

Research Article

The Point of Views of Indonesian Mufassir (M. Quraish Shihab and Hamka) on Polygamy and its Relevance to Legislation in Indonesia

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ORCIDLi'izza Diana Manzil : <https://orcid.org/0009-0009-7833-4872>**Abstract.**

Asr prayer is one of the obligatory prayers performed at specific times among the five daily prayers. However, in the literature of *fiqh*, there is a division of Salat Asar into *faḥḥ* (preferred time), *ikhṭiyār* (permissible time), and *jawāz* (allowable time). This is closely related to the virtue of performing the prayer in its early time, as mentioned in the sayings of the Prophet Muhammad, and the discouragement of delaying Asr prayer until its later time. It is essential to establish a precise time, specifying the exact hour and minute for *faḥḥ*, *ikhṭiyār*, and *jawāz* in Asr prayer. There are two methods for determining the timing of *faḥḥ*, *ikhṭiyār*, and *jawāz*: firstly, through a *fiqh* approach, which involves observing the phenomena of the Sun's movement, and secondly, through a scientific approach, using mathematical and astronomical calculations. Both the *fiqh* and scientific methods are integrated and mutually beneficial in the development of a formulation, providing ease in determining the timing of *faḥḥ*, *ikhṭiyār*, and *jawāz* in Salat Asar.

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1. Introduction

Islam considers marriage sacred. It means worshiping Allah and following the sunnah of the prophet Muhammad and is carried out based on sincerity, responsibility, and following legal provisions that must be respected. Law Number 1 of 1974 defines marriage as an inner bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on Belief in the One Supreme God[1]. The family is the first social unit in society which is formed from legal marriages between men and women.[2]

One form of marriage that is often discussed in Muslim society is polygamy, because it mostly triggers controversy. Polygamy is a marriage bond in which one party (the

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husband) marries many people (more than one wife) at the same time.[3] The argumentation that are often used as the basis for the permissibility of polygamy in Islam is Allah SWT commandment:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ الْبَنَاتِ وَأُولَئِكَ خَيْرٌ لِّمَنِعَتِكُمْ أَلاَّ تَعْدِلُوا فَوَاحِشَةً
 وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ الْبَنَاتِ وَأُولَئِكَ خَيْرٌ لِّمَنِعَتِكُمْ أَلاَّ تَعْدِلُوا
 [due] rights [if you were to marry them], then marry other women of your choice—two, three, or four. However, if you are afraid you will fail to maintain justice, then [content yourselves with] one or that [bondwomen] in your possession. This way, you are less likely to commit injustice.”. (QS An-Nissa: 3).

Polygamy must be applied on fair terms. Fair in various matters such as money, food, clothing, housing, and stay shifts. It is the opinion of most scholars besides Syafi'i because humans will never be fair regarding love.[4]

Islam's pay full attention to polygamy is not merely unconditional. Islam stipulates it with conditions, namely justice and limiting the total number of married wives. Justice is a requirement because the wife has the right to live happily. The limit on the number of married wives is required because justice will be difficult to achieve if it is not limited.[5] The purpose of polygamy is monogamous marriage, namely to form a family that is *sakinah, mawaddah wa rahmah*. It is not to satisfy a man's lust or to discriminate against women.

The spirit of polygamy was carried out by Rasulullah SAW, as explained by M. Quraish Shihab in Tafsir al-Misbah. According to him, Rasulullah SAW practiced polygamy with the spirit of religious preaching to protect widows left behind by their husbands and, in general, were not women who had alluring charms.[6] M. Quraish Shihab says polygamy is similar to an emergency door on an airplane, which can only be opened in certain emergencies.

