



Polygamy, *Nusyuz*, and *Ila'*, and the Role of Judges in Resolving Marriage Issues

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Article Information:

Received February 15, 2025

Revised March 10, 2025

Accepted April 10, 2025

Keywords: *Marriage in Islam, polygamy, nusyuz, ila', judge*

Abstract

In the reality of married life between husband and wife, there are usually both good and bad consequences, such as polygamy in marriage, which is when a man has more than one wife. From an Islamic legal perspective, polygamy is limited to only four wives. Polygamy has existed throughout human history, so it is not a trend that has emerged suddenly. Islamic law regulates polygamy for those who meet the requirements to practice it. However, many current practices of polygamy do not comply with Islamic law, falling far short of what is expected. Marital conflicts often cause arguments and heated debates, and physical and psychological violence is not uncommon, which can disrupt the harmony of the husband and wife's relationship and give rise to what is commonly known as *nusyuz* (disobedience). Then there is *ila'*, which is the husband's vow not to have sexual relations with his wife for a certain period of time, and the role of the judge in resolving marital problems. The purpose of this study is to explain the requirements for polygamy according to Islam, such as *nusyuz*, *ila*, and the role of the judge in marriage. This article will serve as a guide for us in overcoming various problems in marriage.

INTRODUCTION

Islamic marriage is open monogamy, meaning that a husband can only have one wife at a time (Hannan & Rosid, 2024). However, under certain circumstances (emergencies), a husband is permitted to practice polygamy. If we use a door as an analogy, polygamy is an emergency door that can only be opened when the situation is urgent. Polygamy is regulated by law. Muslims who wish to practice polygamy must first obtain permission from the competent religious court (Kurnia & Lestari, 2022; Septiandani & Astanti, 2021). If permission is not obtained, the marriage has no legal force. Some members of our society disagree with or disapprove of polygamy, and they oppose the current practice of polygamy because of its significant negative effects on families and the harm it causes to women (Alip, 2021).

How to cite:

Auziah, S., Ningsih, R., Arifin, Z., K, Munawir. (2025). Polygamy, *Nusyuz*, and *Ila'*, and the Role of Judges in Resolving Marriage Issues. *Suluh Pasaman*, 3(1), 1-8

E-ISSN:

xxxx-xxxxx

Published by:

The Institute for Research and Community Service

However, others approve of polygamy for certain reasons. This last group argues that although polygamy has many risks, it is not something that is prohibited by religion, especially Islam (Engkizar et al., 2021). The issue of polygamy is an interesting topic for discussion. The practice of polygamy is becoming increasingly common in our society. In practice, many polygamists still do not comply with existing regulations, both in terms of state law and religious law. This article attempts to examine the issue of polygamy, particularly the opinions of religious scholars on the laws and regulations of polygamy and how polygamy is practiced today.

The occurrence of polygamy may be related to *nusyuz*, which is the failure of a husband and wife to fulfill their responsibilities, causing the husband or wife to engage in polygamy or polyandry (Nurhalizah et al., 2024; Nurul Aminah, 2023). In Islam, if a couple fails to fulfill their responsibilities in the household, such as a husband neglecting his wife or a wife being disobedient to her husband, this is addressed through the concept of *nusyuz* as explained in the Quran. This article also discusses the concept of *nusyuz*, including its definition, various forms of *nusyuz* that can be demonstrated by husbands or wives according to the Quran and Hadith, as well as solutions described to overcome *nusyuz* in marriage.

Islam is a religion that strongly upholds relationships between people, especially between two individuals who have entered into a marriage contract (Azizah & Fatayati, 2021). Speech is one example. Islam has laws regarding speech that has the potential to hurt one's spouse. Among these laws is the oath of *ila'*. Basically, marriage is not only a bond between husband and wife, but also unites two families (Agus Hermanto et al., 2024; Suryatni, 2021; Taurat Afiati et al., 2022). The joys and sorrows of family life that accompany the lives of husband and wife must be lived together.

