

Syahrur, Polygamy, And Child Protection In Indonesia

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SYAHRUR, POLYGAMY, AND CHILD PROTECTION IN INDONESIA

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ABSTRACT

This research examines Syahrur's thoughts on polygamy through his theory and methodology. The concept is connected or sought for its relevance to child protection efforts in Indonesia as reflected in the Child Protection Law No. 23 of 2002. This research is a library in nature, which operationally processes the substance of texts related to the formulation of research problems theoretically and analytically. The approach used is the character approach i.e., the exploration of Muhammad Syahrur's thoughts and theoretical framework. The results of this study reveal that according to Syahrur polygamy can be done as long as it meets several criteria, (1) the number of wives that can be married is 4 with the provision that the first wife may be a virgin or widow who has orphans or not. While the second, third and or fourth wives must be widows who have children. (2) must be able to create fair conditions, either for his wives or his children. This conception has relevance to the child protection law, which is reflected in the following; First, Syahrur's attention to the lives of orphans is part of the Indonesian government's goal of protecting all children in general. Secondly, the importance of family integrity where the mother and father are in it to work together to pay attention to the lives of their children. However, at this point, Syahrur suggests that the child's mother find a foster father by means of polygamy, while the Indonesian government directs her to find an adoptive father or foster father, (3) Syahrur's concept of polygamy can provide a new discourse on the concept of polygamy in Indonesia by linking the Marriage Law 1 of 1974 and Government Regulation No. 10 of 1983 articles 55-59 KH. 10 of 1983 articles 55-59 KHI with the Child Protection Law No. 23 of 2002 which proclaims the need for child protection, and (4) Syahrur's polygamy requirements are in line with the principles of child protection in Indonesia i.e., nondiscrimination, the best interests of the child, the right to life, survival and development, and respect for the child's opinion.

INTRODUCTION

Polygamy is a controversial and actual issue to be discussed. In Islamic discourse, the pros and cons on polygamy arise from the prevalence of different understanding in studying religious texts. One group views that polygamy is an instrument given by Allah to a husband which is not only regarded as neutral but also meritorious. Another group, however, considers that polygamy is not fair and equal on the relation between husband and his wife since it put the woman in a low level.

Apart from the above controversy, however, ¹³ the problem of polygamy is a problem related to the establishment of a united and happy family in which a father, a mother, and their children must have the equal rights to get their happiness. A wife or wives who live with her or their husband have a right to fulfill their happiness materially and immaterially. The most important of this, however, is their children who generally are still young to reach their future. This becomes ultimately crucial when their father died. It is probably that they do not only have attention and love from their father but also do not have a person who earns money for their need. Children, therefore, are very crucial problem in a social life.

Nevertheless, this problem does not only belong to the family's responsibility but also the government's responsibility. Indonesian government, therefore, issued Number 23 Act of 2002³ in Child Protection. Article 3 on this Act states that child protection is aimed at guar⁷ntying the rights of children to live, grow and participate optimally based on the human values as well as to get the protection from violence and discrimination in order to produce a healthy, comfortable and happy child in Indonesia (*Act of Child Protection*, Number 23 Act of 2002).

In fact, the problem of children does not only come from the practice of polygamy but also from other reasons: divorce, dishonesty, forbidden sexual intercourse, and many others (Nurohmah, 2003; Annisa, 2001; Khairuddin, 1998). Polygamy is not the main reason of abandoning a child because polygamy itself is a complete and large household. Generally, however, the problem of child protection, especially orphan, is no¹⁴ considered an important issue in the discussion of polygamy. Polygamy is always measured with the ability of a man to provide affection materially and immaterially to his wives but, unfortunately, it is not measured with his ability to protect the orphan's life.

By connecting the problem of polygamy with orphan, this research tries to study Muhammad Syahrur's thought viewing polygamy is an instrument to protect a child. This idea, of course, is different from two mainstream opinions on polygamy since it provides a new light proposing that polygamy benefits for parenting and child protection. This study is intended to search the relevance between Syahrur's concept on polygamy and an attempt at protecting children done by Indonesian government.

Studying the relevance of Syahrur's thought on polygamy and child protection, perhaps, is regarded as tendentious. Syahrur's concept is likely smaller than the problem of child protection in Indonesia which is complicated. However, in this study, the writer wants to look at how far polygamy is able to establish a constructive and interpersonal condition among members of family for child protection. In fact, there is an arbitrary understanding on the nature of polygamy among Indonesian people stating that polygamy does not provide opportunities for children to live, and grow. Therefore, a family is extremely crucial to be paid more attention since it is the smallest unit in a society (Sha'di, tt). It means that the development of a society depends on how a family as the smallest unit is developed. Syahrur's concept on polygamy, then, has enough relevance to be concerned in its relation with child protection in Indonesia.

