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## Dialectics of Musdah Mulia's Thought on Polygamy in the Qur'an: Text and Context

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### Abstract

*This article aims to reveal the shari'a of polygamy in the Qur'an. This is motivated by the diversity of interpretations of the polygamy verse, giving rise to diverse opinions and arguments that seem difficult to compromise. Musdah Mulia is a gender figure or Muslim scholar who clearly in her research rejects polygamy and recommends that polygamy be banned and states that polygamy is not Islamic law and its practice has caused harm and is a violation of human rights. This opinion is considered extreme and has drawn criticism and rebuttal from various Muslim scholars. This research method uses a literature study using a socio-historical approach and content analysis. The results of the study concluded that Musdah Mulia's opinion that polygamy is not Islamic law does not have a strong legal basis, because it has gone out of the meaning of the text but in the implementation of the context it can be prohibited if it is outside the predetermined conditions.*

### Kata Kunci

*Dialektika, Musdah  
Mulia, Poligami*

### Abstrak

*Artikel ini bertujuan mengungkap tentang syari'at poligami dalam Al-Qur'an. Hal ini dilatar belakangi oleh adanya keragaman terhadap interpretasi ayat poligami sehingga memunculkan pendapat yang beragam dan argumentasi tersendiri yang agaknya sulit untuk dikompromikan. Musdah Mulia merupakan seorang tokoh gender atau cendekiawan muslim yang secara nyata dalam penelitiannya menolak poligami dan merekomendasikan agar poligami dilarang serta menyatakan poligami bukanlah syari'at Islam dan prakteknya telah menimbulkan kemudharatan dan merupakan*

*pelanggaran terhadap Hak Asasi Manusia. Pendapat ini dinilai ekstrim dan menuai kritik dan bantahan dari berbagai kalangan Sarjana Muslim. Metode penelitian ini menggunakan studi literatur dengan menggunakan pendekatan sosio-historis dan content analysis. Hasil penelitian menyimpulkan bahwa pendapat Musdah Mulia yang mengatakan poligami bukan syari'at Islam tidak memiliki dasar hukum yang kuat, sebab telah keluar dari pemaknaan teks namun dalam implementasi konteksnya dapat saja dilarang jika di luar syarat yang telah ditetapkan*

## Introduction

Polygamy was known long before Islam came, both in the church and Hinduism.<sup>1</sup> In the Old Testament, for example, it is mentioned that Prophet Solomon *a'laihi al-salām* had seven hundred noble wives and three hundred concubines. Similarly, the church in Europe recognised polygamy, as Karel the Great (1742-1814 AD) had more than one wife.<sup>2</sup> Furthermore, Martin Luther King Jr (1929-1968 CE), a Protestant reformer, confirmed the existence of polygamy in Christian culture until the XVIIth or XVIIIth century.<sup>3</sup> This tradition extended to all corners including the *Arabian Peninsula* (Jahiliyyah).<sup>4</sup> Therefore, it is not true that Islam legalised and monopolised polygamy, the truth is that Islam with its holy book continued this tradition by setting its own rules. Polygamy is one of the objects of study mentioned in the Qur'an and in Arabic literature is known as *ta'adud al-zawjāt*, as

revealed in sūrah al-Nisā' verses 3 and 129.<sup>5</sup> The *zāhir naṣ of* verse 3 contains information about the limitation of the permissibility of polygamy for Muslims while emphasising the requirement to be able to be fair. In contrast, sūrah al-Nisā' verse 129 states that polygamists are not allowed to be just even if they maximise their ability. Therefore, polygamy is a classic issue that has always been discussed until this modern era by scholars and thinkers, resulting in pro and con opinions triggered by the interpretation of the meaning of these two verses.<sup>6</sup>

The issue of polygamy is often used by orientalist to accuse Islam of discriminating against women.<sup>7</sup> According to them, polygamy is a form of male exploitation of women as an outlet for men's sexual desires.<sup>8</sup> Of course, this accusation is not true, because the presence of Islam with its holy book is one of its missions to elevate and raise the status of women, which in the pre-Islamic era their existence

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<sup>1</sup> Elva Imeldatur Rohmah, "Problematika Poligami Dalam Lintas Sejarah Dan Agama," *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam* 25, no. 1 (2022): 83–97.

<sup>2</sup> Warkum Sumitro and Moh Anas Kholish, *Konfigurasi Fiqih Poligini Kontemporer: Kritik Terhadap Paham Ortodoksi Perkawinan Poligini Di Indonesia* (Universitas Brawijaya Press, 2014).

<sup>3</sup> Rohmah, "Problematika Poligami Dalam Lintas Sejarah Dan Agama."

<sup>4</sup> Isti'anah, "Poligami Dalam Perspektif Al-Qur'an," *El-Mu'jam: Jurnal Kajian Al-Qur'an Dan Al-Hadits*, vol. 2 No. 1 (2022): 50, <https://ejournal.iainu-kebumen.ac.id/index.php/el-mujam>.

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<sup>5</sup> Andi Intan Cahyani, "Poligami Dalam Perspektif Hukum Islam," *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam* 5, no. 2 (2018): 271.

<sup>6</sup> Siti Ropiah, "Studi Kritis Poligami Dalam Islam (Analisa Terhadap Alasan Pro Dan Kontra Poligami)" 1, no. 1 (2018): 90, <https://doi.org/10.5281/zenodo.1161566>.

<sup>7</sup> Rahimin Affandi Abdul Rahim et al., "Perkaitan Islamophobia Dan Orientalisme Klasik: Satu Analisis," *Ideology Journal* 3, no. 2 (2018): 183–198.

<sup>8</sup> Musfir Aj-Jahrani, *Poligami Dari Berbagai Persepsi* (Jakarta: Gema Insani Press, 1996).

was so despised and not taken into account.<sup>9</sup> In the context of the interpretation of the text of the two verses above, there are various opinions, both in terms of the law of polygamy itself, the limits of the permissibility of polygamy, and the requirements for the permissibility of polygamy. The differences arise due to the style and method of interpretation they use. Some use the *tafsīr bi al-ma'tsūr* method, and some use the rational method (*tafsīr bi al-ra'yi*).<sup>10</sup>

In Indonesia, the law of polygamy and its practice have become such a frightening discussion that feminist figure Siti Musdah Mulia (b. 1958 CE) said that polygamy is basically a form of harassment and humiliation of women's dignity. Therefore, polygamy is prohibited because it is a form of violation of human rights.<sup>11</sup> This study aims to explore the meaning of polygamy in the Qur'an and the development of Musdah Mulia's thought discourse with Muslim scholars through a comprehensive approach to interpreting the text and context of polygamy.

