

**JUSTICE VALUE IN POLYGAMY REGULATION OF
INDONESIA AND MALAYSIA IN THE VIEW OF
ASGHAR ALI ENGINEER**

THESIS

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2014**

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In the name of Allah (swt).

With consciousness and responsibility towards the development of science, the reasercher declares that the thesis entitled:

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TRANSLITERATION GUIDANCE

A. CONSONANT

Arab	Latin	Arab	Latin
ا	a	ط	Th
ب	B	ظ	Zh
ت	T	ع	'
ث	ts	غ	Gh
ج	J	ف	F
ح	H	ق	Q
خ	kh	ك	K
د	D	ل	L
ذ	dz	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H
ش	Sy	ء	'
ص	Sh	ي	Y
ض	Dl		

B. VOCAL, LONG-PRONOUNCE AND DIPHTHONG

Vocal *fathah* = A
Vocal *kasrah* = I
Vocal *dlommah* = U

Long-vocal (a) = \hat{A} e.g. قال become Qâla

Long-vocal (i) = \hat{I} e.g. قيل become Qîla

Long-vocal (u) = \hat{U} e.g. دون become Dûna

Diphthong (aw) = و e.g. قول become Qawlun

Diphthong (ay) = ي e.g. خير Become Khayrun

C. TA' MARBUTHAH (ة)

Ta' marbûthah transliterated as “t” in the middle of word, but if *Ta' marbûthah* in the end of word, it transliterated as “h” e.g. المدرسة الرسالة become *al-risalat li al-mudarrisah*, or in the standing among two word that in the form of *mudlaf* and *mudlaf ilayh*, it transliterated as *t* and connected to the next word, e.g. الله رحمة في become *fî rahmatillâh*.

D. Auxiliary Verb dan Lafdh al-Jalâlah

Auxiliary verb “al” (ال) written with lowercase form, except if it located it the first position, and “al” in lafadh jalâlah which located in the middle of two word or being or become *idhafah*, it remove from writing.

- a. Al-Imâm al-Bukhâriy said ...
- b. Al-Bukhâriy in muqaddimah of his book said ...
- c. *Masyâ' Allâh kâna wa mâ lam yasya' lam yakun.*

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ملخص البحث

أكمل حدي جحيا. 10210057 . العدالة الإسلام في القنون الملاويّ و القنون الإندونيسي عن تعدد الزوجة عند أصغار علي المهندسي, شعبة الأحوال الشخصية, كلية الشريعة, جامعة مولانا مالك إبراهيم الإسلامية الحكومية. مالانج. المشرف : جميلة الماجستير

الكلمات الرئيسية: تعدد الزوجة, العدل

يكون تغير الزمان بتغير القيمة كالتغير علامة العدالة في زمان الرسول إلى علامة العدالة في زمان اليوم. كالإباحة الرقاق في زمان الرسول والتحریم الرقاق في اليوم. رأى بعض العلماء أن تعدد الزوجة كالرقاق هو يباح في الزمان الرسول ويميل إلى التحريم في اليوم. إباحته لحفظ حرمة النساء و تحريمه مضارة تأثر منه. في الماضي تعدد الزوجة لحفظ الثيبة واليتامى, و الحاضر أنه لكثرة الزوجة و الهوى. وبذلك لا يصل إلى عائلة ساكنة مودة ورحمة ولكن يصل إلى الطلاق وعمل الظليم.

جمهورية الإندونيسي و الملاوي قد نظم نظام عن التعدد الزوجة. هذان نظامان يطلعان عن تحديد تعدد الزوجة يشترط فيهما شروطا. إندونيسيا له قنون الزواج رقم 1 سنة 1974 يشترط فيه على إباحة التعدد الزوجة بوجود عيوب النكاح عند الزوجة وإستطاعة الزوج على العدل و يشترط فيه الإذن الزوجة.

أم الملاوي له قنون العائلة الإسلامي سنة 1984 يشترط فيه ما شرط إندونيسيا إلا وجوب وجود الإذن الزوجة. رأى الزوجة أي إذن الزوجة ليس شرطا بل إحد من آلة الإعتبار في جواز الإستعدادان على تعدد الزوجة عند الملاوي.

رأى إحدى من علماء المسلم الدولي, أصغار علي المهندسي أنّ العدل شئ مهم في الإسلام. و أنّ تعدد الزوجة اليوم لا يدل على روح العدل عند الإسلام. النساء و الرجل في محل واحد عند الأصغار, قليس هو العدل إذا يباح تعدد الزوجة بسبب وجود عيوب النكاح عند الزوجة. لذلك, القنونان ليديل على العدل عند أصغار

ABSTRACT

Akmal Adicahya, 10210057, *Justice Value in Polygamy Regulation of Indonesia and Malaysia in The view of Asghar Ali Engineer. Al-Ahwal Al-Syakhshiyah Department, Sharia Faculty, The State Islamic University of Maulana Malik Ibrahim Malang.*

Key words: Polygamy, Justice

The development of the world brings development of value. The institution of slavery was known to be practiced and accepted by society in the classic world, but today it has been treated as an illegal practice. Islam accepted this practice in the prophet era, but it also has been accepted this practice to be wrong by the time being. Several scholars consider the issue of polygamy as the same as the issue of slavery in term of the changing of its legalization. It may be legal in the classical era, but it can be illegal for the modern era. The illegality of polygamy due to its use to legitimate marriage in the shake of fulfilling desire. Because of this phenomena, polygamy did not result a good protection for member of family. In contrary, it leads to domestic violence and divorce.

Indonesia and Malaysia has regulated the practice of polygamy on their law, Indonesia has the marriage regulation number 1 year 1974, while Malaysia has the Islamic family law year 1984. Both of country want to ensure their people welfare particularly in family matter. They did not expect polygamy resulting in chaos and social injustice among citizens.

However, several sides on both of countries see those regulations have some injustice articles within. Anik Farida asserted that Marriage Law number 1 year 1974 of Indonesia does not provide the value of pluralism and women emancipation. Similarly, Roslina Che Soh thinks that Islamic Family Law year 1984 of Malaysia regulation still need to be improved to guarantee the quality of justice towards wives.

This research analyzes the justice value on both regulations in the view of Asghar Ali Engineer. He is one of International Islamic Scholar concern on justice and women emancipation. In his view, justice is an important value in Islam as important as equality in husband-wife relationship. The analysis on this research find that regulations of both countries legitimate the wife disability as one excuse for husband to practice polygamy. Those regulations did not reflect the spirit of justice by considering wife's disability as an obstacle for being equal with her husband. Therefore, it is necessary to revise the existing regulation.