According to Hamka, polygamy is a permissibility, but the permissibility of polygamy does not mean a recommendation. According to him, the permissibility of polygamy is for a certain reason. Some conditions must be considered. One of which is to be fair. Even though the husband who is going to do polygamy has the financial capacity, it does not mean that polygamy can be done just like that. The fair that Hamka means is fair from all sides. There is no distinguishing factor between one wife and the other. Both physically and mentally, even the main thing is justice about the heart. However, Hamka concluded that if you cannot do justice, marry one because that is closer to peace.[7]

It is very different from the spirit that exists in the statutory provisions in Indonesia regarding polygamy. It seems that the regulations applied in Indonesia only emphasize the physical condition of women as a reason for allowing polygamy.[8] As a representative country with a Muslim-majority population, Indonesia allows polygamy. Polygamy is permitted because the wife cannot carry out her obligations as a wife. The wife has a disability or an incurable disease and cannot bear children. In addition to these requirements, polygamy applicants must obtain permission from the first wife. The permission is a form of consent from the first wife so that the husband can practice polygamy. Furthermore, the applicant must ensure he can fulfill all his wife's and children's needs.[9]

The issue of polygamy is indeed very interesting to discuss from various perspectives. Previously, an article by Nawir HK et al. highlighted the justice of polygamy through a critical review of M. Quraish Shihab's interpretation of QS. Al-Nisa4:3. The researcher mentions that the thoughts of M. Quraish Shihab are part of the group's thinking that accepts the practice of polygamy with strict conditions. M. Quraish Shihab's views are classified as moderate in solving the problem of polygamy practices in Indonesia, where M. Quraish Shihab tries to position itself in the middle towards the views of activists and those who oppose the practice of polygamy. However, this research is still limited to thoughts based on M. Quraish Shihab's interpretation of QS. al-Nisa4:3 regarding fair articulation in polygamy,[10] there is also an article by Refo Afdhal et al. highlighting the comparison of polygamy arrangements in Indonesia and Malaysia. According to them, polygamy arrangements in Indonesia and Malaysia have similarities and differences. The Malaysian Law Deed 303 has similarities, including enforceability, permissibility of polygamy, permission from the court, submission of a written application, and Reasons for a Husband to Perform Polygamy. There are provisions regarding polygamy requirements, criminal sanctions, the basis for granting permission, the wife's approval, conditions, dissolution of polygamous marriages, and the amount of punishment.[11]

Unlike the two previous research, this paper is a study that builds explicit discourse on polygamy according to Indonesian mufassir (M. Quraish Shihab and Hamka) and its relevance to the laws and regulations that apply in Indonesia. The formulation of the problem in this study is how the Indonesian mufassir (M. Quraish Shihab and Hamka) view the permissibility of polygamy. What are the provisions of the laws and regulations in Indonesia regarding the permissibility of polygamy? Moreover, what is the relevance of the permissibility of polygamy according to the views of Indonesian interpreters, namely M. Quraish Shihab and Hamka, with the laws and regulations in Indonesia? This paper directly examines the thoughts of Indonesian mufassir, who put more emphasis on the

“heart” aspect, namely acting fairly regarding the permissibility of polygamy. Meanwhile, the legal norms applied in Indonesia, which form the basis for the permissibility of polygamy, tend to emphasize “physical” reasons. It contradicts the concept of justice for women and the spirit of religious preaching, namely saving widows who have been abandoned by their husbands and generally are not women who have alluring charms. Polygamy has become one of the factors causing divorce in Indonesia.

2. Method

This research used qualitative research methods with the “library research” or literature study type. This method collects data by understanding and studying theories from various research-related literature.[12] In this study, the materials or objects were obtained by examining the data that the researcher obtained. This research was analytical and descriptive to describe and analyze the subjects studied.[13] The data sources used consist of primary data sources, namely books that discuss the views of M. Quraish Shihab, Hamka, and Indonesian laws and regulations regarding the permissibility of polygamy. In addition, data were also obtained from other/secondary sources such as books, journals, dictionaries, or articles related to this study.

3. Results and Discussion

Polygamy is a custom for a man to have more than one wife.[14] Polygamy comes from the Greek. This word is a fragment of two words: poly or pollus, which means many, and gamein or gamo,s, which means marriage or marriage.[15] In the Indonesian Dictionary, polygamy is defined as *suatu sistem perkawinan dengan beberapa lawan jenisnya dalam waktu yang bersamaan*. [16] . In Arabic, it is called “Ta’addud Zaujat” if a man marries more than one wife simultaneously, even though the wives are in different areas.[17] Indeed polygamy can be interpreted as a husband who has many wives.

