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**JUDGEMENT ON POLYGAMY CASES:
A CASE STUDY OF SYARIAH COURT
OF KUALA LUMPUR**

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby declare that the work in this academic project is my own except for the quotations and summaries which have been duly acknowledged.

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Mohamad Helmi B. Mian.
Alor Gajah,
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ABSTRAK

Menurut kajian penghakiman terhadap kes-kes poligami, setiap keputusan yang dibuat oleh hakim di Mahkamah Syariah adalah merujuk kepada Seksyen 23 Undang-undang Keluarga Islam Wilayah Persekutuan Akta 1984. Seksyen ini memperuntukkan bahawa permohonan poligami perlu mendapat kebenaran dari Mahkamah. Kajian ini merupakan kajian lapangan yang dibuat selama tiga bulan bermula dari bulan November 2003 hingga bulan Januari 2004 ke atas beberapa kes yang diputuskan di Mahkamah Syariah Wilayah Persekutuan Kuala Lumpur. Kajian ini bertujuan untuk mengenal pasti alasan-alasan hakim yang membenarkan pemohon bernikah satu lagi dan juga membincang beberapa kriteria yang difikirkan sesuai. Untuk memperoleh data, beberapa teknik kajian yang digunakan adalah temubual, membaca fail kes, dan meneliti dokumen yang berkaitan. Hasil kajian telah menunjukkan bahawa penghakiman terhadap kes-kes poligami adalah bersumberkan daripada Seksyen 23 Undang-undang Keluarga Islam Wilayah Persekutuan Akta 1984. Dapatan hasil kajian juga telah menunjukkan bahawa peranan hakim adalah amat diperlukan bagi memastikan kelancaran dalam pengurusan kes-kes poligami

ABSTRACT

Based on the research made to judgment on polygamy cases, each of the decision made by the judge in Syariah Court is referred to the Islamic Family Law Federal Territories Act 1984 (Act 303) Section 23. The Islamic Family Law Federal Territories Act 1984 provides for polygamy. Section 23, which was amended in 1994, provides no man, during the subsistence of a marriage, shall, except with the prior permission in writing of the court. This is a field research made by the researcher to explore some decided cases of polygamy in Syariah Court of Kuala Lumpur from November 2003 until January 2004. The purpose of the research is to elaborate and identify the reasons of judges give permission to polygamy, and also discusses the suitable criterias of the applicant. Interviews, reading the decided file cases and also reviewing relevant documents are the tools employed for data gathering. The findings indicate that the judgment on polygamy cases is based on Section 23 Islamic Family Law Federal Territories Act 1984 (Act 303). Finally, the study concludes with saying that the role of a judge is too important to ensure that polygamy cases are under control.

ملخص البحث

من خلال البحث العلمي عن التحكيم على حالات تعدد الزوجات، كل نتيجة التي يثبت فيها الحاكم في المحكمة الشرعية كانت مستند إلى مقطع 23 من تشريع القانون الأسرة الإسلامية بولاية الفيدرالية 1984 Act (303 Act). هذا القانون من مقطع 23 وينفذ أنشطته من حيث طلب التعدد الزوجات فلا بد أن يكون بإذن الحاكم في المحكمة الشرعية. هذا البحث كان بحثاً ميدانياً قد أقام به في عدة الشهور من تشرين الثاني 2003 حتى إلى كانون الثاني لإثبات القضايا في المحكمة الشرعية بولاية كوالا لومبور. إن الغرض البحث أن يتوسّع ويميز أسباب القاضي في الترخيص المعطى من تعدد الزوجات، ومناقش أيضاً المعايير المناسب لمقدم الطلب. وأما منهج لجمع المعلومات هي الحوار، وإطلاع على الملفات الواقعة ومراجعة الوثائق ذات العلاقة. ومن هذا البحث، قد ورد أن كل إثبات الحكم على التحكيم تعدد الزوجات ترجع إلى مقطع 23 من تشريع القانون الأسرة الإسلامية بولاية الفيدرالية 1984 Act (303 Act). وبناء على هذا، قد إنتهى بقول التي، أن دور الحاكم يلعب به إدارة التحكيم ضرورة لتطبيق وتنظيم حالات تعدد الزوجات هذه القضايا بسهولة ويسر.

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CHAPTER ONE

RESEARCH PROPOSAL

1.0 Background of The Research

Today, there are many researches discussing about polygamy. Every research has different focus and objective on this issue. Polygamy has been hotly debated until today, it is still occurring and there are many different opinions about it. Until now there is no accurate answer on that issue. The writer is not going to continue on the above issue, but this research will concentrate on the judgment in polygamy cases and also further elaborates the provision of polygamy that relate to the issue that already amended by the Malaysian government.

Polygamy is not new in the Islamic world. Other researchers only focused polygamy in Islamic law, the history, polygamy and Islamic family law, and the polygamy in social practice. But, the writer tries to study about the judge's reason on the judgment on polygamy cases.

The first thing that we must know is the purpose of marriage. Allah created men and women so that they can provide company to one another, love one another, produce children and live in peace and tranquility with the commandments of Allah and the directions of His Messenger. In the past time, polygamy was the hottest issue and polemic in our society.

As mentioned by Prof. Azizah Kasim (1998:1) when discussing this issue the advantages is more to the husband and it becomes an interesting issue for them. But to some women, this issue is a sensitive issue. The objections always come from women and the women organizations. It is because the knowledge and information of polygamy is misunderstood. Sometimes the practicing of polygamy becomes injustice from the husband to the wife. From that we can see that polygamy may become a big issue if people always make it difficult and unsuitable to be practiced in Malaysia.

However this research only focuses on judgement on polygamy cases. It means the writer has to explore and read the decided cases relating to this issue. It also needs to discuss the reasons from a judge giving permission to the husbands to marry more than one and also discussing their criteria in polygamy. At the same time, the writer will clarify the condition for husband to add their wife and under what condition for judge either to allow or not to allow the husband to marry more than one.

The Prophet of Muhammad (peace be upon him) orders Muslims to get married as soon as they can. The family is the nucleus of the Islamic society, and marriage is the only way to bring about such an institution. Extra-marital relations are categorically condemned and prohibited. Siti Fatimah Abdul Rahman (1997:75)

It's only logical that Islam sets up the rules to regulate the functions of the family whereby both spouses can find peace, love, security, and relationship. These elements are necessary to accomplish the greatest purpose of marriage: to worship Allah (*al-Ibadah*). By worship it is not only meant the performance of rituals merely having sex with the wife, but it essentially implies righteousness in all transactional behaviors. The concept of *Ibadah* is very wide. Every good deed, every service to humanity, every usual productive effort, and even every good word is a part of the true Muslim's worship of his creator. If both husband and wife observe this main purpose, this cardinal purpose of their union they can easily learn how to help each other achieve this goal – a goal greater than themselves. They would learn how to tolerate each other, how to love Allah in themselves and in other beings, and how to overcome their difficulties and their shortcomings.

Polygamy or marrying more than one wife is not a new phenomenon. It has always been with mankind of different peoples in various parts of the world. The Arabs were polygamous even before the advent of Islam and so were other people on most parts of the world during that time. When one goes through the Jewish and Christian religious scriptures, one finds that polygamy was an accepted way of life. All the Prophets mentioned in the Talmud, the Old Testament and the Quran were polygamous with the exception of Prophet Jesus who if he had lived longer on this

earth would have, perhaps, accepted the same system as his forefathers. In the Pre-Islamic Arabia there was the practice of unlimited polygamy.

With the advent of Islam, polygamy was restricted to four wives at one time under special circumstances and that too with a number of rules attached to it, which we will study here. The Muslim jurists, therefore, have laid down the following conditions if someone wants to take more than one wife. (1) He should have enough financial capacity to look after the needs of the additional wives that he has undertaken. (2) He must do equal justice to them all. Each wife should be treated equally in fulfilling her conjugal needs and other rights.

2.0 Aim of Research

The aim of this academic project is to examine the judgment on polygamy cases and at the same time it also tries to identify the types of reason that are given by the judge especially in handling cases of polygamy.

Other than that, the researcher also will try to elaborate and identify the existing provisions included under the Islamic Family Law of Federal Territories of Kuala Lumpur. In this situation the writer found that all the judgment of polygamy cases is based on section 23 (a), (b), (c), and (d).

Besides that, the aim of this academic project is to find and examine all judgment on polygamy cases that proceeded in Syariah Court are just and fair. Therefore, the judgment also only be side on one party either husband or wife. The writer will focus the decided case from the year 2000 until the year 2002.

The aim of this academic project is also to give the effects and the positive implication for the development of the Syariah court. Therefore, it is hoped that the Syariah Court can improve the weaknesses that occur in civil cases especially related to the polygamy cases.

3.0 Objectives of The Research

The objectives of this academic project are as follows;

1. To elaborate and identify the existing provisions on polygamy in the Islamic Family Law in Federal Territories of Kuala Lumpur.
2. To examine on the application of the provision in Syariah court of Kuala Lumpur.
3. To identify the judgment of judges in cases of polygamy in Syariah court of Kuala Lumpur.

4.0 Research Methodology

Under the research, the researcher had chosen various techniques to collect and analyze the data. There are threefolds:

Reading the file cases in the Syariah Court of Kuala Lumpur is the primary methodology. Based on this methodology, the researcher needs to read and go through the file cases of polygamy in Syariah court as many as possible from year 2000 until 2003. As of now the researcher found about 100 registered cases in 2003. Based on that files the researcher has categorized the data as follows:

1. Demographic of the applicant.
2. Demographic of the wife.
3. Information on the existing marriage such as number of children and duration of marriage.
4. Information on the future wife such as age, occupation and the salary, status of marriage and also the children if any from the previous marriage.
5. The maintenance to the existing wife and the future wife.
6. The reasons for applying polygamy.
7. Statements from the first wife pertaining to the application made by her husband.
8. Reasons of judgement by the judge on the application of polygamy cases.

Interview, this means the researcher applies the interview technique by asking the judge and some officers relating to the issue. Under this technique the researcher made an interview with Yang Arif Tn Hakim Nordin Abas. Syariah Subordinate Court Judge. Mahkamah Syariah Wilayah Persekutuan, Kuala Lumpur. "Judgment on Polygamy Cases". (Personal Interview). 11 December 2003

The example questions asked are as follows;

1. Does the judicial organization especially in Syariah Court of Kuala Lumpur have the power to monitor the application of polygamy?
2. How much power does the judge have to allow permission to the husband to practice polygamy?
3. What are the conditions for the husband to practice polygamy?
4. The issue on polygamy is much debated; sometimes it becomes a sensitive issue. What is your opinion on that issue?

Library research means the researcher gets information as from the library. The purpose is to gain information and gather related articles on polygamy. In this technique, the researcher needs to find relevant books and materials relating to polygamy.

