

Dynamics of Polygamy: An Attempt to Find Common Ground from the Perspective of *Maqhasid Sharia* and Human Rights

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Abstract. *This study aims to find the intersection between maqashid sharia and human rights in the practice of polygamy. Polygamy, or marriage with more than one partner at the same time, is an Islamic teaching that, in light of Maqashid al-Syariah, is permissible as long as it brings benefits, but on the other hand, human rights activists consider polygamy as a form of violation of human rights. This study uses a qualitative approach by analyzing religious texts, laws, and other sources to understand how Maqashid sharia can be applied in the context of polygamy. The results show that, while polygamy may be permissible in certain contexts, its practice must be aligned with the objectives of Maqashid sharia, namely creating justice, welfare, and happiness for all parties involved. From a human rights perspective, there is no single article that discusses polygamy, but as seen from the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination against Women, although Article 16 is interpreted as not allowing polygamy; Article 18 allows polygamy but with strict conditions, namely being fair or adjusted to the rules of each religion. This research provides new insights into how Islamic principles can be used to guide the practice of polygamy and emphasizes the importance of considering social needs so that it does not conflict with human rights.*

Keywords: *Human Rights; Maqhasid Sharia; Polygamy.*

1. INTRODUCTION

The process of uniting two people who were originally separate and independent, into a perfect and complete couple is the definition of marriage.¹ With marriage, a person can have a partner. A man's life will feel imperfect if there is no woman to accompany him, and vice versa for a woman. Therefore, husbands and wives become each other's partner.²

¹ Khoiruddin Nasution, (2005), *Hukum Perkawinan I*, Yogyakarta: ACAdeMia & TAZZAFa, p. 38.

² M. Quraish Shihab, (1996), *Wawasan al-Quran: Tafsir Maudhu'i atas Pelbagai Persoalan Ummat* Bandung: Mizan, p. 206.

Marriage is a ceremony or ritual that is generally carried out by humans as part of their lives. Marriage aims to build a harmonious family by strengthening the bond between husband and wife.³

In principle, the marriage of both husband and wife in marriage is only allowed husband and wife to have one partner. This principle is called the principle of monogamy, which is regulated in Article 3 paragraph (1) of the 1974 Marriage Law.⁴ This principle is also in line with the Qur'anic verse Surah An-Nisa (4): 3 which explains that the principle of marriage in Islam is monogamy.

وَأِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَاتَّكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثَلَىٰ وَثَلَّثَ وَرُبَعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۗ ذَٰلِكَ أَذْنَىٰ أَلَّا تَعُولُوا (سورة النساء : 3)

Meaning: "And if you fear that you will not be able to do justice to the rights of orphaned women (if you marry them), then marry any other women you like: two, three or four. Then if you fear that you will not be able to do justice, then marry only one, or the slaves you own. That is closer to not doing wrong."⁵

However, Islam welcomes the arrival of polygamy, which is permissible. Allah swt gives the husband the right to be polygamous with up to four wives, provided that the husband is obliged to be fair to his wives.⁶ The intention to be fair is to be able to be fair in protecting the wife, providing maintenance for the wife and children, housing, clothing for the wife and children. But if you feel unable to be fair, then only one wife is sufficient (monogamy).⁷ Of course, this behavior is different from the practice of polygamy in pre-Islamic times, which did not limit the number of women who could be polygamous.

Although polygamy is one of the teachings of Islam, human rights activists and observers still consider that polygamy is a form of violation of human rights that must be abandoned because it is considered to violate the principle of gender equality and can cause harm to the rights of women and children so that polygamy is rejected and should not be carried out. Yet if studied in depth, there will be a meeting point (harmonization) between the basic principles of *maqashid sharia* and human rights in polygamy.

In this paper, through *maqashid sharia* theory, it will be explained how the practice of polygamy should be carried out, so that it does not conflict with the principles of *maqashid sharia* and human rights.

2. RESEARCH METHODS

The writing of this article uses descriptive research with a qualitative approach that aims to describe carefully the characteristics and facts that exist. To determine the

³ Santoso, (2016), Hakekat Perkawinan Menurut Undang-Undang Perkawinan, Hukum Islam Dan Hukum Adat, *Jurnal Pemikiran dan Penelitian Sosial Keagamaan*, Semarang, p. 420.

⁴ p. Ahmad Rofiq, (2013), *Hukum Perdata Islam di Indonesia edisi revisi*, Jakarta: Raja Grafindo Persada, h 139.

⁵ Departemen Agama Republik Indonesia, (2023), *Al-Qur'an dan Terjemahannya*, akarta: Proyek Pengadaan Kitab Suci Al-Qur'an Departememen Agama R.I.

⁶ Abdur Rahman, (1992), *Perkawinan Dalam Syariat Islam*, Jakarta: PT Rineka Cipta, p. 44.

