



Polygamy Without Permission in SEMA No. 4 of 2016 Persfpective of Islamic Law

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Abstract. This research aims to analyze unlicensed polygamy in Indonesia from the perspective of Islamic law and the challenges of law enforcement based on Supreme Court Circular No. 4 of 2016. According to Circular No. 4 of 2016, unlicensed polygamy can be punishable by imprisonment for five to seven years. However, in the context of Islamic law, there is no regulation regarding punishment for unlicensed polygamy. This study employs a descriptive-analytical research method with a qualitative approach. Data are obtained through literature review and content analysis from various relevant sources. The research findings indicate that unlicensed polygamy violates the principles of justice, equality, and gender justice in Islam. However, law enforcement against this practice in Indonesia faces various challenges, including diverse legal interpretations, weak legal awareness among the public, and deficiencies in the judicial system. Therefore, more serious efforts from authorities are needed to strengthen law enforcement and raise legal awareness in society, as well as legal reforms that reinforce the provisions of Circular No. 4 of 2016.

Keywords: Polygamy Without Permission, SEMA No. 4 of 2016, and Islamic Law

1. Introduction

Polygamy without permission has become a controversial issue in Indonesia and many other countries. In Indonesia, where the majority of the population is Muslim, the officially recognized principle of marriage is monogamy (Halim, 2019; Mukri, 2018; Reza Fitra Ardhian et al., 2015), meaning that a person can only marry one partner. However, if there are strong reasons that compel a husband to consider polygamy, and he obtains consent from his first wife as well as permission from the religious court, then the husband has the opportunity to engage in polygamy. Thus, Indonesian marriage laws adhere to the principle of open monogamy. This provision is based on Marriage Law No. 1 of 1974 and the Compilation of Islamic Law. The regulation of polygamy is intended to avoid conflicts and injustices in polygamous marriages. Polygamy without permission is fraught with legal and social conflicts.

Polygamy without permission has become increasingly problematic with the emergence of SEMA No. 4 of 2016. According to SEMA No. 4 of 2016, it is stated that individuals engaging in polygamy without permission can be charged under Article 279 of the Criminal Code and sentenced to five to seven years in prison (Agung, 2016). This illustrates that polygamy without permission is a criminal act and can therefore be subject to sanctions. In the context of Islamic law, there is no regulation criminalizing polygamy and its sanctions (Jayusman et al., 2024b).

Studies or research on polygamy without permission can be found in abundance. These various researches can be classified into several categories. Firstly, from the aspect of legal protection for the second wife, as written by Nur Indah Sari (N. I. Sari, 2021) and Misda Deni et al (Deni et al., 2020). Secondly, from the aspect of legal review as written by Rizkal (Rizkal,

2019) and Gentur Cahyo Setiono (Setiono & Bahroni, 2018). Thirdly, from the aspect of impact as written by Misbahul Munir Makka (Makka & Ratundelang, 2022), Suhaila Zulkifli (Zulkifli, 2019), Alfiyah Faizatul Arif (Arif, 2021), and Arum Sari Puspa Dewi (Dewi, 2020). Fourthly, from the aspect of sanctions as written by Baina Sari et al (B. Sari & Ramzati, 2023), Fahmil Huda Dinil Putra et al (Putra et al., 2019), Faiq Tobroni (Faiq Tobroni, 2016), and Rafli sman (Rafli sman, 2016).

Thus, several studies on polygamy without permission have been presented. Among the studies mentioned earlier, this research distinguishes itself by focusing on the criminalization of polygamy in Supreme Court Circular No. 4 of 2016. This study aims to explore the perspective of Islamic law and the challenges of enforcing Supreme Court Circular No. 4 of 2016 regarding polygamy without permission. To ensure clarity and direction in this research, the author formulates two research questions: What is the perspective of Islamic law regarding the sanctions for polygamy without permission in Supreme Court Circular No. 4 of 2016, and what are the challenges of law enforcement based on Supreme Court Circular No. 4 of 2016 regarding polygamy without permission? These two research questions will guide the author in obtaining research data and determining the necessary data sources. This research is important for two reasons. First, there is still fanatical and classical understanding in society regarding polygamy. Second, in Indonesia, polygamy without permission is one of the reasons for divorce (Putra et al., 2019). This argumentation is at least what drives the author to conduct this research.

