



Legal and Administrative Sanctions for Civil Servants Engaging in Polygamy

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Article Information:

Received September 9, 2024

Revised November 28, 2024

Accepted Desember 19, 2024

Keywords: *Polygamy, civil servants, Quran*

Abstract

Polygamy (*addud al-zanjat*) has been a significant issue in husband-wife relationships throughout the history of Islamic civilization. One contributing factor to the practice of polygamy is the lack of understanding regarding its underlying reasons or motives. This study aims to analyze the sanctions imposed on Civil Servants engaging in polygamy based on the Quranic perspective in Surah An-Nisa Verse 3 and according to Indonesian Law No. 1 of 1974. The research employs a library research methodology, utilizing primary sources such as the *Al-Misbah* commentary and secondary sources including the Quran, Hadith, Law No. 1 of 1974, and the Compilation of Islamic Law. The findings reveal two key points. First, for civil servants practicing polygamy, the condition of fairness is emphasized. Material fairness includes equal treatment in terms of rotation, living expenses, food, clothing, and housing. However, emotional fairness, involving love and feelings of the heart, is not mandated. Second, civil servants engaging in polygamy without proper authorization face four possible sanctions: i) demotion, ii) removal from office, iii) honorable dismissal without personal request, and iv) dishonorable dismissal. Female civil servants who become a second, third, or fourth wife are subject to dishonorable dismissal from their civil service roles.

INTRODUCTION

Polygamy is a compelling issue to study because it lies at the intersection of religious teachings, social values, and legal frameworks. It has been a subject of intense debate across various domains, including social, cultural, and legal perspectives (Ipandang, 2021; Primastuti et al., 2024; Sugitanata et al., 2024). In Islam, polygamy is explicitly addressed in the Quran, particularly in Surah An-Nisa, verse 3, which permits a man to marry up to four wives under the primary condition of fairness (Fajar & Jaelani, 2021; Purwanto et al., 2021).

How to cite:

Erwan, E., Ramadhona, S., Y, Yusrial., Sumanto, D. (2024). Legal and Administrative Sanctions for Civil Servants Engaging in Polygamy. *Jurnal Elsyakhshi*, 2(1), 51-57.

E-ISSN:

3032-6818

Published by:

The Institute for Research and Community Service

However, the concept of fairness in polygamy poses significant challenges, especially concerning its practical implementation. Historically, polygamy (*ta'addud al-z'anjat*) has been a critical issue in husband-wife relationships and is well-documented throughout Islamic civilization (Muhalling & Salma, 2024). Before the advent of Islam, several communities, including the Hebrews, Arabs, and Cicilians, practiced polygamy. Despite its acceptance within Islamic teachings, polygamy continues to spark controversy and debate in contemporary society (Malaka, 2023).

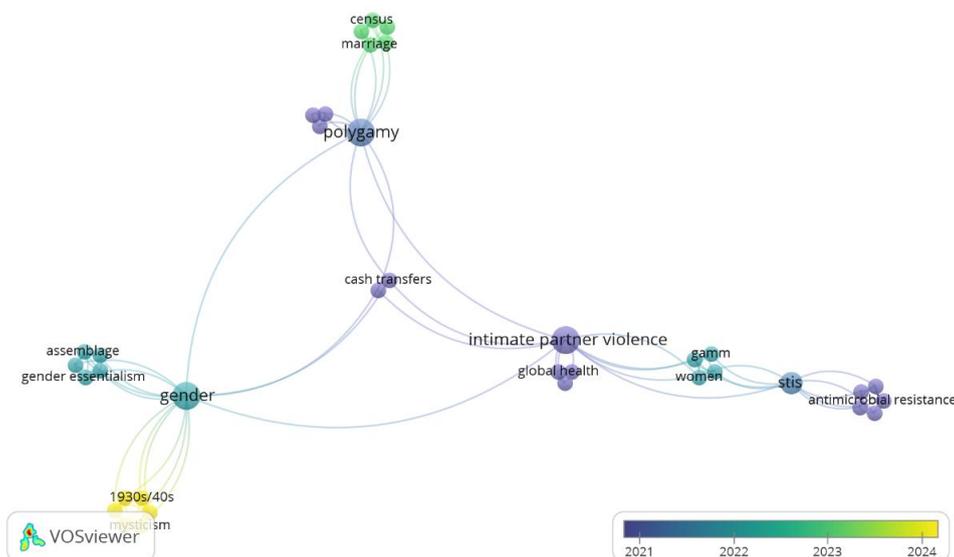


Figure 1. Database on Polygamy from Scindirect

Based on data from Image 1, polygamy is strongly associated with census and marriage records. However, a more focused discussion on polygamy, particularly from the perspective of the Quran (Surah An-Nisa, verse 3) and Law No. 1 of 1974, remains underexplored.

