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Philosophical Foundations of Polygamous Marriage in Islam from Various Aspects

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Abstract: This research aims to explain the philosophical basis of Polygamy in the Islamic religion in detail through several approaches. This research is included in the literature review category. The data collection technique is the documentation technique, while the analysis technique is the Miles and Huberman analysis technique. The source triangulation method was used to validate and authenticate the data obtained in this research. After conducting in-depth research, several important conclusions were found: first, from a legal philosophy perspective, Polygamy can be carried out because there is an underlying legal umbrella, but the ability to carry out Polygamy must be based on several provisions. Polygamy in Indonesia has been regulated by the promulgation of Law Number 1 of 1974 and Government Regulation Number 9 of 1975. Second, from a psychological philosophy perspective, Polygamy should not be carried out haphazardly. The polygamy process must also meet justice criteria. In families that practice Polygamy, wives usually experience inner pressure, such as jealousy, personality conflicts, competition, and children's displeasure towards different mothers. Therefore, it is necessary to fulfill the elements of justice to minimize the emergence of negative things. Third, from a sociological and philosophical perspective, Polygamy currently still has pros and cons in society. Many people still consider Polygamy to be a negative act, even though there is a negative stigma given to the perpetrators. Fourth, from an economic philosophy, many second wives from polygamous families do not have the right to fulfill their living needs, both physical and spiritual.

Keywords: Islam, Marriage, Philosophical, Polygamy.

Introduction: The discourse on Polygamy is still rolling today. Although it always reaps controversial discussions and has always been a source of violence for women and children, until now, Polygamy still receives recognition theologically (religiously), politically (state) and society (sociologically). The phenomenon of Polygamy in Indonesia is not a taboo because almost some tribes in Indonesia still allow the practice of Polygamy.¹ In the perspective of Islam, Islam in principle does not forbid (forbid) Polygamy, but also does not command Polygamy. That is, in Islamic law polygamy is an institution that is established as a way out to overcome certain problems in a family (household). Following the two basic principles of Islamic law, namely justice and benefit, Polygamy can be practiced when both principles are fulfilled. Polygamy must be based on the desire for the perpetrator to realize the benefit among the family and also fulfill the requirements for justice among husbands, wives, and their children. Thus, if Polygamy is done only for the fulfillment of lust, let alone just seeking achievement and prestige amid today's hedonistic and materialist society, and ignoring the fulfillment of the two main principles in Islamic law, then of course, Polygamy is not justified.

Polygamy in Islamic law is a solution for some (few) people to realize perfection in family life that cannot be achieved by monogamy. The problem of childlessness that a wife's sterility may cause, a husband's dissatisfaction due to the lack of excellent service from a wife, or the purposes of da'wah as practiced by the Holy Prophetsa. These are a series of problems that this polygamous institution may solve. But it should be noted that efforts to overcome various problems by Polygamy should not cause new problems that are greater than the previous ones. If this happens, of course, Polygamy is not a recommended solution, but on the contrary it may even be prohibited.²

Literature Review: The term polygamy comes from the Greek, *namely polu and gamein*. *Polu* means many and *gamein* means marriage, so Polygamy can be interpreted as many marriages. In the English-Indonesian Dictionary it is said that Polygamy (*Polygamist*) is defined as a man who has more than one wife. Monogamy is defined as a man who only has one wife and a woman only one husband.³ Historical facts prove that Polygamy has actually been practiced in societies long before Islam came, and it has been embraced by countries that were then classified as advanced cultural countries, such as China, India, Persia, Ancient Egypt, Arabia, Jews, as well as highly civilized societies including Eastern and Western Europe, Germany, Austria, Czechoslovakia, Switzerland, England, Belgium, the Netherlands, Norway. So consequently, Islam does not initiate, neither commands, nor encourages, but allows it to a certain extent and by existing certain conditions.⁴

In Indonesia, the issue of Polygamy is regulated by Law No. 1 of 1974 concerning Marriage, and further clarified by Government Regulation of the Republic of Indonesia No. 9 of 1975 concerning Rules for the Implementation of Law No. 1 / 1974. Meanwhile, for civil servants, the rules regarding Polygamy are separated through Government Regulation (PP) No. 10/1983 concerning Marriage and Divorce Permits for Civil Servants. The provisions contained in the Marriage Law No. 1 of 1974 and its implementing rules, are in principle in line with the provisions contained in Islamic Law. According to the Law, in principle the system adopted by the Marriage Law in Indonesia is the principle of monogamy, one husband for one wife. But in certain cases or reasons, a husband is given permission to marry more than one.⁵

Methodology: This study is a *literature review review*. The approach used in this study is juridical-normative. The data collection technique used is documentary technique, by using literature (scientific journals and books) as the main source. The analytical technique used in this study is the *miles and huberman technique*. While the data validity method, the author uses the source triangulation method. Namely by comparing various information from one source to another.

