact, almost all contemporary interpretations agree not to advocate polygamy, because monogamy in the

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<sup>33</sup> <https://www.komnasham.go.id>, Act No. 9 of 1999 concerning Human Rights, accessed on August 5, 2021 at 08.11

<sup>34</sup> Siti Musdah Mulia, *Islam Menggugat Pologami*, (Jakarta: Gramedia, 2006), 66

<sup>35</sup> Qurrotul Ainiyah, Poligami di Indonesia dalam Perspektif CEDAW dan Mazhab Syafi'i, *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, Vol. 7, No. 1 (2017), 64

<sup>36</sup> Al-Qamar Hamid, *Hukum Islam Alternative Terhadap Masalah Fiqh Kontemporer*, (Jakarta: Restu Ilahi, 2005), 19

<sup>37</sup> Wely Dozan, Fakta Poligami Sebagai Bentuk Kekerasan Terhadap Perempuan: Kajian Lintasan Tafsir dan Isu Gender, *Marwah: Jurnal Perempuan, Agama dan Jender*, Vol. 19, No. 2, 2020, 135

<sup>38</sup> Muhammad Arif Mustofa, Poligami dalam Hukum Agama dan Negara, *AL-IMARAH: Jurnal Pemerintahan dan Politik*, Vol. 2, No. 1, 2017, 48

<sup>39</sup> Muhammad ukhdi dan Faisal, Transformasi Poligami dalam Bingkai Syari'at Islam di Aceh, *TAQNIN: Jurnal Syari'ah dan Hukum*, Vol. 2, No. 1, Januari-Juni 2020, E-ISSN: 2685-399X, 17

<sup>40</sup> Muhamad Arif Mustofa, Poligami dalam Hukum Agama dan Negara, *AL-IMARAH: Jurnal Pemerintahan dan Politik Islam*, Vol. 2, No. 1, 2017, 47

interpretation trajectory is a fact in order to uphold justice and maintain respect for women.<sup>41</sup>

Some of the legal bases used by Islamic scholars or thinkers that allow polygamy include; (1) QS. An-Nisa' verse 3; (2) hadith from the companions of Ibn Umar and Qais bin al-Harith. Meanwhile, one hadith narrated by Qutaibah is the basis of the sunnah of monogamy. Therefore, it is necessary to carefully understand some of the legal bases above;

*First*, QS an-Nisa' verse 3. In fact, this verse has four fragments which are often used as the basis for the permissibility of polygamy; (1) to avoid oppression of orphans by not marrying them; (2) but marrying other women can be two, three or four; (3) even then, if you are worried that it will be unfair, only one wife; (4) because one wife is closer to not being wrong or misbehaving.<sup>42</sup> As for *asbabun nuzul* this verse, namely, there is a guardian who is interested in marrying an orphan who is in his guardianship without a dowry.<sup>43</sup>

*Second*, Hadith narrated by Ibn Umar. In this hadith the subject is a friend of Ghailan bin Salamah, while the version of Qais bin al-Harith is the subject of Qais himself. Both of these hadiths both talk about the same problem, namely someone who has many wives (eight to ten) or even more.<sup>44</sup> So when viewed contextually this hadith allows the practice of polygamy.

*Third*, Hadith narrated by Qutaibah in which the Messenger of Allah did not allow Sayyina Ali to remarry unless Sayyidah Fatimah was divorced. The Prophet said "I do not allow" three times. This expression is a reinforcement that applies not only then, but forever.<sup>45</sup> When viewed textually, this hadith prohibits polygamy, because the jealousy that a wife cannot hold back will cause damage to the family and even religion. Here are some polygamy controversies and possible solutions;

Polygamy Controversy		
No	Argument	Solution
1	Justice	In fact, the justice that humans are able to do is material justice, so in order to avoid mental pressure that will cause a lot of damage, it is better to avoid polygamy.
2	Alternative solutions, if; a. Women cannot carry out their roles both physically and mentally, Ex. Chronic pain b. Women can't give birth	It's not fair if only women are in a difficult position, what if things turned around. Therefore, it is possible to take advantage of advanced technology to cure disease and if not, it would be more noble to have

<sup>41</sup> Wely Dozan, *Fakta Poligami...*, 145

<sup>42</sup> Faqihuddin Abdul Kodir, *Qira'ah Mubadalah*, (Yogyakarta: IRCiSod, 2019), 421

<sup>43</sup> Wahbah ibn Musthafa al-Zuhaili, *al-Tafsir al-Munir fi al-'Aqidah wa al-Syari'ah wa al-Manhaj*, Vol. 4, (Damaskus: Daar al-Fikr al-Mu'asir, 1996), 232-233

<sup>44</sup> Masiyan M Syam & Muhammad Syachrofi, *Hadits-hadits Poligami (Aplikasi Metode Pemahaman Hadits Muhammad al-Ghazali)*, *Dirayah: Jurnal Ilmu Hadits* 4, 1 (September 2019), 94

<sup>45</sup> Rahmi Syahriza, *Analisis Teks Hadits Tentang Poligami dan Implikasinya*, *Al-QUDS: Jurnal Studi al-Qur'an dan Hadits* Vol. 2, No. 2, 2018, 138

		patience and loyalty between partners to do it together.
3	More number of women	This is not a pretext for recommending polygamy. Because if that were the case, surely Allah would have created four times as many women as men. While in Indonesia alone the number of both is stable.
4	Supporting widows and orphans	Support does not have to be by marrying, but can be done by donating or establishing a social organization that houses widows and orphans in need. The government has also guaranteed protection.
5	avoid; a. Divorce b. Infidelity (adultery)	In fact, divorce can be a solution that is justified when one of the parties turns away ( <i>nusyuz</i> ) and is not willing to fix it again. As for infidelity, this is a disease that will only be cured by sincerely repenting.

