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Pendekatan Qaidah Bahasa Arab Dan Hukum Islam
Dalam Penafsiran Al Qur'an

The Provision Of Polygamy In The Family Law Of Islamic
Countries (Saudi Arabia, Turkey, Tunisia, Malaysia
And Indonesia)

Problematika Hukum Poligami Di Indonesia (Analisis Terhadap
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Tafsir Ayat Ahkam Tentang *Syar'u Man Qablana* dan
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Transfusi Darah Menurut Hukum Islam

Pengaturan Lembaga Jaminan Fidusia Di Indonesia Perspektif
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**THE PROVISIONS OF POLYGAMY IN THE FAMILY
LAW OF ISLAMIC COUNTRIES
(SAUDI ARABIA, TURKEY, TUNISIA, MALAYSIA AND INDONESIA)**

Oleh :

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Abstraksi

Secara teoritis, ketentuan poligami telah diatur dalam kitab-kitab *fiqh* yang sejak lama telah dipedomani oleh seluruh umat Islam di dunia. Seiring dengan perkembangan zaman, praktik poligami ini bagi sebagian negara Islam tidak diperbolehkan karena dianggap tidak sesuai lagi dengan kondisi budaya masyarakatnya. Bagi sebagian negara lain, poligami masih dibolehkan dan mereka memegang teguh prinsip poligami sebagaimana yang telah diformulasikan para ulama Fikih. Sementara itu, sebagian negara lain menghendaki adanya pra-syarat yang ketat bila warganya hendak melakukan poligami. Tulisan ini akan mencoba menelisik ketentuan poligami di negara-negara Islam di Dunia meliputi Saudi Arabia, Turki, Tunisia, Malaysia dan Indonesia dan mencoba melakukan analisis perbandingan. Pilihan kelima negara ini sejatinya karena akan menggambarkan polarisasi kedalam tiga bentuk penerimaan negara Islam terhadap ketentuan poligami.

(Theoretically, the provisions of polygamy has been set in the books of fiqh which has long been guided by all Muslims in the world. Along with the development of the times, this practice of polygamy for some Islamic countries is not allowed because it is considered no longer in accordance with the cultural conditions of the community. For some other countries, polygamy is still permissible and they uphold the principle of polygamy as has been formulated by fiqh scholars. Meanwhile, some other countries want strict pre-conditions it their citizens are to engage in polygamy. This paper will try to explain the provisions of polygamy in Islamic countries in the world like Saudi Arabia, Turkey, Tunisia, Malaysia dan Indonesia and try to do a comparison analysis. The choice of these five countries is actually because it will describe the polarization into three forms of Islamic state revenues against the provisions of polygamy.

Key word: polygamy, law, Islamic countries

A. Introduction

Polygamy is one of the problems of Islamic law that still reap the pro-contra in Indonesia until today. This issue last appeared on the Indonesian Women's Ulema Congress at Pesantren Kebon Jambu al-Islamy Babakan Ciwaringin, Cirebon on the date 25-27 April 2017. The female Ulema call polygamy is not Islamic tradition, polygamy practice itself has existed since before the time of Prophet Muhammad. In this Congress also mentioned that polygamy is one form of domestic violence (KDRT).²⁰ In the *fiqh* literature, the provisions of polygamy (*ta'addud jauzaj*) impressed so easy in the sense that a husband is not so charged with certain procedures and conditions that must be passed. As the times progressed, this practice of polygamy could become a space for husbands not to be fair to the women they had married. Husbands who do not trust and not strong faith usually practice polygamy is not in accordance with the provision s of the glorious Shari'a. This phenomenon occurs in many Muslim countries in the world. This has led to family law reform efforts, especially with regard to polygamy provisions including Saudi Arabia, Turkey, Tunisia, Malaysia and Indonesia. This paper will try to trace how the provisions of polygamy are regulated in the five Muslim countries, whether polygamy is permissible or not in the regulation of the country and how the comparison of provisions of polygamy in family law in the five countries.

