

Polygamy in Islamic Law: A Study on Muslim Countries

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Abstract

Original Research Article

Polygamy is permitted in Islamic law based on the allowance to marry more than one woman. In Muslim countries, the regulations regarding polygamy vary. In Indonesia, for instance, polygamy is strictly regulated, requiring court approval in addition to the wife's consent. This contrasts with Saudi Arabia, where polygamy is widely accepted without binding legal restrictions from the state. Meanwhile, Turkey considers polygamy a criminal act and punishes those who engage in it. The country's legal foundation is monogamy rather than polygamy, as Turkey interprets polygamy through a more liberal perspective. The Turkish government prohibits polygamy, taking into account the country's social conditions and economic standards, leading to a legal approach that differs from Islamic law.

Keywords: Polygamy, Law, Islam, Country, Muslim

A. INTRODUCTION

Islamic law is regarded as divine and eternal. This characteristic sets it apart from other legal systems. This understanding of Islamic law's characteristics is shared by Orientalists such as Hurgronye and Schacht, as well as Muslim jurists who maintain that, in its concept, development, and methodology, Islamic law remains eternal. The divine nature of Islamic law plays a crucial role in shaping legal reasoning in *ijtihad*, allowing scholars to address new issues arising from social change. (Mas'ud, Muhammad Khalid, 1977)

In addition to its divine nature, Islamic law is also universal. However, in its implementation, differences in understanding and interpretation of legal rules often arise, necessitating *ijtihad*. One of the most frequently debated issues is polygamy. In principle, Islamic law permits polygamy with up to four wives simultaneously, provided that justice, happiness, and a sincere intention for the sake of Allah—rather than mere sexual desire are upheld.

Criticism of polygamy often centers around the issue of justice. While some scholars do not support polygamy, they still acknowledge its permissibility, albeit under strict conditions that significantly limit its practice or consider it a last resort.

The debate over polygamy persists, primarily due to its legitimacy within Islamic teachings. However, differing interpretations of Quranic verses and hadiths related to polygamy fuel ongoing discussions. Therefore, examining the pro and contra perspectives on polygamy across various Islamic countries is a compelling area of study.

During British colonization, regulatory changes

took place, influencing local legal systems related to Islamic law, such as Sharia courts governing marriage, divorce, and inheritance, which began to follow the British model. This situation continued even after Malaysia gained independence. (Anderson, J.N.D, 1959)

After breaking free from British rule and establishing a federal government in 1963, Malaysia made significant efforts to respond to societal demands by developing family law regulations. Various states, such as Johor and Terengganu, introduced Islamic Law Administration Acts, while other states, including Kedah, Malacca, Negeri Sembilan, Penang, Perak, Perlis, and Selangor, implemented their own Muslim Law Administration Acts. Similarly, in Sarawak and Sabah, where Muslims are a minority, the Malay Court Enactment of 1915 remained in effect, maintaining a legal framework rooted in historical precedents.

B. METHODOLOGY

This study is a qualitative research based on a library research approach. Literature on polygamy law serves as primary and secondary sources. A formative juridical approach is used as the foundation of this research, focusing on marriage laws in Muslim countries to find answers to the research object.

C. RESULTS AND DISCUSSION

1. Polygamy Law in Islamic Countries

The reform of Islamic law in Islamic countries, particularly in the Near East and the Middle East, has led

to unprecedented changes over the past century. These transformations have occurred both in the judicial system and in the legal frameworks applied.

The renewal of Islamic law in Muslim countries can be categorized into three groups. First, countries that have not undertaken any reforms and continue to apply Islamic law as found in classical *fiqh* texts according to their respective schools of thought. Saudi Arabia falls into this category. Second, countries that have abandoned Islamic law and replaced it with secular laws commonly applied in Europe, with Turkey being a prime example. Third, countries that have reformed Islamic law by combining it with secular legal principles. Examples of countries in this category include Egypt, Tunisia, Iraq, Syria, Indonesia, and others. (Rubya Mehdi, 1994)

According to Tahir Mahmood, changes in family law in Muslim countries can be categorized into thirteen aspects: the minimum age for marriage, restrictions on the guardian's role in marriage, mandatory marriage registration, financial capability in marriage, limitations on polygamy, family maintenance, restrictions on the husband's right to divorce, rights and obligations of both parties after divorce, pregnancy period and its implications, parental guardianship rights, inheritance rights of close family members, obligatory wills (*wasiat wajibah*), and the management of endowments (*waqf*).

