

## **Polygamy in Musdah Mulia's View and Its Relevance to Marriage Law in Indonesia**

**<sup>1</sup>Saadah Mardiyati, <sup>2</sup>Laras Shesa**

<sup>1</sup>Universitas Islam Negeri Fatmawati Sukarno Bengkulu, Indonesia

<sup>2</sup>Institut Agama Islam Negeri Curup, Indonesia

Correspondence: [saadahmardiyati@mail.uinfabengkulu.ac.id](mailto:saadahmardiyati@mail.uinfabengkulu.ac.id)

**Abstract.** The pros and cons of polygamy in Indonesia are still an interesting discussion. This discussion becomes increasingly fierce when the facts around us present polygamists who use religious teachings as an excuse for polygamy. Even though polygamy is a personal choice because the essence of Islamic teachings adheres to a monogamous marriage system. Therefore Prof. Dr. Siti Musdah Mulia through her book "Islam Sues Polygamy (*Islam Menggugat Poligami*)" tries to put this understanding back into perspective, by analyzing 114 verses of the Koran about marriage which concludes that it rejects and even forbids polygamy. The question that arises in this research is: What is the relevance of Musdah Mulia's thoughts on the Marriage Law in Indonesia? This research, which is literature research, is qualitative with a gender analysis approach, complemented by an analytical description of Musdah's thoughts, concluding that the basic principle of Islamic marriage according to Musdah Mulia is monogamy, not polygamy. Musdah also concluded that it was necessary to revise Marriage Law Number 1 of 1974 because it was at odds with the essence of Islam, *rahmatan lil alamin*.

**Keywords:** Polygamy; Marriage Law; Musdah Mulia

### **Introduction**

Polygamy is often used as one of the causes of domestic violence and even leads to filing for divorce. What's sad is that Islamic teachings are used as one of the reasons people practice polygamy as a form of worship. When polygamy contributes to social problems in society, Islamic teachings are also in the spotlight in this problem. Muslim scholars from various circles have tried to explain the law of polygamy in Islam, including Musdah, but this study is not enough to stem the problems

caused by polygamy in Indonesia, because the marriage law in Indonesia opens the door to polygamy.

When Islam arrived 15 centuries ago, a rule was issued that limited the maximum that a person could have to 4 (four) wives. This is because, before Islam, a person could have any number of wives, up to hundreds of people. Islam began to set limits on whether a man could marry with strict conditions, namely that it had to be fair. The principle of justice in this case is not just quantitative justice such as giving material things or taking turns to visit one's wife, but also includes qualitative justice (love which is the foundation and main philosophy of domestic life) which is certainly difficult for a man to fulfill.

However, in reality, we often find polygamists who feel they can act fairly and always use the reason for polygamy as worship because they want to imitate the prophet Muhammad SAW. This was enough to make Siti Musdah Mulia<sup>1</sup> (hereinafter referred to as Musdah in this article) furious. For him, polygamy or marriage is generally an individual choice and there is no need to use religious reasons. Because what is happening now is that people are practising polygamy because of lust. Therefore, through his book "*Islam Sues Polygamy (Islam Menggugat Poligami)*", Musdah tried to clarify this issue. In this book, Musdah presents a lot of data about the history, meaning and reasons for polygamy. He also explored a lot more about the meaning of marriage in Islam, which he collected from the 114 verses contained in the Qur'an. Easy concluded that there are five principles in marriage, namely: monogamy, equality, mutual love, support and help, unity and freedom to choose a partner. Polygamy should not be practised because it has the potential to give rise to domestic violence. Musdah in her book also reveals the fact that 90% of polygamous marriages are not flawed in Indonesia. This will result in the loss of protection for women and children. Musdah divides the

