

The Law of Polygamy in Islam: a Methodological Review of Siti Musdah Mulia's Legal Thought

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Abstract: *The Law of Polygamy in Islam: A Methodological Review of Siti Musdah Mulia's Legal Thought.* This essay essentially conducts an objective and critical review of how the constructs and methodological frameworks of Siti Musdah Mulia thought that concluded that polygamy law is haram lighairihi. Some of the main points to be analyzed in relation to this study are the approach which used by her and her method of seeing the verses on polygamy, the polygamy fair terms, the practice of the Prophet's polygamy, and her conception of the lighairihi haram. This study is character studies form, and the primary data material is the works of Siti Musdah Mulia through by using literature study. The analytical method used analysis content with a normative approach. This study found that in carrying out her thoughts on the unlawful law of polygamy lighairihi, Siti Musdah Mulia used several kinds of arguments: normative argumentation, in the form of Qur'an and hadith, jurisprudence and empirical social facts. While in understanding the verses and traditions concerning polygamy, it is more likely use contextual approach and analysis, maqâshid al-syarî'ah (philosophical), socio-historical.

Keywords: *polygamy, haram li ghairihi, Musda Mulia*

Introduction

Polygamy is one of the classic issues, but it still remains as the warm and actual topic to talk about. it cause of this issue always arise the cons and pro opinion of the society. Imagine, because the issue of polygamy is always just kontro-versial so as to reap the pros and cons in the middle of human life, not least among Muslims themselves. Polygamy existing in the teachings of Islam even made by non-Muslims blaspheme and discredit Islam. Western authors often claim that polygamy is evidence that Islamic

teachings in the field of marriage are highly discriminatory against women.¹

In Islam, this issue is discussed in the Qur'an letter al-Nisa`/4 verse 3. In summary, textually and explicitly, QS al-Nisa`/4: 3 allows men to marry more than one woman (polygamy); two, three or four wives.² By referring and based on this naqli argument also, for more or less fourteen centuries, scholars generally argue that polygamy is a teaching in Islam, and some even consider it is sunnah. But in this verse, there is also the recitation of "fa inkhifitum al-lata'dilu fawahidah," which literally means: "if you can not do justice then marry only one." Based on the expression of this verse, that justice becomes an absolute requirement to be able to be a polygamist. Required to be fair in relation to polygamy turned out to be a serious debate among the scholars. Moreover, the Qur'an in other places states that fair to women is a very difficult thing to do, even almost "impossible" is manifested, as al-Nisa` / 4 verse 129. Against this verse, there is a debate and dissent among Muslims, whether in terms of an istinbâti law, the criterion of skill and in terms of its application (tathbîqî). The classical scholars, both from the mufassirûn (interpreter) as well as Islamic jurists (fuqahâ`) argued that based on QS. al-Nisâ` / 4: 3, Muslim men can marry four women, although there is little difference in determining the criteria of polygamy permissibility. Some of them are allowing it absolutely and loosely, while others allow it under strict conditions. But after that, there was the other idea to reject and forbid the polygamy, among others by Siti Musdah Mulia. In her book "Islam Sues Polygamy", Siti Musdah Mulia stated that polygamy is essentially a harassment and an affront to the dignity of women. Furthermore, She forbade polygamous shari'a because it was considered as a violation of human rights. According to polygamy, the law is haram lighairihi (haram because of its excesses). Therefore, it is necessary to propose the absolute prohibition of polygamy because it is seen as a crime against humanity and a violation of human rights ".³

¹ Amiur Nurudin dan Ahmad Azhari Tarigan, *Hukum Perdata Islam di Indonesia*, Jakarta: Permada Media, 2004), 156

² (So marry other women you like: two, three or four, then if you are afraid that it will not be fair, then marry only one or the slaves you have, that is closer to do not abuse), *Ibid.*,60

³ Musdah Mulia, *Islam Menggugat Poligami*, (Jakarta: PT Gramedia Utama; 2004), h. 193-194

The opinion of Siti Musdah Mulia who declared marriage polygamy law is haram lighairih impressed not only very brave but also unique, because it is contrary to the opinion that existed so far. Because of Siti Musdah Mulia's opinion about polygamy, it makes the researcher is interested to conduct the study, especially from the point of view of Islamic legal theory. In this case, the issues are focused on the question of how the argumentation and methodology of Musdah Mulia in understanding the nash al-Syar'iyah, the practice of the Prophet's polygamy, and the fair terms of polygamy and the application of the haram formulation of the lighairihi polygamy it is expressed.

Brief Biography of Siti Musdah Mulia

Her full name is Prof. Dr. Siti Musdah Mulia, M.A, APU. She was born in Bone, South Sulawesi, on March 3rd, 1958, the first child of Mustamin Abdul Fattah and Buaidah Ahmad.⁴ Her mother was the first girl in her village to complete her education at Darud Dakwah wa al-Irsyad (DII) Pesantren, Pare-Pare, while her father was once a Battalion Commander in the Islamic State led by Abdul Kahar Mudzakar who later known as DI / TII movement in South Sulawesi. Furthermore, her family tree is very strong with religious life. Her grandfather of his father, H. Abdul Fatah, was a prominent murshid in Jamaah Terekat Khalwatiyah.⁵ However, Bone is only the birthplace of Musdah. Since 2 years old, she and his parents moved to the Java Island, precisely in Surabaya. After graduating from elementary school (1969), Siti Musdah Mulia went to PGA for 4 years (Religious Teacher Education) in Cilincing, North Jakarta.

In the end of 1973, she completed her senior high school education, graduated with the best grades, then continued her studies at As'adiyah Islamic College and She selected Ushuludin (Theology) faculty.⁶ In addition, She also took a course on the faculty of Shari'ah (Islamic Law) because here is offered an assessment of yellow books about hadith and fiqh with the sorogan method. For two years at the Faculty of Ushuluddin Musdah carved her name as the best student. Enter the third year, She

⁴ Marwan Sardijo, *Cak Nur Diantara Sarung dan Dasi & Siti Musdah Mulia*, (Jakarta :Yayasan Ngali Aksara-Paramadina, 2005), h. 67

⁵ Siti Musdah Mulia, *Muslimah Sejati: Menempuh Jalan Islami Meraih Ridha Ilahi*, (Bandung: Marja, 2011), h. 345

⁶ Marwan Sardijo, *Op. Cit*, h. 71

moved to Makassar so her intention to enter IAIN Makassar became a reality even though it must start from the first semester.

