

Maslahat and Mafsadat Discourse in Polygamy Practice: A Study Of The Implementation of Fiqh Rules

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ABSTRACT

Islamic law is essentially in accordance with basic human needs and is oriented towards achieving maslahat and preventing mudharat, henceforth known as the concept of dharuriyyat al khams and maqashid shari'ah. However, conditions where maslahat and mudharat exist simultaneously are not uncommon in life, for example in the case of polygamy. On the one hand, it has maslahat to avoid sin, but on the other hand, it has the potential to cause conflict and the end of household relationships. So, this research aims to apply one fiqh rule Dar'ul Mafâsid Muqaddam 'Alâ Jalbil Mashâlih. This research is a literature research with a qualitative approach. This study concludes that based on existing data, the practice of polygamy is better avoided in cases where there is no permission from the first wife to avoid the emergence of conflict.

Keywords: Maslahat, Mafsadat, Polygamy, Qawaid Fiqh, Rules.

1. INTRODUCTION

In this life, we are often faced with choices that are not easy. These choices are presented to us, both in individual problems, family life, and society. Which choice will be taken and decided refers to the values held by the person concerned about the belief in truth, goodness, benefit, and conscience which are summarized in the wisdom of making choices. Mistakes in making choices will have certain adverse consequences for life. Conversely, accuracy in making choices will lead to benefits, which if not felt at the present time, the benefits will arrive and be felt in the future [1].

In this case, these choices prioritize the scale of priorities; which should come first and which should be delayed; which is more important and which is less important; which is urgent and which is not so urgent; which concerns personal or family interests and which concerns the interests and benefits of many people. Islam with its shari'a is very oriented to the benefit and prevent the occurrence of various conditions that can harm its people [2][3]. In other words, it is known as keeping the *dharuriyyat al khams* [4].

In essence, humans are bound by space and time, so their choices are also bound by space and time which continues to change and dynamics. So that there are various events that were not found in the past, so that the laws and provisions related to the problem are not strictly found.[4] To facilitate the search for law in Islam, the scholars compiled general rules that can be applied and guided in deriving the law in specific cases in fiqh, namely fiqhiyah rules [5][6].

In conditions where the maslahat and mudharat exist together, then among the fiqhiyah rules relating to the above are the following rules:

درء المفساد مقدم على جلب المصالح

"Rejecting the evil takes precedence over achieving the good"

Imam 'Izzuddin bin Abd al Salam used another expression, namely:[7]

دفع الضرر أولى من جلب النفع

"Rejecting harm is preferable to achieving benefit".

So, this research aims to explore the application of the above rules on several Islamic family law issues that are limited to the issue of polygamy with different perspectives, namely by considering the benefits and harms caused.

2. LITERATURE REVIEW

2.1 Basic principles of Fiqh rules

Basically, the emergence of the embryo of qawaid fiqhiyah began from the sending of the Prophet Muhammad as a Messenger until the 4th century Hijri. As understood in the Qur'an or hadith found the seeds of the rules of fiqh. Then this seed grows and develops in the following period both from the time of the Companions, Tabi'in, and so on until the time of the scholars who have been explicitly arranged in the books they compiled.[8] In connection with the seeds of this knowledge, the Prophet has bequeathed several principles such as: 'Adam al haraj (not burdensome), Taqlil al takalif (minimizing the burden of law), Al tadrij fi al tasyri' (establishing the law gradually), Musyarah bi mashalih al nas (in line with the benefit of society) [9].

The process of taq'id or formulation of fiqhiyah rules is an activity that requires extraordinary ability and effort, because it requires accuracy in reading the text of the Qur'an and hadith and squeezing the general purpose of the text plus interconnection with the existing reality. As a result, qawaid fiqhiyyah becomes a rule because it makes it possible to find solutions to every problem that arises in human life. In addition, qawaid fiqhiyyah also has the binding nature of branch law, which functions with various dhawâbith, which shows that each branch law has manât (illat / ratio legis) [10].

Fiqh rules are divided into two parts: basic rules and non-basic rules. The five main principles known as "basic rules" are not disputed by all madhhab scholars, and no one disagrees with the different opinions. The five rules are:

الأمور بمقاصدها, اليقين لايزال بالشك, المشقة تجلب التيسير, الضرر يزال, العادة محكمة[11]

2.2 Explanation of Rule

درء المفاسد مقدم على جلب المصالح

"Rejecting the evil takes precedence over achieving the good"

This rule is part or branch of the main rule of الضرر يزال (the harm must be eliminated) where this rule shows that harm always exists and occurs in human life, both now and in the future. Islam wants that harm to disappear from human life. In general, this rule covers various issues, including those related to jinayah. For example, Islam establishes the laws of qishash, hudud, expiation, compensating for damage, choosing a ruler to crush rebels, and providing legal sanctions against criminals. In addition, the fiqh rules also cover munakahah issues. Among other things, Islam allows divorce in cases where domestic life is not going well or is not compatible. This is done so that the husband and wife do not always experience psychological pressure and suffering and it is impossible to build a happy household [5].

