



## **Monogamy As The Substance of Pre-Nuptial Agreement: A Cross-Mazhab Comparative Study**

**Ahmad Hidhir Adib<sup>1</sup>, Moch. Said Ahmad<sup>2</sup>, Narse Nur Afida<sup>3</sup>**

UIN Maulana Malik Ibrahim Malang<sup>12</sup>, UNU Blitar<sup>3</sup>

[220204210003@student.uin-malang.ac.id](mailto:220204210003@student.uin-malang.ac.id)

### **Abstract**

*Polygamy is one of the factors causing divorce. To overcome this, the concept of a pre-nuptial agreement can be applied as proposed by Sayyidah Sukainah towards her husband. This study aims to answer the legality of monogamy requirements proposed by the bride. The research method used in this research is literature study with a mazhab (school of thought) comparative approach. The author will compare the views of 5 mazhab; Hanafi, Maliki, Shafi'i, Hambali and Dzahiri. The results of this study indicate that if a woman who adheres to the mazhab of Syafi'i or Maliki does not want her husband to be polygamous, then make a nazar (vow) to her husband. Meanwhile, if she belongs to the Hambali, the scholars legalize this monogamy requirement, even if it has become a tradition in the woman's region, then the condition is automatically binding. Whereas in the Hanafi mazhab, these conditions are not binding, but have an impact on the type of Mahar (dower). So in case of the husband does not meet these requirements, then the wife is entitled to a mahar mitsil dowry of mahar mitsil (determined dower). Whereas in the Dzahiri mazhab, these conditions are not binding, even in case they appear in the contract, it results in the cancellation of the marriage.*

**Keywords:** Agreement; Monogamy; Polygamy; Mazhab.

### **Abstrak**

Dipoligami merupakan salah satu faktor penyebabnya perceraian. sehingga untuk menanggulangnya ini bisa menerapkan konsep perjanjian pra nikah sebagaimana yang diajukan oleh Sayyidah Sukainah terhadap suaminya. Penelitian ini bertujuan untuk menjawab permasalahan legalitas syarat monogami yang diajukan pihak mempelai istri. Metode penelitian yang diterapkan dalam penelitian ini adalah studi literatur dengan pendekatan komparasi mazhab. Penulis akan mengkomparasikan antara pandangan 5 mazhab, yaitu Mazhab Hanafi, Maliki, Syafi'i, Hambali dan Dzahiri. Hasil penelitian ini menunjukkan bahwa Jika seorang wanita yang bermazhab Syafi'i atau Maliki, tidak ingin dipoligami oleh suaminya, maka ajukan nazar kepada suami. Adapun jika ia bermazhab Hambali, para ulama' melegalkan syarat monogami ini, bahkan jika sudah menjadi tradisi di daerah wanita tersebut, maka otomatis syarat tersebut mengikat. Sedangkan dalam Mazhab Hanafi, syarat tersebut tidak mengikat, namun berdampak pada jenis Mahar. Yakni jika suami tidak memenuhi syarat

tersebut, maka istri berhak mendapatkan mahar mitsil. Sedang dalam Mazhab Dzahiri, syarat tersebut tidak mengikat, bahkan ketika dimunculkan dalam akad itu berakibat pada batalnya pernikahan.

**Kata Kunci :** Perjanjian; Monogami; Poligami; Mazhab.

## Introduction

The practice of polygamy is often misunderstood by certain individuals who misinterpret its recommendation. Many people desire polygamy for various motives, yet not all meet the necessary regulations (Flicker, S.M., Sancier-Barbosa, F., 2021). If one fulfills these conditions, polygamy becomes lawful. (Nasrulloh, 2021) However, many men want to engage in polygamy without ensuring the justice that may violate Islamic principles. Even they dare to claim for emulating the sunnah of Prophet Muhammad SAW. In fact, many people know that the Prophet's marriages were directed by Allah, not motivated by personal desires (Al-Minangkabawy, 2021). Thus, polygamy driven by biological motives and lacking justice is deemed *haram* (forbidden). ('itr, 2003)

An example of this is when the Prophet prohibited Sayyidina Ali from marrying another wife while married to Fatimah Al-Zahra for she was left by her mother and sister, but Ibnu Hajar Al-Asqalani argued this prohibition was exclusive to the Prophet's daughter (Al-Asqalani, 1960). However, Ibnu Al-Mulaqqin interpreted the Prophet's forbidding Sayyidina Ali as a father's defense of his daughter's welfare (Al-Mulaqqin, 2008). When applying the principle of *fahwa al-khithab*, his principle implies that women have the right to demand monogamy. While a father defends for his daughter, a woman has more rights to defend herself for their peace of mind.

