

Polygamy and Women's Rights: An Examination of Divorce Litigation in Sharia Court Rulings Pertaining to Revisions in Indonesian Matrimonial Legislation

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Abstract

This study aims to assess and elucidate the influence of polygamy on domestic violence as reflected in the Sharia Court rulings in Aceh, as well as the viability of polygamy as a justification for granting divorce petitions. The study of this topic is significant since Islam essentially allows polygamy, provided that men can behave justly. The divorce ruling at the Sharia Court in Aceh revealed that polygamy led to the neglect of women and other forms of domestic violence. Unfortunately, Indonesian laws and regulations do not acknowledge polygamy as a valid ground for women to petition for divorce. The study is normative juridical review in nature. The data source is a judicial ruling. The data is examined under a women's protection framework. The findings indicate that the wife initiated divorce proceedings against her husband for practicing polygamy, which contravened Indonesian marital law and the Compilation of the Islamic Law, namely polygamy conducted without the wife's consent. Furthermore, polygamy often leads to domestic abuse against the wife. Polygamy can be categorized as irresponsible when practiced by a husband lacking steady economic resources, resulting in the neglect of women and their children. This polygamy is likewise deemed a contravention of the rules of marriage in the Islamic jurisprudence. At the present time, polygamy is not

recognized as the reason for divorce in the Indonesian law. This study advocates for the inclusion of polygamy without consent as a legal ground for divorce, as the current legislation recognizes only physical domestic violence as a valid justification for divorce.

Keywords: Polygamy; divorce; rationale; safeguarding

Introduction

Divorce is a growing problem in contemporary culture, particularly Indonesia, which has experienced notable transformations in family dynamics. Aceh is a key focus in divorce research. Statistics from the Aceh Sharia Court indicate a consistent annual rise in divorce cases. In 2018, there were 5,179 divorce cases, of which 72.45% were initiated by the wife. In 2019, the number rose to 6,048 cases, with 74.29% comprising divorce litigation, and in 2020, it reached 6,090 cases, maintaining a similar percentage. The pattern indicates that divorces initiated by women are prevalent, particularly within the context of marriage in Aceh.¹

A primary issue that emerges in divorce, particularly those instigated by women, is polygamy. Islam allows polygamy provided that the husband maintains equitable treatment among all his wives.² In practice, however, achieving justice in polygamy is often challenging, leading to numerous instances of women's neglect, domestic violence, and familial instability. In Aceh, numerous examples exist when women subjected to polygamy without their consent seek divorce due to feelings of financial and emotional neglect, rendering them victims of psychological and economic abuses.

The Law No. 1 of 1974 about Marriage and Article 116 of the Compilation of Islamic Law (KHI) delineate several valid grounds for divorce in Indonesia, including physical abuses, adulteries, financial neglects, and persistent conflicts between spouses. Although sharia permits polygamy under the condition of justice, the Indonesian Positive Law does not officially recognize it as a valid ground for divorce. This is a vital aspect of the study, particularly given that numerous instances of polygamy culminate in household discord, neglect of women, and various manifestations of non-physical violence.

¹ Haiyun Nisa dan Koentjoro, "Some issues about women who file for divorce in Aceh," *Artikel*, Gender Equality: International Journal of Child and Gender Studies, Vol. 8 No. 1 March 2022, p. 76.

² Mughni Labib Ilhamuddin Is Ashidique, "Poligami dalam Tinjauan Syariat dan Realitas," *Jurnal Al-Ahwal Al-Syakhsyiyah: Jurnal Hukum Keluarga dan Peradilan Islam*, Vol. 2, No. 2, (September 2021), hlm. 204; 1 Nasaiy Azis & Nor Syahida Binti Ahmad Ramlan, Ketidakadilan Suami yang Berpoligami Dalam Memberi Nafkah Sebagai Alasan cerai Gugat (Analisa Putusan Mahkamah Syar'iyah Bentong Pahang Nomor Kasus Mal No. 04300-076-0213, *Jurnal Gender Equality: International Journal of Child and Gender Studies*, Vol. 1, No. 2, September 2015.

In this environment, injustice in polygamy is frequently manifested not via physical violence, but through more insidious forms, including psychological and economic coercions. Irresponsible polygamy—particularly without the consent of the first wife—fosters emotional and financial discontent in the husband-wife dynamic, as the husband often neglects his financial responsibilities and emotional engagement with his first wife. Domestic violence stemming from polygamy frequently manifests not as physical aggression, but rather as neglect, a disrespect for the wife's rights, and the husband's failure to equitably allocate time, attention, and financial resources among his wives.

This study posits polygamy as a factor contributing to divorce, which, while acknowledged by sharia, has not been properly integrated into the Indonesian law. The Sharia Court in Aceh addresses several divorce issues related to polygamy; nonetheless, the existing legislation does not recognize polygamy as an independent ground for divorce, permitting dissolution only in instances of violence or other infractions specified in Article 116 of the KHI.

Conversely, Islam permits polygamy provided that the husband can equitably satisfy the rights of each wife, encompassing both financial support and emotional engagement. Nonetheless, numerous examples exist where the husband is incapable of meeting these responsibilities, resulting in polygamy inducing instability within the household. Several rulings from the Sharia Court in Aceh, which are the focus of this study, indicate that polygamy conducted without consent frequently incites marital discord, ultimately resulting in divorce petitions filed by the wife. In certain instances, clandestine polygamy leads the husband to emotionally and economically ignore his first wife, resulting in injustice.

It is essential to assess whether unauthorized polygamy can serve as a valid ground for divorce, independent of the necessity for physical abuse or other transgressions to transpire. This study, grounded in normative legal research utilizing empirical data from the Sharia Court decisions, aims to determine whether the practice of polygamy conducted without adhering to legal requirements (such as lacking the first wife's consent and court authorization) constitutes a valid basis for a divorce petition.

This study advocates for the inclusion of a provision in the Indonesian marriage law to recognize unlawful polygamy as a valid reason for divorce, as irresponsible polygamy adversely affects women economically, psychologically, and physically. This paper contends that the analysis of court rulings reveals unjust polygamy as a violation of the norm of justice in Islamic marriages, hence legitimizing the wife's divorce petition.