Polygamy in a Juridical Philosophy Perspective: Juridically philosophy, Polygamy is allowed with several provisions that have been stipulated in the legislation. Although the Marriage Law No. 1 of 1974 adheres to the principle of monogamy i. A sas monogamy in the marriage law is not absolute, meaning that it is only directed at the establishment of monogamous marriage by making it difficult to use the institution of Polygamy and not completely abolishing the polygamy system. If a husband wants to practice Polygamy, he

must meet the reasons and conditions for allowing Polygamy, as stated in Law No. 1 of 1974 concerning Marriage Article 3 paragraph (2), namely the court can give permission to a husband to have more than one wife if desired by the parties concerned. This article shows that the Religious Court as an institution is quite important and plays a role in granting permission for a person to apply for a polygamy permit. The permission of the Religious Court seems to be very decisive. If a legal decision that has permanent legal force, court permission is not obtained, then according to the provisions of article 44 of PP No. 9 of 1975 it is explained that the Recording Officer is prohibited from registering the marriage of a husband who will have more than one wife before the permission of the Court as referred to in article 43 (PP No. 9 of 1975).⁶⁷

In addition to the requirement of the wife's consent, there are still two more requirements, namely the certainty that the husband concerned is able to guarantee the necessities of life of his wife and their children and the guarantee that the husband will act fairly towards his wife, wife and their children (Article 5 paragraph (1) letter b and c). The Religious Court as the executor of judicial power for the people seeking justice for Muslims regarding certain civil cases, has the authority to grant/permit or not grant/not permit applications for polygamy permits submitted by a husband (Article 10 paragraph (1) of Law No. 14 of 1970 concerning Basic Provisions of Judicial Power and Article 49 of Law No. 7 of 1989 concerning Religious Courts and Article 4 of Law No. 1 Year 1974 on Marriage). The Religious Court will grant permission to a husband to practice Polygamy if it is proven that:

1. The wife cannot perform the duties of a wife;
2. The wife is disabled or incurable;
3. Wives cannot give birth to offspring.⁸

At the global level, there are 3 (three) groups of Muslim-majority countries in addressing Polygamy. First, a country that bans Polygamy absolutely. Tunisia's Family Law (Code of Personal Status No. 66 of 1956), enacted in 1957 by President Habib Bourguiba, banned Polygamy absolutely and punished those who violated the rules of Polygamy. Even in 1964 polygamists were not only punishable but declared invalid marriages. There are two reasons Tunisia forbids Polygamy: a. Slave institutions and Polygamy may only be during development but are prohibited after becoming a cultured society. Sura An-Nisa (4):3, stipulates that it is necessary for a husband to be polygamous if he can do justice to his wives. While historical facts prove that only the Prophet could do justice to his wives. Tunisia is the third Muslim country after Turkey and Lebanon to ban Polygamy absolutely. The Tunisian Personal Status Law of 1956 especially Article 18 states: "*That having more than one wife is forbidden. Any person who has entered into a marriage bond and remarries before the former is legally dissolved shall be imprisoned for one year or a fine of 240,000 malim or both.*"⁹

Second, States that restrict Polygamy (Conditional Polygamy). In order to protect and guarantee the rights of women and children, in general, Muslim countries provide regulations regarding the permissibility of Polygamy that are tightened with a number of requirements that are difficult for a man to fulfill. In Indonesia, Iraq, Malaysia, Somalia and Syria a husband who wants to practice Polygamy must first obtain permission from the court. While in Bangladesh and in Pakistan such permits are also required and obtained

from some sort of Arbitration Board. In Iraq and Syria permission for Polygamy can be granted if there is a good and legitimate reason. In Pakistan, Bangladesh and Malaysia, permission for Polygamy is granted if the husband is deemed by the courts to be fair. Even in Malaysia added its provision that it must be ensured that wives do not get *mudharat* or harm caused by Polygamy. In Indonesia, Somalia, and South Yemen courts may grant permission for Polygamy if the wife suffers from infertility, physical disability or an incurable disease or the wife is unable to perform her duties properly. In South Yemen there is also a provision that Polygamy is allowed if the wife is in prison for more than 2 years. The husband's financial ability is also a matter of consideration in granting permission by the court. The third group, the State that addresses Polygamy in a regular manner. Saudi Arabia, Qatar, Kuwait and Oman are countries that respond to Polygamy habitually because considering that it has been regulated in the books of fiqh and should not be a much-handed state in this regard, the regulation of Polygamy is more left to the practitioners and established provisions of fiqh.¹⁰