If polygamy is actually based on personal interests, but the action is based on the sunnah of the Prophet, there are really many other sunnahs if he really wants to carry out the sunnah of the Prophet. So it needs to be considered again. Even though polygamy is legal, the regulations are very strict. This is in order to guard against problems and prevent evil (Sonny Dewi Juadiah, Deviana Yuanitasari, Revi Inayatillah, 2021). Because she is so afraid of polygamy, especially if her future husband is someone who does not meet the criteria for someone who is allowed to have polygamy (Sadat & Ipandang, 2020). So the woman puts forward a condition that she must not have polygamy when she gets married (Ning Cai, Chen Diao, 2019), or in metajuridical language it is called a pre-nuptial agreement dictum (Thompson, 2024). Where it is permissible for one of the bride and groom to propose an agreement that must be fulfilled, and this has legal certainty (Parker, 2019). This matter has been done by his granddaughter Sayyidah Fatimah Al-Zahra whose name is Sayyidah Sukainah bint Husein bin Ali bin Abi Talib. Where she submits a condition

to her future husband, if violated then she has the right to ask for a divorce. (Al-Isfahani, 2018). The points of the agreement are (1) No polygamy, (2) No secrets regarding financial matters and (3) No travel restrictions. It turned out that after establishing the family, her husband, Zaid bin Umar al-Utsmani, violated the first rule. Therefore, Sayyidah Sukainah filed for divorce toward a judge, and her husband divorced her. (Muhammad, 2020). In fact, this tradition still continues, according to Muhammad Al-Thalibi's report, this tradition was rooted in that era. Even the Qairāwan residents since the beginning of the 2nd century Hijriyah, they have required husbands in their marriage contracts not to be polygamous or have concubines. If he violates it, the wife has the right to determine the continuation of her household, namely continuing or terminating the marriage. (Al-Thalibi, 2019)

Departing from the phenomenon above, the researcher wants to discuss the polemic regarding monogamy requirements proposed by wives within the scope of 5 *mazhab* (schools of thought); Hanafi, Maliki, Syafi'i, Hanbali and Dzahiri. The researcher limits the discussion to only focusing on the legality of the monogamy requirements proposed by the bride viewed by 5 schools.

After conducting data research, here are several studies that are similar to the researcher's discussion, along with their points of difference. Abdullah wrote regarding the juridical review of marriage agreements in general, meanwhile (Syarifah & Purwanto, 2019) wrote this phenomenon through the perspective of Jasser Auda's Maqashid Syariah and discuss it using family law apparatus.

Thus, it can be seen that the differentiating point of this research from the discussion of previous research is that the researcher discusses the marriage agreement in the form of monogamous conditions proposed by the prospective wife from the perspective of 5 schools of thought; Hanafi, Maliki, Syafi'i, Hambali and Dzahiri, while previous research only discusses this topic in general from the perspective of figures' opinions, Islamic law (one school of thought only), and positive law.

## Research Method

The type of research used in this research is literature or normative study, namely research that uses the library as the object of study (Hermawan, 2019). The data collection technique applied in this research is documentation, namely collecting data by examining written sources, either in the form of books, reports or other information required in the research (Hamzah, 2019). Thus, this research will take data from the literature of the 5 schools of thought, namely Hanafi, Maliki, Syafi'i, Hanbali and Dzahiri. And various references that provide information related to the researcher's discussion.

For the Hanafi Madzhab, the author refers to *Hasyiyah Ibn Abidin*, *Badai' i al-shana' i*, *Kanz Al-Daqaiq* and several other literatures. For the Maliki Madzhab, the author refers to *Al-Syamil*, *Jami' Al-Ummahat*, *Al-Fawakih Al-Dawani*, *Al-Taj Wa al-Iklil*, and other literature. For the Syafi'i Madzhab, the author refers to *Minhaj Al-Thalibin* and his annotations, *Al-Majmu'*, *Al-Fiqh Al-Manhaji*, and several other literature. As for the Hambali Madzhab, the author refers to the books of *Al-Mughni*, *Al-Inshaf*, *Mathalib uli Al-Nuha*, *Kasyyaf Al-Qinna'*, and several other literatures. Specifically for the Dzahiri Madzhab, researchers refer to Ibnu Hazm Al-Andalusi's work entitled *Al-Muhalla*, *Al-Ihkam Fi Ushul Al-Ahkam* and *Maratib Al-Ijma'*. The secondary data is comparative jurisprudence literature such as *Bidayat Al-Mujtahid*, *Al-Mausu' ah Al-Fiqhiyyah Al-Kuwaitiyyah*, *Al-Fiqh Ala Madzahib Al-Arba' ah*, *Fiqh Al-Islami Wa Adillatuh* and a set of other literature that supports the complexity of the data and this research.