RESULTS AND DISCUSSIONS

The Discourse on Polygamy

According to Islam, marriage is a human's need to fulfill by giving a fair proportion related to the right and obligation between a husband and a wife in their position as good creatures in the eye of a society and Allah. Islam views that any kinds of marriage during Jahiliyah's time such as *istibdha*¹, *rahtun*², *syigar*³, *badal*⁴, *maqtu'*⁵, *khadan*⁶, *baghaya*⁷ and *'irts*⁸ is not permitted. This, however, does not mean that Islam prohibit polygamy (Mulia, 2004; Baidan, 1999). Qur'an and Sunnah allows this kind of marriage.

In this modern era, there are many reasons to do polygamy, some of them are: to follow Muhammad's teaching (Sunnah Nabi) (Ibn Katsir, 1998), the unbalanced population between man and woman (Muthahari, 1995), the rise of free sex and dishonesty (Syalthut, tt; Al-Bakri, 1982) the increase of illegal birth from unmarried couple, and the prevalence of wives who is barren or has chronic disease. (Ridha, 1374).

The practice of polygamy in a contemporary Indonesian society is also supported by Indonesian government's policy. The law of marriage as stated in the Number 1 Marriage Act of 1974 and the compilation of Islamic law (KHI) allows the practice of polygamy, even though there are some strict requirements.

Muhammad Syahrur : *His Figure, Works, Theory and Methodology*

Muhammad Syahrur was born in an intersection region of Shalhiyyah, Damascus, Syria on 11 April 1938. He is the fifth child from Deyb and Siddiqah. His father sent him to basic and high school in Midan, a southern outskirt of Damascus city. His high school was completed in 1957 when he got a diploma from Abd al-Rahman al-Kawakib school (Syahrur, 2002).

In 1958, he was sent by the government to study Architecture in Moscow. In 1964, he succeeded in getting a diploma of civil engineering. A year later, he was appointed as an assistant lecturer at Faculty of Civil Engineering in Damascus University. He got his master and doctorate from National University of Ireland, in 1969 and 1972 respectively, specializing in civil engineering particularly in mechanics and soil construction (Syahrur, 1990).

¹ A husband asks his wife to have sex with another man who is well-known and prestigious in order to have a child so that this child will be well-known and prestigious as his father.

² This marriage allows some men to make sexual intercourse with a woman whom they want. After being pregnant, this woman invites all men who have sex with her to inform them about her pregnancy. She, then, chooses a man among them to be her husband. The elected man cannot avoid her choice and he must be her husband.

³ It is a son who marries her stepmother after his father died and she is not able to disagree. If he is still young, his family will encourage her to wait until he is adult. After being adult, he can choose whether he marries her or not.

⁴ This is two men who make agreement to exchange their wives without getting a divorce in order to satisfy their desire so that they are not bored.

⁵ It is a some ¹² who marries off his daughter or his sister with a man without asking him to give bride price.

⁶ It is a secret relationship between a man and a woman in which they live in the same room. They also have sex but they do not marry legally.

⁷ A group of man have sex openly with a prostitute by turns. When she gets pregnant and gives birth, they meet her in a noisy group. She, then, chooses among them to be her husband after selecting a man whose face is similar with the face of her son or daughter.

⁸ At that time, when a man died while he does not a son, his wife belongs to his relatives though she has a family. If one of them wants to marry her, she must accept him. When there is no one among them who wants to marry her, they marry off her with another man while the bride price belongs to them.

Besides he taught in faculty of technique, Damascus University, he, together with his friends, also found a special office for architecture in 1972 and it was called as *Dar al-Istisyrat al-Handasiyah*. Syahrur is able to speak English and Russian fluently. He is very interested in philosophy and *fiqh al-Lughah* (philology, linguistic). These three field of studies become a basic thought of his 'deconstructive' theory.

Muhammad Syahrur who is called as 'Immanuel Kant' of Arabic world and 'Martin Luther' of Islamic world (Christmann, 2004:18-19), has written many books on technique of construction. Syahrur also wrote some books telling his idea about contextualization of Qur'an and Hadist in general. He criticized the conservative Islamic thought and deconstructed the hegemony of classical Islamic thought rooted in Muslim's consciousness and knowledge.