An examination of the Sharia Court's rulings in Aceh revealed that numerous wives initiated divorce proceedings against their husbands due to the practice of polygamy. This study aims to examine the dynamics of polygamy

that prompt wives to initiate divorce proceedings and to assess whether polygamy constitutes a valid ground for divorce.

Extensive research has been conducted on the initiative of wives to initiate divorce from their husbands in Indonesia, including Aceh; however, this research has not resulted in critiques or the introduction of new provisions regarding the reasons for divorce as stipulated in Article 116 of the Compilation of the Islamic Law and Article 39 of Law No. 1 of 1974 concerning Marriage. The current research can be classified into three groups. The initial category encompasses research identifying the factors prompting wives to initiate divorce from their husbands, exemplified by the article entitled, “the Analysis of Causes of Divorce by Wives.”³ This study exclusively examines these factors, including polygamous husbands, without providing an in-depth explanation of each cause. The second group addresses wives initiating divorce for specific grounds, such as impotent spouses. Examples include the article titled: “Divorce Lawsuit Due to Impotence Perspective *Maslahat* Theory: Case Study of the Andoolo Religious Court Decision, Southeast Sulawesi,”⁴ and another article entitled: “the Immorality of a Husband as the Cause for a Working Wife to File for Divorce in Indonesia.”⁵ The third is research addressing polygamy and divorce, such as the articles entitled “The Dynamics of Polygamy and Divorce in Muslim Countries,”⁶ and “Divorce Lawsuit Due to Polygamy in the Manado Religious Court.”⁷

The aforementioned three categories of research, while addressing the wife's efforts to divorce, encompass distinct aspects of discussion. This research differs from these previous studies. The article states that a spouse engaging in polygamy is the reason for a wife to initiate divorce proceedings against him. This article does not address the dynamics of polygamous behavior that lead women to initiate divorce proceedings, nor does it consider whether polygamy itself constitutes a valid ground for divorce.

³ Nurhasanah, “The analysis of causes of divorce by wives,” *Artikel*, COUNS-EDU: The International Journal of Counseling and Education, Vol.2, No.4, 2017, pp. 192-200

⁴ Fitri, dkk, Divorce Lawsuit Due to Impotence Perspective *Maslahat* Theory: Case study of the Andoolo Religious Court Decision, Southeast Sulawesi. *Artikel*, El-USrah: Jurnal Hukum Keluarga, Vol. 7, No. 1, June 2024.

⁵ Jumni Nelli, “The Immorality of a Husband as the Cause of a Working Wife to File for Divorce Lawsuit in Indonesia,” *Artikel*, JURIS (Jurnal Ilmiah Syariah), 2023, Vol. 22 No. 1, 2023: 119-132

⁶ Dinda Difia Madina, Ahmad Rezy Meidina, dan Anwar Zein, “The Dynamics of Polygamy and Divorce in Muslim Contries.” *Artikel*, El-Aqwal: Journal of Sharia and Comparative Law, Volume 2, Issue 2, 2023.

⁷ Edi Gunawan dan Faradila Hasan, “Divorce Lawsuit Due to Polygamy in the Manado Religious Court.” *Artikel*, Al-Mizan: Jurnal Pemikiran Hukum Islam, Vol. 13, No. 2, 2017, h. 272-293.

An article of this nature pertains to one of the previous studies, specifically the dynamics of polygamy and divorce, as well as divorce litigation resulting from the husband's polygamous actions. The dynamics of polygamy and divorce indicate that many Muslim nations, like Turkey, categorically outlaw polygamy, but others permit it under family law with certain stipulations. Countries that categorically forbid polygamy permit divorce proceedings on the grounds of the husband's polygamous status. In nations that permit polygamy, such as Indonesia, polygamy is not explicitly recognized as the reason for divorce. This debate differs from the article that addresses the permissibility of polygamy as a form of divorce. An article of comparable relevance is entitled "Divorce Lawsuit Due to Polygamy in the Manado Religious Court." This piece primarily analyzes the rationale behind the Manado Religious Court judge's decision to grant the wife's divorce petition, focusing solely on the judge's acceptance of the wife's assertion that she could no longer coexist harmoniously following her husband's engagement in polygamy. This article only analyzes a single ruling and concludes by elucidating the rationale behind the judge's legal considerations, specifically those stemming from the wife's belief that she could not coexist harmoniously with her husband, who had another spouse. This article analyzes the necessity of recognizing polygamy as a valid ground for divorce.

A normative legal research will be undertaken to address the aforementioned question. The data source was derived from the ruling of the Sharia Court about divorce cases due to the husband's polygamy. Data were gathered through document analysis, specifically by examining the foundational legal reasoning of the judge in adjudicating the divorce case related to polygamy. The data was studied in relation to polygamy in Islam, divorce, and legal protections for women.

Discussion

Polygamy in Islam

Polygamy refers to a marital system when one individual concurrently has multiple spouses of the opposite sex. The antithesis is monogamy, a system permitting a man to have a singular woman for a specified duration. The definition of polygamy, as articulated in the aforementioned phrase, does not restrict the ability to marry many individuals to the husband alone; it equally applies to the woman. This article defines polygamy only as a husband possessing multiple wives simultaneously.

What is Islam's perspective on polygamy? Does Islam permit it unconditionally or under specific conditions? The fundamental principle of polygamy in Islam is permissibility, allowing one the choice to engage in or

abstain from it.⁸ The evidence is derived from the Qur'an, Surah An-Nisa', verse 3, which states: "And if you fear that you will not be able to deal justly with orphans (if you marry them), then marry (other) women of your choice: two, three, or four. But if you fear that you will not be able to act justly, then (marry) only one, or the female slaves you possess. That is closer to prevent injustice."

Scholars contend that the law of polygamy is permissible. "Permissible" denotes the allowance to choose between performing or abstaining from an action. The term "*amar*" (command) in the aforementioned verse is construed as a command that is permissible, allowing for either action or inaction. In the Science of *Usul Fiqh*, "*amar*" can be categorized into three classifications: the command to perform (obligatory and *sunnah*), the command to abstain (*makruh* and *haram*), and the option to choose between action or inaction (*mubah*).

While the law of polygamy is permissible, it entails several stipulations and prerequisites that men must fulfill. The primary stipulation regarding the number of concurrent wives is a maximum of four. Additionally, the husband is required to maintain equity among his wives in terms of sustenance, attire, accommodation, and other material aspects. Furthermore, some scholars assert that justice extends beyond material considerations to encompass non-material factors as well.

