

Analysis Of The Islamic Legal Paradigm In Studying Monogamy, Polygamy And Divorce

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Info Articles	Abstract
Article History Received : 2021-07-03 Revised: 2021-07-11 Published: 2021-07-30	This article examines contemporary Islamic legal perspectives on monogamous and polygamous marriages, as well as the processes and underlying reasons for divorce within the framework of modern Islamic jurisprudence. In everyday life, marital relationships frequently encounter various social, economic, and emotional challenges, prompting individuals to navigate between monogamy as the ideal normative model and polygamy as a conditionally permissible practice under sharia. At the same time, divorce emerges as a complex phenomenon influenced by multiple factors, including incompatibility, economic hardship, and moral considerations. The study aims to explore the views, arguments, and proposed solutions of contemporary Islamic scholars in addressing these issues. Employing a qualitative bibliographic approach, this research draws upon classical fiqh literature alongside the interpretations and analyses of modern scholars, thereby bridging traditional doctrines with current socio-cultural realities. This method allows for a comprehensive understanding of how Islamic legal thought evolves in response to changing contexts. The findings reveal that contemporary Islamic law promotes a balanced, just, and context-sensitive approach to marital issues. Monogamy is strongly encouraged as the ideal form of marriage due to its alignment with principles of fairness and stability. Polygamy, while permitted, is strictly regulated and only justified under compelling circumstances, with the absolute requirement of justice among spouses. Furthermore, divorce is regarded as a last resort, permissible only after all efforts toward reconciliation, mediation, and mutual understanding have been thoroughly exhausted.
Keywords: <i>Monogamy, Polygamy, Divorce, Contemporary Jurisprudence.</i>	

I. INTRODUCTION

Marriage is an important part of human life, not only as a physical bond between two individuals, but also as a form of worship in Islamic teachings. In practice, two main forms of marriage are recognized: monogamy, where a person lives with only one partner, and polygamy, where marriage involves more than one partner, regulated by specific conditions under Islamic law. Both forms have long been discussed in classical Islamic jurisprudence.

However, with the passage of time and changing social conditions, societal views on monogamy and polygamy have shifted. Issues such as domestic justice, women's rights, and economic and social challenges have made polygamy an increasingly sensitive topic. Similarly, divorce, although permitted in Islam, remains a last resort after various resolution efforts have been exhausted. Contemporary Islamic jurisprudence studies emerge as a new

form of ijtihad (intelligence) by Islamic scholars to address the various issues surrounding marriage today. The goal is not to change existing laws, but rather to provide contextual interpretations that are more relevant to the social conditions of modern society. Through this approach, it is hoped that the values of justice, responsibility, and welfare can be maintained in the practice of marriage and domestic life for Muslims today.

II. RESEARCH METHODS

In this research, the author employed a qualitative approach using a literature review method. This method was chosen because the study focuses on exploring and understanding the views of Islamic scholars on monogamy, polygamy, and divorce from a fiqh perspective, both from classical and contemporary times. The primary objective of this approach is to explore the content, meaning, and development of Islamic legal thought related to marriage issues from

various scholarly sources.

The data sources in this study include primary and secondary written materials. Primary sources include classical fiqh books such as *Al-Mughni* the work of Ibn Qudamah and *Al-Umm* The work of Imam Shafi'i, as well as various references from the interpretation of the Quran and hadith that discuss the topic of marriage. Meanwhile, secondary sources include contemporary books, scientific journals, and previous research results relevant to this topic. The data obtained were analyzed using a descriptive-analytical approach, namely by explaining and explaining the content of the opinions of scholars, then connecting them to the social context of today's society. Through this method, it is hoped to gain a more comprehensive understanding of how Islamic law adapts and responds to the realities of modern marriage, without losing the core values of sharia such as justice, welfare, and responsibility.