⁷ Fatimah Zuhrah, (2017), Problematika Hukum Poligami di Indonesia, *Jurnal Peneliti pada LP2M UINSU*, Vol. 5 No. 1, p. 29.

frequency of something that occurs in the problem under study, the author uses normative legal research. This type of research is categorized as normative legal research, because the legal research conducted is examining positive legal materials.⁸ Therefore, the research that the author will carry out is classified as library research (Library Research) Normative legal research means legal research that examines legal issues from the point of view of legal science in depth on legal norms formed.⁹ Then a conceptual approach is also carried out because the analysis in this study will depart from the views and doctrines that develop in legal science, namely regarding *Maslahat Mursalah*. With this approach, researchers are expected to find legal objectives (*maqashid shari'ah*) for the enactment of existing legal rules.

3. RESULT AND DISCUSSION

3.1 Polygamy; Its Meaning and Development Throughout History

Based on etymology, the word polygamy is taken from the Greek language which has two word elements, namely *Polu* which means many, and *Gamein* which means marriage. Thus, polygamy can be defined as a type of marriage that involves more than one partner.¹⁰ Polygamy is explained as a form of marriage where a husband has more than one wife at the same time.¹¹ In polygamy, these wives remain under the husband's responsibility and are not divorced, so their status is considered legitimate wives. According to WJS. Poerwadarminta, polygamy is a custom in which a man has many wives.¹² Meanwhile, the Popular Scientific Dictionary defines polygamy as a marriage in which one party, a man, is married to two or more women.¹³

In *Munakahat* discussions, the term polygamy refers to the practice of a man marrying more than one wife within a maximum limit of four. If the number of wives exceeds four, it is considered a rejection of the shari'a established by Allah for the benefit of the lives of both husband and wife.¹⁴

In *fiqh* books, the term used for polygamy is "*ta'addud al-zaujat*," which literally means having multiple wives. However, in terminology, polygamy is defined as the permissibility for a husband to marry two, three, or four women, as long as it is done fairly. The majority of scholars limit polygamy to only four wome.¹⁵ Thus, polygamy can be explained as a marriage entered into by a man (husband) who has more than one wife or multiple wives simultaneously. In addition to polygamy, there is also the term polyandry, which is a form of marriage in which a wife marries more than one

⁸ Soekanto, Soerjono. (2001). *Hukum Adat Indonesia*. Jakarta: PT. Raja Grafindo Persada, p. 14.

⁹ Faculty of Shari'ah and Law, (2012): 10

¹⁰ Bibit Suprpto, (1990), *Liku-Liku Poligami*, Yogyakarta: Al Kautsar, p. 11.

¹¹ Musdah Mulia, (2019), *Pandangan Islam tentang Poligami*, Jakarta: Lembaga Kajian dan Jender, Perserikatan Solidaritas Perempuan, The Asia Foundation, 2.

¹² W.J.S. Poerwadarminta, (1976), *Kamus Umum Bahasa Indonesia*, Jakarta: PN Balai Pustaka, p. 763

¹³ Pius A. Partanto dan M. Dahlan al-Barry, (1994), *Kamus Ilmiah Populer*, Surabaya: Arkola, p. 606.

¹⁴ Abdurrahman Ghazaly, (2003), *Fiqh Munakahat*, Jakarta: Prenada Media, cet. I, p. 129.

¹⁵ Supardi Mursalim, (2007), *Menolak Poligami Studi tentang Undang Undang Perkawinan dan Hukum Islam*, Yogyakarta: Pustaka Pelajar, p. 16.

husband simultaneously.¹⁶ However, compared to polyandry, polygamy is more common in society.

The practice of polygamy is not a new phenomenon. Polygamy has existed since ancient times, in societies all over the world.¹⁷ The Arabs, for example, practiced polygamy long before Islam entered the region, and so did people in many other regions at that time. In the scriptures of the heavenly religions and history books, it is recorded that polygamy was common among leaders and other people of various nations, even among the Prophets. In Judaism and Christianity, polygamy is considered an accepted part of life.¹⁸ All the Prophets in the Talmud, Old Testament and Qur'an had more than one wife, except Jesus/Prophet Isa (peace be upon him). The practice of unlimited polygamy also existed in pre-Islamic Arab culture.¹⁹

The practice of polygamy was already known among the people of Medes, Babylon and Persia. The Prophet Muhammad allowed the practice of polygamy because it was also common among the Greeks, where wives could be exchanged or even sold. Polygamy was also a common practice among First Nations tribes in Africa, Australia, and Mormons in America. Even other religious teachings such as Hinduism in India do not prohibit polygamy.²⁰

Before the advent of Islam, *Jahiliyyah* Arabs used to marry an unlimited number of women and viewed them as property to be owned. In many cases, such polygamy was not considered a true form of marriage, as the women were considered property and could be bought and sold by the husbands as they saw fit.²¹

After Prophet Muhammad SAW was sent as the last Prophet in Arabia, Allah SWT strictly prohibited adultery and the view of considering women as goods or animals to be owned. Islam does not absolutely forbid polygamy, but provides certain limitations and conditions.²² The limit on the number of wives is set to ensure the benefit of offspring, social institutions, and the readiness of men. A man may only marry a maximum of four women on the condition that he is able to provide for and treat his wives fairly.