At IAIN she choosed the Faculty of Adab. Besides in Adab, Musdah resumed her studies at the faculty of Ushuluddin, Universitas Muslim Indonesia (UMI), Department of Da'wah and entered semester III. In 1978, she got a Bachelor's Degree. Graduated with a Bachelor Degree in Faculty of Adab in 1980. In 1990, She continued her study at IAIN Syarif Hidayatullah Jakarta postgraduate program. Exactly two years (1992) She graduated and continued her study in the doctoral program in the same university.⁷

In addition to her formal education, Musdah Mulia has also undertaken non-formal education: the Short Course on Islam and Civil Society at the University of Melbourne, Australia. (1998); Short Course of Human Rights Education at Chula-longkorn University, Thailand (2000); Short Course of Advocacy for Human Rights Enforcement and Democracy (International Visitor Program) in the United States (2000); Short Course of Management Education and Leadership at George Mason University, Virginia United States (2001); Short Course of Human Trainers at Lund University, Sweden (2001); short Course on Women's Management and Leadership in Bangladesh Institute of Administration-traction and Organization (BIAM), Dhaka, Bangladesh. Visting Professor at EHESS, Paris, France (2006), International Leadership Visitor Program, US Department of State, Washington (2007).⁸ In 2008 she received an award from Yap Thiam Hien Human Rights Award for her persistence in defending minority groups in Indonesia. And she also received the Woman of the Year 2009 award from the Italian government for her strong commitment to fight for women's rights.⁹

At the beginning, She worked as a researcher since April 1985, precisely at the Center for Research of Religions training in Makasar. at Ministry of Religious Affairs. after Five years had worked (1985-1990) she was transferred to the Center for Research Lektor Religion, Agency for Research and Development Department of Religious Affairs Jakarta to

⁷Siti Musdah Mulia, *Islam & Hak Asasi Manusia*, (Jakarta, Naufan Pustaka,2010), h. 357

⁸ Siti Musdah Mulia, *Muslimah Sejati: Op. Cit*, 346-347

⁹ Siti Musdah Mulia, *Islam & Hak Asasi Manusia*, *Op. Cit*, h. 359

follow her husband who is studying at IAIN Jakarta.¹⁰ On March 3 rd, 1996, she received a Decree of Principal Investigators (APU), a professorship at the University, signed by President Soeharto. The following three years, May 4 th, 1999 she has confirmed as the Principal Research Expert of the Religious Literate in front of the Assembly of the Major inaugural Research Assembly led by the chairman of LIP. Soefyan Tsauri, MSc, APU.

In addition she also worked as a lecturer in several universities, including in the Faculty of Adab IAIN Alauddin, Makassar (1978-1989),¹¹ at Universitas Muslim Indonesia (UI) Ujung Pandang, Faculty of Adab IAIN Jakarta (now becoming UIN) and the Institute of Quranic Sciences (IIQ) Jakarta (1997-1999). She was also recorded as a board member and lecturer of Pesantren Pondok Madinah Ujung Pandang Foundation (1987-1990). In addition, there are also active institutions in various language courses, both Arabic and English, including the H.Ayyrik Mosque language course, and Ittihad Foundation, in Makassar. Finally, she was offered as a teacher at the IAIN Jakarta Program for Modern Development courses in the Islamic World. In 2000-2001, She became expert staff of State Minister of Human Rights Affairs in field of Prevention of Discrimination and Protection of Minorities; and expert staff of the Minister of Religious Affairs of the Organization of International Relations (2001).¹²

Beside this, Musdah also active in some social organizations such as: social organizations, student organizations, youth organizations, women's organizations and religious organizations. These social activities took place since she was a university student. She ever served as a board member of the campus organization, such as the IAIN student council, the Senate of the Faculty of Adab, the head of the Nadhatul Ulama (IPPNU) South Sulawesi province, the head of the Fatayat NU region of South Sulawesi, the head of the Indonesian Muslim Student Movement Corps (KOPRI PMII) of South Sulawesi, and the board of KNPI DPD TK I South Sulawesi. During she stayed in Jakarta, he was active as general secretary of Fatayat NU Chief (1990-2005), subsequent chairman I Fatayat NU

¹⁰ Siti Musdah Mulia, *Islam dan Kesetaraan Gender*, (Yogyakarta: Kibar Press, 2007), h. 257

¹¹ Siti Musdah Mulia, *Muslimah Sejati*, *Op. Cit.*, h. 347

¹²*Ibid.*, h. 347

(1995-2000), vice chairwoman of Indonesian Development Women (WPI) 1995-2000 period, chairman of the MDI Women Corps Experts Council (1995-2005), Indonesian Women Coalition Councils (1998-2003), deputy secretary of the NU Muslim Leaders' Chief (2000-2005). While at the NGO organization she was the chairman of the Institute for Religious and Gender Studies (LKAJ), chair of the Communication Forum between Religious Leaders on Violence Against Women, a member of the Jakarta Religious Communication and Consultation Forum, chairman of the 3rd Indonesia Conference on Religion and Peace (ICPR). centered in New York USA. Next, become a board in the ties of the Indonesian Hajj Brotherhood (IPHI). in addition, she also noted as a member of the organization Rabithah al-Adab al-hadis based in Cairo, Egypt. 2001).¹³

Siti Musdah Mulia has produced many papers. The written works that have been published include the following:

1. Popular Arabian Mufradat (1980)
2. The base of Arabic Language (1989)
3. History and Introduction to Hadith (1995)
4. History and Introduction to Science of Tafsir (1995)
5. Islamic State: Political Thought of Haikal, Paramadina, Jakarta (1997)
6. Islam's View of Polygamy, Jakarta: Institute for Religious and Gender Studies, 1999
7. Lektor Agama In Mass Media, Dep. Religion (1999)
8. Anotation of Contemporary Islamic Book, Dep. Religion (2000)
9. Islam Sues Polygamy, Gramedia, Jakarta (2000)
10. Gender Equality and Justice (Islamic Perspective), LKAJ (2001)
11. Guidelines of Da'wah Muballighat, KP-MDI (2000)
12. Analysis of Public Policy, Muslimat NU (2002)
13. Hacking the Early Path of Human Life: Counseling Training Module on Reproduction Rights, LKAJ (2002)
14. Subtlety of Worship in Islam, As-Sakinah, Jakarta (2002)
15. Reformed Muslim: Religious Reformer, Mizan, Bandung (2005)
16. Women and Politics, Gramedia, Jakarta (2005)
17. Islam and Violence against Women. LKAJ, Jakarta (2006)