B. Polygamy: *Fiqh* Perspective

The word polygamy comes from the Greek word *polus* which means a lot and *gamin* which means married. This word then has a synonym of words in several languages, such as polygamy (English), *polygamie* (French) and *al-zawaj al-ta'addud* (Arabic). There are actually three forms of polygamy; Polyginiy (many wives), polyandry (many husbands) and group marriage. The term polygamy is defined by a man who has (married) several wives at the same time.²¹ The issue of polygamy has become a discourse that invites some theoretical studies of both aspects of history, psychology, social culture, religion and law. The Qur'an as a holy book of Muslim guidance gives a statement about this polygamy, that is on Q.S. Al-nisa verse (3) which means:

²⁰ See "Kongres Ulama Wanita: "Poligami bukan tradisi Islam". in <http://www.bbc.com/Indonesia-39716791>, accessed on 03 May 2017.

²¹ See A. Zakri Badawi, *A Dictionary of Social Sciences* (Beirut: Librarie Du Liban, 1978), p. 319 and Rahmat Hakim, *Hukum Perkawinan Islam* (Bandung: Pustaka Setia, n.d), p. 116.

"And if you are worried that you do not do justice to orphans (if you marry her), then marry other women who are good for you, two, three, four. But if you are afraid that you can not do justice, (then marry) only one person, or the slaves you have. That is better than to do no harm. "

This verse explains the points of polygamy as follows: 1) Polygamy can be up to four people. 2) It is prescribed to do justice between his wives. Anyone who has not been able to meet the above requirements, he can not have more than one wife. A man who actually believes he will not be able to do justice, but still do polygamy, it is said that his marriage ceremony is valid, but he has sinned. 3) The fair referred to in this paragraph is material (clothing, food, shelter and *qasam* (division of wives's turn) and immaterial (love and affection, *mawaddah wa rahmah*).²²

According to Rifa'at Syauqi Nawawi this is the only verse of the Qur'an that explains polygamy. The verse clearly does not encourage polygamy, but only gives permission, even with very strict conditions. Ironically, the above verse is often used as the basis for the issue that Islam is the only religion of revelation that permits polygamy.²³ According to Imam Shafi'i and *ijma'* of the scholars argue that it is permissible to polygamize up to four wives and no one is justified marrying more than that unless the Prophet himself is an exception, whereas the Shiites allow more than four wives even some of them allow without limit. Imam Qurthubi rejected their opinion on the grounds that the numbers two and three and four do not indicate the marriage of nine wives and the letter *wawu* here does not indicate the sum of the numbers.²⁴ The Rafidhah and some Zahiriyah scholars understand that the word *matsna* (two-two) is equivalent to two plus two, as well as the words *tsulatsa* (three-three) and *ruba'a* (four-four). In fact some Zahiriyah scholars argue more extreme than that, that they allow marry up to eighteen people on the grounds that the numbers are called repetitious and there is a letter *wawu* that denotes the meaning of the sum of the numbers. So the verse shows the meaning of "2 + 2 + 3 + 3 + 4 + 4 = 18. Such opinions clearly show their ignorance in understanding Arabic and *Ijma'* of Muslims or *tabi'in* who have never combined more than four wives.²⁵

²² See Ridwan,, "Poligami Dalam Pandangan Islam" <http://ridwan202.wordpress.com/2007/11/14/poligami-dalam-pandangan-Islam>, accessed on 19 Juli 2016.

²³ Rifa'at Syauqi Nawawi, "Sikap Islam Tentang Poligami dan Monogami", in Khuzaimah T. Yanggo and HA Hafiz Ansyary Az, *Problematika Hukum Islam Kontemporer*, Book II (Jakarta: Pustaka Firdaus, 1994), p. 104.

²⁴ Ridwan, *loc. Cit.*

²⁵ *Ibid*

In Islamic jurisprudence, the practice of polygamy does not require strict procedures such as the permission of a wife, court permission and the existence of certain conditions that allow a person to become polygamist. Abu Isma'il Muslim al-Atsari explains that Allah does not require polygamy except with one condition, that is to be fair to wives in the case of the something material (*lahiriyah*). In addition, it must also have the ability to do polygamy, because the ability is a requirement in carrying out all types of worship.²⁶