3.2 Legal Basis for Polygamy

The legal basis that permits polygamy is contained in the Word of Allah in Surah An-Nisa' verse 3.

¹⁶ Departemen dan Kebudayaan RI, (1998), *Kamus Besar Bahasa Indonesia*, Jakarta: Balai Pustaka, p. 693

¹⁷ Abdurrahman I Doi, (1996), *Karakteristik Hukum Islam dan Perkawinan*, Jakarta: Raja Grafindo Persada, p. 259.

¹⁸ Muhammad Bagir al-Habsyi, (2019), *Fiqih Praktis Menurut Al-Qur'an, as-Sunah, dan Pendapat Para Ulama*, Bandung: Mizan Media Utama, p. 90.

¹⁹ Abdurrahman I Doi, (1990), *Inilah Syari'ah Islam Terjemahan, Buku The Islamic Law, Usman Efendi AS dan Abdul Khaliq Lc*, Jakarta: Putaka Panji, p. 207.

²⁰ Abdurrahman I Doi, (1992), *Perkawinan dalam Syari'at Islam", Syari'at The Islamic Law, Terj. Basri Aba Asghary, Wadi Masturi*, Jakarta: Rineka Cipta, p. 43.

²¹ Abdurranman I Doi, (1993), *Karakteristik Hukum Islam dan Perkawinan*, p. 260

²² Muhammad Rasyid Ridha, (1992), *Jawaban Islam Terhadap Berbagai Keraguan Seputar Keberadaan Wanita", Terj, Hukuukal Mar'ah al-Muslimah, Abd. Harris Rifa'i dan M. Nur Hakim*, Surabaya: Pustaka Progresif, p.78.

And if you fear that you will not be able to do justice to the rights of orphans (when you marry them), then marry any other woman you like: two, three or four. But if you fear that you will not be able to do justice, then marry only one, or a female slave whom you own. But if you fear that you will not be able to do justice, then marry only one, or a female slave whom you own.

According to Aisha r.a, the verse in Surah An-Nisa' verse 3 was revealed in response to Urwah bin Zubair's question to Aisha about the verse. Aisha explained that "orphan" in the verse refers to an orphan girl who lives with her guardian and has wealth mixed with the wealth of her guardian. However, because of her beauty, the guardian of the orphan was pleased with her and wanted to take her as his wife, but was unwilling to give her a fair dowry. Therefore, it is forbidden for such a guardian to marry them. However, if he is able to be fair and give a higher dowry than usual, then he is allowed to marry the orphan. If the caretaker is unable to fulfill these requirements, then he is commanded to marry another woman of his choice.²³

Likewise with Surah An-Nisa' Verse 129:

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ وَإِنْ تُصْلِحُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا

Meaning: "And you will not be able to be just between your wives, even if you wish to do so, so do not be too inclined (to the one you love), so that you leave the other hanging. And if you make amends and preserve yourselves (from cheating), then indeed, Allah is Forgiving, Merciful."

Fairness refers to providing equal treatment to wives, including in aspects such as clothing, housing, time for attention, and other physical and material needs. Although Islam allows the practice of polygamy, there are several requirements that must be met in order for this fair treatment to be realized.

Islam permits polygamy by limiting the number of women one can marry, but it does not require individuals to practice absolute monogamy. Although a man is not required to marry only one woman, Islam basically supports monogamy with some tolerances that open up the possibility of polygamy within set limits. In principle, a man should only have one wife, and similarly, a wife should only have one husband.²⁴ However, Islam does not deny the possibility of some men having more than one wife, as was the case in the past. Islam does not rule out the possibility of polygamy for a man.

Based on these two verses, it can be concluded that a Muslim man is allowed to marry up to four women provided he is able to be fair. However, if he is unable to be fair and is worried that he will be unjust if he has several wives, it is advisable for him to marry only one wife. This is a solution to the limitations of man in being materially and emotionally fair, even though he really wants to be and has tried his best.²⁵

²³ Tihami dan Sohari Sahrani, (2013), *Fiqh Munakahat Kajian....*, p. 359.

²⁴ Tihami dan Sohari Sahrani, (2013), *Fiqh Munakahat Kajian Fiqih Nikah Lengkap*, Jakarta : PT Raja Grafindo Persada, p. 357.

²⁵ Mardani, (2011), *Hukum Perkawinan Islam di Dunia Islam Modern*, Yogyakarta: Graha Ilmu, p. 87.

While at first glance, verse 3 of Surah An-Nisa' and verse 129 of Surah An-Nisa' appear to contradict each other on the issue of being fair, they do not. The 3rd verse of Surah An-Nisa' underscores the need for fairness in matters that can be measured concretely, such as financial support, rotating intercourse times, and other practical matters. On the other hand, the 129th verse emphasizes that fairness in terms of love and affection, which is an emotional aspect and difficult to measure with clear parameters, is difficult for humans to fully implement. Therefore, in essence, these two verses are not contradictory, but distinguish between justice in concrete matters and justice in aspects of emotional relationships.