Scholars meticulously examine the criteria for a husband to exhibit fairness, as delineated in verse 3 of the letter An-Nisa'. This verse explicitly indicates that if a husband fears his inability to be equitable, he should limit himself to one wife. A protracted discourse among scholars ensues regarding this fairness criterion, with the consensus suggesting that it serves as an implicit encouragement for men to maintain monogamy, given the inherent challenges of achieving true fairness. Consequently, the allowance for polygamy is restricted to specific circumstances. Quraish Shihab analogizes the permissibility of polygamy to a narrow emergency exit, accessible solely under pressing conditions and accompanied by stringent prerequisites.⁹

Mughni Labib Ilhamuddin Is Ashidiqie in his article entitled "Polygamy in the Review of Sharia and Reality" has summarized the discourse on the provisions of polygamy in Islam. The existence of polygamy in Islam has its own polemics, especially related to the concept of justice which is a requirement for practicing polygamy. There are three views on this matter, namely, first, allowing polygamy loosely, some even consider polygamy as a form of following the "*sunnah*" of the Prophet Muhammad SAW. The explicit conditions mentioned in the Qur'an tend to be ignored or are limited to providing mere verbal arguments. Second, allowing polygamy but with strict conditions,

⁸ Satria Effendi M. Zein, *Usul Fiqh*, Jakarta; Kencana, 2008, hlm. 60.

⁹ M. Quraish Shihab, *Tafsir Al-Misbah, Pesan, Kesan Dan Keserasian Al-Qur'an* (Jakarta: Lentera Hati, 2000), hlm. 321.

including formal-distributive justice in the form of fulfilling economic (financial) and sexual (rotating) rights, as well as the requirement to obtain permission from the wife and several other conditions. Meanwhile, substantive justice such as affection and love are not a concern. Third, prohibiting polygamy firmly (absolutely).¹⁰

The author posits that equitable conditions in polygamy serve as a safeguard for women, ensuring they receive appropriate rights from their husbands, encompassing both material and non-material demands. Consequently, no woman should be overlooked in marriage.

According to the aforementioned explanation, it can be inferred that Islam permits polygamy, stipulating a maximum of four wives, provided that equitable treatment is afforded to each spouse. These equitable conditions serve as a safeguard for women, ensuring they are not marginalized. Consequently, polygamy does not lead to the neglect of women. Islam imposes a cap of four wives, in contrast to the previously unrestricted number prior to its advent.

Prior to the advent of Islam, women were frequently regarded as mere instruments for male gratification, with little regard for their dignity. Consequently, men often did not restrict the number of wives they took. This phenomenon persists in various regions globally, particularly during wartime. It is not uncommon for a king to possess numerous concubines or a *hareem*. Islam emerged to safeguard women's dignity, instituting stringent and inviolable regulations, permitting a maximum of four wives, provided that men exercise fairness. Should there be apprehension regarding the ability to maintain equity, it is advisable to marry only one woman.

Islamic Divorce Provisions

Islamic divorce provisions encompass specific terms and regulations governing the execution of divorce. It is regarded as a final recourse for resolving domestic issues, with multiple forms of divorce delineated by the Islamic law, each possessing distinct procedures and prerequisites.

1. Dissolution of Marriage (*Talaq*)

Divorce is a procedure initiated by the husband to formally dissolve the marital union. In Islamic jurisprudence, divorce is permissible but regarded as a detestable act unless justified by compelling reasons. It can be categorized into two types: *talak raj'i* and *talak ba'in*. *Talak raj'i* allows the husband to reconcile with his wife during the *iddah* period (waiting period), whereas *talak ba'in* signifies a complete termination of the marital relationship, necessitating a new

¹⁰ Mughni Labib Ilhamuddin Is Ashidiqie, "Poligami dalam Tinjauan Syariat dan Realitas," *Jurnal Al-Ahwal Al-Syakhsiyah: Jurnal Hukum Keluarga dan Peradilan Islam*, Vol. 2, No. 2, (September 2021), hlm. 205-6.

marriage contract for remarriage. Islamic divorce must adhere to specific stipulations, including the prohibition of divorcing a wife during menstruation or postpartum, as well as in circumstances lacking tranquility or harmony between the spouses.¹¹

2. *Kbulu'*

Kbulu' is a type of divorce initiated by the wife, who redeems herself from the marriage by compensating her husband, typically by returning the dowry received at the time of marriage. This process is deemed valid if both parties reach an agreement. In *kbulu'*, a wife may seek divorce if she feels incapable of coexisting harmoniously with her husband for various reasons, without necessitating any fault on the husband's part.¹²

3. *Fasakh*

Fasakh is an annulment of marriage adjudicated by a religious court judge, typically arising from deficiencies in the marriage, such as noncompliance with requirements or deceit. *Fasakh* can be executed without the husband's consent and is frequently employed in instances where one party perceives betrayal or unlawful mistreatment. *Fasakh* does not diminish the permissible number of *talak*, as it is regarded as an annulment rather than a formal divorce.¹³

4. *Ila'*

Ila' is an oath undertaken by the husband to abstain from sexual relations with his wife for a duration exceeding four months. Should the husband fail to reconcile after this period, the marriage will terminate automatically. *Ila'* is frequently perceived as a means for the husband to maintain his wife in a state of uncertainty without formal divorce. In the Islamic jurisprudence, this practice is forbidden, and the husband is mandated to decide between reconciliation or divorce once the four-month timeframe has elapsed.

5. *Li'an*

Li'an is a divorce procedure that necessitates oaths from both spouses, typically employed when the husband alleges his wife's infidelity without substantiating evidence or witnesses. The husband swears four times affirming his truthfulness and a fifth time expressing his readiness to accept divine retribution if he is deceitful. In turn, the wife swears four times denying the accusation and a fifth time indicating her willingness to accept divine

¹¹ Agustin Hanapi, *Konsep Perceraian dalam Islam; Sebuah Interpretasi Ulang*, Aceh Besar: Sahifah, 2018, hlm. 56.

¹² Definisi ini disebutkan oleh mazhab Hanbali. Lihat Wahbah al-Zuhaili, *Al-Fiqh al-Islam wa Adillatuh*, Juz. VII, (Damaskus: Dar al-Fikr, 2008), hlm. 498.