The method of this writing uses a *literature study* by tracking the literature, especially research by Musdah Mulia and enriching the analysis by examining books of interpretation, books, articles and journals that are relevant and supportive of the main issues in this study. This research is analytical-descriptive in nature by presenting the character's way of thinking through her works, as well as using a *socio-historical* approach that explains the social background of the application of polygamy throughout

history. Last year's research conducted by Fajrussalam described Musdah Mulia's thoughts on gender equality in the Qur'an that women's position seems to be lower than men, but in other aspects of life that women must still get their rights in the social community, such as rights in politics, education and the right to freedom of life.<sup>12</sup> Firdaus and Adfira conducted a study of polygamy that has become a trend in social media and the treasures of feminist interpretation recommend to re-examine the meaning of a more up to date polygamous context.<sup>13</sup> Dozan argues that the study of the trajectory of polygamy interpretation is a solution to eliminate the problematic fact of polygamy as a form of violence against women.<sup>14</sup> Muqsith and Alhumaedah succeeded in mapping that Musdah Mulia's legal thinking on polygamy is in line with the demands for gender equality that feminists advocate.<sup>15</sup> Therefore, the focus of this research is to rethink Musdah Mulia's critique of polygamy from a different perspective as an alternative thought of contextual interpretation..

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<sup>12</sup> Hisny Fajrussalam et al., "Kesetaraan Gender Dalam Pandangan Musdah Mulia," *Jurnal Pendidikan dan Konseling (JPDK)* 5, no. 2 (2023): 5511–5519.

<sup>13</sup> Muhamad Yoga Firdaus, Suryana Alfathah, and Eni Zulaiha, "Telaah Tentang Poligami Dalam Al-Qur'an," *Reslaj: Religion Education Social Laa Roiba Journal* 5, no. 6 (2023): 2702–2709; Rifdah Adfira, "Trend Poligami Di Media Sosial Perspektif Kesetaraan Gender," *Mizan: Journal of Islamic Law* 6, no. 3 (2023): 447–462.

<sup>14</sup> Wely Dozan, "Fakta Poligami Sebagai Bentuk Kekerasan Terhadap Perempuan: Kajian Lintasan Tafsir Dan Isu Gender," *AN-NISA: Jurnal Studi Gender dan Anak* 13, no. 1 (2023): 739–749; Wely Dozan, "Fakta Poligami Sebagai Bentuk Kekerasan Terhadap Perempuan: Kajian Lintasan Tafsir Dan Isu Gender," *Marwah: Jurnal Perempuan, Agama dan Jender* 19, no. 2 (2021): 131.

<sup>15</sup> Abdurrahman Muqsith and Fadil Sj, "Hukum Poligami: Analisis Komparatif Terhadap Pemikiran Musdah Mulia Dan Muhammad Syahrur," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 4, no. 1 (2022): 52–65; Ita Masithoh Alhumaedah and Muhammad Romli, "Hukum Poligami: Studi Analisa Pemikiran Siti Musdah Mulia," *SAINTIFIKA ISLAMICA: Jurnal Kajian Keislaman* 9, no. 2 (2022): 149–172.

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<sup>9</sup> Hendri Hermawan Adinugraha, Asep Suraya Maulana, and Mila Sartika, "Kewenangan Dan Kedudukan Perempuan Dalam Perspektif Gender: Suatu Analisis Tinjauan Historis," *Marwah: Jurnal Perempuan, Agama Dan Jender* 17, no. 1 (2018): 42–62.

<sup>10</sup> Gamal Al-Banna, *Evolusi Tafsir* (Jakarta: Qisthi Press, 2004).

<sup>11</sup> Musdah Mulia, *Islam Menggugat Poligami* (Jakarta: Gramedia Utama, 2004).

## Polygamy in History

The term polygamy etymologically comes from the Greek, namely; poly / *apolus* which means 'many' and *gamien / gamos* which means 'marriage'.<sup>16</sup> If the word is combined into *apolusmagos* or polygamy, it means many marriages or marriages carried out by more than one person at the same time.<sup>17</sup> Meanwhile, in terminology, *polygamy* means a marriage system in which one party marries several members of the opposite sex at the same time.<sup>18</sup>

While the term polygamy in Arabic literature is equivalent to *ta'adud al-zawjāt* which means 'many wives', while in terms of terms it is the permissibility for a Muslim man to marry more than one Muslim woman, provided he is able to be fair. The *Jumhūr al-U'lamā'* set a limit of four wives and no more.<sup>19</sup> A different opinion was expressed by M. Ichsān, who said that the specific term that refers to the marriage of a man with several women is polygyny and that refers to the marriage between a woman and several men is polyandry. Meanwhile, what is popular in the community is that a man marries several women.<sup>20</sup> In the context of legislation in Indonesia, the term used is polygamy, a term that is familiar to the community as stated in Law Number 1 of 1974 concerning marriage. It is stated that having more than one wife can be justified if it fulfils several reasons and conditions stipulated by law. More than one marriage can take place if there is permission

from the Religious Court.<sup>21</sup> The term polygamy is also contained in KHI (Compilation of Islamic Law) articles 55 to 59.

Based on the above explanation, it is understood that the appropriate term to indicate a husband who has several wives is polygyny, which comes from the word *polus* which means many and *gune* which means woman. Meanwhile, the term polygamy is used to indicate more than one marriage, both male and female. It's just that the term that is well-known and familiar in the community that shows a man who has more than one wife is polygamy. There is a discourse related to the use of terms, in the end what determines it is the agreement of the community and in this study the term used henceforth is polygamy.

Historically, polygamy and its practice existed long before Islam came and it was not Islam that started it. According to Alhamdani as quoted by Andi Intan Cahyani, there is a lot of evidence that can be used as a basis that the teaching of polygamy did not come from Islam. Recorded in the history of several countries, both in Europe / West and in Asia / East have practised polygamy, such as Russia, Yugoslavia, Czechoslovakia, Germany, Belgium, the Netherlands, Denmark, Sweden and England. The same applies to some Middle Eastern countries and peoples, such as the Hebrews and Arabs. Therefore, the claims of Western writers that polygamy originated from the teachings of Islam are not true. This is because the countries mentioned above had practised polygamy long before Islam came and even this teaching developed rapidly in Africa, India, China and Japan, which are not Muslims.<sup>22</sup>

In the teachings of Christianity, polygamy was originally not prohibited or forbidden, the reason for the justification of

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<sup>16</sup> Tihami dan Sobari Sahrani, *Fiqh Munakahat: Kajian Fiqh Lengkap* (Jakarta: Rajawali Perss, 2013).

<sup>17</sup> Abdillah Mustari, "Poligami Dalam Reinterpretasi," *Jurnal Sipakalebbi* 1, no. 3 (2014).

<sup>18</sup> Depdiknas, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 2002).

<sup>19</sup> Supardi Mursalim, *Menolak Poligami: Studi Tentang Undang-Undang Perkawinan Dan Hukum Islam* (Yogyakarta: Pustaka Pelajar, 2007).

<sup>20</sup> M Ichsān, "Poligami Dalam Perspektif Hukum Islam (Kajian Tafsir Muqaranah)," *JURIS (Jurnal Ilmiah Syariah)* 17, no. 2 (2018): 153, <https://doi.org/10.31958/juris.v17i2.1196>.

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<sup>21</sup> Abdul Manan, *Aneka Masalah Hukum Perdata Islam Di Indonesia* (Jakarta: Kencana, 2006).