5.0 Literature Review

According to Nor Atiqah Ghazali (1996: 145) in her article “Poligami yang disalahertikan”, raised that Polygamy or marrying more than one is not a new phenomenon. It has always been with mankind since the beginning of time among different people in various parts of the world. The Arabians were polygamous even before the advent of Islam and so were other people on most part of the world during that time. When one goes through the Jewish and Christian religious scriptures, one finds that polygamy was an accepted way of life. All prophets mentioned in the Talmud, the Old Testament and the Quran were polygamous with the exception of Prophet Jesus whom if he had lived longer on this earth would have, perhaps, accepted the same system as his forefathers. In pre- Islamic Arabia there was the practice of limitless polygamy

The Concise Dictionary of Law (1993/1990: 415) mentioned that the definition of Polygamy marriage is the practice of having more than one spouse. English law considers a marriage actually polygamous if there is in fact more than one spouse and potential polygamous if there is only spouse but the marriage is contracted under a system of law that permits polygamy.

As explained by Asghar Ali Engineer (2002:2) Polygamy also defined as: " Any person male or female may unconditionally marry unlimited number of spouses at the same time. This means that a male or female may marry unlimited number of males or females at the same time. In other cultures and faiths, a male may marry unlimited number of wives, at the same time, for any reason, and unrestricted with any conditions

According to Sharul Mizan Ismail (2001: 265) in his article “Transformasi Peruntukan Berkaitan Dengan Poligami: Antara Hak Dan Prerogatif Terkawal”. The term polygamy refers to general deed where the men or women are married to more than one. The term polygamy refers to the man, but the term polyandry referring to the woman. Generally, the researcher will focus only on husbands deeds that are marrying more than one woman. Therefore, throughout the discussion the researcher is using

the term polygamy, it is suitable for the understanding of the society about the idea of polygamy for today. A Muslim man can marry up to a maximum of four wives. Although polygamy is allowed, the condition is that the man must be able to treat his wives equally.

According to Prof. Dr. Hj. Abdul Malik Abdul Karim Amrullah (Dr Hamka) (1982: 252), he mentioned that the rule on polygamy has been introduced conditionally. The verse 4:3 more especially refers to justice to be done to the orphans. It was revealed immediately after the battle of Uhud when the Muslim communities were left with many orphans and widow and some captives of wars. The treatment was to be governed by principles of greatest humanity and equality. As Yusuf Ali says, the occasion has past but the principles remain. Marry the orphans if you are quite sure that it is in that way you will protect their interest and their property with perfect justice to them and to your own dependents if you have any. The verse not merely limited to the orphans but it has a general application about the marital laws in Islam. The Muslim jurists, therefore, have laid down the following conditions if at all someone wants to take more than one wife.

1. He should have enough financial capacity to look after the needs of the additional wives that he has undertaken.
2. He must do equal justice to them all. Each wife should be treated equal in fulfilling her conjugal and other rights.

If a man feels that he will not be able to treat them with equality and justice or he does not have the means to support them he should restrict himself to marrying only one wife. Imam Malik says in the *Muwatta* that Ghaylan bin Salamah accepted Islam and he had ten wives.

While, Mimi Kamariah on her book, *Family Law in Malaysia* (1999: 60), The Islamic Law (Federal Territories) Act 1984 provides for polygamy in section 23. Section 23 (1) which was amended in 1994 provides no man, during the subsistence of a marriage, shall, except with the prior permission in writing of the court, contract another marriage with another woman nor shall such marriage contracted without such

permission be registered under the Act. Be that as it may, the court may, if it is shown that such marriage is valid according to hukum syara', order it to be registered subject to section 123. Section 123 declares that any man who, during the subsistence of a marriage, contract another marriage in any place without the prior permission in writing of the court commits an offence punishable with a fine not exceeding RM 1000 or with imprisonment not exceeding six months or with both.

Section 23 (1) applies to a marriage in the Federal Territory of a man who a resident within or outside the Federal Territory and to a marriage outside the Federal Territory of a man who is resident in the Federal Territories. An application for permission shall be submitted to the court in the prescribed manner and shall be accompanied by a declaration stating the grounds on which the proposed marriage is alleged to be just and necessary, the present income of the applicant, particulars of his commitments and his ascertainable financial obligations and liabilities, the number of his dependants, including persons who would be his dependants as a result of the proposed marriage, and whether the consent or views of the existing wife or wives on the proposed marriage have been obtained. A copy of the application and the declaration shall be served on the wife or wives

Tan Sri Datuk Professor Ahmad Ibrahim, (1997:156-158) who mentioned that the permission to enter into polygamous marriages has sometimes been abused and it is sad to hear those who abuse this privilege justifying their action by quoting what they interpret to have been example given by the Holy Prophet (peace be upon him). Yet for more than 25 years of his life the Holy Prophet (peace be upon him) had only one wife. It was only after his wife, Khadijah, died that he married a number of women. Of these only Aisha was a virgin. All the others were widows or had been divorced from their husbands. If one examines these marriages it can be seen that they were partly designed to assist the women who would otherwise have been destituted or to strengthen bonds of personal or tribal friendship.

A study of some of the juridical treaties on Islam does in fact support the interpretation that polygamy is suggested only when it helps to cure social injustice. Shaik Abu Bakar Al- Razi, for example, in his book *Akhamul Quran*, said that Allah

commands marriages with one wife only if there is fear of injustice in marrying more than one. Some Muslim jurists interpreted justice in such a case to mean cohabitation in turn, equality in maintenance and in treatment. In other words their interpretation was one of outward justice but not justice in matters of the heart, as for example, in love and affection. This interpretation is based on the *ayat* on the Holy Quran which reads: 'You are never able to be fair and just as between women even if it is your ardent desire.' (Surah an-Nisa', 4: 129)

The Muslim jurists considered also the problem of showing such types of justice to wives in different towns or countries. They suggested that the conditions of equality of treatment and of cohabitation in turn must be satisfied even in such cases and could only be waived with the permission of the wives. A further condition on the permission of adopting polygamy is that the husband must be able to provide adequate maintenance to each of his wives and his dependants. This condition is based on the interpretation by Imam Shafii in the concluding words in the *ayat* of polygamy that is, *dhalika adna ana la ta'ulu*. These words which are usually interpreted by Imam Shafii meaning that you may not cause them (the wives) to suffer in their livelihood.

According to Sharul Mizan Ismail (2001: 294) in his article “transformasi Peruntukan Berkaitan Dengan Poligami: Antara Hak Dan Prerogatif Terkawal. He stated that there are eight situations where the applicant can practice polygamy;

1. If the wife is seriously sick like mentality unsound and she has bad contagious disease.
2. If the doctor proved that the existing wife is unable to get pregnant and have children again.
3. If the wife has unsound mind and always causes burden to the husband.
4. If the wife is too old, weak and also unable to manage the house.
5. If the existing wife is ill mannered and she cannot be change.
6. If the existing wife leaves the house and commits “nusyus” or does not obey the husband. At the same time she is ill mannered and she cannot be change.
7. When war occurs, the man dies and there are many women who become widow.

8. If the man feels that he cannot live without a second wife to fulfill his strong sexual desire. He also fears that he will misbehave and yet he has adequate salary to practice polygamy.

As the conclusion, the researcher agrees with some opinions in the literature review, where polygamy marriage is the practice of having more than one spouse and any person male or female may unconditionally marry unlimited number of spouses at the same time. This means that a male or female may marry unlimited number of males or females at the same time. Based on the previous research, the researcher defines that polygamy must be informed to the Syariah court. Without the permission from the court, polygamy cannot be practiced. Based on the research also the researcher defines that condition of justice is the important element in practicing polygamy and the requirements of equal treatment and of cohabitation in turn must be satisfied even in such cases and could only be waived with the permission of the wives.

CHAPTER TWO

POLYGAMY UNDER ISLAMIC FAMILY LAW OF FEDERAL TERRITORIES

2.0 Introduction

Initially, either in Malaysia or other Islamic Countries do not mention on the provisions to control the practice of polygamy in marriage. Polygamy in marriage can be executed at any time if there is consensus between the couple. However the consent in some circumstances is wrongly used by the husband. This chapter will highlight on the related provisions pertaining to polygamy.

In 1926, the Egyptian legislators agreed to include provisions of capability to maintenance under the Islamic Family Law. This was the condition of consent to those who wanted to practice polygamy marriages. Sheikh Muhammad Abduh made this draft as a continual of exigency in 1898. However the Islamic Family law in Egypt passed on 1929 did not include any provision that purpose to rule polygamy marriage. The reason is because of disobedience from many religious schools of Egypt at that time. This issue continued until 1979. After that the provision of polygamy including the controlling of polygamy application was included into the Islamic Family law in Egypt. Under this provision it mentions that the wife must be informed that her husband wants to practice polygamy. More over, if the wife does not mention any agreement or her husband did not inform her about the marriage, therefore the wife is entitled to apply for divorce.¹

¹ Abd. Kadir Hj. Muhammad. 1995. "Poligami dan Pengamalannya di Malaysia" *Jurnal IKIM*. Kuala Lumpur: Penerbit IKIM. Vol III. No 4. November. pp. 86

2.1 Polygamy under Islamic Family Law (FT) Act 1984²

A provision on polygamy in Kuala Lumpur is under the jurisdiction of IFLA (FT) Act 1984. In section 23

1. No man, during the subsistence of a marriage, shall except with the prior permission in writing of the court, contract another marriage with another woman nor shall such marriage contracted without such permission be registered under this Act: provided that the court may if it is shown that such marriage is valid according to Hukum Syara' order it to be registered subject to Section 123. Here, this means that any married man in Kuala Lumpur must get a written permission to marry another women. The intended marriage should be registered in Section 123 of the Act.
2. Subsection (1) applies to the marriage in the Federal Territory of a man who is resident within or outside the Federal Territory and to marriage outside the Federal Territory of a man resident in the Federal Territory.
3. An application for permission shall be submitted to the Court in the prescribed manner and shall be accompanied by a declaration stating the grounds on which the proposed marriage is alleged to be just and necessary, the present income of the applicant, particulars of his commitments and his ascertainable financial obligations and liabilities, the number of dependents as a result of the proposed marriage, and whether the consent or views of the existing wife or wives on the proposed marriage have been obtained.
4. On receipt of the application, the Court shall summon the applicant and his existing wife or wives to be present at the hearing of the application, which shall be *in camera*, and the Court may grant the permission applied for if satisfied-
 - a. That the proposed marriage is just and necessary, having regard to such circumstances as, among others, the following, that is to say, sterility,

² Islamic Family Law (Kuala Lumpur) Act 1984 (Act 303) Section 23

physical infirmity, physical unfitness for conjugal relations, willful avoidance of an order for restitution of conjugal rights, or insanity on the part of the existing wife or wives;

- b. That the applicant has such means as to enable him to support as required by Hukum Syara' all his wives and dependents, including persons who would be his dependents as a result of the proposed marriage;
- c. That the applicant would be able to accord equal treatment to all his wives as required by Hukum Syara'; and
- d. That the proposed marriage would not cause *darar syarie* to the existing wife or wives

In Kuala Lumpur the provisions of polygamy is mentioned under the Section 23 of Islamic Family Law of Federal Territories Enactment 1984. As mentioned by the judge of Syariah Subordinate Court, Tn. Hakim Abas Nordin, that all polygamy application must be informed so that the court will know and manage the application perfectly. According to him also, the polygamy application must inform to the court to ascertain the rights of the existing wife³.