2. Methods

This research employs a qualitative approach with an analytical descriptive research method. Data are collected through literature review from various relevant primary and secondary sources concerning the research topic. Content analysis is utilized to identify patterns and main themes within the data. The aim of this research is to comprehensively understand and analyze the regulations regarding polygamy without permission as stipulated in Supreme Court Circular Number 4 of 2016 from the perspective of Islamic law. Through this approach, it is hoped that the congruence and incongruence between Indonesian legal regulations and Islamic legal principles, as well as their impacts on women's rights, family stability, and principles of justice within society, can be elucidated.

3. Results and Discussion

a. Polygamy in Classic Fiqh Provisions

Taadud al-jauzaat is a fiqh term used to refer to polygamy, meaning "marriage with more than one woman at the same time." The verse often cited in this context is Surah An-Nisa, verse 3, which permits a man to marry up to four women as wives, provided that he can treat them fairly. *"And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice]"*.

This verse emphasizes the importance of fairness in polygamy. Fairness in this context encompasses all aspects of life, such as financial support, housing, time, attention, and affection. The verse also suggests that husbands should consider their ability to be fair before deciding to marry more than one woman (Qadir, 2019). If a husband is concerned that he cannot be fair to his wives, then it is recommended to marry only one woman. Additionally, this verse also provides an alternative for the husband if he is unsure about being fair, which is to marry only one woman or choose from his owned slaves (Salamah, 2019). This indicates

that polygamy is not an absolute obligation, but rather a matter of capability to consider and fulfill responsibilities fairly. Most importantly, this verse emphasizes that it is better for a husband not to commit injustice against his wives. In this context, the obligation to act justly is considered more important than marrying more than one woman if the husband is unsure of fulfilling this obligation (Ahmad & Rozihan, 2021; Arsal & Imran, 2023; Nurvita Rahmayanti, 2022; Qadir, 2019). Thus, the concept of fairness in verse 3 of Surah An-Nisa emphasizes the importance of fairness in the context of polygamy in Islam, and provides guidance for husbands to consider wisely before deciding to marry more than one woman. In addition to verse 3 of Surah An-Nisa, there is also verse 129. *"...And you will never be able to be fair between wives, even if you should strive to do so. So do not incline completely [toward one] and leave another hanging. And if you amend [your affairs] and fear Allah - then indeed, Allah is ever Forgiving and Merciful"*.

In this verse, Allah conveys that it is difficult for a husband to truly be fair among his wives, even if he strives earnestly (Asvia, 2020). Thus, the concept of fairness in verse 129 of Surah An-Nisa emphasizes the challenge of achieving perfect justice. Injustice towards wives can trigger their disobedience to the husband (Jayusman et al., 2022, 2024a).

In addition to the above verses, there are also Hadiths that regulate the procedures of polygamy and provide guidance to Muslims on how to carry out polygamy properly (Qudsy & Burhanuddin, 2016; Syahriza, 2018). Regarding the legality of polygamy, scholars' opinions vary. This is due to their interpretations of religious evidence and specific social contexts. Some scholars believe that polygamy is permissible, but it must be done with careful consideration and fairness. On the other hand, there are also scholars who consider polygamy as a practice that should be avoided unless in specific circumstances that genuinely require it.

In classical fiqh, there are conditions that must be fulfilled in polygamy, namely justice. A man must be able to treat his wives fairly (Handayani et al., 2019). A husband practicing polygamy must be able to fulfill the material needs and maintenance for his wives adequately. This illustrates that a man practicing polygamy must be able to meet the rights of his wives, such as providing sustenance, shelter, and fair treatment. However, justice in Islam does not only encompass financial aspects but also other aspects such as emotional support and time (Sundari et al., 2023).

