

**JUDGES' VERDICTS
IN POLYGAMY PERMISSION
(A CASE STUDY AT THE APPELLATE ISLAMIC
COURT OF YOGYAKARTA 1993-2004)**



A THESIS

**SUBMITTED TO SYARI'AH FACULTY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE BACHELOR DEGREE IN ISLAMIC LAW**

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Assalamu'alaikum Wr. Wb.

After having read, researched and corrected to whatever extent necessary, we, as a supervisor, think that the thesis belongs to:

Name : Ulfa Jamilatul Farida
S I N : 00350300
Department : Family Law
Title : A Study of Judges' Verdicts In Polygamy
Permission (A Case Study Judges' Verdicts At The
Appellate Islamic Court of Yogyakarta 1993-2004)

Could be submitted in a partial requirement to obtain a Sarjana degree in Islamic Law. Thus, it could be immediately tested.

Thanks a lot for being available and understanding, may this thesis be useful, Amin.

Wassalamu'alaikum Wr. Wb.

Yogyakarta, 20 Jumadil Akhir 1427 AH.
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APPROVAL PAGE

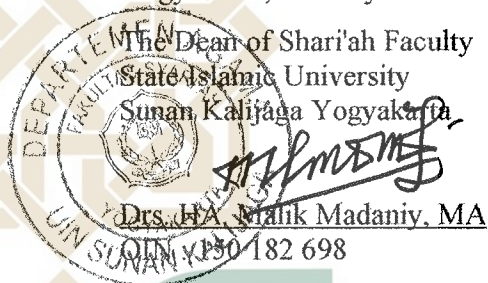
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MOTTO

If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two or three or four; but if you fear that you shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice.

(An – Nisa (4): 3)



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DEDICATION

With all grateful I dedicate this thesis to

My beloved mother and father

My beloved sisters and husband

My Lecturers and Teachers

And all of my friends

Who spices up my life



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Praise be to Allah, most gracious most merciful, who gave and blessed His protection for us. Pray and peace for the prophet Muhammad SAW (peace be upon him) who has successfully brought us from the darkness to the lightness.

I would like to express my gratitude to:

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TRANSLITERATION

The transliteration in this thesis is done to write *Arabic* into *Latin* as accorded and used in Mc. Gill University.

Consonants:

,	ا
b	ب
t	ت
ts	ث
j	ج
h	ح
kh	خ
d	د
dh	ذ
r	ر
z	ز
s	س
sy	ش
s.	ص
d.	ض
l.	ط
z.	ظ
'	ع
gh	غ
f	ف
q	ق
k	ك
l	ل
m	م
n	ن
h	ه
w	و
y	ي

Long Vowels:

ā : ا
ī : ي
ū : يو

Diphthong:

aw : او
ay : اي

Assimilation of the definite article:

al :ال
al-s- :الش

Long with tashdid: اِيّ and اوّ, instead of īya and ūwa, we employ iyya and uwwa respectively. In the case ta' marbuta (ة)h is omitted, unless it occurs within an izāfah where it is written at.

The hamzah (ء) occuring in the initial position is omitted.

Short Vowels:

a : _
ii : _
u : _

ABSTRACT

JUDGES' VERDICTS IN POLYGAMY PERMISSION (A CASE STUDY AT THE APPELLATE ISLAMIC COURT OF YOGYAKARTA 1993-2004)

by: Ulfa Jamilatul Farida

Polygamy is defined as a system of marriage whereby one person has more than one spouse. There are types of polygamy: one is polygyny where a man marries more than one woman, and the other is polyandry, where a woman marries more than one man. In Islam, limited polygyny is permitted, whereas polyandry is completely prohibited. This thesis is going to talk about the first type of polygamy, namely polygyny, but generally called polygamy. Polygyny is one of marriage's kinds in Islam, so did polygamy (polygyny) still in the framework of attaining the basic purposes of marriage in Islam, namely: *sakinah, mawadah, and rahmah*?