Islam is not the originator of the polygamy concept.[18] Many people think that Islam brought the teachings of polygamy. Even more extreme, some argue that polygamy would not have been known in human history if it were not for Islam.[19] However, the practice of polygamy existed long before Islam came. However, Islam exists to provide strict limits and conditions for polygamists so that they are not arbitrary towards women. Islam limits the number of women who can be married, namely four, with the condition that they must be able to treat all wives fairly. Conversely, having only one wife is sufficient if you cannot do fair.[20]

The prophet Muhammad practiced polygamy after the death of his first wife, Siti Khadijah. The prophet has eleven wives with widow status because her husband was killed in the war to defend religion.[21] However, among the eleven wives of the prophet Muhammad, only Aisyah was still a girl in her teens. The prophet did polygamy not to fulfill his biological needs. This mistake is used as a justification for polygamy. One must first know the history of the prophet Muhammad's life journey. It is used to understand the purpose of the prophet Muhammad's polygamy.[22]

3.1. Polygamy in the view of M. Quraish Shihab

Most people who support polygamy always base their arguments on the word of Allah surah An-Nisa' verse 3. However, in the commentary book by M. Quraish Shihab entitled Tafsir Al-Misbah: message, impression, and Harmony of the Qur'an. Part of surah An-Nisa', M. Quraish Shihab, has his interpretation of this verse. The interpretation is not solely about polygamy but includes various important matters related to the verse "*Asbabul nuzul.*"

M. Quraish Shihab explained the contents of the verses of the surah An-Nisa' verse 3 that Allah forbids using the property of orphans wrongfully. After that, God forbade to apply maltreatment to the orphans personally. Therefore, he emphasized that if you are afraid that you will not be able to do fair to women other than orphans, then marry what you like according to your taste, and it is lawful for the other women. If necessary, you can join at the same time, the two, three or four but no more. Then if you are afraid that you will not be able to be fair in terms of wealth and outward treatment, not in terms of love if you have more than one wife, marry only one, or marry the enslaved woman you have. Caring for others other than orphans causes injustice, and providing for one wife is closer to not doing the abuse. It leads you more to justice or not having many children that you have to pay for their living expenses.[23]

In the book of spreading the Al-Qur'an, several things concern the QS An-Nisa' verse 3 as follows:

1. (a) i. The verse addresses the caregivers of orphans who want to marry them without being fair. Editorially, the people can be interpreted that case the permission to practice polygamy is only given to the caretakers of orphans, not to everyone. Even though the context, it is because since the time of the prophet Muhammad and his companions. It has been shown that those who do not care for orphans also practice polygamy, and this case is known as the prophet Muhammad. Therefore, it is not proper to make

- the verse above only limited to the caregivers of orphans. The word “fear” is a translation of the word *hifum* also means “to know.” It implies that whoever believes or strongly suspects or even suspects that he will
- ii. not be able to treat his wives fairly, whether orphan or not. Then, they are not permitted by the verse above to practice polygamy. What is allowed is only those who believe or strongly suspect that they can act fairly. Those who doubt or doubt whether polygamy is permitted, as reiterated by the closing verse, “If you are afraid that you will not be able to do fair, then only one.”[24]
 - iii. The verse above uses the word *tuqsithu* at the beginning and *ta’dilu* at the end of the verse, both of which, due to the limitations of the Indonesian language, are translated as *adil*. Indeed, some Ulama unifies the meaning but differentiate it in their knowledge of the language because there are no two different words like those used in the verse above. From here, scholars who distinguish it say that *tuqsithu* applies fairly between two or more people, justice that makes both of them happy or receive good. While *ta’dilu* is applied to others and oneself, justice can displease one party. Then it means that permission for polygamy is only given to those who suspect that he expects his move will be accepted by all the wives he marries. It is understood from the word *tuqsithu*. However, if this cannot be achieved, then the husband must act fairly, even though polygamy can be displeasing to one of them.
 - iv. Once again, the verse above is not an order, let alone a suggestion for polygamy. The editorial of this verse is similar to the words of a person who forbade other people to eat certain foods and to reinforce the prohibition. He said: “If you are worried that you will get sick if you eat this food, then just finish the food other than what is in front of you.” The order to finish other foods merely emphasizes the need to heed the prohibition not to eat certain foods. If polygamy were recommended, the number of women who have the potential to marry must be four times the number of men. What is the meaning of recommendation if what is recommended is not available?[24]