b. Polygamy in Supreme Court Circular No. 4 of 2016

Polygamy and its regulation in Indonesia have been part of social, religious, and legal debates for years. Before the colonial period, polygamy in Indonesia was regulated by customs and Islamic law. During the colonial period, particularly under Dutch East Indies rule, colonial criminal law did not explicitly regulate polygamy. However, polygamy was governed by customary law and Islamic law (Mubarok, 2012). After Indonesia gained independence, the state underwent legal reforms by issuing Law No. 1 of 1974 concerning marriage (Kushidayati, 2018; Malaka, 2023). Various aspects related to marriage, including polygamy, are regulated in the Marriage Law from articles 3 to 5. Currently, Law No. 1 of 1974 concerning Marriage has been amended to Law No. 16 of 2019. According to this law, essentially, in a marriage, a man is only allowed to have one wife, and vice versa. Thus, fundamentally, Indonesian marriage law is based on monogamy. As emphasized in Article 3 paragraph (1) of the Marriage Law along with its explanation (Wandri et al., 2023).

"Essentially, in a marriage, a man is only allowed to have one wife, and a woman is only allowed to have one husband (monogamy principle)". However, the Marriage Law allows polygamy if desired and permitted by the relevant parties. This is based on Article 3 Paragraph 2 of the Marriage Law.

"The court may grant permission to a husband to have more than one wife if desired by the parties involved." For those who are Muslim, provisions regarding polygamy are further regulated in the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI) (Harahap, 2019) from articles 55 to 59. Related to the court's permission, it is stated in Article 56 Paragraph (1) as follows: *"A husband who wishes to have more than one wife must obtain permission from the Religious Court."*

The court will grant permission for polygamy if the husband obtains consent from the wife/wives. Additionally, the husband ensures the full fulfillment of the rights of his wives and their children (Handayani et al., 2019), as stated in Article 5 of the Marriage Law (Marni et al., 2023).

This consent is not required for a husband if his wife/wives cannot be asked for consent and cannot be party to the agreement. Additionally, consent is also not needed if there has been no news from the wife for at least two years or due to other reasons that need to be assessed by the court judge. These rules reflect that the consent of the wife is an absolute requirement for polygamy. Then, in 2016, the Supreme Court issued Supreme Court Circular No. 4 of 2016. Supreme Court Circular (SEMA) No. 4 of 2016 is a guideline issued by the Supreme Court of the Republic of Indonesia regarding polygamy without permission. The main point regulated in this circular is the requirement of permission from the first wife before a husband can engage in polygamy. If a husband violates this provision and engages in polygamy without permission from his first wife, then Article 279 of the Criminal Code can be applied. A marriage conducted by a husband with another woman while the husband does not obtain permission from his previous wife for another marriage, then Article 279 of the Criminal Code can be applied (Liza et al., 2023).

In paragraph (1), it is mentioned:

"Anyone who conducts a marriage while knowing that the marriage or existing marriages constitute a lawful impediment to it shall be punished with imprisonment for a maximum of five years."

Constitute a lawful impediment means that the husband, in marrying again, actually knows and realizes that to marry again, he requires permission from his wife and polygamy permission from the court, but he disregards this.

"In paragraph (2), it is mentioned:

"The punishment is even more severe, namely imprisonment for 7 years if the husband who remarries hides the fact that he is still bound by marriage to another woman."

Thus, it appears that Supreme Court Circular No. 4 of 2016 does not explicitly regulate legal sanctions for perpetrators of polygamy without permission. However, the practice of polygamy without permission usually violates broader legal provisions, such as those stipulated in Article 279 of the Criminal Code. In the first paragraph, it is mentioned that there is a threat of imprisonment for up to five years for someone who remarries, knowing that the existing marital status constitutes a lawful impediment. This means that the perpetrator knows that they should obtain permission from their wife or certain approval before remarrying, but still does so without such permission or consent. In the second paragraph, the threat of punishment is more severe, namely imprisonment for seven years. This applies if the husband who remarries hides the fact that he is still bound by marriage to another woman. In other words, the perpetrator remarries without disclosing that he still has a valid marital bond with someone else, which, if known, may serve as an obstacle to the new marriage (Dafizki et al., 2023).