¹³*Loc. Cit,*

18. Islam & Gender Equality Inspiration, Yogyakarta: Kibar Press, 2007
19. Towards Women's Political Independence: Efforts to End Indonesian Depoliticization in Indonesia, Sleman Yogyakarta: Kibar Press, 2007
20. Islam & Human Rights, Jakarta, Naufan Pustaka, 2010
21. True Muslim: Taking the Islamic Way to Reach the Divine Ridha, Bandung: Marja, 2011

She also wrote dozens of entries in the Encyclopedia of Islam (1993), Encyclopedia of Islamic Law (1997), Encyclopedia Al-Qur'an (2000), and the number of articles presented in various scientific forums, both inside and abroad.¹⁴

Based on the description above, it is illustrated that how Siti Musdah Mulia is a woman scientist, productive, dedicated, persistent and unyielding, the frugal writer, and in addition she should be a role-model for Indonesian women. Finally, Musdah Mulia is also known as a female humanitarian combatant who has been consistent and active in the fight for women's rights, human rights and democracy in Indonesia. Because of that struggle, on March 7th, 2007, Musdah received the International Women Of Courage award from US Secretary of State Condoleezza Rice at the White House in Washington DC. The award was presented directly to Musdah along with 9 other people who came from several countries, a Zimbabwe, Latvia, Iraq, Afghanistan, Saudi Arabia, Maldives and Argentina. On the occasion, Musdah represents the Asia Pacific region. The ten people, including the Musdahs, were strictly selected from 100 candidates from around the world.¹⁵ Consistency against polygamy practices that always degrade women and children is part of their idealism of equal and equitable gendered living.

Analysis of Musdah Mulia's Concerning on Polygamy Issues

In this paper, the analysis of Musdah Mulia's thought, directed and focused on four things, her thoughts on the verses about polygamy, the practice of polygamy of the Prophet SAW, fair terms in polygamy, and the unlawful law of polygamy *lighairihi*

¹⁴*Ibid*, h. 348

¹⁵*Ibid.*, h. 346

The Verses about Polygamy

Against Surat al-Nisâ 'verse 3, which is commonly used as the basis of polygamy law, Musda Mulia stated that:

At first glance it looks so, because in it there is a phrase "fankihu mathaba lakum min-annisa'i matsna wa tsulatsa wa ruba 'which means" marry women you like, two, three, or four. "However, the instructions of the Qur'an ', it can not be fully understood and true only by referring to a particular passage of a verse and ignoring the rest of the verse. A verse should be seen in full, not beheaded. Moreover, only take part of the favorable verse, and deny the other parts that are considered unprofitable. Basically, in discussing the issue of polygamy, almost all tafsirs and jurisprudences highlight permissively (permitting polygamy), without re-criticizing the nature behind it, whether historically, sociologically, or anthropologically.¹⁶

Furthermore, according to her, to understand a problem in the Qur'an we cannot only rely on one or two verses only, but all the verses that allude to the matter must be seen and discussed one by one to get a common thread that links the content of various verses different. Not only that, it should also be understood what the relationship between verses that one and the other verse, and relationship content verse with the central theme of the sura.¹⁷ With reference to the views of the exegetes, she added that this verse (Q.S al-Nisa` / 4: 3) was revealed in Medina after the Uhud War. As understood, due to the carelessness and in discriminatory of Muslims in the war resulted in them being defeated. Many Muslim soldiers are killed on the battlefield. The next impact, the number of widows and orphans in the Muslim community has increased dramatically. The responsibility of maintaining the orphans is of course then delegated to his guardians. Not all orphans are in poor condition, among them inherit treasures that many relics of their deceased parents.¹⁸

In that situations and conditions, made evil intentions appeared in the hearts of some guardians who care for orphans. In many ways, they

¹⁶Loc. Cit

¹⁷ Siti Musdah Mulia, *Islam Menggugat Poligami*, h. 92; Juga Musdah Mulia, *Pandangan Islam*, h. 31-32

¹⁸ Musah Mulia, *Islam Menggugat Poligami*, *Op. Cit*, h. 93-94;

cheated and disdain the orphan's property. and for women orphans who have beautiful faces, the guardians marry them, and if they were ugly, they cherished them unmarried even though there were other men who propose to them. The purpose of the saints married orphans who are in their power solely so that the orphan's property did not turn to others. While their goal prevented the orphans to marry other men, that was to keep their property from turning to others. Thus, they married or prevented the orphan from marrying the same purpose, that was to take possession of their property. Both forms of a deed are very unfair.¹⁹ Because the ultimate goal of the guardian is to take possession of the orphaned property, consequently the noble purpose of marriage did not materialize. some orphans who have been married by their own guardians suffer the misery of unfair treatment. The orphans were married, but their rights as wives, such as dowries and livelihoods were not given. In fact, their property is seized by their own husbands to feed their other wives whose numbers are more than fairness.²⁰

From the reading of the various reports of al-nuzul asbabs expressed by commentators in his various tafsirs, in turn, Musdah Mulia concluded that QS al-Nisa` / 4, verse 3 which is the theological and normative basis for justifying the permissibility of polygamy, not speaking in context marriage, but in the context of orphans. Read more her explanation:

If it is searched asbab nuzul the verse (Q.S al-Nisa` / 4 verse 3) clearly does not speak in the context of marriage, but in the context of orphaned meditation. Islam is a religion that carries a mission of liberation. The liberation primarily addressed to three groups of society, ie slaves, orphans, and women, who have often been treated unfairly and therefore called mustadh'afin (the oppressed). Orphans get not less important attention from slaves and women because they are often the object of oppression. At that time, marriages done with orphans were often intended only as a cover to take possession of his property. To avoid unfair treatment of orphans, Allah SWT gives a solution to marry other women as much as, two, three and four. They can do polygamy if they able to do justice if enable one is

¹⁹*Loc. Cit.*, Juga Musdah Mulia, *Pandangan Islam, Op. Cit.*, h. 32-33

²⁰*Loc. Cit.*

enough. From this it can be concluded that the principle of marriage in Islam is monogamy, not polygamy.²¹

On another occasion Musdah also stated:

By reading to the composition of the editors only, we can know clearly that this verse is not a suggestion for polygamy, but rather to provide a solution so that guardians avoid being unjust to orphans in their guardianship by marrying other women by itself is spared from the nasty deeds of orphans. For marriage motives with orphans of the guardians are merely to take possession of their possessions."²²

In order to avoid unfair behavior and persecution of orphans, God calls upon believers not to marry them and as an alternative to marry other women who are rarely likely to cheat on them. It is allowed to marry more than four. But remember, Allah affirms at the end of the verse that marrying only one person, more promising to be fair.²³ Polygamy is only a temporary solution for Muslims in the early days, so they are free from unlimited marriages that are condemned for inequality. Thus Q.S al-Nisa` / 4 verse 3 does not legitimize polygamy as understood by many people.²⁴