Islam allows the practice of polygamy (polygyny) only in specified and restricted circumstances. A muslim male may marry other females provided that there are circumstances that yield this kind of arrangement and it is restricted with several clear conditions. In Indonesian context, the government put Marriage Law into effect which is polygamy as one of aspects, especially for muslim family codes mechanism. By this law, the government regulated the practice of legal polygamy. Through the Religious Court as the representation of government authority in this matters, a polygamy permission would be decided. In Marriage Law determined that if a husband who wants to do polygamy, he has to get a permission from the first wife, and then he has to submits an appeal to the Religious Court in his regency first. Actually, the reality has shown that the requirements to attain a legal polygamy are very hard and difficult. But, in spite of the requirements of polygamy is really hard, we realize that a lot of husbands seeking for polygamy permission to the court, including in Yogyakarta.

This thesis discusses about polygamy in Yogyakarta. There is a number of polygamy permission cases in Special Province of Yogyakarta which submitted an appeal to a higher court when the judge verdict of Religious Court on regency level remarked that the polygamy permission was refused. After analyzed all of the data (verdicts), the conclusion remarked that the Judges at Appellate Islamic Court of Yogyakarta could give permission for polygamy if and only if: first, the wife can not fulfill of her duties, second, the wife gets a physical defect or incurable disease, and third, if the wife is infertile.

Key words: marriage, polygamy, verdict.



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CHAPTER I

INTRODUCTION

A. Background

Islam does not regard marriage as a union between man and woman only for the gratification of sexual lust, but a social contract with wide and varied responsibilities and duties. The reason it is that, according to the divine decree, a woman is not a plaything in the hand of man, but a spiritual and moral being who is entrusted to him on the sacred pledge to which Allah is made a witness. The wife is, therefore, not meant to provide sensuous pleasure only to the male, but to fully co-operated with him in making the life of the family and ultimately of the whole humanity significantly meaningful.

Besides, a marriage in Islam is intended to establish family life in *sakinah, mawadah, and rahmah*, as what the article 3 of Compilation of Islamic Law remarked. Then, what about polygamy? Did polygamy still in the framework of attaining the basic purposes of marriage in Islam? Actually, there are aims of marriage in Islam which can be attained through polygamy, so polygamy has double side of impacts, namely positive and negative. For example a man practices polygamy for social reasons, for instance a man is married for the second times with a poor widow to help and protect her, it will be a beneficial polygamy and also has a positive impact. Yet, when a polygamy has an individual reasons, for instance a man fall in love again with other woman, and he wants to marry her, whereas he has a wife and children who love him very

much, moreover if his family did not agree with his planning to polygamy, so perhaps it will be a negative polygamy because it becomes a problem or bad impact for his family and the aims of marriage in Islam might be lost here. Even polygamy has double side of impact (negative and positive), unfortunately polygamy is often make many problems than the benefit, that is, for the family, especially for the first wife and children. Eventually, we found out that the marriage in Islam's purposes, such as: *sakinah*, *mawadah*, and *rahmah*, did not achieved.

Polygamy is still being in Indonesia, especially in circles that are financially well off. In principle the Qur'an allows a muslim men to marry up to four women. Like what mentioned of *an-Nisā* (4): 3

وإن خفتم ألا تقسطوا في اليتامى فانكحوا ما طاب لكم من النساء مثنى وثلاث ورباع فإن خفتم ألا تعدلوا فواحدة أو ما ملكت أيمانكم ذلك أدنى

ألا تعولوا¹(٣)

This rule was revealed in the Arab society at the time when men married far more than four women. So, the rule originally curtails the number of women allowed. Yet, there is the injunction that the husband has to be fair and just to all his wives. If men fears that he can not treat his wives equally, he is advised just to take one wife. The teaching can be interpreted in a material sense. If you can provide a house and a car for all your wives, you are allow to do polygamy. But, that interpretation ignores other verse in the Holy Qur'an that call for harmonious

¹ An-Nisā (4): 3

living between spouses and their children. This includes giving love and affection. It is difficult to be fair in dividing one's love, so here a man would be unjust. This creates great suffering for women and can be considered a form of psychological violence.

With regard to psychological view, polygamy has a negative impacts for emotional condition of wife, such as: broken heart by what her husband did. At least, this condition was supported by two factors namely *first*, it caused of how great wife's love for her husband. Generally, a wife will entrusted and loved her husband with all of her heart, so no place to another man in her heart, except her husband only, and all the more so, if they have children. Therefore, a wife cannot accept when the truth said that her husband had taken a second wife. *Second*, a wife has an inferiority complex feelings because the practice of polygamy revealed that the wife cannot fulfill her husband's biological necessity.² The first wife will be face a great dilemma, but she has to accept that dilemma in order to maintain their children.

