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## **PUNISHMENT FOR POLYGAMY DOER IN THE PERSPECTIVE OF ISLAMIC LAW “FIQH” IN INDONESIA**

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### **ABSTRACT**

*Indonesian government has been progressively attempting to minimalize the polygamy. This is proved by the issuance of regulation/constitution (UU) No. 1 in 1974. Then, specific regulation (PP) is also issued for the civil servants No. 10 in 1983 and has been amended into No. 45 in 1990 dealing with the permission for marriage and divorce. Both UU and PP stipulate certain of punishments in doing polygamy. This research is aimed to find out (1). What punishments are given for civil servants in terms of UU No. 1 Tahun 1974. (2) How is the punishments given for civil servants in terms of Islamic Marriage Law/fiqh. Hence, the main data used is UU No. 1 in 1974 for general reference. Meanwhile, PP No. 10 in 1983 which was amended into PP No. 45 in 1990 is also applicable to civil servants. Second data is Al-Qur'an, Hadist, fiqh books and compilation of Islamic Law. Among the findings of this research are; firstly, civil servants who break the polygamy law could be*

*fined amount of seven thousand Rupiah (IDR). If his new marriage is no consent from applied rules, he could be punished by the four alternatives: (1) lowering his rank to lower level; (2) freeing from his current position; (3) being fired from the current government civil servant; (4) ceasing his status as civil servant disrespectfully. Female civil servant whose status is as the second/third/forth wife would be ceased disrespectfully from civil servant. Secondly, in Islamic law or fiqh, polygamy is obligated to fulfill certain of requirements. In fiqh, polygamy is strictly forbidden. It refers to Quranic verse: **بَلِّغْ أُنثَىٰ آلَا تَعُولُوا**. This is viewed as 'azimah, meanwhile it is allowed to do if he could give justices to his wives as so called as rukhshah. Regulation on polygamy is referring to Al-Qur'an which allows man to marry more than one wife. In another reference, Indonesia government through marriage regulation is forbidden in terms of its negative impacts (mafsadah) are bigger than positive one (mashlahah),*

**Keywords:** Polygamy, Civil Servant (PNS), Fiqh, Indonesian Regulation/Constitution (UU) No. 1 in 1974

## 1. INTRODUCTION

Humankind's history has recorded tremendous events including ones' marriage, and there have been noted some problematic issues. One of them is the "Poligamy" or "*ta'addud al-zaujat*" (Kodir, 2005: ix). In the past, many people were used to do polygamy before Islam came to their lives such as Ibranians, Arabians, Jahiliyah, and Cisilians (Sabiq, 2007: 9). This issue in Islamic perspectives has been foramally accepted, but in its implementation, this is still problematic among Mulsems in various regions.

The issue is also taking place in Indonesia. Polygamy is among debatable cases and becoming a controversial issue (Sabiq, 2007: 9). In another view, polygamy has been introduced to public since its fundamental premises are becoming an alternative solution toward having an affair and engaging in a prostitution. However, polygamy is rejected in terms of some arguments for example its normative laws, psychological aspects

and even to gender issues. And western scholars claim that polygamy is the evidence of Islamic teaching to discredit and discriminate to woman.

One of the causes is the emergence of instability of social lives dealing with her/his education levels and reasons for what they do polygamy. If the reasons to do polygamy has been published and known broadly by public, and even it is formally stated and issued in formal regulations, doing an academic research will have no debates on polygamy. This is also being applied to ways of conducting polygamy since some people of polygamy doers have not understood and implemented its fundamental bases or principles of doing polygamy. Their minimal understanding will affect to social lives and their marriage.

In Indonesia, there have been various efforts to minimize the activity of doing polygamy by issuing Indonesian Regulations/constitution (UU) for instances Regulation Number 1, 1974 about marriage, Number 9, 1975 about technical procedures of implementing regulation Number 1, 1974 about marriage. For Civil Servant/Government Officers, Indonesian Government has issued regulation Number 10, 1983 and has been amended into Number 45, 1990 about permission to marry and divorce for civil servants. Then, Indonesian government has issued a special regulation for Moslem by President Number 1, 1991 about the Compilation of Islamic Law. Some articles on regulation Number 1, 1974 about marriage and its implementation, and Islamic Law Compilation are principally in line with Islamic Law. According to the regulation, Indonesian government's law of marriage is "Monogamy" (Manan, 2008: 6).