C. The Provisions of Polygamy in Muslim Country Countries

a. Saudi Arabia

Saudi Arabia is the country that uses the royal system or monarchy. Saudi Arabia belongs to an Islamic state whose family law is uncodified, it's mean that family law in that country has not been regulated in writing. Tahir Mahmood categorizes Saudi Arabia to a country that has traditionally applied Islamic law, where Islamic law does not move in to a rule of law. Looking at the historical background of Islamic law, the Arabian peninsula region initially embraced the Maliki school of thought. But since the agreement of Amir Muhammad bin Saud with Muhammad bin Abdul Wahhab caused the Hanbali school to become the official school in the territory of Saudi Arabia. Due to the absence of legislation regarding Islamic law in Saudi Arabia, to trace family law we must look at the reference of *fiqh* Imam Ahmad bin Hanbal. In countries where the law of marriage is still uncodified law, then the law of marriage is based on the jurisprudence of the schools that's embraced. In this case, Saudi Arabia's marriage law is in accordance with the Hanbali school. Usually, the marriage execution and other matters related to it as well as divorce and reconciliation is generally handled by local Ulema or religious institutions deemed to be authorized in dealing with the religious matters of Muslims.²⁷

Concerning about the provision of polygamy, Saudi Arabia has no special legal provision on this issue. There are no specific limitations or procedures to be done for husbands who want to be polygamous. Polygamy is allowed for men but limited to four wives at a time. Even in this case, it is known that the government has promoted polygamy as part of returning to the program Islamic values. In 2001, the Grand *Mufti* (the highest religious authority) issued a fatwa or opinion calling upon Saudi Arabian women to accept

²⁶ Abu Isma'il Muslim al Atsari, "Syarat dan Adab Poligami." <https://almanhaj.or.id/2552-syarat-syarat-poligami.html>. accessed on 03 Mei 2017.

²⁷ Muhammad Amin Summa, *Hukum Keluarga Islam di Dunia Islam*, (Jakarta: PT Grafindo Persada, 2005), p. 92.

polygamy as part of the Islamic package and declare that polygamy is needed against the "old virgin epidemic".²⁸

The concept of polygamy is quite common in the Kingdom of Saudi Arabia and men do not feel reluctant about having more than one wife. Even for the married women the concept of men having more than one wife is so common that they wouldn't be shocked if the same person would be seen with a different wife next time. The men of Saudi Arabia would have children with all their wives and that sometimes lead to a large number of siblings. Some would argue that because there are more women on this planet than men, spinsterhood can only be avoided if men keep more than one wife. Therefore when a woman reaches the age of thirty, she rather marry a man who is already married than stay a bachelor and struggle with the pressure the society would put her in. Another reason to not object to polygamy would be to avoid extra-marital affair and and child birth out of wedlck.²⁹

b. Turkey

The current family law in Turkey refers to the Turkish Civil Law Code issued in 1926. This law contains marriage provisions (covering engagement issues, marriage age, *mahram*, polygamy, wedding reception, Cancellation of marriage), divorce and separation, compensation and inheritance law. The 1926 law was born by adopting The Swiss Civil Code of 1912 with little change in accordance with the demands of Turkish conditions. As a country that has adopted the modern legislative process, the amendments to the law are always made be in accordance with the condition of the times. Similarly to the 1926 Act, six amendments have been made. These amendments resulted, among other things, relating to compensation, marriage dispensation, married couples given the opportunity to improve relationships when separating beds, as well as the elimination of all forms of divorce out of court.³⁰

With regard to the provisions of polygamy, Turkey prohibits the marriage of more than one wife during the first marriage is still in progress. The Turikish Code provides that no person shall marry again unless he proves that the earlier marriage has been dissolved by the

²⁸ See UUF ROUF, "Hukum Keluarga Islam (*Family of Law*) di Saudi Arabia" <http://kbpa-ujnk.blogspot.co.id/2012/11/hukum-keluarga-di-saudi-arabia>, accessed on 17 Juli 2016.

²⁹ See "The Polygamy Practcice in Saudi Arabia", <http://life-in-saudiarabia.blogspot.co.id/2014/10/polygamy-practice-in-saudi-arabia-.html>, accessed on 06 Mei 2017.

³⁰ See Umar Faruq Thohir, "Reformasi Hukum Keluarga Islam Turki," in Khoiruddin Nasution, et.al (ed.), *Hukum Perkawinan dan Warisan di Dunia Muslim Modern*, (Yogyakarta: ACADEMA, 2012), p.95-96.

death of either party or by divorce or by decree of nullity and that a second marriage may be declared invalid by the Court on the ground that a person had a spouse living at the time of marriage. The provisions of banning polygamy are contained in the Civil Code of 1926, articles 93, 112 and 114 which essentially prohibit the practice of polygamy and offenders are punishable. The permission of polygamy given by the Qur'an subject to certain specified condition has, thus, been voluntarily abandoned by the Turkish Muslims. The reason for this, as stated by some Turkish scholars, was that the Qur'anic legislation on the subject was "a great improvement over the unlimited polygamy of pre-Islamic Arabia thus pointing out the way to monogamy," and the changed social and economic conditions of the Turkish had made the Qur'anic condition for polygamy "unrealisable"³¹