This often leads to turmoil and prolonged conflict, which is often caused by differences in vision and mission, high levels of selfishness in the couple, differences in understanding, lack of communication, infidelity, and even domestic violence, which ultimately shakes the foundation of their long-established household, and many of them end up in divorce. Therefore, during divorce proceedings, the judge plays an important role in resolving marital problems (Hamzah et al., 2022). This article will discuss polygamy, *nusyuz*, *ila'*, and the role of judges in resolving marital problems.

METHODS

The data collection technique used in this article is to collect data from books obtained from Google and Ipusnas, articles that support the research, collected, selected according to the object of study, and typed in summary form (Engkizar et al., 2022). Data analysis was conducted by collecting literature, reviewing and identifying it, and seeking solutions to existing problems until the final stage of drawing conclusions from all the data obtained.

RESULT AND DISCUSSION

The Definition of Polygamy According to Scholars and Its Requirements

Etymologically, the word polygamy comes from Greek, which is a combination of two words, poli or polus, meaning many, and gamein and gamos, meaning marriage. Thus, polygamy means multiple marriages. Terminologically, polygamy is a marriage system in which one party has or marries several partners of the opposite sex at the same time. If the person who has more than one partner is a husband, the marriage is called polygyny, while if the person who has more than one partner is a wife, the marriage is called polyandry (Kaputra et al., 2021). However, in everyday language, the term polygamy is more commonly used to refer to a husband marrying more than one wife. The opposite of polygamy is monogamy, which is

marriage system that only allows a husband to have one wife at a time. In Islam, polygamy is defined as the marriage of a husband to more than one wife, with a maximum limit of four wives at the same time (Ahmad Muzayim, Imron Choeri, 2024; Arifin & Irawan, 2025).

Imam Madzhab permits polygamy on the condition that the husband is certain or strongly believes that he is capable of being fair. The fairness referred to is material and measurable fairness, such as financial support, clothing, housing, and time allocation. Imam Syafi'i does not recommend polygamy and does not make it obligatory (Sufi'y & Ja'far, 2024). Imam Hanafi permits polygamy on the condition that the prospective practitioner ensures fairness among his wives. Imam Hanbali does not recommend polygamy because it is prone to injustice. The scholars mention two conditions that Allah mentions in the Quran when a man wants to practice polygamy, and another condition mentioned in the hadith of the Prophet (Anwar, 2023). First, the maximum number of wives is four, and no more. Second, he must be able to act and behave fairly between his wives. Third, he must have the physical ability and financial means to provide for them.

All three conditions must be met in order for a man to be allowed to practice polygamy and marry one to four wives fairly. The reasons for practicing polygamy must also be clear and acceptable to reason (Aini & Abdurrahman, 2021). First, polygamy must be practiced under certain conditions, meaning not under normal circumstances. For example, if the wife is elderly or sick, so that there is concern that the husband will not be able to maintain his honor if he does not practice polygamy. Second, marriage is the cause of relationships (kinship) and bonds between fellow human beings. In other words, practicing polygamy is the cause of relationships and closeness between many families, and this is also one of the reasons why the Prophet practiced polygamy. Third, polygamy is a means of protecting the honor of a large number of women and fulfilling their needs in terms of financial support, shelter, having many descendants and children, and this is a requirement of Sharia law. Fourth, men who have a high sex drive, so that one wife is not enough for them, while they do not want to fall into things that violate Sharia law (Engkizar et al., 2024). Fifth, sometimes after marriage, a wife becomes infertile, so she chooses polygamy over divorce (Yulianis & Susanti, 2025).