It is underlined that concerns QS. An-Nisa’ verse 3 is as follows:

- i. The verse addresses the caregivers of orphans who want to marry them without being fair. Editorially, one might say that permission to practice

polygamy is only given to the custodians of orphans, not to everyone, but because of the time of the prophet Muhammad and his companions. It has been shown that those who do not care for orphans also practice polygamy under the Rasulallah SAW. It is not right to make the verse above only limited to the caretakers of orphans.

- ii. The word “fear” is a translation of the word *hifum* can also mean to know. It implies that you cannot be fair to orphans.
- iii. According to M. Quraish Shihab, justice is a word derived from “fair,” taken from *adl* in Arabic. Arabic dictionaries inform that this word originally meant the same, where this equation is associated with immaterial things.[25] It should also be explained that the justice implied by the verse that allows polygamy is justice in the material field. In surah, An-Nisā’ verse 129 also confirms that:

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ وَإِنْ تُصْلِحُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا “*between justice [emotional] maintain to able be never will You the leaving one, towards incline not do So are. you keen how matter wives—no your is Allah surely Allah [of mindful are and right is what do you If suspense.1 in other* (129)]:4[An-Nisa’ (QS. .”Merciful Most All-Forgiving,

The concept of emergency in polygamy, according to M. Quraish Shihab, there are several reasons for allowing polygamy, namely:

- i. The wars that have taken place so far have claimed the lives of more men than women, as happened a few years ago, many women in West Germany appealed for polygamy to be justified, even if only for a few years, but the government and the church did not allow it, so this is a problem that needs solving.[26]
- ii. If there is a serious illness or infertility, polygamy is the right emergency exit, but with conditions that are not easy, such as being able to act fairly.[23].

In this case, M. Quraish Shihab, in response to the opinion that tightly closed the chance of polygamy on the, reason that polygamy has a bad impact and causes great harm, according to him, before closing the door to polygamy. It is necessary to know that polygamy, which causes the adverse effects described above, is carried out by those who do not follow religious guidance. The occurrence of violations of legal provisions is not an appropriate reason to cancel legal provisions, especially if the cancellation results in a negative impact on society. Here we need to realize that in a society that

prohibits polygamy or considers it bad both in the East and even more so in the West. There has been a trend of free or unmarried sex and the emergence of mistresses and underhanded marriages. It has a very bad impact on society, especially on women.

According to M. Quraish Shihab, polygamy is similar to an emergency door in an airplane, which can only be opened in certain emergencies. Even those who sit beside the emergency door must have the knowledge and ability to open it and are only allowed to open it when they receive permission from the pilot[27],[28] M. Quraish Shihab explained that the justice referred to by the verse is justice in the field of the immaterial (love). That is why a polygamous heart is prohibited from following his heart and being excessively inclined towards those he loves. Thus it is not appropriate to use this verse as an excuse to close the door on polygamy tightly.[29]

In the book *al-Umm* written by al-Shafi'i and also the founder of the Shafi'i School, it is written that Islam allows a Muslim to have a maximum of four wives based on the Al-Qur'an and the Hadith of the Prophet. From the Al-Qur'an, it is noted that the surah An-Nisa' (4): 3 and several other verses such as Al-Ahzab (33): 50, Al-Mukminum (23): 5-6, while the basis of the hadith to indicate polygamy is a maximum of four, It is recorded that a man from the Saqif nation who converted to Islam and had ten wives told him to take only four. According to Syafi'i, the demand to act fairly among wives is related to physical affairs, for example visiting the wife at night and during the day. The demand for the prophet's behavior in treating his wives is dividing the night shift fairly, giving a living, and then praying. Then, for justice in the heart, according to Syafi'i, only Allah knows. Because of that, a man cannot be fair to his wife, which is implied in verse An-Nisa' (4): 129 related to the heart. Thus the heart is indeed not possible to do justice. Meanwhile, the fair obligation demanded if a person has more than one wife is fair in physical form, namely in actions and words.[30]