"Rejecting the evil takes precedence over achieving the good" is one of the essence of Islamic Shari'ah. So Imam al Suyuthi explained that for this reason, in some types of obligations for Muslims given legal relief due to difficulties, such as illness or other

excuses, so that in the obligation to stand can be replaced by sitting or lying down or just by sign only according to the degree of excuse suffered [12].

More specifically, Muhammad Shidiq stated that this rule applies in all cases where the haram law prevails over the halal law. Because when the haram law is prioritized to be abandoned, it will automatically prevent the emergence of mafsadat. Muhammad Shidiq further said, thus this rule is related to the rule of idza ijama'a al halal wa al haram, ghuliba al haram. This shows that the haram law is more emphasized to overcome the emergence of mafsadat from the haraam object [13].

2.3 Explanation of Rule

All scholars agree that the purpose of shara' law is to achieve benefits and prevent damage. In short, maslahat can be interpreted as benefit, goodness and away from damage. So, maslahat includes one of two sides or both at once: the side of bringing benefits or goodness and the side of eliminating / preventing damage (mafsadat) and harm (madharat) jalb al-manâfi' aw al-khayr wa daf'u al-mafâsid aw al-madharrah.[14] Maslahat is also understood as something that refers or is returned to the establishment of human life [15].

In terms of the existence of maslahat according to shara' divided into: First, Maslahat al-Mu'tabarah, namely the benefits supported by shara'. That is, there is a specific argument that is the basis of the form and type of benefit. For example, the qishash punishment contained in the Qur'an surat al-Baqarah verse 178 and the exemption of punishment against thieves contained in the Qur'an surat al-Ma'idah verse 38. Mu'tabarah benefit can be used as a legal basis.

Second, Maslahat al-Mulghah, namely the benefit whose existence is rejected by shara', because it contradicts the provisions of shara'. For example, the fatwa of al-Laits ibn Sa'ad which stipulates the punishment of fasting two consecutive months for a king (ruler of Spain) who had intercourse with his wife during the day in Ramadan. According to al-Laits ibn Sa'ad, for a king, the necessity of freeing slaves as a legal sanction will not be able to have a positive impact so that he does not honor the month of Ramadan and fasting. This is because it is easy for a king to free a slave because of his luxurious living conditions. Therefore, the obligation to fast as a sanction in the second order as confirmed by the text must be implemented because it can realize the benefit as the purpose of the law. This is the reason for the development of opinions about the application of the law in order (order) or takhyir (choosing) from the provisions of the punishment.

Third, Maslahat al-Mursalah, which is a benefit whose existence is not supported by Shara' and neither canceled or rejected by Shara' in detail. This maslahat is needed by the situation due to things that come after the breakup of revelation and shara' does not determine the law and does not cancel it, this is called general maslahat which is not regulated in the nash. For example, making prisons, traffic regulations, marriage registration so that if the marriage is not registered, the marriage lawsuit will not be accepted.

Likewise with mafsadat, it can be divided into several groups, as follows: First, mu'tabarah mafsadat, which is a form of mafsadat that has been explained by existing evidence. As mentioned in Surah Baqarah verse 291, regarding alcohol in which there

is a great sin. Second, mafsadat mulghah, namely mafsadat whose existence is rejected by shara'. Third, mafsadat mursalah, which is a mafsadat that explicitly does not have a nash that talks about it.

In Ath Thufi's view, maslahat can be divided into two, the first is related to worship which he leaves entirely to the guidance of the text and consensus, the second is related to mu'amalah which is based on a sense of absolute benefit [16].

3. METHODS

The research the normative legal research method is used in this study. It focuses on literature studies of relevant legal norms, both in the form of sacred texts of the Qur'an, hadith, fiqh rules, and positive legal documents like the Compilation of Islamic Law (KHI) in Indonesia [17]. Ini adalah metode yang dipilih karena masalah ketidakhadiran anak dan dampaknya terhadap hak inheritance adalah masalah normative yang membutuhkan analisis teks dan konteks dari ketentuan Islamic law. This is in accordance with the theory of Noel J. Coulson, who developed the theory of historical-based Islamic legal research and tried to reveal its relevance, which led to neo-ijtihad.