This statement is referred to al-Qur'an an-Nisa, 3: *"And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice].* Doing justice is to his wives in terms of her clothes, house, and mental and other physical needs. Before this verse came to Prophet Muhammad, verses on polygamy has been stated and implemented by

previous prophets. This verse on QS an-Nisa' 3 limits to four wives only and his slaves. This will be close to do good deeds. (*Q.S. An-Nisa, 3 and Departemen Agama, 2004: 24*).

The above verse delivers to three main points. *Firstly*, people who are doubtful to do justice to his orphan daughter's wealth and may not to marry her in terms of avoiding unfair to her wealth. *Secondly*, they should choose another woman either two or three even four women. *Thirdly*, if Moslem may not exercise justice to his wives, it is suggested to marry just one wife or marry his slave.

The implementation of Regulation (*Undang-Undang*) Number 1, 1974 clearly states that man who marries more than one wife must get permission from local court (article 4, passage 1) and his approval is given to him by fulfilling the following requirements:

1. A wife cannot perform her roles and duties
2. A wife is suffering from physical problems
3. A wife cannot give a child (*Undang-Undang No. 1 Tahun 1974, 2007: 3*)

Hence, for a civil servant – polygamy case - has been regulated by regulation Number 45, 1990 as the amendement from the regulation Number 10, 1983 about the permission to marry and divorce for civil servant. It is clearly stated on article 4 that:

1. Civil servant who wishes to marry more than two women must get the formal permission from local court.
2. Civil servant (woman) may not become the second/third or fourth wife.
3. The permission or approval must be in written form.
4. The permission as stated at point (3) must state logical reasons to do polygamy.

Regulation Number 1, 1974 seems to be contrary to Islamic Law since it does not require the approval from the local court and there is no prohibition for woman to become the

second/third or fourth wife. Thus, researcher is interested in studying this issue scientifically.

## 2. RESEARCH QUESTION

The main research questions are what punishments given to civil servants doing polygamy based on regulation Number 1, 1974? and what punishments given to civil servant doing polygamy based Islamic Law “fiqh”?

## 3. METHODOLOGY

This study is library research. This method is to collect the written data by doing content analysis (Ashshofa, 2004: 38-42). Then, the primary data used is Regulation (UU) Number 1, 1974. Meanwhile, for a civil servant is Number 10, 1983 and has been officially amended into Number 45 Tahun 1990. Al-Qur’an, Hadist, fiqh book and Compilation of Islamic Law are becoming the second data/resources. In addition, the data analyses used are descriptive analyses. This aims to describe the true phenomena systematically and accurately as well as to find its relations to adherent issue (Nazir, 1999: 63).

## 4. POLYGAMY

A term “polygamy” is derived from a work “poly” means “several or many” and “gamy” means “wife”. It means that polygamy is having several wives. Hence, it is defined as “a man (husband) marries to one and more wives” but it is limited to four wives (Ghozali, 2010: 129). In Arabic term, polygamy is called as *ta’addud az-zaujaat* (تعدد الزوجات), (Hakim, 1999: 13). Meanwhile, Indonesian Dictionary states that polygamy is the activity of a man marries to several wives in his life, (Peter S & Yenny S, 1991: 1178). In addition, in Islamic dictionary states that the condition of a man who marries to two till four wives (Sudarsono, 1994:180).

For Moslem scholars and some polygamy does use Quranic verse on Surah an-Nisa’, 3 which means that *“And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable*

*that you may not incline [to injustice] (Q.S. An-Nisa', 3).* This verse is commenced by an alternative solution to orphans in form of directing to marry. But, if he is injustice to wives (orphans), he is instructed to marry other women and do them justice mentally and physically.