However, justice in love is an impossible thing to do because it is beyond human ability. Allah did not create two hearts in the body of a human being. Allah says in the Qur'an: "Allah has never made for a person two hearts in his cavity." On one occasion, Aisyah Ra said: "At that time, Rasulullah tried to determine the turn for his wives and then tried to be fair." After that, he said: "O Allah, this is the result of my distribution of what I have. So, do not burden me with something you have but I cannot have." Then, what is meant here is the heart (*al-qalbu*).[31]

A polygamous husband cannot possibly be fair to his wives, especially in the immaterial field, even though he has tried his best. Only the prophet could do justice to his wives, while his followers were not. God has given attention to the fact that polygamy is

hard. A Muslim practices polygamy, believing he cannot apply justice to his wives. He has committed a grave sin before Allah.

3.2. Polygamy According To Hamka's View

According to Hamka, in interpreting the Qur'an verses about polygamy, Hamka uses the asbab an-nuzul of the revelation of the verse. According to him, munasabah verses between surah al-Nisa' verses 3 and 2 are about caring for orphans. It was explained that there should not be acts of maltreatment and fraudulent acts against orphans. The assets that exist in orphans must be given accordingly. However, in reality, the treasure is still in the hands of the guardian, and is reluctant to give it away. Then the perception arises that by marrying her, her property can be owned by playing with her dowry in nominal but not paid, or because she is already a wife, she is entitled to her property.[7] However, such a perception cannot be justified. Hamka said that such an act is a grave sin.

Furthermore, in verse 3, Hamka explains caring for orphans and Allah's permission to have up to four wives. It is better if you are going to be married, marry honestly, and be paid the dowry properly.[7] It is due to when the orphan's property must be handed over because he is about to get married. More strictly, Hamka explained that if you still want to marry an orphan by wanting to control his property and your property is mixed with it, do not marry him. Marry another woman (which you like), even if it is up to four. This verse contains a deep message. Instead of mistreating the property of orphans, then marry other women up to four. However, being married until four is difficult too.[7]

According to Hamka, the emphasis in the verse is not polygamy but monogamy. Even though Hamka came to this conclusion, there are clear reasons for this conclusion. According to him, psychologically and sociologically, polygamy is an option for overcoming mental problems. He said that was the policy of the Qur'an because Islam does not only regulate worship or the interests of the people with Allah SWT alone. Even though the rules are very strict, if the rules are not following one's soul, the rules will certainly be violated.

Even though it is permissible to marry up to four, there are difficulties, apart from being fair to one to four wives. All wives also have rights over you and the right to claim their rights, such as housing, maintenance, clothing, and food. Hamka added, do not be afraid that you will not be able to act fairly. It will make it unfair to the other wives. That is why Hamka said it is better to have only one wife. It will be safe.[7]

If a husband still wants to practice polygamy, it is better to have one wife, and the others are slaves, according to the verse (or slaves you have). The slaves that Hamka meant were female slaves who came from prisoners of war, whose rights were different from free wives. The reason is that they are bought and sold. So they have no right to demand equality with an independent wife. In contrast to the rights of children obtained from these slaves, these rights are the same as those obtained from free wives.