III. RESULTS AND DISCUSSION

A. Understanding Monogamy, Polygamy, and Divorce

1. Monogamy

In the family context, women are often assigned leadership roles, while men are the leaders. Women are perceived as weak, gentle, and whiny. This labeling makes women incapable of leadership. Leadership requires a strong, decisive, and rational character, along with reliable technical skills. These are the traits considered essential for men. (Hikmah, 2012)

Marriage is the union of two people, a man and a woman, who are different in terms of family background, way of thinking, character and disposition, instinct, and even attitude to life, in a sacred bond that gives them a reason and shelter for love and affection and responsibility in a sense of belonging whose existence is protected by both religion and formal law. Therefore, marriage is the most appropriate institution as a shelter for the growth and development of the smallest institution of society, called the family.

Marriage in Islam is a highly recommended act of worship for all Muslims. Likewise, the monogamous marriage system was exemplified

by the Prophet Muhammad (peace be upon him) when he was married to Khadijah for 25 years. Monogamy comes from the Latin word monogamia, which is composed of the word "mono" (from the root word "manos" meaning one, single, or alone), and "gami" (from the root word "gamos" meaning marriage). Therefore, the word "monogamy" can be interpreted as meaning a single marriage or a single marriage. (Aprillia & Setya, 2019)

Meanwhile, in terms of terminology, monogamy has two meanings: (1) a condition of marriage that is only carried out with one person. (2) a marriage that is carried out with one person forever. In simple terms, monogamy is a marital relationship where a person only has one partner in his life for as long as the marriage relationship lasts.

2. Polygamy

Polygamy is a marriage in which a husband has multiple wives (polygyny) as his life partners simultaneously. Sidi Gazalba stated that polygamy is marriage between one man and more than one woman. The opposite is polyandry, which is marriage between one woman and several men. (S Gazalba, 1975)

Islam views polygamy as carrying more risks than benefits. Because humans are naturally jealous, jealous and like to complain. Therefore, polygamy is only permitted in emergency situations, such as when the wife turns out to be infertile. So in this situation, the husband is given permission to carry out polygamy because he is afraid that he will not have children, provided that he is truly able to provide for the entire family and must be fair in providing physical and spiritual support as well as his turn in residence.

3. Divorce

Divorce is a term from Arabic, namely "al-ṭalāq" which linguistically means to give, to release from one's ties, to separate, or to divorce. Al-Jaziri and al-Zuhaili The linguistic meaning of divorce is to dissolve a bond, untie a bond, or separate a bond, whether physical, such as a horse

or a captive, or a spiritual one, such as a marriage bond. For example, it is called "talāq al-naqah" or "nāqatun ṭāliqun," which means to dissolve a camel's bond and release it, or a camel that is free. (Zuhra & Jumhuri, 2018)

In principle, divorce is makruh based on the words of the Prophet Muhammad. which reads:

عَنْ عَبْدِ اللَّهِ
 اللَّهُ الطَّلَاقُ

"This means: the halal act that is most hated by Allah is talaq (divorce)." (HR. Abu Dawud and Ibn Majah. This hadith was authenticated by Al-Hakim, but Abu Hatim made it mursalann).

The meaning of talak tends to be directed towards the meaning of breaking the bonds of marriage, or divorce between husband and wife. Or it can also be understood as breaking the bonds of marriage by uttering the word talak or something similar. So it can be understood that talak is the termination of the bonds of marriage, resulting in the wife no longer being lawful to her husband,⁸ and vice versa. The severing of the bond due to talak is a release from all forms of rights and responsibilities as a husband. a husband and wife couple who were previously created because of a marriage contract. (Hafidz, 2022)

B. Terms and Conditions of Monogamy

Monogamy is a marriage system in which a person legally has only one life partner at a time. In Islam, monogamy has certain conditions and pillars, which can vary depending on the religious context and applicable law. The following are the conditions and pillars of monogamy based on the general view in Islam:

1. Conditions for Monogamy According to Islamic Law.

- a) Maturity: Both parties to a marriage must have reached an age considered sufficient for marriage (adulthood).
- b) Mutual consent: Both parties must mutually consent and agree to the marriage.

- c) No Legal Barriers: For example, there is no mahram relationship (siblings, parents, etc.) between the two parties.
- d) Guardianship: In some cases, if the prospective wife is still a minor or has never been married, the woman's guardian must be present and give permission.
- e) Dowry (Dowry): Men are required to give women a dowry as a sign of respect and part of women's rights.
- f) Marriage Contract: There is an ijab and qabul, which is a sign that both parties agree to marry with full awareness.