That the decline of Q.S al-Nisa`/4 verse 3 is related to orphans being unfairly treated by their guardians, and the case occurred after Uhud's war, according to the authors of irrefutable historical and historical data and facts. However, it does not mean that the verse (Q.S al-Nisa`/4 verse 3) has no link to the issue of polygamy in marriage. Precisely reminded to be careful and think twice if you want to polygamy because of it there are conditions that are very heavy and easy to fall into the sin and unjust. It's just that most people see the text fragment of Q.S al-Nisa`/4 verse 3 (fankihu mathalakum min nisa ...) as the basis of the permissibility of polygamy, without seeing the whole verse and not or less considering the verses. M. Quraish Shihab in his commentary puts it, deeply regrets Surat al-Nisa`/4 verse 3 because it is often misunderstood. This verse goes down, as Ayesha ra said, concerning the

²¹ Musdah Mulia, *Islam & Inspirasi Kesetaraan Gender*, (Yogyakarta: Kibar Press, 2007), h.145

²² Siti Musdah Mulia, *Islam Menggugat Poligami*, *Op. Cit.*, h 91

²³*Ibid.*, h. 106

²⁴ Musdah Mulia, *Muslimah Sejati*, *Op. Cit.*, h. 40

temporary attitude of the guardian (who is entrusted with the orphan) who wishes to marry beautiful and rich orphaned children who are in his care, but did not want to give him the proper dowry and also did not want to give him a living fairly. This verse prohibits this with a strict sentence. The mention of "two, three and four" in essence in order to claim fair to them. The editors of the verse are similar to the words of someone who forbids others from eating certain foods, and to reinforce the prohibition it says: *"If you are afraid of getting sick when eating this meal, just eat another meal that is in front of you, as long as you do not worry sick. the only meaning is the emphasis of the ban on eating certain foods."*²⁵ Quraish Shihab further underlines that the verse does not contain the rules on polygamy because polygamy has been known and practiced by the Shari'a of religion and tradition before Islam. This verse also does not oblige polygamy or advocate but merely talks about polygamy, and it is only a small emergency exit that can be passed when necessary and in a mild condition.²⁶

At the exposition of Musdah Mulia's thought that rejecting the QS al-Nisa`/4 verse, 3 is made a normative argument about the permissibility of polygamy, insignificant and erroneous, is based on her critical reading on the asbab nuzul QS al-Nisa`/4 verse 3. This means the analytical approach used in understanding the verse is a socio-historical and contextual approach. That is an approach to understand the texts of the Qur'an by paying more attention to its historical aspect, rather than the text of the text itself. As a result it seems impressed there is a text waiver.

And the scholars generally admitted that the study of asbab al-nuzul has an important meaning to understand the Qur'an. Knowledge of asbab al-nuzul will help a person to understand the context of the coming down of a scripture. The context will give an explanation of the implications of a verse, and provide material for interpreting and thinking about how to apply a verse in different situations. ²⁷Shubi al-Shalih, even saying that ignorance of asbabun al-nuzul will cause errors,

²⁵ M. Quraish Shihab, *Tafsir Al-Misbah*, Jilid II (Jakarta: Lentera Hati, 2000) h. 324; Juga M.Quraish Shihab, *Wawasan Al-Qur'an*, (Bandung: Mizan, 1996), h. 199

²⁶ M.Quraish Shihab, *Op. Cit*, 324

²⁷ Masdar F. Mas'udi, *Konsep Asbab al-Nuzul: Relevansinya Bagi Pandangan Historis Segi-Segi Tertentu Ajaran Keagamaan*, <http://www.otodidakilmu.blogspot.com>.

even can lead to practices that are contrary to what is desired by a verse.²⁸ Furthermore, citing various sources of authority in this field, Ahmad von Denffer, as stated by Masdar F. Mas'udi, gave details of the importance of knowledge about *asbab al-nuzul*, especially regarding the legal verses: (a) Meanings and immediate and immediately understood implications of a verse, as can be seen from the original context; (b) The first underlying reason underlying a legal interest; (c) Purpose of a verse; (d) Determining whether the meaning of a verse contains a special or general applied application and, if it is so, how it can or should be applied; and (e) The historical situation in the time of the Prophet and the development of the Muslim community.²⁹

However, in terms of taking meaning the scholars turned out to make two rules theories in different *asbab al-nuzul*. First, "العبرة بعموم اللفظ لا بخصوص السبب" (the meaning is taken based on the text, not on the particularity of the cause)." Second, "العبرة بخصوص السبب لا بعموم اللفظ" (the meaning is taken based on the specificity of cause, not based on *lafazh*). Since there are two different rules that can be applied, the result can be different depend on which rule is applied. In this regard, She seemed to choose to apply the second principle, therefore, one of the reasons that Musdah Mulia stated her opinion about QS *al-Nisa`/4* verse 3 is not significant as the justification argument for the permissibility of polygamy, on the basis of consideration of *al-nuzul* verse *asbab*, it looks very contrast to the opinion of the *fiqh* scholars who are already established the first rule of the theory.

The Practice of Polygamy of Prophet SAW

Musdah Mulia, really didn't deny that during his life the Prophet SAW applied polygamy. But in her opinion, many people who miss understanding the practice of polygamy by Prophet SAW, including Muslims themselves. Furthermore Musdah said:

There is a presumption that the Prophet did polygamy with the goal as ordinary people have, that is to fulfill the biological demands or to satisfy the desires of his lust. In general, poly-gamy is done for biological purposes only. This error needs to be straightened out,

²⁸ Subhi al-Shalih, *Al-Mabahis fi Ulum al-Qur'an*, (Beirut : Dar al-Ilmi al-Malayin, 1988 M), h. 132

²⁹ Masdar F. Mas'udi, *Loc. Cit.*

especially since the practice of the Prophet's polygamy is often used as a justification for the permissibility of polygamy in Muslim societies. "³⁰

The assumption of the polygamy practice did by the Prophet is a Sunnah that can be made hujjah, in her view this is a mistake. Polygamy performed by the Prophet must be understood properly and correctly. According to her polygamy practices conducted by the Prophet SAW, not at all based on biological interests or to get offspring. Similarly, the Prophet did polygamy not in normal circumstances and conditions, but in the conditions and atmosphere of life filled with activities of devotion and struggle for upholding the syiar of Islam toward the formation of a coveted civil society.³¹ Therefore, to understand the meaning of the Prophet's polygamy correctly, we must be able to understand the life of the Prophet Muhammad first.³²The implementation of polygamy by Prophet SAW as seen in history described by her as follows.

