



## Granting of License Polygamy Perspective Maqasid: Analysis of Article 4 of Law Number 1 of 1974 and Article 57 of the Compilation of Islamic Law

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### Abstract

**Abstract:** This article I focus on the reasons for granting polygamy permission for a man as contained in the provisions of Article 4 of Law No. 1 of 1974 and Article 57 Compilation of Islamic Law using the approach of ushul fiqh. Polygamy is an issue in Islamic family law both in classical jurisprudence and in contemporary jurisprudence. Islamic marriage law allows husbands to commit polygamy with a maximum of four as in the QS. An-Nisa verse (3) among scholars have different opinions about the provisions of polygamy, there are those who allow it with loose requirements and there are also some scholars who require it strictly. The granting of polygamy permission is very relevant to the concept of *sharia maqasid* in the aspect of *daruriyat*, which is to protect the offspring (children) in article 4 of Law No. 1 of 1974 and article 57 KHI if a wife is unable to give birth or give offspring then the husband has the right to propose to marry more than one wife.

**Keywords:** Compilation of Islamic Law; Polygamy; Marriage Law; Sharia Maqasid

## 1. Introduction

Marriage is an inner and outer bond between a man and a woman as husband and wife to raise a happy and eternal family (household) based on God Almighty. Marriage law that applies in Indonesia adheres to the principle of open monogamy, in meaning that in a marriage, a man can only have one wife, and a woman can only have a husband. However, in certain circumstances, the court may permit a husband to have more than one wife if the party wants.<sup>1</sup> Islamic guidance allows polygamy with a limit of up to four people. It obliges them to be fair regarding food, clothing, shelter, and other material matters without distinguishing between a rich wife and a poor wife who come from descendants high and low from the bottom.<sup>2</sup>

Indonesia does not explicitly prohibit polygamy in its positive law, but it regulates and limits polygamy with strict rules and restrictions. For example, this provision can be seen in Law Number 1 of 1974, article 3 paragraph 1, which explains the principle of national marriage monogamy, and article 3 paragraph 2 concerning the requirements that are pretty strict for perpetrators who will practice polygamy. Those who will practice polygamy must also pay attention to Government Regulation No. 9/1975. Especially Civil Servants must heed the special provisions contained in Government Regulation No. 10/1983 concerning marriage and divorce permits for Civil Servants.<sup>3</sup> Islam says that the purpose of marriage is to create a *sakinah, mawaddah wa rahmah* family among husband, wife, and children. Action is needed to reach the purposes of marriage. These actions are mutual understanding, affection, respect, and help. Islam does not make polygamy as an obligation for men, nor is it obligatory for women and their families to accept marriage from married men. It should be emphasized that the purpose of enacting Islamic law is for humankind's benefit. Similar to this principle, it is clear that polygamy is also prescribed for the benefit of humans. To clear that if polygamy is not or without permission from the court, and the marriage has no legal force, it is considered conducted by the legal court. In this case, the court will consider the wife's morality and health conditions, especially

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<sup>1</sup> Ali Imron, "Menimbang Poligami Dalam Hukum Perkawinan," *QISTIE* 6, no. 1 (2012), 1.

<sup>2</sup> Edi Darmawijaya, "Poligami Dalam Hukum Islam Dan Hukum Positif (Tinjauan Hukum Keluarga Turki, Tunisia Dan Indonesia)," *Gender Equality: International Journal of Child and Gender Studies* 1, no. 1 (2015): 27–38.

<sup>3</sup> Darmawijaya, 27.

reproduction. Another thing that needs to be considered is the agreement of both parties before the court, orally and in writing.<sup>4</sup>

Danu Aris Setyanto's research entitled "Polygamy in the Philosophical Perspective of Islamic Law (Criticism of Marriage Law in Indonesia)" states that polygamy is a discussion that is constantly debated theologically and anthropocentrically. In Indonesia, polygamy is allowed under strict conditions, known as the monogamy principle. The main requirement for polygamy in fiqh and Law Number 1 of 1974 concerning marriage is to act physically and mentally reasonably. However, the philosophical meaning of polygamy in the marriage law in Indonesia is considered by some parties to be unable to be realized effectively. It is due to the absence of strict sanctions, weak administration, and weak public awareness of obeying religious rules and the Marriage Law in Indonesia.<sup>5</sup> Furthermore, Danu Aris Setyanto said in his conclusion that in the Indonesian context, polygamy is a problem that scholars must study, especially regarding the reasons for polygamy in the Marriage Law. Some feminist figures see the reasons for polygamy in the Marriage Law as not fulfilling justice.