There are many books written by him. Some of them are; *al-Kitab wa al-Qur'an: Qira'ah Mu'asirah* (1992), *Dirasah Islamiyah Mu'asirah fi adalah-Daulah wa al-Mujtama'* (1994), *al-Islam wa al-Iman: Manzumah al-Qiyam* (1996), and *Nahw usul Jadidah li al-Fiqh al-Islamiy, Fiqh al-Mar'ah* (2000).

From his books, it can be seen that his paradigm and methodology is a combination between science and linguistic. Syahrur establishes his paradigm through empirical natural phenomena. According to him, the nature always exists in the circle of *kaynurah*, *saynurah*, and *shaynurah*. *Kaynurah* is a condition of the earliest existence of thing. *Saynurah* is a process based on space and time. *Shaynurah* is the end of the existence after being processed. In the context of humanity, these three concepts can be understood that human is an existed entity in society (*kaynurah*) which is changeable and in the process (*saynurah*) and results the development and change (*shaynurah*). These three concepts basically happen in human's life (Syahrur, 2000:27-53). The such development and change follows the natural law which is curvature (*hanifiyah*) and straightness (*istiqamah*). These two last concepts are contradictory, but complementary. They are regarded as natural character which is always changeable but constant in their rule. From these concepts, it is created a theory of limit (*nadzariyah al-hudud*).

Child Protection in Indonesia

Child protection is aimed at guarantying the realization of children's right to live, to grow and to participate optimally based on the human values, as well as to get protection from violence and discrimination in order to realize happy and comfortable Indonesian children. Child protection in Indonesia is guaranteed by Number 23 Act of 2002. Based on this Act, Indonesian president found the commission of child protection to socialize the regulations stated in the Act of Child protection, collect the data, get information, accept the society's complaint, make evaluation, supervise to the practice of child protection, make report, suggestion, input, recommendation to the president related to child protection.

In Indonesia, some characteristics of children who need protection are: child workers, children who are sexually exploited, child trade, and children involved in an armed conflict, a child without having a birth certificate, child violence victims, (physically and mentally), child abuse, child victims on drug, street children, children involved in law conflict, children who need special protection, children coming from minority, and handicapped children.

The problem of offence to children is considered as domestic problem. Therefore, a few data were recorded in police report. In 2002, there are only 239 cases and in 2003 there are 326 cases. Most of these cases cannot be processed further by the law since their evidences are not adequate or they are withdrawn. According to national commission of child protection, in 2005, it was found 736 cases of child violence which can be divided into 327 cases of sexual exploitation on children, 233 cases of physical violence, 176 cases of psychological violence, and 130 cases of abandoned children. A report from national commission of child protection stated that 80% of child victims are children under 15 years old. The forms of child abuse include physical, emotional, social and sexual abuse. The actors of child abuse generally are those who were known by the victims (66%) including their parents (7,2%) (<http://www.kpai.go.id/>).

The increase of child abuse is due to economic factor combined with psychological factor and wrong view of parents to their children. Poverty, high social pressure, and anger to his or her spouse become important contributor to child abuse. Child abuse is not limited only to aggressive behavior such as beating, snapping, and physical punishment and so on but the careless parents are also identified as passive child abuse. This carelessness can be viewed as the non-existence of social, emotional, and physical attention from their parents such as paying less attention to child, less affection to child, carelessness to children's need; food, playing, safety, health, protection (house) and education, neglect their children or do not ask their children, make differences among their children, separate children from their parents without satisfying and stable substitute.

The problem of child protection can not be separated from the role of parents or their substitutes who contribute significantly to the physical, cognitive, emotional, and social development of a child. The presence of father and mother has influenced a child since the child was in the womb. The harmony of family influences the children's character when they enter adult. Parents, in this case father, are able to give deep impression when he works hard to earn money for family's need; finance, physiology, and emotion. This impression is influenced by father's motivation and commitment, his belief on fatherhood, his self-confidence to be a father, his success in earning money, his relation with his wife, and how a wife supports his engagement in parenting. A responsible father always protects his children, engages positively and intensively to support the process of child development. This also occurs for a father who has more than a wife.

The term of polygamy is mentioned in Marriage Act and Government Regulation No. 10 of 1983 and it is mentioned that a man only needs permission from his wife to practice polygamy. In Indonesia, polygamy provokes many problems. These problems generally are due to disengagement of children in giving permission to their father to practice polygamy and an unfair father in taking care for his wives and children. Perhaps, these problems are not accommodated well in Indonesian law.