¹³ Agustin Hanapi, *Konsep Perceraian dalam Islam; Sebuah Interpretasi Ulang*, Aceh Besar: Sahifah, 2018, hlm. 139.

punishment if her husband is truthful. Following their oaths, the court adjudicates the divorce as irrevocable, precluding any restoration of the marital relationship. *Li'an* serves as a mechanism to address grave allegations such as *zina* without the requisite four witnesses mandated by the Islamic law.¹⁴

6. *Zihar*

Zihar is a form of divorce in which a husband likens his wife to a woman with whom marriage is prohibited, such as a mother or sister. Under the Islamic law, this comparison is deemed insulting. In cases of *zihar*, the husband is required to pay a *kaafarat* (penalty or expiation), and the marriage is rendered invalid until he rectifies the situation, typically through fasting or providing sustenance to the needy. Failure to comply with the *zihar* results in the dissolution of the marital relationship.¹⁵

Divorce in Islam is meticulously governed to prevent arbitrariness and safeguard the rights of the wife, husband, and children. The diverse forms of divorce, including *talaq*, *khulu'*, *fasakh*, *ila'*, *li'an*, and *zihar*, illustrate the various approaches to resolving marital issues based on specific circumstances. In Indonesia, the contemporary legal framework integrates these principles with national legislation that permits divorce solely on legitimate grounds, thereby offering enhanced protection for women facing domestic violence or neglect.

Divorce in Islam is not merely regarded as a conclusive resolution to marital issues; it is meticulously governed to safeguard the rights of both parties, particularly women. Islamic divorce law underscores equity and perceives divorce as a significant process, considering its social and psychological ramifications.

In Indonesia, divorce is governed by Law No. 1 of 1974 about Marriage and Government Regulation No. 9 of 1975, which stipulate that divorce must occur in court and be predicated on legitimate grounds. The law delineates the grounds for divorce as follows:

1. One party engages in infidelity
2. One party develops an addiction to alcohol, gambling, or narcotics
3. One party abandons the spouse for two successive years without a legitimate justification
4. One party receives a sentence of five years or longer in jail.
5. Cruelty or severe maltreatment that jeopardizes the other party.

¹⁴ Ibn 'Abidin, *Hasyiyah Radd al-Mukhtar 'ala al-Dur al-Mukhtar 'ala al-Dar al-Mukhtasar Syarb Tanwir al-Absar*, Juz. III Dar al-Fikr, 1976), hlm. 482; Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatub*, Juz. VII, hlm. 529.

¹⁵ Ibn 'Abidin, *Hasyiyah Radd al-Mukhtar 'ala al-Dur al-Mukhtar 'ala al-Dar al-Mukhtasar Syarb Tanwir al-Absar*, Juz. III, hlm. 466; Malik bin Anas, *al-Mudanwanah al-Kubra*, Juz. III, (Riyadh: Maktabah al-Mukarramah, 1999), hlm. 1021; Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatub*, Juz. VII, hlm. 557; Sayid Sabiq, *Fiqh Sunnah*, Jilid 11, Dar Al-Fikr, 1983, hlm. 264-265.

6. Illness or physical handicap that impedes the fulfillment of spousal responsibilities.
7. Ongoing conflicts and no prospect of achieving concord once more.¹⁶

Within the framework of divorce delineated above, polygamy is not explicitly acknowledged as a valid ground for divorce; however, numerous instances of irresponsible polygamy—such as that conducted without the first wife's consent or the fulfillment of maintenance obligations—can precipitate divorce. Judicial rulings in various regions, including Aceh, indicate that polygamy executed without the first wife's approval frequently results in neglect, domestic violence, and familial instability.

Protection of Women in Domestic Violence Cases

This section elucidates the safeguarding of women, particularly with Domestic Violence, emphasizing polygamy as a contributing factor to divorce. Domestic violence endured by women (wives) is one of the divorce-related issues linked to polygamy.

Under legal and religious principles, a wife is entitled to happiness and tranquility within her home. The absence of such peace, resulting in discord, suffering, or distress, indicates a failure to fulfill the marital objective of establishing a joyful, harmonious, and peaceful family, often referred to as a "*sakinah mawaddah wa rahmah family*." A significant contributor to this discord is domestic violence perpetrated by the husband.

Should a wife endure any form of violence, encompassing physical, psychological, sexual, or domestic neglect, she may utilize this as grounds for divorce. This text delineates the various forms of domestic violence, emphasizing psychological violence and economic neglect, and examines their utility as analytical frameworks for assessing polygamy as a justification for divorce.

Indonesia has enacted a specific regulation to tackle domestic abuse, namely Law No. 23 of 2004 about the Elimination of Domestic abuse (PKDRT). This legislation comprises 10 chapters and 56 articles, featuring some essential terminology that warrant comprehension:

1. Domestic Violence encompasses any act perpetrated against an individual, particularly women, that inflicts physical, sexual, or psychological harm, as well as domestic neglect. This includes threats, coercion, or unlawful restriction of liberty within the family co.¹⁷

¹⁶ Article 19 of Government Regulation No. 9 of 1975 Implementing Law No. 1 of 1974 Regarding Marriage

¹⁷ Article 1, Section 1 of Law No. 23 of 2004 on the Eradication of Domestic Violence

2. The eradication of domestic violence constitutes a state obligation to prevent such violence, prosecute offenders, and safeguard victims.
3. Victims are individuals who endure abuse or threats of domestic violence, predominantly women.
4. Protection is an endeavor to furnish a sense of security to victims, facilitated by family, advocates, social institutions, law enforcement, prosecutors, courts, or other entities, either temporarily or pursuant to a judicial ruling.

The PKDRT Law's focus on women as a vulnerable demographic is justified. Socially and physically, women frequently fall victim to domestic violence due to perceptions of their inferiority to men. Consequently, this law deliberately offers enhanced protection to women to prevent them from becoming targets of domestic violence.