Tunisia, Pakistan, and Malaysia fall into the third category of legal reform, with a particular focus in this study on Tunisia, which has drawn significant attention from the Islamic world for its prohibition of polygamy and the removal of the guardian's role as a prerequisite for marriage. The prohibition of polygamy is stipulated in Article 18 of *The Code of Personal Status*, enacted in 1958, which regulates marriage and inheritance laws. The Tunisian *Personal Status Code* not only bans polygamy but also imposes fines and imprisonment on violators. (Agustina Nurhayati, 2014)

This regulation has been considered by some Muslim countries as inconsistent with Islamic law. Polygamy has historically been widely practiced among Muslims based on Quranic verses that explicitly permit it.

On the other hand, Malaysia permits polygamy as stated in the Qur'an and various *fiqh* texts, but only through judicial approval. Pakistan also allows polygamy, but under very strict conditions, requiring not only the consent of the wife and her family but also approval from an arbitration council and the court, with rigid requirements.

In Malaysia, Islam is declared the official religion; however, the state ensures that each religious group has the right to manage its own affairs. While non-Muslims are constitutionally and legally protected, Muslims are governed by Islamic law, with the Sultan overseeing their religious affairs and the Sharia courts responsible for enforcing religious laws.

Thus, Islam is the state religion, and Islamic law regulates the behavior of believers. However, constitutionally, other religious groups are also granted the freedom to practice their faith as they wish. The majority of Muslims in Malaysia follow the Shafi'i school of thought, which is evident in religious practices, particularly in Islamic family and inheritance law. Nevertheless, in practice, the implementation of Islamic

law remains under the control of the ruling Sultans. This is due to the historical reality that the Malay Peninsula was once divided among several Islamic kingdoms, such as Johor, Malacca, Kelantan, and Terengganu, each ruled directly by a Sultan.

Between 1983 and 1985, efforts were made to reform family law legislation in Malaysia, which was implemented in several states. The Islamic Family Law Act of 1984 consists of 135 articles divided into ten sections. An attempt to standardize Islamic family law in Malaysia was once undertaken under the leadership of Tengku Zaid. The committee's task was to draft the Islamic Family Law Act. After receiving approval from the Conference of Rulers, the draft was distributed to individual states for adoption as their family law. However, not all states accepted the act in its entirety. Kelantan, for example, made revisions to the draft. As a result, Islamic family law in Malaysia remains non-uniform to this day. (Abu Yazid Adnan Quthny, 2016)

These differences may be due to the varying objectives of each state in formulating its legislation. For states such as Perlak, Selangor, Negeri Sembilan, and the Federal Territories Act, the focus was mainly on modifying certain aspects of marriage, divorce, maintenance, *hadanah* (child custody), and other family-related matters, rather than a complete overhaul. Meanwhile, the primary goal of the Islamic Family Law Act was to unify the various laws related to Islamic family matters to enhance their consistency and applicability. This means that the law aimed to establish a comprehensive legal framework to ensure adherence and compliance. On the other hand, Kelantan sought not only uniformity but also to reform existing laws. Ultimately, the purpose of marriage legislation in Malaysia was to elevate the status of women and modify *Shariah* legal provisions concerning family matters. (Abdul Azis Dahlan, 1996)

Pakistan is located in South Asia, and according to the 2024 population calculation, it has a population of 237.4 million, making it the second-largest Muslim-majority country in the world. The country is home to various ethnic groups, all of whom coexist peacefully under diverse religious banners. Islam is recorded as the largest religion, followed by 97% of Pakistan's population. Meanwhile, other religions such as Christianity, Hinduism, and others live peacefully in the country, which shares borders with Iran to the west, Afghanistan to the northwest, India to the southeast, and Kashmir to the northeast.

The capital city, Islamabad, was once part of British India as a former British colony. The modern history of the Indian subcontinent and Pakistan began with the decline of the Mughal Empire and British occupation of India. British colonization destroyed the highest political position once held by Muslims. The local population, small traders, artisans, and laborers suffered greatly. The impact of colonization extended beyond economic and political losses, affecting cultural aspects as well. Initially, the British showed sympathy toward traditional Muslim education programs and India's classical culture. However, over time, they began suppressing diversity, often imposing harsh and cruel punishments. English became the language of governance and education, while the Mughal language was abolished

as the official language in courts.

