

Comparative Study of Polygamy Marriage Regulations in Turkey, Russia, and Jordan: A Priority Fiqh Perspective

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ABSTRACT

Polygamy marriage has been an ongoing worldwide debate. The regulation of polygamy marriage in Turkey, Russia, and Jordan faces challenges in addressing the complexity of social issues. This article aims to explore and evaluate the polygamy marriage regulation in these three countries, from a social and fiqh (Islamic jurisprudence) priority perspective. The fiqh

Keywords

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priority perspective emphasizes the common good and prioritizes long-term benefits. The article outlines diverse views on polygamy, including arguments supporting polygamy as a solution to specific social problems, as well as the complex social implications of polygamous practices. Furthermore, a comparative study of polygamous regulation in Turkey, Russia, and Jordan reveals differences in approaches to governing polygamy and how it affects societies within different social, cultural, and religious contexts. Through an analysis of social perspectives and fiqh priority, this article provides a deeper understanding of the regulation of polygamous marriage in Turkey, Russia, and Jordan, along with considerations that need to be taken into account in addressing this issue. The article contributes to the ongoing debate on polygamous marriage regulation by offering a global perspective, exploring both social and fiqh perspectives, acknowledging diverse views, highlighting complex social implications, conducting a comparative study, and providing considerations for addressing the issue

1. Introduction

Polygamous marriage, often connoted as polygyny, has been an ongoing discourse worldwide. The discussion surrounding polygamy remains open for debate as long as humans possess diverse feelings and behaviors, indicating a perpetual lack of consensus on the matter (Ahmad Fuadi, Devi Anggreni. Sy 2021). Polygamy remains a controversial social topic, acknowledged by some scholars as a potential solution to certain social issues within societies that embrace value systems allowing such practices. However, scholars also recognize the complex and varied social impacts associated with polygamous practices. Some argue that polygamy may serve as a solution to address social issues, such as a shortage of men due to war or natural disasters resulting in a significant loss of male lives. In such contexts, polygamy might help alleviate social and economic problems arising from a scarcity of available male partners for women.

Nevertheless, scholars emphasize the need for strict regulation of polygamous practices to ensure the protection and respect of women's and children's rights. Additionally, scholars highlight the importance of an inclusive and open approach toward women in society to promote gender equality and women's rights. This doctrine is frequently advocated by feminist activists, including figures like Fatimah Mernisse and Aminah Wadud (Roibin et al. 2023).

In the context of polygamous marriage regulations, Turkey, Russia, and Jordan exhibit distinct social backgrounds. In the aftermath of the Syrian civil war, Turkey faced a significant influx of refugees, particularly women who managed to escape the ravages of the war in Syria. (Sholihin and Alfani 2021) Many of these women were either widowed or vulnerable orphans facing economic and financial hardships. Simultaneously, Turkey experienced a population surplus, and refugee women were in need of assistance. However, Turkey's regulations did not align with the existing social conditions. The Turkish legal framework, from the 1926 Turkish Civil Code to the more recent 1951 Turkish Family Law of Cyprus, unequivocally prohibits polygamous marriages. Perpetrators of polygamous marriages are categorized as criminals subject to imprisonment for two to six years (D. U. L. Fitria and Ariani 2021).

What Jordan has experienced makes it an ideal haven for refugees, according to Médecins Sans Frontières (MSF), an independent international medical humanitarian organization providing emergency assistance to those affected by armed conflicts, epidemics, pandemics, natural disasters, and exclusion from healthcare. The number of refugees in Jordan has reached 660,550 people, with 140 from Syria. According to

Médecins Sans Frontières (MSF), there have been 10,000 births in the last four years (Frontières 2018). This situation has contributed to Jordan experiencing an uncontrollable demographic surplus.