2. Pillars of Monogamy According to Islamic Law.

- a) Bride and Groom: Both parties must be present and legally present under the specified conditions.
- b) Guardian: For unmarried women, the presence of a guardian is a valid pillar of marriage.
- c) Ijab and Qabul: Statements or words that bind both parties in marriage.
- d) Witnesses: Two valid witnesses are required to validate the marriage contract.
- e) Dowry: A dowry given by a man to a woman who becomes his wife.

C. Conditions and Pillars of Polygamy.

Polygamy in Islam is a marriage in which a man has more than one wife simultaneously. While permitted, polygamy in Islam has strict conditions and pillars to ensure that the rights of each wife are respected and protected. The following are the conditions and pillars of polygamy based on the general view of Islam.

1. Conditions and conditions for polygamy in Islam:

- a) Justice: A man who wishes to practice polygamy must be able to treat all his wives fairly in terms of maintenance, treatment, and attention. This fairness is the main requirement for polygamy, as

stated in the Qur'an, Surah An-Nisa' [4:3] which states that if one is unable to treat all his wives fairly, it is better to only marry one wife.

- b) **Financial Capability:** A man must have the ability to provide a decent living for each of his wives and children, both in terms of food, shelter, clothing and other needs.
 - c) **First Wife's Consent:** Although not a legal requirement, many Islamic scholars believe that the first wife must be informed and agree to her husband's decision to remarry. This is a form of etiquette in a household.
 - d) **There is no legal prohibition:** Polygamy is only permitted if there are no legal obstacles, such as the presence of mahram (siblings, mothers, daughters, etc.) or marriage relationships prohibited by Islamic law.
 - e) **Able to Maintain Emotional and Psychological Justice:** A man must be able to give equal attention and affection to each wife emotionally, which is part of the justice that must be fulfilled.
2. **Pillars of Polygamy in Islam:**
- a) **Bride and Groom:** Polygamy must still follow the basic principles of Islamic marriage, namely the existence of a legitimate bride and groom, and their ability to carry out the marriage.
 - b) **Guardian (If the wife is not yet independent):** Just like a monogamous marriage, if one of the wives to be married is not yet independent or is still under a guardian, then the guardian must be present at the marriage contract process.
 - c) **Ijab and Qabul (Marriage Contract):** As in a monogamous marriage, the marriage contract between a man and a woman (second wife and so on) must be carried out with a valid ijab and qabul.

- d) **Dowry (Dowry):** Every marriage in Islam, whether monogamous or polygamous, must be accompanied by the giving of a dowry from the husband to the legal wife as a sign of respect and rights for the wife.
- e) **Witness:** The marriage contract process must be witnessed by two witnesses who are legally recognized under Islamic law. These witnesses must witness the marriage contract as proof that the marriage was valid.

D. Terms and Conditions for Divorce / Divorce.

Divorce (talaq) in Islam is one way to end a marriage when all other efforts to save the marriage have failed. Divorce is permitted in Islam, but only as a last resort after various remedial efforts. The following are the complete requirements and pillars of divorce in Islam. These are the requirements and pillars of divorce based on the general view of Islam.

1. Conditions for Divorce.

- a) There is a valid reason.
- b) Divorce in Islam can only be carried out if there is a valid reason according to sharia law. These reasons could be incompatibility, lack of harmony in the household, one party committing a detrimental act (such as domestic violence or infidelity), or other problems that cannot be resolved.
- c) **No Possibility of Reconciliation.**
- d) Before a divorce is finalized, a husband and wife must work to repair their relationship. Islam encourages reconciliation efforts, such as appointing a mediator or involving a third party to resolve the issue. Divorce may only be finalized if there is no further possibility of repairing the situation.
- e) Divorce is done at the right time.
- f) In Islam, divorce must be performed at the appropriate time, namely during the

period of purity or when the wife is not menstruating or pregnant. This is to ensure that the divorce is not carried out in an emotional state that could influence the decision and to ensure that the wife's rights (especially regarding the iddah period) are protected.