In 1980, the provisions to control polygamy marriage existed in the Enactment of Administration of Islamic Law has been postponed it using under these enactments for the more specific provision in some state. More over this provision is legislated over all states including Kuala Lumpur, Selangor, Pahang, Pulau Pinang, Johor, Kedah, Negeri Sembilan, Sabah, Melaka, and Perlis.

Generally, the provision including the conditions as follows,

1. That the proposed marriage is just and necessary, having regard to such circumstances as, among others, the following, that is to say, sterility, physical infirmity, physical unfitness for conjugal relations, willful avoidance of an order for restitution of conjugal rights, or insanity on the part of the existing wife or wives;

³ Yang Arif Tn. Hakim Nordin Abas. Syariah Subordinate Court Judge. Mahkamah Syariah Wilayah Persekutuan, Kuala Lumpur. Judgement on Polygamy Cases. (Personal Interview). 11 December 2003

2. That the applicant has such means as to enable him to supports as required by Hukum Syara' all his wives and dependents, including persons who would be his dependents as a result of the proposed marriage;
3. That the applicant would be able to record equal treatment to all his wives as required by Hukum Syara'; and
4. That the proposed marriage would not cause *darar syarie* to the existing wife or wives⁴

According to Yang Arif Hakim Abas Nordin⁵ the applicant that who applies for polygamy marriage must fulfill all the above-mentioned conditions. However, if the applicant fails to fulfill the conditions, the court will reject the application and the applicant cannot practice polygamy marriage. According Y. Bhg. Dato' Dr. Abdul Monir Yaacob, Assistant of chief director of IKIM, all judges in judgment on polygamy cases must ensure that all preconditions must be fulfilled by the applicant.⁶

From the above statement the researcher found that, all polygamy application must be informed to the Syariah court. Without the permission from the court, therefore the polygamy marriage cannot be practiced. Actually, there are steps to apply polygamy marriage, firstly the applicant must mention the reason clearly to practice polygamy and then fill in the polygamy form completely. Secondly the court will call the parties, husband and wife for judgment *in camera* to determine either the husband can practice or not on polygamy marriage.

Other way to apply polygamy marriage is the applicant must complete the declaration form. The declaration Form should contain the relevant sections to be filled in detail by the applicant as required under Section 23(3, including sections: for the applicant to declare whether the consent or views of the first wife have been obtained. The wife's signature is a requirement to indicate whether she has been consulted or not. Failure to consult should be a factor to be considered in the judge's decision on whether to grant permission or not. It is only fair that the wife, as a partner in the

⁴ Islamic Family Law (Kuala Lumpur) Act 1984 (Act 303) Section 23 (a), (b), (c), and (d)

⁵ Yang Arif Tn. Hakim Nordin Abas. Syariah Subordinate Court Judge. Mahkamah Syariah Wilayah Persekutuan, Kuala Lumpur. Judgement on Polygamy Cases. (Personal Interview). 11 December 2003.

⁶ Siti Fatimah Abdul Rahman 1999 "Kriteria Berpoligami dan Alasan Perhakiman" *Jurnal IKIM*. Kuala Lumpur. Penerbit IKIM. Vol. II. No. 4. September. pp. 104.

marriage contract, must be consulted regarding her husband's intention at this preliminary stage to change the terms of the contract. It is iniquitous for the wife to learn of the husband's intention only at the stage when she is summoned to appear before the Syariah Court under Section 23(4); for the applicant to make a declaration to the truth of his statements and that any false declaration would render him liable to be charged under Section 38 of the Act. The signatures of two witnesses are required to attest to the declaration.

The form must also requires the applicant to produce: Supporting medical report to prove that the proposed marriage is just and necessary because of the wife's sterility, physical infirmity, willful avoidance of an order to reconstitute conjugal rights, or insanity. Supporting documents from his employer or company, his banks, as well as income tax statements, to prove his net income after deductions for debts and other liabilities

At the same time, the writer discovers that the Syariah Court has a jurisdiction to control polygamy. The court will arrange the application of polygamy marriage. To ensure that the rights of wife is closely observed and the husband cannot practice polygamy as what he wishes.

According to Yang Arif Abas Nordin, to practice polygamy, the applicant must follow the required conditions. The court has the power to determine whether the applicant is qualified or not. Furthermore he said that all judgments are based on section 23 of Islamic Family Law Enactment (Federal Territories) 1984. He also mentioned that before the court decides, the judge has to determine the reasons, capability, fairness and justice, and also applicants' responsibilities towards his existing wife and children.⁷

⁷ Yang Arif Tn. Hakim Nordin Abas. Syariah Subordinate Court Judge. Mahkamah Syariah Wilayah Persekutuan, Kuala Lumpur. Judgement on Polygamy Cases. (Personal Interview). 11 December 2003.

2.2 Issues of Polygamy Marriage

There are four issues that will be determined by the court judgment on polygamy cases.⁸

The first issue is the necessity for the husband to practice polygamy. The judge will ask whether the existing wife is really sick, barren, “*musyus*”, disobedient, or has unsound mind. If it is proven, the husband can apply and practice polygamy with the permission of the court.

The second issue is the capability of the husband. This includes the responsibility of the husband toward his existing wife and children. According to judge Yang Arif Abas Nordin, the court will make decision based on three-folds.

1. The income or earning from the husband. This includes the salary and wages.
2. The responsibility and maintenance of the husband toward his existing wife and children.
3. The property, salary or income and also debts.

The third issue is the capability of the husband to practice and to be fair in polygamy. To act fair is necessary to the existing wife and future wife. According to Yang Arif Abas Nordin under this issue, he said that the court will make judgment based on the following criterias:

1. Religious aspect. This is an important criteria, as the judge will determine whether the husband can act as a leader or not. The judge also will ask whether the husband performs his prayer. If it is proven that the husband does not pray, therefore it becomes difficult and impossible for the husband to practice polygamy.

⁸ Yang Arif Tn. Hakim Nordin Abas. Syariah Subordinate Court Judge. Mahkamah Syariah Wilayah Persekutuan, Kuala Lumpur. Judgement on Polygamy Cases. (Personal Interview). 11 December 2003

2. Attention from the husband to the existing wife. According to Yang Arif Abas Nordin said that, the husband must prove that he can act with rational in managing his family in terms of maintenance if he practices polygamy.

The forth issue is the proposed marriage would not cause *darar syarie* to the existing wife or wives. This includes protection of property, religion and safety of wife.

As stated in the above-mentioned, all four issues of just and necessity, financial means, equal treatment and no harm caused to the existing wife are of equal importance and must be proven independently. This means that even if the applicant can prove that he can financially support a second family, he still needs to prove to the Court that he is able to fulfill the other conditions.

The conditions are as follow;

- a. The Court should request that medical and other evidence (including witnesses) be produced to prove that the wife is sterile or physically infirmed or unfit for conjugal relations or is insane or is willfully avoiding an order for restitution of conjugal relations
- b. The applicant must produce supporting documents from his employer or company, his banks, as well as income tax statements, to prove his net income after deductions for debts and other liabilities
- c. Witnesses, including the applicant's existing wife, must be produced to corroborate the applicant's claim that he is able to accord equal treatment to all his wives. A mere verbal declaration that the applicant would be fair, without proof and supporting evidence from witnesses, is not acceptable
- d. The existing wife and witnesses must be called and medical evidence be produced to prove that the proposed marriage would not cause *darar syarie* to the existing wife.⁹

⁹ Yang Arif Tn. Hakim Nordin Abas. Syariah Subordinate Court Judge. Mahkamah Syariah Wilayah Persekutuan, Kuala Lumpur. Judgement on Polygamy Cases. (Personal Interview). 11 December 2003

2.3 Case study of reported Polygamy in Kuala Lumpur

From this reported files, all the data on polygamy reason, income or salary of applicant, and also reason of judgment are used. For information, the writer would like to mention here is about polygamy is the applicant's reasons to support their application. Whereas, the judgment reason refers to the judge's reason in court.

2.4 Reasons for Polygamy.

2.4.1 Reason of Polygamy made by the Applicant.

If we look at the reason of polygamy as given by the applicant, the writer found that there are many factors that courses polygamy practice. For detail the writer has mentions in the schedule below.

Schedule 1: Polygamy Reasons¹⁰

Factors	Details
Husband's Capability	Capability in material, Health and physical.
Descendants	The wife is unable to give child to the husband, even though they have been married for a long time, generally for 10 to 15 years and the husband really wanted a child children especially a boy.
The wife and wife's relationship	Disobedient from wife ¹¹ , wife's health ¹² , consent by the wife ¹³ , internal problem between husband and wife ¹⁴ , and others ¹⁵

¹⁰ 2000, 2001, 2002, "File Cases of Polygamy Marriage" Syariah Court Of Kuala Lumpur 11 December 2003

¹¹ This is including reasons like the wife is run away, does not obey to prepare her husband food, neglect her husband, irresponsibility, and the wife also does not respect to the husband

¹² This is including like the wife is sick, unable to produce birth, because of the wife health she unable to give attention to the husband, unsound mind, and the wife has asthma so that the doctor thigh the wife's womb.

¹³ This is referred to the wife where she agrees to the husband's application of polygamy

Religious.	The husband wants to practice polygamy as to gather to God's allowance, "sunnah" or commendable of the Prophet, and confident to practice justly after polygamy.
Future wife and the relationship with the future wife	The husband has known each other with the future wife and they also love each other, or she is a business partner and widow, the husband feels empathy with her life and her children. The husband needs a woman that can help to manage the family; this is because the first wife is sick or has been divorced by the husband.
The applicant has a good intention	The husband wants to practice polygamy to prevent himself from defamation of society, to help the widow and children. The husband desires to return to the ex-wife and her children and wants to hold the responsibility in the future. The husband really has sympathy to the future wife's health and to guide the future wife to the right way. The husband needs a future wife to help the first wife. The husband wants to help the future wife because she is an orphan and he wants to take the responsibility after committing adultery.
Family	The proposed of polygamy marriage has been agreed by both parents.

¹⁴ This is include the problem like both party does not admonish each other even though they live under one roof, both party does not have any understanding of each others, and sexual problem

¹⁵ This is include like the wife has been old, menopause, divorce, to prevent from any evil deeds and to give rest to the wife so that she will concentrate with family.