Furthermore, we realize that polygamy is allowed, moreover, prescribed only as a matter of exigency, so what the condition is that makes polygamy to be relevant for implemented ? We know that the purposes and functions of marriage are not only to attain human safely, but also to preserve this world continuously.³ With the reach of that purpose, so to practice polygamy could be permitted. In

² Musdah Mulia, *Pandangan Islam tentang Poligami*, 1st ed., (Jakarta: Lembaga Kajian Agama dan Jender, 1999), p. 51

³ Chuzaimah T. Yanggo and A. Hafiz A. (ed), *Problematika Hukum Islam Kontemporer*, (Jakarta: PT Pustaka Firdaus, 2002), p. 111

this case, Islam also permitted a men to marry up to four wives, and of course with very strict requirements.

In Indonesian context, the government put Marriage Law into effect which is polygamy as one of aspects, especially for muslim family codes mechanism. By this law, the government regulated the practice of legal polygamy. Through the Religious Court as the representation of government authority in this matters, a polygamy permission would be decided. In Marriage Law determined that if a husband who want to do polygamy, he has to get a permission from the first wife, and then he has to submits an appeal to the Religious Court in his regency first.⁴ Furthermore, in this Religious Court, his polygamy permission will be processing. The permission from the first wife and submitted of a polygamy permission to the Religious Court become the first step of legal polygamy process in Indonesia, therefore, to practice legal polygamy will depend on the jugde verdict for the permission.

Then, with regard to the permission from the Religious Court, a polygamy permit will just giving for a person who really fulfill the conditions. As what mentioned on the Marriage Law, the court could but accepted a polygamy permission with strict requirements, as follows:⁵

1. wife cannot fulfill of her duties
2. wife gets a physical defect or incurable disease
3. wife gets infertility

⁴ See: *Marriage Law No.1 of 1974*, Chapter I; article: 4

⁵ *Ibid.*

Yet, we often saw that the husbands do polygamy in secret, wherein just in the presence of muslim cleric and witnesses, without seeking permission from an Islamic Court, which would require permission from the first wife. Clearly, it could be an illegal practice. Based on that article above, it appeared that there were some pre-conditions that must be fulfilled by a husband before submits a polygamy permission to the court. Meanwhile, in point of the regulations of polygamy control, we can take a Presidential Instruction No.1 of 1991 about Compilation of Islamic Law, specifically on article 55 (1) as the basis. Article 55 (1) remarks: " To have more than one wife at the same time, it was restricted up to four wives".⁶

Actually, the reality have shown that the requirements to attain a legal polygamy is very hard and difficult. These regulations were purposed in order to make a polygamy control, clearly, so men or husbands who want to do polygamy cannot marriage however they please without following the polygamy regulations. Additionally, a Religious Court permission could be the one who determines of doing polygamy. But, in spite of the requirements of polygamy is really hard, we realize that a lot of husbands seeking for polygamy permission to the court, including in Yogyakarta. For example in Special Province of Yogyakarta we found a number of polygamy permission cases in each of Religious Court, and specifically the litigants are men, not women.⁷

Moreover, specifically in Special Province of Yogyakarta, there is a number of polygamy permission cases in Special Province of Yogyakarta which

⁶ See: *Compilation of Islamic Law*, Chapter IX: article: 55 (1)

⁷ Accessed from the data of Appellate Islamic Court of Yogyakarta

submitted an appeal to a higher court when the judge verdict of Religious Court on regency level remarked that the polygamy permission was rejected. Then, the same process will be repeated in a higher court when the litigant is request an appeal. Something what we should understand that through the considerations of law in making verdict, the judge would be determined about allow or not allow to practice polygamy. There is no guarantee that in the second level request, it means, a request to appeal to a higher court for permission of polygamy will be accepted after rejected in the first level of court, because a verdict will be based on considerations of law.

As previously mentioned, we know that polygamy permission cases have many issues that very interesting to be described and explained. Moreover, it would be very important for someone who major in Islamic Law because we have to keep in mind that the judge consideration forms is one of law determinations, especially in Islamic Law. Therefore, this thesis will be focus on describing about polygamy permission cases process in Appellate Islamic Court of Yogyakarta and explaining about how actually the verdict of polygamy permission was decided by the judges of Appellate Islamic Court of Yogyakarta. There are reasons why this thesis focus on Appellate Islamic Court of Special Province of Yogyakarta only, namely, *first*, related to its relative authority whereas based on Law No. 20 of 1992 Appellate Islamic Court of Yogyakarta has an authority to solve all of Islamic Personal Law problems in this province, *second*, related to how actually the polygamy dynamics of Yogyakarta society.