Definition of *Nusyuz*, Islamic Legal Perspective, and Forms of *Nusyuz*

Nusyuz literally means disobedience, defiance, and hatred. According to the term *nusyuz*, it refers to a wife who defies her husband by not obeying his commands, turning away from him, and making him angry (Ananta & Ainur Rofiq, 2023). *Nusyuz* can be committed not only by the wife, but also by both parties. In the Compilation of Islamic Law, the rules regarding *nusyuz* are narrowed down to only the *nusyuz* of the wife and the legal consequences it causes (Rahmi et al., 2021; Wahyuddin & Kusuma, 2023). The Compilation of Islamic Law begins its discussion of *nusyuz* with the initial provision regarding the obligations of a wife, namely that in domestic life, the main obligation of a wife is to serve her husband physically and emotionally within the limits permitted by Islamic law. A wife is considered *nusyuz* if she refuses to carry out the aforementioned obligations. However, according to the Compilation of Islamic Law, the determination of whether or not a wife is *nusyuz* must be based on valid evidence.

Nusyuz committed by a wife is as follows: i) the wife refuses to move with her husband to live in a house that has been provided according to the husband's means, or the wife leaves the house without her husband's permission, ii) if both of them live in the wife's house with the wife's permission, then at some point the wife forbids him from entering the house and it is not because she wants to move to the house provided by her husband, iii) the wife refuses her husband's invitation to settle

in the house that has been provided without a valid reason, iv) if the wife travels without her husband or mahram even though the trip is obligatory, such as the hajj, because a woman traveling without her husband or mahram is considered a sin (Pratama & Prasetya, 2023).

For the husband, if it is clear to him that his wife is rebellious because of her behavior, so that she disobeys and is disloyal by committing sins and hostility, arrogance, and deceit. Islam requires the husband to take three steps as follows: i) when signs of her disobedience become apparent, the husband has the right to advise her, ii) after her disobedience becomes clear, the husband has the right to separate from her in bed, iii) if she remains disobedient, the husband has the right to strike her (Ihyak, 2022).

Among the forms of *musyuz* by the husband are: i) displaying signs of indifference, such as leaving his wife except to perform obligatory duties, or showing obvious hatred towards his wife through his attitude, ii) neglecting his obligations, such as not providing for his wife, iii) arrogance, tyranny, and pride of a husband towards his wife, iv) the husband having a violent temper and acting in a way that endangers his wife, v) the husband's unfair treatment of his wives (especially in the case of polygamy), vi) refusing to pay the dowry, vii) expelling the wife from the house, meaning forbidding her to live with him, viii) accusing the wife of adultery without clear evidence, ix) arbitrarily divorcing the wife, x) insulting her by mentioning her physical or mental flaws, xi) ordering the wife to commit immoral acts and violate Allah's prohibitions (Yanti & Zahara, 2022).

Resolution of a husband's *musyuz* according to the interpretation of the scholars; i) reaching a peaceful agreement whereby the wife allows her husband to reduce her daily allowance if he remarries a younger woman, ii) the wife waives part of her dowry (so that she is not divorced by her husband), iii) the wife can take steps to win her husband's heart by relinquishing her rights or part of her rights, such as her right to physical and emotional support, the right to clothing, or other rights that are the husband's obligation, and here the husband may accept this, iv) human nature is to always be stingy, v) withholding some of the husband's rights, as food for thought for the husband, vi) the wife can practice verse 34 of Surah An-Nisa by doing, advising, separating beds, calling on the hakam, vii) the wife gives something from her property to her husband so that her husband will divorce her, which is known as *iwadh khabulu'* (property given by the wife to her husband in the case of *khabulu'*) (Azaly, 2022; Damiarto et al., 2023).

Definition of Ila', Conditions of Ila', and Conditions for the Termination of Ila'

According to Ibn Abbas, *ila'* means an oath not to have sexual relations with one's wife forever. Meanwhile, Atha' says that *ila'* means swearing by Allah not to have sexual relations with one's wife for four months or more. If it is not accompanied by an oath, then it is not called *ila'*. *Ila'* is an oath made by a husband to his wife using the name of Allah or one of His attributes to not have sexual relations with his wife for a certain period of time or more than four months. Allah has changed the time limit for *ila'* from the custom of Jahiliyah to a time limit of four months (Fadli, 2022). Within the four-month period, the husband is given the choice to remarry his wife by paying the cost of redeeming the oath, or to divorce his wife. Conversely, the wife can use this four-month period to introspect on her weaknesses that her husband dislikes (Ahmad & Rozihan, 2021).

