

Prohibition on Female Civil Servants' Polygamy Perspective of Maqāṣid Al-Syarī'ah

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Abstract: This research examines three main issues: (1) polygamy from the perspective of Islamic law and national legislation, (2) the legal construction behind the prohibition of polygamy among female civil servants in Indonesia, and (3) the maqāṣid al-syarī'ah (objectives of Islamic law) perspective on this prohibition. Using library research within the normative legal framework, this study analyzes laws, regulations, court decisions, and relevant literature through a qualitative analysis approach. The findings show that, first, Islamic law allows polygamy under strict conditions to ensure justice and fairness. This principle is reflected in Indonesia's Marriage Law and the Compilation of Islamic Law, both of which permit polygamy but with rigorous requirements. Second, Government Regulation No. 10 of 1990, which amends Regulation No. 10 of 1983, explicitly prohibits female civil servants from being second, third, or fourth wives to civil servants. This restriction contradicts Islamic law, the Marriage Law, and the Compilation of Islamic Law, as it is discriminatory and creates legal uncertainty, leading to issues such as unregistered marriages and the neglect of women's and children's rights. Third, from the maqāṣid al-syarī'ah perspective, this prohibition conflicts with the five essential objectives: *ḥifẓ al-dīn* (protection of religion), *ḥifẓ al-nafs* (life), *ḥifẓ al-'aql* (intellect), *ḥifẓ al-nasl* (lineage), and *ḥifẓ al-māl* (property). The policy causes more harm than benefit and fails to uphold justice or protect women's dignity. Consequently, Government Regulation No. 45 of 1990 should be revised, and future legislation should integrate maqāṣid al-syarī'ah principles as a foundation for legal evaluation and reform in Indonesia.

Keywords: Polygamy, Islamic Law, Maqāṣid al-Syarī'ah, Civil Servants

1. INTRODUCTION

Among the Islamic teachings that continues to be discussed is polygamy. In Islamic law, polygamy is an integral part of marriage law within Islamic family law. In its classification, Islamic law is divided into two scopes. First, *ahkam al-ibadah*, which consists of *ihdla* worship and *ihdlaḥ ghair mahdlaḥ* worship. Second, *ahkam al-mu'malat*, which includes *ahkam al-ahwal al-syakhsiyat*, *ahkam al-madaniyat*, *ahkam al-jinayat*, *ahkam al-qadla wal al-murafa'at*, *ahkam al-dusturiyah*, *ahkam al-dauliyah*, and *ahkam al-iqtishadiyah wa al-maliyah*.

The practice of polygamy was then further affirmed by Islamic law. However, it is immediately stated that the nature, character, and mechanisms associated with the practice of polygamy within Islamic law differ significantly from those observed in other civilizations throughout the long history of humankind. This is because the practice of polygamy in other civilizations is excessively free, allowing for the adoption of wives and mistresses according to the desires and demands of sexual desires and political power. Therefore, in addition to affirming this, Islamic law also corrects and reformulates the legal provisions related to polygamy. The differences in Islamic legal construction regarding polygamy can be seen directly in the primary sources and arguments of Islamic law, namely the Qur'an and the Hadith.

In the Indonesian context, there are many legal regulations that regulate matters related to polygamy. Among them are Law No. 1 of 1974 concerning Marriage, Article 2; Government Regulation No. 9 of 1975

concerning the Implementation of Law No. 1 of 1974 concerning Marriage, Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law, Article 55 paragraph (1). However, these marriage regulations include conditions, mechanisms, and procedures that are quite strict in carrying out polygamy. Therefore, many assume that marriage in the Indonesian context adheres to the principle of stricter monogamy. This is understood not only from Article 3 paragraph (1) but also from the conditions, mechanisms, and procedures for polygamy. However, these marriage regulations include conditions, mechanisms, and procedures that are quite strict in carrying out polygamy. Therefore, many assume that marriage in the Indonesian context adheres to the principle of stricter monogamy. This is understood not only from Article 3 paragraph (1) but also from the conditions, mechanisms and procedures for polygamy.

Equally important is the fact that the sociology of law relating to the practice of polygamy within the structure of Muslim society in general is still a long way off. The ideals of Islamic legal construction sometimes seem to be far removed from the realities of Muslim life. This means that the practice of polygamy practiced by some Muslims does not fully understand and internalize the legal and moral values contained in the legal provisions of polygamy. Consequently, many polygamous practices, not only deviate from Islamic principles and values, but also often give rise to numerous problems and paradoxes in social life. These include polygamy without the permission of the first wife, underhanded marriages, injustice towards wives, subordination of polygamous wives, inability to provide for the family, conflict, and even marital discord.