However, unlike the regulations applied by Turkey, Jordan still allows the practice of polygamous marriage with very strict conditions, and few can afford to practice polygamy due to the extremely challenging requirements. Article 19 No. 61/1976, as amended by Jordanian Family Law No. 25/1977, regulates polygamy in Jordanian family law (Karimullah 2021). The spirit of upholding equality and the potential for conflict among wives is what makes polygamy difficult according to the provisions of this article.

On the other hand, Russia is experiencing a decline in birth rates, and the demographic balance between women and men is uneven. This decline in birth rates is due to the lack of interest among men in Russia who want to marry and form families. State Duma Deputy Edward Murzin proposed a similar initiative in Bashkiria. "We do not have enough normal men, not enough women for everyone. That's why the birth rate is low - few people dare to raise a child without a husband"(Novosti 2015).

At this point, the societies of Turkey, Russia, and Jordan, each with different social contexts and highly complex cultural and religious diversity, make considerations of common good and individual interests crucial. Therefore, it is essential to address the issue of polygamy from the perspective of social and fiqh priorities, taking into account the social, cultural, and religious factors that influence society's views on polygamous practices. A normative comparative study of legal regulations in Turkey, Russia, and Jordan can provide insights into the differences in approaches to regulating polygamy and how it affects social and religious dynamics in different societies.

2. Research Method

The scientific value of a discussion and problem-solving related to the legal issues under investigation is highly dependent on the approach used. If the approach is not appropriate, the research weight becomes inaccurate, and its accuracy can be compromised. This is certainly not desired by the researcher. Therefore, in examining and evaluating the regulations of polygamous marriage in Turkey, Russia, and Jordan between Social Issues and Social Solutions from the Perspective of Fiqh Priorities, the author employs a normative research method using a Comparative Approach (Kadir 2004).

Normative research involves the examination of written legal regulations from various perspectives, including theoretical aspects, scope and substance, formalities and legal characteristics, as well as the legal language used. Normative legal research is also often referred to as dogmatic or theoretical legal research (Marzuki 2021). The approach utilized is the Comparative Approach. The Comparative Approach is employed to compare one legal institution from one legal system with another. Through this comparison, similarities and differences between the two legal institutions can be identified (Suhaimi 2018).

3. Results and Discussion

a. Exploring Polygamy Regulations in Turkey

Turkey is one of the largest Islamic caliphates globally and has been a prominent nation in the Islamic world for centuries. The majority of its population, as followers of Islam, heavily incorporate Islamic teachings into their culture. It can be said that the Turkish people are deeply connected to Islam, and this connection has endured for a significant period (Kamilia 2023). It is evident that Turkish society pays significant attention to the development of fiqh, feeling the need for an advancement in the

concepts of fiqh that have served as their reference. Therefore, under the leadership of Mustafa Kemal, Turkey underwent numerous reforms, including the updating of laws to accommodate societal developments and the progress of Islam itself (V. Fitria 2015).

Before Turkey reached its zenith, it had a history of grappling with the clash between Islamic and Western civilizations, which had previously led to the downfall of the Turkish caliphate. Culturally, Turkey represents a fusion of Islam and Europe, causing ideological friction in political, social, and economic realms. Additionally, the more advanced development of Western civilization fueled the Turkish population's nationalist spirit to modernize their country, including moving away from Family Law that referenced Sharia law (Jaenudin 2019). Despite this, the majority of the Turkish people continued to hold onto their Islamic beliefs.

As the first country to initiate reforms in Muslim Family Law, Turkey has its perspective on addressing polygamy cases. In essence, polygamy in Islamic law allows a man to marry two, three, or four women simultaneously, as explained in the Quran, Surah An-Nisa' verse 3. However, Turkey strongly prohibits polygamy, deeming it as detrimental to women. This prohibition dates back to 1926 when Turkey adopted The Swiss Civil Code of 1912, transforming it into The Turkish Civil Code of 1926, which later evolved into The Turkish Family Law of Cyprus (Nasrun and Fathoni 2020).