A husband who wishes to perform *ila'* to his wife must fulfill the conditions stipulated in Islamic law. The conditions for performing *ila'* according to Hanafi scholars are: i) the woman must be the husband's wife, ii) the husband has the right to divorce her, iii) the oath must not be tied to a specific place, as he may approach

his wife in another place, iv) the wife must not be combined with ajrabi, because in that combination the husband may approach his wife alone without incurring any obligation, v) reluctance should be limited to intimate relations only, vi) do not return to have sexual relations with your wife within the specified period of four months, because Allah has made divorce unlawful as a condition for its fulfillment. If the husband wishes to resume intimate relations with his wife, he must first pay the penalty for his oath (Ilba & Siddik Turnip, 2024; Musyafah, 2020).

The Role of Judges in Resolving Marriage Issues

According to Qamus Al-Mu'jam Al-Wasith, linguistically, the word hakim means man *mushshiba li al hukmi bayna al-nasi*, which means a person who is entrusted with the law among humans. *Hakamain* in Arabic is a *tasniyah* word or refers to two people, which comes from hakam. The term *hakam* comes from the Arabic al *hakamu*, which means referee or mediator. In the Indonesian Dictionary, *hakam* means intermediary, separator, or referee. Meanwhile, according to the term *hakam*, it refers to a party from the husband and wife's family or another party tasked with resolving disputes (Marwa, 2021; Mubarrak & Irfan Nur, 2023). The mujtahids agree that appointing two hakim, in the event of a dispute between husband and wife and they do not know for sure who is at fault, is obligatory.

The main function of the *hakam* (mediator) is to reconcile (Suwardi, 2021). Rasyid Ridha in Tafsir al-Manar states that the *hakam* (mediator) is sent with the intention that they can see, observe, examine, and study the reports from the husband and wife who are having problems, and try to find out the true situation, as well as give a decision to both of them to stay together or separate. The basic rule regarding the appointment of two mediators is that they should preferably be from the husband and wife's family, the wisdom being that family members are more familiar with the husband and wife's circumstances. This makes it possible to reunite the husband and wife. Allah gives orders to their family. If there are no family members, or if one of the family members of the husband and wife is present and one of them is unfair, or for other reasons, the judge (authority) chooses two fair mediators from among the Muslims for both of them (husband and wife) or one for both of them (husband and wife), as there are no two mediators from among them or one of them, and it would be better if both (two mediators) are close neighbors (husband and wife). And this is the purpose of appointing two mediators.

The requirements that must be met by two mediators are: i) both mediators must be of sound mind and intellect, ii) of legal age, iii) fair, and iv) Muslim. The two arbitrators are not required to be from the husband's family or the wife's family, so even if they are not from the husband and wife's family, it does not matter, because this is only a recommendation. This is because arbitrators who have authority and are respected by the parties can calm the emotions of the disputing parties. It should also be noted that divorce is something that should be avoided, as it causes many harms, one of which is that children lose the place where they receive love from both parents. This becomes a psychological burden that must be borne by each party, including the husband, wife, and children (Haq et al., 2023).

CONCLUSION

The conclusion that can be drawn is that in marriage, whether in the context of polygamy, *nusyuz*, or *ila'*, Islamic law provides clear guidelines to ensure justice and protection of the rights of each party. It can be concluded that Islam allows polygamy, but there are restrictions and conditions that must be met in order to practice polygamy according to Islamic teachings. The role of judges is very important in maintaining the continuity and harmony of the household, both by providing solutions to problems that arise and by ensuring that the law is enforced fairly. However, even though Islam provides solutions to many problems in marriage,

the implementation of the law in everyday life is highly dependent on the social and cultural context of each community, as well as the legal system in force in that country.

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