Although polygamy is allowed in Islam, views on it differ between women and men. For many women, polygamy is often perceived as an attempt to use women to fulfill men's biological needs. This is due to the increased awareness of women's rights and status. On the other hand, men see polygamy as a legitimate act that was practiced by the Prophet Muhammad. Even so, not all scholars have a uniform view on the validity of this practice. Some scholars reject it, while other views continue to allow it.

3.3 Dynamics of Polygamy; Between Desire and Need

The verse on polygamy in Surah An-Nisa verse 3 was revealed after the Islamic community faced defeat in the battle of Uhud. After the battle, many companions died and became martyrs, leaving behind orphans who needed the attention, love, and guidance of parents who could care for them. Also, widows left behind by their husbands faced difficulties in providing for themselves and caring for the orphans left behind. It is in this context that marriage, including polygamy, is considered a solution to overcome these challenges. The Qur'an provides direction and guidelines regarding polygamy so that orphans are not neglected and can receive the necessary attention.²⁶

The purpose of polygamy in Islam can be exemplified from the practice of polygamy carried out by the Prophet Muhammad SAW. When he had several wives, his goal was not solely to satisfy biological desires. Instead, he practiced polygamy with the intention of helping to overcome the difficulties faced by the women who later became his wives. The Prophet Muhammad (PBUH) never behaved greedily or lustfully towards women, because if he had, he would not have married women who were mostly widows, some of whom were elderly and no longer young, and did not provide economic benefits.

Therefore, the main essence of the practice of polygamy in Islam is to help address social issues, such as providing support to widows and orphans who do not have a decent source of livelihood. The aim is not merely to satisfy biological desires, but also to fulfill a social and humanitarian role by providing protection and care to those in need.

In the course of his life, the Prophet Muhammad never married a woman who was still a girl or a virgin, except for Aisha who was married at a relatively young age. All of the Prophet's wives, except Aisha, were widows, and some of them had orphans. This is the reason that Islam does not require men to be polygamous, but it does not prohibit them from doing so as long as they can be fair to their wives.

²⁶ Labib Mz, (1986), *Rahasia Poligami Rasulullah*, Gresik: Bintang Pelajar, p. 51.

Therefore, polygamy in Islam is usually not practiced except in cases of necessity, and is generally used as a solution in emergencies or for specific reasons. The essence of polygamy in Islam is the implementation of social and humanitarian responsibilities, especially in helping widows and orphans who need protection and support.²⁷

The purpose of legislating polygamy is to avoid the presence of unmarried Muslim women in the public. The purpose of making polygamy permissible is to avoid the presence of unmarried Muslim women in the public, so as to create a region that is free from misguidance and immorality.

To achieve the goal of marriage in accordance with Islamic teachings, a husband who wants to carry out polygamy must look at the requirements that must be met. This is due to some reasons that can be described as follows:

1. **Mental Strength:** A husband must have a strong heart when experiencing the realities of the household. As the leader of the family in polygamy, he is obliged to lead all his wives and children with full and overall responsibility.
2. **Good Ethics:** Good morals or ethics are very important in a household. The goal of marriage in Islam is to produce a harmonious, loving, and supportive family. Therefore, a husband in polygamy must have good morals and guide his children to be devoted to both mothers and fathers.
3. **Financial stability:** Not only sharing emotional support, a husband must also be able to fulfill the financial needs of his wives and children to survive each day. Financial stability is needed to facilitate daily activities and allow the family to worship properly.
4. **Emergency Conditions:** Polygamy can be considered as an option in emergency situations, where there is no other viable route to solve the problems in the household with long-term consequences. For example, if the wife is unable to share the generation and the family fears about the continuity of the generational lineage, polygamy can be a solution in such a situation.²⁸

By observing these requirements and mastering the alibis behind them, a husband can carry out polygamy by taking full responsibility for the family, and always upholding the principles of justice, welfare, and happiness for all family members.

In contrast to Al-Maragi, the conditions that allow polygamy are as follows:

1. The inability of the husband to have a generation due to a barren wife, while the husband really wants to have a generation. In this situation, polygamy can be considered as a solution to fulfill the husband's desire to have children.
2. When the wife has reached old age and no longer faces menstruation (menopause), and the husband has the financial skills to distribute maintenance to more than one wife. In this situation, polygamy can be an option to protect the self-respect of wives who are no longer able to conceive and provide financial protection for them.

²⁷ Syaikh Mutawalli As-Sya'rawi, (2009), *Fiqih Perempuan Muslimah*, Jakarta: Sinar Grafika Offset, p. 184

²⁸ M. Ilham Marzuq, (2009), *Poligami Selebritis*, Sidoarjo: Masmadia Buana Pustaka April, p. 63.

3. To protect the husband's personal honor from falling into adultery, especially if the husband's intimate capacity encourages him to be polygamous. In this context, polygamy can be an alternative to fulfill the husband's intimate needs in a halal and honorable method.
4. When population census information shows that the number of women outnumbers men by a significant ratio. In this situation, polygamy can be considered as a solution to distribute marriage opportunities to unmarried women.