In the Ottoman law of family rights in 1917, Article 38 stipulates the permissibility of *ta'liq talaq* for the wife that her husband should not marry another woman (polygamy). In 1915, the sultan in his decree stated that the wife could ask for a divorce if the husband left his wife. Another provision was issued in the same year in which a wife could ask for a divorce on the grounds that the husband had a disease that made it impossible to live together as a husband and wife.³²

c. Tunisia

Personal law was reformed and codified in Tunisia during the year of independence. In the late forties of this century, some prominent Tunisian jurists thought that by a fusion of Hanafi and Maliki schools of Islamic law a new code of personal status could be evolved in conformity with the changing social conditions of the country. A group of jurists prepared a comparative account of the law under the two schools and published it under the title *La'ihat Majallat al-Ahkam al-Shari'ah* (Draft Code of Shari'ah Law). Using source *La'ihat* and the family legislation of Egypt, Jordan, Syria and the Ottoman Empire, the committee submitted to the government the draft of a code of personal status. It was eventually enacted under the title *Majallat al-Ahwal al-Syakhsyah* (the Code of Personal Status 1956).³³

With regard to the provisions of polygamy, the family law of Tunisia includes a State which prohibits the practice of polygamy. The provision that prohibits polygamy in Tunisia is governed by the 1956 Article 18 of the Status of Personal Status Act. In this article

³¹ Tahir Mahmood, *Family Law Reform in The Muslim World*, (Bombay, N.M, Tripati PVT.LTD, 1972), p. 21.

³² Khoiruddin Nasution, *Status Wanita di Asia Tenggara*, (Jakarta: INIS, 2002), p. 245.

³³ Tahir Mahmood, *Personal Law in Islamic Countries (History, Text and Comparative Analysis*, (New Delhi: Academy of Law and Religion, 1987), p. 152

it is prohibited and whoever violates it can be jailed for 1 year or a fine of 24,000 Francs.³⁴ Moh Najib noted that with regard to the criminalization of polygamy in Tunisia, it is contained in chapter 18 which states:

1. Polygamy is prohibited, anyone who has married before her first marriage is completely over, then remarried, will be subject to a year's imprisonment or a fine of 240,000, - *malim* or both.

2. Who has married violated the rules contained in Law no. 3 of 1957 relating to the civil rule and the second marriage contract, while he is still bound by marriage, it will be subject to the same penalty.

3. Who deliberately marries a person subject to punishment, according to unofficial provisions, he may also be subject to the same punishment.³⁵

In article 18 above expressly stipulates that polygamy is prohibited. This prohibition is said to have a legal basis in another verse in the Qur'an, which states that a man is obliged to marry a wife if she believes she is unable to do justice to her wives (Q.S. an-Nisa 'verse 3). It turns out that neither the experience nor the revelation of justice can be fulfilled.

d. Malaysia

Prior to the entry of Britain, the laws that prevail in Malaysia are Islamic law which is still mixed with customary law. According to Abdul Munir Yacob that the laws prevailing in the states prior to British intervention are the *pepatih* customs for most Malay people in Negeri Sembilan and some areas in Malacca and the *tumenggung* customs in Semenanjung.. While the Malay in Sarawak follow the law of Sarawak Malay Court. The law is heavily influenced by Islamic law and principally in matters of marriage, divorce and buying and selling.³⁶ In 1880 the British recognized the existence of Islamic marriage and divorce law by introducing Mohammedan Marriage Ordinance, No. V of 1880 for enforcement in the Strait States (Pulau Penang, Malacca, and Singapore). After Malaysia's independence,³⁷ Family Law renewal efforts already cover all aspects related to marriage and divorce as in the

³⁴ As quoted Ibnu in the book Ali Trigiyatno dalam Muhammad Abu Zahrah, *Tanzima al-Usrah wa Tanzim an-Nasl*. See Trigiyatno, Ali. "Poligami dan Pengaturannya di Beberapa Negeri Muslim" <http://abdulkarimmunthe.blogspot.co.id/2013/05/poligami-dan-pengaturannya-di-beberapa.html>, accessed on 03 Mei 2017.