Islam is the majority religion in Pakistan. In religious life, where Urdu is the official language, several Islamic schools of thought have developed. The Hanafi school is the most widely followed, along with other schools such as Shia and Hanbali. Religious tolerance is well maintained in Pakistan. Minority communities, including Hindus, Christians, and Buddhists, live in a democratic and tolerant environment that upholds religious freedom, and more than that, they are considered friends. (Labib MZ, 1986)

Religious life in Pakistan is essentially not much different from that in other Muslim countries. Islam serves as a way of life that is deeply embraced by its people. Their worldview and inclinations are entirely rooted in Islam, while traditions and cultural influences do not fundamentally alter the essential characteristics of Islam.

Since the introduction of Islam in Tunisia, the majority of Tunisian Muslims, like other communities in the Maghreb region, have been Sunni adherents of the Maliki school of thought. However, various ruling dynasties in Tunisia, both foreign and indigenous, held different religious beliefs. The Shi'a Fatimid dynasty overthrew the Aghlabid dynasty between 905 and 909 CE. However, after their rule, Shi'ism became a minority sect and is now considered almost nonexistent in Tunisia. (Esposito John L, Ed) (2000)

With the arrival of the Ottoman Turks, who ruled Tunisia and brought the Hanafi school of thought, their influence gradually spread through direct governance and a regional system. As a result, followers of both the Hanafi and Maliki schools coexisted side by side. During the French colonial rule, family law matters—such as marriage, divorce, inheritance, and land ownership—remained under the jurisdiction of Islamic law, overseen by Hanafi or Maliki judges. However, these rulings had to align with French legal principles, particularly in civil, criminal, commercial, and procedural law.

This system functioned smoothly because, politically, the development of various sectors, including family law, heavily depended on the role of scholars (*ulama*). Figures like Khiyar al-Din sought to understand and integrate new legal concepts from France. In Tunisia, there was minimal—if any—tension between *ulama* and certain groups, including French officials. Instead, they collaborated on matters such as *waqf* (endowment) administration, public affairs, and the management of *zakat* (almsgiving) and taxation. (Fred R. Von der Mehden, 1980)

After Tunisia gained independence in 1956, gradual efforts to establish a comprehensive family law system continued. The development and codification of family law in Tunisia combined legal principles from both the Hanafi and Maliki schools. These efforts led to the successful enactment of the *Majallah al-Ahwal al-Syahsiyyah* (Personal Status Code) in 1956, which became the foundation of Tunisia's modern family law. (Hassan Sadily, 1994)

2. Polygamy in Islamic Law in Muslim Countries

According to Malaysia's marriage laws regarding

the permissibility of polygamy for men, there are three key aspects discussed: requirements, considerations, and exceptions. Unlike Indonesia, which explicitly states that monogamy is the fundamental principle of marriage, Malaysian law does not specifically affirm such a principle.

Regarding the requirements, all Malaysian family laws mandate that a man must first obtain written permission from a judge (court) before practicing polygamy. However, there are slight variations in the details, which can be broadly categorized into two groups. First, the majority group stipulates that polygamous marriages cannot be registered without prior court approval. Second, another set of laws allows polygamous marriages to be registered even without prior court approval, provided the husband first pays a fine or serves a penalty. (Khoiruddin Nasution, 2002)

The court's considerations for granting or denying permission are based on the circumstances of both the wife and the husband. The reasons considered from the wife's side include infertility, physical incapacity, inability to engage in marital relations, deliberate refusal to fulfill marital obligations, or mental illness. Meanwhile, the considerations from the husband's side include financial capability to support multiple wives and children, commitment to treating all wives fairly, assurance that the marriage will not pose harm to religion, life, physical well-being, intellect, or the existing wife's property, and that the marriage will not diminish the dignity of the wives or individuals directly or indirectly associated with the marriage.

As an exception, the Sarawak Marriage Law in Malaysia does not include the fourth criterion regarding potential harm. The Perak Marriage Law only emphasizes fairness towards wives, while the Kelantan Marriage Law does not mention any specific requirements for men seeking to practice polygamy. In Kelantan's law, there are no explicit conditions that must be met before engaging in polygamy.