Muhammad Rasulullah the bearer of Islamic teaching, growing in the polygamous tradition, but instead, He chose monogamy. The first Rasul SAW married to Khadija bin Khuwailid when He was 25 years old, while Khadija was 40 years old. The marriage of Rasul SAW with the monogamous and joyful Khadija lasted for 28 years; 17 years lived before the apostolate (qobla bi'-tsah) and 11 years later (ba'da bi'tsah). Until Khadijah died, the Prophet did not marry another woman (polygamy). If polygamy is a commendable and noble behavior, "why did the Apostle not do it from the beginning", so Musdah Mulia threw her critical question.³³

Three years after Khadijah's passed away death, He was faced with the great responsibility of developing the state Islam to Yathrib (Madinah) and also out of the Arabian Peninsula. The conditions of tribal people at that time forced Him to establish extensive communication with various tribes in order to support the struggle, and marriage became a strategic communication tool. Thus, the Prophet later married several women for the implementation of the syiar of Islam. The first

³⁰ Musdah Mulia, *Pandangan Islam Tentang Poligami*, Op. Cit, h. 17-18

³¹ Musdah Mulia, *Islam Menggugat Poligami*, Op. Cit h. 81

³² Musdah Mulia, *Pandangan Islam Tentang Poligami*, Op. Cit h. 18

³³ Musdah Mulia, *Muslimah Sejati*, Op. Cit h. 192-193

woman to be married after the death of Khadija, named Saudah bint Zam'ah aged 65 years, some history mentions 72 years who would have been menopause while He was 54-year-old. The Prophet married Saudah to protect the old lady from the neglect and pressure of her idolatrous family. Or perhaps also in return for the merits of her husband, Sakran ibn Amar, a friend of the Prophet who accompanied him on his way to Abyssinia. After Saudah, the Prophet married Aisha Binti Abu Bakr, the only wife who was a virgin and young, even too young. Because Aisha was still young, the Prophet delayed getting his right as a husband until Aisha grew older. It was at this time that the Prophet (s) started polygamy life after the age of 54 years, which is usually at this age male sexual abilities have begun to decline. After Aishah, Rasul SAW successively married Hafsa Binti Umar ibn al-Khattab, Umm Salamah, Umm Habibah, Zainab Binti Jahsyi, Zainab Binti Khuzaimah, Juwairiyah Binti Haris, Shafiyah Binti Huyai, Raihanah Binti Zaid, and the last with Maimunah Binti Harits occurred in the seventh year of hijriah. All of these Prophet marriages took place in the Madina and within in a short time, only 5 or 6 years. The distance between one marriage and another is very short. He died in 632 M or three years after his last marriage. The interesting topic of this is none of the wives were ever divorced by him.³⁴

Further, Musdah Mulia added that although the Prophet married more than one woman, but still he did not agree if his daughter, Fatimah al-Zahra, felt the condition of husband who does polygamy. The prophet was angry and denounces his son-in-law, Ali ibn Talib who intends polygamy. A number of narrations of hadith which told it, they are as follows:

حَدَّثَنَا قُتَيْبَةُ، حَدَّثَنَا اللَّيْثُ، عَنِ ابْنِ أَبِي مُلَيْكَةَ، عَنِ الْمِسْوَرِ بْنِ مَخْرَمَةَ، قَالَ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ وَهُوَ عَلَى الْمِنْبَرِ: «إِنَّ بَنِي هِشَامِ بْنِ الْمُغِيرَةِ اسْتَأْذَنُوا فِي أَنْ يُنْكَحُوا ابْنَتَهُمْ عَلِيَّ بْنَ أَبِي طَالِبٍ، فَلَا أَدْنُ، ثُمَّ لَا أَدْنُ، ثُمَّ لَا أَدْنُ، إِلَّا أَنْ يُرِيدَ ابْنُ أَبِي طَالِبٍ أَنْ يُطَلِّقَ ابْنَتِي وَيُنْكَحَ ابْنَتَهُمْ، فَإِنَّمَا هِيَ بَضْعَةٌ مِنِّي، يُرِيدُنِي مَا أَرَابَهَا، وَيُؤْذِنِي مَا آذَاهَا» رواه بخاري

Has told us Qutaibah, has told us al-Laits, from Ibn Abi Mulaikah, from al-Miswarah bin Makhramah said; I heard the Messenger of Allah say

³⁴Ibid., h. 193-194;

in the pulpit: "The family of Hisham ibn Mughirah has sought permission to marry his daughter to Ali, so I will not allow it, I do not allow it, I will not allow it, unless Ali is willing to divorce my daughter, newly married their child. Know, she (Fatimah) is the caress of my soul, anyone who happy Fatimah means happy me. On the contrary, whoever hurt him means he hurt me.

Toward this hadith above, Musdah Mulia stated that:

The Hadith proved how the prophet disagrees on polygamy. He even repeated three times his disapproval of Ali's polygamy intentions. History also noted Ali just married again after Fatimah died. As an Apostle, of course, he was aware that the defense of girls and his violent rejection of polygamy would be exemplified by the fathers of his people. Objections of the Prophet are very logical and even very humanity. Where is a sane father willing to see his daughter combined? For, only monogamous marriage promises the realization of macadamweRamah (unbreakable love of kais), mu'asyarah bi alma'ruf (politeness and modesty) sa'adah (happiness) and sakinah (peace and peace).³⁵

The behavior of the Prophet who did polygamy with various basic considerations, and tied to the historical setting of the moment as stated above Musdah Mulia, so far seems to be an irrevocable historical reality. No One who denies that the Prophet polygamy was not a biological drive, lust, and descendants, but because of the interests of da'wah, syi'ar of Islam. The only problem is, "the behavior of polygamy of the Prophet" becomes the Sunnah fi'liyyah of the Prophet that must be followed and or can be a proposition of the permissibility of polygamy? For Musdah Mulia, who from the outset put more emphasis on historical and contextual rather than textual studies, the practice of the Prophet's polygamy is not a sunnah of the Prophet, as lethal and textually understood by some to justify the permissibility of polygamy absolutely. Against the women who married Prophet SAW, M. Quraish Shihab also commented:

These are the wives of Prophet Muhammed (SAW) who are all widows except Ayesha, and whom he married after having been aged over the age of over twenty years and during his life with the mother

³⁵*Ibid.*, h. 196; Juga Siti Musdah Mulia, *Pandangan Islam tentang Poligami, Op. Cit.*, h.