In Indonesia, the provisions on polygamy are regulated in the Marriage Law no. 1 Year 1974 and the Compilation of Islamic Law. Not only does it fulfill the requirements of Islamic law, polygamy in Indonesia must also pass through the Religious Court. The Religious Court grants permission to a husband who wants to have more than one wife in some circumstances, such as:

1. If the wife is unable to fulfill her duties as a wife.
2. If the wife has an irreversible disability or illness.
3. If the wife is unable to give birth to the next generation.

If we analyze these conditions further, the following are the conditions that must be met to carry out polygamy:

1. Consent of the wife/wives: The husband must obtain oral or written consent from the wives concerned. If the consent is given orally, the consent must be pronounced in front of a legal assembly. However, the wife's consent is not required if the wife cannot be asked for her consent, cannot be a party to the agreement, or if there is no news from the wife for a minimum of 2 years, or other alibis that need to be considered by the judge of the legal panel.
2. Financial capability of the husband: The husband is obliged to ensure that he is able to fulfill the living needs of his wives and their children. The fact of financial capability may take the form of an income statement signed by the treasurer of the husband's place of work, an income tax statement, or any other document acceptable to the tribunal.
3. Guarantee of fair treatment: The husband must give assurances that he will treat his wives and their children fairly. This guarantee may take the form of a statement or promise made by the husband in a prescribed form.

By complying with these conditions, a husband can carry out polygamy with his wife's consent, sufficient financial expertise, and a commitment to distribute fair treatment to his wives and their children.

If we observe the above reasons why polygamy permits are granted, we can understand that the goal is to achieve happiness and continuity of marriage in accordance with the conditions stipulated in the Compilation of Islamic Law (KHI), known as *Sakinah*, *Mawadah*, and *Rahmah*, based on belief in God Almighty. If these reasons are not met in the bond between husband and wife, it can be assumed that the family will not be able to produce happiness.

In Islamic law, polygamy can be a solution for a small number of people when monogamy cannot introduce perfection into family life. Some problems such as wife infertility, husband dissatisfaction due to lack of wife service, or da'wah purposes such as those attempted by Prophet Muhammad (PBUH), may be solved through polygamy.

However, it is important to remember that efforts to overcome problems with polygamy must not lead to the emergence of new problems that are more serious than before, so that fairness becomes one of the main considerations. If this is the case, polygamy is not the recommended solution, but the opposite can be prohibited.

Nowadays, many people practice polygamy without paying attention to the basic principles. Most of the polygamy applications are only tried to fulfill lust or seek prestige in a society that tends to be hedonistic and materialistic. This has led to the main principles of Islamic law, namely justice and benefit, being alienated. As a result, many women (especially wives) and their children are neglected. This atmosphere has the potential to cause a rift in the family which is contrary to the sacred purpose of the institution of marriage.

At present, there are differences in the problems of Islamic law compared to the past.²⁹ In the past, polygamy was used as a way to protect orphans and widows left behind by war. However, today there has been a significant shift in the practice of polygamy that has led to the non-fulfillment of the basic principles of benefit and justice, which are the universal goals of Islamic law.

Therefore, it is difficult for us to justify whether the application of polygamy attempted by many people today is more oriented towards fulfilling needs in achieving benefits, or even just limited to satisfying lust. This is due to the fact that many polygamists violate the conditions that allow polygamy to be practiced.

3.4 *Maqashid sharia* Analysis of Polygamy

The purpose of law is to create human benefits, both in this life and the hereafter. However, the implementation of the law must pay close attention to the social and cultural context of local residents so that it can be applied efficiently. Moreover, laws can face changes due to the demands of social change. Therefore, it is necessary to reinterpret and reformulate the existing legal requirements so that they are always suitable for the growth and demands of the era. Thus, what must be protected and respected are moral values and messages, while legal provisions can be changed according to the needs of the place and time, including the provisions overriding polygamy.

Islamic law does not categorically prohibit polygamy, but neither does it mandate it.³⁰ In principle, polygamy in Islamic law is an institution introduced as a solution to certain problems in a family. The practice of polygamy must be based on the main principles of Islamic law, namely justice and benefit. Polygamy can be practiced if these principles are met.³¹ Polygamy must be based on the desire to achieve the benefit of

²⁹ M. Arfan Mu'ammam dkk., (2012), *Studi Islam Perspektif Insider/Outsider*, Yogyakarta: IRCiSoD, p. 386.

³⁰ Polygamy is a small door that can only be passed by those who are in dire need and with conditions that are not light. See, M. Quraish Shihab, (2005), *Perempuan*, Jakarta:Lentera Hati, p. 184.

³¹ In short, the polygamy shari'a recommended by the Qur'an is based on *jalb al-masalih* (creating benefits), if the practice of polygamy can even cause misfortune or damage, then it must be abandoned. Because in the rules of *usul fiqh* it is said *dar'u al-mafasid muqaddam 'ala jalb al-masalih* (rejecting mischief must take precedence over creating benefits). See, Nurjannah Ismail, (2003), *Perempuan dalam Pasungan*. Yogyakarta: LKis Yogyakarta, p. 230.

the family and fulfill the conditions necessary to create justice among husbands, wives, and their children.