<sup>22</sup> Cahyani, "Poligami Dalam Perspektif Hukum Islam."

polygamy is because there is no single verse in the Gospel that strictly prohibits its congregation from practising polygamy. Unlike the case with the ancient Greek and Roman religions, they had initially prohibited polygamy. After they embraced Christianity, they continued to practice monogamy, which was considered to be the teaching of their ancestors who forbade polygamy. Therefore, European Christians adhered to the principle of *monogamous* marriage. Thus, the principle of monogamy in marriage is not purely Christian, but rather the teachings of their ancestors. The Church's teachings then forbade polygamy as a religious rule and doctrine, even though there is no such prohibition in the Gospels.<sup>23</sup>

In the Arabian Peninsula, especially in Jahiliyah Arabia, it was common for men to marry several women (polygamy), and to regard their wives as property.<sup>24</sup> Therefore, the polygamy practised in the Jahiliyyah period was no longer a polygamous marriage, but rather a form of harassment, because they had underestimated women who could be taken, owned and traded according to the will of men.<sup>25</sup>

Referring to the explanation and exposure above, it can be concluded that historically the practice of polygamy in marriage has long been known and implemented by humans, both in the

Eastern and Western hemispheres, and specifically in the Arabian Peninsula, which is the centre of revelation and the beginning of

the birth of Islam. The practice of polygamy, when examined from a sociological-historical aspect, reflects how the local community views and values women as partners and partners. When society views women as inferior, polygamous practices will flourish in the community. On the other hand, if the existence of women is seen as high in dignity, the practice of polygamy will be reduced and if it occurs, it is certain that it will not harass women.

### **Polygamy: Text and Context**

Based on the results of the study in the book *al-Mu'jān al-Mufahras li 'Alfāz Ayāti Al-Qur'an*, two verses were found that inform with different themes, namely the concept of polygamy and the practice of polygamy. The following verses will be presented as the legal basis for the shari'at of polygamy.

*Firstly*, the verse that contains the basic concept of polygamy can be seen in Sūrah al-Nisā' verse 3 as follows:

وَإِنْ خِفْتُمْ أَلَّا تَقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ  
مَنْتَىٰ وَتِلْثَ وَرُبْعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ  
ذَلِكَ أَذَىٰ أَلَّا تَعُولُوا ۝ ۳

*And if you fear that you will not be able to do justice to the orphaned woman (whom you marry), then marry two, three and four other women of your choice. But if you fear that you will not be able to do justice, then marry only one (woman) or a female slave whom you own. That is closer to not doing injustice.*

The background or cause of the revelation of the verse is a narration from 'Aisyah explaining that at that time there was a man who controlled an orphan and then married her. He entered into a partnership to trade with the orphaned woman in his charge. Furthermore, in the marriage he did not give anything and actually controlled all the property of the union, so that the orphan woman had no power at all over her property

<sup>23</sup> Cahyani, "Poligami Dalam Perspektif Hukum Islam."

<sup>24</sup> Rico Setyo Nugroho, "Adab Education In Polygamous Households," in *International Conference on Humanity Education and Social*, vol. 2, 2023; A Kumedi Ja'far, Rudi Santoso, and Agus Hermanto, "A Sociohistorical Study of Polygamy and Justice," in *1st Raden Intan International Conference on Muslim Societies and Social Sciences (RIICMuSSS 2019)* (Atlantis Press, 2020), 338–342.

<sup>25</sup> Abdul Rahman I. Doi, *Karakteristik Hukum Islam Dan Perkawinan* (Jakarta: Raja Grafindo Persada, 1996).

that had been unionised. Therefore, Allah revealed the 3rd verse as a rebuke, advice and warning to those who marry orphans (Hadīth narrated by Bukhārī from Ibrāhīm ibn Mūsā from Hishām from Ibn Juraij from Hishām ibn U'rwah from his father from `Āisyah).<sup>26</sup>

The social context (*muqtaḍa`al-hāl*) in which this verse was revealed is related to the aftermath of the Battle of Uhud, in which many Muslim soldiers died as *martyrs* and left behind widows and orphans.<sup>27</sup> More specifically, the case of guardians who acted unreasonably towards orphans and widows by marrying orphaned women with the aim of controlling the orphan's property, thus oppressing the lives of orphans. The presence of this verse is a form of correction in the form of a solution in defence of justice for orphaned women.

Sūrah al-Nisā' verse 3 begins with the phrase "*wa inkhifum allā tuqsiṭū fi al-yatāmā fankihū mā tāba lakum min al-nisā' matsnā wa tsulātsa wa rubā'a...*". The meaning of this verse, as stated by al-Maraghi, is that if you feel or realise the fear of eating your wife's property from orphaned women, then do not marry them and please find another woman for you to marry one, two, three or four.<sup>28</sup> Furthermore, the verse "*fa inkhifum allā ta'dilū fawāḥidatan*" means that the fear of not being able to be fair can be measured by conjecture or doubt, while fairness is measured by confidence without the slightest doubt.<sup>29</sup> The justice required in this verse is outwardly or materially, not in terms of love,

because in this case it is beyond one's ability, unlike the material.

The central discussion about polygamy in the verse is the limit on the number of polygamists (*ta'adud al-zawjāt*), as in the verse ( *مَتْنَى وَتَلْت وَرُبْع* ), two, three, or four. *Linguists* agree that these words are counting words, each of which indicates the number mentioned. The word *matsnā* means: two, two; the word *tsulātsa* means: three, three; and the word *rubā'a* means: four, four. So the meaning of the verse: "*Marry the women you like two-two, three-three, four-four*".<sup>30</sup>

In relation to the understanding of this wording, a language analysis is presented by al-Zamakhshārī (1075-1143 CE) quoted by Ali al-Shābūnī (1930-2021 CE): This expression is addressed to a large number of people, which must be repeated so that each person who wants to marry wills polygamy according to this count. A comparison would be someone saying to a crowd: Distribute this money (1000 dirhams for example), two dirhams, two dirhams or three dirhams, three dirhams or four dirhams, four dirhams. If the expression is mentioned in the singular (*ifrād*), then it has no meaning at all. So the meaning of two dirhams, two dirhams is two dirhams each, not four dirhams.<sup>31</sup>

Although it has been thoroughly explored in the context of language, differences in interpretation or interpretation of verses related to the limits of polygamy are inevitable. Basically, classical scholars did not question the permissibility of polygamy. They differed on the limit of the number of women a man can marry at the same time. These differences can be stated as follows:

*Firstly*, according to the majority of scholars, the maximum limit of polygamy for a

<sup>26</sup> A. Mudjab Mahali, *Asbabaun Nuzul; Studi Pendalaman Al-Qur'an* (Jakarta: Raja Grafindo Persada, 2002), 206; Abdurrahman bin al-Kamal Jalaluddin as-Suyuthi, *Al-Daur Al-Mantsur* (Beirut: Dar al-Fikr, 1993), 427.

<sup>27</sup> Ibnu Hisyam, *Sirah Nabawiyah-Ibnu Hisyam* (Qisthi Press, 2019), 105.