Polygamy in a Psychological Philosophy Perspective: In the perspective of philosophy psychology, the process of being able to Polygamy must also be able to meet certain criteria of justice so that Polygamy can provide welfare and justice for all parties involved in the process. And if Polygamy has occurred in marital life, it is required of all parties to be able to fulfill mutually determined procedures so that there is no inequality in carrying out life together in one family with a pattern that is different from other forms of monogamous families.¹¹

In general, women do not want to share their husbands with others because it will have an impact on themselves and their families, because women when their husbands want to remarry will definitely cause feelings of pain in their hearts or psychologically disturbed. As happened at the EW (pseudonym) wedding. *EW's love for her husband diminishes even EW no longer feels jealous and does not care if the husband is with his other wives. That's because EW feels his pride has been hurt and hurt. EW continued to carry out her duties as a wife as a form of commitment from her marriage.* The second example is in the polygamous marriage of SF families (pseudonyms). *Despite feeling the heartache of being betrayed by her husband, SF's love for her husband has not changed. SF continued to care for and serve her husband as usual. SF behaved as if there was no problem between them. She did this because she loved her husband so much, and SF didn't want him to leave. SF never asked further questions about the husband's relationship with the woman who had become his honey to avoid statements that could make his heart hurt more. This causes SF and husband's communication to be not open even though the goal is to avoid conflict. In addition, SF has also lost faith in her husband. SF even earns his own living to meet his household needs. Fear of being abandoned by the husband makes SF harbor more of her feelings and succumb to the husband.*¹²

These facts strengthen the argument that Polygamy causes psychological distress to women who are honeyed. But there is also a surprising fact, there are some wives who claim to be ready to be polygamous with various considerations and reasons, which make the first wife ready to be honeyed and the other wife ready to be the second or even the third. This fact is quite surprising, because usually women when they hear Polygamy alone make it feel disturbed because it seems to demean women. Even women who are ready to

be polygamous think that Polygamy is a solution to overcome infidelity or adultery in the household.

In polygamous families, the wife usually gets inner pressures, such as jealousy, personality conflicts, competition, and displeasure of children towards different mothers. Then, the fellow wives did not open up to each other and were willing to communicate well. Polygamy not only has an impact on the loss of confidence of women as wives but also on the psychological condition of children. (S. Hikmah, 2012)

But this fact does not apply in totality, because the fact is that there are also polygamous families that are bahagaia, harmonious households, there are no severe problems in the household even though in the household it has two or more wives.¹³ Behind the adverse effects that are often felt by wives in polygamous marriages, there are also those who feel the positive effects of polygamous marriages. Like she became felt she had friends to share because of the closeness between her and her husband's other wives. Then another impact is to be more patient, more sincere, in controlling his emotions for the better. She also became more comfortable with her marriage because she had free time for herself and did activities that she liked or did her hobbies, and the demands of meeting biological needs and serving her husband became less.¹⁴

This fact is what makes Islam not make rules rejecting Polygamy. Islam allows Polygamy provided that it can be fair in marriage. This polygamous principle is found in Sura An-Nisa verse 3, which means as follows: *"And if you fear that you will not be able to do justice to the orphaned woman (if you marry her), then marry the (other) women you please: two, three or four. then if you fear that you will not be able to do justice, then (marry) one only."*

According to Karam Hilmi Farhat, justice in Polygamy is to divide equally in place, that is, that all polygamous women have equal place rights to one another, equal in the division of place and time. And it is not permissible to give something to one of the wives. While the Imams of the Four Madzhabs agreed that what is meant by fair is in terms of providing a living in accordance with the abilities possessed and in accordance with the habits of the wife's life in the form of food, clothing and high place.¹⁵