Then, in Khoirul Abror's writing entitled "Polygamy and Its Relevance to Household Harmony" (Case Study in Rajabasa Village, Bandar Lampung), this article examines the problem of polygamy in the household, from the reasons why husbands have polygamy to the impacts arising from polygamy. This type of research is a case study with the research location in the Rajabasa Village, Bandar Lampung Municipality. The results of this study reveal several facts, including; *First*, the main reasons behind husbands' polygamy generally lead to natural desires, coupled with the assumption that they can support more than one wife. *Second*, polygamy cases tend to negatively impact household disharmony between husband and first wife and between first wife and second wife. Another negative impact is that attention to children is neglected, so it is not uncommon for them to become neglected.<sup>6</sup>

Then the article by Marzuki entitled "Polygamy in Islamic Law" was written. According to Marzuki in his article, polygamy is the marriage of a husband with more than one wife at the same time. In Islamic law, polygamy

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<sup>4</sup> Danu Aris Setiyanto, "Poligami Dalam Perspektif Filsafat Hukum Islam (Kritik Terhadap Hukum Perkawinan Di Indonesia)," *Al-Abwaal: Jurnal Hukum Keluarga Islam* 10, no. 1 (2017): 49–60.

<sup>5</sup> Setiyanto, 49.

<sup>6</sup> Khoirul Abror, "Poligami Dan Relevansinya Dengan Keharmonisan Rumah Tangga (Studi Di Kelurahan Rajabasa Bandar Lampung)," *Al-Adalah* 13, no. 2 (2016): 227–38.

is limited to a maximum of four wives. According to Marzuki, two main verses can be used as a reference in practicing polygamy, namely *Surah Al-Nisa* (4):3 and *Surah Al-Nisa* (4):29. Polygamy has gone hand in hand with the history of humankind, so polygamy is not a new trend that suddenly appeared. The ulama differ on the provisions and laws of polygamy. Among them are those who agree to polygamy with rather loose conditions and some who strictly require it. Among them, some prohibit polygamy, except out of necessity (as rukhsah) under certain conditions; Islam does not prohibit polygamy absolutely (haram) and also does not recommend absolutely (mandatory). Islamic law regulates the issue of polygamy for people who are qualified to do so. According to Islamic law, the implementation of polygamy must be based on fulfilling justice and benefit between the parties involved. However, the reality is many polygamous practices do not heed the provisions of Islam, so it is still far from what is expected.<sup>7</sup>

Article 40 of Government Regulation Number 9 of 1975 states that “if a husband intends to have more than one wife, he must submit a written submission to the Court”, as stated in Article 3 paragraph (2) of the Marriage Law. In addition to these articles, a husband who will practice polygamy must comply with articles 4 and 5 of the Marriage Law, Article 41 PP No. 9 of 1975, and articles 55, 56, 57, 58 and 59 KHI.

Article 4 of the 1974 Marriage Law states, among others, the following:

- 1) If a husband has more than one wife, as referred to in Article 3 paragraph (2) of this law, he is obliged to apply to the court where he resides.
- 2) The court referred to in paragraph (1) of this article only permits a husband who will have more than one wife if:
  - a) The wife cannot carry out her obligations as a wife;
  - b) The wife has a disability or an incurable disease;
  - c) The wife cannot bear children.

In Article 4 of Law Number 1 of 1974 and Article 57 points (C) of the compilation of Islamic Law, the Religious Courts permit a husband to have more than one wife if the wife cannot give birth to children. By taking into the requirements that must be complied, such as the consent of the wife or wives for the husband who intends to remarry another woman (polygamy), by applying

<sup>7</sup> Marzuki Marzuki, “Poligami Dalam Hukum Islam,” *Jurnal Civics: Media Kajian Kewarganegaraan* 2, no. 2 (2005), 1.