An Analysis on the Concept of Polygamy and Its Relevance to Child Protection

1. Muhammad Syahrur's Concept on Polygamy

In interpreting verse 3 from surah an-nisa', Syahrur (2000:302) do not separate some verses before, namely verse 1 and 2. These three verses, according to him, have (silaturahmi) solidarity meaning, humanistic, and put all basic social relationships in one creation. It is also in the following verses, namely verse 4, 5, and 6. The themes in Qur'an such as alms giving and brideprice, parenting and protecting orphan's property are based on how to protect orphans in which they are identified as indicators for social solidarity, humanism, and Islamic dignity. Therefore, according to Syahrur, the discussion of polygamy should be related to the attention for orphans.

Through his theory of limit (nadzariyah al-hudud), Syahrur (1992:457) considers that polygamy is put in the third level of theory of limit, namely minimal limit (al-hadd al-adna) and maximal limit (al-hadd ala'la). Minimal limit for marriage is a wife. This means that an action under this limit can not be allowed. A person who does not marry is forbidden based on this theory. While its maximal limit is a man marrying less than 5 wives, this means that only 4 wives are permitted. This is because an action beyond maximal limit can harm the principle of justice.

In his first marriage, a man may marry a virgin or widow who does not have children. A man who does not want to marry is not permitted in Islam. Allah creates humans and other living things in a pair. It is an integral part of human dignity. It is also indication that a man needs a partner. A man who marries with his first wife is minimal limit must be done. The desire to practice polygamy, however, is allowed as long as it is less than 4 wives and they must be widows who have orphans (Syahrur, 1992:599).

Syahrur (1992:598) uses quantity and quality standard in studying polygamy. Quantity standard, according to Syahrur, is applied in order to decide the number of women who are permitted to be married. Minimal limit for marriage is a wife while its maximal limit is 4 wives. This clearly is stated in Qur'an (*Mastna wa tsulatsa wa ruba'*) and it can not be avoided and disturbed by other verses. This means that quantity standard for polygamy is between 2 and 4 wives.

Quality standard in this case means that a man is allowed to marry any woman both a virgin and widow in his first marriage. It is different, however, for his following marriage. Quality standard requires a man to marry his second, third and fourth wife who is a widow having orphans. A man, then, is not permitted to marry a virgin in his second, third or fourth wife (Syahrur, 1992:598-599).

His theory of limit which is then explained further by his quality and quantity standard indicated that a man can do polygamy if he is able to fulfill two requirements: (1) The second, third or fourth wife must be a widow having orphans. And (2) he must worry about the possibility to treat his children and orphans brought by his wife unfairly (Syahrur, 2000:303).

Some above requirements are decided by Syahrur based on *Surah an-Nisa'* Verse 3 which clearly states about the importance of paying attention to orphans. An orphan will face difficulty in his life if he does not have a father who protects him or her. The presence of orphan's court can not guarantee that orphan's life is good. This is because she or he does not have a complete family (Syahrur, 2000:304). Allah confirms in His verse that polygamy is allowed. This indicates that a solution for orphan is by giving a space for polygamy. It, however, requires the principles of child protection as a central theme of this verse. The principles of justice play an important role in this case. This is because justice is not only a fair share in affection but also it is related to attention, love and material need for the orphans until they enter adult. Therefore, one who wants to practice polygamy, he should prepare everything related to his ability to fulfill biological need, and ability to protect all of his children and wives fairly.

In this case, Syahrur concludes that polygamy can solve some social problems faced by women in the society. He mentions at least three advantages of polygamy: (1) the presence of a man beside a widow will keep and protect her from immoral acts that will influence their children's life. (2) it will create more protection to the orphans in which they live and grow. (3) the presence of a mother can protect and educate their children well. All of these will protect and keep the children from juvenile delinquent.

2. The Relevance of Syahrur's Concept on Polygamy with the Effort of Child Protection In Indonesia.

The discussion of polygamy proposed by Syahrur has a relevance and new insight with the effort of child protection in Indonesia. This can be seen as follows:

First, Orphan's Concept is a part of Child's Concept in UUPA. Orphan is a child whose his father died. A child who left by his father due to divorce or other factors is not categorized as orphan. This is because he or she is still able to make contact with his father. What Syahrur means as orphan indeed, exists in general context of a child. Indonesian government through its Act explains that a child is a person who is under 18 years old including that of in the womb. In this context, an orphan can be categorized as a child based on the Act. An orphan, in the early, comes from a complete family in which there are a father and mother. But, since his father dies he or she then is called as an orphan. The completeness of a family is not perfect when his father died. The responsibility then is delivered to his mother. In this case, Syahrur proposes a solution for the problem of an orphan and a widow. He wants that a family can be complete again by marrying the widow so that the responsibility in raising the orphan becomes the responsibility of the new parents. The orphan then changes his or her status to be a stepson or stepdaughter. His or her stepfather has responsibility to raise him or her as explicitly stated in Chapter I General Regulation Section 1 verse 4 : " parents are a father and mother or a stepfather and / or stepmother...." This confirms that an orphan, after his mother getting married, becomes the responsibility of his or her parents, namely his or her mother and stepfather.