- g) A person who is divorcing must be of sound mind and mature. Divorce may only be performed by a person of sound mind and of legal age. A husband who is mentally or physically unwell may not perform a divorce.
 - h) The Right of Divorce to a Husband.
 - i) In the Islamic marriage system, the husband has the right to divorce (talaq). However, a wife can also file for divorce through khulu' (a divorce requested by the wife in exchange for a dowry from her husband) if she feels uncomfortable in the marriage.
 - j) No Legal Barriers.
 - k) If one of the parties (husband or wife) is in a situation that prevents divorce, for example during the iddah period or still in a period of invalid marriage, divorce cannot be carried out.
2. Pillars of Divorce.
- a) Husband and Wife.
 - b) Both the husband and wife who are divorcing must be present and directly involved in the divorce proceedings. A divorce can only be performed by a husband against a legally married wife according to Islamic law.
 - c) Acceptance and Acceptance.
 - d) Divorce is carried out through the acceptance of the marriage vows (ijab and qabul). In this case, the husband pronounces the word "talaq" (divorce), for example, "I divorce you," or a sentence indicating his intention to divorce. The wife does not need to respond as in the marriage contract, but

the divorce is considered valid once the husband pronounces the word "talaq" (divorce).

- e) Witness
Divorce in Islam must be witnessed by two fair witnesses. These witnesses are necessary to ensure that the divorce is carried out properly according to Islamic law and to prevent potential abuse of the right of divorce.
- f) Dowry (If Not Paid)
- g) If the dowry (dowry) has not been paid in full, the husband must pay it in full before the divorce is finalized. If it has been paid, the wife is entitled to her rights after the divorce is finalized.
- h) Iddah (Waiting Period)
- i) After a divorce, the wife is required to undergo a waiting period (iddah) to ensure there is no possibility of pregnancy arising from the marriage. The iddah period for a divorced wife varies depending on circumstances, such as menstruation or pregnancy, and typically lasts around three months or until delivery if the wife is pregnant.

E. Legal Basis of Contemporary Islamic Legal Paradigm on Monogamy, Polygamy and Divorce.

The contemporary Islamic legal paradigm on monogamy, polygamy, and divorce is based on fundamental Islamic principles found in the Qur'an, Hadith, and Ijma' (consensus of Islamic scholars). In the context of increasingly complex developments and social challenges, contemporary scholars conduct ijtihad, or reinterpretation, of Islamic legal sources to address issues arising in modern life. The following is the legal basis that serves as the foundation for contemporary Islamic jurisprudence studies related to monogamy, polygamy, and divorce:

1. Legal Basis for Monogamy in Islam

Monogamy is a legitimate form of marriage in Islam, prioritizing one husband and one wife. The Quran and Hadith provide a strong legal basis for monogamy as the primary and primary form of marriage.

- a) Al-Qur'an: One of the verses that forms the basis of the law of monogamy is Surah an-Nisa' [4:3]

طَابَ Mo تَقْسِطُوا فِي الْيَتَامَى فَانكحُوا Allah وَإِنْ خِفْتُمْ
 تَعَدَّلُوا Allah لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلثَ وَرُبْعَ ۚ فَإِنْ خِفْتُمْ
 Allah مَلَكَتْ أَيْمَانُكُمْ ۚ ذَلِكَ أَدْنَىٰ Al Mo فَوَاجِدَةً
 تَعُولُوا

"Then if you fear that you will not be able to deal justly with orphans, then marry women who are good for you, two, three, or four. But if you fear that you will not be able to deal justly with them, then marry only one." This verse shows that monogamy is the first form of marriage recommended and is more recommended if the husband is unable to deal justly with more than one wife.

- b) Hadith: In the Hadith, the Prophet Muhammad (peace be upon him) emphasized the importance of treating wives fairly in marriage. Although polygamy is permitted in Islam, monogamy is preferred by most Muslims, especially in modern society, which faces social and economic challenges.

2. Legal Basis for Polygamy in Islam.

Polygamy is permitted in Islam, but with strict restrictions. Contemporary Islamic jurisprudence emphasizes that polygamy can only be practiced if the husband can fulfill the conditions stipulated by Islamic law.