for a permit for polygamy in the Religious Courts Article 4 paragraph (10) and Article 5 paragraph (1 ) letter a Law Number 1 of 1974 concerning marriage.<sup>8</sup> This is in accordance with the *maqasid sharia* to guarantee, provide protection and preserve the benefit for humans in general, namely the *daruriyat*, that is urgent or basic necessities that must be complied. From the academic anxiety above, the author is interested in studying the reasons for granting polygamy permits contained in Article 4 of Law Number 1 of 1974 and Article 57 of the Compilation of Islamic Law. Analysis of this problem will use the *Ushul fiqh* approach etymologically *ushul fiqh*, meaning the basics of understanding. While in terms *ushul fiqh* is a science that studies the basics, rules, and methods used to implicate sharia law.<sup>9</sup> The purpose of establishing sharia law is believed to be the benefit of humans as the target of sharia. The goal of *maqasid sharia* is to determine whether a case is still relevant to be determined by existing legal provisions when there is a change in the social structure. The author tries and seeks to reveal the values of justice in granting polygamy permission by the wife. This discussion is essential because scholars' thoughts produce fiqh. Fiqh has a sociological character in addition to theological nature.<sup>10</sup>

## 2. Literature Review

### Definition of Polygamy

Etymologically the word polygamy comes from Greek, a combination of two words: *poly* or *pollus*, which means many, and *gamein* and *gamos*, which means marriage.<sup>11</sup> Thus polygamy means multiple marriages.<sup>12</sup> Meanwhile, polygamy is a marriage system in which one party owns or marries several members of the opposite sex at the same time. If the one with more than one partner is a husband, the marriage is called polygynous. Whereas if the one who has more than one partner is a wife, the marriage is called polyandry. However, in everyday language, the term polygamy is more popular to designate the marriage of a husband with more than one wife.

<sup>8</sup> Zainal Abidin Abubakar, *Kumpulan Peraturan Perundang-Undangan Dalam Lingkungan Peradilan Agama* (Yayasan Al-Hikmah Jakarta, 1993), 124.

<sup>9</sup> Ali Sodikin, "Fiqh Ushul Fiqh: Sejarah, Metodologi, Dan Implementasinya Di Indonesia," *Yogyakarta: Beranda*, 2012, 20.

<sup>10</sup> Bani Syarif Maula, *Sosiologi Hukum Islam Di Indonesia: Studi Tentang Realitas Hukum Islam Dalam Konfigurasi Sosial Dan Politik* (Aditya Media Publishing, 2010), 13.

<sup>11</sup> Dendiknas, *Ensiklopedia Islam* (Jakarta: PT. Ihtiar Baru Van Hove, 2002), 107.

<sup>12</sup> Khairuddin Nasution, "Riba Dan Poligami: Sebuah Studi Atas Pemikiran Muh. Abduh" (Yogyakarta: Aca Nemia, 2002), 84.

Based on Law Number 1 of 1974 concerning Marriage, it is stated that marriage is legal if it is carried out according to the laws of each religion and belief. The registration of marriages is proved by the existence of a marriage book which is only administrative and does not affect the validity of the marriage. Even though it is administrative, marriage registration is a government policy that should be supported and adhered to.<sup>13</sup> The term polygamy is rarely used in society. It is only used among anthropologists that it directly replaces the term polygyny with an understanding between a man and several women, which is called polygamy. This word is used as opposed to the word polyandry. So as in terms, polygamy means a marriage bond which one party owns or marries several of the opposite sex simultaneously.<sup>14</sup>

According to Islamic law, polygamy is a *rukhsah* (leniency) during an emergency. It is same with *rukhsah* for travelers and sick people who are allowed to break their fast at Ramadan while traveling. The meaning of crisis is related to the men's nature in terms of the tendency to get along alone. It is the tendency that if Islamic law does not allow polygamy, it will inevitably lead to adultery. Therefore, polygamy is permitted in Islamic law.<sup>15</sup> The legal basis for polygamy is stated in Surah An-Nisa verse 3: "And if you fear that you will not do justice to the orphans, then, marry the women you like, in twos, in threes and fours. But, if you fear that you will not maintain equity, then (keep to) one woman or bondwomen you own. It will be closer to abstaining from injustice."

The opposite of polygamy is monogamy, a marriage bond consisting of a husband and a wife. The husband only has one wife; another term is monogyny. In the sociological reality in society, monogamy is more practiced because it is felt to be most by human nature and is a form of marriage that promises peace.

In this case, there are 2 (two) moral polygamy, namely:<sup>16</sup>

1. Dharuri Polygamy

This Dharuri polygamy is allowed if the first wife is sick. So that she no longer serves her husband's biological needs and cannot perform her routine duties at home. Islam views that a second marriage for the

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<sup>13</sup> Imron, "Menimbang Poligami Dalam Hukum Perkawinan", 4.