In Indonesia, the practice of polygamy is regulated not only by religious principles but also by national legal frameworks. Law No. 1 of 1974 on Marriage and its related regulations impose strict limitations on polygamy (Destriyanti et al., 2023; Trigiyatno et al., 2023). For civil servants, additional restrictions are outlined in Government Regulation No. 45 of 1990, requiring the fulfillment of specific conditions, such as obtaining permission from superiors and the first wife. Non-compliance with these regulations can lead to administrative sanctions, including dismissal (Mursalin, 2023; Sudirman et al., 2021).

Despite these rules, some civil servants engage in polygamy without adhering to the prescribed legal requirements. This raises critical issues concerning the harmonization of Islamic law and Indonesia’s positive law in regulating polygamy, particularly among civil servants (Afdhal et al., 2021; Aminah & Muala, 2023). This research aims to analyze polygamy from the perspectives of Islamic and national law, with a specific focus on its implications for civil servants. It examines the normative foundation of polygamy in Surah An-Nisa, verse 3, and evaluates its implementation within the framework of Law No. 1 of 1974 and related regulations. This approach seeks to provide a comprehensive understanding of the synergies and challenges between Islamic law and Indonesia’s positive law in the context of polygamy among civil servants (Aminah & Muala, 2023).

Additionally, this study investigates the social and legal impacts of violations of polygamy regulations among civil servants and evaluates the effectiveness of existing policies in regulating and monitoring polygamy. The findings aim to

contribute academically and practically toward achieving justice and societal order, particularly within the state apparatus.

METHODS

The research method employed is library research, which involves gathering information from literature sources such as books, notes, or research reports (Magolda, 2007). The researcher collects data by reading and analyzing relevant sources related to the study. First, the primary data source is derived directly from the main reference, namely *Tafsir Al-Misbah*. Second, the secondary data sources include information from secondary references such as the Quran, Hadith, Law No. 1 of 1974, Government Regulation No. 10 of 1983, and the Compilation of Islamic Law (KHI) (Gorichanaz, 2018). The study employs specific methods for data processing and analysis. First, data processing involves systematically compiling information collected through a literature review using documentation techniques (Chu & Ke, 2017). Second, descriptive data analysis is used to present a systematic, factual, and accurate depiction of the facts, characteristics, and relationships among the phenomena under investigation (Liang, 2019).

RESULT AND DISCUSSION

Polygamy Sanctions for Civil Servants According to the Quran Surah An-Nisa Verse 3

The permissibility of polygamy in Islam is emphasized with a strict requirement for fairness. The verse "فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ" is closely associated with the phrase "إِنْ خِفْتُمْ أَلَّا تَعْدِلُوا". Consequently, many scholars argue that practicing polygamy becomes impermissible if fairness cannot be ensured. This prohibition stems from the implied *fi'il amr*, which serves as a response to the conditional statement, "إِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً". Following the principle that a command to act implies a prohibition to neglect, the legal ruling derived is either *فانكحوا* or *فلتزوجوا واحدة واحدة*. This interpretation essentially instructs, "If you are afraid of being unfair, do not marry more than one." The underlying principle is to avoid injustice and inequality.

The rationale for limiting polygamy to one wife revolves around fairness and the avoidance of harm. In cases of polygamy, fairness is mandated between wives, particularly in material aspects such as alternating turns, financial support, food, clothing, and shelter. However, fairness in emotional aspects, such as love and inclinations of the heart, is not required, as this is beyond human capacity (P & Jumhana, 2022). The prohibition of polygamy is further supported by the verse's conclusion, "ذَلِكَ أَذَىٰ أَلَّا تَعُولُوا", which underscores the importance of avoiding oppression and deceit. Scholars categorize the prohibition of polygamy as *'Azimah* (a strict rule), while allowing polygamy under fair conditions is seen as *Rukhsah* (a concession) in cases of necessity (Munir & Rachmawati, 2020; Rasyidi et al., 2024).

According to Prof. KH. Ibrahim Hosen, the fairness condition in polygamy is a religious requirement rather than a legal one. He explains that a legal condition is something that must exist before the law can take effect, such as ablution being a prerequisite for the validity of prayer. Since fairness cannot be established before polygamy occurs, it cannot be considered a legal condition for polygamy. Instead, it is a religious requirement, which becomes a husband's obligation after entering into a polygamous marriage (Carter & Duncan, 2017; Eekelaar, 2017; Lamadokend et al., 2022).