According to the Domestic Violence Law and Government Regulation in Lieu of Law No. 1 of 2002 regarding the Eradication of Criminal Acts of Terrorism, violence is characterized as any act that employs physical force, whether directed or not, unlawfully inflicting harm on an individual's body, life, or freedom.¹⁸ Within the framework of domestic violence, it is delineated as an act that inflicts both physical and psychological suffering. The manifestations of violence in domestic violence include the following:

1. Physical violence refers to actions that inflict bodily harm, such as beating, slapping, or tormenting.
2. Sexual violence refers to activities that coerce sexual intercourse without consent or breach ethical standards.
3. Psychological violence refers to actions that induce fear, diminish self-confidence, hinder agency, evoke feelings of helplessness, and cause significant psychological distress.¹⁹ It can manifest as verbal abuse, neglect of information, emotional manipulation, and controlling behavior, which restricts pleasure and freedom.
4. Coercion, specifically compelling the victim to engage in actions against their will.
5. Domestic Neglect/Economic Violence constitutes the failure to meet economic needs, either by withholding financial support or obstructing the wife's access to economic independence. Domestic neglect, as delineated in Article 9 of the Domestic Violence Law, refers to the neglect of an individual within a household by a person who is legally or contractually

¹⁸ Article 1, Section 4 of the Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 of 2002 on the Eradication of Terrorism-Related Criminal Acts

¹⁹ Pasal 7 UU PKDRT

obligated to provide sustenance, care, or maintenance. Economic neglect further encompasses the imposition of restrictions or prohibitions on the victim (typically the wife) from engaging in employment, thereby rendering the victim economically dependent on the perpetrator (husband), who exerts complete control over the situation.

In the realm of *fiqh* (Islamic jurisprudence), a husband is mandated to provide sustenance and treat his wife and family with respect. This duty encompasses economic, emotional, and physical requirements. Should the husband neglect his responsibilities, whether materially or emotionally, it may be deemed a form of domestic violence. In such circumstances, the wife is entitled to initiate divorce proceedings.

Furthermore, in instances of polygamy, if the husband exhibits inequity or fails to provide adequate economic or emotional support to the first wife, this may constitute a valid basis for divorce, in accordance with relevant legal frameworks and considerations of domestic violence. Consequently, safeguarding women in situations of domestic violence is crucial, particularly in preventing the injustices frequently encountered by women within the domestic sphere.

Dynamics of Polygamous Practices in Sharia Court Rulings

This section elucidates the dynamics of polygamous practices within the society. The objective is to examine polygamous practices that deviate from Islamic stipulations, identify the perpetrators, and assess whether such practices may constitute domestic violence. Additionally, it will explore the potential for polygamy to serve as a sole justification for divorce, independent of other factors. This topic will be addressed in the subsequent sub-section, focusing on polygamy as a basis for divorce.

There are eight divorce cases in the Sharia Court that were studied, namely divorce lawsuits or divorce lawsuits filed by wives. A divorce lawsuit or divorce lawsuit is a divorce lawsuit filed by a husband or wife or their attorney to the Court whose jurisdiction includes the defendant's residence.²⁰ In this article, the divorce lawsuit is filed by the wife. The decision analyzed is a wife who filed a divorce lawsuit because her husband practiced polygamy followed by other reasons. The wife's reasons were then used by the judge as legal considerations in determining the divorce decision. The following are the circumstances of husbands who practice polygamy and their behavior after doing so.

²⁰ Article 20, Paragraph (1) of Government Regulation No. 9 of 1975 about the Implementation of Law Number 1 of 1974 on Marriage.

The first case is the Sharia Court Decision Number 4/Pdt.G/2021/MS.Sgi. in this case the plaintiff (wife) works as a civil servant and the husband is a retiree. In this case the parties do not have children and have lived in harmony for five years, but then there was a dispute and quarrel caused by the defendant who was irresponsible towards the Plaintiff and the Defendant had remarried another woman. A witness said: "What the witness knows is that the Plaintiff and the Defendant lived peacefully at the beginning of their marriage, but then since the end of 2019 the Plaintiff and the Defendant have been arguing a lot because the Defendant has remarried another woman, the witness knows this because the Defendant once came to see the witness stating that he no longer wanted to continue his household with the Plaintiff and had pronounced divorce and even made a divorce letter and submitted it to the Keuchik to be forwarded to the Plaintiff, after that the Defendant no longer returned to the Plaintiff's house."²¹

The second case, numbered 10/Pdt.G/2023/MS.Lgs, involves a plaintiff (wife) and a defendant (husband), both employed as civil servants, with two children. Since February 2022, the defendant has exhibited significant alterations in communication with the plaintiff, resulting in frequent disputes. The plaintiff observed that the defendant began to speak disrespectfully, spent less time at home, often left for extended periods under the pretext of official duties out of town, and reduced financial support for household and children's needs. The plaintiff attributed the defendant's behavioral changes to his clandestine marriage to another woman, a claim corroborated by witnesses.²²

The third case, namely the case at the Banda Aceh Sharia Court Number 44/Pdt.G/2023/MS.Bna. In this case, the plaintiff (wife) worked as a housekeeper and the defendant was self-employed. This couple did not have children. At the beginning of the marriage, the household between the Plaintiff and the Defendant was harmonious. Initially, the Defendant worked as an independent electrical installer but since mid-2021 the Defendant has become a developer who builds houses on land owned by other people. In his work as a developer, the Defendant knew a woman as the owner of the land where the Defendant built the house and then over time their relationship became closer and not just as co-workers. Since then, the Defendant began to change, often behaved and spoke harshly and no longer wanted to invite the Plaintiff to the construction site of the house that the Defendant was building. Shopping money also decreased day by day and the Defendant came home less and less. The cause of the disharmony between the Plaintiff and the Defendant's

²¹ Putusan Mahkamah Syar'iyah Sigli (The Shariah Court Decision of Sigli) Nomor 4/Pdt.G/2021/MS.Sgi

²² Putusan Mahkamah Syar'iyah Langsa (The Shariah Court Decision of Langsa) Nomor 10/Pdt.G/2023/MS.Lgs

household was because the Defendant had married another woman and the Plaintiff was not supported. This information was confirmed by witnesses.²³

The fourth case is case number 80/Pdt.G/2023/MS.Lgs. The Plaintiff (Wife) and Defendant (Husband) are both employed as casual laborers and have three children. Since June 2021, the Plaintiff's domestic tranquility with the Defendant has deteriorated, characterized by frequent misunderstandings and ongoing disputes. Contributing factors include the Defendant's marriage to another woman, his harsh verbal treatment of the Plaintiff, occasional violence, his irresponsibility regarding financial support, and his refusal to heed the Plaintiff's counsel for improvement. This situation was corroborated by witnesses.²⁴