The prohibition of polygamous practices in Turkey originated from Mustafa Kemal's extensive modernization movement. Women were granted equal rights to men, reflecting policies influenced by Western thought aimed at cultural modernization. The ban on polygamy was enshrined in The Turkish Civil Code of 1926 and was indisputable, even by Islamic scholars or leaders in Turkey. Modernist scholars concurred with the ban, arguing that no human could achieve justice in practicing polygamy. This perspective also harks back to the dark history of the Islamic caliphate in Turkey, prompting a reinterpretation of Quranic verses, such as Surah An-Nisa' verse 3, and endorsing the prohibition of polygamy (Hadiati 2014).

Regarding the conditions for practicing justice in polygamy, the majority of fiqh experts believe that qualitative justice in polygamy is impossible to achieve due to emotions being immeasurable and uncontrollable. The justice referred to in polygamy is the kind achievable by humans in family life, such as financial support, education, and other needs. Therefore, as long as a prior marriage is still in effect, a second marriage is not allowed, as stated in Article 8 of The Turkish Family Law of Cyprus 1951.

b. Exploring Polygamy Regulations in Russia

Fundamentally, the principle of marriage in Islam is monogamous. Therefore, if Islam permits polygamy, it does not mean that Islam originated it. In history, it is said that polygamy existed long before Islam. Polygamy itself has become an unquestionable tradition, as mentioned in Syafiq Hasyim's book. In its application, polygamy has faced criticism as it is seen as a violation of human rights and contrary to the mission of Islam to uphold the dignity of women.

If we delve into the history of polygamy, it is known that the Salafiyun or what we call 'Russia' practiced polygamy, especially in ancient Russia (Musfir Husain aj-Jahani 1996). Polygamy was considered a common practice, but the historian Nestor, from *The Tale of Bygone Years*, opposed this practice in the context of the Radimichi and Vyatichi, Slavic tribes who were neighbors. The author felt angered because these tribes were named according to the number of wives they had, indicating unrestricted sexual freedom. However, the author concluded that polygamous marriages did not actually exist.

After the emergence of the Church in Russia, rules regarding the permissibility of marrying more than one spouse were rejected, and measures to punish bigamy or polygamy were introduced into the Penal Code in 1960 (Kończak 2018). In line with Turkey, Russia explicitly prohibits the practice of polygamy and considers it a criminal

act. According to Article 160 of the Russian Criminal Code, polygamy is punishable by imprisonment for up to two years. Additionally, Article 172 of the Russian Criminal Code states that marriages conducted by a man or woman who is still married to someone else are subject to imprisonment for up to three years (Makarov. 2015).

It is often stated that polygamy is prohibited in Russia. Indeed, entering into a civil marriage with multiple women is impossible. This is stated in the Russian Federation Family Code of 1995, as amended in 2022, Article 14 concerning impediments to marriage: "Marriage is not allowed between individuals, at least one of whom is already registered as married to another"(Bronislav Gongalo, Pavel Krashenninikov, Lidiya Mikheeva 2022).

However, this regulation seems challenging to enforce due to deeply rooted conservative values in Russian society or Russian Orthodoxy. On the other hand, social conditions such as the declining interest in marriage among Russian men, leading to a low birth rate, pose a unique challenge to family stability in Russia. It is not surprising that some efforts to legalize polygamous marriages in Russia have sparked intense discussions among legal experts, even though the practice is not legally recognized by the state.

c. Exploring Polygamy Regulations in Jordan

In Jordan, the practice of polygamy is regulated by Islamic law applied by Sharia courts. Law No. 61/1976, amended by Jordanian Family Law No. 25/1977, governs polygamy in Jordan's family law (Karimullah 2021). Marriage law in Jordan allows a man to marry up to four wives, provided that he can treat them fairly and equitably in terms of financial support and time spent with each of them.