This thesis will also explain about the reasons why the litigants submitted an appeal for their polygamy permission to Appellate Islamic Court of Yogyakarta. The litigants hope the judges at Appellate Islamic Court level can reviewing for the verdict that was decided before. Finally, this research will be focused on polygamy permission cases which were submitted to Appellate Islamic Court of Yogyakarta in the year 1993-2004 as an object.

B. Problem Formulation

Based on the background stated before, this research study is aimed at uncovering:

1. Why the litigants submitted an appeal for their polygamy permission cases to Appellate Islamic Court of Yogyakarta in 1993-2004?
2. How did the basic and consideration of law which was used by the judges in settling of polygamy permission cases at the Appellate Islamic Court of Yogyakarta in 1993-2004?

C. Objectives and Significances

1. Objectives of this Study
 - a. To describe and explain about the litigants' reasons for submitted an appeal of their polygamy permission to Appellate Islamic Court of Yogyakarta in 1993-2004.

- b. To describe and analyze the basic and consideration of law which was used by the judges in settling of polygamy permission cases at Appellate Islamic Court of Yogyakarta in 1993-2004.

2. Significances

- a. Academically, to enrich scientific references of Syari'ah Faculty, especially concerning with the Islamic Law codes in matters of polygamy permission at Appellate Islamic Court of Yogyakarta.
- b. Practically, to give a contribution of thought and to enrich legal literature to Appellate Islamic Court of Yogyakarta, especially in polygamy permission cases, and become the material research for the next.

D. Prior Study

There are many literatures talking about polygamy, such as: a book entitled "Poligami dari Berbagai Persepsi". In chapter VII of this book explained in point of misunderstanding in polygamy codes, for example: how the husband argued that Islam allows him to have up to four wives and as we know that sometimes the husband who want to do polygamy has been exploiting the Qur'an to justify his sexual desire.⁸ Then, a book entitled "Keutamaan – Keutamaan Poligami" by Kholid Bin Abdurrachman,⁹ and a book entitled "Hukum

⁸ Mufsir Al-Jahrani, *Poligami dari Berbagai Persepsi*, 2nd ed, (Jakarta: Gema Insani Press, 2001), p. 80-81

⁹ Kholid Bin Abdurrachman, *Keutamaan-keutamaan Poligami*, (Yogyakarta: Sajadah Press, 2005).

Perkawinan Islam” by Ahmad Azhar Basyir, especially in chapter II of this book is also describing and explaining about polygamy,¹⁰ and many others. Then, the research was written by Dr. Khoiruddin Nasution with the title: “The Phenomenon of Polygyny in Contemporary Malaysia” was also explained about polygamy. The contents of this research are around about the practice of polygamy in Darul Arqam movement in Malaysia.¹¹ With regard to the Darul arqam opinion, they interpreted that there was an injunction for the husband in order to be able to fair and just to all his wives. Therefore, the practice of polygamy could be the one of ways in measuring the sense of justice for Darul Arqam men. Meanwhile, a practice of polygamy could be the pathway to be patiently life for Darul Arqam women. He also was wrote a book about polygamy, entitled: “Riba dan Poligami, Sebuah Studi atas Pemikiran Muhammad Abduh”.¹²

There are several research pertaining of polygamy matters. For instance, a thesis entitled: “Poligami di Bawah Tangan di Kecamatan Cibeureum dalam Perspektif Hukum Islam dan Hukum Positif”. This thesis emphasized on the analysis of the illegal polygamy practice in Cibeureum at the time.¹³ And then, there is a thesis that was researched by Eva Fadhia, entitled: “Tinjauan Hukum

¹⁰ Ahmad Azhar Basyir, *Hukum Perkawinan Islam*, (Yogyakarta: UII Press, 2000)

¹¹ Khoiruddin Nasution, “The Phenomenon of Polygyny in Contemporary Malaysia, A Case Study of the Darul Arqam Movement”, *Journal of Islamic Studies Al Jami'ah*, No. 1 (January-June, 2001), p.36