Thus, the court's considerations in granting or denying permission for polygamy involve three parties: the wife, the husband, and related parties. The considerations stemming from the wife's side include infertility, physical disabilities, an unfit physical condition that makes sexual relations impossible, intentional refusal to fulfill marital rights, or mental illness. (Muhammad Jawad Mughniyah, 1996)

From the husband's side, which also serves as the basis for permitting polygamy, the considerations include the husband's financial capability to support his wives and future dependents from the marriage, as well as his commitment to treating his wives fairly. As for the considerations from related parties those directly affected by polygamy the marriage must not cause harm to the existing wives, and it must not degrade, either directly or indirectly, the standard of living or dignity of those who were previously dependent on the husband. The procedure for polygamy consists of three steps. First, the husband intending to practice polygamy must submit a request for permission from the court. The request must specify whether or not the consent of the current wife or wives has been obtained.

Second, the applicant and his wife or wives are summoned for a court hearing to verify the legitimacy of the request and the supporting documents submitted by the husband. For this purpose, a copy of the application, including details of financial responsibilities and whether the wife's consent has been obtained, must be attached to the court summons for the existing wife or wives. They, along with the husband, must appear in court to provide testimony and clarify their positions. Third, the court will issue a ruling either approving or rejecting the application. If any party is dissatisfied with the court's decision, they may file an appeal.

A husband who engages in polygamy without adhering to the legal provisions may generally face a maximum fine of one thousand ringgits, imprisonment for up to six months, or both. However, in Sarawak, the penalty is stricter, with a maximum fine of three thousand ringgit or imprisonment for up to two years. Additionally, such husbands are still required to pay any unpaid dowry and return any gifts or belongings borrowed from their wives. If the husband fails to make these payments, the dowry may be claimed as debt. Likewise, a husband who fails to treat his wives fairly may be considered a lawbreaker and could face a maximum fine of one thousand ringgits, imprisonment of up to six months, or both. (Tahir Mahmood, 1972)

In general, Malaysia's legal framework on polygamy aims to ensure that men who practice polygamy are financially capable of supporting and providing for the needs (clothing, food, and shelter) of their entire family (wives and children) and are able to treat their wives fairly. This prevents wives and children in polygamous marriages from being neglected. However, some states in Malaysia, such as Kelantan, still adhere to traditional concepts regarding polygamy. Furthermore, Malaysia's legal system appears to emphasize the value of wives within the husband's way of life.

In 1961, Pakistan introduced a law permitting polygamy only with prior approval from the Arbitration Council. Violators of this regulation may face imprisonment or fines. Historically, long before the partition of India and Pakistan in 1947, polygamy was a widely practiced cultural and traditional norm among Muslims. In Pakistan, the 1961 polygamy regulation, outlined in Article 6, states:

1. While still in a marital bond, no man is allowed to marry another woman unless he has obtained written permission from the Arbitration Council.
2. The request for permission must be submitted to the chairman in the prescribed manner along with the required fee, detailing the reasons for seeking an additional marriage and whether written consent from the current wife or wives has been obtained.
3. Upon receiving the request, the chairman will require the applicant and his legal wife or wives to appoint their respective representatives. The Arbitration Council will grant permission for polygamy if it deems the marriage necessary and justifiable, particularly concerning health considerations.

4. In making its decision, the Arbitration Council must document the reasons behind its ruling. The applicant may submit a revision request to the collector, whose decision will be final and cannot be contested in court.
5. A person who marries another woman without the permission of the Arbitration Council shall: (a) Immediately pay the entire dowry to his wife or wives, whether it was promised as a lump sum or in installments; if not paid, it will be considered an outstanding debt or rental. (b) Face imprisonment for up to one year, a fine of up to 5,000 rupees, or both.

Polygamy is permitted under the condition that written permission is obtained from the Arbitration Council (Judge) before a man can marry a second wife. Such permission is granted only if the Arbitration Council is convinced that the proposed marriage is justified and legitimate. In this regard, the consent of the first wife is required unless she is mentally ill, physically disabled, or infertile. (Rubya Mehdi, 1994)

The judge's approval must be obtained before proceeding with the second marriage. Anyone who violates this rule may be sentenced to up to one year in prison, fined up to 5,000 rupees, or both. If the dowry payment has been deferred, it must still be paid in full, and the existing wife has the right to seek divorce. Furthermore, if a second marriage is conducted without the council's approval, the marriage may be declared legally invalid.

Essentially, these reinforced regulations aim to reduce or restrict the practice of polygamy and its negative implications, particularly the injustice towards women. Tunisia, through Family Law No. 66 of 1956, which was enacted in 1957 by President Habib Bourguiba, completely prohibited polygamy and imposed legal penalties on those who violated this law. By 1964, not only could polygamists be punished, but their marriages were also declared invalid.