of his son, Khadija r.a, his first and beloved wife. These wives mentioned above are often highlighted by those who do not want to know or are reluctant to understand the background of the magazine. ... Nor can it be said that the Prophet married more than one, and such marriages should be imitated, for not all what the Apostle did was exemplary, as not all that was obligatory or forbidden to him, was obliged and forbidden to people. Is not Rasul SAW among others must build a night prayer and should not receive zakat? Is it not ablution; when he fell asleep? Is not there a right for the leader to succeed his mission? Or do those who claim it really want to imitate the Prophet in marriage? If so, then they need to realize that all the women he marries, except Ayesha, are widows, and all to succeed da'wah, or help and rescue the women who lost their husbands, who are generally not women, and has an alluring appeal.³⁶

There are four important points highlighted by Musdah Mulia, which seemed to be the basis of the argument that the Prophet's polygamy behavior, SAW is not a sunnah of the Prophet or part of the religious teachings (sunnah) therefore it cannot be a justification for polygamy. These are the life span of the Prophet with a much longer monogamous (28 years) than married to a polygamy of only 5 or 6 years; (b) the polygamy of the Prophet (s) is not based on biological or lustful interests; (c) polygamy of the Prophet (s) performed on situations and conditions of life full of activities of devotion and struggle to uphold the syiar of Islam, and; (d) the prohibition of the Prophet (s) against the waning of Ali ibn Abi Talib polygamy or pitting Fatimah, daughter of Rasulullah SAW.

Justice as the Polygamy Terms

If Q.S al-Nisa`/4, verse 3, which is always a reference to the polygamy issue, it is clear that there is the word "fa in" which means "then if" as a form of word of the condition. That is, after the phrase "fankihu ma thabalakum min al-nisa matsna, wa tsulasta wa ruba (then marry the woman you love, two, three and four)", there is the word "fa inkhiftum anla ta'dilu fa wahidah (if you cannot afford it do justice, then just marry one only). The word "fa inlam ta'dilu" becomes a requirement

³⁶ M.Quraish Shihab, *Tafsir al-Misbah*, Jilid II, *Op. Cit*, h. 325

for both before and after sentences; "Fawahi-dah" is the answer if the condition is not met.

In Her view, justice is a basic principle taught by the Qur'an to be used in all aspects of life and it is no exception. Polygamy is only a temporary solution for Muslims in the early days, so that they are free from unlimited marriages who are cursed because of unfairness. Thus Q.S al-Nisa`/4 verse 3 does not legitimize polygamy as understood by many people.³⁷

As a religion which is respectable to justice, according to Musdah Mulia, Islam came to bring radical changes in the practice of polygamy at the time. Islam limits the number of wives to only four people, and even then only if the husband is able to be fair. The requirements set for polygamous permissibility are very severe, and it is almost certain that no one is able to fulfill them or else it is impossible to fulfill them. That is, Islam is tightening the terms of polygamy in such a way that men should no longer arbitrarily against their wives in advance. Thus it is seen that the practice of polygamy that Islam allowed in the early days, is very different from previous polygamy practices. The difference is seen in two things. First, the wife's number of unlimited numbers becomes limited to only four. This restriction was felt very heavy because the men of that time were familiar with many wives, then they were told to choose four and divorce the rest. Second, on the terms of polygamy, this must be able to be fair. Previously, polygamy did not recognize any conditions, including the terms of justice. As a result, polygamy brings a lot of misery and suffering to women because polygamous husbands are not bound to the necessity of justice, they are persecuting and arbitrary following the outrage of their passions.³⁸

Furthermore, she said, the revolutionary modification of Islam to the form of polygamy actually indicated that in principle Islam wants to eliminate polygamy. But in accordance with the principle of Islamic law that is not burdensome and set the law gradually, then the elimination is done in stages, just like the forbidden of the wine. Clearly the stages of polygamy removal. The first stage, beginning with the restriction of wife number, from the previous unlimited number to only four. Quantitative

³⁷ Musdah Mulia, *Muslimah Sejati, Op. Cit*, h. 40

³⁸ Musdah Mulia, *Islam Menggugat Poligami, Op. Cit*, h. 128-129

limitation itself is a new breakthrough in the history of humanity at that time. The next stage, affirming fair terms for polygamists and drawing them into justice covers all aspects, not just in material terms, but also concerns, and affection. So the important is this fair requirement so that the Prophet to affirm the treatment of unfair husbands in polygamy, as seen in a narrative from Abu Hurayrah, the Prophet said: "Who has two wives, then one-sidedness to one, then one day he will come on the Day of Resurrection with one of his shoulders tilted."HR Abu Dawud, Nasa` and Ibn Majah.

And the next step down Q.S al-Nisa` / 4 verse 129 which states that the husband will not be able to do justice to his wives even though he really wanted to do it. That is, Islam has closed the door of polygamy through the verse.³⁹

From the explanation above, there are at least two main points of view of Musdah Mulia in relation to polygamy. First, the just being encoded in polygamy is not only in material things, such as livelihood but also in the immaterial, the tendency of love and affection. Second, fair criteria covering two aspects of it, impossible or hardly anyone can fulfill it except the Prophet (s). This Noble Awakening view of such justice is clearly contrary to the jurists of fiqh (fuqaha ') who hold that the fair conditions set forth in the polygamy clause only concern the fair in livelihood and mabit (night shift).⁴⁰

In relation to the question of justice in the QS al-Nisa / 4, verses 3 and 129, it seems that, according to the authors, the cause of differences among scholars about the law of polygamy. Some argue that the polygamy of the law is permissible, for that justice is not equality in all things. The justice demanded is on the subject matter (livelihood) and the night shift. While justice in the case of immaterial form of the tendency of the heart and feelings of love, it is not demanded or required, because beyond the reach of human capabilities. Meanwhile, others argue that polygamy is forbidden on the grounds that it is argued that the justice demanded by the Qur'an verse, especially in the case of the immaterial, cannot be fulfilled. In the case of the feelings and

³⁹*Ibid.*, h. 129-130

⁴⁰ Abdurrahman Al-Jaziry, *Al-Fiqh 'Ala Al-Madzahib Al-Arba'ah*, Juz IV (Beirut : Darul Fikr, 1996), h. 206-207

tendencies of heart and love, as Q.S al-Nisa 'verse 129 says, none of the husbands can do justice, in the sense of having the same love for their wives. The tendency of the heart and feelings of a husband's love for the "second / young wife" will not be possible with the "first / old wife", and that clearly affects the psycho-logical and behavior of the husband in association with his wives. Is, then a polygamous husband is quite easily caught up in the unjust and sinful attitude, for causing one of his wives to feel doomed, lacking or not getting attention and affection.

