

# Concept of Justice in Polygamy from Mohammad Quraish Sihab Perspective

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**Abstract:** Polygamy is a contentious issue that spawned a wide range of opinions. Some scholars support it, some refuse it and some others support with requirements. Of the controversy issues in polygamy is a justice matter. Can men be fair (justice) to women? To what extent does justice is required to be polygamous men? Those questions will be answered through the idea of Mohamed Quraish Shihab. This study employs literatur research method. Data collected through the books written by Shihab and then analyzed with a content analysis approach. This research finds out that according to Shihab, polygamy is not the order of Islam because this tradition was exist before Islam and Islam allows Muslem to do it because of social problem appear after war. The justice in polygamy is not the inner meaning of justice (such as love and affection) but justice in material problems and measurable.

## 1 INTRODUCTION

Study on the concept of justice in polygamy still interesting today, especially when viewed from Koranic interpretation perspective, because all views expressed by the scholars on polygamy ultimately come from the interpretation of the Koranic verses (Jawad, 1991).

Some researches on polygamy in Islam had been done by Islamic Scholars, either through the study of texts or field study with grounded research approach. The issue of polygamy has a historical background that is very rational for Muslims (Phillips, 1990). There are differences in perception of polygamy in Islamic perspective between past, present and future (Johnson, 2004). Other studies also has been done, but all of which still leaves the issue unresolved because the time differences affect the understanding of Koranic meaning in polygamy (Abidin, 2011; Jawad, 1991; Phillips, 2001; Charsley, 2013; Nurmila, 2009).

In Indonesia the research on polygamy and the concept of justice in it also has been conducted by a lot of researchers (Khoiriyah, 2014; Fajarwati, 2015; Nasution, 2015; Ma'mur, 2010; Dinata, 2006). All of those researches indicate that polygamy is remain became an important issue that still alive in Indonesia and still require the in-depth study to

provide alternative answers to the problems of polygamy in Indonesia today (Brenner, 2006).

This study wanted to examine the thoughts of a famous Islamic thinker in Indonesia, Muhammad Quraish Shihab. This figure is interesting to be studied because he explained a fundamental problem of polygamy that needed further examination. In order to be more specific and in accordance with the main point of the study, it will focused on the concept of fairness or justice in polygamy in Shihab perspective.

## 2 POLYGAMY BETWEEN PROS AND CONS

The most popular Koranic verses talk about polygamy is QS. An-Nisa` verse 3:

“If you fear you cannot act fairly towards the orphans—then marry the women you like—two, or three, or four. But if you fear you will not be fair, then one, or what you already have. That makes it more likely that you avoid bias”

This verse was revealed after Uhud war, where a lot of Muslim fighters who died, leaving many wives into widows and children into orphans. Of these issues, polygamy is the only way to solve the problem. As a result, many Moslems conducted

polygamy with the aim of protecting widows and orphans (Gatje, 1976; Ahmed, 2002).

When we viewed from causes of verse revelation, it is quite clear, but the law of polygamy it's self is still debated between supporting and opposing. Opinions about polygamy law can be broadly divided into three groups: first, those who allow polygamy absolutely (supported by the majority of classical scholars). Second, who absolutely prohibit it. Third, who allow polygamy under certain conditions (Nasution, 2002). Among supporters of polygamy considers that polygamy is *sunnah*, as emphasized in the Koran surah An-Nisa verse 2-3. It was also viewed from the historical fact that Prophet Muhammad practiced the polygamy. For them polygamy is allowed (even ordered) as done by the Prophet (Huda, 2008).

Understanding the verses above, Allah is not just allows polygamy, but He highly recommends it, but with two conditions that must be met. First, the wives of the second, third and fourth must be widows with orphans. Second, there must be a sense of worry can't do justice to the orphans (Sharur, 2004). Conversely, if the conditions are not met then the command of polygamy becomes void.

The group that resisted against polygamy said that the Prophet Mohammed stayed longer monogamous than polygamous. He conducted monogamous in the midst of society tradition that polygamy is commonplace. He lived with his first wife, Khadijah Binti Khuwailid lasted 28 years. Just then two years after the death of Khadijah the Prophet's polygamy begins. Even then he lived only about eight years from the rest of his life. In the case of polygamy, the Prophet was to embody the *Surah An-Nisa* verse 2-3 on protection against the widows who had lost her husband who strived in the way of Allah as well as orphans. By tracing the *Jami 'al-Usul* by Imam Ibn al-Athir (544-606 H), can be proved that polygamy of the Prophet was the media to resolve the social problem when social institution still not strong enough to provide a solution (Nashif, 1993).