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<sup>1</sup>Prof. DR. Siti Musdah Mulia, MA was born in Bone, South Sulawesi on March 3, 1958. She was the first woman to obtain a doctorate in Islamic political thought at UIN Syarif Hidayatullah Jakarta; The first woman confirmed by LIPI as a Principal Research expert. Carrying out research in the fields of social, anthropology and philology, including, "*Naskah Kuno berbasis Islam*", "*Potret buruh perempuan dalam industri Garmen Jakarta*", "*Konsep ketuhanan dalam etnis Sasak*", and wrote several religious books including: "*Sejarah dan Pengantar Ilmu Hadis*", "*Sejarah dan Pengantar Ilmu Tafsir*", "*Seluk beluk ibadah dalam Islam*". Write entries in Islamic encyclopedias; "*Encyclopedia of Islamic Law*", and "*Encyclopedia of the Qur'an*". Writing books on Islam and Gender, among others: "*Potret Perempuan dalam lektur Islam*", "*Islam menggugat Poligami*", "*Kesetaraan dan Keadilan Gender dalam perspektif Islam*", "*Pedoman dakwah Muslimat*" and "*Muslimah Reformis; Perempuan Pembaharu keagamaan*".

consequences of polygamy into categories: socio-psychological implications for women, violence against women and social implications for society.<sup>2</sup>

If we look at Musdah's thoughts on challenging polygamy, it seems inconsistent with the Republic of Indonesia Law Number 1 of 1974 concerning Marriage as amended in Law Number 16 of 2019. If we can accept this idea, it will have an impact on the need to change the marriage law in Indonesia, therefore this article will examine: "*Polygamy law according to Musdah Mulia and its relevance to the Marriage Law in Indonesia*". By raising a problem: "What is the relevance of Musdah Mulia's thoughts about polygamy to Law number 1 of 1974 concerning Marriage in Indonesia."

This research is a legal thought with a gender perspective that is based on social problems, therefore the problem approach used in this research is a gender analysis approach. The main point of this study is legal thinking, so the gender analysis approach is also supported by Islamic legal thinking. In this case, Musdah's thoughts about polygamy are expressed descriptively, then the description is analyzed using content analysis (*Content Analysis*) based on theories. The theories used in this research include gender theory (gender concept, lack of gender justice and the feminist movement), and polygamy theory (genealogy polygamy in Islam and according to Musdah). Next, a legal philosophical approach is used to understand Musdah's line of thinking, then the author compares it with the Marriage Law in order to find the roots of the differences between this Law and Musdah's thinking. In the final stage, the researcher will analyze the impact of Musdah Mulia's thoughts on the law.

Indeed, this study of polygamy is not new in Islamic legal thought. There have been many books and even research that have tried to overcome the problem of polygamy, such as Ahmad Khairul Fata<sup>3</sup>, Siti

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<sup>2</sup> Mulia, Siti Musdah, *Islam Contests: Polygamy*, Jakarta: Gramedia, 2004, p.21.

<sup>3</sup> Khairul Fata, Ahmad & Mustofa. 2013. " Questioning Contextualization of Islamic Law regarding Polygamy ." *Al-Ulum* 414-434.

Hikmah<sup>4</sup>, M. Ichsan<sup>5</sup>, Abd. Moqsith<sup>6</sup>, Siti Ropiah<sup>7</sup> and Agus Sunaryo<sup>8</sup>. Siti Hikmah's study has tried to examine this problem by presenting facts about domestic violence caused by polygamy problems using gender analysis. Agus Sunaryo's research has tried to explore the problem with a normative sociological analysis of polygamous behaviour in Indonesia, while M. Ichsan's research focuses more on the study of Islamic law. On the other hand, Abd. Moqsith focused his studies more on the interpretation of verses about polygamy. A study focusing on the debate on the pros and cons of polygamy has also been presented by Siti Ropiah. Therefore, the author tries to present a study of the thoughts of one of the Muslim women scholars, namely Musdah Mulia, with a gender analysis approach which will be understood philosophically by comparing it with the current Marriage Law as a thought contribution to one of the solutions offered by improving the Marriage Law in Indonesia.