¹² Khoiruddin Nasution, *Riba dan Poligami: Sebuah Studi atas Pemikiran Muhammad 'Abduh* (Yogyakarta: Pustaka Pelajar, 1996)

¹³ Alia Hernis, “Poligami di Bawah Tangan di Kecamatan Cibeureum dalam Persepsi Hukum Islam dan Hukum Positif”, An unpublished thesis of IAIN Sunan Kalijaga Yogyakarta (1999)

Islam Terhadap Praktek Poligami dalam Masyarakat Muslim di Kelurahan Duren Sawit Jakarta Timur". She discusses about the practice of polygamy in muslim society in the political village administrative Duren Sawit of East Jakarta, wherein she describes that the majority of the practice of polygamy were based on individual reason (husband's reason) namely to fulfill the husband's sexual wandering, only.¹⁴ And, she is also explains about wife condition that was pressured by her polygamous husband. Of course, the religion does not allow that.

Luthfi Hardiyanto also wrote his thesis entitled: "Pertimbangan Masalah oleh Hakim Pengadilan Agama Mojokerto dalam Masalah Perizinan Poligami". He discusses about the acknowledged interest considerations of law that was used by the judge in making a verdict wherein the judge accepted the polygamy permission.¹⁵ With reference to interpretation study which is pertaining polygamy, Rasyid Ridha in *Tafsir al-Manār* (*al-Manār* exegesis), explained that the basic of marriage in Islam is monogamous. Polygamy is strictly permitted under certain circumstances or in "emergency" situation such as the infertility and enduring illness of the wife.¹⁶

Furthermore, M. Quraish Shihab, in his interpretation of *an-Nisa* (4): 3, explained that this verse is not the Islam's rule for legality of doing polygamy

¹⁴ Eva Fadhia, "Tinjauan Hukum Islam Terhadap Praktek Poligami dalam Masyarakat Muslim Kelurahan Duren Sawit Jakarta Timur", An unpublished thesis of IAIN Sunan Kalijaga Yogyakarta (1997)

¹⁵ Luthfi Hardiyanto, "Pertimbangan Masalah oleh Hakim Pengadilan Agama Mojokerto dalam Perizinan Poligami", An unpublished thesis of IAIN Sunan Kalijaga Yogyakarta (1999)

¹⁶ Rasyid Ridha, *Tafsir al-Manār*, (Beirut: Dar al-Fikr, no year), IV:345

today.¹⁷ There is no imperative content from this verse, so it is clear that polygamy is allowed, but not required. Something what we must bear in our mind is that rule was revealed in the Arab society at the time when men married far more than four women. So the rule originally curtails the number of women allowed. This verse is not an injunction for the husband to do polygamy, without something reasonable. As what Rasyid Ridha also remarked above. With regard to Islam allows a husband to practice polygamy, there was of course a set of hard requirements that must be fulfilled by polygamous husband, such as: the husband has to be fair and just to all his wives and children, and we know that no one be able to do that.

Besides it, for Indonesian context, as what Law No.1 of 1974, articles: 4 and 5, mentioned that to practice polygamy is through polygamy permission from the official that have a legal authority about this, namely Religious Court. Therefore, without court permission, so polygamy becomes an illegal practice. From several prior studies above, the researcher want to advanced research about the considerations of law which was used by the judges in settling of polygamy permission cases, completed with the litigants' reasons to do polygamy. It could be an important study, especially for family law studies.

¹⁷ See: M. Quraish Shihab, *Tafsīr al-Misbāh*, 1st ed., (Jakarta: Lentera Hati, 2000), p. 324-325

E. Theoretical Framework

1. The Authority of Law Making

A Religious Court decree, both of verdict and determination, which have been obtaining a permanent authority of law are consist of two dimensions. On the one hand, this decree remarked that the application of law has been formed a concrete phenomenon of law. And on the other hand, this decree also appeared that the development of law occurred.¹⁸ We know there is a method to attain development of law, that is through an interpretation and judgement or *ijtihad*.

An *ijtihad* in judiciary process is the effort of the jurist to derive the law on an issue by expending all the available means of interpretation at his disposal and by taking into account all the legal proofs related to the issue.¹⁹ *Ijtihad* means striving to the utmost to discover the law from the texts through all possible means of valid interpretation. Furthermore, we was also acquainted with an Islamic jurisprudence.