This kind of study is qualitative and employs the following methodology: Examining the Qur'anic and hadith teachings regarding marriage, polygamy, and family ties using a normative-theological perspective. Conceptual approach, to develop an analysis of the concept of childfree in relation to the principles of Islamic inheritance law and its practical problem. Additionally, the maqashid shari'ah approach aims to comprehend how shari'ah objectives are oriented in light of evolving social realities [18].

4. RESULTS AND DISCUSSION

Polygamy (ta'addud) is a discussion that is always interesting to study from various perspectives. The reason is that polygamy itself is seen as a controversial marital practice, especially by those outside of Islam, some of whom prohibit it and even forbid it. However, in reality, the practice of polygamy has been demonstrated in the past by various nations. Even the existing practice is carried out without clear rules and restrictions, so that in history it is found that leaders or kings marry up to hundreds or even thousands [19].

So, when Islam came with a sharia that explicitly regulates the permissibility of polygamy, it immediately received a diverse and even negative response, especially from the West, both on the grounds of gender, justice and humanity. On the other hand, they are more permissive in the practice of free sex, LGBT and other forms of sexual deviance.[20] Society's response to polygamy, especially women and feminist groups, also changed. Women and feminism did not oppose polygamy before the 20th century, but when polygamy entered in the 20th century, polygamy began to be opposed [21].

The third verse of Surah An Nisa' is the text that serves as the legal basis for polygamy in Islam:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثَلًا وَلَكُمْ مِنَ النِّسَاءِ مَثَلًا وَلَكُمْ مِنَ النِّسَاءِ مَثَلًا وَلَكُمْ مِنَ النِّسَاءِ مَثَلًا وَلَكُمْ مِنَ النِّسَاءِ مَثَلًا
أَدْنَىٰ أَلَّا تَعُولُوا

"If you fear that you will not be able to do justice to orphaned women (if you marry them), marry any other woman you like: two, three, or four. But if you fear that you will not be able to do justice, marry only one, or a female slave whom you own. That is closer to not doing injustice".

In general, the above verse is a part of surah al-Nisa, which begins with the command to fear Allah, who made mankind, and to maintain friendship with one another. This verse is sociologically derived from the customs of the Jahiliyah Arabs who allowed a man to marry more than four, six,

or ten women. The Jahiliyyah were of the opinion that “no one can forbid his people to marry as so-and-so did in terms of the number of women he married” [13].

According to Apriana Asdin in her research, the scholars are divided into at least three groups in understanding this verse. First, this verse is understood as a proof of the permissibility of polygamy and limits the number of women who can be married to four people. Secondly, the verse does not limit it to only four people, this is indicated by the use of the words *matsna* (two-two), *tsulata* (three-three) and *ruba'* (four-four), but rather summed up so that it becomes nine and even eighteen. Thirdly, this verse is understood to prohibit polygamy if the conditions are not met, namely justice [22].

Commenting on this, Islamic jurisprudence expert Wahbah Zuhaili stated that polygamy is a *maslahah ammah* to solve problems for those with social problems and weak families, especially those with high libido for hypersexed men, so that they can avoid adultery and negative moral crises. This will definitely benefit households and make the environment better. Most importantly, it can safeguard women and orphans and prevent the transmission of dangerous diseases such as HIV. [23]

Furthermore, according to Wahbah Zuhaili, when the concept of polygamy is seen from the perspective of *maslahah*, there are at least two reasons Allah imposes restrictions on polygamy. First, the husband must be able to be fair in the flesh. If the husband is able to provide maintenance, the division of time in accordance with verse 3 al-Nisâ to fulfill the rights of his wife and children will be done. Second, having the ability to pay the necessary expenses to fulfill the needs of his household, so that all feel comfortable and calm in living their lives [23].

In the Indonesian context, the marriage regulations of Law Number 1 of 1974 and the Compilation of Islamic Law, accommodate the permissibility of polygamy for Indonesian citizens. Like Muslim countries in general, the existing marriage regulations seek to provide strict guidelines and restrictions on the practice of polygamy. Where polygamy is permitted by requiring the permission of the first wife, both written and verbal, it is not permitted [24].

This is formulated as a preventive measure against domestic disputes resulting from polygamy. Given the conflict theory, the possibility and potential for conflict between the first and second wives, as well as between extended families, either because of economic conditions or feelings of conflict [25].