This verse is also related to activities of Islamic marriage that is limitation to marry to four wives justly. Prophet Muhammad also state that "Narrated from Salim, from his father *Radliyallaahu 'anhu* that Ghalian Ibnu Salamah converted into Islam together with his ten wives. Then, Prophet Muhammad instructed to Sallam to choose four wives and divorce the rest. Hadits is from Imam Malik form Zuhri, Hadits Ghailan. (Syafi'I, 1338 [274/1]). Another Hadist is from Qais Ibnu Al-Harits narrated by Abu Daud and Ibnu Majah which means that "*from Qais Ibnu Al-Harits states that when he converted into Islam he has eight wives, and I met Muhammad telling his family and Muhammad stated to "choose four among them".* (H.R. Ibnu Majah). Ibnu Katsir in his interpretation mentions that prophet's companions who have four wives to divorce others and only four wives are allowed. This premise becomes the main concept in justifying for Islamic law to marry only four wives (Katsir, 1999: 80).

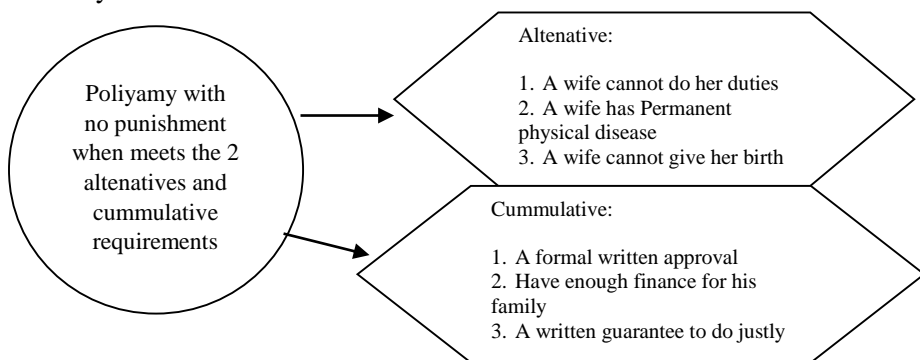
The limitation to be married by a man will be another requirement that is to do justly for his wives when doing polygamy. The verse is ended by highlighting the warning for him if he does injustice for his wives. In understanding a verse of polygamy, Imam Syafi'i, Hanafi, Maliki and Hambali argued that a husband may have more one wife since Islamic Law allows to marry till four women. But, this approval is required other requirements to do justly to his wives (Mughniyah, 2011: 109).

## **5. PUNISHMENTS FOR POLYGAMY DOER**

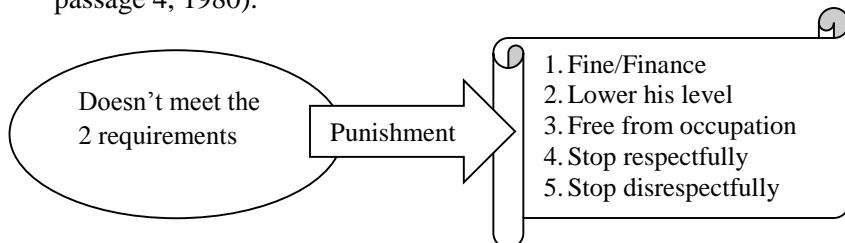
The basic principles of marriage in Indonesia is monogamy. This statement is based on regulation (UU) Number 1, 1974. However, there is a chance to marry woman till four by means of getting approval from local court and his first wife's in advance. For a civil servant, he must fulfill other requirements based on Regulation (PP) Number 10, 1983 Article 10, passage 1. They

are (1) a wife cannot do his roles and duties; (2) a wife has physical problems and need special treatments; (3) a wife cannot give a bith (UU Number 1 ,1974 Article 4 passage 2; PP Number 9, 1975 Passage 41 a; PP Number 10, 1983 Article 10 passage 2, and Compilation of Islamic Law, Article 57).

However, someone who wants to do polygamy must also meet a cummulative requirements such as (1) a written approval from his first wife; (2) a legal guarantee from husband to fulfill wife and children's basic needs; (3) a formal written guarantee to do justly to his wives (UU Number 1, 1974 Article 5 and PP Number 9, 1975). To prove his ability to cover all needs, he must get an official statement from his organisasion/office and signed by treasurer.



Someone who breaks the law of polygamy could be punished and fined with a mount of seven thousand Indonesian Rupiah (IDR). This amount is seen in perspective of value not its amount. A civil servant who has more than one wife without any permission can be given punishments by four possibilities: (1) to lower his position level; (2) to free his position/job; (3) to cease his status as civil servant formally prior to his request; (4) to stop his status irrespectfully as civil servant (PP Number 30 Article 6 passage 4, 1980).