Eddah (Period)	The husband whose wife is in “ <i>eddah</i> ” and if he desires to marry again, he should complete the form in cases where the husband has pronounced “ <i>talaq</i> ”
Others	Husband’s work venue is very far from the wife; therefore he takes an opportunity to marry another woman.

Sources: 2000, 2001, 2002 “File Case of Polygamy Marriage” Syariah Court Of Kuala Lumpur 11 December 2003

The researcher found that, all the reasons are same with other researchers. For example, according to Hanim Fauziah (1996)¹⁶ she found that among the factors that lead to polygamy marriage are as follow;

1. Prophet’s practice.
2. Sexual needs.
3. To produce descendents to the generation.
4. To help widows and single women.
5. To prevent themselves from any evil deeds
6. Because of women’s attitude. For example the women do not follow with the husbands to places.
7. Others. For example the women is sick, return to the ex-wife, and also arrested because of “*Khalwat*”

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Another researcher Zawiyah Yusuf (1991)¹⁷, found that the reasons of polygamy are to follow the commendable act of the Prophet, for self–dignity, and also to prevent themselves from any defamation of society. Other reason is to show that polygamy is not the issue of maltreatment or abuse of the women but can be with consent from the wife, support from certain group and also to establish a blissful family.

¹⁶ Hanim Fauziah Abdul Ghani (1996) “Poligami: Masalah dan Penyelesaiannya Mengikut Perspektif Islam” Latihan Ilmiah, Fakulti Usuluddin, Akademi Pengajian Islam, Universiti Malaya.

¹⁷ Zawiyah Yusuf (1991) “Poligami Dalam Islam: Amalan dan Tanggapan: Satu Tinjauan di Mukim Rawang” Latihan Ilmiah, Fakulti Usuluddin, Akademi Pengajian Islam, Universiti Malaya.

The researcher also agreed with Sharul Mizan¹⁸ in his research of polygamy. He stated that there are eight situations where the applicant can practice polygamy;

1. If the wife is seriously sick like mentality unsound and she has bad contagious disease.
2. If the doctor proved that the existing wife is unable to get pregnant and have children again.
3. If the wife has unsound mind and always causes burden to the husband.
4. If the wife is too old, weak and also unable to manage the house.
5. If the existing wife is ill mannered and she cannot be change.
6. If the existing wife leaves the house and commits “nusyus” or does not obey the husband. At the same time she is ill mannered and she cannot be change.
7. When war occurs, the man dies and there are many women who become widow.
8. If the man feels that he cannot live without a second wife to fulfill his strong sexual desire. He also fears that he will misbehave and yet he has adequate salary to practice polygamy.

In order to make decision, the judge will consider all reasons. Then investigation on the wife also will be done. This is to ensure the reason is truly made by husband. Generally, the approval is given in the case where the wife disagrees. However, other approval also is given for other factors not mentioned under the provision.

Among the reasons given by the judge in the case of application of polygamy marriage by the wife are as follow;

1. The wife is sick.
2. Unsound mind.
3. Menopause.
4. Unable to produce birth
5. The wife agrees with polygamy,

¹⁸ Shahrul Mizan Ismail. 2001. “Transformasi Peruntukan Berkaitan Dengan Poligami: Antara Hak dan Prerogatif Terkawal”. *Law Majalla*. Seri Kota Selangor. International Islamic University Malaysia. . p 294

6. The wife wants to return to her country (this is for foreigner)
7. The wife who applies for divorce.
8. The wife does not have any reaction for her husband application

Those who promote polygamy in this country have used several arguments that the researcher feels are untenable. The arguments are as follow;

First, it is said that polygamy is the "right" of every Muslim male and that to challenge this right is to challenge the word of Allah (s.w.t.). However, a reading of verse 4:3 in the Qur'an clearly shows that polygamy is not an unconditional right in Islam, but a responsibility to ensure that justice being done to the widows and orphans.

﴿وإن خفتم إلا تقسطوا في اليتامى فانكحوا ما طاب لكم من النساء مثنى وثلاث ورباع،
فإن خفتم إلا تعدلوا فواحدة﴾

“If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if you fear that you shall not be able to deal justly (with them), then only one. That will be more suitable to prevent you from doing injustice.”¹⁹

Second, those who advocate polygamy have often cited that there is nothing in the Qur'an nor the Sunnah of the Prophet that requires a Muslim husband to seek his wife's consent before he takes a second wife. Therefore there is no need for the existing wife to be consulted, nor for her consent to be obtained.

Actually, The Qur'an as a book of divine guidance is eternal and universal, but neither the Qur'an nor the Sunnah offer specific detailed rules for everything. To do this would render a universal message irrelevant in changing times and circumstances. To meet the challenges of change, the jurists therefore established the principle of *al-siyasa al-syariyya*, which recognizes the right of a state to enact legislation by

¹⁹ Al-Qur'an. An-Nisa' 4: 3 (All Quranic translations in this writing are based on Abdullah Yusuf Ali. 2000. *The Holy Qur'an, Original Arabic Text with Translation and Selected Commentaries*. Saba Islamic Media Sdn. Bhd. Translations from other sources will be cited accordingly)

choosing opinions from among the four schools of jurisprudence to serve the best interest of the community on matters where there is no specific text in the Qur'an or Hadith. It is a fact that the great majority of Islamic rulings are reached through the medium of *qi'yas*, i.e. judgment upon juristic analogy

Third, it is often cited that polygamy is an institution sanctioned by Islam to enable men to satisfy their lust through legitimate means. However, nowhere in the Qur'an is there any intimation that polygamy is a solution to men's alleged unbridled lust. Nor do the laws of Malaysia recognize lust as a condition for polygamy. Islam teaches self-control, self-discipline and self-purification. The solution to an immoral society whether in the West or in the Muslim world is not polygamy. If this was so, one would see the end of adultery, rape, incest and prostitution and other such social ills and crimes in Muslim countries or among Muslim men wherever they are

Fourth, a fallacious justification for polygamy often cited is demographic fictions of there are 14 women to every man in Malaysia. This has been repeated over and over again by many advocates of polygamy over radio and television, in the press and in their public talks. However, figures from the 1991 National Population Census issued by the Statistics Department show that there are in fact 103 men to every 100 women in Malaysia and that men exceed women in every age group except in the 60 years and above group.. As far as we know, such practices are not part of the Malaysian culture²⁰

2.4.2 Permission of Polygamy made by the Judge.

As stated by Tn. Hakim Abas Nordin, polygamy case is a summoning case. Therefore, if the wife receives any order from the court, she must come forward and must attend to the court. She also must be aware the court jurisdiction and has to explain about her right. This procedure will give her opportunity or maybe will reject her husband's application. This procedure also will focus on wife's rights.

²⁰ Zaleha.2002. *Analisis Poligami Menurut Perspektif Islam*. Kuala Lumpur. Utusan Publication & Distributors Sdn. Bhd. Vol I. p. 105

Other reason for the judge to give permission in polygamy is related to the husband. This includes the husband's capability, in terms of material, husband's intention, to help the widow. If the judge stated that the future wife has her own income therefore, she will help reduce the applicant's burden.

As to descendents factor, the judge will give permission, if applicant's intention is only to have children. However, in some cases permission also was granted because the applicant desires to add the number of children.

2.5 Applicant's Capability

In order to determine the husband's capability, the judge will decide based on the existing data. This includes the husband's income and responsibility, maintenance to the existing wife and children, and the estimated maintenance for his future wife. Other information is about the income of wife and future wife will also help the judge in making their decision.

Besides the written data, the judge will ask the applicant and the existing wife to collect any new information. During the meeting, the judge will examine the statement made by the applicant and at the same time the judge will examine thoroughly, to ensure the capability of the applicant. In that time, maybe all the expenses like house rental, car, and bills will be deducted from the husband's income.

Schedule 2: Applicant's Salary²¹

Total Income Per Month	Percentage
Less than RM 1000	21.3
RM 1000-RM 1999	39.7
RM 2000-RM 2999	16.6
RM 3000-RM 3999	9.9
RM 4000-RM 4999	2.0
More than RM 5000	9.3
Not mention	0.7
Total	100.0

Sources: 2000, 2001, 2002 "File Case of Polygamy Marriage" Syariah Court Of Kuala Lumpur

The above schedule mentions that the applicants' range of monthly income from less than RM1000 to more than RM5000. The lowest income that found here is RM1000 per month, whereas the highest income that the writer found is RM30, 000 per month. The majority of applicants come from individuals who have their salary between RM1000 until RM1999.

2.6 Capability For Being Fair and Proposed Marriage Would Cause *darar syarie* to The Existing Wife or Wives

According to Yang Arif Tn. Hakim Abas Nordin, firstly, the judge will try to determine background of applicant during interview. Secondly, interrogate about the husband from the wife during the interview. All arguments and declarations of husband and wife will help the judge in judgment. For example, the wife declares that her husband is a responsible person and also admission from the husband that he will practice justice and ready to incur punishment if he fails to practice. All that will help the judge make decision easily.²²

²¹ 2000, 2001, 2002 "File Case of Polygamy Marriage" Syariah Court Of Kuala Lumpur 11 December 2003

²² Yang Arif Tn Hakim Nordin Abas. Syariah Subordinate Court Judge. Mahkamah Syariah Wilayah Persekutuan, Kuala Lumpur. "Judgment on Polygamy Cases". (Personal Interview). 11 December 2003.

All the information that the judge has also will help him to determine and speculate about the husband. Especially capability to do justice and would cause *darar syarie* to the existing wife. From that issue exist reason that sound like this “The court determines that the marriage that is proposed would not cause *darar syarie*” or “The court believe that the husband can practice justice” or “The marriage proposed would not cause harm to other parties” or “The husband understand the rule and can teach the wives” or “The husband is a responsible person”. As for the welfare of all parties, the court with its power will practice the concept of “conditional acceptance” or “order with acceptance”. The meaning here is the acceptance given by the court is a conditional acceptance where the applicant is able to marry more than one, with the condition that the applicant must obey.²³

Basically, the condition is related to total maintenance given by the husband to the wife, children, the future wife, and also capability for being justice. If the husband fails to obey these conditions, the husband will be punished. More over, it becomes a responsibility to inform if the other party is being abused or if any contravention therefore the court will take action on the husband.