<sup>28</sup> Ahmad Mustafa al-Maraghi, *Tafsir Al-Maraghi, Jilid.II*, (Beirut: Dar al-Fikri, n.d.).

<sup>29</sup> Ahmad Mustafa al-Maraghi, *Tafsir Al-Maraghi, Jilid.II*, .

<sup>30</sup> Muhammad Ali Ash-Shabuni, *Rawai'ul Bayan Tafsir Ayati Al-Ahkam Min Al-Qur'an , Juz.I*, (Jakarta: Dar al-Kitab al-Islamiyah, 2001), 334.

<sup>31</sup> Muhammad Ali Ash-Shabuni, *Rawai'ul Bayan Tafsir Ayati Al-Ahkam Min Al-Qur'an , Juz.I*, .



man is four women. The argument is that the word "مَنْتَى وَتَلْتِ وَرُبْعٌ" which means two-two, three-three, and four-four, is not added but remains two, three, or four. This is in accordance with the opinion of the linguists. Likewise, the letter "waw" as a conjunction of the words "*matsnā wa tsulātsa wa rubā'a*" is not used for *muṭlaq jama'* (adding together) but is used for "*takhyīr*" (choice), which means that the limit for polygamy is four women.<sup>32</sup> In addition to the verse, it is also based on the hadith of the Prophet (SAW) who ordered the Companion Ghaylān ibn Salāmah al-Tsaqafī al-Dimasyqī when he entered Islam to divorce six of his wives and keep four. Similarly, Nawfāl ibn Mu'āwiyah who had five wives divorced one of them and kept the remaining four. Furthermore, Qais ibn Hārīts when he entered Islam had 8 wives. He was also asked by the Prophet to keep 4 wives and divorce the others.<sup>33</sup>

*Secondly*, the Zāhiriyyah scholars, and some Shī'ah groups argue that polygamy is permissible with more than four women. Their reasoning is that the word al-Nisā' in the verse is a general word that cannot be specified by number (*matsnā*, *tsulātsa*, and *rubā'a*).<sup>34</sup> The number is mentioned to indicate that men are allowed to marry multiple women. Therefore, if there is an *ahad hadith* that limits the number of women that can be married to four, it cannot be accepted. This is because the Qur'ānic ruling cannot be cancelled by an *ahad hadith*. Ibn Abd al-Bār added that the hadith that limits the number of women to four is flawed even though it was narrated from various sources.<sup>35</sup> According to

them, the text of Sūrah al-Nisā' verse 3 uses the letter "waw" as the letter "aṭaf" (conjunction) in the verse "*matsnā wa tsulātsa wa rubā'a*" to mean *muṭlaq jama'* (adding up) not *takhyīr*. Therefore, according to them, the number of women who can be married is not four but up to nine.

*Third*, the liberal opinion, as expressed by Fakhruddīn al-Rāzī (1150-1210 CE), said that there is an opinion that states that the maximum number of women who can be married is 18. This opinion is strengthened by analysing the words *matsā*, *tsulātsa*, and *rubā'*. The word *matsnā* means *itsnataini wa itsnataini* meaning two-two which means 4. The word *tsulātsa* means *tsalātsah wa tsalātsah*, meaning three-three which means 6. And the word *rubā'a* means *arba'ah wa arba'ah*, meaning four-four which means 8 (eight). Then the three words combined are  $4+6+8=18$ .<sup>36</sup>

The most popular opinion and widely practised by the companions after the Prophet's death, and there is no history of the Prophet's companions marrying more than four women at the same time. Imam Thabari states in his book, the Companion of Ali ibn Abi Talib married 8 women not simultaneously, some died and some were divorced. Similarly, Umar ibn al-Khattāb married nine women, but not simultaneously. Finally, the Companion Uthmān ibn A'ffān married 9 women, also not at the same time, some died and some were divorced.<sup>37</sup> However, the two opinions above share the same view on the permissibility of a man marrying more than one woman or being polygamous, provided that he can be fair among his wives.

<sup>32</sup> Fakhr al-Din al-Razi, *Al-Tafsir Al-Kabir*, (Beirut: Dar al-Fikri, 1995).

<sup>33</sup> Abdurrahman bin al-Kamal Jalaluddin As-Suyuthi, *Al-Daur Al-Mantsur, Jilid. II*, (Beirut: Dar al-Fikr, 1993).

<sup>34</sup> Fakhr al-Din al-Razi, *Al-Tafsir Al-Kabir, Juz IX* (Beirut: Dar al-Fikr, 1995).

<sup>35</sup> Jamal al-Din al-Qashimi, *Mahasin Al-Takwil, Jilid. III* (Kairo: Dar al-Hadits, 2003).

<sup>36</sup> Fakhr al-Din al-Razi, *Al-Tafsir Al-Kabir, Juz IX*.

<sup>37</sup> Ibn Jarir al-Thabari, *Tarikh Al-Rusul Wa Al-Mulk, Juz.I*, (Kairo: Dar al-Ma'rifah, 1968); Abu al-Faraj al-Jawzi, *Tarikh Umar Ibn Al-Kaththab* (Mesir: Maktabah al-Salam al-'Alamiyah, 1394).

Based on the above explanation, it can be understood and concluded that the interpretation of the text of Sūrah al-Nisā' verse 3 as the basis for the law of polygamy, gave birth to different interpretations and formulations of the limits of the permissibility of polygamy. The first opinion states that the limit of polygamy is four women. The second opinion states that the limit may be up to nine women. And the third opinion, says the limit of the permissibility of polygamy is precisely up to 18 women. It seems difficult to find a meeting point and compromise so that this slavery is a form of enrichment and difference. Each opinion uses verse 3 of Sūrah al-Nisā' as the basis for the law of polygamy.

Another verse on polygamy is found in Sūrah al-Nisā', verse 129:

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ وَإِنْ تُصْلِحُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا ۱۲۹

*Meaning: And you will not be able to do justice between your wives, even though you are eager to do so. So do not tend too much (to the one you love), so that you leave the other hanging, and if you make amends and have taqwa (abstain from cheating), then surely Allah is Oft-Forgiving, Most Merciful.*

The context of this verse, according to Imām al-Wāhidī, does not contain any narration about the asbabun nuzul or the background of this verse. However, according to al-Biqā'i, the verse is closely related to the third verse of Sūrah al-Nisā', which warns men who have more than one wife (polygamy). The central message is that a man (husband) will not be able to be fair among his wives, so he is warned not to be inclined to one and ignore the others.<sup>38</sup>

<sup>38</sup> Burhanuddin Abi Hasan Ibrahim ibn Umar al-Biqā'i, *Nazm Al-Durar Fi Tanasubi Al-Ayat Wa Al-Suwar, Juz. II*, (Beirut: Dar al-Kutub al-Ilmiyah, n.d.).