On the other hand, the practice of polygamy in Indonesia is dominated by the practice of *nikah sirri*, that is, without being officially recorded. Although *fiqh* can be justified and considered valid, based on existing regulations and good governance reviews, the practice of *sirri* polygamy is not considered a good thing. [26] Again, the potential for conflict is high and can lead to divorce.

Data from the Central Bureau of Statistics released the number of divorces in 2024 at 399.921 cases, and 849 of them were due to polygamy [27]. Looking at the existing reality based on the views and data above, it shows that the practice of polygamy is like a coin with two different sides. On the one hand, polygamy is recognized as one of the discussions in Islamic law and is allowed because it has a *maslahat* side because it can avoid the danger of sinful acts and become a solution in certain conditions, for example, not having offspring or the wife's condition is unable to carry out her duties.

But on the other hand, polygamy has the potential to create *mafsadat* in the form of conflict and the end of marital relations. Where the conflict and divorce can spread and result in other aspects of life, such as neglect of the rights of children and wives, disrupted family harmony.

Thus, when *maslahat* and *mafsadat* exist simultaneously, the rule of *درء المفساد مقدم على جلب المصالح* can be applied. Where *mafsadat* must take precedence to be abandoned rather than trying to get the *maslahat* side. This means that if seen from this rule is that polygamy should be avoided to be practiced. By not aiming to say that polygamy is forbidden or *haram*, but by origin the law remains permissible. However, in household conditions where the first wife does not give permission for polygamy for legitimate reasons, if the husband insists on polygamy, then the conflict is only waiting for its time, and the potential for *mafsadat* can be greater.

In such circumstances, the polygamy practiced can be regarded as *makruh*, in the sense that abandoning it is more rewarding. Although polygamy is practiced on the basis of following the

sunnah of the apostle as is generally assumed by the community (the adage of people who use the sunnah to legitimize the practice of polygamy).

CONCLUSION














Based on the results of the discussion above, it can be concluded that the position of polygamy in Islamic law cannot be denied. Given that in practice, polygamy has a side of *maslahat* and has the potential to bring *mafsadat*. So, with the application of the rule *درء المفساد مقدم على جلب المصالح*, the practice of polygamy is preferable to avoid, considering the potential conflict that can be caused can be greater than the *maslahat* in it.