Tunisia's rationale for banning polygamy is based on two main points. First, institutions such as slavery and polygamy were allowed only during societal development stages but were prohibited once civilization advanced. Second, Surah An-Nisa (4:3) states that a man may marry multiple wives only if he can treat them fairly. However, historical evidence suggests that only the Prophet was able to do so. According to David Pearl, Tunisia sought modernization while remaining within the framework of religion.

Regarding polygamy, modern Tunisian legal scholars, influenced by Western lifestyles, have argued that the guidance provided in the Qur'an, specifically in Surah An-Nisa (4:3), should not be interpreted strictly as a moral warning but rather as a legal prerequisite for polygamy. According to them, a second marriage should not be permitted unless there is clear evidence that all wives will be treated fairly.

Tunisian legal scholars also assert that, in the context of modern social and economic conditions, fair treatment among wives is practically impossible. Therefore, they argue that the fundamental requirement for polygamy cannot be fulfilled. They have even taken a step further by

completely banning polygamy, contradicting the explicit explanation in the Qur'an.

3. Implementation of Polygamy Laws in Muslim Countries

Tunisia, through Family Law No. 66 of 1956, banned polygamy based on two arguments. First, the institution of slavery and polygamy were only permitted during the developmental phase of society but were prohibited once a society became civilized. Second, Surah An-Nisa (4:3) states that a man is allowed to practice polygamy only if he can treat his wives fairly. Tunisia still bases its legal stance on polygamy on the Qur'an because it seeks modernization while remaining within the framework of religion. Thus, Tunisia became the third Muslim country, after Turkey and Lebanon, to impose a complete ban on polygamy.

The polygamy laws in Malaysia, Pakistan, and Tunisia reflect different interpretations of polygamy, which can be categorized into six models of legal interpretation:

1. Emphasizing the requirement of fairness as stipulated in the Qur'an.
2. Granting wives the right to include an anti-polygamy clause in the marriage contract.
3. Requiring judicial approval before practicing polygamy.
4. Granting marriage institution the authority to oversee and regulate polygamy.
5. Completely prohibiting polygamy.
6. Imposing criminal sanctions on those who violate polygamy regulations.

From the arguments above, the polygamy laws in these three countries still fundamentally rely on normative interpretations of Qur'anic texts, although they are adapted to contemporary sociological contexts. Additionally, they are based on *siyasaḥ syar'iyah* (Islamic governance), which includes penalties and fines for violators, administrative requirements for polygamy approval, and adherence to traditional *madhhab* (Islamic jurisprudence), as seen in the case of marriage guardianship laws.

D. CONCLUSION

The development of polygamy laws varies across family legislation in Muslim countries, particularly in Tunisia, Pakistan, and Malaysia. This diversity is evident in the different legal provisions adopted by these nations, as outlined below:

1. Legal Requirements and Restrictions

- A. In Pakistan and certain states in Malaysia, men wishing to remarry must inform their prospective second wife about their previous marriage and obtain court approval.
- B. In Pakistan, a husband must also secure written permission from his first wife before entering into a second marriage. Additionally, various penalties are imposed for those who violate polygamy regulations. These measures can be interpreted as a modern interpretation of

the Qur'an, aiming to restrict polygamy due to its potential negative consequences, especially for women.

- C. Meanwhile, Tunisia prohibits polygamy entirely based on religious arguments. Modernist scholars argue that the Qur'an conditions polygamy on the ability to ensure absolute fairness among wives. Since achieving such fairness is deemed impossible, Tunisian law declares polygamy as unlawful (*haram*).

2. Legal Methods and Arguments

- A. The three countries employ different legal methodologies. Some apply a normative approach by interpreting Qur'anic texts sociologically to align with contemporary contexts.
- B. Others base their regulations on *siyasaḥ syar'iyah* (Islamic governance), incorporating penalties, fines, and administrative requirements, such as obtaining prior consent from the first wife. This follows established *madhhab* (Islamic jurisprudence) traditions, similar to cases regarding marriage guardianship (*wali nikah*).
- C. Additional legal reasoning stems from *madhhab* scholarship, employing *maslahah* (public interest) and *sadd al-dhari'ah* (blocking means to harm) to regulate polygamy.
- D. Some legal frameworks cumulatively combine normative texts and methodological reasoning, integrating *sadd al-dhari'ah* and *maslahah* while maintaining a balance between textual adherence and rational interpretation. This final point is closely tied to local settings, responses to modernity, and the way each country's legal system adapts to emerging discourses in Islamic law.

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