If we see in terms of language (etymology), the term or the word fair indeed contains a broad meaning. In language, the word fair is given meaning: balance (impartial); duly; not arbitrary.⁴¹ In Arabic, the word fair contains many meanings: al-musawah (same), al-i'tidal (straight / middle), and al-maiyl ila al-haq (leaning to the right).⁴² Because of his straight and equal attitude, not partial to one side, then he means doing something right. So a fair person, said M. Quraish Shihab, is a person whose attitude is straight, always using the same size, not a double size. The equation is what makes a fair just not one of the disputants.⁴³ Furthermore, according to al-Raghib al-Asfahani, the word justice in the meaning of al-musawah (the same) is used for two at once, namely for " " العدل يستعمل فيما يدرك بالبصيرة " (used for something that can be seen and " " يستعمل فيما يدرك بالحاسة " something that is known by non-matter / feeling.) .⁴⁴ On the basis of this lughuwi fair meaning, too, it seems that Musdah Mulia stated that the justice as polygamy's terms encompasses the material and the immaterial. In this connection, it is interesting to put forward the opinion of Muhammad Abduh, that the skill of polygamy (at a glance literally) offered by the Qur'an is a very difficult thing, given the weight of the conditions that must be fulfilled. The requirement of justice is absolute. The weight of the prescribed conditions leads to the understanding that God forbids polygamy. Polygamy is forbidden to those who have no concern can be fair. Thus the polygamy mentioned in the Qur'an does not imply encouragement (targhib) but shows an unpopular attitude (tarhib). If the person who wants to practice

⁴¹ Departemen Pendidikan dan Kebudayaan RI, *Kamus Besar Bahasa Indoensia*, (Jakarta: Balai Pustaka, 1998) h. 9

⁴² Luwis Ma'luf, *Al-Munjid fi al-Lughah*, Beirut: Dar al-Masyriq, 1973, h. 491-492

⁴³ M. Quraishy Shihab, *Menyingkap Tabir Ilahi*, (Jakarta: Lintera Hati, 1999), h. 148

⁴⁴ Al-Raghib al-Ashfahani, *Mu'jam Mufradat al-Fazh al-Qur'an*, (Beirut: Dar al-Fikr, 2010), h. 244

polygamy is thinking about the severity of the condition of justice, surely he will have only one wife.⁴⁵

The Law of Haram Lighairihi in Polygamy

Islam does not advocate polygamy much less oblige it. "Furthermore she stated that:" The practice of polygamy in society has caused widespread social problems and has been very alarming. Among the causes of unofficial marriage, high rates of domestic violence, high cases of violations of children's rights, abandonment of wives and children, especially psychologically and economically. In conclusion, the negative aspect of polygamy is greater than the positive aspect. In religious terms, more harmful rather than useful and in accordance with the rules of fiqhiyah all things more harmful must be eliminated. Given the adverse effects of polygamy in social life, polygamy can be expressed haram lighairihi (haram because of its excesses). Therefore, it is necessary to propose the absolute prohibition of polygamy because it is seen as a crime against humanity and a violation of human rights. "⁴⁶

In her book "Islam Sues Polygamy", Musdah Mulia mentioned that in the study of Islamic legal theory, the term is found what is meant by the term haram lighairihi, she further explained:

Haram li ghairi is haram because the excesses are very crucial in society. If the crucial excesses can be removed, yes, back to the original law: it is permissible. I see the practice of polygamy in our society, with some of the data that I have, have caused a very crucial thing, and have become a very big social problem. The number of cases of domestic violence is high and many cases of child neglect. be expressed haram lighairihi (haram because of its excesses). Therefore, it is necessary to propose the absolute prohibition of polygamy because it is seen as a crime against humanity and a violation of human rights. "⁴⁷

The term "haram lighairihi" is not popular in the daily life of Muslims. But when we talking about the division of the law of taklifi. The

⁴⁵ Muhammad Abduh & Rasyid Ridha, *Tafsir al-Manar*, Jilid IV (Beirut: Dar al-Fikr, t.th), h. 348- 349

⁴⁶ Musdah Mulia, *Islam Menggugat Poligami*, Op. Cit, h. 193-194

⁴⁷Loc. Cit.

law of taklifi, as defined by the scholars of Islamic jurists, is the provision of Allah and His Messenger directly related to the actions of the mukallaf, whether in the form of orders, the suggestion to impose, the prohibition and the suggestion of not doing, or in the form of giving freedom choose to do or not to do.⁴⁸

Based on the opinion of Ushul fiqh scholars, in general divide the law of taklifi on five types: Mandatory, sunnat, haram, makruh and mubah. In this connection according to Muhammad Abu Zahra and other scholars of ushul fiqh, the law of haram is divided into two, haram lidzatihi (لذاته حرام) and haram lighairihi (لغيره حرام).⁴⁹ Haram lizatihi is an act that is forbidden by Allah, because the essence of danger (harmful) it is contained in the act itself. Like a ban on eating carrion, drinking khamr, free sex, stealing. While the haram lighairihi is an act that is prohibited by syara ', not because of its essence, but under certain conditions, something is forbidden because there are external considerations that will bring to or cause something that is essentially banned (dzatihi).⁵⁰ In other terms and meanings, Abd. Wahhab Khallaf calls it the "haram li'ardhihi" that is an act whose legal in law at first mandatory, nadab or mubah, but there is something new accompanying it that makes it as a joy. ⁵¹ For example, the ban on buying and selling at the time of Friday prayer. Sale and purchase basically the law is mubah (May), but if he is done at the time of Fridayprayer, then the law becomes haram lighairi. Other examples, performing prayer with the clothes of the spoils (stolen), wishal fast, selling something that contains fraud, marriage is merely to justify the wife that has been divorced three times and so forth.⁵²

Based on the theory of Islamic law above, it appears that the law of something can change from its origin because there is a cause that accompanies it. Because of this came two popular rules of formula among scholars of Islamic jurisprudence, "Al-hukmu yaduru ma'a al-illati wujudan wa 'adaman" (the law revolves along with whether or not' illat), and "taghayyur al-ahkam bi taghayyuri al-azman wa amkinah "(the

⁴⁸ Satria Effendi. *M. Zein, Ushul Fiqh*, (Jakarta: Kencana, 2005), h. 41

⁴⁹ Muhammad Abu Zahra, *Ushul Fiqh*, (Kairo: Dar al-Fikr al-'Arabi, t.th), h. 41-4

⁵⁰ Satria Effendi, *Op.Cit*, h. 55 dan 57

⁵¹ Abd Wahhab Khallaf, *Ushul Fiqh*, (t.tp: Al-Haramain, 1425 H/2005M), h. 113

⁵² *Loc. Cit*; Muhammad Abu Zahrah, *Lo. Cit*.

change of law is by changing times and places). So, the rationale of the opinion of Musdah Mulia which declared polygamy law, haram lighairihi, not out of the concept of legal theory formulated by Islamic jurists.

