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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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POLYGAMIC POLICY IN INDONESIA
(Analysis of Polygamic Arrangements and Practices 1959-2015)

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ABSTRACT

In essence, marriage is a sense of love, obligation, the fulfillment of sexual desire and resuming the descent. In Islam, a sense of love is the first pillar of a marriage. One principle of marriage is monogamy principle, where a man can have only one wife and vice versa (in time). Monogamy principle here is open or not absolute. These properties are not absolute monogamy principle set forth in article 2, paragraph 2, 4 and 5 of paragraph (1) of Law No. 1 of 1974 concerning marriage and regulated in article 55, paragraph 56 (1), 57 Compilation of Islamic Law; in fact, regulated, also in the Koran, that Q.S. An-Nissa paragraph 3. The term of polygamy itself is a term that is often present in everyday life. The term polygamy has a close relationship with marriage, both in new families and families who have been doing weddings

Formulation of the problems discussed in this dissertation as follows: 1) How does the construction of polygamy laws and procedures set out in the legislation in Indonesia since the year 1959 to 2015? 2) How does the practice of polygamy since 1959-2015? 3) How is the reconstruction of polygamy ideal setting in the future?

The method used in this research is using socio legal reserch method or can be called a sociological juridical approach. Constructivism paradigm is the paradigm of a social reality where truth is seen as socially constructed, and the truth of a social reality is relative.

The results of this study were 1) the provisions laid down concerning the setting of polygamy in Indonesia as the basis of the implementation of polygamous marriage contained in the Act No. 1 Year 1974 on Marriage, KHI and government regulation No. 9 of 1975 concerning the Implementing Regulations of Law No. 1 Year 1974 on Marriage, then it is very optimistic and believes that the prospect of polygamy is getting better, and opens the possibility of polygamy for highly skilled and have a sincere intention for happiness and prosperity. 2) The debate is getting better when the draft law on marriage proposed to become law. Finally, after a long debate, monogamous finally set to be one of the principles but with an exception for people who are under the law and allowed to take more of a religion. 3) The doctrine of polygamy after the entry of the Prophet Muhammad and Islam became more orderly and has provisions in its implementation. A husband and wife have a maximum of only limited amounts to four people with the terms and conditions when it is able to be fair and able to provide maintenance to his wives. If a husband is not able to be fair and not be able to give birth to a living wives then it is better for a man married is only one person.

Keywords: Polygamy, Polygamy Rules, Practice Polygamy in Indonesia

A. Background

In essence marriage is a sense of love, obligation, fulfillment of sexual desire and continuation of descent. In Islam, love is the first pillar of a marriage.¹ Meanwhile, according to Imam Syafi'i marriage itself is a contract with which to be lawful sexual relations between men and women and according to the meaning majazi marriage means sexual intercourse.²

One principle of marriage is the principle of monogamy, in which a man may only have a wife as well as vice versa (within a certain time). The principle of monogamy here is open or not absolute. As with the provisions of the Civil Code, the principle of monogamy is absolute.³ The principle of monogamy is not absolute means that a husband can have more than a wife, if desired and in accordance with the husband's religious law.

The term polygamy itself is a term that is often present in everyday life. The term polygamy has a close relationship with marriage, both in new families and families who have long engaged in marriage. Polygamy has also taken place long before the coming of Islam. The Europeans we now call Russia, Yugoslavia, Germany, Belgium, the Netherlands, Denmark, Sweden and England are all polygamous nations.

For the Indonesian nation, polygamy is not only a religious issue but a state, the role of the state is needed in the effort to solve the problems that arise as a result of polygamy committed by its citizens. Therefore, the author is interested in taking the title: **POLYGAMIC POLICY IN INDONESIA (Analysis of Polygamic Arrangements and Practices 1959-2015).**

B. Research Results

Reconstruction of an Ideal Polygamy Arrangement in the Future

Apart from that in the era of globalization is mainly the emergence of feminist movement then at least need a review of the status of polygamy or reforms are intended to reach and answer the challenges of the times to be responsive and not anachronistic. The motivation of this effort arises from the background of internal and external factors. How these two things encourage the birth of reforms can at least be seen in two things: The

¹ Al-Thahir Al-Hadad, *Wanita Dalam Syari'at dan Masyarakat*, Pustaka Firdaus, Jakarta, 1993, page. 59.

² Ibrahim Hosen, *Fiqh Perbandingan Dalam Masalah Nikah, Talak dan Rujuk*, Ihya Ulumuddin, Jakarta, 1971, page. 65

³ See Article 27 of the Civil Code, At the same time, a man may only be married to one woman; And a woman with only one man

existence of changes in legal fatwa from time to time and state policy intervention on the substance of Islam.

In the same case the effort to renew the Law on Family Islamic Law, especially the issue of polygamy considered extreme is also influenced by internal and external factors. So in this context there are at least two forms of the nature of reform that is; Intra doctrinal reform and extra doctrinal reform. The first is done by combining the opinions of some schools or taking other opinions from the adhered schools, while the latter by way of giving the interpretation that exists. In addition to these two forms there are actually two other reformation character things: regulatory reform or legislation and codification. These last two traits tend to the process of mating; Organize administration, and codify existing laws. Thus the last two properties are the nature of the process by which the formula is enacted.