In PP No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, Article 4 paragraph (2) states: "Female Civil Servants are not permitted to become the second/third/fourth wife of a Civil Servant." Meanwhile, Article 4 paragraph (3) explains that: "Female Civil Servants who will become the second/third/fourth wife of a non-Civil Servant must first obtain permission from an official." These articles indirectly do not allow female Civil Servants to practice polygamy with fellow Civil Servants. Article 4 paragraph (2) expressly and definitely does not allow female Civil Servants to practice polygamy as the second/third/fourth wife with a Civil Servant. Meanwhile, Article 4 paragraph (3) makes an exception for female Civil Servants to become the second/third/fourth wife of a non-Civil Servant. However, this provision was annulled through PP No. 45 of 1990 concerning Amendments to PP No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants Article 4 paragraph (2).

Thus, PP No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants Article 4 paragraph (2) prohibits female civil servants from becoming second/third/fourth wives, not only for fellow civil servants, but also for non-civil servants. This logic is reasonable because the conditions stated in PP No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants Article 10 paragraphs (1), (2) and (3) emphasize the cumulative conditions that must be met by a civil servant who wishes to practice polygamy, including having sufficient income to support more than one wife and children as proven by an income tax certificate. Logically, a civil servant is restricted from practicing polygamy, let alone a female civil servant who wishes to become the second/third/fourth wife of a non-civil servant. In this context, there is relevance and rationality in Article 4 paragraph (2) of PP No. 45 of 1990.

In contrast to the legal sanctions for female civil servants who practice polygamy, the legal sanctions for civil servants who practice polygamy without permission are subject to 4 (four) hierarchical punishment sanctions, namely 1) demotion to a lower rank for a maximum of 1 (one) year, 2) dismissal from office, 3) honorable dismissal not at one's own request as a civil servant, and 4) dishonorable dismissal as a civil servant.

Understanding Polygamy

Islamic law in Indonesia has a specific and specific conception of polygamy, which is regulated by sharia, fiqh, and legislation. There are even numerous cases and court decisions concerning polygamous marriages. Etymologically, the word "polygamy" comes from the Greek word "polygamia," which consists of the words "poly" or "man" or "woman." "polus" which means many and "gamie" or "gamos" which means marriage. Polygamy is "marriage of more than one person" or "many or multiple marriages." Another term for polygamy is "pemaduan," which in Javanese is known as "wayuh." Men who practice polygamy are called "bermadu," while women are called "istri madu" or "maru" in Javanese. In Arabic, polygamy is called ta'addud al-zaujāt.

In the Indonesian Dictionary, there are several definitions of polygamy. First, polygamy is defined as "a marriage system in which one partner has or marries several members of the opposite sex simultaneously." Second; "a marriage system that allows a man to have more than one wife at the same time. In line with that,

in the book Menapak Jejak Polygami Nabi SAW , the word polygamy, adapted from the word " polygamia ," is interpreted with two meanings, namely: 1) a person who has more than one partner, both male and female; and 2) a man who has more than one wife and vice versa.

The etymological definition of polygamy seems to see polygamy in both a general and a specific sense. However, the general understanding of polygamy seems to be far more dominant. This is understandable, as the terminology of polygamy is generally used to describe a marriage system where a person marries more than one person of the opposite sex, whether a woman marries more than one husband at the same time or a man marries more than one woman at the same time. In other words, this definition of polygamy means not only a man marrying more than one woman, but also a woman marrying more than one man.

Understanding Maqāṣid al-Syarī'ah

The discourse on maqāṣid al-syarī'ah in the construction of Islamic legal epistemology has a very important position. Because, maqāṣid al-syarī'ah is closely related and even attached to all laws and regulations in Islam. Islam does not order something to be done by humans, but because there is a maqāṣid al-syarī'ah called benefit. On the other hand, Islam does not prohibit an action to be avoided and shunned or not to be done, but because there is the opposite of benefit, namely harm.

To understand the meaning of maqāṣid al-syarī'ah comprehensively, of course, each word must be explained first. Because, etymologically, maqāṣid al-syarī'ah (مقاصد الشريعة) is تر ك ب إضافي from the words مقاصد and الشريعة and is related to the word الإسلام to become مقاصد الشريعة الإسلامية . The word maqāṣid (مقاصد) The plural of the word المقصد و المقصد is the maṣdar of the verb مقصدا - مقصدا - يقصد - قصد . Both are forms of maṣdar mīmī (مصدر ميمي) whose f'il al-māḍī form is qaṣada (قصد) .