The practice of polygamy, actually, has been a common tradition before Islam. A man allowed to marry a number of wives which swelled to a dozen (Downhower, 1971; Smith, 1978). Islam came and put down the rules in restricting the maximum numbers of women allowed to be married are four, with the strict condition that possibly difficult be met by a man because it emphasizes the principle of justice (al-Hibri, 1982).

Some opinions state the principle of justice is not just some sort of quantitative equity provision of material or time shift inter-wife but includes qualitative justice (an affection that is the foundation and the main philosophy of domestic life). This

opinion is supported by al-Dhahhak and members of other scholars who stated that the purpose of a fair in polygamy is just in all things, both in terms of materials (requirements related to collateral or physical) or in the case of immaterial (feeling). A husband demanded fair in terms of love, compassion, living, home and so on (Al-Qastholani, 1996).

Justice in polygamy is very difficult to be realized because it includes not only material needs, but also involves the feeling in the heart *Thoha* (2003). The same view on the difficulty of doing justice in polygamy also expressed by mostly Muslim feminists. Polygamy is prohibited on the basis of the negative effects of it (*haram li ghayrih*) because the Koran started from the presupposition that the requirement of justice against wives is unrealizable (Mulia, 2004). This claim is based on *Surah An-Nisa'* verse 129 (Saifuddin, 2009).

In contrast to those opinions, some scholar stated that justice in polygamy is only in the material needs not included the immaterial thing. While doing justice in the immaterial matter, unfair treatment can be tolerated (Yasid, 2005). This opinion is based on the hadith of the Prophet SAW when he felt guilty not being able to do justice to his wives saying "O God, this is my abilities, and you shall not charge me for something I didn't able."

### 3 METHOD

This research employed a literature study method. The primary sources in this research are books written by Shihab and other books talk about him. While the secondary sources are the books that talked about the polygamy from other scholars. The research was begun by reading some books relate to topic, especially Shihab books, and analyze those literatures in order to identify the key points and essential attribute of matters. In general, this research has several steps; first, classify information contained in literatures. Second, select typical examples to re-organize and the last come to conclusion on the basis of qualitative description.

### 4 POLYGAMY IN SHIHAB PERSPECTIVE: PROBLEM OF JUSTICE

*Surah An-Nisa'* verse 3 explicitly states that a husband may married more than a woman but not more than four with a condition able to do justice to them (Shihab, 2007). This verse explicitly forbids

men to marry more than four women. When this verse was revealed, the Prophet ordered all men who have more than four wives, to divorce some of them and to keep only four.

Further, this verse does not make the regulations on polygamy because polygamy has been recognized and implemented in Arabian traditions before. This verse also does not order polygamy or encourage it, but just talking about the allowance of polygamy, and even then a small emergency exit, which is only passable in the very necessary and on condition that no lightweight (Shihab, 2007). The importance of the principle of justice in polygamy. Justice is as a condition that must be met when a husband wants to conduct polygamy. These opinions show that Shihab is not included in the group who oppose polygamy, but allow it by condition include the principle of justice.

Based on the foregoing discussion it is said that justice is a central tenet of Islam and universal. It is something fundamental as the embodiment of Islam that its main mission is *rahmatan li al-'alamin*. Justice must be done in various aspects both in public affairs and family life, including the issue of polygamy. The importance of justice commanded in the Koran in various letters and verses. Among the fundamental reasons of justice in Islam is the equality of human beings (Shihab, 2009).

It means: "Whoever is doing righteous deeds, both men and women in a state of faith, verily shall We give him a good life and verily We shall give replies to them with a better reward than what they have done" (Q.S. An-Nahl: 97).

Justice in the paragraph above as described by Shihab is a key condition that must be met by a husband who wanted to practice polygamy. Justice in polygamy for him involves many aspects because verse 3 surah An-Nisa is still something to do with the previous verse or verse 2 that reminded the trustee who manages the property of an orphan.