Apart from that, it is undeniable that there is a dilemma to be faced when the reform is done that this effort will confront the two extreme opinions of those who want to keep Islam and the opinion that says there needs to be total change. Then how these two interests are bridged and accommodated in the legal reforms undertaken. In Anderson's observation, there are at least four methods that can be used to solve this problem:

- a. Procedural: focusing on procedural issues by abandoning the subject of the substance of the law in its entirety.
- b. Make compromise between schools of law in order to complete or make the Act. This method is famous for the term *talfiq*.
- c. Provide a new interpretation of the existing text, to discover new laws. This path is taken if the efforts of *takhayyur* are not effective. In Islam this business is commonly called *ijtihad*.
- d. Combine or combine the above methods for later enforcement of the selected law. The more popular these efforts are called *legislas*.⁴

This fourth point is a significant step in which the legal legislation provides the force for the rules applied so that it is capable and has legal consequences (legal sanctions)

⁴ JND. Anderson, "Modern Trend in Islam: Legal Reform and Modernization in the Middle East", dan *International and Comparative Law Quarterly*, No. 2 1971, page. 12

implemented. This legislation can take the law in the form of family law (Especially regarding the status of polygamy).

Analysis of Tahir Mahmood, in general madhhab law adopted by a Muslim country used to solve legal problems. It's just that in certain cases different from that majority school, then the method of Islamic renewal in this case should be adapted. In amatannya at least there are several methods that can be used are: Takhayyur, talfiq, siyasah, syar'iyah and ijtihad.⁵

Fundamental paradigm Anderson and Tahir Mahmood will be seen that the method used to reform the legal status of polygamy with modifications here and there, can be read and understood. Even if carefully observed the process and background formation of each law is step by step using a combination of two schemes model of this method. Perhaps what distinguishes one from the other is proportion: the dominance or absence of one method is used.

C. Cover.

1. Conclusion

a. The ideal polygamy setting in the future is:

Polygamy prior to the entry of Islam in principle long before the presence of Islam then the earlier human beings have practiced polygamy system in their married life. Polygamy carried out prior to the entry of Islam among the former people is not limited to the number of wives. Some reach 50 (fifty) wives even up to 100 (one hundred) wives for one husband. Thus it can be said that before the inclusion of Prophet Muhammad SAW as the carrier of Islam to the world with the teachings of polygamy then the previous people have practiced polygamy in their lives with no

⁵ Tahir Mahmood, *Personal Law In Islamic Countries*, (New Delhi: Academi Of Law and Regilion, 1987), page 11-12

restrictions and seem to have no clear rules so that women at that time really like neglected His rights in polygamous marriage before the entry of the teachings of Prophet Muhammad SAW and Islam about polygamy which has the terms and conditions and the number of wives who are limited to a maximum of four people in doing polygamy.

The teachings of polygamy after the entry of Prophet Muhammad SAW and Islam became more orderly and have provisions in implementation. A husband is only limited to have a maximum wife of four people with the terms and conditions if able to be fair and able to provide for their wives. If a husband can not afford to be fair and unable to provide a living for his wives, it is better to have a husband with only one person. In other words, Islamic teachings in polygamy have strict conditions and provisions in implementing polygamy. It aims to protect the rights of women who carry out polygamous marriages so that these rights are not neglected or harmed by the marriage of polygamy. Islam sees a woman with a very noble view, so that in marriage marriage polygamy of woman as wife that dipoligami by her husband must be protected in accordance with provisions of applicable law. Polygamy marriages do not result in the rights of women being neglected or harmed by husbands who engage in polygamy marriages.

D. Suggestion

1. The view of polygamy in Indonesia is still a lot of pros and cons among the community. The regulation on Polygamy in Indonesia has been in existence since 1975, where the regulation is contained in Article 40 of Government Regulation No. 9 of 1975 stating that if a husband intends to have more than one wife, he shall submit a written application to the court. However, there are still many people who do not understand the regulations on polygamy in Indonesia. In addition, the requirements of polygamy are also

very strict for the State apparatus (Civil Servants). When referring to Islamic law of course also very clearly arranged about polygamy for a husband with the condition must be fair and limited to a maximum of 4 wives. Certainly in the construction of polygamous law in Indonesia the good alangka is based on the clear Islamic law regarding the regulation of Polygamy.

2. Polygamy in Indonesia has occurred since the time of President Soekarno where in the era of 1950, of course at that time regulation on Polygamy still not regulated in Law or in Government Regulation. The practice of polygamy from time to time does reap a lot of pros and cons, as for people who reject and protest about polygamy that is by women's organizations in Indonesia. Changes in attitudes and regulations about polygamy again surfaced during the New Order era. Government Regulation no. 10 of 1983 on Marriage and Divorce Licenses for Civil Servants, which includes polygamy should be abolished. The abolition of Government Regulation No. 10 of 1983 certainly also raises the Pros and Cons even to date polygamy practices exist in Indonesia but are still lacking approval by the women where polygamy is in their opinion is one of the things that are not fair and do not protect and respect women.
3. Government regulations on polygamy have existed since 1952, but until now polygamy in Indonesia is still seen as one of the most adverse actions for women. Polygamy is still regarded as one of the things that do not respect the rights of women, whereas in the context of Islamic religion has also been explained about polygamy from the time of Prophet Muhammad SAW. Polygamy is one of the answers for the past because they are far from respecting women altogether, but polygamy after the Islamic period comes very regularly and conditioned. Polygamy is one of the actions that aims to glorify women's position and avoid the act of adultery. Polygamy in Islam is limited to certain conditions. That is the number of polygamous wives is limited to four women and can be fair to his

wives and children Islam allows certain men to practice polygamy as an alternative or a way out to overcome male sex needs or other disturbing causes His inner calmness in order not to fall into the valley of adultery or prostitution that is clearly forbidden religion.

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