## Results and Discussion

Polygamy comes from the Greek word *Polus* which means a lot and *gamos* which means marriage. If these meanings are combined, polygamy will mean a marriage of many or more than one person<sup>9</sup>. In the Indonesian Dictionary (KBBI), polygamy is a marriage bond in which one party has/marries several people of the opposite sex at the same time.<sup>10</sup>

Experts then differentiate the term for a man who has more than one wife with the term *polygyny* (*polus=many, gune= women*), while for wives who have more than one husband it is called *polyandry* (*polus=many, andros=men*). However, in Islamic studies, polyandry is not recognized, so polygamy is referred to in Islam as *polygyny*. The opposite of polygamy is *monogamy*, namely a marriage bond consisting of a husband and a wife, another term is *monogyny*.<sup>11</sup>

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<sup>4</sup> Hikmah, Siti. 2012. "The Facts of Polygamy as a Form of Violence against Women." *Sawwa: Journal of Gender Studies* 1-20.

<sup>5</sup> Ichsan, M., 2018. "Polygamy in Islamic Law Perspective." *JURIS ( Shari'ah Scientific Journal )* 151-159.

<sup>6</sup> Moqsith , Abd. 2015. "Tafsir above Polygamy in the Qur'an." *KARSA: Islamic Social and Cultural Journal* 132-148.

<sup>7</sup> Ropiah, Siti. 2018. "Critical Studies Polygamy in Islam (Analysis of Reasons Pros and Cons)." *Al-Afkar; Journal for Islamic Studies* 89-104.

<sup>8</sup> Sunaryo, Agus. 2010. " Polygamy in Indonesia." *Yinyang: Journal of Gender and Child Studies* 143-167

<sup>9</sup> Hoeve, Van. 1984. *Indonesian Encyclopedia*. Jakarta: New Efforts, p. 2736.

<sup>10</sup> RI, Ministry of Education and Culture. 1999. *LARGE DICTIONARY OF INDONESIAN LANGUAGE*. Jakarta: Balai Pustaka , p. 693.

<sup>11</sup> Mulia, Siti Musdah, *Islam Menggugat Poligami*, Jakarta: Gramedia, 2004, p. 44.

## Polygamy in Islam

In all Islamic studies regarding polygamy, the Qur'an Surah Annisa verse 3 is always used as the main source that allows polygamy to occur.

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِسُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَٰلِكَ أَدْنَىٰ أَلَّا تَعْدِلُوا

It means:

And if you are afraid that you will not be able to do justice to (the rights of) orphaned women (if you marry them), then marry (other) women that you like: two, three or four. Then if you are afraid that you will not be able to do justice, then (marry) just one person, or the slaves you have. That is closer to not committing wrongdoing.

The majority of classical scholars think that the verse above is the basis for allowing a Muslim man to marry up to four women, but Muhammad Abduh does not agree with this.

Muhammad Abduh (1849-1905) said that polygamy was permitted in the early Islamic period because of compelling circumstances. First, at that time there were fewer men than women because many Muslim men died in war. Second, at that time Islam was still in its period of spread, so if a Muslim man married more than once, it was hoped that he would be able to help spread the word of Islam. Third, marrying more than one woman, especially from different tribes, can be a means of unity to prevent conflict between tribes. However, in reality, polygamy nowadays actually causes hostility, hatred and quarrels between wives and children. The psychological effects are greatly felt by children resulting from polygamous marriages, so Abduh decided to prohibit polygamy.<sup>12</sup>

Thaha Husein even stated in his book *Fi Shi'r al Jahili*, that the Qur'an depicts the social conditions at the time the Qur'an was revealed, where women were marginalized and disadvantaged, so polygamy was

<sup>12</sup> Abduh, Muhammad. *Al-A'mal al-Kamilah Lil imam al-Sheikh Muhammad Abduh*, editor: Muhammad 'Imarah, Cairo: Dar al- Syuruk . Volume II. 1993. h. 88-93, see also p. 76-87

recorded as a social reality in society at that time.<sup>13</sup> Therefore QS Annisa: 3 must be seen as an unfinished verse because the Qur'an is a historical product that cannot escape the social, cultural and political context of the Hijaz Arab Society at that time, the Qur'an is God's response to various problems of the people faced by the Prophet Muhammad at that time.<sup>14</sup>