The doctrine of *maqashid sharia* is an attempt to realize *maslahah* as an essential element in the objectives of the law. *Maqashid Shari'ah* consists of two words, *maqashid* and *shari'ah*. Etymologically, *maqashid* comes from the word *maqad* which means something to be achieved, whether it is a place or other things. Experts often use other terms that have similar meanings to *maqashid* in defining *maqashid sharia*, such as *al-hazf* or *al-Ghayah*, *al-hikmah*, *al-ma'ani*, *al-asrar*, *al-'illat*, and *al-sabab*.³²

The parameter used to determine the good and bad of an action and the main objective in the formation of law is the fulfillment of basic human needs. Human needs have different levels. In order, the levels of need are primary needs (*maslahah al-daruriyah*), secondary needs (*maslahah al-hajjiyah*), and tertiary needs (*maslahah tahsiniyah*). Ushul *fiqh* experts, such as al-Shatibi, divide needs based on their quality and importance into three types, namely *maslahah al-daruriyah*, *maslahah al-hajjiyah*, and *maslahah tahsiniyah*.³³ In interpreting the verses on polygamy, Ibn 'Ar cannot be separated from considering the main benefit (*maslahah al-daruriyah*), which is related to the basic needs of mankind in this world and the hereafter, including protecting religion, protecting the soul, protecting property, protecting the mind, and protecting offspring.

It is important for a Muslim to distinguish priorities in achieving benefits, distinguishing between the *daruriyah*, *hajjiyah* and *tahsiniyah* benefits. The *daruriyah* benefit must be given higher priority than the *hajjiyah* benefit, and the *hajjiyah* benefit takes precedence over the *tahsiniyah* benefit.

The author uses *Maqhasid Sharia* as an analytical tool because it is considered important to solve the problem, because *Maqhasid Sharia* is the purpose of Allah and His Messenger in formulating Islamic laws. This goal can be found in the verses of the Qur'an and the Prophet's hadith as a logical basis for formulating laws that are oriented towards the benefit of mankind.

As stated by Abu Ishaq *al-Syatibi*, the main purpose of Islamic law is to achieve human benefit, both in this world and in the hereafter. Furthermore, Abu Ishaq *al-Syatibi* revealed that the results of the scholars' research on the verses of the Qur'an and the Prophet's traditions showed that Allah established His laws to realize the benefits of mankind, both in the life of the world and the life of the hereafter.

Maqashid sharia has a very important role in determining the law, and legal theorists consider it as knowledge that must be possessed by mujtahids who perform *ijtihad*. The essence of *maqashid sharia* theory is to achieve good and avoid bad, attract benefits and reject *madharat*. The concept that is in line with the core of *maqashid sharia* is *maslahat*, because the law in Islam must be based on *maslahat*. As explained by Ash-syathibi, the purpose of Allah to send down the sharia (rule of law) is to achieve *maslahat* and avoid harm, in accordance with the principles in the rules of *ushul fiqh*;

³² Ibn Mandhur, (1119 H), *Lisan al-Arab*, Kairo: Dar al-Ma'arif, 1119 H, 3642. Lihat juga Shatibi, (1998), *Muwafaqat*, Kairo: Mustafa Muhammad, II: p. 7.

³³ Abu Ishaq al-Syatibi, (1997), *Al-Muwafaqat*, Beirut: Darul Ma'rifah, jilid 1-2, p. 324.

Meaning: Rejecting *mafsadah* (damage) takes precedence over taking benefit.

For Ibn Rushd al- Hafid, there are some properties or wisdom in a marriage, including: 1) provide a legal and suitable place to channel intimate instincts; 2) is a very suitable method to have children and continue the generation legally; 3) fulfill maternal and fatherly instincts; 4) urge responsibility in protecting and educating children, thus sharing a strong motivation for a person to share happiness with those who are his responsibility; 5) divide the responsibilities between husband and wife that could have been borne by each person; 6) connect two large families so that the bond of friendship becomes stronger and a new, larger family is formed; 7) have the ability to extend the life of a person.³⁴

Based on the wisdom of marriage, there are a number of objectives that the Shari'ah of polygamy aims to achieve, whether these objectives are related to the interests of the husband or the wife. These sharia objectives include: Guaranteeing the right to freedom of religion (*hifz al-din*).

1. Guaranteeing the protection of the right to life (*hifz al-nafs*).
2. Guaranteeing the right to the development of sex and offspring (*hifz al-nasl*), including the freedom to choose a good and qualified husband or wife. Some scholars also replace the position of this third goal with the benefit of maintaining glory and honor (*hifd al-'ird*).
3. The shari'a objectives of polygamy also include ensuring the development of a healthy mind (*hifz al-'aql*), including freedom of thought, opinion, the right to education, and teaching.
4. In addition, the purpose of polygamy shari'a also involves protecting the right to the selection of property (*hifz al-mal*), including the freedom to work, get a job, as well as the right to manage and utilize natural resources.