Justice in polygamy that concern to the justice for orphans is a very good idea because most of the phenomena that occur at this time, the polygamists just focus their equity to the wives of polygamy (although in practice the justice which is also difficult to realize). Narrowing the meaning of justice is simply understood as fairness in treating wives become issues answered by Shihab. He stated that justice in polygamy is also about justice for orphans. This thought is resulting from the thematic method of interpretation employed by him that correlated previous verses with the verses being studied as well as seeing factors causing verses revelation (*asbab al-nuzul*) of surah An-Nisa' verse 3 that the number of widows and orphans after the battle of Uhud.

## 5 DISCUSSION

From finding above we see that Shihab understand polygamy as an order of Allah to solve the social problem, in the context of maintaining the orphan and the protection of widows. Man is allowed to marry more than a woman by condition if he able to do justice toward their wives.

This opinion is in line with Engineer (1994) thinking that polygamy is allowed as long as a qualified justice, especially justice for women and orphans. To determine the polygamy law necessary to understand the context of the QS. An-Nisa' verse 1-3 which begins with "and if you worry can't do justice to the children (girls) are orphans ...". The third verse emphasis not to marry more than one woman, but to do justice to the orphans. So the context of this verse is to describe people who are responsible for maintaining the wealth of orphans often done improperly, which sometimes marry her without a dowry. Thus, Koran fixed incorrect behavior by marrying widows and orphans in this context as a form of aid, not for sexual gratification. This means, that this verse has contextual temporal enforcement, not a paragraph which the universal principles that must prevail forever (Engineer, 1994; Nasution, 2002).

In addition justice in polygamy according to Shihab was justice in the field of materials only. He bases his opinion on Surah An-Nisa' verse 129:

Meaning: "You're never going to be able to do justice between wives, even if you really want to do so because it does not be too inclined (to whom you love), so that you let others in limbo." (QS An-Nisa': 129).

The meaning of word "justice" in the paragraph above is justice in the field of immaterial (love). The paragraph implied that this kind of justice can't be achieved by human ability. So that for Shihab justice in polygamy is only in the field of materials, not included in the field of immaterial (affection) (Shihab, 2002)

The presence of polygamy concept with a set of rules and conditions as described by Shihab above, according to the author is a correction of the ignorance tradition that is not in accordance with the principles of justice in Islam. God emphasizes a very difficult requirement in conducting polygamy is justice. This requirement is a breakthrough that is very advanced in the circumstances at that time. Allah explains in Surah An-Nisa' verse 129 that someone would not be able to do justice even though is keen to do justice. This word should not be interpreted that justice in polygamy is only related to the field of material, the argument can actually be a reason that polygamy is something that is extremely

difficult to do. It does not need to be done if it is not confident of being able to do justice. Even if you believe you should think twice because God had warned in Surah An-Nisa' verse 129 that a person may not be fair in polygamy.

Amendments to a system are always held on the previous experience that does not meet certain principles. In the case of polygamy, the tradition of ignorance is far from the principles of Islam. Then Allah "corrected" it with rules that accordance with the justice as islamic principle. Re-examine the social situations that cause injustice to establish good community situation is almost the same as the theory of John Rawls (2009). He states that one of the important justice principles is that everyone has the same rights on the basic of freedom.

This principle is very appropriate to be applied in a relationship, especially in the context of polygamy. By recognizing and understanding that everyone has an equal right to the basic need of freedoms, then a man who wants to do polygamy will think again if he could give such rights as a principle of justice, where justice is a key condition in polygamy.

Justice in polygamy that emphasizes justice and maintenance of orphaned and widows (Shihab, 2007), is in accordance with the spirit to correct the social systems that cause injustice (Rawls, 2009). In the ignorance tradition, marrying a number of wives demonstrates the high power of a man. Having many wives would add prestige and is rated as a great man. Justice in polygamy according is correcting this understanding that polygamy should be based on resolving a social problem; protection of orphans and the poor widows (Shihab, 2007).

## 6 CONCLUSIONS

Poygamy in Islam is an order that relate to the social problem. It's allowed to be done by man by condition that he able to do the justice and by the spirit for protecting the orpan and widows. The justice in polygamy is not the inner meaning of justice (such as love and affection) but justice on matters that are material and measurable. Polygamy is like the emergency exit in the aircraft, which can't be opened except when the situation is very serious and approved by the pilot. Not every one can sit near it, because it was not allowed to sit next to the emergency door unless certain people who able to open it.

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