Polygamy does not rely on texts but follows the situation and conditions.<sup>46</sup> This is because the practice of polygamy by the Muslim community was still influenced by socio-cultural influences at that time. So that when they heard that their friends were polygamous, they were not actually fulfilling the recommendations of the Qur'an, but looked at polygamy as an *umrah* thing that was in effect at that time.<sup>47</sup> It should be underlined, actually QS. An-Nisa' verse 3 does not talk about the recommendation of polygamy, but talks about the permissibility of polygamy on conditions that are not light.<sup>48</sup> Therefore, polygamy can be a solution for those who really need it and even the opposite is an ambition for those who only want it.

#### Polygamy Analysis in *Maqashid Syari'ah* & Human Rights Perspective

		POLYGAMY
MAQASHID SYARI'AH	Keeping Religion	Polygamy can be worth worship and promised a great reward for a woman. However, it will turn into something that can damage the quality of worship if it is not able to control jealousy.

<sup>46</sup>M. Ichsan, Poligami dalam Perspektif Hukum Islam (Kajian Tafsir Muqaranah), *Jurnal Ilmiah Syari'ah*, Vol. 17, Nomor. 2, July-December 2018, 159

<sup>47</sup>Faquhuddin Abdul Kodiq, *Memilih Monogami: Pembacaan Atas al-Qur'an dan Hadits Nabi.*, ed. 1, (Yogyakarta: LKiS Pelangi Aksara, 2005), 62-65

<sup>48</sup> M. Quraish Shihab, *Tafsir al-Misbah*, Vol.2, (Tangerang: Lentera Hati, 2016), 410



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	<b>Nurturing the soul</b>	polygamy can maintain the souls of many parties by guaranteeing their lives. However, it will damage the soul and life of his own family if he is not able to withstand the turmoil of anger
	<b>Keeping your mind</b>	Polygamy can keep someone from thinking about having an affair. However, it will damage the mentality of the family, especially the children who feel that their family is no longer intact (there is only one mother, one father and several siblings)
	<b>Caring for offspring</b>	Polygamy can perpetuate and as a way to reproduce offspring. However, it will actually provide a gap for family noise for children between wives
	<b>Keeping property</b>	Polygamy can be used as a forum for better management of abundant wealth. But on the contrary, abundant wealth will become a bone of contention for families and children between wives
<b>HAM</b>	<b>UDHR CEDAW</b>	"Equal rights in marriage, starting from the freedom to choose a partner with their consent to the same rights during marriage and in the event of the termination of the marriage". According to human rights, both in UDHR and CEDAW, polygamy violates the regulation, namely Article 16 paragraphs 1-3.
	<b>Act No. 39 of 1999</b>	"Everyone has the right to recognition, guarantee, protection and fair legal treatment and to obtain legal certainty and equal treatment before the law." (Article 3 paragraph 3)  "A valid marriage can only take place at the free will of the prospective husband and prospective wife concerned, in accordance with the provisions of the legislation." (Article 10 paragraph 2)  In this case polygamy does not violate Article 10 paragraph 2 as long as it is carried out according to the will of the husband and wife and is carried out according to applicable regulations, namely permission from the <i>Majlis Hakim</i> . As for Article 3, polygamy indirectly

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discriminates against women, because men have a polygamy solution while women do not.

The fulfillment of human sexual rights is based on six main principles;<sup>49</sup>

1. Protection for children's growth
2. Non-discrimination
3. Enjoyment and comfort
4. Freedom of responsibility
5. Freedom and respect
6. Fulfillment of rights

In this case, polygamy will have more potential for violence both physically, psychologically and mentally for a woman

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In dealing with polygamy, there are at least three points that need to be considered; (1) patience and fidelity are universal values, therefore men and women are required to do the same to their partners; (2) women have the full right to refuse polygamy, because the Prophet gave advice not to hurt themselves and others; (3) women have the right to divorce when the husband forces polygamy, because in QS. An-Nisa' 128-130<sup>50</sup> consider polygamy as part of the husband's *nusyuz* which can be dealt with by divorce.<sup>51</sup> In essence, based on the Marriage Law, one of the principles of marriage is monogamy, that a man can only have one wife and vice versa. In addition, polygamy also keeps away from the realization of expectations regarding a harmonious family.<sup>52</sup> Likewise, the Prophet did, he lived a monogamous life longer than polygamy.

#### 4. Closing

Polygamy is indeed allowed, but it is not a recommendation or even sunnah. As for the current situation, it seems that polygamy is no longer a solution to some of the conditions on which it is permitted. In fact, whether in the eyes of *Maqashid Syari'ah* or human rights, polygamy has a higher degree of exclusion of wives and children. Historians have also said that polygamy was originally practiced by kings, state officials and wealthy people. Therefore at that time polygamy was more towards the oppression of women by people who were rich and on the throne.

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<sup>49</sup> Wely Dozan, *Fakta Poligami...*, 142

<sup>50</sup> QS. An-Nisa (128-130), in which it is very clear and firmly stated that women have the right to divorce if the husband turns to another woman (*nusyuz*) and intends to marry her (in the form of polygamy). Because according to the Qur'an, it is possible that through this divorce can make women more fulfilled and independent.

<sup>51</sup> Faqihuddin Abdul Kodir, *Qira'ah...*, 421-422

<sup>52</sup> Siaran Pers Nomor: B-103/SETMENHM.02.04/04/2021, [www.kemenpppa.go.id](http://www.kemenpppa.go.id), accessed on August 4, 2021 at 23.25 WIB

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