The word qaṣada (قصد) with several derivative forms and their respective meanings based on their siyaq are found in the Qur'an and hadith. In the Qur'an, for example, it is found in QS al-Taubah/9:42; QS al-Nahl/16:9 and QS Luqm ān /31:19. The following will present the verses in question with each meaning of the word qaṣada (قصدي) as explained by scholars of tafsir, namely:

يُهْلِكُونَ أَنْفُسَهُمْ وَاللَّهُ يَعْلَمُ إِنَّهُمْ لَكَاذِبُونَ God willing لَوْ كَانَ عَرَصًا قَرِيبًا وَسَفَرًا قَاصِدًا لَاتَّبَعُوكَ وَلَكِنْ بَعَدَتْ عَلَيْهِمُ الشَّقَّةُ وَسَيَّحِلُّونَ

Translation:

"If (what you called to them) was an easy gain and the journey was not too far, they would have followed you. However, (they were reluctant because) the destination seemed very far to them. They would have sworn by (the name of) Allah, "If we were able, we would definitely go with you." They destroyed themselves and Allah knows that they are truly liars." (QS al-Taubah/9:42).

2. METHOD

This research is library research, which relies on written sources such as books, legal documents, court decisions, and other relevant materials. It belongs to the normative legal research category (normative juridical research), which examines legal norms governing the prohibition of polygamy among female civil servants as regulated in Government Regulation No. 10 of 1983 jo. No. 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants. The study aims to analyze this prohibition from a comparative perspective between Islamic law and human rights, as well as to assess the vertical and horizontal synchronization of these legal provisions within Indonesia's legal system.

The research employs two main approach methods. The Statute Approach examines all legislative products related to the prohibition of polygamy among female civil servants and analyzes their interrelation and legal hierarchy to ensure comprehensive understanding. The Analytical-Conceptual Approach draws from legal doctrines and theories to analyze and conceptualize legislative and comparative elements concerning this prohibition. These approaches complement each other, providing a deeper insight into the normative and conceptual foundation of the relevant legal framework.

The study uses qualitative data analysis based on primary and secondary data sources. Primary sources include the Qur'an and Hadith, Marriage Law No. 1 of 1974, Compilation of Islamic Law (1991), relevant government regulations, and classical works in Uṣūl al-Fiqh such as Al-Muwafaqat by al-Syatibi and Al-Mustasfa by al-Ghazali. Secondary sources consist of books, theses, dissertations, journal articles, and media publications related to marriage, polygamy, and maqāṣid al-syarī'ah. Data management involves organizing and classifying information systematically through stages of inventory, identification, classification, and systematization, followed by qualitative interpretation to draw conclusions aligned with the research objectives.

3. FINDINGS AND DISCUSSIONS

1. Analysis of Maqāṣid al-Syarī'ah on the Prohibition of Polygamous Marriages of Female Civil Servants
In assessing the prohibition on female civil servants being polygamous in the context of Islamic law in Indonesia, the maqāṣid al-syarī'ah approach becomes a very important instrument. The maqāṣid al-syarī'ah approach makes it possible to see a policy not only from the legal-formal aspect, but also from the aspect of the goals to be achieved and realized by Islamic law in life. Among the many approaches in maqāṣid al-syarī'ah, the most basic framework is al-ḍar ū riyāh al-khams, namely ḥif z al-d ī n, ḥif z al-nafs, ḥif z al-'aql, ḥif z al-nasl And ḥif z al-m ā l. Al-Ḍar ū riyāh al-khams as the main axis of maqāṣid al-syarī'ah which must not be ignored in life, including not being ignored in making any public policy.

1. Analysis of Ḥifz al-D ī n

Within the framework maqāṣid al-syarī'ah, ḥif z al -d ī n is placed as the most basic and main maqāṣid. According to Ibn Taimiyyah, maintaining religion is the greatest goal of all divine religions (ḥif z al- d ī n huwa al-maqāṣid al-akbar lil risālāt al-samāwiyyah jam ī'an). Similarly, when explaining the power of the three levels of benefit, Yūsuf al-Qardāw ī said that “ al-ḍarūriyyāt itself is not at the same level, but rather diverse, but the most important is religion, then the soul” (al-ḍarūriyyāt laisatu kulluhā f ī manzilah wāḥidah, bal tatafāwat wa awwaluhā al-d ī n ṣumma al-nafs).

2. Analysis of Ḥifz al-'Aql

In the construction of maqāṣid al-syarī'ah, besides ḥifz al-d ī n, there are also The mind of reason, which is one of the five faculties of khams, holds a fundamental position. Reason is the greatest and most beautiful gift from Allah, distinguishing humans from other creatures and simultaneously serving as an epistemological instrument for understanding and upholding religion, studying law, and managing life in accordance with religious guidance. Therefore, Islamic law establishes various laws aimed at safeguarding the existence of human reason from various forms of damage, both physically (such as the prohibition of alcohol) and epistemically (such as the prohibition of radical, extremist thinking, and so on).