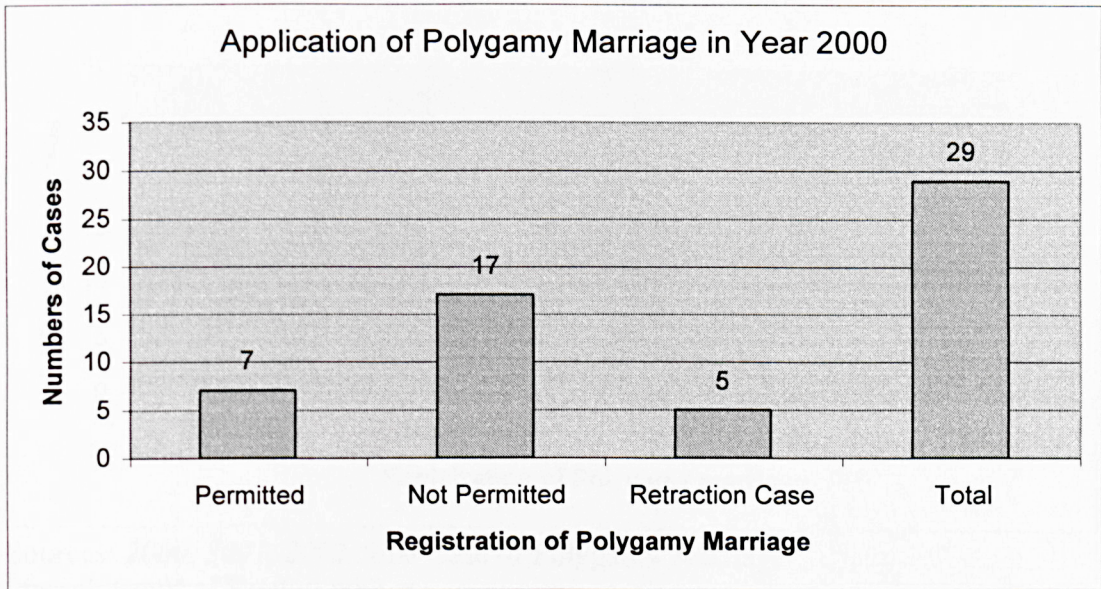
In conclusion, the researcher would like to say, what happens in the future, is not something that can be expected. The Syariah Court should take proper step to guarantee the welfare of the parties involved in this marriage.

²³ Siti Fatimah Abd Rahman 1999 “Kriteria Poligami dan Alasan Perhakiman”. *Jurnal IKIM* Kuala Lumpur: Vol 7 No. 2. pp. 100.

Application of Polygamy Marriage from year 2000 – 2002

Table 1: Application of Polygamy Marriage in year 2000.

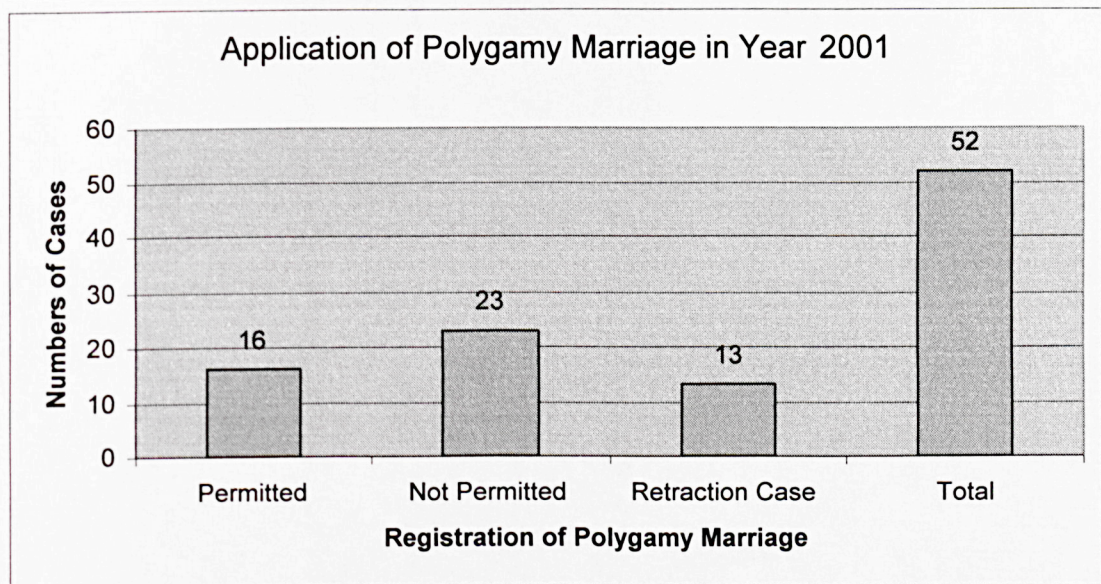
Year	Permitted	Not Permitted	Retraction Case	Total
2000	7	17	5	29



Sources: 2000, 2001, 2002 “File Case of Polygamy Marriage”
Syariah Court of Kuala Lumpur

Table 2: Application of Polygamy Marriage in year 2001.

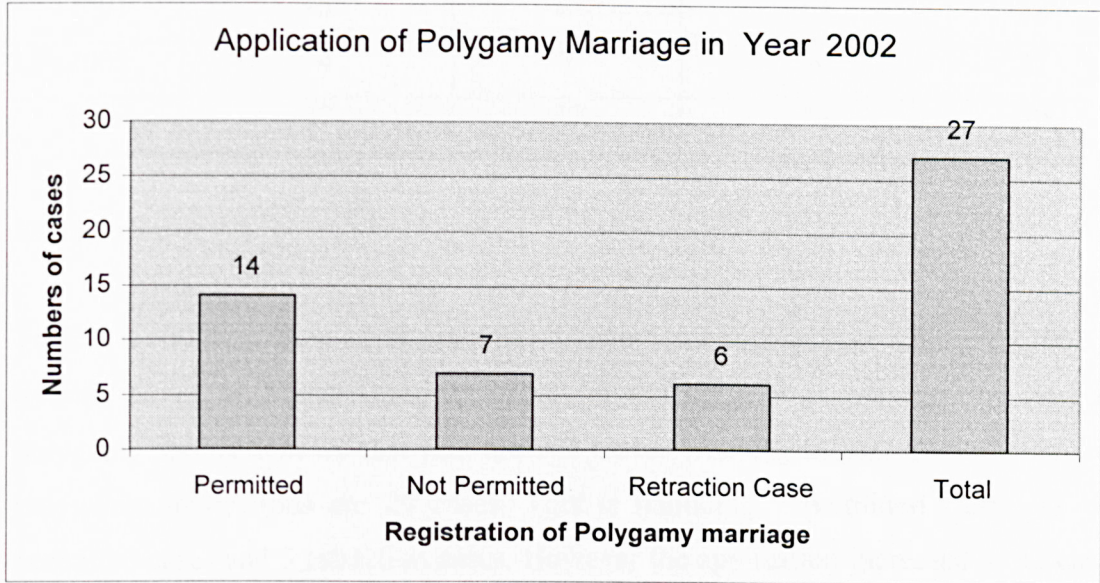
Year	Permitted	Not Permitted	Retraction Case	Total
2001	16	23	13	52



Sources: 2000, 2001, 2002 “File Case of Polygamy Marriage”
Syariah Court of Kuala Lumpur

Table 3: Application of Polygamy Marriage in year 2002.

Year	Permitted	Not Permitted	Retraction Case	Total
2002	14	7	6	27



Sources: 2000, 2001, 2002 “File Case of Polygamy Marriage”
Syariah Court of Kuala Lumpur

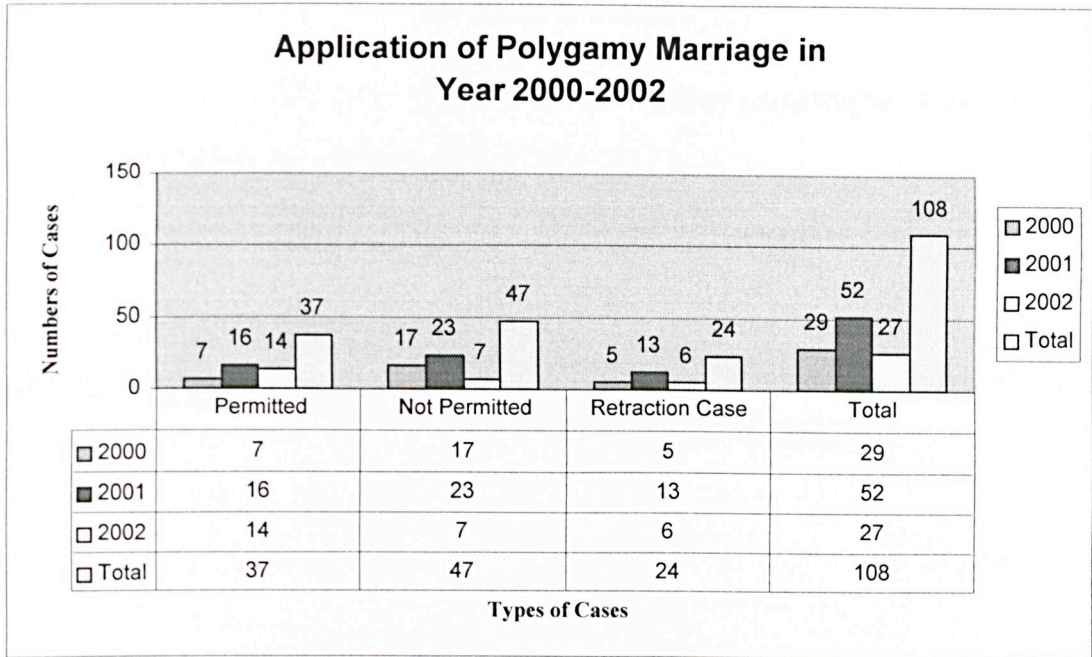
Table 4: Application of Polygamy Marriage from year 2000 – 2002.