Even in intercourse, it is different from an independent wife. An independent wife must be paid a dowry while marrying a slave is not required to pay a dowry. Rasulullah SAW has exemplified both of these situations. Shafiah bint Huyai, who was his prisoner in the Khaibar war, meant that he had become his slave, and then he set him free. With this independence, he made a dowry for him. Then, it is independence called its dowry. His last wife was Mariah al-Qibthiyah, a slave gift from Muqauqis, King of Egypt. He married without paying a dowry.[7]

However, slavery has been abolished, and these regulations no longer apply. Modern scholar Sayid Mohammad Rasyid Ridha emphasized that slaves arise because of war and should be war because of religion. When Umar bin Khattab became caliph, he made a rule that a slave who had a wife and had children from that relationship, the slave was called Ummul Walad or the child's mother. Because the slave has children, the rank increases, and they may not be sold again.[7]

At the end of verse 3, Hamka concludes that if you cannot do justice, marry one because that is closer to peace. In his book, Imam Syafi'i's opinion is also explained about the fragment of the verse, An-la ta'ulu, which according to Hamka, is special. Imam Syafi'i interpreted the piece as "that way it is more likely that you will avoid many dependents." It means that if a man marries more than one wife, the burden of responsibility will be even heavier. Having many wives will give birth to many children, and each child must be properly cared for and meet their needs.[7]

Polygamy is limited to four, no more than four. Even then, if you are afraid that you will not be able to do justice, only marry one person to avoid arbitrary behavior towards a wife you do not like or suffer from too many dependents. Hamka said it was difficult to be fair to wives, even though they tried hard. As at the beginning of QS An-Nisa' (4) verse 129: *وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ* " *And you will never be able to act fairly between (your) wives, even though you want to do so ...*" (QS.An-Nisa' [4]: 129)

According to Hamka, what cannot be fair is the heart. Household expenses can be justified, and day and night shifts can be faired. However, the heart cannot be judged. One's inclination is a matter of the heart. Who can compel the human heart? God himself gave destiny in such a way.[7]

This tendency of the heart is beyond human ability, as is the tendency of the prophet's heart to Aisha and Sauda. Even though it was Saudah's turn that night, with Sauda's blessing, she gave her turn to Aisyah, who was then in her teens. Ahmad and Ash-Habus Sunan narrated that the Messenger of Allah begged Allah, who said, "O Allah, this is the fair share that I can give. So do not regret me in matters that only You control, and I have no power."

For this, the prophet felt unable to share justice with Aisyah and Saudah. Although the heart cannot be forced, a wise man can control himself. What is more, if wives are blessed with children, the unfair treatment of a husband towards his wife will leave a bad impression on his children. Therefore, Hamka said not to make a wife who is less loved like a dependent object. It is tough, to be fair.

The verse above gives a subtle warning but also gives satire when marrying two, three, and four. Every married woman must be given a living, food and clothing, clothing, shelter, and justice, which is a big problem. In addition, Hamka added that the purpose of marriage is *sakinah, mawaddah wa rahmah*. It will not be easy to achieve if the wife does not get the love and affection of a husband. It is because husbands should not be inclined to only one wife. After all, jealousy will arise toward the other wife, leading to a feud between the wives.[7]

However, a believer, male or female, if faced with a household problem, according to Hamka, will not choose the short path, namely divorce (*talaq*). There is verse 128, which states that a man is unable to judge love, it is not recommended to seek a divorce, but according to Hamka, it is to suppress feelings of peace and piety, both from the male and female side. Indeed Allah will forgive if there is a small mistake and will still love His servants who are aware of their weaknesses.[7]

Suppose you think philosophically about the emphasis on the verses of the Al-Qur'an regarding monogamy and the permissibility of polygamy. In that case, it can be understood that the meaning of surah An-Nisa' verse 1, which forms the basis of the following verse, is surah An-Nisa' verses 2, 3, and 4 that the unity of the people based on piety to Allah and familial affection. According to Hamka paragraph 2, it is a call to pay attention to the assets of orphans under their guardians' care to achieve this goal. The verses contained in Surah An-Nisa verses 3 and 4 show that universal human goals can only be achieved if every family can live *sakinah, mawaddah wa rahmah*. It can be achieved by having one wife because it leads to doing justice.[32]

In addition, Hamka explained, if religion does not regulate the addition of more than one wife, there will be two negative impacts: the emergence of mental illness,

as previously mentioned, and significant social pathology in the sexual sphere, as in Western countries.[33]