³⁵ See Tahir Mahmood, *Personal Law...*, *op. cit.*, p. 156 and Moh Najib, "Hukum Poligami di Negara Indonesia dan Tunisia," <http://my-dock.blogspot.co.id/2014/01/hukum-poligami-di-negara-indonesia-dan-tunisia>, p. 2, accessed on 20 Juli 2016.

³⁶ See Abdul Munir Yacob, *Pelaksanaan Undang-undang Dalam Mahkamah Syariah dan Mahkamah Sipil di Malaysia*, (Kuala Lumpur: Institut Kefahaman Malaysia, 1995), p. 8.

³⁷ Khoiruddin Nasution, *Status Wanita di Asia Tenggara: Studi Terhadap Perundang-undangan Perkawinan Muslim Kontemporer di Indonesia dan Malaysia*, (Jakarta : INIS, 2002), p. 62-65.

previous law. Among the Laws in question are the Malacca Family Law of 1983, the Kelantan Act of 1983, the Nine State Act of 1983, the Regional Guild Act of 1984, the 1984 Silver Act and others.

With regard to the provisions of polygamy, Malaysian family law has determined a pre-requisite of whether or not a person is polygamous. Under the Malaysian marriage law on whether or not a man may engage in polygamy, there are three matters to be addressed: (i) conditions, (ii) reasons for the consideration of polygamy, and (iii) procedures. In Malaysian legislation there is no affirmation of the principle of marriage. As for the conditions that must be met, first, polygamy without prior permission from the court should not be registered; Secondly, polygamy without prior permission from the court may be registered on the condition that it first pays a fine or undergo a predetermined sentence. Reasons for consideration for the court to grant permission or to no three parties (1) the spouse, (2) the husband, and (3) the parties concerned. As for the sourced from the wife is: because of sterility; an aging body; Due to improper or impossible physical conditions of sexual intercourse; Deliberately do not want to restore the rights of intercourse, or wife is crazy.

While the consideration of the husband, which is also a requirement for polygamy, is:

1. the husband has the ability to bear all the expenses of the wives and the persons who will become his dependent with his new marriage;
2. the husband tries to do justice among his wives.

Moderate procedures for polygamy are three steps:

1. The husband submits a request for permission from the judge, along with the consent or permission of his wife / wives.
2. Calling of the applicant and wife or wives, as well as examination by the court against the truth of the applicant.
3. Court rulings in the form of acceptance or rejection of the applicant's petition.

Husbands who do polygamy that is not in accordance with the rules of legislation set, in general can be punished in the form of punishment of a maximum of one thousand ringgit or a maximum of six months or both.³⁸

³⁸ *Ibid*, h. 111-112.

e. Indonesia

In the perspective of Indonesian marriage law regulated in Law on Marriage no. 1 of 1974 and other relevant regulations, affirms that in principle the marriage law adheres to monogamous principles and polygamy is strictly limited. Polygamy is permissible if desired by the person concerned and because the law and religion concerned allow it. This means that for the Muslim population there is an opportunity to carry out polygamy, because Islamic law is not prohibited and legislation also provides an opportunity for it. Although the marriage law of 1974 provides opportunities for polygamy, but there are several reasons that should exist and are considered appropriate to be given permission to someone who wants to do it. In Article 4 paragraph (2) of marriage law of 1974 affirmed

"The court referred to in paragraph (1) of this article only grants permission to a husband who will marry more than one if:

1. The wife can not fulfill her duties as a wife.
2. Wife gets a body defect or disease that can not be cured.
3. Wives can not bear offspring.

Based on the sound of Article 4 paragraph (2) above the reasons that can be submitted for obtaining a polygamy permit are: (1) The wife can not fulfill her obligation as a wife, (2) The wife gets an incurable body disability or disease. (3) The wife can not bear offspring. Apparently the three reasons set by the Act are difficult reasons. This means that if a husband does not find the reasons as mentioned, then the court will not give him permission to polygamy. So the permission is granted with a very important and "forced" reason.