### **Musdah Mulia's view of polygamy**

Musdah in her book "*Islam Sues Polygamy (Islam Menggugat Polygamy)*" firmly states that it is time for polygamy to be abolished with several arguments: The only verse that has always been used as a basis for the permissibility of polygamy in Islam is QS An-Nisa verse 3. Even if we trace the *Asbabun Nuzul* in this verse, it is not speaking in the context of marriage, but rather in the context of talking about orphans and women who have often been treated unfairly, therefore they are called *mustadh'afin* (oppressed people).<sup>15</sup>

For Musdah, it is quite surprising that people adhere to verse 3 of Surah An-Nisa, even though there are hundreds of verses in the Qur'an that command humans to do good and not to abuse other people and to protect their feelings. If you observe all the verses of the Qur'an regarding marriage, they will contain several principles of marriage, namely: monogamy, freedom to choose a partner, *mawaddah warahmah*, mutual complementarity and protection and *mu'asyarah bilma'ruf*.<sup>16</sup> Here Musdah invite us to see polygamy in a big-frame marriage.

In her other book "*Islamic Views on Polygamy (Pandangan Islam tentang Polgami)*" we find a call similar to what he expressed in "*Islam Sues Polygamy (Islam Menggugat Poligami)*", inviting us to look at polygamy from a feminist perspective, especially Islamic feminists, where women and men are egalitarian and balanced creatures, although they differ in the concept of reproduction.<sup>17</sup>

Musdah also added several other arguments so that polygamy should not be carried out. From various studies, it has been found that polygamy has more potential to give rise to domestic violence. Eight years after the publication of Musdah's book, Hikmah still provides evidence of the facts about polygamy as a cause of domestic violence.<sup>18</sup> The latest data

<sup>13</sup> Husein, Taha, *Fi Syi'r al-Jahili*, Tunisisa: Dar al-Ma'arif, n.d. P. 25-33

<sup>14</sup> *Ibid.*

<sup>15</sup> Mulia, *op-cit.*

<sup>16</sup> *Ibid*

<sup>17</sup> Mulia, Siti Musdah, *Pandangan Islam tentang Poligami*, Jakarta: LKAJ, 1999.

<sup>18</sup> Himah, *op-cit.*

released by the National Commission on Violence Against Women at the end of 2018, after 14 years of Musdah's lawsuit against polygamy, still makes polygamy the biggest cause of violence that occurs in households with 1,697 cases. Until 2023, cases of violence caused by polygamy are still quite worrying, as stated by Welly Dozen in his research.<sup>19</sup> Dinny Rahmayanty's research et al concluded that the practice of polygamy often harms children's education and the process of forming dynamics within the family.<sup>20</sup>

Commonly, polygamy marriage in Indonesia is not recorded, and this will result in the loss of protection for women and children. Musdah further divided the consequences of polygamy in terms of socio-psychological implications for women, violence against women and children, and social implications for society.<sup>21</sup>

There are indeed women who agree to polygamy, the question that Musdah raises is, what kind of woman? According to Musdah, women who are willing to undergo polygamy are women whose minds are closed and who understand Islam traditionally; wives who experience violence and unpleasant treatment from their husbands so they want their husbands to remarry so that their suffering can be relieved or at least reduced; those who have no other choice but to be polygamous; those who practice polygamy for economic interests, social status and lust. And what is certain is that they have no empathy for fellow women.

Then, how with polygamy practised by the Apostle? The Apostle was polygamous after 53 years old, after his wife Khadijah died and after his children matured and independent. The question is, if polygamy That recommended in Islam, why not the Apostle polygamous from the beginning of his marriage? Easy mention a number in the hadith that explains the Prophet Muhammad did not permit his daughter Fatimah polygamous. In a hadith quoted by Musdah; When Ali bin Abi Talib, Fatimah's husband would Marry Again, the Prophet became angry and said: " *O Ali, you know that Fatimah is caress my soul, Fatimah's pain is my pain too, Fatimah's misery is my miserable too,*" <sup>22</sup> this hadith explains the Prophet's dislike of polygamy. Hadith of the Prophet that did not allow his daughter polygamous is also peeled by Erwanda Safitri in her research

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<sup>19</sup> Dozen, *op-cit*.