In conclusion, Article 279 of the Criminal Code aims to protect the validity of marriage and prevent marriages that violate legal provisions, especially concerning the need for specific

permission or consent before entering into a new marriage. Violations of this article can result in serious legal consequences for the perpetrators. It can be said that polygamy without permission is considered a criminal offense (Roslinda et al., 2019) which can result in imprisonment for five to seven years for violating the legal regulations set within the context of positive law in the country (Raflisman, 2016). The inclusion of rules set forth in Supreme Court Circular Number 4 of 2016 can be justified for several reasons. Firstly, it pertains to violations of positive law. Polygamy without permission violates the provisions of positive law in Indonesia. Although polygamy is permitted in Islamic teachings, Indonesian law regulating the procedure for polygamy requires permission from the first wife before it can be practiced. Violation of this rule is considered a breach of the law and can be subject to criminal sanctions. Secondly, it concerns the protection of women's rights. The rule requiring permission from the first wife before polygamy is practiced is intended to protect the rights of women, including the rights of wives. This step is in line with the principle of protecting women's rights in the context of marriage and family life. Polygamy without permission can result in injustice, inequality, and abuse against the wives involved. Thirdly, it addresses family stability and welfare. The practice of polygamy without permission can disrupt family stability and welfare. The presence of additional wives without the permission of the first wife can cause conflict and tension within the household. Therefore, the criminal punishment imposed on those who engage in polygamy without permission is intended to promote awareness of the importance of considering the welfare and stability of the family. Fourthly, it serves as a deterrent in law enforcement. The strict criminal punishment against those who engage in polygamy without permission is also intended as a measure to prevent and reduce such practices in society. By imposing serious sanctions, it is hoped that a deterrent effect will be created for those who are inclined to violate rules and consider the serious legal consequences before engaging in polygamy without permission. Thus, polygamy without permission is considered a serious violation of the law because it contravenes rules set in positive law, violates women's rights, disrupts family stability, and requires decisive measures for prevention and law enforcement.

c. Challenges and Constraints in Enforcing the Law on Unauthorized Polygamy in Supreme Court Circular Number 4 of 2016

Unauthorized polygamy in Indonesia poses complex legal and social issues. Regulations related to polygamy still face many challenges in enforcement. The enforcement of Supreme Court Circular Number 4 of 2016, which regulates permission from the first wife before practicing polygamy, is confronted with several challenges and constraints. Firstly, the legal awareness of the community. One of the main challenges is the low legal awareness among the public, especially regarding the provisions of polygamy in Supreme Court Circular Number 4 of 2016. Many people have a limited understanding or are unaware of the contents of this circular, thus hindering law enforcement efforts. This is evidenced by the high number of divorces resulting from husbands practicing polygamy without permission from their wives (Putra et al., 2019), leading to conflicts and ultimately ending in divorce with the previous wife. Secondly, cultural and social issues (Khotimah, 2008). Polygamy, especially in Indonesia, is associated with cultural and social values in society. Issues such as stigma against women who refuse polygamy (Jannatur Rahmah et al., 2020) or the belief that polygamy is an absolute right of a husband can pose challenges in enforcing Supreme Court Circular Number 4 of 2016. Thirdly, non-compliance and deviations. There is a risk of non-compliance with the provisions of Supreme Court Circular Number 4 of 2016 by parties engaging in polygamy without permission. Additionally, there is also a risk of deviations in the law enforcement

process that can hinder efforts for fair and transparent law enforcement. Fourthly, other legal powers. The sanctions for polygamy in Supreme Court Circular Number 4 of 2016 may overlap with other regulations or laws that also regulate polygamy or marriage. This could confuse the law enforcement process and make it difficult to make appropriate decisions. Fifthly, Supreme Court Circulars do not have binding legal force like laws. This means that Supreme Court Circulars do not directly create legally binding obligations for individuals or institutions, as laws do.