Jurisprudence is the the science of the first principles of law which may concern it self with law in its various aspects, namely, with its traditional analysis with its historical origin and development, and with its ideal character.²⁰ The starting point of jurisprudence, in the history of the development of law, is a phase in which law is developed from its rudimentary from and begins to be

¹⁸ Referred to *Law No. 14 of 1970*, on article 27 (1): "The Judge stands for law enforcement and justice, must exploring, following, and understanding for legal values of the society".

¹⁹ Imran Ahsan Khan Nyazee, *Theories of Islamic Law*, (Pakistan: Islamic Research Institute and International Institute of Islamic Thought, 1945), p. 319

²⁰ Ahmad Ahsan, *The Early Development of Islamic Jurisprudence*, (New Delhi: Adam Publisher and Distribution, 1994), p. xiv

systematically constructed. At this stage, questions about the authority of law making, the source of law and a method of reasoning arise will be answered. Therefore, law is followed by jurisprudence.²¹ Nevertheless, as the principle, *ijtihad* is not a real source of law; the real source in the true sense of the term are the texts of the Qur'an and also Sunnah.²² *Ijtihad* is an activity, a struggle, a process to discover the law from the text and apply it to set of facts awaiting decision. Verdict means a judge's statement in a written law style and was announced in front of the session that opened for people, as the result of investigations at a lawsuit case.²³

2. The Thought of Islamic Scholar

The definition of polygamy is a system of marriage whereby one person has more than one spouse. Polygamy can be two types: one is polygyny where a man marries more than one woman, and the other is polyandry, where a woman marries more than one man. In Islam, limited polygyny is permitted, whereas polyandry is completely prohibited. This thesis is going to talk about the first type of polygamy, namely polygyny, and generally called polygamy. In the framework of polygamy matters, according to *al-Maraghi* wherein his book *Tafsir al-Maraghi* (*al-Maraghi* exegesis), explained that Islam had allows polygamy, like what remarked on an-Nisa (4): 3: "A man may take a second or

²¹ *Ibid.*

²² Imran Ahsan Khan Nyazee, *Theories of*, p. 287

²³ Mukti Arto, *Praktek Perkara Perdata Pada Pengadilan Agama* (Yogyakarta: Pustaka Pelajar, 2000), p. 251

third or fourth wife only if he is able to provide for each equally". According to al-Maraghi, polygamy is strictly permitted under certain circumstances or in "emergency" situation such as the infertility and enduring illness of the wife.²⁴ He also remarks that the conditions enables a husband to polygamy are as follows:

- if wife gets infertility, while the husband wishes for children.
- if wife is too old or perhaps menopause.
- the husband wants to maintain his self respect in order to go away from sexual acts outside of marriage.
- if the census remarked that there was a large number of women than men, significantly.²⁵

3. Relevant Legislation

Eventhough Islam allows polygamy, but the government be able to restrain of polygamy practice with the framework of acknowledged interest or the benefit. It means, polygamy is permissible, but if polygamy has a bad impact for other people, so it could be prohibited.

Furthermore, for the force of analysis in point of the judge considerations in settling of polygamy permission cases, we can referring to Marriage Law No.1 of 1974, Compilation of Islamic Law, and Marriage Law Implementing Regulation No.9 of 1975, with complete explanation, as follows:

181 ²⁴ Al-Marāghī, *Tafsīr al-Marāghī* (Mesir: Mustafa al-Babi al-Halabi, 1382 H / 1963 M), p.

²⁵ *Ibid.*

a. Marriage Law No.1 of 1974

With regard to polygamy matters, we found out the relevant regulation on articles: 3, 4, and 5.

- Article 3:

- (1). Basically, a marriage is monogamy.
- (2). The court be able to to give a permission for a husband to marry more than one wife, if there was agreed by outsider whom was connected.

- Article 4:

- (1). With reference to article 3 (2), so the husband has to submitted a polygamy permission appeal to the court in his regency.
- (2). The court could but giving a polygamy permission if only:
 - a. wife can not fulfill her duties
 - b. wife gets a physical defect or incurable disease.
 - c. Wife gets infertility

- Article 5:

- (1). For submitted to the court as what mentioned on article 4 of this law, there were conditions that must fulfilled, as follows:
 - a. There is an agreement from his wife / wives.
 - b. There is a guarantee that the husband will fulfill of all of the basic necessities of his family life.
 - c. There is a guarantee that the husband will be fair in dealing with all his wives and his children.

b. Compilation of Islamic Law

With regard to polygamy matters, we found out the relevant regulations in chapter IX about “to have more than one wife”. With articles as follows:

- Article 55

- (1). To have more than one wife at the same time, restricted up to four wives, only.
- (2). The first condition to have more than one wife is the husband has to be fair and just.
- (3). If to fulfill the first condition above is impossible, therefore it is prohibited for a husband to have more than one wife.