Islam, the perfect religion, recognizes that sexuality has a biological impact on humans. This biological desire is undoubtedly useful for continuing human descent on Earth. In addition, Allah has bestowed on human beings, men and women, the blessing of love for a beautiful partner. Hamka says Hamka explained that religion allows marriage to control lust. So every man is allowed to marry up to four times, but because humans are given reason, they must use it not just to follow their lust because lust is turmoil while reason is calm.[34]

In this thought, one will come to the idea that Islam provides a way for marriage to express one's lust, but there are special requirements for marriage that exceed one person. The conditions that must be carried out are fair. According to Hamka, Islam pays excellent attention to biological sexual life. Hamka said that all young people from all walks of life, even though the young man is not Muslim, are naturally tempted to see women, and these young men have lust. Therefore, there must be mental symptoms that lead to unhealthy behavior if religion prohibits marriage and makes sexual intercourse unclean or sinful.[35]

3.3. Polygamy according to Indonesian Laws and Regulations

The issue of monogamy and polygamy was one of the things that was widely discussed long before the government passed the marriage law. Moreover, when a draft law on marriage was proposed to become a law, this issue became a lively topic of discussion among the many issues to be discussed in family law in law. In the discussion, some parties agreed, and some did not agree that monogamy or polygamy was included in one of the principles of the Marriage Law. Then monogamy became one of the principles but with an exception. The exception is aimed at people who, according to law and religion, allow a man to have more than one wife. Regarding these exceptions, the Marriage Law provides quite severe restrictions, namely in fulfilling a condition for a certain reason and obtaining permission from the court as stated in Articles 3 to 5 of Law Number 1 of 1974 concerning marriage.

In principle, the laws in Indonesia do not prohibit the practice of polygamy. It can be seen in Article 4, paragraph 2 of the Marriage Law. The reasons for allowing a man to have more than one wife are as follows: "The court referred to in paragraph (1) of this article only permits a husband to have more than one wife if:

3.3.1 The wife cannot carry out her obligations as a wife;

3.3.2 The wife has a physical disability or an incurable disease;

3.3.3 The wife cannot bear children.

The existence of an article that allows polygamy for certain reasons, as stated above, clearly shows that the principle adhered to by the Marriage Law is not the principle of absolute monogamy but open monogamy or, as Yahya Harahap calls it, non-absolute monogamy.[36] Polygamy is placed in an emergency legal status or extraordinary circumstances (extraordinary circumstance). In addition, polygamy is not solely the full authority of a husband who wants to practice polygamy.[37] The reasons for practicing polygamy above have been mentioned in Article 4, paragraph 2 of the Marriage Law and repeated in Article 41 of the Implementing Regulations. If a husband is going to apply for polygamy due to one of these reasons, then in his submission to the court, it must be supported by the following three conditions:

3.3.1 There is consent from the wife/wives;

3.3.2 There is certainty that the husband is able to guarantee the necessities of life for his wives and their children;

3.3.3 There is a guarantee that husbands will treat their wives and children fairly.[38]

Law Number 1 of 1974 concerning marriage does not regulate the procedure for submitting applications for polygamy permits in more detail. A more detailed procedure for submitting applications for polygamy permits has been regulated in Government Regulation Number 9 of 1975 in Article 45, paragraph 1.

3.4. The relevance of polygamy according to the views of Indonesian mufassir (M. Quraish Shihab and Hamka) with Indonesian laws and regulations

Polygamy, in the view of M. Quraish Shihab, in interpreting the verses of the Qur'an, is known as a mufassir who uses the maudhu'i (thematic) interpretation method. In analyzing the polygamy verse, Shihab uses theory from the material and immaterial (compassion) side. "Justice" in QS An-Nisa's verse 3 tends to be fair to orphans. In verse, QS An-Nisa' 129, Shihab uses immaterial justice (compassion), which is why a polygamous heart is prohibited from dedicating his heart and excess in the tendency to love someone because in basically, the heart can not be divided. Then, Shihab also believes in polygamy with airplanes, which can only be opened in an emergency. Those sitting beside the emergency exit must also have the ability and knowledge to open it and are only allowed to open it if they get permission from the pilot.