- a) Al-Qur'an: Polygamy is permitted in surah an-Nisa' [4:3], which also emphasizes the limits and conditions so that polygamy can be carried out fairly. The verse reads, "Then if you are afraid

that you will not be able to do justice to orphans, then marry women who are good to you, two, three, or four. But if you are afraid that you will not be able to do justice, then just marry one..."

- b) This verse explains that a man is allowed to marry more than one woman, but with the condition that he must be fair. If he is unable to be fair, then it is recommended to marry only one wife. Hadith: The Prophet Muhammad (peace be upon him) gave guidance regarding fair treatment in polygamy through several hadiths. In the hadith narrated by Bukhari and Muslim, the Prophet Muhammad (peace be upon him) said, "Whoever has two wives, then he is more inclined towards one of them, then he will come on the Day of Resurrection with his body tilted" (Narrated by Bukhari and Muslim). This hadith warns about the dangers of injustice in polygamy.

- c) Ijma' (Consensus of Scholars): Scholars agree that polygamy is permissible in Islam, but with strict restrictions. Contemporary scholars often emphasize that if polygamy is practiced, the husband must ensure fairness, physically, emotionally, and financially, between his wives. If he is unable to do this, polygamy is not recommended.

3. Legal Basis for Divorce in Islam.

Divorce (talaq) is permitted in Islam, although it is greatly hated by Allah. Divorce is only permitted if all efforts to reconcile the couple have failed.

- a) The Qur'an: One of the legal bases for divorce is Surah al-Baqarah [2:229], which states, "Divorce is two times. After that, it is permissible to reconcile with them in a good manner or to let them go in a good manner. And it is not lawful for you to take back anything of what you have given them, unless both of them

fear that they will not be able to observe the limits of Allah..." This verse provides guidelines regarding the process of divorce and reconciliation, and emphasizes that divorce can occur twice, after which there is no opportunity for reconciliation except in a legal and good manner.

- b) Hadith: The Prophet Muhammad SAW also explained about divorce in several hadiths, which among other things remind us that divorce is something that is very hated, but is still permitted as a last resort.
- c) In the Hadith narrated by Abu Dawud, Rasulullah SAW said, "Divorce is a halal matter, but it is most hated by Allah among the halal things." (HR. Abu Dawud). This hadith illustrates how Islam prioritizes maintaining the household, but provides a way out if the marriage can no longer be maintained.
- d) Ijma' (Ulama Consensus): Scholars agree that divorce should only be permitted after all attempts to reconcile the husband and wife have failed, whether through mediation or with the assistance of a third party. Contemporary Islamic jurisprudence emphasizes the importance of divorce being conducted fairly and without harm to either party, especially women and children.

F. Contemporary Islamic Jurisprudence Views on Monogamy, Polygamy, and Divorce in Modern Society.

Contemporary fiqh is an understanding of Islamic law that has evolved to address new issues emerging in modern society, including monogamy, polygamy, and divorce. Although the basic principles of fiqh are established in classical texts, their application in a developing society requires adaptation to current social, cultural, and economic conditions. The following are contemporary fiqh perspectives on monogamy, polygamy, and divorce in the context of modern society:

1. Monogamy in Contemporary Jurisprudence.

Monogamy, that is, marriage between one man and one woman, remains the primary form of marriage in Islamic jurisprudence. Essentially,

monogamy is a fundamental principle of Islamic law, and Allah SWT states in the Qur'an, Surah an-Nisa' [4:3], that if a man feels unable to act justly, it is better to marry only one woman. Furthermore, according to contemporary Islamic jurisprudence, monogamy is as follows:

a) Prioritizing Justice and the Rights of Wives:

In modern society, many contemporary scholars emphasize the importance of justice within the household. Therefore, they emphasize monogamy as a form that is easier to maintain and implement fairly, especially in the context of today's more complex social dynamics. : In many countries, especially in urban and modern societies, the high cost of living and the need to fulfill the rights of wives and children make monogamy a more practical option. Therefore, in many contexts, contemporary Islamic jurisprudence considers monogamy to be a more realistic way of fulfilling family responsibilities in the modern era.