While Supreme Court Circulars do not have legal binding force, they hold significant moral authority within the judicial system in Indonesia. Because Supreme Court Circulars serve as guidelines and directives for law enforcement, especially for religious courts, in handling cases. This reflects that in practice within the Courts, judges often consider Supreme Court Circulars as guidance in decision-making. Thus, the presence of Supreme Court Circulars can influence legal interpretation by judges and other legal practitioners. This reflects that although they do not have legally binding force, Supreme Court Circulars are used as references in legal interpretation and considerations in various cases. Therefore, Supreme Court Circulars help create consistency in law enforcement across various levels of the judiciary, by providing the same guidance to judges. Supreme Court Circulars can help ensure that law enforcement is carried out uniformly and consistently throughout Indonesia. This indicates that the implementation and respect by judicial institutions are key; when Supreme Court Circulars are respected and consistently applied by the courts, they can become effective tools in improving the quality of law enforcement.

Thus, it can be concluded that, although Supreme Court Circulars do not have legal binding force, they still play an important role in the judicial system in Indonesia and can influence legal practices and court decisions. To address these issues, further efforts are needed to provide better understanding of the rules of polygamy in Islam, increase legal awareness in society, strengthen law enforcement systems, and educate the public about the importance of protecting women's rights in the context of polygamy. In facing these challenges and constraints, coordinated efforts are required among relevant institutions, enhancement of legal awareness in society, improvement of human resources and infrastructure, as well as legal reforms that strengthen the provisions of Supreme Court Circular Number 4 of 2016.

d. Polygamy Without Permission in Supreme Court Circular Number 4 of 2016 The Perspective of Islamic Law

Polygamy without permission is the act of a husband marrying another woman without obtaining permission or consent from his existing wives, and without obtaining official permission from the relevant authority, in this case, the religious court (Alimuddin & Abdurrahman, 2023). In Indonesia, polygamy without permission violates marriage laws which stipulate that polygamy must be conducted through clear procedures and obtain permission from the relevant authority. By engaging in polygamy without permission, husbands are violating applicable legal provisions. Polygamy without permission also reflects husbands neglecting administrative obligations, such as registration with the Office of Religious Affairs (KUA). This disregard for obligations is often referred to as unregistered marriage/secret marriage (Elfiani, 2016; Shafra, 2007) or informal marriage. Although religious norms do not regulate the permission of wives, polygamy without permission reflects a violation of the principles of justice and equality in marriage (Karimullah, 2021a, 2021b; Sugitanata & Karimullah, 2023). Polygamy without permission reflects injustice towards existing wives. This action does not provide the opportunity for wives to know about

or give consent to their husband's decision to engage in polygamy, which violates their rights as wives. Thus, polygamy without permission creates insecurity and uncertainty in marital relationships. Additionally, polygamy without permission is a violation of ethics and morality in marital relationships. This action disrespects existing wives and can cause serious damage to marital and family relationships. Therefore, polygamy without permission is not only a legal violation but also reflects a violation of the principles of ethics, justice, and equality in Islam. This can lead to serious negative impacts for all parties involved in the marital relationship.

Thus, it can also be said that from the perspective of Islamic law, the provisions regarding polygamy in Supreme Court Circular Number 4 of 2016, which require permission from the first wife before engaging in polygamy and impose penalties for those who violate it, are steps that align with the principles of justice in Islam. Because polygamy without permission is not only a legal violation but also contrary to the values of Islam that promote justice, equality, and the protection of women's rights.

In classical Islamic jurisprudence, the rules governing polygamy primarily regulate the condition of fairness in providing maintenance to the wives of a husband. This principle of fairness is a requirement that must be fulfilled when practicing polygamy according to Islamic teachings. From the perspective of jurisprudence, the principle of fairness remains a crucial factor in polygamy. However, the requirement of permission from the first wife in the context of Indonesia can be seen as an implementation of a broader principle of justice, which includes the protection of women's rights and family stability. The principles of equality and justice in Islam demand that a husband must obtain permission from his first wife before engaging in polygamy. This aims to protect the rights of the first wife and ensure that the practice of polygamy is carried out with careful consideration and fairness. Supreme Court Circular Number 4 of 2016 emphasizes that permission from the first wife is an absolute requirement before a husband can lawfully engage in polygamy. Violation of this provision can result in criminal penalties, with subsequent marriages being punishable. Polygamy conducted without permission is viewed as a criminal (Faiq Tobroni, 2016; Roszi, 2018) act within marriage, and perpetrators can face imprisonment for five to seven years.