The fifth case is case number 122/Pdt.G/2023/MS.Bna. In this matter, the plaintiff is the wife and the defendant is the husband, both employed as Civil Servants (PNS), and they have a child together. Since October 2020, the defendant has entered into a clandestine marriage, residing in the domicile of his second wife. This situation has incited conflicts and discord within the family. Following his remarriage, the husband has ceased to provide adequate support for his family.²⁵

The sixth case is case number 192/Pdt.G/2023/MS.Lgs. The wife works as a civil servant teacher and her husband is self-employed. They have been blessed with seven children. Since 2005, the peace of the Plaintiff's household with the Defendant has begun to waver between the Plaintiff and the Defendant, there are often misunderstandings and continuous quarrels, the causes of which include: the Defendant is married to another woman, the Defendant is irresponsible in terms of providing for the family, the Defendant does not want to listen to the Plaintiff's advice to be better, and the Defendant does not respect the Plaintiff as a wife. The Plaintiff has tried to give in and be patient, but the Defendant has never changed to be better, which makes their household life not harmonious and harmonious. That the peak of the dispute and quarrel between the Plaintiff and the Defendant occurred in March 2023 with the causes as mentioned above, because the Defendant never changed his behavior and the Plaintiff could not stand it anymore, then the Defendant left the house leaving the Plaintiff, as a result the Plaintiff and Defendant have separated houses.²⁶

²³ Putusan Mahkamah Syar'iyah Banda Aceh (The Shariah Court Decision of Banda Aceh) Nomor 44/Pdt.G/2023/MS.Bna

²⁴ Putusan Mahkamah Syar'iyah Langsa (The Shariah Court Decision of Langsa) Nomor 80/Pdt.G/2023/MS.Lgs

²⁵ Putusan Mahkamah Syar'iyah Kota Banda Aceh (The Shariah Court Decision of Banda Aceh) Nomor 122/Pdt.G/2023/MS.Bna

²⁶ Putusan Mahkamah Syar'iyah Langsa (The Shariah Court Decision of Langsa) Nomor 192/Pdt.G/2023/MS.Lgs.

The seventh case is decision Number 314 / Pdt.G / 2022 / MS.Lgs. The wife is a retired civil servant, while the husband is a trader. They have six children. The Plaintiff and Defendant frequently experience misunderstandings and ongoing disputes, attributed to the Defendant's lack of respect for the Plaintiff as a spouse, failure to fulfill familial financial responsibilities, and remarriage to another woman.²⁷

The eighth case is Decision Number 328 / Pdt.G / 2022 / MS.Lgs. The wife manages the household while the husband is a trader. They have no children. The witness corroborated that the dispute between the Plaintiff and the Defendant stemmed from the Defendant's remarriage to another woman, the Defendant's inadequate provision for the Plaintiff, and the Defendant's frequent absences from home without justification.²⁸

Prior to examining each case, the author identified commonalities in divorce cases, specifically that, in conjunction with or subsequent to engaging in polygamy, the husband, as the defendant, exhibited a lack of responsibility in financially supporting his wife and family. The statistic is striking, with 100% of the studied divorce cases attributed to polygamy. Furthermore, this was often accompanied by additional detrimental behaviors, as elaborated in the subsequent explanation.

The author will examine the cases individually. In the initial case, the husband, in addition to remarrying, neglects his responsibilities in providing for his wife and family, which is fundamentally his obligation.²⁹ This practice of polygamy is unequivocally not endorsed by Islam, which advocates for fairness among husbands, particularly in terms of financial support.³⁰ Furthermore, the husband's refusal to heed his wife's counsel for self-improvement reflects an egotistical disposition that undermines the esteemed values of marriage, where mutual support and respect are paramount. Consequently, the husband's lack of respect towards his wife is undesirable.

In the second scenario, alongside polygamy, the husband frequently employs harsh language and may even perpetrate domestic violence against his wife. The wife acknowledged that her polygamous husband exhibited irresponsibility in fulfilling financial obligations, which can be classified as economic domestic violence. Furthermore, akin to the prior case, the husband

²⁷ Putusan Mahkamah Syar'iyah Langsa (The Shariah Court Decision of Langsa) Nomor 314/Pdt.G/2022/MS.Lgs.

²⁸ Putusan Mahkamah Syar'iyah (The Shariah Court Decision) Nomor 328/Pdt.G/2022/MS.Lgs.

²⁹ Jumni Nelli, "Analisis tentang Kewajiban Nafkah Keluarga dalam Pemberlakuan Harta Bersama," *Al Isti'bat: Jurnal Hukum Islam*, Vol. 2, No. 1, 2017, hlm. 30.

demonstrates a notable reluctance to heed his wife's counsel for self-improvement.

In the third scenario, alongside polygamy, the husband frequently communicates with his wife in a harsh manner and exhibits irresponsibility in providing for his family (wife and children). This behavior indicates that the husband possesses a relatively poor character; he is negligent in his domestic responsibilities, often speaks unkindly, and engages in polygamy. He is unable to adequately meet the needs of his first wife, opting instead to remarry clandestinely without her consent or awareness. Naturally, this second marriage is conducted in secrecy.

In the fourth scenario, alongside polygamy, the husband prohibits his wife from engaging in employment to meet their financial needs. This restriction inevitably fosters economic dependence on the husband, who neglects his duty to provide for the household. Additionally, the husband's frequent nocturnal absences and early returns exacerbate the situation, as he fails to offer the emotional support and affection essential for nurturing a harmonious and loving family environment, characterized *sakinah mawaddah wa rahmah*.

In the fifth scenario, the husband exhibits irresponsibility in providing for the household and fails to adequately respect his wife. The extent of the wife's suffering due to her husband's behavior is evident. His lack of proper respect constitutes a form of psychological torment, exacerbated by his negligence in fulfilling physical sustenance obligations. This situation is further compounded by the husband's engagement in polygamy without the wife's knowledge or consent. One may question the husband's suitability for polygamy and the wife's entitlement to seek divorce. For those who empathize with the wife's plight, the conclusion is that she is justified in pursuing a divorce.

The author's assessment of the wife's situation in the sixth case is particularly sympathetic, noting that, in addition to enduring polygamy, her husband was absent for three years without sending provisions. Prior to his disappearance, the husband exhibited a detrimental habit of frequenting nightlife and returning home at dawn.