Year	Permitted	Not Permitted	Retraction Case	Total
2000	7	17	5	29
2001	16	23	13	52
2002	14	7	6	27
Total	37	47	24	108

Explanation:

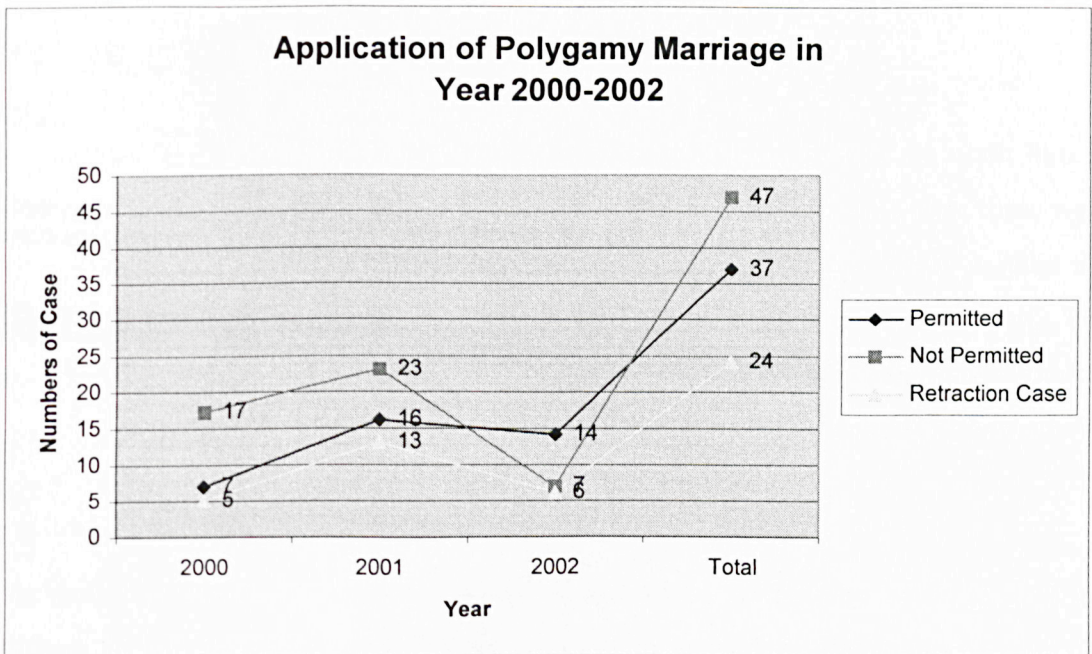
Table 4 mentioned about application of polygamy marriage in year 2000 until 2002 in Syariah Court of Kuala Lumpur. Based on the table, it shows that the total of polygamy applications on that year are 108 cases. Whereby in year 2000 the total of polygamy applications are 29 cases. This is including 7 permitted cases, 17 not permitted cases and 5 retraction cases. However the application increased to 52 cases in year 2001. This is including 16 permitted cases, 23 not permitted cases and 13 retraction cases. After that, the applications are decreased to 27 cases in year 2002. This is including 14 permitted cases, 7 not permitted cases, and 6 retraction cases. In conclusion, the total of permitted cases from year 2000 until year 2002 are 37 cases. Whereas, not permitted cases are 47 cases and retraction cases are 24 cases. In addition, the causes of not permitted cases are, the applicant does not have any sufficient evidence to bring to the court and the court reject the application based on the criterias in section 23 (4) of IFLA. Whereas the cause of retraction cases is, the applicant retracts his application because he notices that he unable to follow the criterias in section 23 (4) of IFLA and the wife claimed for divorce.

Chart 1: Application of Polygamy Marriage from year 2000 – 2002.



Sources: 2000, 2001, 2002 “File Case of Polygamy Marriage”
Syariah Court of Kuala Lumpur

Chart 2: Application of Polygamy Marriage from year 2000 – 2002.



Sources: 2000, 2001, 2002 “File Case of Polygamy Marriage”
Syariah Court of Kuala Lumpur

CHAPTER THREE

THE ROLE OF THE SYARIAH COURT IN DETERMINING FAIR AND CAPABLE FOR POLYGAMY

3.1 Introduction.

Before we start our discussion in this chapter, it is important for us at first to know the significant of the purpose of Surah An-Nisa' verse 3 in polygamy.

﴿وإن خفتن إلا تقسطوا في اليتامى فانكحوا ما طاب لكم من النساء مثنى وثلاث ورباع،

فإن خفتن إلا تعدلوا فواحدة﴾

Meaning: "If you fear that you shall not be able to deal justly with the orphans, marry the women of your choice, two or three or four. But if fear that you shall not be able to deal justly with them, then only one"²⁴

Surah An-Nisa' verse 3 was revealed to Prophet Muhammad peace be upon him in Madina after he migrated to it from Mecca and established an Islamic state there right after the battle of Uhud in which the Muslims not only had lost badly against the Pagans, but also suffered a dramatic decrease in the number of Muslim men. The Muslim men before that battle were approximately 700. They became only 400 after the battle. This loss had left so many Muslim women (1) Widows, and (2) Not able to get married if they were single²⁵.

To make matters even worse, the Muslims had faced yet another battle against the Pagans in Mecca and its neighboring tribes who wanted to attack the Muslims in Madina to finish off Islam once and for all, and by the Jews and the Christians in

²⁴ Al-Qur'an. An-Nisa' 4:3

²⁵ Abd Karim Ahmad. 15 February 2002. "Poligami dalam Islam" *Lajnah Penerangan dan Dakwah, DPP Kawasan Dungun, Terengganu*. <[Http://click.to/tranung](http://click.to/tranung) or [Http://www.tranungkite.cjb.net](http://www.tranungkite.cjb.net)>.

Madina who betrayed the Muslims in the "battle of Trench" after signing a defense treaty with Muhammad peace be upon him against the Pagans.

All praise due to Allah Almighty. With Allah's Will and Mercy, the Muslims had miraculously won the battle against the Pagans of Mecca and drove them back to where they came from, and then attacked the Jews and the Christians who betrayed the defense treaty and kicked those hypocrites out of Madina forever!

These continuous battles against the Muslims were very costly in terms of Muslim men's lives. The women had to be taken care of one way or another. For this reason, Allah Almighty had revealed the Noble Verse 4:3 to Muhammad peace be upon him to solve the social problems that the Muslims were facing. That is why at the very beginning of the Noble Verse 4:3 we see Allah Almighty setting a conditional clause for Orphans "If ye fear that ye shall not be able to deal justly with the orphans...(4:3)." This Noble Verse came down for the purpose of protecting the Orphans and to increase the number of the Muslims by allowing the men to marry multiple wives (preferably from the grown Orphans at that time), up to four wives only. The purpose was absolutely not for man's sexual pleasure nor privilege, nor was it to support man's personal ego. It was revealed to solve a major social problem to prevent major sins such as illegal sex and prostitution²⁶.

Polygamy is not encouraged in the Noble Quran, nor Allah Almighty had allowed it because He really liked it. He was clearly careful to highly discourage polygamy to men by telling them "but if ye fear that ye shall not be able to deal justly (with them), then only one...(4:3)" which clearly orders men to either be fair or to not marry at all, despite the fact that we lost many men, Allah Almighty still didn't want polygamy to really take place. That's why He later told men "Ye are never able to be fair and just as between women, even if it is your ardent desire...(4:129)" which clearly nullifies the excuse that He gave them to practice polygamy. Is this a contradiction then? Absolutely not! It clearly proves that when Allah Almighty allowed polygamy, He only allowed it because we (the Muslims) had an emergency; we lost almost half of

²⁶ Abd Karim Ahmad. 15 February 2002. "Poligami dalam Islam" *Lajnah Penerangan dan Dakwah, DPP Kawasan Dungun, Terengganu*. <[Http://click.to/tranung](http://click.to/tranung) or [Http://www.tranungkite.cjb.net](http://www.tranungkite.cjb.net)>.

our men if not even more. When Islam later became much stronger and Muslims defeated the infidels in the continues battles that were forced upon them (the Muslims), Allah Almighty nullified the excuse that he gave to men to practice polygamy, which would then lead to prohibiting polygamy altogether.²⁷

In context of polygamy, justice is referred as a demand of *syara'*. The husband is compulsory to practice to their wife or wives, children and household²⁸. As the researcher said before, justice is the one important condition in polygamy. Under the section 23 (c) mentioned that the applicant would be able to record equal treatment to all his wives as required by *Hukum Syara'*²⁹. Any applicants who desire to practice polygamy, they should ensure that they are able to make justice and being fair for his wives.

Here the researcher will clarify briefly the meaning of “Adil” or justice in polygamy. According to Ibn Faris “Adil” means the thing that we scaling in same weight. Al Rafie in his opinion “Adil “ is the thing that we deliberate in same thing and same quantity. If the thing is different, therefore it should be same in its value. For example 1 kg of rice is the same with 2 kg of flour. From that statement, we can say that the “Adil” is the thing we divided in same and equal³⁰

In Al-Quran, Allah mentioned about the importance of maintenance of wife.

﴿أَسْكِنُوا هُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وَجْدِكُمْ وَلَا تَضَارُوا هُنَّ لِتَضِيقُوا عَلَيْهِنَّ . وَإِنْ كُنَّ

أَوْلَاتٍ حَمَلٍ فَأَنْفَقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَنَاتُوهُنَّ أُجُورَهُنَّ

وَأْتَمَرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاَسَرْتُمْ فِستَرَضِعْ لَهُ أُخْرَى﴾

²⁷ Abd Karim Ahmad. 15 February 2002. “Poligami dalam Islam” *Lajnah Penerangan dan Dakwah, DPP Kawasan Dungun, Terengganu*. <[Http://click.to/tranung](http://click.to/tranung) or [Http://www.tranungkite.cjb.net](http://www.tranungkite.cjb.net)>.

²⁸ Zaleha Muhamat. 2002. *Analisis Poligami Menurut Perspektif Islam*. Kuala Lumpur. Utusan Publications & Distributors Sdn Bhd. 2002. p. 119

²⁹ Islamic Family Law (Kuala Lumpur) Act 1984 (Act 303) Section 23 (c)

³⁰ Zaleha Muhamat. 2002. *Analisis Poligami Menurut Perspektif Islam*. Kuala Lumpur. Utusan Publications & Distributors Sdn Bhd. 2002. p. 119

Meaning: `Let the women live (in *iddah*) in the same style as ye live, according to your means: annoy them not, so as to restrict them. And if they carry (life in their wombs) then spend (your substance) on them until they deliver their burden: and if they suckle your (offspring), give them their recompense: and take mutual counsel together, according to what is just and reasonable and if ye find yourselves in difficulties, let another woman suckle (the child) on the (father's) behalf³¹

In Hadith, the prophet of Muhammad clarifies maintenance from the husband to the wife,

«عن حكيم بن معاوية عن أبيه رضي الله عنه قال: قلت: يا رسول الله: ما حق زوج أحدنا عليه؟ قال ﷺ: (تطعمها إذا أكلت, وتكسوها إذا اكتسيت). رواه أحمد و أبو داود والنسائي وابن ماجه وعلق البخاري بعضه وصححه ابن حبان والحاكم»

Meaning: “One man asks the prophet (peace be upon him) about the woman’s right. The prophet said “you should give your wife food when you eat and you should give your wife cloth when you wearing the cloth”³²

The justice in this Hadith is about maintenance of the wife. This includes, the ability of the husband to give and prepare shelter for the wife based on the husband’s capacity, the ability to give clothing to the wife and ability to prepare food.

³¹ Al-Qur’an. Al-Talaq, 2:6.

³² Al-Baihaqi. *Sunan Al-Baihaqi Al-Kubra*. Beirut: Alam Kutub. Kitab al-Dirasatul Ahkaam Min Ahadith al-Rasul. Bab Ma Haqqu al-Maraatu ‘ala Zaujaha. Juz’ 7:p 305. #4.