As for the reason of Musdah Mulia, why polygamy law for now is "haram lighairihi", changed from the law of origin may, as seen above is because of the negative excess (harmful) polygamy is greater than positive impact (benefit). This means that Musdah Mulia examined the polygamy law in Islam using the maqashid syari'ah analysis approach, a istinbath method which uses the deepest purpose of intentional analysis of a law (shari'ah). As is known, there are three models of approaches of analysis developed by scholars ushul in doing istinbath law, namely: (a) textual approach that is through linguistic rules (qawâ'id allughawiyah), (b) analysis approach 'illat hukum (causa legis), and; (b) approach by recognizing the meaning or purpose of shari'ah (maqâshid al-syarî'at).⁵³

The third method of istinbath of law, that is, by the approach of maqâshid al-syarî'ah analysis (meaning the establishment of Islamic law), that is, a law is dug up and fixed through a deep study from the side of analyzing the meaning or intention contained in the shari'ah (law) descended by Allah SWT. The approach in this form, according to the scholars is important,⁵⁴ because especially since the verses of Allah's law in the Qur'an are limited in number, while the problems of society always arise. In dealing with the various problems that arise, through a knowledge approach about the purpose of law then the development of law will be done. So in summary, in conducting legal studies, this third analytical approach is not tied to existing written texts, or is not textual in understanding the written texts, but rather emphasizes the contextual aspect.

⁵³The linguistic analysis approach is usually referred to as al-ijtihad al-bayani; The analytical approach 'illat hukum (causa legis) is called by the term al-ijtihad al-qiyasi, and; The analysis of the meaning or meaning of shari'ah (maqashid al-syari'ah), is called al-ijtihad al-ishtilahi. Muhammad Salâm Madkur, *Al-Ijtihad fi Tasyri' al-Islami* (t.tp: Dâr al-Nahdhah al-'Arabiyyah, 1404 H/1984 M), h. 42-45.

⁵⁴ Imam al-Syaukani, for example, declares a person who stops being born nash or simply approaches only through the lafzhiyah (textual) approach and is tied to the juz'i nash and ignores the deepest intentions of the 'law' on errors in ijtihad. Muhammad bin Ali bin Muhammad al-Syaukânî, *Irsyad al-Fuhul ila Tahqiq al-Haqqi min 'Ilm al-Ushul*, Jilid I, Cet. III, (Kairo: Dar al-Salam, 1430 H/2009 M), h. 258

In the historical development of Islamic law it appears that, the conclusion or establishing the law by paying more attention to the benefits of maqashid syari'ah, rather than being tied to the text, actually it have happened in the early period of Islam, precisely at the time of the second Caliph, Umar bin Khattab. For example, Umar bin Khattab did not share the wealth of zakat to the mu'allaf, when in fact it is expressly in the letter of al-Taubah verse 60. Umar did not do that because, according to him that the Prophet gave part of zakat to the convert at that time is to strengthen Islam, but because things have changed. Basically Islam is much different from the Messenger of Allah. Islam is strong and stability is well established therefore, when the condition of Muslims is strong and the stability of the government has been more stable, Umar r.a stop giving part of the convert. In the case of this convert, it appears that Umar did not see any benefit to continue giving gifts to those who had previously.⁵⁵ Similarly, another example is the MUI fatwa which forbids the marriage of Muslim men and women of the People of the Book. In the case of Q.S of al-Maidah letter / 5, paragraph 5 explicitly allows the marriage⁵⁶. In fact, MUI issued the fatwa because of the consideration of the condition and the benefit of the people. The conditions and objectives of the law at the time of Q.S al-Maidah / 5 verse 5 are revealed to have changed considerably with the present condition of Muslims, so that the law of a Muslim man with women ahl Kit is now allowed to be prohibited.

From the description above it can be concluded that, in the methodological point of view, the law of polygamy is haram lighairihi put forward by Musdah Mulia does not seem excessive if it is said to have the same with fatwa of MUI which forbids Muslim men married to the ahl Kitab women. However, if returned to the original concept of the term "haram lighai-rihi" then the law of haram ligaihihi polygamy is stated by Musdah Mulia, should not be absolute. Polygamy is said to be unlawful when there is a cause and the negative excesses that accompany it are greater than the impact of its benefit, especially if the absolute requirement is not fulfilled. That means in other words, the

⁵⁵ Amiur Nuruddin, *Ijtihad Umar Ibn Khattab: Studi Tentang Perubahan Hukum dalam Islam*, Amiur link24share.blogspot.com/2012/04/ijtihad-umar-ibn-al-khattab

⁵⁶ Mohammad Atha' Mudzhar, *Fatwa-Fatwa Majelis Ulama Indonesia*, (Jakarta: INIS, 1993), h. 103-104

issue of polygamy in the view of the Qur'an, should not be seen only in terms of ideal or good and bad, but must be seen from the point of view of the law in a variety of conditions that may occur. It is natural for legislation, let alone a religion that is universal and applicable to every time and place, to prepare for the law which may take place at one time, even though it is a possibility.

Conclusion

Based on the previous data and analysis, then as a conclusion can be taken several conclusions as follows. *First*, In carrying his thoughts on the law of haram lighairihi polygamy, Siti Musdah Mulia used several kinds of argumentation (argument), namely normative argumentation, in the form of al-Qur'an and hadith, fiqh rules and empirical social fact. *Second*, in understanding the verse, the traditions concerning polygamy and the practice of polygamy by the Prophet (s), Musdah Mulia is more likely to use contextual approach and analysis, maqâshid al-syarî'ah (philosophical), socio-historical.

Third, in addition to using language analysis (semantics), Musdah Mulia actually tend to be textual in understanding fair as the absolute requirement of polygamy (ie QS al-Nisa ' / 4: 129). Fourth, the provision of the law of "haram li ghairi" polygamy who put forward Musdah Mulia in principle based on the rule of fiqhiyah "dar'u al-mafasit muqaddamu 'ala jalb mashalih". This rule is actually born from the theory of maqashid al-syari'ah developed by ulama in the study of ushul fiqh. It means, methodologically, in polygamy law using "istinbath term in method" and therefore the analytical approach is contextual and philosophical. With these methods and approaches, Musdah did not seem to be bound or even leave a text or lafazh zahir Nash. The theories, methods and approach used by Musdah are in contrast to the classical fiqh ushul scholars who generally prefer the study of text Nash from the context of the texts.

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