In the seventh case, alongside polygamy, the husband frequently uttered harsh words to his wife. Moreover, the financial support provided by the husband has diminished over time. Another alarming circumstance is the husband's infrequent return home without a valid explanation. Furthermore, in the eighth case, in addition to polygamy, the husband exhibits irresponsibility in supplying sustenance.

This text outlines the circumstances and attitudes of husbands who engage in polygamy, leading their wives to seek divorce. These husbands do not obtain consent from their wives for polygamous practices, opting to marry

second wives clandestinely. This secrecy arises from their inability to publicly announce the marriage, and registering it poses challenges, often resulting in falsified documentation, such as misrepresenting their marital status as widower. Furthermore, significant findings indicate that polygamous husbands generally exhibit a lack of responsibility, neglecting their duties to provide for and show proper affection to their wives and children. A considerable number of these individuals are also implicated in domestic violence (KDRT) incidents.

The conduct of husbands towards their first wives, as previously delineated, does not constitute the polygamy sanctioned by the Qur'an. The Qur'an's stipulation regarding a husband's demeanor towards his wives is unequivocal: he must exhibit equity among them. Furthermore, the Qur'an explicitly cautions that if one fears an inability to maintain fairness, it is advisable to marry solely one woman.

Safeguarding Women in Domestic Violence Incidents

In Indonesia, the provisions for divorce are regulated in Article 39 of the Indonesian Marriage Law (Law No. 1 of 1974), which states that divorce can only be carried out in court, and to carry out a divorce there must be sufficient grounds that the husband and wife will not be able to live in harmony as husband and wife. The reasons for divorce are outlined in Article 19 of PP No. 9 of 1975, as follows: divorce can occur for reasons or reasons, one party commits adultery or becomes a drunkard, drug addict, gambler, and so on which are difficult to cure. One party leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or for other reasons beyond their ability. One party is sentenced to 5 (five) years in prison or a heavier sentence after the marriage takes place. One party commits cruelty or serious abuse that endangers the other party. One party gets a physical disability or illness with the result that they cannot carry out their obligations as husband/wife; and between husband and wife there are continuous disputes and quarrels and there is no hope of living in harmony again in the household.

The grounds for divorce do not exclusively cite polygamy as the cause. Notably, polygamy is not regarded as the reason for the couple's inability to coexist harmoniously. It is widely believed that the underlying reason is the permissibility of polygamy under *sharia*, despite its lack of recommendation. In practice, polygamy is likely to inflict distress upon the wife, as evidenced by the aforementioned ruling of the *Sharia* Court.

In this context, can polygamy serve as a valid justification for divorce? A careful examination of the grounds for divorce outlined in Article 19 of PP No. 9 of 1975 suggests that, due to the aforementioned circumstances, the spouses do not attain genuine happiness (*Sakinah mawaddah wa rahmah*). Initially, one party may engage in infidelity or develop issues such as alcoholism, drug addiction, or gambling, which are challenging to rectify.

The act of adultery perpetrated by a partner constitutes a profound betrayal of their life companion. This transgression also contravenes religious doctrine. Such betrayal inevitably undermines the happiness of both spouses. Additionally, behaviors such as alcoholism, drug addiction, and gambling, which are challenging to rectify, further exacerbate the situation. Both religious teachings and scientific research indicate that the consumption of alcohol and other intoxicants can impair cognitive function. Numerous studies demonstrate that these behaviors can incite domestic violence and lead to the neglect of responsibilities inherent in the marital relationship. Consequently, such conduct will undoubtedly disrupt domestic harmony.

Furthermore, one party leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or for other reasons beyond their ability. This second reason certainly also affects the relationship between the two parties; husband and wife. This second reason, in addition to affecting the fulfillment of physical and psychological needs. Among the purposes of marriage is the mutual fulfillment of needs between partners, not just the fulfillment of the needs of one party. This reason is followed by the next reason, namely one party is sentenced to 5 (five) years in prison or a heavier sentence after the marriage takes place. It is very clear here that the presence of a husband and wife together in a household is a demand, and when it is not fulfilled, the husband or wife can file for divorce.

The next reason is that one party commits cruelty or severe abuse that endangers the other party. This reason will of course be dangerous to the harmony of the household. This reason can even endanger the physical and mental health of the couple. Abuse itself is a criminal act in Islam, the perpetrator of which can be subject to the punishment of *qisas*. Abusing a partner is not an act that is permitted in Islam. In addition to being a criminal act, the act will destroy the ideals of a marriage, namely to create a happy family (*sakinah mawaddah wa rahmah*).

Another legally recognized ground for divorce is the presence of a physical disability or illness in one party that impedes their ability to fulfill their spousal obligations. Certain illnesses can significantly disrupt domestic harmony, leading to emotional distress for the couple due to unmet needs in their marital relationship. While some ailments may have a minimal impact, those that are intolerable or unacceptable to either partner can hinder the establishment of a harmonious household.

The last reason is that there are continuous disputes and quarrels between husband and wife and there is no hope of living in harmony again in the household. Similar to the previous reason, this last reason outwardly shows that there is disharmony in the household. Thus it is appropriate for it to be the cause of divorce. This also shows that there is disharmony in the household.

Based on the description above, it can be stated that the causes of divorce regulated by Article 19 of PP No. 9 of 1975 all lead to the failure to realize the purpose of marriage, namely to create a happy and understanding family, one party needs the presence of the other party as husband and wife. Husband and wife are a couple, if one is not there, the couple is incomplete. Thus, all efforts must be made to maintain and care for it. Husband and wife must create their home like heaven, as once expressed by the Prophet Muhammad s.a.w in his hadith: my home is my heaven. Then, all matters that damage household harmony must be abandoned.

The aforementioned polygamy, as illustrated in the table of divorce lawsuits initiated by wives due to their husbands' polygamous practices, can be characterized as irresponsible polygamy. This form of polygamy is conducted clandestinely, without the knowledge or consent of the wife, and lacks authorization from the religious court. Consequently, the state does not officially recognize the polygamous marriage.