This verse is often used as an argument and reason for a group of people who do not understand Islam to claim that Islam does not allow polygamy, because the permission of polygamy in the verse is required to be fair based on the word of Allah in Sūrah al-Nisā' verse 3, and further mentioned in verse 129 that men will not be able to be fair between their wives. According to Quraish Shihab, such an opinion is unacceptable, not only because the Prophet SAW and his companions practised polygamy, but also because the verse does not stop where the proponents of this opinion stop, but continues by stating, "therefore do not be too inclined (to those you love). This passage indicates the permissibility of polygamy even if absolute justice cannot be realised (in the case of love).<sup>39</sup>

### Musdah Mulia's Thoughts on Polygamy

Siti Musdah Mulia was born on 3 March 1958 in the city of Bone, South Sulawesi, and she was born into a strong religious family. This was characterised by her father being a renowned *murshid* in the Khalwatiyah congregation.<sup>40</sup> Her education is a complex one, because at the undergraduate level she studied at the Ushuluddin and Sharia faculties, at the second level she pursued the field of history and at the third level she studied Islamic political thought.<sup>41</sup> Therefore, according to the author, Musdah Mulia is not rightly called a fiqh expert (*fuqahā'*), but rather an expert in the field of Islamic Political Thought, because her final education was in the field of politics, not Islamic law (*fiqh*).

<sup>39</sup> M.Quraish Shihab, *Tafsir Al-Misbah; Pesan, Kesan Dan Keserasian Al-Qur'an*, Vo.2 (Ciputat: Lentera Hatir, 2000), 582.

<sup>40</sup> Marwan Saridjo, *Cak Nur: Di Antara Sarung Dan Dasi & Musdah Mulia Tetap Berjilbab* (Jakarta: Penamadani, 2005).

<sup>41</sup> Sulaiman, *Kesejahteraan Gender Dalam Pemikiran Siti Musdah Mulia* (Yogyakarta: FS UIN Sunan Kalijaga, 2004).



Although he did not study Islamic law, his intelligence and competence in Islamic law need to be appreciated. This is evidenced by her various thoughts in the field of Islamic law, one of which is on polygamy. According to Musdah Mulia, an alternative methodology (*uṣūl fiqh*) is needed to fulfil community justice, especially for women with the following principles:<sup>42</sup> *First*, that the reactualisation of Islamic law is very likely to occur due to the dynamics and development of the times that give birth to various forms of social change. *Secondly*, the reactualisation of Islamic law is only related to partial and substantial issues of *furū'* (the result of scholars' thoughts or interpretations of Islamic Shari'ah, which of course are still human and temporary) and not matters of *uṣūl al-kulliyah* (universal basic principles). *Third*, Islamic law reform is based on the principle of "preserving the old that is relevant and formulating and offering the new that is better". *Fourth*, the reactualisation of Islamic law must be followed by a critical attitude towards the treasures of classical scholars without losing respect for them. *Fifth*, the rationalisation and reactualisation of Islamic law means understanding and reassessing the entire Islamic tradition, including the interpretation of the Qur'an and hadith by understanding it morally, intellectually, contextually, and not being fixated on legal forms of law that tend to be partial and local. *Sixth*, the reactualisation of Islamic law still adheres to *maqāṣid al-syarī'ah* and the welfare of the people.

Based on the explanation above, it can be understood that Musdah Mulia's ijtihad method in understanding the content of the verse uses the contextual *maudū'i* (thematic) interpretation method, where in

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<sup>42</sup> Siti Musdah Mulia, *Muslimah Reformis: Perempuan Pembaru Keagamaan*, (Bandung: Mizan Pustaka, 2005).

understanding the text, Musdah Mulia examines many aspects that cover the interpretation of the text, both in terms of socio-historical, socio-cultural, political aspects, and so on, so that a comprehensive conclusion is drawn. In addition, she is also very concerned with paying attention to the relationship between the context in which the verse was revealed and the current context by making *maqāṣid al-syarī'ah* as a reference.

Talking about polygamy, according to Musdah Mulia, the principle of marriage outlined in Islam is monogamy and not polygamy. It was not Islam that introduced polygamy, because long before Islam came polygamy had become a tradition of society in various parts of the world, including Arab society. Islam

Islam does not advocate polygamy, let alone require it. Islam views marriage as a trust, because in marriage the two parties bind a covenant which in the language of the Qur'an is called *mitsāqan ghalīẓhan* (a firm covenant).<sup>43</sup>

According to Musdah Mulia, verse 3 of Sūrah al-Nisā' has always been used as a justification for polygamy, but it has been misunderstood by some parties, making it a recommendation for polygamy. When viewed from the text, this appears to be the case, as it contains the phrase "*marry any woman you like, two, three and four*". However, just by looking at the wording, it can be seen that this verse is not a recommendation for polygamy, but rather provides a solution for guardians to avoid not being fair to orphans under their guardianship.<sup>44</sup>

According to Musdah Mulia, the only verse that is used as a basis for the opinion that allows polygamy is Sūrah al-Nisā' verse 3.

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<sup>43</sup> Siti Musdah Mulia, *Muslimah Reformis: Perempuan Pembaru Keagamaan*,.

<sup>44</sup> Siti Musdah Mulia, *Pandangan Islam Tentang Poligami*, (Jakarta: Lembaga Kajian Agama dan Gender, 1999).

This verse was revealed in Medina after the battle of Uhud when, due to the carelessness and indiscipline of the Muslim army, the Muslims lost heavily and many soldiers died on the battlefield. As a result the number of widows and orphans increased, and thus the responsibility of caring for the orphans passed to their guardians. The condition of the orphans was not all poor, some were wealthy and had property left by their parents. It is in this condition that negative things arise by the guardians, there are guardians who want to marry her with the aim of owning her property, if she is beautiful without treating her well and properly. And vice versa, if the orphan is not beautiful, they do not want to marry her, but also do not want to marry someone else with the aim of having her property under their control.<sup>45</sup>

Musdah Mulia's view, if we look at the beginning of the verse until the third verse, the focus of the content is the command to be fair, especially towards orphans. So to avoid unfair behaviour and mistreatment of orphans, Allah calls on believing men not to marry them, and as an alternative, they can marry other women with a maximum number of four people if they are able to be fair among them. The end of the verse emphasises that marrying one woman is more promising for fairness.<sup>46</sup> Musdah Mulia further states in her book that the discussion of polygamy in the Qur'an, if examined more deeply, is in one breath with the discussion of orphans where there are similarities between orphans and women, namely that both are often victims of unfair treatment of orphans, as well as women in marriage.

Based on the above explanation, it can be seen that Musdah Mulia comprehensively understands that verse 3 of sūrah al-Nisā' is basically about justice to women, both to

orphaned women and to wives in marriage. This is evident from the solution given by Allah SWT to be fair to female orphans and the affirmation to be fair to wives in marriage, namely making sure to have only one wife (monogamy).