REFERENCES

- [1] A. Manan, I. Mohd, A. Syukran, dan A. Ab, "The Role Of Maqasid Al-Shariah In Contemporary Fatwa Formulation: A Balanced Approach," *Al-Qanatir Int. J. Islam. Stud.*, vol. 33, no. 7, hal. 85–110, 2025.
- [2] M. N. Umar, *Kaidah Fiqhiyyah dan Pembararuan Hukum Islam*. Banda Aceh: Yayasan WDW Banda Aceh, 2019.
- [3] A. bin N. Al Sa'di, *Syarah Manzhumah Al Qawaid Al Fiqhiyyah*. Maktabah Al Alukah, 1441.
- [4] L. Karmelia, "Implementasi Qawaid Fiqhiyyah Dalam Menyelesaikan Problematika Hukum Keluarga Islam," *Maqasid*, vol. 12, no. 2, hal. 98–107, 2023, doi: 10.30651/mqsd.v12i2.19313.
- [5] Firdaus, *Al-Qawaid Al-Fiqhiyyah; Membahas Kaidah-Kaidah Pokok dan Populer Fiqh*. Padang: Imam Bonjol Press, 2015.
- [6] M. H. Zuhdi, *Qawaid Fiqhiyyah*, vol. 1, no. 1. Lombok: Elhikam Press Lombok, 2023. [Daring]. Tersedia pada: http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8ene.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484_SISTEM_PEMBETUNGAN_TERPUSAT_STRATEGI_MELESTARI
- [7] A. bin S. Al Lahjiy, *Idhah Al Qawaid Al Fiqhiyyah*. Kuwait: Darul Dhiya', 2013.
- [8] A. Helim, *Al Qawaid Al Fiqhiyyah*. Yogyakarta: Pustaka Pelajar, 2024.
- [9] M. A. Duski Ibrahim, *Al-Qawa'id Al-Maqashidiyyah*. Yogyakarta: Ar Ruzz Media, 2019.
- [10] B. A. Mahendra, M. Abdillah, T. Ramadhan, dan H. A. Hanif, "The Urgency of Qawaid Fiqhiyyah and Its Implementation in the Actualization of Islamic Inheritance Law Urgensi Qawaid Fiqhiyyah dan Implementasinya dalam Aktualisasi Hukum Waris Islam," *QANUN J. Huk. Kel. Islam*, vol. 2, no. 2, hal. 118–140, 2024.
- [11] A. bin A. S. M. Al Zarqa, *Syarah Al Qawaid Al Fiqhiyyah*. Damaskus: Darul Qalam, 1989.
- [12] A. Haq, A. Mubarak, dan A. Rouf, *Formulasi Nalar Fiqh (Tealaah Konseptual)*. Surabaya: Khalista, 2009.
- [13] M. Ichsan, "POLIGAMI DALAM PERSPEKTIF HUKUM ISLAM (Kajian Tafsir Muqaranah)," *JURIS (Jurnal Ilm. Syariah)*, vol. 17, no. 2, hal. 151, 2018, doi: 10.31958/juris.v17i2.1196.
- [14] A. Umar *et al.*, "Maqasid Syari'ah and the Renewal of the Tradition in Understanding Fiqh," *J. Elsyakhshi*, vol. 2, no. 2, hal. 71–79, 2024.
- [15] Sutisna *et al.*, *Panorama Maqashid syariah*. Bandung: PENERBIT MEDIA SAINS INDONESIA, 2021.
- [16] M. Rosyid dan A. Hafidzi, "Paradigma Dan Alienasi Konsep Maslahat Al-Tufi Sebagai Legalitas Sumber Syariah," *Al-Banjari J. Ilm. Ilmu-Ilmu Keislam.*, vol. 19, no. 2, hal. 159, 2020, doi: 10.18592/al-banjari.v19i2.3823.
- [17] Muhaimin, *Metode Penelitian Hukum*. Mataram: Mataram University Press, 2020.
- [18] F. Ananda dan W. Marpaung, *Metode Penelitian Hukum Islam*. Jakarta: Prenada Media, 2018.
- [19] A. Cahyani Intan, "Poligami dalam Perspektif Hukum Islam The Polygamy in the Perspektif of Islamic Law," *Al-Qadau*, vol. 5, no. 2, hal. 271–280, 2018.
- [20] E. Masri, "Poligami Dalam Perspektif Undang-Undang Nomor I Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam (Khi)," *Krtha Bhayangkara*, vol. 13, no. 2, hal. 223–241, 2019, doi: 10.31599/krtha.v13i2.7.
- [21] D. A. Setiyanto, "Poligami Dalam Perspektif Filsafat Hukum Islam (Kritik Terhadap Hukum Perkawinan Di Indonesia)," *Al-Ahwal J. Huk. Kel. Islam*, vol. 10, no. 1, hal. 49, 2017, doi: 10.14421/ahwal.2017.10105.
- [22] A. Asdin, "KONSEP KEADILAN DALAM BERPOLIGAMI DALAM PERSPEKTIF HUKUM ISLAM DAN HUKUM POSITIF," *J. DARUSSALAM Pemikir. Huk. Tata Negara dan Perbandingan Maz.*, vol. 3, hal. 50–78, Jun 2023, doi: 10.59259/jd.v3i1.39.
- [23] Anwar Hafidzi, "Prasyarat Poligami Dalam Kitab Fiqih Islam Dan Kompilasi Hukum Islam Perspektif Mashlahah Mursalah," *Al-Daulah J. Huk. Dan Perundangan Islam*, vol. 7, no. 2, hal. 366–392, 2017.
- [24] S. S. Karimullah, "Poligami Perspektif Fikih Dan Hukum Keluarga Negara Muslim," *J. Islam. Fam. Law*, vol. 02, no. 01, hal. 2775–7161, 2021, [Daring]. Tersedia pada: <http://ejournal.iainpalopo.ac.id/index.php/maddika>
- [25] A. Faisol, "Poligami Dalam Berbagai Perspektif," *J. Ilm. Ahwal Syakhshiyyah*, vol. 2, no. 1, hal. 19, 2020, doi: 10.33474/jas.v2i1.6820.
- [26] N. Hikmah dan A. A. Subagyo, "Perlindungan Hukum Bagi Perempuan Terkait Praktik Poligami Siri Dalam Perspektif Hukum Islam," *LENTERA J. Gend. Child. Stud.*, vol. 2, no. 1, hal. 35–54, 2020.
- [27] BPS, "Jumlah Perceraian Menurut Provinsi dan Faktor Penyebab Perceraian (perkara), 2024," 2024. <https://www.bps.go.id/id/statistics-table/3/YVdoU1IwVmlTM2h4YzFoV1psWkViRXhqTlZwRFVUMDkjMw==/jumlah-perceraian-menurut-provinsi->

dan-faktor-penyebab-perceraian--perkara---2024.html?year=2024 (diakses 12 Mei 2025).

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