In addition to the foregoing reasons, for polygamy a person must also fulfill certain pre-determined requirements. In Article 5 paragraph (1) mentioned:

"To be able to file an application to the court as referred to in Article 4 paragraph (1) of this law, the following conditions must be fulfilled:

1. Approval of wives / wives;
2. There is a guarantee that the husband guarantees the necessities of life of their wives and children;
3. There is a guarantee that the husband will be fair to his wives and their children. "

These terms of stipulation also seem rather difficult to do by someone who wants to polygamy. A wife is usually not so easy to give consent to her husband for polygamy. Women tend not to be combined and share "husband" with other women. The law also calls for the assurance of husbands who want to become polygamous to ensure the survival of their wives and children. If the wife is more than one, the likelihood of living expenses will be

greater especially when children are born from second, third and fourth wives. For that reason it is reasonable if the life insurance of the wives and children really can be overcome by the husband.³⁹

Furthermore, the Act also requires assertiveness from a husband about the assurance that he will be fair to his wives and their children. In Compilation of Islamic Law (KHI), also requires this fair conduct as set forth in article 55:

1. Having more than one person at a time, limited to only four wives.
2. The main requirement to marry more than one person, the husband must be able to do justice to his wives and children.
3. If the main condition mentioned in paragraph (2) is impossible to fulfill, the husband is prohibited from having more than one wife.

Under article 55 of this KHI consider the fair behavior of a husband to be the main condition and the most attention. Even if these conditions can not be met, husbands are forbidden to polygamy.

Observing the polygamy procedures established by the legislation seems rather difficult and prudent. This is in line with the principle of marriage that is strictly bound polygamy and the principle of improving the degree of women. Because however, the practice of polygamy without control and done freely, it can harm the human rights of women.⁴⁰

D. Comparison Analysis

Seeing the provisions of polygamy prevailing in the five Islamic countries of the World, including Saudi Arabia, Turkey, Tunisia, Malaysia and Indonesia, we can classify it into three major groups. First, countries that allow unconditional polygamy, second; A country that allows polygamy under certain conditions and third; Countries that do not allow polygamy at all, meaning to ban the entry of polygamy. The group of countries that allow unconditional polygamy is Saudi Arabia. As explained earlier, that in Saudi Arabia there is no provision or any special law that regulates polygamy. The rules of polygamy refer to the opinion of the ulema who thrive there ie the Hanbali school. In the jurisprudence books, polygamy is usually only required in the limited number of four wives, while the requirement of the first wife's permission or certain conditions that cause polygamy is not regulated. This

³⁹ Ibnu Radwan Siddik T, *Hukum Perdata Islam di Indonesia (Kajian Tentang Hukum Perkawinan Islam Dalam Undang-undang No 1 Tahun 1974 dan Kompilasi Hukum Islam)*, (Medan: Zai Grafika Publishing, 2010), p. 84.

⁴⁰ *Ibid.*, p 85.

means polygamy may be implemented without requiring certain conditions as applicable in other Islamic countries.

The group of countries that allow polygamy under certain conditions is the state of Indonesia and Malaysia. The law of marriage in Indonesia in principle adheres to the principle of monogamy, one wife for one husband. But in certain circumstances, polygamy can be done by a husband. The condition may be because the wife can not perform her duties as a wife, the wife can not give birth (sterility) or the wife has an incurable body disability. But despite these conditions, not necessarily a husband can carry out polygamy. The husband must meet several requirements again such as the approval of the wife whether oral or written consent, the presence or absence of the husband's ability to ensure the necessities of life of his wives and children. Likewise with Malaysia, this country also allows polygamy under certain conditions. Among the reasons that allow polygamous husbands are wives to be infertility, physical lust, due to physical improper or impossible sexual intercourse or wife is crazy. Then required also the husband must have sufficient financial ability to bear the livelihood of his wives and children later. On the appeal of Indonesia, Malaysia more firmly with regard to violation of this polygamy provisions. In Malaysia, husbands who engage in polygamy that are not in accordance with established rules of law can generally be punished with a maximum fine of one thousand ringgit or maximum six months or both, while in Indonesia no such physical and financial sanctions are found.

Meanwhile, state groups that ban polygamy or do not allow polygamy at all are Turkey and Tunisia. Turkish law prohibits more than one marriage during the first marriage still in progress. The law states that a person is not married, if he does not prove that the first marriage broke up due to death, divorce or a cancellation statement. Similarly with Tunisia, in addition to banning polygamy, the country also imposes strict punishment sanctions for polygamists. Mentioned sanctions are imposed a one year imprisonment or a fine of 240,000, - *malim* or both.