However, despite the legal allowance for polygamy in Jordan, men seeking to marry again must meet strict requirements. Before seeking permission to remarry, a man must apply to the Sharia court and prove that he can meet the financial requirements and provide equal treatment to each wife. The Sharia court will then consider the application and grant or deny permission. Even women are given the right to enter into marriage contracts stipulating that their husbands are not allowed to practice polygamy. If a husband violates this agreement, the wife has the right to divorce him, in accordance with Article 19 of Jordanian Family Law No. 61/1976 (Rosyid 2020).

Some critics argue that the practice of polygamy in Jordan still poses many problems, including gender inequality and abuse by men who remarry without permission or do not treat their wives fairly. However, supporters of polygamy argue that this practice remains relevant and can be a social solution for issues such as widows in need of protection or women facing difficulties in getting married.

d. Polygamy in the Perspective of Classical Jurisprudence

In the perspective of classical jurisprudence, particularly in Islamic law, polygamy is deemed permissible as long as it meets certain conditions. In Islamic law, polygamy is regulated in the Quran, Surah An-Nisa verse 3, which states: "And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four (Dwi Riyanto, Deden Firdaus, Efa Rodiah Nur, Mahir Bayasut, Usman Syarif, Yulianto, Yulia Ulfah, Moh. Anas Kholish 2023). In the perspective of classical jurisprudence, particularly in Islamic law, polygamy is deemed permissible as long as it meets certain conditions. In Islamic law, polygamy is regulated in the Quran, Surah An-Nisa verse 3, which states: "And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then (marry only one or those) your right hand possesses. That is more suitable that you may not incline (to injustice)".

From this verse, it can be concluded that polygamy is allowed as long as a man can meet the requirement of treating his wives fairly. These requirements include providing financial support, residence, and equal treatment to each wife. If a man cannot meet these conditions, he is not allowed to practice polygamy.

In the classical jurisprudential perspective, polygamy is also considered a social solution for women facing difficulties in marriage or those who are widowed. In such circumstances, polygamy is seen as a way to assist women in meeting their living needs. This aligns with the opinion of Imam Malik, who accepted polygamous marriage as a solution to social conditions, such as the prevalence of widows due to war or other phenomena (Zukhdi and Faisal 2020). On the other hand, Imam Shafi'i and Imam Hanbali allowed polygamy with the condition of fairness among wives (Maya Novia Sari 2021). In contrast, Imam Abu Hanifah, as described in his biography by Abu Zahrah, expressed his disagreement with polygamy based on the inability to be fair (KH. Husein Muhammad 2020). This perspective is followed by classical jurists like Ibn Hazm, al-Qurtubi, and al-Ghazali, who criticized polygamy due to its potential for injustice towards wives, leading to conflicts and disputes.

In the discourse of classical jurisprudence, Ibn Qayyim al-Jawziyya made decisions based on Maslahat (public interest). In his monumental work "Zad al-Ma'ad," Ibn Qayyim permitted polygamy as a solution to some social issues in society (Ibn Abi Bakr Ayub Al-Zarī 1995). He argued that in emergencies, polygamy could be allowed to address social problems like a shortage of eligible men or financial difficulties faced by families. However, he emphasized that polygamy should be viewed as an exceptional measure, not a societal norm. Ibn Qayyim stressed that polygamy must be strictly regulated, allowed only in genuine necessity, and carried out with full responsibility and respect for the rights of women and children.

Ibn Qayyim also emphasized that polygamy should be regarded as an emergency exception rather than a societal norm. He stressed that the practice of polygamy should be strictly regulated and only permitted in situations that genuinely require it. Furthermore, he insisted that polygamy must be conducted with a sense of responsibility and respect for the rights of women and children. Although Ibn Qayyim allowed polygamy in certain specific situations, he underscored the importance of upholding gender equality in all aspects of life. He emphasized that polygamy should not be used as a justification to undermine the rights of women and children (KH. Husein Muhammad 2021).