<sup>20</sup> Rahmayanty et al., "The Effect of Polygamy on Children's Education and Family Dynamics." *Innovative: Journal of Social Science Research* 3, number 5 (2023): 6501-6512.

<sup>21</sup> Mulia, 2004. *Op-cit*. P.26.

<sup>22</sup> Explanation about hadith This can be seen in: Siti Musdah Mulia. *Islam sues Polygamy (Islam Menggugat Poligami)*. Jakarta: Gramedia. 2004: 82-84.

"*Understanding Hadiths About Polygamy (A Theological Study of Social Hadiths about Polygamy)*."<sup>23</sup> Nugraha in his research seems to be in line with the thoughts of Musdah and Erwanda Safitri by looking at the prohibition of polygamy from a hadith perspective.<sup>24</sup>

Easy to conclude that Polygamy is essentially an insult to women. As the description given by Qais Amin, the figure of a husband who has many wives is like a rooster surrounded by a group of females. This is natural in the animal world but not natural in the human world. Unlike humans, animals do not have emotions so polygamy in the animal world does not cause psychological problems, as experienced by humans.<sup>25</sup>

The legitimacy of the polygamy discourse is actually fighting over the interpretation of QS Anisa verse 3. Pro-polygamy groups argue that the permissibility of marrying more than one person up to a maximum of four people. Anti-polygamy groups adhere to having only one wife (monogamy) because if there is more than one, the consequences for being fair are very heavy. These pros and cons have also been discussed by several researchers such as Andi Intan Cahyani<sup>26</sup> and Norcahyono<sup>27</sup> research.

The process of human culture recorded in the holy books should not be the absolute standard for our lives today because life is always experiencing change as a characteristic of life. On the other hand, measuring the standards of justice in the time of the Prophet with justice in modern humans like us today is not proportional. This is where we need to deconstruct our religious understanding. Narratives of humanitarian problems and religious texts (Al-Qur'an) which we have viewed as sources of "teachings" need to be shifted to become part of the recording of human cultural processes. Perhaps this view is at odds with liberalists who think that the solution to the problems of religious discourse is centred on the courage to interpret the history of the Prophet in a contemporary context. Meanwhile, the author's offer is not to

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<sup>23</sup> Safitri, Erwanda. "Understanding Hadiths About Polygamy (A Theological Study of Social Hadiths about Polygamy)." *Journal of the Study of the Sciences of the Qur'an and Hadith* 17, number 2 (2016): 187-206.

<sup>24</sup> Nugraha, Irsyad. "Polygamy and its prohibitions from a hadith perspective." *IJOIS: Indonesian Journal of Islamic Studies* 2, number 2 (2021): 127-138.

<sup>25</sup> Mulia, Islamic View of Polygamy (*Pandangan Islam tentang Poligami*), p. 50.

<sup>26</sup> Cahyani, Andi Intan. "Polygamy in the Perspective of Islamic Law." *Al-Qadau Journal: Islamic Justice and Family Law* 5, no. 2 (2018): 271-280

<sup>27</sup> Norcahyono, Norcahyono. "Reactive Thought on Polygamy Law in the Qur'an (Quraish Thought Shihab in Tafsir Al-Mishbah)." *Al-Banjari: Scientific Journal of Islamic Sciences* 15, number 2 (2017): 213-222.



reinterpret but to explain events during the time of the prophet recorded in the holy books naturally and humanely.

### **Positive Law Review in Musdah's view**

For Musdah, the Mariage Law in Indonesia seems pro-polygamy, the indications are polygamy arranged in a way detailed in the articles. If you read thoroughly verses in article 3 contain inconsistency with himself. Verse 1 confirms principle of marriage is monogamy, on the contrary, the next article gives a husband permission to do polygamy although limited only to up to 4 wives. The Mariage Law allows polygamy for 3 reasons: a. the wife cannot carry out her obligations as a wife; b. the wife has a physical disability or an incurable disease; and c. the wife cannot bear children.<sup>28</sup>

Indeed, if we observe the sociological reality in society, it shows that almost all polygamous behaviour in society does not originate from the three reasons mentioned. Even though there is no accurate data on this matter, we can clearly see that there are many polygamist husbands whose wives are obedient to carrying out their obligations, are not sick or disabled, and have children. Besides that, all the reasons for allowing husbands to have polygamy are only seen from the perspective of the husband's interests and do not take into account the women's perspective at all. So, it appears that the Mariage Law provisions regarding polygamy show women's subordination to men. In addition, Polygamy is a form of subordination to women. On the other hand, polygamy is also one of the causes of domestic violence, both physical, psychological and economic, so it is contrary to the law. Number 23 of 2004.