- Article 56:

- (1). A husband who want to have more than one wife, he has to get a Religious Court permission.
- (2). The submitted of this permit is referred to Marriage Law Implementing Regulation No.9 of 1975.
- (3). The second, third, and fourth of marriage do not have a weight of law.

- Article 57:

The Religious Court will give a permission for a husband who want to have more than one wife, if only:

- (1). wife cannot fulfill her duties
- (2). wife gets a physical defect or incurable disease.
- (3). wife gets infertility

- Article 58:

The contents of this article was in harmony with article 5 in Marriage Law No.1 of 1974 as what mentioned before.

- Article 59:

With reference to wife can not giving an agreement and permission for her husband to have more than one wife in the frame of reasoning on articles 55 (2) and also article 57, Religious Court is allowed to give permission to have more than one wife based on the determination, wife or husband may please submitted an appeal to Appellate Court or moreover to Supreme Court.

c. Marriage Law Implementing Regulation No.9 of 1975

For this regulation, especially for chapter VIII about "To have more than one wife", article 40:

"If a husband want to have more than one wife, therefore he must submits a written permit appeal to the court..." It is a regulation about the mechanism of doing legal polygamy in Indonesia.

4. Lawrence M. Friedman Theory

Lawrence M. Friedman said that there must be a very complicated motif background and idea behind people to obey the law. The complexity of the motif and idea, for him can be classified into four categories, as follows:²⁶

²⁶ Lawrence M. Friedman, *Law and Society, An Introduction* (New Jersey: Prentice Hall, 1977), p. 115-116

- a. *First*, self interest. People obedience toward law because the law can contribute to their interest.
- b. *Second*, sensitivity toward sanction. A sanction is one of reasons which can realize the law conduct.
- c. *Third*, respond of social factors. There are norms and values in society which are accepted by them.
- d. *Fourth*, obedience. Friedman said about this obedience that people obey the law because they think that passing the law is immoral or illegal.

F. Reseach Method

1. Kind of Research

This research is constitute a **field research** that belonging to doctrinaire of law namely a stock taking of law whereas the judges' verdicts as the source of primary data of this research. Source of primary data is a set of main data of research that related to the problem of research.

Then, source of secondary data here is based on the result of supplement data. The supplement data of this research is a set of informations that related to the problem of research, such as an information from interview result and the judge opinions.

2. Type of Research

The type of this research is **qualitative research**. In the social science, qualitative research is a broad term that describes research that focuses on

how individuals and groups view and understand the world and construct meaning out of their experiences.²⁷ This research will be focused on polygamy permission cases in Appellate Islamic Court of Yogyakarta in 1993-2004 as the object of research.

3. Characteristic of Research

This research will be conducted a research characterized by **descriptive analytic**, using analysis in serving problems to describe. First, this research will be described the data of polygamy permit appeal cases at Appellate Islamic Court of Yogyakarta, then, analyzed it on the basis of research approach.²⁸

3. Data Collection

Data are collected by interview and documentation. With explanation as follows:

- a. Interview, it is referred to the method of collecting data through “semi structured”. The informants of interview in this research consist of the judge, and then the registrar of Appellate Islamic Court of Yogyakarta. With reference to the judge, this interview is purposed to find informations and description around about the settling process of polygamy permission cases. Then the interview with the registrar of

²⁷ Be summarized from chapter I “Menggabungkan Pendekatan Kualitatif dan Pendekatan Kuantitatif: Sebuah Tinjauan” of Julia Brannen, *Memadu Metode Penelitian Kualitatif dan Kuantitatif* (Yogyakarta: Pustaka Pelajar, 2005) and also see: Lexy J. Maleong, *Metode Penelitian Kualitatif* (Bandung: PT. Remaja Rosdakarya, 2002)

²⁸ Winarno Surakhmad, *Pengantar Penelitian Ilmiah, Dasar, Metode, Teknik*, (Bandung: Tarmo, 1990), p.139

Court is to find data of court session process at Appellate Islamic Court of Yogyakarta and polygamy permission records.