<sup>14</sup> Abror, "Poligami Dan Relevansinya Dengan Keharmonisan Rumah Tangga (Studi Di Kelurahan Rajabasa Bandar Lampung)", 229.

<sup>15</sup> Surjanti Surjanti, "Tinjauan Kompilasi Hukum Islam Terhadap Poligami Di Indonesia," *Jurnal Bonorowo* 1, no. 2 (2014): 13–22.

<sup>16</sup> Surjanti, 15.

husband is dharuri/permitted. In this case, the wife advises the husband to marry another woman to have children. But the wife is advised to find another partner for her husband spiritually and in character.

## 2. Lust Polygamy

This polygamy is not allowed if it is driven by the temptation of a man's imagination that the second woman will provide different pleasures from the first wife so that he will take a second, third, and so on.

## The Purpose and Wisdom of Polygamy

The purpose of polygamy is seen in the practice carried out by the Prophet Muhammad. He married wives not only to fulfill biological desires but also to help ease the burdens and difficulties experienced by the women who later became his wives. Suppose the Prophet was greedy towards women, most of whom were widowed and even old and no longer young and not profitable in the economic aspect. According to fiqh scholars, a husband who wants to be polygamous has at least two conditions: First, the ability to have sufficient funds to finance various needs with the addition of wives. Second, he must treat all his wives fairly. Every wife must be treated equally to fulfill her marital and other rights.<sup>17</sup>

During his life, Rasulullah SAW never married a woman who was still a girl (virgin) except for Aisyah, who was married at a young age. All of the wives of the Prophet, apart from Aisyah, were widowed, and some brought orphans. If you look back into the law of polygamy, you will find that the law is not obligatory but only permissible (mubah).

Islam does not explicitly require a man to marry and have more than one wife. However, if he wants to do it, he is allowed. Usually, polygamy is not allowed except in urgent circumstances.<sup>18</sup> Polygamy is prescribed so that there is no single Muslim woman without a husband, wherever they are in a society. In other words, it aims to be free from faultlessness and disobedience.

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<sup>17</sup> A Bery Arifin and Syinqithi Jamaluddin, "A. Rahman 1. Doi, Syari'ah The Islamic Law, Terj. Zaimudin Dan Rusydi Sulaiman, 'Penjelasan Lengkap Hukum-Hukum Allah (Syari'ah)', Jakarta: Raja Grafindo Persada, 2002, Hlm. 120 2 Muh Zuhri, Hukum Islam Dalam Lintasan Sejarah, Jakarta: Raja Grafindo Persada, Tt. h, Hlm. 93. Abu Hanifah Meninggal Pada Tahun 150 H. Menurut Pendapat Nawawi," n.d, 192.

<sup>18</sup> Husnul Amini, "Status Dan Peran Muslimah Dalam Buku Fikih Perempuan (Muslimah) Karya Syaikh Mutawalli As Sya'rawi." (Universitas Islam Negeri Sultan Syarif Kasim Riau, 2021), 184.

The husband who will carry out polygamy must pay attention to the terms and conditions and several reasons that must be considered. There are several reasons and conditions for polygamy, including the following:

1. The number of polygamous wives is not more than four women. This restriction on four women is based on the verse of the Qur'an Surah An-Nisa' verse 3.
2. The following condition is being able to do justice to the wife, to do justice to the wives in matters of eating, drinking, clothing, shelter, lodging, and living.
3. Polygamous women have no sibling relationship with their wives, whether in terms of milk or lineage, because it is forbidden to collect their wives with their siblings or aunts. As in QS. An-Nisa verse 23, which means:

“And forbidden to you the wives of your biological children (daughter-in-law); and bring together (in marriage) two women who are brothers, except what has happened in the past, verily Allah is Forgiving, Most Merciful.”

Islamic law allows polygamy with a limit of up to four people. It obliges them to be fair regarding food, clothing, housing, and other material matters without distinguishing between a rich wife and a poor wife. If the husband is worried about doing wrong and cannot fulfill all their rights, then he should not be polygamous. If he can only perform three, he is not recommended to marry four people. If he can only fulfill the rights of two wives, then he is not recommended to marry three times. Likewise, if he is worried about doing wrong by marrying two women, it is not recommended for him to practice polygamy.<sup>19</sup> This is as the word of Allah SWT in Surah An-Nisa verse 3: “So marry (other) women you like: two, three, or four. If you fear that you will not be able to do justice, then (marry) only one, or the enslaved people you have, that is closer to not doing wrong”. (QS Al- Nisa (4):3).