The differentiation of polygamy provisions in Islamic countries mentioned above is in line with the ideas of Islamic family law renewal which in one country "thrives" while in other countries it is still difficult to "move" due to the strong implementation of Islamic law as it is in the books Jurisprudence. Tahir Mahmood divides the application of family law to Muslim countries into three forms. Firstly, the countries where the classical family law of Islam, according to it various schools, remain unchanged and uncodified till the present day. Second, the countries where Islamic family law has been completely abandoned and replaced by the modern status law applicable to all citizens irrespective of their religion. The third are

the countries where the locally prevalent forms of Islamic family law have been reformed through modern legislative process, either by adopting provisions of the various other schools of Islamic law itself or by subjecting some of its institutions to certain regulatory measure.⁴¹

According to Ali Trigyatno, if observed then the government of the majority of Muslims in addressing polygamy is divided into three groups namely the state that prohibits (forbid) polygamy, tighten the permissibility of polygamy and that responded as usual as the provisions in the books of *fiqh* so far. Countries that dare to make polygamy as unlawful objects are Turkey and Tunisia. The basis of its consideration in prohibiting polygamy practice is that due to the fair conditions as required in the Qur'an it is impossible to be fulfilled and fulfilled by the husband as stated in the Qur'an, "*wa lan tastati'u 'an tadilu bainan nisa'i walau harastum bihi*". By itself if the requirement of skill can not be met then the permissibility of polygamy to be closed. So the state takes a policy to ban the permissibility of polygamy and even make it as a crime that can be sentenced for the perpetrators.⁴²

Nasaruddin Umar also mentions that the development of contemporary family law in the Islamic world is caused by four factors: 1) whether a country retains its position or is dominated by a European country. 2) The character of ulema or leadership organization. 3) The development of Islamic education. 4) the nature of the colonial policy of the colonizing countries. The reform of Islamic law in Turkey can go smoothly, government policies in family law followed by Turkish residents. Although there is a difference between modernist and traditionalist, but not to the degree of antipathy. This is due to the nature of the ulama's organization in Turkey which has no strong religious institutions such as in Egypt (al-Azhar). This is as a result of the secularization applied in Turkey.⁴³ As well as Tunisia, although the inhabitants are almost 99,5% Muslim, but the idea of secularism is inherent in the life of their country. It has been reported that the ruling party of Tunisia, Islamist Ennahda, said that Tunisia will not apply Islamic law as its new constitution. This decision was taken to defend secularism in that the north African country. There is no change in the first chapter of constitution of 1959, the constitution has been accordance with what the conservative want.

⁴¹Tahir Mahmood, *Family Law Reform...op. cit.*, p. 2-3.

⁴²Ali Trigyatno, *loc. cit.*

⁴³Nasaruddin Umar, "Hukum Keluarga Kontemporer di Negara-negara Muslim", paper presented at Seminar Nasional Hukum Materiil Peradilan Agama, Antara Cita, Realita dan Harapan, Hotel Red Top Jakarta, 19 Februari 2010, p. 6.

The first article of the constitution states that Tunisia is a free country, religion of Islam, speaking Arabic and in the form of a republic.⁴⁴

E. Conclusion

The provisions of polygamy are actually explicitly regulated in the Jurisprudence literature and practiced as part of Islamic law since the time of the prophet Muhammad. Along with the development of the times, polygamy provisions contained in the book of *fiqh* is changing according to the social and political conditions of a nation that is predominantly Muslim. Saudi Arabia still holds strong indigo values of polygamy as contained in the book of jurisprudence because it is supported by the government and social condition of the society's diversity. While Malaysia and Indonesia made changes to the pre-requisite of polygamy, it means that in family law in these two countries still make *fiqh* as a source of law but adapted to the plural social and political conditions of the plural nation and does not make Islam the only official state religion. What is unique is what happens in Turkey and Tunisia, although these two countries are predominantly Muslim, but do not allow anyone at all to be polygamous. This is not apart from the idea of secularization that enters not only in the social life of its people, but also its political and legal life. As far as the writer's observation, the absolute prohibition of polygamy practice is not a solution, it will even alienate the Islamic nation from the value of sharia which must have noble purpose.

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⁴⁴ Republika, "Tunisia Tak Lagi Terapkan Hukum Islam," <http://m.republika.co.id/berita/internasional/global/12/03/27/m1i900-tunisia-tak-lagi-terapkan-hukum-islam>., accessed on 06 Mei 2017

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