Woman civil servant who becomes the second, the third or the fourth will be automatically stopped his status as civil servant (PP Number 45, 1990 Article 15 passage 2 and Article 4 passage 2).

## 6. DATA ANALYSIS

One of the requirements to do polygamy is do justly to his wives. This is in line with quranic verse, “then marry those that please you of [other] women two or three or four”, then this verse is interconnected to next verse that is “but if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice]”. Doing polygamy, in another hand, is forbidden since its part of verse is taken from “*fi'il amr*” which directs to answer the adherent verse “*fa in khiftum an la ta'ulu*”. Thus, it can be drawn as “to marry one wife “or “to marry only one woman”. This is based on premise “instruct to do something is by leaving something”. It is interpreted as “if you fear that you will not be just, then [marry only] one”.

The source of its prohibition is derived from the end of the verse “*zalika adna an la ta'ulu*”. It means that doing polygamy is prohibited to avoid injustice or bad deeds. The law of doing polygamy for some scholars' views is '*azimah*, however others argue that it is allowed to do if he is able to fulfil all requirements and so called as *rukhsah* (Hosen, 1971: 88). Ibrahim Hosen has scientifically studied a wide range of scholars' arguments on polygamy. Some of his arguments are to do justly is not main requirement as argued by some Quranic interpreters or *mufastir*, but it is viewed as Islam gives possibility to do polygamy. In terms of conceptual law, any law can be judged as the requirements are met.

An illustration of the concept is doing a worship which is obligated to take ablution before doing it. It means that both worship and ablution are the adherent two entities. Regarding to law of doing polygamy, doing a justice cannot be performed before doing polygamy. Therefore, do justly to wives cannot be argued as the law requirement, but doing a justice is regarded as Islamic requirement obligated to husband after his marriage. The



law requirement affects to legal standing of doing polygamy. But his concept is not used for the Islamic law since someone who does polygamy injustice to his wives, he will be burdened “sin” by God. If doing a justice becomes the law requirement to do polygamy, his marriage will be broken the law because of his injustice to wives (Hosen, 1971: 92).

The Indonesian constitution regulates to a man who wishes to do polygamy by fulfilling the required requirements: (1) has ability to provide sufficient finance for his family; (2) has ability to do justice for all his wives. That is why the constitution tries to keep woman’ right by getting her formal approval if his husband wishes to do polygamy as well as a written approval from the local court. And the Islamic local court has the authorities to reject or approve husband’s proposal for doing polygamy.

Thus, Indonesian constitution on polygamy prohibits to husband to do polygamy eventhough the Al-Qur’an gives chance to do so. The prohibition is because of its prohibition (*mafsadah*) is higher than usefulness (*mashlahah*), (Mudzhar, 1993: 100). The constitution is made to play a higher role than classical book of “fiqh”.

## 7. CONCLUSION

Regarding to the analysis on the issue of polygamy and its punishments for civil servant in terms of Al-Qur’an Surah An-Nisa’, 3 and Constitution Number 1, 1974 found that polygamy done by civil servant has been formally regulated on government regulation Number 45, 1990 and has been amended Number 10,1983 about the approval and divorce for civil servant. Article Number 4 is clearly stated that: (1) civil servant (man) who will marry to women must get the approval from the local court, (2) civil servant (woman) is not allowed to be the second/third/fourth wife, (3) the permission as stipulated on Article 3 must be in written form. On permission letter as stipulated on Article 1 must be clearly stated the reasons of marriage. Then, Surah an-Nisa’ 3, clearly states and uses "و" which means “or” not “and”. So, it limits to 4 (four) wife not more than that.

For the civil servant who breaks the laws of polygamy will be fined an amount of seven thousand Indonesian Rupiah (IDR). This fine should be not merely judged on its amount. Then, civil servant who does polygamy without any permissions or legal approvals will be punished with the four alternatives: (1) lowering his rank to lower level; (2) freeing from his current position; (3) stopping his occupation by his own proposal as civil servant; (4) ceasing his status as civil servant disrespectfully. Female civil servant whose status is as the second/third/forth wife would be ceased disrespectfully from civil servant.

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