Meanwhile, Al-Maragi argues that the conditions under which the husband is allowed to practice polygamy are as follows:<sup>20</sup>

<sup>19</sup> Darmawijaya, “Poligami Dalam Hukum Islam Dan Hukum Positif (Tinjauan Hukum Keluarga Turki, Tunisia Dan Indonesia)”, 28.

<sup>20</sup> Ahmad Mustafa Al-Maragi, “Tafsir Al-Maragi,” *Cairo: Np*, 1946, 181.

1. If the husband is barren, while he hopes for offspring.
2. When the wife is old and reaches menopause age (not menstruating), the husband can provide more than a wife.
3. For the sake of maintaining self-respect (not falling into adultery) because the husband's sexual capacity encourages polygamy.
4. If it is known from the results of the population census that there are more women than men, there is a striking difference.

### 3. Result and Discussion

#### Ulama's View on Polygamy

Most ulama' from the mufassir and fakih argue a Muslim man can marry four women based on the QS. An-Nisa (4):3. This interpretation has dominated the reasoning of all Muslims. However, other ulama revealed the verse above after the Uhud war was over when many Muslim fighters who died became martyrs. Consequently, their fathers or husbands leave many orphans and widows behind. This also results in the neglect of their lives, especially regarding education and their future.<sup>21</sup> This condition is the background of the law on polygamy in Islam.

Here are some views of scholars regarding the law of polygamy:<sup>22</sup>

1. Polygamy According to Zamakhsyari

Zamakhsyari, in his book *Tafsir Al Kasy-syaaf*, said polygamy, according to Islamic law, is a rukhshah (leniency) during an emergency. It is the same with rukhshah for travelers and sick people who are allowed to break their fast during Ramadan while traveling.

2. Polygamy According to Shaltut

Shaltut has a different opinion from Abduh by not putting a condition of coercion on the issue of polygamy. He left it to the individual to determine his condition whether he was able to act justly or not, then he answered himself before Allah. Syaltut sees that the original law of polygamy is allowed to provide a way out for the caregivers of orphans so that they are not trapped in injustice due to their unfair actions. Therefore, according to Shaltut, justice is essential in polygamy, not coercion.

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<sup>21</sup> Nasution, "Riba Dan Poligami: Sebuah Studi Atas Pemikiran Muh. Abduh", 85.

<sup>22</sup> Darmawijaya, "Poligami Dalam Hukum Islam Dan Hukum Positif (Tinjauan Hukum Keluarga Turki, Tunisia Dan Indonesia)", 30.

### 3. Polygamy According to Imam Ghazali

Imam Ghazali is famous as a scholar who often defends women. In his book, *Nahwu al-Tafsir al-Maudu'i li Suwari Al-Quran*, he discusses the issue of polygamy in great detail. According to Al-Ghazaly, polygamy in Islam has special rules, unlike in the western world, where a man has one legal wife but up to ten unlawful wives. In Islam, single men who cannot marry are advised to fast because what about men who cannot afford polygamy? According to him, such a person should not be allowed; he will not be able to do justice. Ghazali saw that in marriage, there should be no coercion. Therefore, women are free to accept or refuse to be married.

### 4. Polygamy According to Yusuf al-Qaradawi

Yusuf al-Qaradawi, however, disagrees with the opinion that forbids polygamy. The law is still allowed, not haram, because it looks at various benefits. People who will practice polygamy must have complete confidence that they can act reasonably without worrying about falling into injustice, as explained in Surah al-Nisa, verse 3.

## **Polygamy According to Islamic Law and Marriage Laws in Indonesia**

Based on the instructions of the Qur'an, the purpose of marriage is: (1) to form a *sakinah, mawaddah wa rahmah* family. As the main objective, it is then assisted with the following: (2) reproductive purposes (generational transmission), (3) fulfillment of biological needs (sex), (4) maintaining honor, and (5) worship.<sup>23</sup> Among the concepts of marriage offered in Islam are monogamous marriage and conditional polygamy. The first concept is the embodiment of the promise of loyalty and love pledged by husband and wife. Meanwhile, the second concept reflects the sociological reality of men and the patriarchal-Arabic culture that Islam accommodates and modifies. Many Islamic countries, including Indonesia, later adopted this concept.<sup>24</sup>

Existence of polygamy in the Qur'an, almost no one rejects it. Both classical and modern ulama will depart from the basic framework of the Qur'an; when talking about polygamy, there is one interesting thing here: although everyone

<sup>23</sup> Khoiruddin Nasution, *Hukum Perkawinan I Dilengkapi Perbandingan UU Negara Muslim Kontemporer* (Jakarta: Academia Tazzafa, 2013), 42.