Reason is the basis for determining obligations (manāt al-takl ī f). With it, humans are honored, privileged above all creatures, and specially prepared to carry out God's grand mission as caliphs on earth. According to Ibn Taymiyyah, safeguarding reason is linked to the goal of safeguarding religion. This is because safeguarding reason is essentially safeguarding the primary instrument of takl ī f, with which humans can carry out the teachings of their religion. Thus, safeguarding reason is a fundamental right. Protecting it from anything that could harm it is a matter agreed upon by all sane people. All divine laws are guided by this mission and principle. Islamic law, full of wisdom, places great emphasis on the human mind from various angles.

3. Analysis of Ḥifz al-Nafs

aspect of al-ḍarūriyyāt al-khams which has a very important position in the construction of maqāṣid al-syarī'ah is ḥif z al-nafs. Islamic law pays great attention to the soul. This can be seen from the construction of Islamic law, which stipulates a number of laws that bring benefit to the soul and prevent harm to it, as an intensive effort to protect, preserve and avoid actions that attack the soul. Because, if souls are allowed to perish or be destroyed, then people who worship Allah will disappear (no longer exist) and this in turn will lead to the destruction of religion.

4. Analysis of Ḥifz al-Nasl

In the order of maqāṣid al-syarī'ah, ḥifz al-nasl is included in the category of al-ḍarūriyyāt al-khams which is the primary goal (maqāṣid al-darūriyyah) in Islamic law. The goal of preserving offspring (ḥifz al-nasl) is directly related to human survival, the sanctity of the bloodline, and the integrity of the family structure as the foundation of society. Islam places great emphasis on safeguarding offspring through legal and valid marriage mechanisms, because marriage is not just a social contract, but also a holy and sacred religious bond (mītsāqan ghalīzan) in order to channel human instincts honorably and ensure the birth of a generation whose nasab is protected.

The principle of nasl is one of the main pillars of human life and a key factor in the development and sustainability of civilization on earth. It is within it that the strength of a nation, state, and religion lies. Through the continuity of generations, a people are respected, hold a noble position, and are able to protect

their religion, safeguard their souls, maintain their honor, and defend their property. Islam places great emphasis on the protection and preservation of offspring, encouraging its followers to multiply children and forbidding anything that could hinder the continuation or safety of offspring.

5. Analysis of Ḥifẓ al-Māl

Within the framework of the maqāsid al-syarī'ah, ḥifẓ al-māl is one of the al-ḍarūriyyāt al-khams which are the pillars of human life. Islamic law places wealth as a trust that must be guarded, managed fairly, and utilized for the wider benefit, not a cause of damage. Islamic law not only regulates how to acquire and use wealth, but also organizes the social system so that its distribution takes place in a balanced manner and in accordance with the principles of divine justice. Ḥifẓ al-māl is maintaining everything that may be utilized and that is permitted by sharia to be traded, including al-a'yān (tangible objects), al - duyūn (receivables), and al-manāfi' (benefit).

4. CONCLUSION

Based on the previous discussion, the conclusion of this study is:

Polygamy is one of the teachings of Islam. From an Islamic legal perspective, polygamy is permitted under strict conditions. The Islamic law on polygamy's permissibility is further regulated in the Marriage Law and the Compilation of Islamic Law, which essentially permit polygamy with very strict conditions and mechanisms.

PP Number 1990 concerning Amendments to PP No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants Article 4 paragraph (2) expressly and definitely does not allow female civil servants to practice polygamy as a second/third/fourth wife with civil servants. This prohibition is contrary to Islamic law, the Marriage Law and the Compilation of Islamic Law itself. This prohibition also tends to be discriminatory against women's rights and creates a legal vacuum as well as new family law problems, in the form of the phenomenon of unregistered polygamous marriages, neglect of women's and children's rights.

From the perspective of the maqāsid al-syarī'ah, the prohibition on polygamy of female civil servants is absolutely contrary to the maqāsid al-ḍarūriyyāt al-khams, namely the ḥifẓ al-dīn, ḥifẓ al-nafs, ḥifẓ al-'aql, ḥifẓ al-nasl and ḥifẓ al-māl. This prohibition does more harm than good. In fact, the prohibition violates the maṣlaḥah mu'tabarāh by using the excuse of mafsadah. This prohibition also does not provide justice and protection for women's dignity. Therefore, PP Number 45 of 1990 contains serious problems and must be revised.

Research Implications

Based on the above research conclusions, there are several research implications. First; it is important to conduct a research study against the prohibition of polygamy for female civil servants from the perspective of maqāsid al-syarī'ah. Second; the formation of legislation related to polygamy must consider the aspects of maqāsid al-syarī'ah and Islamic law in Indonesia. Third; it is necessary to make maqāsid al-syarī'ah a paradigm in evaluating and transforming it in the construction of positive law, the principles and values of maqāsid al-syarī'ah are universal.

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