Finally, Musdah came to a big conclusion: the Mariage Law should indeed be revised because several articles in it discriminate against women, placing them in subordinate positions and as objects of law. This is contrary to the 1945 Constitution, Law number 7 of 1984 concerning the Elimination of all forms of discrimination against Women, Law number 39 of 1999 concerning Human Rights, Law number 23 of 2004 concerning the elimination of domestic violence, and Law 35 of 2014 concerning Children's Rights.

### **Mariage Law**

Marriage Law Number 1 of 1974 is the first law in Indonesia that regulates marriage matters nationally. Before that, marriage matters were regulated through various laws, namely customary law for native

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<sup>28</sup>Researcher interview with Musdah Mulia on December 6 2007

Indonesian citizens, Islamic law for citizens of the Islamic faith, Indonesian Christian marriage ordinances for Indonesian citizens who were Christian, the Civil Code for citizens of descent and Mixed marriage regulations for mixed marriages. It is clear that the aim of the Marriage Law is the unification or uniformity of marriage laws which were previously very diverse.

The formulation of the Marriage Law by the government is very much influenced by *civil society marriage* and eliminating the regulation of the head of the household, women's obligations for household matters and the wife's permission for divorce. So, women are very interested in the existence of Marriage Law. However, several problems regarding marriage emerged before the birth of the Marriage Law, such as cases of polygamy, forced marriage, arbitrary divorce and child marriage. As a result, the Marriage Law was born and clarified the subordination of women (wives) to men (husbands). On the one hand, article 31 paragraph 2 explains the equal capacities and abilities of women and men. However, in Article 31 paragraph 3 there is a provision that places men as the central figure of the family, namely the head of the household. So, the Marriage Law emerged as a standardization of women's domestication.

Apart from that, the privilege of men who can marry more than one woman is legitimized and regulated in this Law, articles 3, 4 and 5.

#### Article 3

- 1) In principle, in a marriage, a man can only have one wife. A woman can only have one husband.
- 2) The court can permit a husband to have more than one wife if the parties concerned wish.

#### Article 4

- 1) If a husband will have more than one wife, as stated in Article 3 paragraph (2) of this Law, he is obliged to submit an application to the Court in the area where he lives.
- 2) The court referred to in paragraph (1) of this article only permits a husband who wants to marry more than one wife if:
  - a. the wife cannot carry out her obligations as a wife ;
  - b. the wife has a physical disability or an incurable disease;
  - c. the wife cannot bear children.

#### Article 5

- 1) To be able to apply to the Court, as intended in Article 4 paragraph (1) of this Law, the following conditions must be

met: a. the consent of the wife/wives; b. the certainty that husbands can guarantee the living needs of their wives and children; c. there is a guarantee that husbands will treat their wives and children fairly.

- 2) The consent referred to in paragraph (1) letter a of this article is not required for a husband if it is impossible for his wife/wives to ask for their consent and cannot be a party to the agreement, or if there has been no news from his wife for at least 2 (two) years, or for other reasons that need to be assessed by the Court Judge.

The provisions of the articles above further emphasize the subordination of women to men

Ideally, a legal product such as the Marriage Law needs to be reviewed to what extent it is effective in regulating people's behaviour in the field of marriage, but the polygamy provisions in the Marriage Law since Law number 1 of 1974 until it was changed to Law number 16 of 2019, for 49 years there has been no serious effort to evaluate the extent of the effectiveness of the Marriage Law in responding to the problems of Indonesian society. Changes contained in Law Number 16 of 2019 only focus on one problem, namely the minimum age limit for marriage. There are still many problems that have not been evaluated after the implementation of Law Number 1 of 1974. In the span of 49 years, there have been many changes that have occurred in society, for example, the phenomenon of women as heads of households is increasing from year to year, which is not explained by the Marriage Law. Apart from that, the development of human rights discourse internationally has encouraged many parties to realize their recognition concretely at the national level with various legal recognitions (legal instruments). Starting from the Human Rights Law, the Human Rights Courts Law, the Child Protection Law, the Domestic Violence Law and the Children's Rights Law.