Polygamy in a Sociological Philosophy Perspective: Although Islamic teachings allow and have prescribed rules for polygamists, problems often arise when a Muslim man enters into a polygamous marriage. Polygamy today is still a pro-con in society. This is due to differences in people's views on Polygamy itself. It is undeniable that polygamous marriages cause many reactions from other parties, especially from family and surrounding communities. If from the beginning, polygamists sow kindness, have an attitude of responsibility, and can-do justice to their families, then the effects that will arise are also sound, but if the opposite happens, then Polygamy will give birth to problems and problems that threaten the integrity of the household building that has been built. Thus, it can be concluded that implementing Polygamy can have positive and negative implications for domestic life.¹⁶

There are still many people who consider Polygamy a negative act, even often negative stigma is given to the perpetrators. For example, KH. Abdullah Gymnastiar (Aa' Gym) whom his worshippers abandoned after practicing Polygamy. Also, the number of students studying at the pesantren he leads has also decreased. This is because Polygamy is considered to hurt women and only benefit men.¹⁷

Polygamy in an Economic Philosophy Perspective: In Indonesia, Polygamy is not prohibited or ordered, but is allowed for certain people who meet the requirements stipulated in Law Number 1 of 1974 regarding the subject matter of marriage and then also regulated in the Compilation of Islamic Law.¹⁸ From an economic philosophy perspective, Polygamy in Indonesia is mostly due to economic facts, although this assumption is not one hundred percent correct. However, many people believe that one of the strongest motives for Polygamy is economic problems. In short, polygamous people only have the potential to be implemented for rich groups or other elite groups. Theoretically-normatively, the basic theory that is one of the parameters of Polygamy in Indonesia is the proof of income of a husband who will be polygamous is a figure who is able to provide economic support for all his wives and children. The result was that the supposedly strong economic motives on which Polygamy was based were not entirely correct. A study conducted in Surabaya, produced a very surprising data finding, namely husbands who were polygamous sirri from 64 procedural polygamous marriages turned out to only earn under Rp. 17 million. Of these, 39% are husbands with self-employed professions who earn no more than 2.5 million every month, and 31.3% earn Rp. 4.9 million. Husbands who were polygamous sirri out of 56 polygamous marriages turned out to earn just under 24 million. Of these, the most, 50%, are husbands with self-employed professions who earn no more than 2.4 million every month.¹⁹

So, it is not surprising, if the second wife of a polygamous family is not fulfilled the right to security of the necessities of life, both outwardly and mentally. This requires them to work independently to obtain the fulfillment of the needs of their lives and families. The necessities of life of the children of the second wife do not fully get the right to life security and the legality of the legal status of children in Indonesian marriage. So that many of their rights are threatened with not being fulfilled in the future.²⁰

Polygamy greatly impacts the economic well-being of households. These impacts can be in the form of negative impacts and positive impacts. From a negative perspective, it is the lack of providing for the husband that results in the wife working to meet her needs. Meanwhile, from a positive perspective, Polygamy has an impact on the independence of the perpetrator's wife. They are not dependent on the provision of their husbands because they have jobs. Thus, work is able to support the family economy without depending on the gifts of their husbands. Economic dependence that occurs due to Polygamy is common. Especially for wives of polygamists who do not have a job, because in practice it is often found that polygamists think that providing monthly income for their wives is considered sufficient to meet their needs. As explained by severe respondents that they divide their income to their wives according to the amount of needs of each wife. Reduced provision is one of the impacts felt by the wives of polygamists.²¹

Conclusion: Based on the explanation of the data above, it can be concluded that juridically philosophy polygamy may be carried out because there is an underlying legal umbrella, but the ability to practice Polygamy must be based on several provisions. Polygamy in Indonesia itself has been regulated, namely with the enactment of Law No. 1 of 1974 and PP No. 9 of 1975. While from a psychological perspective, Polygamy should not be done carelessly. Processes to be able to Polygamy must also meet the criteria of justice so that Polygamy can provide welfare and justice for all parties involved in the process. In polygamous families, the wife usually gets inner pressures, such as jealousy, personality conflicts, competition, and the displeasure of children towards different mothers. Therefore, it is necessary to fulfill the elements of justice to minimize the emergence of negative things. Philosophically and sociologically, Polygamy today is still a pro-con in society. There are still many people who consider Polygamy a harmful act, even if negative stigma is given to the perpetrators. Philosophy Economically, many wives of polygamous families have not fulfilled the right to secure the necessities of life, both outwardly and mentally.

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