It is crucial to note that perspectives on the practice of polygamy in classical juridical views are neither homogeneous nor monolithic. Various scholars may either accept or reject polygamy based on different arguments and understandings influenced by their knowledge backgrounds and social contexts.

e. Polygamous Marriage in Contemporary Jurisprudential Perspective

Contemporary jurists, or contemporary thought figures, exhibit a similar discourse on polygamous marriage. There are two prominent viewpoints among contemporary jurists: first, a strict endorsement of polygamy with certain conditions, and second, an outright rejection of polygamy.

Advocates of the first perspective include contemporary Islamic thinkers like Yusuf al-Qardhawi. He permits polygamous practices in Islam, provided that men fulfill their obligations towards their wives, as articulated in his work "Hadyu Islam Fatawa Mu'ashirah" (Aristya 2019). According to al-Qardhawi, polygamy can serve as a solution in specific situations, such as when a man wishes to marry a widow with children in need of financial and emotional support. This position aligns with figures like Ali Gomaa, a former Grand Mufti of Egypt, and Swiss-based Islamic scholar Tariq Ramadan, who also permit polygamy as a solution in specific social conditions.

The second perspective is represented by jurists vehemently rejecting polygamous marriages, primarily based on gender equality premises and concerns about potential injustices within polygamous unions. Scholars like Fatimah Mernisse argue that polygamy contradicts the concepts of equality and individual freedom, fostering competition among a man's wives (Al-hidayati, Ibnu Rusydi 2022). A similar sentiment is echoed by American Islamic scholar Aminah Wadud, who believes that polygamy goes against Islamic values that should encourage equality between men and women (Anam 2020).

For contemporary jurists, gender equality is paramount, as faith and piety are the distinguishing factors. This perspective is closely tied to the doctrine of equality, influencing the interpretations of contemporary jurists without considering social contexts. In this stance, Kyai Husein Muhammad, an Indonesian Islamic scholar, challenges the legitimacy of polygamy based on verses 2 and 3 of Surah An-Nisa. He contends that the broad interpretation of these verses calls on society to act justly towards the powerless, such as orphaned children and women (KH. Husein Muhammad 2020). He also dismisses the validity of using Islam to justify polygamous practices, arguing that Prophet Muhammad's polygyny was contextually specific to social, political, cultural, and highly particular circumstances, especially regarding having more than four wives. Islamic scholars unanimously agree that his case was *min khushshiyatir rasul* (an exception for a prophet).

Despite numerous viewpoints suggesting that polygamous marriage is related to religious dimensions and theological acts, legitimized by divine texts, some modern Muslim scholars assert that Prophet Muhammad's polygyny was more of a political act. This viewpoint is supported by facts indicating that several of his wives were daughters and widows of political figures (*sayyid qawmihi*) and even widows of his political adversaries.

In this perspective, Husein Muhammad takes a firm stand against polygamous practices, deeming them unacceptable in contemporary contexts. He vehemently opposes polygamy resulting from demographic surpluses, arguing that such a view oversimplifies and degrades women. Moreover, the argument that the surplus of women is not clearly categorized, meaning not all are adult women or virgins, adds complexity to the discussion.

f. Formulation of Yusuf al-Qardhawi's Priority Fiqh in Addressing Humanitarian Issues

At this juncture, the tool of Priority Fiqh attempts to delve deeper into unraveling the common thread: whether polygamy is a solution to societal issues that need improvement or a social problem that should be tightened or even abolished through state intervention and existing regulations. In the perspective of Yusuf Qardhawi's priority fiqh, the general welfare must be prioritized over individual welfare. Long-term issues should take precedence over short-term concerns, and primary problems should be prioritized over secondary and tertiary issues (A. Latif 2019). It is at this point that this study will attempt to examine how the perspective of priority fiqh evaluates polygamy regulations in Turkey, Russia and Jordan - whether polygamy is a social issue that needs resolution or a social solution that should be applied.