Furthermore, Musdah Mulia said that the current practice of polygamy, especially in Indonesia, has caused various negative implications that are difficult to avoid. One of the implications is psychological, where many wives are hurt to see their husbands having relationships with other women. Another psychological problem is in the form of internal family conflict, either between wives, between wives and stepchildren, or between children who have different mothers. This usually occurs because the husband pays more attention to the younger wife than to the other wives.<sup>47</sup>

Another negative implication is the occurrence of domestic violence against women. Violence against women, according to Musdah Mulia, mostly occurs in the household and the perpetrator is her own husband. Violence against wives is usually rare and difficult to disclose to the public because it is considered a private matter. Apart from physical abuse, wives also often experience sexual violence in the form of husbands not paying attention to their wives' needs and satisfaction. In her book, Musdah cites research by Khairuddin N.M. which concludes that polygamy is the factor that triggers the most abuse of wives' rights, including rights related to sexuality. This happens because in polygamy the husband is usually only interested in having sexual relations with his young wife.<sup>48</sup>

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<sup>45</sup> Siti Musdah Mulia, *Pandangan Islam Tentang Poligami*,.

<sup>46</sup> Siti Musdah Mulia, *Islam Menggugat Poligami*,.

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<sup>47</sup> Musdah Mulia, *Indahnya Islam Menyuarakan Kesetaraan Dan Keadilan Gender*, (Yogyakarta: SM & Naufan Pustaka, 2014).

<sup>48</sup> Musdah Mulia, *Indahnya Islam Menyuarakan Kesetaraan Dan Keadilan Gender*,.

Finally, Musdah Mulia concluded that considering the adverse effects of polygamy in social life, polygamy can be concluded as *ḥarām li ghairihi* (haram because of its excesses). Therefore, it is necessary to propose an absolute ban on polygamy, because it is seen as a *crime against humanity* and a violation of human rights. The abolition of polygamy is in accordance with the fiqh rule; "*Dar`u al-Mafāsīd Muqaddam `alā Jalbi al-Maṣāliḥ*", meaning: Rejecting mafsadah (harm) must take precedence over achieving mashlahah.<sup>49</sup>

Referring to the above explanation, it can be concluded that the concept of polygamy according to Musdah Mulia is not the principle of marriage in Islam and its practice is not born from Islam. According to her, the principle of marriage in Islam is monogamy. As for her understanding of the interpretation of verse 3 of Sūrah al-Nisā', which is always used by many parties as a foundation in the issue of polygamy, for her this verse is not an order or shari'a to be polygamous, but contains a solution to avoid being unjust to orphaned girls. According to him, this verse comprehensively describes the command to be fair to women, both orphans and wives.

### **Dialectics of Musdah Mulia's Thought on Polygamy**

Musdah Mulia is a woman who has the ability and insight into Islam and Islamic law that needs to be appreciated. This is evidenced by various works and articles on Islam and Islamic law that have been published. However, the results of Musdah Mulia's thoughts are full of contradictions, especially studies whose objects are related to women, because she is known as an Indonesian feminist figure who is concerned with defending women's rights, such as polygamy sharia.

Her intriguing discussion of polygamy is presented in a book entitled "Islam Menggugat Poligami", as revealed above, emphasising that polygamous sharia is a form of harassment and insult to women. Furthermore, Musdah Mulia forbids polygamy because it is considered a violation of human rights, and the prohibition of polygamy is haram lighairi. Therefore, she said, it is necessary to propose an absolute ban on polygamy because it is considered a *crime against humanity* and a violation of human rights.<sup>50</sup>

Musdah Mulia asserts that sūrah al-Nisā' ayat 3 is not an argument for the justification of polygamy, but rather the central message of the verse is an admonition to the guardians of orphans who are unjust and unjust towards them. This understanding is based on the context of the verse and also a comprehensive understanding of the verse. Therefore, this verse does not advocate polygamy as understood by many scholars, but rather affirms the importance of maintaining and being fair to widows and orphans under guardianship.<sup>51</sup> Thus, he said, polygamy is not Islamic law, because polygamy existed before Islam came, and the principle of marriage is monogamy.

Musdah Mulia's thinking seems very bold in her views and contradicts the polygamy shari'a that has been considered final among previous scholars. Similar thinking was also done by Fatimah Mernisi, Amina Wadud, Aisyah Bintu Syathi, Zaitunah Subhan and Hannah Al Rashid.<sup>52</sup> Furthermore,

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<sup>50</sup> Siti Musdah Mulia, *Islam Menggugat Poligami*,.

<sup>51</sup> Siti Musdah Mulia, *Pandangan Islam Tentang Poligami*,.

<sup>52</sup> Arsal Arsal, Busyro Busyro, and Maizul Imran, "Kepemimpinan Perempuan: Penerapan Metode Tafsir Hermeneutika Feminisme Amina Wadud," *AL QUDS : Jurnal Studi Alquran dan Hadis* 4, no. 2 (2020): 481; Maizul Imran and Ismail Ismail, "'Ā'isha Bint Al-Shāṭi's Thoughts on Tarāduf and Their Implications for the Istīnbat of Law," *Al-Risalah* 19, no. 2 (2019): 125.

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<sup>49</sup> Siti Musdah Mulia, *Islam Menggugat Poligami*,.

Musdah Mulia also seems to deny the shari'a that has been determined by Allah and His Messenger, of course every shari'a that has been determined in the Qur'an and sunnah has defects or there are mistakes in the shari'a that has been determined.

Furthermore, to enrich Musdah Mulia's thinking, it is recommended to determine a different ijihad scheme in determining a law between the *conceptual-normative* dimension and the *contextual-implementative* dimension, as follows:.

Tabel. 1

<b>Recommended ijihad scheme</b>	
<b><i>Conceptual-Normative</i></b>	<b><i>Contextual-Implementative</i></b>
Musdah Mulia's statement that polygamy is not Islamic Shari'ah and that verse 3 of Sūrah al-Nisā' cannot be used as an argument to justify polygamy, even asserting the need to reject polygamous Shari'ah, is certainly unacceptable and contradicts the understanding of polygamy according to the ijma' of the companions and the ijihad of classical scholars.	The subjective anxiety and turmoil that led to the traumatising of polygamy by saying that there are distortions and negative impacts of polygamous practices, especially in Indonesia, is a reality that cannot be denied. Presumably what Musdah Mulia said is acceptable and justified. This is not due to the shari'a of polygamy but rather forms of violations in the practice of polygamy or illegal polygamy and indeed things

like this must be disciplined.

To strengthen this recommendation, several approaches are proposed, as follows: *Firstly*, based on tracking and reviewing the literature, there is no classical scholarly opinion that prohibits polygamy. This is because the shari'a of polygamy is linked to the doctrine and is also closely related to the traditions that developed at that time. This is confirmed by Abū Lu'bah's research, which concludes that for approximately 1300 years, there has never been a difference of opinion among scholars about the law of polygamy. They all agreed that polygamy is permissible, because its permissibility is based on *qaṭ'i* (definite) evidence.<sup>53</sup> Thus, if there is an opinion that rejects the absolute Shariah of polygamy, this opinion is contrary to the opinion of the *salaḥ al-ṣāliḥ* who were more familiar with the teachings of the religion.