3.2 The Role of the Syariah Court in Determining Fair and Capable

Surah An-Nisa' verse 3 mentioned about polygamy

﴿وإن خفتن إلا تقسطوا في اليتامى فانكحوا ما طاب لكم من النساء مثنى وثلاث ورباع،

فإن خفتن إلا تعدلوا فواحدة﴾

Meaning: "If you fear that you shall not be able to deal justly with the orphans, marry the women of your choice, two or three or four. But if fear that you shall not be able to deal justly with them, then only one"³³

Based on the Surah An-Nisa' verse 3, the researcher found that there is only one condition that the husband should fulfill before he can practice polygamy. The condition is that the husband should practice fair and justice. As explained by Yang Arif Abas Nordin, nobody can determine whether the husband has fulfilled the condition. According to him also, there are two issues in determining the condition of fair and justice. First issue is whether the government especially Syariah Court has power to involve in putting pre-condition of justice in polygamy. The second issue is whether the husband has a right to determine that he has fulfilled that condition. Based on that issues, Yang Arif Abas Nordin stated that, after investigation, therefore the government especially Syariah Court has power to determine whether the husband can practice justice in polygamy. When we look at the ayah, the researcher found that, this ayah is an answer for widow and orphans problem in the battle of Uhud. This means the command of the ayah shows that the polygamy is applicable.

According to Yang Arif Abas Nordin, even polygamy marriage is allowed in Al-Quran, but the actual meaning that it connotes is a task that is full with responsibility, burden and serious. The permission of polygamy is under control, where the husband may marry up more than one wife if he is able to become a responsible husband and can give the rights of their wife and existing wives with fair and justice. However, if

³³ Al-Qur'an. An-Nisa' 4:3.

the husband fails to fulfill the condition, therefore Islam suggested that monogamy marriage is the best solution and the best concept.³⁴

According to Abdur Rahman I. Doi, fair attendance in terms of shelter, food and clothes are difference with one another based on the economy level. Therefore it is difficult to the government especially Syariah Court to make condition of fair in polygamy marriage. Generally, as explained by Mahmud Shaltut and Dr. Abu Zahrah, they concluded that the one way where the Syariah Court may act in determining of fair and justice is only monitoring the problems of injustice in polygamy marriage.

The researcher also agrees with Ahmad Shafwat, in his argument he support that the government has a right to involve in conditioning of fair and justice in polygamy. After make some discussion with Yang Arif Abas Nordin, the researcher cannot deny that the element of fair and justice is an abstract form, therefore we cannot measure accurately. However, it is not mean that the government cannot involve in matters of polygamy. If the Syariah court is unable to list down pre-condition of fair and justice in polygamy, therefore the husband feels that he has entitle to practice polygamy without consent from the Syariah Court.³⁵

Under this situation, the researcher thinks that, if there is no body or parties in determining the fair and justice pre-conditions, therefore the husband feels that they are qualified to practice polygamy. Here, the researcher also thinks that the government especially Syariah Court has power to control application of polygamy. Actually, we need one body in arranging polygamy application, because this body will consider each polygamy application and at the same time they will determine the qualified husband in practicing of polygamy marriage. As the researcher said previously in chapter two, a provision on polygamy in Kuala Lumpur is under the jurisdiction of IFLA (FT) Act 1984. In section 23 (4) it is listed that there are four criterias that the husband should fulfill before he can practice polygamy. If one of

³⁴ Yang Arif Tn. Hakim Nordin Abas. Syariah Subordinate Court Judge. Mahkamah Syariah Wilayah Persekutuan, Kuala Lumpur. Judgement on Polygamy Cases. (Personal Interview). 9 March 2004

³⁵ Shahrul Mizan Ismail. 2001. "Transformasi Peruntukan Berkaitan Dengan Poligami: Antara Hak dan Prerogatif Terkawal". *Law Majalla*. Seri Kota Selangor. International Islamic University Malaysia. . p 277-278

these criterias is failed to fulfill by the husband, therefore the judge has a power to reject the application.

The criterias that the husband should follow are as below:

- a. That the proposed marriage is just and necessary, having regard to such circumstances as, among others, the following, that is to say, sterility, physical infirmity, physical unfitness for conjugal relations, willful avoidance of an order for restitution of conjugal rights, or insanity on the part of the existing wife or wives;
- b. That the applicant has such means as to enable him to supports as required by Hukum Syara' all his wives and dependents, including persons who would be his dependents as a result of the proposed marriage;
- c. That the applicant would be able to record equal treatment to all his wives as required by Hukum Syara'; and
- d. That the proposed marriage would not cause *darar syarie* to the existing wife or wives³⁶

According to Shaikh Muhammad Abduh, involvement of government in application of polygamy marriage is necessary. The purpose is to ensure that the institution of polygamy marriage will achieve its objective. The Islamic jurist must be aware that the coming of Islamic religion is for the protection and peaceful. However, if the one of the ayah in Al-Quran will bring cause and effect on Islamic ummah, therefore it is compulsory for Islamic jurist to observe its execution.³⁷

In conclusion, the kernel of the Surah An-Nisa' verse 3 the researcher found that there is no restriction for the husband to marry more than one. Based on the ayah, it is clearly mentioned that "*marry the women of your choice, two or three or four*". Actually, polygamy in Islam is not absolute, however based on the ayah, before the

³⁶ Islamic Family Law (Kuala Lumpur) Act 1984 (Act 303) Section 23 (4)

³⁷ Shahrul Mizan Ismail. 2001. "Transformasi Peruntukan Berkaitan Dengan Poligami: Antara Hak dan Prerogatif Terkawal". *Law Majalla*. Seri Kota Selangor. International Islamic University Malaysia. . p 278

husband decided to practice polygamy; he must be able to follow the pre-conditions of capability and fairness.

The purpose for the government to control the polygamy application is to achieving its objective in polygamy marriage. It also can be seen as the one effort based on the principle of *marsalah mursalah*. Which means, in Al-Quran there is no clearly mentioning about the status who is entitled to determine the pre-conditions of polygamy. Under this situation, the researcher thinks that the principle of *marsalah mursalah* is allowed to the government especially Syariah Court in taking steps for ummah welfare, even it is not mentioned in Al-Quran. Actually, the control is allowed as well as it is not denying what is clearly mentioned in Al-Quran.

3.3 Function of Justice

Marriage with multiple women in Islam might not be allowed for those who might result in damaging the society with their marriage by bringing more illiterate, poor, and in many cases starving children to the society. Hence, purpose of justice in polygamy to bring harmony to those who practice polygamy. This means, each polygamy cases must practice justice and it is compulsory. Hence, God tells the husband that it is forbidden to practice polygamy, if they are unable to be fair to the existing wife or wives. The concept of justice is mentioned by Allah in Surah An-Nisa'

﴿وإن خفتم إلا تقسطوا في اليتامى فانكحوا ما طاب لكم من النساء مثنى وثلاث

ورباع, فإن خفتم إلا تعدلوا فواحدة﴾

Meaning: "If you fear that you shall not be able to deal justly with the orphans, marry the women of your choice, two or three or four. But if fear that you shall not be able to deal justly with them, then only one"³⁸

³⁸ Al-Qur'an. An-Nisa' 4:3.

Notice how Allah Almighty orders men to be either fair to their wives or never marry more than one wife. Based on the ayah, if the husband is doubtful with his ability to act as a leader of a family and unable to practice justice, therefore it is enough for him to marry only one wife. Justice is the condition of polygamy, where it is determined either the husband can practice or not. Without being fair and justice, the husband is not allowed to marry another women. The body of judiciary like Syariah Court is responsible to investigate and determine either the husband can practice or not.³⁹

Another ayah

﴿ولن تستطيعوا أن تعدلوا بين النساء ولو حرصتم فلا تميلوا كل الميل فتذروها

كالمعلقة وإن تصلحوا وتتقوا فإن الله كان غفوراً رحيماً﴾

Meaning: "Ye are never able to be fair and just as between women, even if it is your ardent desire: But turn not away (from a woman) altogether, so as to leave her (as it were) hanging (in the air). If ye come to a friendly understanding, and practice self-restraint, God is Oft-forgiving, Most Merciful."⁴⁰

Here it is clearly seen that Allah Almighty tells men that they will never be fair to their wives. Allah Almighty ordered us to take care of the orphans in our Islamic society Allah also commands us that if we fear that we will not be able to provide enough support to the orphans in our society, then marry up to four of them to provide a social balance between men and women. But if an applicant feels that he cannot handle multiple women, then one is just fine. That's really all there is to it.

³⁹ Zaleha Muhamat. 2002. *Analisis Poligami Menurut Perspektif Islam*. Kuala Lumpur. Utusan Publications & Distributors Sdn Bhd. 2002. p. 123

⁴⁰ Al-Qur'an. An-Nisa' 4:129.

3.4 The Truth of Justice

Justice in Islam has two things. Firstly, the husband's ability to prepare maintenance in material and internal needs. Basically, as explained by Yang Arif Abas Nordin the material maintenance includes like shelter, clothes, and food. Whereas, the internal maintenance are divided into four folds:

1. “*Muasyarah*” or relationship between the husband and wife. Based on Surah An-Nisa’ verse 19, Allah commands the husband to have good relationship to the wife.

﴿يا أيها الذين آمنوا لا يحل لكم أن ترثوا النساء كرها ولا تعضلوهن

لتذهبوا ببعض ما ءاتيتموهن إلا أن يأتين بفاحشة مبينة وعاشروهن بالمعروف

فإن كرهتموهن فعسى أن تقرهوا شيئا ويجعل الله فيه خيرا كثيرا﴾

Meaning: “O ye who believe! You are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may take away part of the dower ye have given them except where they have been guilty of open lewdness, on the contrary live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing, and God brings about through it a great deal of good⁴¹ .

This ayah is aimed for the husband, and it also refers to the judge. This mean the judge is responsible to investigate and determine the capacity of the husband of having good relationship with their wife or wives before the intention to practice polygamy is allowed.

2. Leadership: In Islam, the husband is always referred to as a leader in family. The characteristic of a leader should be is loving and caring to his wife or wives and also to the children. At the same time, the husband must be aware before he can practice polygamy, he should equip himself with “*taqwa*” or fear

⁴¹ Al-Qur'an. An-Nisa' 4:19.

to Allah. A guideline should be given to the husband, because it is to ensure that he will be just to the wife or wives and also to the children.

To make sure that the characteristics are achieved, the court or other body should give guideline and special education to those who apply for polygamy. The special education must include with information that can make the husband realize about his responsibility of being fair.

3. Relationship with the wife or wives: Allah ordered the husband to have good relationship with the wife, base on Surah An-Nisa' verse 19 Allah said:

﴿وعاشروهن بالمعروف﴾

Meaning: On the contrary live with them on a footing of kindness and equity.⁴²

4. Refuge to the wife: this mean it is compulsory for the husband to give refuge to the wife. The wife has the right to have shelter, food, and cloth. Other that, the husband cannot beat the wife. Cannot talk with unnecessary word or chide, and the husband cannot move to other place, except his own house. The motive is to ensure that the husband is always aware his responsibility.⁴³

⁴² Al-Qur'an. An-Nisa' 4:19.