In the priority fiqh approach, the term "maslahah mursalah" or general welfare is known (Ilham Tohari, Moh. Anas Kholish 2020). However, in the context of polygamous marriages, the issue of general welfare often conflicts with individual interests, meaning that individual interests are often prioritized. It is not surprising, then, that negative stigmas such as hypersexuality, injustice, and inequality are often used by feminists against specific individuals, institutions, or agencies. Thus, simultaneously, the social benefits of polygamous marriages shift towards negative connotations (Herlindah, Siti Rohmah, Ahmad Qiram As-Suvi 2022).

Yusuf al-Qardhawi is a Qatari scholar and jurist renowned for his moderate and progressive views in Islam. One of his contributions is the development of the concept of priority fiqh, an approach to solving religious issues based on humanitarian principles and the urgency of the issues at hand. According to Qardhawi, this approach is an effort to make Islamic law valid for all times and places by looking beyond Sharia, understanding the intended purpose of Sharia itself. In the context of priority fiqh, Qardhawi establishes a prioritization scale to comprehend the goals of Sharia comprehensively. He states that prioritizing what is more important over what is important, prioritizing the primary over the secondary, prioritizing knowledge over action, and prioritizing quality over quantity are fundamental principles in priority fiqh (Qardawi 1996).

In the Formulation of Priority Fiqh, al-Qardhawi emphasizes the importance of addressing urgent humanitarian issues that affect society. (Nasution 2022) Therefore, he argues that the primary focus in fiqh should be on issues related to human rights, health, security, justice, and poverty - the core of Sharia.

From al-Qardhawi's perspective, priority fiqh prioritizes addressing issues related to humanity over debating minor or secondary issues that lack urgency. He emphasizes the importance of addressing humanitarian issues such as poverty, injustice, and inequality as the primary priorities in Islam (As-suvi and Zainullah 2022).

Furthermore, al-Qardhawi underscores the importance of *ijtihad* (independent reasoning) in addressing humanitarian issues. He argues that thought and approaches in fiqh should follow the developments of time and social realities, ensuring that the solutions provided can respond to and resolve the issues faced by society (Soesanto 2022).

Regarding polygamous marriages, al-Qardhawi places monogamous marriage as the primary priority in Islam (Arsyad 2020). However, he permits the practice of polygamy as a solution for specific cases, such as when a woman becomes a widow with significant economic responsibilities. Nevertheless, polygamy must be carried out responsibly, justly, and in accordance with internationally recognized humanitarian principles.

In the contexts of Turkey, Russia, and Jordan, each with distinct social backgrounds, they share the same reasons for implementing conditional polygamy as a priority in their regulations to address humanitarian crises. These regulations also serve as a social solution in dealing with refugees, mainly women who have lost their husbands or are widowed - as observed in Turkey and Jordan. On the other hand, Russia faces low birth rates and a minimal number of men interested in marriage, impacting family resilience.

4. Conclusion

In exploring the regulations of polygamous marriages in Turkey, Russia, and Jordan, along with the associated social issues and social solutions, the importance of the concept of priority fiqh becomes evident. The differences in social, cultural, and religious contexts reveal the complexity of polygamy issues involving the common good and individual interests. When regulating polygamy, it is crucial to consider the complex social impacts and to protect and respect the rights of women and children. An inclusive approach to women in society is essential to promote gender equality and women's rights. Comparative studies of polygamous marriage regulations in Turkey, Russia, and Jordan provide insights into the differing approaches and their social and religious impacts on diverse communities. Priority fiqh emphasizes the importance of prioritizing the common good, long-term benefits, justice, and equality in the context of polygamous marriages. To address these issues, in-depth dialogue and discussions involving stakeholders and experts are necessary to find balanced solutions, preserving harmony and social justice in multicultural and multireligious societies. Regulations on polygamous marriages should reflect humanistic values, justice, gender equality, and consider social, cultural, and religious contexts. Only through a holistic and balanced

approach can we tackle the complex challenges of polygamy by prioritizing the overall well-being of individuals and society.

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