According to Musdah, from a woman's perspective, the Marriage Law needs to be re-read considering that several laws have been introduced which emphasize efforts to protect and strengthen women which lead to the realization of conditions of gender equality and justice in all aspects of life such as the fourth amendment to the 1945 Constitution, Law number 39 of 1999 concerning human rights, Law number 23 of 2004 concerning the Elimination of Domestic Violence, to Law Number 35 of 2014. The sad thing is that we still use Marriage Law

Number 1 of 1974 which until now has not accommodated some principles of defence and protection for women as stated in the fourth amendment to the 1945 Constitution and several other laws.

Musdah firmly stated that the Marriage Law must prohibit polygamy because polygamy is a crime against humanity (*Crime against humanity*) as stated in the Tunisian marriage law<sup>29</sup>, which is an Islamic country with a Sharia constitution since 1956. In line with this, Atik Wartini in her research concluded that Islamic/Muslim countries fall into 5 groups: a) There are those that prohibit polygamy absolutely, such as Turkey, Lebanon and Tunisia, b) There are those that provide punishment for those who violate the rules regarding polygamy, such as Tunisia, Iran, Iraq, Egypt, Pakistan, Indonesia and Malaysia. c) Polygamy must obtain permission from the courts, namely Syria, Iraq, Pakistan, Bangladesh, Somalia and Indonesia. d) Polygamy is a reason for divorce in Morocco, Lebanon, Syria and Egypt. And e) Polygamy is absolutely permitted in Algeria. Polygamy. <sup>30</sup>It can be said that the majority of Islamic/Muslim countries do not provide an easy path for polygamists.

In the Indonesian context, the reason that can be used to reject polygamy is that there are so many social problems that arise as a result of polygamy. Among them, polygamy legitimizes underhanded marriages or marriages that are not registered, the high number of child marriages, causing high cases of domestic violence, abandonment of wives and children, especially psychologically and economically, and the transmission of venereal diseases. In conclusion, polygamy brings more harm than good.

## Conclusion

According to Musdah, the basic principle of Islamic marriage is monogamy, not polygamy, by inviting us to understand polygamy in a large framework of marriage which contains the principles of marriage in Islam, namely: monogamy, equality, mutual love, support and help, unity and freedom to choose a partner. And let us not look at the Qur'an, Surah Annisa as a stand-alone verse, but as a unit with other verses of the Qur'an about marriage and muamalah. So, Musdah concluded that she rejects and even forbids polygamy. For Musdah, it is time for Indonesia to ban polygamy for various reasons which he stated, both psychological, social,

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<sup>29</sup> *Ibid*

<sup>30</sup> Wartini, Atik. "Polygamy: From Fiqh to Legislation." *Hunafa: Journal of Studia Islamika* 10, number 2 (2013): 2 67-266.

economic and health. Apart from that, polygamy is seen as inconsistent with several laws in force in Indonesia that have emerged since.

Musdah's thinking leads to the conclusion that Marriage Law Number 1 of 1974 must also be revised, not just Article 7 which is contained in the amendment to Marriage Law Number 16 of 2019. Because several articles discriminate against women, placing them in a subordinate position and as objects of the law. Apart from that, some articles in the Marriage Law also conflict with the essence of Islam which is believed to be a religion that spreads compassion for the universe (*rahmatan lil alamin*) and promises liberation for the *mustadh'afin* (oppressed), including women. The revision of the MARRIAGE LAW should be carried out by taking into account the following principles: 1) The principle of universal human benefit, 2) The Nationalistic Principle (*Muwathanah*), 3) The principle of upholding human rights and 4) The principle of gender equality.

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