⁴³ Zaleha Muhamat. "Analisis Poligami Menurut Perspektif Islam". *Siri Islam*. Utusan Publications & Distributors Sdn Bhd. 2002. pp 123-127

3.5 Can Anyone Be Absolutely Fair in Polygamy?

No one on this earth including Muhammad (peace be upon him) can be absolutely fair. Our Prophet (peace be upon him) used this Doa in one of his prayers to Allah Almighty by saying in Arabic

﴿اللهم إنك تعلموا أنني عادلوا بما أستتبع ولكني لا عادلوا بما لا أستتبع﴾

Which means, "Dear Allah, you are well aware that I try to be just with all I can, but I can't be just with what I can't."

This Doa means that our Prophet always tried to be fair as much as possible, but he could not always do that.

One time, Prophet Muhammad peace be upon him said this prayer, because he used to love his wife Aishah (who was the youngest of his wives) the most, and he always feared that he would not be fair to the rest of his wives. Muhammad (peace be upon him) recognized that he was only a human being, and he cannot be fair especially in his feelings at all time.

This clearly proves that Islam highly discourages the marriage of multiple wives for (1) No one can be fair; (2) Polygamy is only allowed when the male species is endangered in a society; and (3) The Holy Verse 4:3 orders us to marry only one wife if we feel that we will not be fair. The Holy Verse that is presented above also clearly proves that no one can be absolutely fair; "Ye are never able to be fair and just as between women, even if it is your ardent desire: But turn not away (from a woman) altogether, so as to leave her (as it were) hanging (in the air). If ye come to a friendly understanding, and practice self-restraint, God is Oft-forgiving, Most Merciful (The Noble Quran, 4:129)⁴⁴

⁴⁴ Asghar Ali Engineer. 2002. "Polygamy in Islam: Concept and Practice".
<<http://www.pucl.org/Topics/Gender/2002/polygamy-islam.htm>>.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATION

4.1 Conclusion

Discussions and debates on the problems of polygamy always touches the women's sensitivity especially their rights. Not only that, there are also some theories that claim that this practice can destroy the family institution. However, it is not proven how far accurate is this theory. This is because; polygamy marriage is related to the responsibility of the husbands. Polygamy marriage can be the best and effective solution for a husband who has good intention and is responsible.

Yet, it is questionable, whether the husband who applies for polygamy practice does have a good intention and is a responsible one. The husbands who are sincere and honest maybe will not make an application to practice polygamy, because they feel that they are unable and incapable to fulfill the criteria and conditions as mentioned in Surah An-Nisa verse 3'. From that issue, it is true that husband can and will do that? Over more the risk is invariable to the husband who doesn't care about this condition.

Unfortunately, some of the husbands feel that they are qualified to practice polygamy marriage. Basically the condition mentions about material and physical capabilities to set up responsibility, and also to practice fairness and justice to the wife and wives. To practice polygamy is not easy, because the husband will go through many procedures. The judge will evaluate and view the criteria of the husband. In polygamy, the most important thing that the judge would view is, whether the husband's right or the wife and children's welfare. To make a judgment, the judge must make fair and justice decision, because it involves both parties.

Truly the responsibility of the husband is very difficult, in Surah An-Nisa': 37 the God said that

﴿الرجال قوامون على النساء بما فضل الله بعضهم على بعض وبما أنفقوا من أموالهم﴾

فالصالحات قانتات حافظات للغيب بما حفظ الله والآتي تخافون نشوزهن واهجرهن في

المضاجع واضربوا هن فإن أطعنكم فلا تبغوا عليهن سبيلا إن الله عليا كبيرا﴾

Meaning: "Men are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what God would have them guard. As to those women on whose part ye fear disloyalty and ill conduct. Admonish them first, next, refuse to share their beds, and last beat them lightly: but if they return to obedience, seek not against them means for annoyance, for God is Most High, Great (above you all)"⁴⁵

According to the Ayah, the husband is the person who is given the responsibility to protect the wife and bring them to straight and right way. Allah awards the husband the strength more than the other. Therefore, they will be of more advantage than women.

Under this situation, the most important criteria is the function and role of husband in protecting and defending the women's right. More over, this criteria plays most important reason if the family institution is involved in polygamy. Actually, without wisdom and kindness, the purpose of polygamy marriage will not bring them to a blissful life. At the same time, it will cause injustice and frustration to the parties. Hence, if this happens the position of women in social life is the same to the Jahiliah period.

To solve the above problem we need to control and take early prevention. The polygamy marriage should be organized perfectly. The researcher thinks that we need one body to organize the application of polygamy marriage. As we know the

⁴⁵ Al-Qur'an. An-Nisa'4: 34.

government has given the responsibility to the Syariah court. The Syariah court, especially the judge has a power to control polygamy marriage. The writer thinks that the family institution should have a guideline. This is to ensure the welfare and safeness of the wives and children are under control. The judge is the important person in judgment on polygamy cases and also he is the best person in performing Islamic family law.

Under Surah Ar-Rum verse 21 Allah mention about among his sign.

﴿من آيته أن خلق لكم من أنفسكم أزواجا لتسكنوا إليها وجعل بينكم مودة ورحمة إن في

ذلك لآيت لقوم يعقلون﴾

Meaning: "And among His Signs is this, that he create for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between yours (hearts) verily in that are signs for those who reflect"⁴⁶

From the above ayah, Allah clarifies about the purity of family institution. The marriage is not only to permit sexual relationship and to have children, but at the same time it give us calmness and peace. The question, is it true that marriage can give us such feelings? And if we refer to polygamy can it bring peace to the family institution?

Based on that issue, rationally the writer thinks that polygamy marriage needs to be controlled. The judge should determine various sources; because sometimes there are many elements of deceptions in the application form. For example, the applicant tells that his other income is higher than the salary. We need to control because we don't want anything to happen, for example divorce, irresponsibility, neglect of welfare, unable to practice justice and so on, because of polygamy practice. The judge has a role in organizing and also executing the trust. At the same time, the purpose of control is to avoid the rights of polygamy from being wrong deed.

In Islam, the family is considered as the cornerstone of Human society; any extra-marital relation is devastating and damaging to the family and hence it is strictly

⁴⁶ Al-Qur'an. Ar-Rum 30:21.

prohibited. Married life is most desirable in Islam. Allah wants a woman to be respected, an honorable wife, never a secret mistress, and Allah wants men to be respected and responsible husbands, never indulging in secret affairs. Both men and women are expected to make sacrifices to make family life a success.

In judgement on polygamy cases, as the writer mentioned in chapter two, where all judgment on polygamy is based on the section 23 of Islamic Family Law of Federal Territories. Actually, the purpose of that is to ensure that only qualified husband can practice polygamy. Under that section, stated the laws and conditions, this is made to forbid the women and children from being downtrodden. If the applicant is really sincere, honest, able to practice justice and responsible, and also qualified, they should not fear, because their right is not being spoiled.

In reality, the writer thinks that the role of judge is not only in judgment on polygamy, because the existing of polygamy provision should be supported with clarity and correct execution. The aims will not be achieved if the law is not organized perfectly.

In the end of this chapter the writer would like to conclude that polygamy marriage is not prohibited or *haram*. This is because; the right of polygamy has been mentioned and discussed clearly in Al-Quran. Hence, any denying about that, therefore we judge that we have declined about what the God has permitted or (*halal*).

Here, the writer would like to say, that Allah has appointed human to be a leader on this earth. They are like a representative from the God. They are given the trust to uphold Syariah and Islamic law. In the context of Malaysian Government, the Syariah court especially in Kuala Lumpur has taken an earlier step in controlling polygamy's application. They also have taken initiative wisely via the provisions of law to set up pre conditions requirement of polygamy marriage.

In Surah An-Nisa' Allah commands to the leader to be responsibility of something.

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ﴾

﴿إِنَّ اللَّهَ نَعْمَا يَعِظُكُمْ بِهِ, إِنَّ اللَّهَ كَانَ سَمِيعًا لَّصِيرًا﴾

Meaning “God doth command you to render back your trust to those to whom they are due and when ye judge between man and man, that ye judge with justice verily how exelence is the teaching which He giveth you For God He who *heareth* and *seeth* all thing”⁴⁷

Based on that ayah, Allah clarified about the responsibility of the leader in all fields of governance. In the context of polygamy, the researcher thinks, it is a responsibility to the judge to ensure the rights of the existing wives and their welfare are not abandoned. Under this situation, the judge plays an important role in judgment on polygamy cases. This is because the execution of polygamy should be done seriously and cautiously.

⁴⁷ Al-Qur'an. An-Nisa' 4: 58.

4.2 Recommendation

As a Muslim, the researcher believes that Islamic Law is the best solution and appropriate to everyone. The purpose of making law is to achieve justice. Indeed, the Islamic law comes from Allah. God bestowed revelation on a Prophet peace be upon him to guide on human life.

Despite that, the best of Islamic laws designed to protect women will remain ineffective if prejudicial social attitudes towards women prevent them from getting access to the rights granted to them under the law. All Syariah judges, religious officials, and counselors must undergo gender sensitization training to enable them to better serve their clients, the majority of whom are women. Only then can the Syariah courts instill engender confidence among women that they can be assured of justice within the system

In addition, Yang Arif Tn. Hakim Abas Nordin⁴⁸ suggested that the parties involved in the application for polygamy including the husband, the existing wife and the future wife, must attend counseling sessions to consider more deeply and fully the consequences of a polygamous marriage and to consider its impact on the children. All must be counseled on their rights and responsibilities in a polygamous marriage, the options opened to any aggrieved party, and the penalties for failure to carry out duties according to the law. The Court in deciding whether permission should be granted should take the counselor's report into consideration or not.

Other initiative is that the researcher would like to recommend that the Government especially the Syariah Court, should fund a comprehensive research project to be undertaken by an independent organization to study all aspects of polygamy: how the court grants permission for polygamy, polygamy without permission of the court, and the impact of polygamy on the family institution, socially, economically, morally and emotionally.

⁴⁸ Yang Arif Tn. Hakim Nordin Abas. Syariah Subordinate Court Judge. Mahkamah Syariah Wilayah Persekutuan, Kuala Lumpur. Judgement on Polygamy Cases. (Personal Interview). 11 December 2003

Then, a common computerized register of Muslim marriages be established at the national level linked to a similar system at the state level to enable the Court or the State Religious Department to establish immediately if an applicant for marriage is already married. Very often the proposed wife is not aware that her intended husband is already married. In a case where the applicant has lied about his marital status, the Court should dismiss outright any subsequent application on his part to contract a polygamous marriage and charge him for false declaration under Section 38 Islamic Family Law (Kuala Lumpur) Act 1984 (Act 303).

Another suggestion is the researcher thinks that all Muslim males applying for permission to marry must sign a statutory declaration that they are unmarried and this is to be submitted together with his application form. A false declaration renders him liable to be charged under Section 38 Islamic Family Law (Kuala Lumpur) Act 1984 (Act 303).

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