Furthermore, Hamka's view of polygamy is a permissibility, but the permissibility of polygamy, according to Hamka, does not mean it is a recommendation. According to him, the permissibility of polygamy is for a certain reason. Some conditions must be considered. One of which is to be fair. Even though the husband who is going to do polygamy has the financial capacity, it does not mean that polygamy can be done just like that, according to him. The fair that Hamka means is fair from all things. There is no distinction factor between one wife and the other. Both physically and mentally, even the main thing is justice about the heart. Hamka concluded that if you cannot do justice, marry one because that is closer to peace.

Those two mufassir require provisions that rely on "heart" as the reason for the permissibility of polygamy. As required, the husband must act pretty. However, both also require guarantees regarding the husband's ability to support his wife and children. In Islam, the practice of polygamy was carried out by Rasulullah SAW and motivated by da'wah and protecting widows. Quraish Shihab in Tafsir al-Misbah explained that It is clear that the provisions of permissible polygamy contained in the laws and regulations in Indonesia do not cover the principle of "fairness." This principle prioritizes the protection of women's rights and treats them fairly. The background to the law and regulation of polygamy in Indonesia is more motivated by the reason for finding a solution for the husband in the event of health problems for the wife so that she cannot serve her husband. This provision prioritizes channeling the husband's sexual desires to prevent adultery. In her position as a human being, the wife must receive fair treatment and non-discrimination. The existence of regulations that provide opportunities for husbands to practice polygamy on the grounds of physical health disorders weakens the wife's position. The wife becomes a victim of this provision. There was no choice for him when his health condition was compromised.

The wife's physical condition, which is the object of the reason for allowing polygamy, is a form of discrimination and injustice against women. Provisions state that if a woman can no longer serve or have intercourse with husband and wife, then the man may apply for a permit to polygamy. This rule discredits the dignity of women as if women are only seen as objects of husband and wife relations. It provides opportunities legitimized by laws and regulations for husbands to get a wife who is physically better than their first wife.

The granting of permission for polygamy, because women are infertile, will ultimately have a psychological impact and a harmonious relationship between husband and wife. Especially the first wife will get psychological pressure and burden if the second wife gives birth to a child. The husband will pay more attention to the second wife. Even

though there is justification for this position because the first wife is barren, the husband and wife relationship will be unequal. The first wife will be the one who is hurt and weak.

From the studies discussed above, the researcher recommends adding conditions for polygamy in Indonesian laws and regulations, namely requiring a guarantee of fair treatment in the form of taking an oath by the husband before a judge at the Religious Court and imposing criminal penalties on men who commit Polygamy by Sirri or under the hand especially if without the knowledge of his wife. The author agrees with Edi Darmawajaya, who, in his writings, explains the criminal threat of polygamists in order to protect the welfare of women and their families. So polygamy is not used by husbands as a place to find a wife to channel not only sexual desires but also the mission of protection and fair treatment for women will be guaranteed.

4. Conclusion

It can be seen that those two mufassir require provisions that rely on “heart” as the reason for the permissibility of polygamy. Meanwhile, the regulations that apply in Indonesia only emphasize the “physical” condition of women as a reason for allowing polygamy. The permissibility of polygamy in statutory regulations is still not relevant to the views of Indonesian interpreters. These laws are only a solution for channeling the husband’s lust and do not emphasize protecting women by emphasizing that men act fairly. It is a form of injustice and discrimination against the wife. The wife is weak, has no choice, and becomes a victim of this regulation. For this reason, it is necessary to add to the conditions for the permissibility of polygamy in the statutory provisions in Indonesia by requiring guarantees of fair treatment in the form of taking an oath before a religious court judge. Then it also imposes criminal penalties on men who practice illegal polygamy or underhanded ways, especially if without the knowledge of their wives. So polygamy is not only used by husbands as a place to find a wife to channel only sexual lust but also the mission of protection and fair treatment for women will be guaranteed.

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