<sup>24</sup> Agus Sunaryo, "Poligami Di Indonesia (Sebuah Analisis Normatif-Sosiologis)," *Yinyang: Jurnal Studi Islam Gender Dan Anak* 5, no. 1 (2010): 143–67.

departs from the same basic understanding, the conclusions drawn tend to vary. There is even the opposite. From the historical perspective, there was no limit for a man with many wives, even hundreds. It was before the Quran was revealed. Then Islam limits it to only four. Islam allows a man to marry only two, three, or four wives. Islam allows a man to marry two, three, or four women on the condition that only he can be fair to them.<sup>25</sup>

The verse of the Qur'an that discusses the issue of polygamy is QS. An-Nisa verse: 3: "So marry (other) women you like: two, three, or four. If you fear that you will not be able to do justice, then (marry) only one, or the enslaved people you have, that is closer to not doing wrong". (QS Al- Nisa (4):3).

All the Imams of the madhhab (Imam Shafi'i, Hanafi, Hambali, and Maliki) agree that a man may have four wives at the same time and not five.<sup>26</sup> This is like the Hadith of the Prophet Muhammad SAW. In the book of Abu Dawud from Harith bin Qais which means: "I converted to Islam with my wife with eight of my wives, then I told it to the Prophet. So he said: choose four of them".<sup>27</sup>

Sayyid Qutub views polygamy as an act of *rukhsab*. Therefore, polygamy can only be done in an urgent emergency. This permissibility is still required to have a fair attitude toward the wives. The justice demanded here includes in the areas of living, *muamalah*, association, and night shifts. For a husband who cannot do justice, only one wife is enough.<sup>28</sup>

In marriage law, it is held that a man may only have one wife. A woman can only have one husband. However, if desired by the parties concerned (husband or wife), the Court may permit the husband to take more than one wife.

The Court will only permit a husband to have more than one wife if he fulfills (Article 4 of Law No.1/1974):<sup>33</sup>

1. The wife cannot carry out her obligations as a wife.
2. The wife has a disability or an incurable disease.
3. The wife cannot bear children.

In addition to article 4 above, the marriage law also adds other requirements contained in (article 5):<sup>34</sup>

<sup>25</sup> Zakir Naik, *Mereka Bertanya Islam Menjawab* (Solo: Aqwam, 2010), 135.

<sup>26</sup> Muhammad Jawad Mughniyah, *Fiqih Lima Mazhab: Ja'fari, Hanafi, Maliki, Syafi'i, Hambali (Gold Edition)* (Shaf, 2015), 333.

<sup>27</sup> Sayyid Sabiq, *Fiqih Sunnah Jilid 1* (Republika Penerbit, 2017), 139.

<sup>28</sup> Abu Abdillah Muhammad Bin Al Kurthubi, "Ahmad. Al Jami'Li Al Ahkam Al Qur'an" (Juz V Kairo: Dar Al Katib Al Arabi, 1967), 236.

1. To be able to submit an application to the Court as referred to in Article 4 paragraph (1), the following conditions must be met:
  - a. There is the consent of the wife or wives.
  - b. There is a certainty that husbands can provide for the necessities of life for their wives and children.
  - c. There is a guarantee that husbands will treat their wives and children fairly.
2. The consent referred to in paragraph (1) is not required for a husband if it is impossible for his wives to ask for their consent and cannot become a party to the agreement or if there is no news from his wife for at least 2 (2) years or other reasons, which need to be assessed by a Court Judge.

With the articles above which allow a man to practice polygamy under certain conditions and reasons, it is clear that the principle adopted by the marriage legislation is not the principle of absolute monogamy but open monogamy.

Then in the compilation of Islamic Law (KHI), it is not much different from the Marriage Law in this polygamy issue. For citizens of various Muslim countries, the issue of polygamy is regulated in the Compilation of Islamic Law Book I on Marriage Law Chapter IX Articles 55 to 59.