*Secondly*, according to the classical and prominent commentator Ibn Jarīr al-ṭabarī (839-923 CE), verse 3 of Sūrah al-Nisā' means what it says in its context, which is a correction of the behaviour of guardians towards orphaned women who have always treated them arbitrarily and are required to be fair to them and their property. The emphasis is that if you are worried that you cannot be fair with them, then marry one to four other women with whom you can be fair. On the other hand, if you are worried that you will not be fair with polygamy, then marry only one.<sup>54</sup> Imām al-ṭabarī's opinion does not reject the existence of polygamy as long as he is able to be fair, but he emphasises monogamy. This certainly reflects how difficult it is to be fair.

<sup>53</sup> Abdurrahim Faris Abu Lu'bah, *Syawaib At-Tafsir Fi Al-Qarn Ar-Rabi' 'Asyar Al-Hijry, Disertasi*, (Beirut: Jami'ah Beirut al-Islamiyah Kulliyah asy-Syar'iyah, 2005).

<sup>54</sup> Ibn Jarir al-Thabari, *Jami' Al-Bayan Fi Takwil Ayati Al-Qur'an*, (Beirut: Dar al-Fikr, 1978), 155.

*Thirdly*, according to Imām al-Qurṭubī (1214-1273 CE) in his tafsir, verse 3 of sūrah al-Nisā' specifically contains orphaned women, but legally it applies to all women whether orphaned or not. It is derived from the generality of the text, not from the specificity of the cause. Thus it is clear to us that the Qur'ān permits polygamy on the condition of being just.<sup>55</sup> Similarly, Ibn 'Ashūr (1879-1973 CE) emphasised the importance of fairness in polygamy, otherwise the family building will be damaged, fitnah in the family is inevitable. Polygamy is prescribed in the Qur'ān because there are a number of benefits, such as; (a). Polygamy helps to multiply Muslims, (b) The number of women is far greater than the number of men, so polygamy can help women who do not have a partner. (c) Since Allah has forbidden adultery, in various ways, the polygamy shariah will be able to limit the rate of adultery in society, (d) finally, the polygamy shariah as a bridge to minimise the occurrence of divorce (*ṭalaq*).<sup>56</sup> The benefits proposed by Ibn 'Ashur are purely normative and conceptual in the form of positive ideals or expectations from the polygamy shariah or what is popularly called *Maqāsid al-Sharī'ah*.

*Fourth*, the polygamy mentioned in the Qur'an is polygamy based on justice, if it cannot be just then it should not be done. This description is put forward by al-Zamakhshārī (1075-1143 CE) in his book, according to him the context of the verse is an order to be fair to orphans and also to women who you polygamy. If you are unable to be fair among them, then reduce the number of women you marry and make sure that you marry only

one.<sup>57</sup> A relatively similar opinion was expressed by al-Marāghī (1883-1945 CE), who said that family happiness can be achieved if monogamy (one partner) and that is the pinnacle of perfection and ideal. However, for certain reasons, one may depart from this ideal (polygamy). Polygamy is established as a *rukhsah* (legal dispensation) that can be carried out in urgent conditions, including; (a) The husband has a barren wife, while the husband has a desire to have children and it is certain that he is able to do justice, (b) If the wife has entered menopause, while the husband is still biologically desirous, (c) The husband has high sexual abilities, (d) The increasing number of female population and the potential for moral decline.<sup>58</sup> Both of these opinions are in line with the principle of having one wife and this is the ideal and the realisation of domestic welfare. However, they do not prohibit husbands from practising polygamy by stipulating various conditions and positioning polygamy as a *rukhsah* (legal concession).

*Fifth*, Muhammad Syaḥrūr (1938-2019 AD), a contemporary Islamic thinker who has always expressed controversial opinions, has a different view on polygamy. According to him, polygamy is not only permissible, it is even highly recommended to be practised as long as two conditions are met, namely; the woman to be polygamised is a widow who has orphans, and there must be a fear of not being able to be fair to the orphans. If these two conditions are not met then the command to polygamy is cancelled.<sup>59</sup> Syaḥrur's opinion, in my opinion, always considers aspects of the context of the verse and the meaning of the text of the verse

<sup>55</sup> Muhammad bin Ahmad bin Abi Bakar dan Farah al-Qurthubi, *Al-Jami' Li Ahkam Al-Qur'an*, (Beirut: Dar al-Fikr, n.d.), 457.

<sup>56</sup> Muhammad Thahir Ibn 'Asyur, *Tafsir Al-Tahrir Wa Al-Tanwir*, (Tunisia: Dar Suhnun li al-Nasyr wa al-Tauzi', 1984).

<sup>57</sup> Mahmud ibn 'Umar al-Zamakhshari, *Al-Kasysyaf 'an Haqa'iq Al-Tanzil Wa 'Uyun Al-Haqawil Fi Wujuh Al-Ta'wil*, Juz.1, (Mesir: Maktabah Mishr, n.d.).

<sup>58</sup> Ahmad Mustafa al-Maraghi, *Tafsir Al-Maraghi*, Jilid.II.

<sup>59</sup> Aa Sofyan, "Analisis Pemikiran Musdah Mulia Terhadap Keharaman Poligami," *Bil Dalil* 1, no. 1 (2016): 20.

so that the results are very rational and full of nuances of the benefit of the people, when addressing social cases.

Based on this explanation, it is intended that when understanding the content of verse 3 and verse 129 of sūrah al-Nisā', the Companions and tabi'in scholars and tabi'tabi'in scholars agree that polygamy (having more than one wife) is one of the shari'a of Islam. This is reinforced by the practice carried out by the Prophet Muhammad,<sup>60</sup> and then followed by the Companions.<sup>61</sup> But after the 18th century AD, precisely the modern era when there was debate and pros and cons related to the existence of polygamy syari'at. Of the many mufassirin who have been mentioned above, basically no one argues that polygamy is not shari'a, but is one of the Islamic shari'a on condition that it can be fair. However, they positioned polygamy as a *rukḥṣah* and not a ruling of *'azīmah*. The practice of polygamy must first fulfil several strict conditions to ensure justice as mentioned in the verse.

Indeed, there are opinions that reject the practice of polygamy and prohibit it. This opinion was expressed by a contemporary commentator, Muhammad 'Abduh (1849-

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<sup>60</sup> After Khadijah died, the Prophet Muhammad married several women, such as; Saudah bint Zam'ah, 'Aisyah bint Abi Bakar, Hafsa bint Umar ibn al-Kaththab, Zainab bin Khuzaimah, Ramlah bint Abu Sufyan (Umm Habibah), Umm Salamah, Hindun bint Abu Umyah, Zainab bint Jahsh, Juwairiyah bint al-Haris ibn Abu Dhirar, Shafiyah bint Huyay ibn Akhthab, Maimunah bint al-Harith, al-"Aliyah bint Zhayan, Asma" bint al-Nu'man, Umrah bint Yazid. In history it is recorded that the Prophet SAW married 15 women, who had intercourse with 13 people, who lived with the Prophet SAW as many as 11 people. Two of his wives were returned to their families, namely; Umrah bint Yazid and Asma' bint al-Nu'man. And when the Prophet died he left 9 wives. Abd. Moqsith, "Tafsir Atas Poligami Dalam Al-Qur'an ," 2015, 139, <https://media.neliti.com/media/publications/146703-ID-none.pdf>.