- b. Documentation, it is referred to collect data through searching and explaining for all of the documents which were consist of judge verdicts of settling process in polygamy permission cases.

4. Data Analysis

The data analysis of this research is **content analysis** method. Content analysis (also called: *textual analysis*) is a standard methodology in the social sciences on the subject of communication content. Earl Babbie defines it as "the study of recorded human communications, such as books, web sites, paintings and laws".²⁹ This research is consist of:

- a. Deduction, conclusion reached by reasoning from general law to particular case. The particular laws and regulations are used to analyze the general description of polygamy permission cases obtained from samples.
- b. Induction, method of reasoning obtains or discovers general law from particular facts or examples. The general laws and regulations are used to analyze the judges considerations in settling polygamy permission cases.

²⁹ Earl Babbie, *The Practice of Social Research*, 10th edition (New York: Thomson Learning Inc., 2000), p. 135

5. Research Approach

The approach employed here is **doctrinaire of law**, through stock taking of law which the problems are seen from settling a standard and law or legal proceedings. This approach is used to analyze data in order to find or draw a conclusion.

G. Outline of the Thesis

This thesis consists of five chapters:

To facilitate solution and understanding, the research will be compiled in a few chapters and sub chapters.

Chapter one, it is composed of background, problems formulation, objectives, and significances, prior study, theoretical framework, research method and outline of thesis.

Then, chapter two discusses an overview of polygamy. This chapter comprises several points, as follows: marriage in Islam as the basic matter of polygamy, the definition of polygamy, polygamy in Islam, and the principle codes of polygamy. The significance of this chapter is that polygamy stands for the case study, so it is right if we talk about it firstly. As the centre of the problem in this thesis, polygamy discussion would be the path way to analyze.

Chapter three, focuses on the existence of Appellate Islamic Court of Yogyakarta as the official that has an authority of reviewing a verdict in settling of polygamy permission cases. In this chapter the author will describe the profile and also general activities in Appellate Islamic Court of Yogyakarta. This chapter

is really important, especially for understanding about Appellate Islamic Court of Yogyakarta as the institution and also as the high court. Through this chapter, the author also will explain about the manner of polygamy permission to the Court.

Chapter four consist of the analysis of the judge verdicts at Appellate Islamic Court of Yogyakarta in settling of polygamy permission cases. It will discusses the reasons why the litigants submitted a polygamy permission, and then how the litigation in settling the permission.

Chapter five is a concluding remarks, it contains conclusion, advises or recommendations related to the research.

CHAPTER V

CONCLUDING REMARKS

A. Conclusion

From the description and analysis, I draw some conclusions below:

1. Generally, the reasons why the litigants submitted an appeal for their polygamy permission cases to the Appellate Islamic Court of Yogyakarta in 1993-2004 was because they wanted to fulfill their sexual gratification, and unfortunately, they assumed that Islam allows polygamy, so they can do it. It means that their comprehension of polygamy in Islam is false or actually that they do not really understand the concept of polygamy in Islam and of course, they do not know the regulations for polygamy in Islam. Related to this research, majority of cases in this research appears that the social factors here including norms and values in society were also become the main reasons for the litigant to request an appeal to a higher court to get a legal polygamy or polygamy permission.
2. The basic consideration of law which was used by the Judges in the settling of the polygamy permission cases at the Appellate Islamic Court of Yogyakarta in 1993-2004 are based on Marriage Law No.1/1974, articles: 3, 4, and 5. Islamic Law Compilation, article: 55-59, and Marriage Law Implementing Regulation No. 9/ 1975, article: 40. Actually, we can conclude that the court could give permission for

polygamy if and only if: first, the wife can not fulfill of her duties, second, the wife gets a physical defect or incurable disease. And third, if the wife is infertile.

B. Recommendations

From this study, there are some suggestions and considerations, namely:

1. For the Indonesian government, hopefully the government can be more concerned in protecting women's rights might women make faults, but they should be given the same rights as men. The regulation is very important because women tend to the victim, especially in our behavior, and also sometimes we find that women are also the victims of lawsuits, like in polygamy permission cases that were mentioned in this study.
2. For the law supremacy, it will be better if the social and psychological aspects become part of the considerations for the Judges when they decide a lawsuit or case.



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