Article 55 KHI:

1. Having more than one wife at the same time, limited to four wives.
2. The main requirement is to have more than one wife. The husband must be fair to his wife and children.
3. If the main conditions referred to in paragraph (2) cannot be fulfilled, the husband is prohibited from having more than one wife.

Article 56 KHI:

1. Husbands who wish to have more than one wife must obtain permission from the Religious Courts.
2. The submission of the permit application referred to in paragraph 1 is carried out according to the procedure as stipulated in Chapter VIII PP No. 9 of 1975.
3. Marriages with second, third, or fourth wives without permission from the Religious Courts have no legal force.

## The Relevance of Article 4 of Law No. 1 of 1974 and Chapter 57 KHI About Granting Polygamy Permits with Concepts Maqasid Syari'ah in Daruriyat Aspects

*Maqasid Syariah*, as a concept result of the previous ulama for the development and formation of law for the common interest and benefit. The purpose of the *maqasid syariah* is to guarantee, provide protection and preserve the benefit of humans, especially Muslims. The protected aspects include three (3) things: *daruriyat*, *hajiyat*, and *tahsiniyat*.<sup>29</sup>

*Daruriyat* means a need that is urgent, basic, and must be met. *Daruriyat* is considered essential, so there will be chaos if they are not met. According to Hallaq, *daruriyat* contains two meanings: *first*, the need must be realized or fought for, second, all things that can hinder fulfilling these needs must be removed. According to Ash-Syatibi, the category of *daruriyat* must prioritize five things for protection, namely: religion (*al-din*), soul (*al-nafs*), reason (*al-aql*), property (*al-mal*), and offspring or children (*al-nasl*).

Article 4 of the Marriage Law permits, in this case, the Religious Court as an institution that is given full flexibility by the constitution to carry out its duties, one of which is granting polygamy permits to parties or to men who wish to apply for more than one wife (polygamy). Then it is not much different from Article 57 of the Compilation of Islamic Law (KHI). One of the conditions for granting a polygamy permit is that the wife cannot give birth or give offspring, so on that basis, a husband may apply for polygamy to continue his generation in maintaining the existence of human life as caliph on earth.

Article 4 of the Marriage Law and Article 57 of the Compilation of Islamic Law are very relevant to the maqasid syariah aspect of daruriyat to maintain and preserve offspring (children) in considering giving a husband's permission to practice polygamy.

Maintaining offspring is part of the primary human needs. These descendants will continue the human generation on earth. So the necessary regulation so that the offspring produced by humans can later continue the caliphate. On the other hand, as a noble being, the Therefore, Islam regulates the issue of marriage with various requirements in it. Islam forbids adultery because it is considered to pollute human dignity. From this, it can be understood why marriage is assessed, and cheating is prohibited.

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<sup>29</sup> Sodiqin, "Fiqh Ushul Fiqh: Sejarah, Metodologi, Dan Implementasinya Di Indonesia", 149.

From the explanation above, according to the author, the reasons for granting polygamy permission to a man are as safe as the terms and conditions contained in Article 4 of Law No. 1 of 1974 and Article 57 of the Compilation of Islamic Law are very in line and relevant to the concept of maqasid sharia as a means to benefit humankind, especially Muslims. Maintaining offspring is included in *maslahah daruriyat*, which means an urgent or essential need. It must be met so that if in a marriage a wife cannot give birth or give birth to children, the husband is allowed to practice polygamy to obtain offspring from his marriage with the other woman. So, the offspring can continue the caliphate.

#### 4. Conclusion

According to Islamic law, polygamy is a *rukhsah* (leniency) during an emergency. Islamic law allows polygamy with a limit of up to four people. It obliges them to be fair to them in terms of food, clothing, shelter, and other things. The Marriage Law adopted that, in principle, it is monogamy in marriage. A man may only have one wife. A woman can only have a husband, but that is not absolute. In certain circumstances, the Religious Courts may grant permission to a man who wishes to apply for polygamy on the grounds stated in Article 4 of Law No. 1 of 1974 and Article 57 of the Compilation of Islamic Law. The provisions in Article 4 of Law No. 1 of 1974 and Article 57 of the KHI are very relevant to the *syariah maqsid* concept of *daruriyat* aspect, namely *hifdzu al-nasl* (maintaining offspring or children) because it is to continue the function of the caliphate.

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