Islam controlled polygamy with the aim of benefiting the people and correcting the system that had prevailed in Arabia. When Islam legislated polygamy, it was for the universal benefit of the people. Some of the more obvious benefits of polygamy include:³⁵

1. Polygamy can allow the husband to have the desired generation when the original wife is barren or has a medical condition that prevents her from conceiving or giving birth. This purpose is included in the preservation of the generation (*hifz al- nasl*) which is the main purpose of marriage.
2. Polygamy can protect the honor of the husband and the initial wife from committing adultery, especially when the husband is attracted to other women whom he can

³⁴ Muhammad Ibn Rusyd al-Hafid, (2006), *Bidayat al-Mujtahid wa Nihayah al-Muqtasid*, Kairo: Maktabah Dar al-Salam, I: 665. Lihat juga, Tihami dan Sohari Sahrani, (2006), *Fikih Munakahat*,. 20. Abd Rahman Ghazaly, (2006), *Fiqh Munakahat*, Jakarta: Kencana, 22.

³⁵ Abd al-Nasr Taqfiq al-'Aththar, (1988), *Ta' addud al-Zaujad fi al-Shari'ah al-Islamiyah*, Kairo: Mu'assasah al-Bustani li al-Tiba'ah,14-23. Sebagaimana yang di kutip oleh A. Halil Thahir, (2008), *Poligami dalam Islam'*, *Empirisma*, Vol. 18 No. 2, 175-190.

marry for the sake of sharia. This motive for polygamy is to protect honor (*hifz al-ird*) from despicable acts.

3. Polygamy can also be one of the solutions to overcome intimate deviations such as lesbianism and prostitution caused by the imbalance in the number of women and men. Information from the 1960-1961 population census in Egypt, for example, shows that there was a difference in the growth of the female and male populations in one year. In this regard, polygamy can provide a place for women to fulfill their sexual desires legally.

From the description above, it can be concluded that polygamy actually has many benefits when tried to match the provisions and conditions in Islamic teachings. But, in fact, these conditions and requirements are difficult to fulfill evenly. Nevertheless, since Sharia does not prohibit a husband from practicing polygamy, we should think carefully about the benefits and disadvantages and the extent of our need to practice polygamy. Therefore, if the application of polygamy is only to satisfy lust, the result is not efficacy but harm with the emergence of various problems.

3.5 Polygamy from a Human Rights Perspective

In Islamic teachings, the practice of polygamy has been carefully regulated to ensure that no woman feels disadvantaged when her husband chooses to be polygamous. This principle is in accordance with the instructions found in the Qur'an, specifically in Surah An-Nisa' verse 3, which states that a man is allowed to have two, three, or four wives as long as he can treat them fairly; if unable to, it is advisable to have only one wife. Nonetheless, the practice of polygamy is still a matter of debate in society as there are pro and con views regarding this matter.³⁶ People who oppose polygamy tend to view the practice negatively, even calling it a form of abuse by men against women, seen as a way to fulfill lustful desires. Some people who oppose polygamy argue that it can be considered a form of violence or abuse against women's rights.³⁷

Islamic law allows polygamy as mentioned in the verse An-Nisa' and reinforced by the traditions of Prophet Muhammad SAW. For example, the Prophet Muhammad SAW advised a companion who had 10 wives to divorce some of them, so that the number of remaining wives did not exceed four. Based on the analysis of the Qur'anic verses and the hadith, scholars agree that polygamy is permissible, but on the condition that the husband is able to treat his wives fairly.³⁸

Human rights practitioners consider that the practice of polygamy violates the principle of equality between men and women. In contrast, Islam is considered a religion that recognizes the equal status of men and women, with many verses highlighting such equality. For example, Surah Az-Zariyat states that the creation of men and women has the purpose of worshipping God. With this understanding, the author is interested in exploring the extent to which human rights value polygamy and how the concept of human rights is applied in the context of polygamy. Based on the description above, the author wants to dig deeper by formulating research questions regarding how

³⁶ *Ibid*

³⁷ Musdah Mulia, (2019), *Pandangan Islam tentang Poligami*, Jakarta: Lembaga Kajian dan Jender, Perserikatan Solidaritas Perempuan, The Asia Foundation, 2.

³⁸ Salamah, (2019)...

human rights view wives who experience polygamy and how the concept of human rights is implemented in polygamy in the Islamic context.