Additionally, legal requirements invalidate an act if they are not fulfilled, whereas the absence of a religious requirement does not invalidate the act but results in sin. Therefore, a husband who fails to act fairly in a polygamous marriage is guilty of sin and may face judicial consequences. However, the marriage itself remains valid. If fairness were a legal condition, an unfair husband would render the marriage invalid, which is not the case (Hidayat et al., 2019).

Polygamy Sanctions for Civil Servants According to Law No. 1 of 1974

The principle of marriage in Indonesia is monogamy, as stated in Law Number 1 Year 1974. However, this law provides dispensation for polygamy with a maximum of four wives, subject to court approval and written permission from the first wife. For civil servants, permission for polygamy can only be granted if they fulfill at least one of the alternative conditions and all cumulative conditions stipulated in Government Regulation (PP) Number 10 of 1983 Article 10 Paragraph 1.

Alternative conditions include: (1) the wife is unable to carry out her obligations as a wife, (2) the wife has a physical disability that cannot be cured, or (3) the wife cannot bear offspring. These provisions are elaborated in Law Number 1 Year 1974 Article 4 Paragraph 2, Government Regulation Number 9 Year 1975 Article 41(a), Government Regulation Number 10 Year 1983 Article 10 Paragraph 2, and the Compilation of Islamic Law (KHI) Article 57. Meanwhile, the cumulative requirements include: (1) written consent from the wife, (2) assurance that the husband will be able to provide for his wife and children, and (3) written assurance that the husband will be fair. The husband's financial capability is usually proven through a certificate of income signed by the treasurer at work or other documents acceptable to the court (Anwar & Ikamulia, 2019; Hariati, 2021).

Violation of the polygamy rule is considered a violation of the applicable law and is subject to a fine of up to seven thousand five hundred rupiahs, which is more important than the nominal amount. For civil servants, this violation may be subject to four types of sanctions, namely: (1) demotion to one level lower, (2) dismissal from office, (3) dishonorable discharge not at one's own request as a civil servant, or (4) dishonorable discharge as a civil servant. This provision is stated in Government Regulation Number 30 of 1980 Article 6 Paragraph 4 (Afdhal et al., 2021; Anwar & Ikamulia, 2019; Hafsari et al., 2023; Nurmila, 2016; Shiddiq, 2023).

Furthermore, female civil servants who become the second, third, or fourth wife of a man will be dishonorably discharged. This is confirmed in Government Regulation Number 45 of 1990 Article 15 Paragraph 2, which states that female civil servants who violate the provisions of Article 4 Paragraph 2 will be subject to disciplinary sanctions in the form of dishonorable dismissal (Auliarahman & Asnawi, 2022; Dalimunthe & Milhan, 2023; Syafa'at et al., 2024).

The author argues that Indonesia's marriage legislation on polygamy aims to ensure that polygamous men meet certain requirements, namely adequate economic capacity and a fair attitude towards all their wives. Indonesian legislation also demonstrates respect for the wife as a partner in the husband's life, which is shown through the obligation to obtain the wife's consent before entering into polygamy. In this regard, religious courts have an important role in ensuring compliance with the applicable rules.

Although the Quran explicitly permits polygamy, Indonesian legislation tends to restrict it due to considerations that the potential harms (*mafsadah*) outweigh the benefits (*mashlahah*) (Aziz et al., 2023; Rasyidi et al., 2024; Sativa & Tanjung, 2023). Therefore, laws made by the government are placed higher than classical fiqh texts in this context.

CONCLUSION

Polygamy in Islam is regulated in Surah An-Nisa Verse 3, which emphasizes the importance of justice as the main requirement in implementing polygamy. The ruling is based on the principle of material justice, such as fair division of turns and

equal provision of the necessities of life, such as food, clothing, shelter, and others. Meanwhile, emotional justice, which relates to feelings of love and inclination, is not required as it is beyond the limits of human capabilities. In Indonesia, the practice of polygamy is regulated by Law No. 1/1974 and its derivative regulations, which provide sanctions for civil servants who violate polygamy rules. Violation of this rule can result in a fine of up to seven thousand five hundred rupiah, as well as administrative sanctions in the form of demotion, dismissal from office, or honorable dismissal. Female civil servants who become the second, third, or fourth wife of a man who commits polygamy without permission can be dishonorably dismissed from their status as civil servants.

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