Second, Between a mother and orphan's court. When a child lives under a family, the responsibility of raising and keeping his life is under his parents. This responsibility, according to Chapter I General Regulation Section 1 Verse 2 UUPA, covers child's rights to live, grow, develop, and participate optimally based on human values as well as get protection from violence and discrimination. Chronologically, the first person who is responsible for protecting a child is his mother and father. However, when his father died, the responsibility is taken by his mother. If his mother do not have ability in taking the responsibility, according to Syahrur, the best solution is that his mother should be ready to marry as a second, third, or fourth wife. In section 7 verse 2 UUPA, it is stated: " when their parents cannot guarantee the children's need to live and grow, they can be taken care by other persons based on the Act." This is different from Syahrur's idea. This Act mentions that when parents cannot take care their children, they should send their children to other persons to be protected and taken care. Syahrur, however, proposes that these children should be given a father and, it means that, his mother should marry again with married man.

There is a basic difference in this issue. Syahrur offers polygamy for the solution while UUPA proposes the child to be adopted child. A stepfather or adopted father has the same responsibility in raising the child to grow and live well. It is different however on the ways of parenting. Syahrur proposes that the child can live beside his mother through polygamy. Mother is very crucial for the child. This is because his mother can understand the child's need and what the child wants. But when the child is taken care adopted by other persons who are not their parents, this will cut the emotional connection between the child and his mother.

Third, The empowerment of Polygamy in the Context of Act. In Indonesia, polygamy is stated in UU Perkawinan (Act of Marriage) and PP No.10 Tahun 1983 (Number 10 Government Regulation of 1983). In these regulations, it is only stated that polygamy is allowed when he is allowed by his first wife. But the problem of child's rights and his future is not stated in these government regulations. However, in Number 23 Act of 2002 on Child Protection, government proposes the importance of child protection so that the child is able to live and grow well and protect the child from violence and discrimination based on human values. This means that the government becomes the facilitator for the child protection.

These two Acts can be connected each other in order to get advantages. The marriage Act will not benefit if polygamy only based on the first wife's allowance. It is likely that the government does not restrict polygamy because there is no strict regulation on polygamy. This indicates that polygamy as stated by the above Act does not empower the child positively. It is different from when the Marriage Act is connected with the Child Protection Act. Polygamy should require the readiness of a man, not only to protect and keep his family and wives, but also raise the child to be happy and comfortable.

Fourth, The Orientation of Polygamy's Requirement a¹⁵ Basic Principle of Child Protection. As stated by Syahrur, polygamy should require : (1) the second, third, and fourth wife is a widow with orphans. And (2) ability to share fairly among his children including children brought by his second, third, and fourth wife. From these requirements, it can be seen that when someone wants to practice or do polygamy, he has to look for widows having orphans instead of thinking about the personality and physical appearance of woman. The first requirement is absolutely can not be fulfilled by a man who does not have spiritual, material, and immaterial ability. Having more than a wife and a child needs serious attention. For the children, it is not only temporary attention but continuous attention until they are adult. The second requirement is also can not be fulfilled by a man who does not have patience, wise, and high justice in his personality. This requirement clearly needs the seriousness in material and immaterial dimension.

Syahrur's orientation on his discussion of polygamy of course has the similarity with government's effort in protecting the child. What Syahrur requires on polygamy is in line with the basic principle of child protection in Chapter II section 2 of the Act of Child Protection: the child must not be discriminated, the treatment for the child should be in line with the best need of the child, the treatment for the child should guarantee the child's rights, the child development and growth, appreciate with the child idea. With the orientation of protecting and parenting the child in polygamy and supported by ability and justice, Syahrur concept on polygamy is in line with the basic principle of the above parenting.

CONCLUSION

Syahrur's concept on polygamy has relevance with the child protection, namely (1) The importance of orphan who should be protected by government as other children, (2) The importance of complete family in which there are a father and mother (3) Syahrur's concept on polygamy can give new insight for the law of polygamy in Indonesia by connecting with the Marriage Act and the Act of Child Protection, (4) The requirements from Syahrur on polygamy are in line with the principle of child protection in Indonesia; non-discrimination, the best treatment for the child, the child rights, the child development and growth, and appreciation for the child idea.

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