The concept of equality is a key element in discussions on human rights. The principle of equality emphasizes that no comparisons should be made between individuals or groups based on differences such as ethnicity, race, gender, color, religion, and other factors. Equality is considered a very important instrument in the international human rights context. Therefore, equality is a source of inspiration inherent in human rights, as reflected in the General Declaration of Human Rights and other conventions that emphasize the elimination of all forms of inequality or discrimination, including against women as in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and so on.³⁹

The Universal Declaration of Human Rights (UDHR) is a set of norms that set standards for human life, both individually and in the context of groups, both within an organization and a state. The UDHR honors human rights in important areas such as peace, development, and democracy.⁴⁰

The UDRH has become customary international law that will judge the movement and behavior of a state. When talking about human rights, it will naturally refer to the UDRH, which is the pinnacle of human conceptualization in the universe, providing firm support for human rights. UDRH provides a commitment to all nations in the world that always uphold equality without any exceptions, such as race, gender, color language, religion politics and so on, as mentioned in the UN Charter.⁴¹

The Convention on The Elimination of All Forms Discrimination Againts Women (CEDAW) is the most comprehensive tradition or convention protecting women's rights because it makes women the central concern of human rights. CEDAW is contained in the UN Charter, which reaffirms the belief in human rights that provide for human dignity and the absence of differences between men and women. CEDAW provides for equality between men and women as well as measures to achieve it. CEDAW guarantees equal rights under the law between men and women, and clarifies behavior that discriminates against women in relation to political and public life, learning, citizenship, health, employment and marriage.⁴² Achieving women's equality with men requires full recognition within societal traditions that men and women are equal.⁴³ Until now, the author has not found any detailed rules in human rights that discuss polygamy or even the prohibition of polygamy. But it can be seen how the concept of polygamy in human rights by looking at UDRH and CEDAW. There are two contradictory issues that override human rights stipulations regarding polygamy. One: polygamy violates the requirements of UDRH and CEDAW.

a. Have equal rights in marriage, meaning at the time of marriage as well as in the family.

³⁹ *Ibid.*

⁴⁰ Chesterton, (2006),....

⁴¹ Farida,)2011),...

⁴² Boer Mauna, (2000), *Hukum Internasional: Pengertian Peranan Dan Fungsi Dalam Era Dinamika Global*, Bandung: PT Alumni.

⁴³ Kelly, (2006),...

Article 16 of the UDRH and Article 16 of CEDAW explain that "Member States shall eliminate all forms of discrimination against women in all matters relating to marriage and within the family and shall rely on the equality of men and women", mandatory justification:

1. Equal rights with men to enter into marriage
2. The right to choose a companion and to enter into marriage with their full consent.
3. The same rights in marriage as well as in terminating the marriage.

Furthermore, Article 16 paragraphs a, b, and c, can be understood to indirectly prohibit polygamy itself. This is due to the fact that husbands may marry polygamists or polygamists, but women may not. This difference is called discrimination against women. Because what is meant by discrimination in Article 1 of the Convention on the Elimination of Discrimination against Women is "a distinction, exclusion or restriction based on sex which has the effect or purpose of reducing or eliminating the recognition, enjoyment or exercise of human rights and political rights and social rights". cultural freedom, economic equality, civil or gender".

- b. Women's right to freedom from all forms of stereotypical evaluation, as well as the constraints of violence, as stated in article 5 of CEDAW.

Furthermore, article 19 states that "Violence" is defined as "any behavior that is perpetrated against women or that treats women unequally because they are women." It is understood that gender-based violence encompasses any conduct that results in bodily or physical, mental or sexual disability, hence polygamy is considered to fall under this category.

The prohibition of polygamy violates the provisions of the Universal Declaration of Human Rights and polygamy is seen as incompatible with international human rights, although on the other hand the prohibition of polygamy can be seen as a violation of rights because basically religions allow monogamy Polygamy which is a human right. polygamy. Humanity itself. Article 18 of the UDRH states that: "Every human being has the right to freedom of thought, conscience and religion, including to change his or her religion of preference, with the freedom to explain his or her religion or belief with the method of practicing it, practicing it, worshipping it and obeying the provisions of that religion, either alone or together with other people, either in private or in public."

The article above shows that polygamy has a loophole as long as the religion allows it. Judging from the two interpretations behind the articles of the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination against Women, the author is more likely to take the middle path that does not violate human rights, namely, allowing polygamy but with strict conditions. For example, in Islam, a man who wants to be polygamous must treat all the wives he marries fairly.

4. CONCLUSION

From the description above, it can be concluded that in the perspective of *Maqhasid Sharia*, polygamy can be analyzed based on the criteria of benefit and avoiding harm. *Maqhasid Sharia* is the objectives of Islamic law which include five important aspects,

namely: *Hifzh al-Din* (protecting religion), *Hifzh al-Nafs* (protecting the soul), *Hifzh al-'Aql* (protecting the intellect), *Hifzh al-Mal* (protecting property), and *Hifzh al-Nasl* (protecting offspring). Polygamy in the perspective of *Maqhasid Sharia* is acceptable as long as it is in accordance with Islamic law and is carried out with good intentions and legitimate reasons not merely as a fulfillment of desires and lust. However, polygamy should only be considered if all the criteria of benefit and prevention of harm are met. So that with all that polygamy will correspond or not oppose the rules and principles in human rights at least when it is able to maintain the principles of justice in terms of gender equality, child protection and provide health and security guarantees and most importantly polygamy can be carried out as a form of freedom of expression in carrying out the religious teachings that a person believes in.

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