In accordance with Islamic marriage law in Indonesia, the principle of monogamy prevails; stipulating that a man may have only one wife and a woman may have only one husband. Nevertheless, the court may grant permission for a husband to have multiple wives if all parties involved consent to this arrangement.³¹

In the regulations in force in Indonesia, every husband who practices polygamy must meet the specified requirements. The Marriage Law (Law No. 1 of 1974) in Article 3 paragraph (2) states that the court can grant permission to a husband to have more than one wife if desired by the parties concerned. Furthermore, articles 4 and 5 explain that in the event that a husband will have more than one wife, he must submit an application to the Court in the area where he lives, and then the Court only grants permission to a husband who will have more than one wife if the wife cannot carry out her obligations as a wife, the wife has a physical disability or an incurable disease; and the wife cannot bear children. Husbands who submit applications to the Court must meet the requirements such as the approval of the wife/wives, the certainty that the husband is able to guarantee the necessities of life for the wives and their children, the guarantee that the husband will be fair to the wives and their children.

The law provides exceptions in certain circumstances where the husband may not attach/not require the wife's consent for a husband if his wife/wives cannot be asked for consent and cannot be a party to the agreement, or if there is no news from his wife for at least 2 (two) years or for other reasons that require an assessment by the Court Judge. The author considers an example of a

³¹ Chapter 3 no (1) and (2) Constitution no. 1 year 1974 on marriage.

wife's condition where it is impossible to ask for consent and the wife cannot be a party to the agreement is a wife in a state of insanity.

Two critical points must be emphasized: first, the husband must secure the wife's consent, and second, he must submit an application to the religious court for authorization to engage in polygamy. To obtain the wife's consent, the husband must engage in a discussion with her devoid of violence or coercion. The wife's consent is essential for specific reasons and signifies the husband's suitability for polygamy. This arrangement ensures that the wife retains confidence in the stability of the family. Such a framework does not undermine the fundamental purpose of marriage and safeguards women's rights, ensuring they receive protection and welfare guarantees, thereby preventing any inappropriate conduct from their husbands.

The husband subsequently petitions the court for authorization. This provision is intended to ensure legal certainty regarding the husband's obligations in a polygamous marriage. For the husband, possessing this permit provides legal reassurance to engage in polygamy. Furthermore, the state can ascertain that a polygamous husband does not neglect any of his wives. In this framework, it can be asserted that the state bears responsibility for safeguarding the rights of each wife within the household.

Based on the aforementioned explanation, it can be asserted that Islam, as interpreted by scholars referencing the Qur'an, aims for every marriage to fulfill its intrinsic purpose of establishing a *Sakinah mawaddah wa rahmah* family. In this framework, spouses are entitled to their respective rights from one another. Furthermore, Islam permits polygamy under specific conditions, ensuring that the rights of wives and children are adequately met. Consequently, when husbands engage in polygamy, they are expected to maintain their households without causing distress to their wives. Therefore, the Marriage Law stipulates certain prerequisites for husbands seeking to practice polygamy.

The situation described in the MS decision involves wives initiating divorce proceedings due to their husbands' engagement in polygamy. This analysis will examine the nature of polygamy and assess whether it constitutes a sufficient basis for divorce. The author characterizes the polygamy referenced in the MS decision as "underhand polygamy," a term used because these marriages are not formalized before a marriage registrar, thus lacking an official marriage certificate issued by the state.

Covert marriages persist in society, driven by various factors, including unions involving individuals under the age of 19 without a marriage dispensation from the MS,³² marriages lacking familial approval from both

³² Chapter I no. 1 Chapter 7 Constitution No. 16 Year 2019 on replacement of the Constitution no. 1 year 1974 regarding marriage.

parties, unions arising from coercive circumstances, and polygamous arrangements. Such clandestine marriages do not conform to conventional norms and are often motivated by specific reasons. For instance, polygamous marriages may be pursued for reasons such as evading religious regulations governing polygamy or other particular motives, such as marrying a financially affluent woman or resulting from an extramarital affair. The aforementioned motivations for polygamy are unequivocally prohibited by the Islamic law.

After reviewing the MS decision, it was found that the polygamy was not carried out validly because the marriage was carried out underhanded. The husband did not meet the provisions/requirements for polygamy; did not get the wife's approval and court permission. Thus, the polygamy violates Indonesian marriage law, plus the motive for the second marriage was to marry a woman who was more economically capable.

The practice of polygamy as described above, of course, according to the author, can be used as the sole reason for a wife to file for divorce. The judge, in the author's opinion, can immediately accept the wife's divorce suit after it can be proven convincingly that the husband has carried out "underhand polygamy." Polygamy like this cannot achieve the goals of marriage and has even harmed the goals of marriage itself. Meanwhile, it has been mentioned above that all the reasons for divorce in PP No. 9 of 1975 do not realize the goals of marriage and guarantee happiness for both husband and wife.

The next argument is that the wife has the right to file for *kebulu'* on the grounds of displeasure with her husband, which then has an impact on not being able to serve her husband as he should. In this context, *kebulu'* is no longer seen from the aspect of the husband's condition who may be able to fulfill the wife's needs/living, but is seen from the wife's subjective feelings. In the practice of polygamy above, two elements can be fulfilled, namely the husband no longer fulfills the needs of his wife and children, and has hurt the wife's feelings. Thus, the wife no longer gets the pleasure of marriage with her husband. Based on this, the author considers that underhanded polygamy can be used as the sole reason for divorce. If this reason is acceptable, then the reason for divorce submitted by the wife, namely the husband committing "underhanded polygamy" can be added to the clause on the reasons for divorce as stated in Article 19 of PP No. 9 of 1975, as mentioned above.

Conclusion

The dynamics of polygamy, especially underhanded polygamy, are common in the society. This practice has become the cause of domestic violence against women and eliminates the purpose of marriage; creating a happy family. In Indonesia, the reasons for divorce regulated in marriage law are because the husband and wife no longer achieve the goals of marriage for

various reasons. In the reasons for divorce, "underhanded polygamy" is not listed as a reason for divorce. Thus, in the trial process, the wife must submit other reasons, because polygamy is not listed as a reason for divorce in the existing regulations. In fact, the practice of "underhanded polygamy" is a form of betrayal in marriage and the wife is usually no longer able to achieve the goals of the marriage itself. On the other hand, in Islam, wives are allowed to file for divorce. Thus, it is only right that this "underhand polygamy" can be used as a reason for divorce and is stated in existing regulations, especially the reason for divorce in article 19 of PP No. 9 of 1975.

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