<sup>61</sup> Abd Moqsith, "Tafsir Atas Poligami Dalam Al-Qur'an," *KARSA: Journal of Social and Islamic Culture* 23, no. 1 (2015): 132–148.

1905 CE), as quoted by Muhammad Rasyid Ridhā (1865-1935 CE) in *Tafsīr al-Manār*. The reason used was that the practice of polygamy would bring about mischief (damage) in the household. Similarly, the requirements set forth are not capable of being fulfilled by a person. Nevertheless, he did not absolutely prohibit it and still provided a loophole for it to be allowed even in a narrow space or in a very emergency condition, but still with the principle of justice.<sup>62</sup>

Abduh's opinion was followed by his students and followers, such as Qāsim `Amīn (1861-1908 CE) who also firmly rejected the sharia of polygamy. According to him, polygamy is very degrading to women, and a woman would not be ready to share a partner with another woman, nor would a man. His understanding of verse 3 of Sūrah al-Nisā' is that the main message is that a husband is required to have one wife, and he will not be able to be fair among many wives, as stated in verse 129 of Sūrah al-Nisā'. However, at the end of the explanation, it still opens the door to polygamy, but under emergency conditions. This is due to the Prophet's own practice.<sup>63</sup> He said there are conditions that make polygamy permissible; *First*, the wife suffers from a disease that makes her unable to carry out her obligations as a wife. *Second*, the first wife cannot bear children or is barren. With these two reasons polygamy can be done, while other reasons are just following lust.<sup>64</sup>

In her opinion, Musdah Mulia is inspired by the opinions of these two contemporary tafsir figures who openly reject the practice of polygamy and polygamy is said to be a form of humiliation and harassment of

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<sup>62</sup> Muhammad Rasyid Ridha, *Tafsir Al-Qur'an Al-Hakim, Juz IV*, (Beirut: Dar al-Kutub al-'Ilmiyah, 1999), 284.

<sup>63</sup> Qashim Amin, *Tahrir Al-Mar'ah Wa Al-Mar'ah Al-Jadidah*, (Kairo: Al-Markaz al-'Arabi li al-Bahts wa al-Nasyr, 1984).

<sup>64</sup> Qashim Amin, *Tahrir Al-Mar'ah Wa Al-Mar'ah Al-Jadidah*,.



women. However, there is a difference of opinion between Musdah Mulia and Abduh and Qashim Amin, the two scholars of tafsir tasfir above do not tightly close polygamy, but still open the opportunity for its permissibility even with very strict requirements. This is in contrast to Siti Musdah Mulia's opinion, which does not open up space for the permissibility of polygamy at all. This can be seen from her opinion that the practice of polygamy is not an Islamic tradition, the practice of polygamy is a form of harassment of women and a violation of human rights. She then recommends that polygamy be banned outright.

In closing, the author states that to understand the Shari'ah of polygamy, it is necessary to harmonise the meaning of text and context. Textually, the central message of Sūrah al-Nisā' verse 3 is to marry one woman if one is unable to be just. And if a person feels able to be fair, then he may have several wives with a maximum of four women (polygamy). Then the fairness that is used as a condition for polygamy is everything that is within human capabilities, namely material things, such as providing maintenance and shelter and does not include love, because sharing love is something that is beyond human capabilities. Nevertheless, the main message of an-Nisa' verse 129 is to avoid loving one wife too much and forgetting the other wives. The point is that as long as one does not forget the second and third wives, even if the love is not the same, it is not a barrier to polygamy.

Proof that what is meant by fairness is physical or material and does not include things that are difficult to measure, such as love and inclination, is not required in polygamy. In one narration it is found that the Prophet once prayed to Allah SWT regarding his inability to divide his love between 'Aisha and his other wives, and the narration is as follows:

حدثنا موسى بن أسماعيل , حدثنا حماد عن أيوب عن أبي قلابة عن عبد الله بن يزيد الحظمي عن عائشة قالت كان رسول الله ص

م : يقسم فيعدل و يقول : " اللهم هذا قسمي فيما أملك فلا تلمني فيما تملك و لا أملك " . يعنى القلب . (رواه أبو داود).

*Narrated Musa ibn Ismail from Hammad, from Ayyub from Abi Qilabah from Abdullah ibn Yazid al-Khatmi from 'Aisha (ra), who said: "The Messenger of Allah divided the night shifts among his wives fairly, and the Messenger of Allah said: 'O Allah, this is the fairest share. O Allah, this is what I can afford, so do not charge me with anything that is beyond my capacity'" (H.R. Abū Dāwud).<sup>65</sup>*

The contextual interpretation of verse 3 of Sūrah al-Nisā' begins with the defeat in the battle of Uhud and the death of many Muslim troops, and consequently there were many widows and orphans. This condition is also exacerbated by the behaviour of guardians who tend to mistreat and abuse orphaned women, some of whom they marry and some of whom they do not. This verse is a warning to guardians to avoid injustice towards orphans and at the same time provides a solution to marry up to four other women on the condition that they are able to be fair to their wives. The main message is for guardians to give more justice (*iqsāt*) to orphaned women, and for husbands who have more than one wife to apply the same (*al-'adl*) among them, without distinguishing one from another. Thus, textually and contextually, it cannot be denied that polygamy is one of the Islamic shari'a that comes with its own style, different from the polygamy that was known before Islam came, namely the maintenance of widows and orphans.

## Conclusion

This study concludes that; *first*, historically the practice of polygamy is not only the tradition of non-Muslim nations and countries, but also the tradition of the previous prophets and apostles, as practised

<sup>65</sup> Abu Daud Sulaiman bin Asy'ats al-Sijistani, *Sunan Abu Daud, Juz.2*, (Kairo: Dar al-Hadits, 1999).



by Prophet Ibrahim (peace be upon him), Prophet Ya'kub (peace be upon him), Prophet David (peace be upon him) and Sulaiman (peace be upon him), then this tradition was also practised by Prophet Muhammad (peace be upon him). *Secondly*, Musdah Mulia's opinion that polygamy is not an Islamic Shari'ah and it is forbidden to practice it (*ḥarām li ghairihi*), of course, this opinion is unreasonable and not in line with *historical* evidence. Likewise, this opinion does not pay attention to the text and context of the polygamy verse as a whole. However, if the practice of polygamy is not in accordance with the provisions of the Shari'a, then the author agrees that it is prohibited, because it is considered a violation of the Shari'a of polygamy. *Third*, to understand polygamy in the Qur'an, it is necessary to harmonise textual and contextual interpretations. Otherwise, it will fail to understand the central message of the verse. By considering the aspects of text and context, polygamy in the Qur'an is allowed, even highly recommended on the condition that the woman is a widow and has orphans, then there must be a fear of not being able to be fair to the orphans. It is the care of widows and orphans that is the *maṣlahah* (good) in the shari'ah of polygamy, and not mere considerations of desire (lust).

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