In Islam, protecting women's rights, including the rights of wives, is highly significant. Rules that establish penalties for polygamy without permission can be seen as a measure to safeguard wives from the misuse of polygamy by husbands. This aligns with the principles of justice and well-being within the family according to Islamic teachings. Additionally, the institution of family in Islam is considered highly important, and the stability of the family institution is one of the primary objectives of laws related to marriage and polygamy. Rules aimed at ensuring that polygamy is carried out with careful consideration and fairness can be regarded as efforts to protect the family institution from the potential instability caused by irresponsible polygamous practices.

Furthermore, from the perspective of Islamic law, there is a principle that Muslims must obey the laws of the country where they reside (the principle of obedience to authority or *wali al-amri*). Therefore, the rules regarding polygamy without permission stipulated in Supreme Court Circular Number 4 of 2016 in Indonesia are considered part of the obligation to comply with the applicable law. Islamic law emphasizes the protection of women's rights, including the rights of wives in the context of marriage. The requirement of permission from the first wife before engaging in polygamy can be seen as an effort to protect women's rights in the context of family life. Polygamy without permission can result in injustice towards the involved wives and is contrary to the principle of justice in Islam. In Islam, the family is considered a highly important institution, and the stability and welfare of the family are

primary goals in Islamic teachings. The practice of polygamy without permission can disrupt the stability and welfare of the family by causing conflict and tension. Therefore, rules governing polygamy with specific conditions, including permission from the first wife, can be viewed as efforts to maintain the stability and welfare of the family.

In Islam, law enforcement and the application of punishment as a deterrent against legal violations are also considered important. The criminal penalties imposed on perpetrators of polygamy without permission can be viewed as efforts to uphold Islamic law and prevent similar violations in the future. By imposing serious sanctions, it is hoped to create a deterrent effect for those inclined to violate legal rules in the practice of polygamy. Thus, from the perspective of Islamic law, the rules regarding polygamy without permission stipulated in Supreme Court Circular Number 4 of 2016 in Indonesia can be seen as steps aligned with Islamic values, including the protection of women's rights, justice, family stability, and the enforcement of Islamic law. Considering the factors above, the imposition of sanctions on perpetrators of polygamy without permission does not directly contravene Islamic principles if these sanctions are applied while considering the principles of justice, protection of women's rights, deterrent effects, and adaptation to the prevailing social and legal contexts. However, it is important to ensure that these sanctions do not contradict Islamic principles and do not lead to injustice in their implementation. Thus, the Islamic legal perspective on criminal sanctions in cases of polygamy without permission encompasses principles of justice, protection of women's rights, prevention of Sharia violations, and adaptation to prevailing social and legal contexts. These criminal sanctions must be carefully considered and aligned with Islamic principles that promote justice, equality, and human welfare. The imposition of sanctions on perpetrators of polygamy without permission does not directly contradict Islamic principles, especially if these sanctions are applied while considering principles of justice, equality, and welfare.

4. Conclusions

In the context of polygamy without permission according to Supreme Court Circular Number 4 of 2016, marriage without the consent of the first wife is considered a violation of marriage, and the perpetrator can be punished. This rule emphasizes the importance of permission from the first wife before a husband can engage in polygamy, as a form of protection of women's rights and family stability. However, the practice of polygamy without permission still occurs in Indonesian society, posing significant challenges in law enforcement. Low legal awareness among the public, resource limitations, and cultural issues are some of the main obstacles in the efforts to enforce this rule. Although Supreme Court Circular Number 4 of 2016 provides clear guidance, its implementation requires cooperation among relevant institutions, increased legal awareness in society, and concrete steps to address these challenges. Thus, understanding and implementing Supreme Court Circular Number 4 of 2016 are key to maintaining justice, equality, and welfare in the institution of marriage in Indonesia. The effectiveness of this circular must be supported by stronger and binding regulations such as laws.

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