2. Polygamy in contemporary jurisprudence.

Polygamy, which allows a man to marry more than one woman, is regulated in the Qur'an, Surah An-Nisa' [4:3], with the condition that he must be fair between the wives. Polygamy is permitted but is very limited and strictly regulated. The contemporary Islamic jurisprudence view on polygamy is as follows:

a) Elusive Justice:Contemporary Islamic jurisprudence often warns that achieving fairness between wives in polygamy is very difficult, both emotionally, financially, and socially. Many contemporary scholars argue that polygamy is best avoided unless there is a clear justification and the ability to act justly.

- b) Social welfare:In many modern societies, polygamy is considered problematic. Some countries, such as Indonesia, strictly regulate polygamy, requiring court permission and proof that the husband is capable of providing for his wives and providing fair treatment. Furthermore, the issue of inequality in

women's rights is often cited as a reason for further restricting the practice of polygamy.

- c) Social and Economic Conditions: Polygamy in modern society is often considered irrelevant to existing social and economic conditions, where both parties in a marriage often have to work to meet their living needs.

3. Divorce in contemporary jurisprudence.

Divorce (talaq) is permitted in Islam as a last resort to end a marriage, but is considered extremely hateful by Allah. Divorce is often avoided and is only recommended if all attempts to reconcile the parties have failed. Contemporary Islamic jurisprudence also considers divorce as follows:

- a) Divorce as the Final Solution: In modern society, divorce is often seen as a final solution when a couple can no longer maintain their marital relationship. Contemporary Islamic jurisprudence emphasizes the importance of peaceful co-existence (reconciliation) through mediation and the assistance of a third party, such as a religious court or family counselor, before resorting to divorce.
- b) Women's Rights Contemporary Islamic jurisprudence also places greater emphasis on women's rights in divorce. Many contemporary scholars support a woman's right to divorce if her husband fails to fulfill his obligations or causes unhappiness in the household, as in the case of khulu' (a divorce initiated by the wife in exchange for returning the dowry to her husband).
- c) A Fair and Harmless Divorce: Many contemporary Islamic scholars advocate that divorce be conducted fairly and without prejudice to either party. For example, the wife is entitled to her rights, such as maintenance for the iddah (waiting period), child custody, and other rights related to divorce.

G. CONCLUSION AND SUGGESTIONS

A. Conclusion

Monogamy is a form of marriage recognized in Islamic teachings and is exemplified in the life of the Prophet Muhammad, particularly when he lived with Khadijah for over two decades without marrying another woman. This demonstrates that marriage to one partner is not only permissible but also reflects the values of sincerity, loyalty, and long-term commitment to building a harmonious, loving, and compassionate household.

Linguistically, the word monogamy comes from a combination of Latin terms meaning marriage to one partner. In its understanding, monogamy can be defined as a marital relationship with only one person, either for a single time or for life. This view emphasizes the importance of an exclusive bond between husband and wife in the life of a household. In real life, the practice of monogamy is preferred by many people because it is considered simpler and more stable, both emotionally and economically. Although Islam permits polygamy, Islamic law imposes strict limitations, such as the ability to act fairly and have a justifiable reason. Thus, monogamy is considered an ideal choice for many in maintaining household harmony. Overall, Islamic teachings do not mandate a single form of marriage, but rather direct its followers to choose a form of marriage that aligns with each person's capacity and responsibilities. Monogamy, in the modern social context, is considered more suitable and relevant for forming healthy, stable families, capable of serving as the foundation of a strong society.

B. Suggestion

Given the significant role of monogamy in creating a peaceful and balanced family, it is appropriate for Muslims to deepen their understanding of the concept of marriage within religious teachings, from a legal, moral, and social perspective. Monogamy is not simply a lifestyle choice, but also a manifestation of a serious commitment to building a household relationship based on love, affection, and long-term commitment. Therefore, the role of religious scholars, educators, and Islamic outreach

institutions is crucial in providing a comprehensive understanding to the community. Comprehensive education about monogamy and polygamy will help Muslims make marriage choices that align with their personal circumstances and Islamic values. Furthermore, government agencies and related institutions dealing with family matters need to strengthen premarital counseling programs. The goal is to ensure that prospective couples are equipped mentally, spiritually, and intellectually before entering married life. With thorough understanding and preparation, monogamy can be a conscious and responsible choice, not simply driven by cultural coercion or environmental pressure.

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