The theory used in this research is *muqaranah al-madzahib*, namely comparative study or comparison of schools of thought, namely a type of Islamic legal research that is oriented towards presenting the arguments of each school of thought. (Arfa & Marpaung, 2016).

## Result and Discussion

### The Legality Of Polygamy And Its Basic Concepts

In the perspective of contemporary Muslim academics, Sheikh Wahbah Al-Zuhaili stated that polygamy is an alternative concept, so that monogamy is more important and that is the ideal. Polygamy is an exception in marriage, so that only with general and special reasons can polygamy be practiced (Lenon, 2022). According to him, monogamy is the most important marriage system (Emmers-Sommer, 2020), in fact this monogamy system is common and is the building block of marriage proclaimed by sharia'. As for polygamy, this is an unusual system (Fadhilah et al., 2023), it is an exception and the polygamy system violates the origins or principles of sharia'. The concept of polygamy cannot be applied, unless there is an urgent need, therefore Islamic law does not require it, and does not even recommend anyone to practice polygamy. Islamic law only allows polygamy for general reasons and special reasons (W. Al-Zuhaili, 2015).

Sheikh Muhammad Khudhari added that polygamy is not a fundamental principle of Islam that must be practiced. According to him, polygamy is not part of the principle principles that must be practiced in the view of Allah and the Messenger of Allah as the maker of Islamic law. Polygamy is part of *mubah* (permitted to conduct) whose consideration rests with the individual *mukalaf* (lawful) (Azis et al., 2023). If someone wants, he can practice polygamy. If he chooses monogamy, he may ignore polygamy as long as it does not cross the line. (Al-Khudari, 1995)

The general and specific causes intended by Sheikh Wahbah Al-Zuhaili are that polygamy is projected as a solution to the low population of an area, while the specific causes are such as barren wives, illness, hyper husbands and so on. In short, polygamy is legalized because there are urgent conditions, needs or benefits that are legitimized by sharia. (W. Al-Zuhaili, 2015)

In the view of Sheikh Musthafa Dib Al-Bugha, Sheikh Musthafa Al-Khin, and Sheikh Ali-Al-Syirbiji, polygamy is an alternative concept and the law depends on certain conditions (Danial, 2023). It's just that many polygamists are far from the initial spirit of legitimizing polygamy (Isaac Dery, 2019). Islam legitimizes polygamy not to harm women, polygamy is aimed at meeting needs, maintaining demographic stability, and so on. (Al-Bugha et al., 2018) Syaikhul Azhar, Sheikh Musthafa Al-Maraghi also believes that there are indeed several conditions that urge someone to commit to polygamy, but still the origin of marriage is monogamy and true happiness is to implement it in the household. He firmly stated that in principle the legalization of polygamy is narrow, where someone can practice polygamy if they really need it, provided they can act fairly and not deviate. This is very important considering that many polygamous couples are not harmonious and their families are on the verge of breaking up. It can be seen that the children of one wife are actually hostile to the children of another wife. In fact, husbands listen and obey the wife they love more, thereby opening up the rift in the household. (Heenan, 2021) Moreover, polygamy also has other negative impacts such as causing lies, fighting over property, murder and so on. (Abbasi, M.Z., Cheema, 2020)

Therefore, policy holders and implementers should prioritize "disadvantages must be eradicated" by taking measurable attitudes and policies to overcome the problem of polygamy based on the spirit of marriage, in order to create *sakinah mawadah* and *rahmah* which is the essence of marriage so as not to rush into polygamy, except because there is a definite need or interest and there is a guarantee that justice can be done. If not, polygamy is actually a form of injury to women, their children, themselves and even the people around them (Martínez & Auséns, 2021). (Al-Maraghi, 1946) Sheikh Wahbah Zuhaili in his fatwa also states that the original law of marriage is monogamy and that is the most *afdhal*, based on Surat Al-Nisa' verse 3. (W. Al-Zuhaili, 2003)

3 The school of thought holds that the *sunnah* is monogamy, in the *fiqh* encyclopedia it is explained that for the Shafi'iyah and Hanbaliyah (Harahap, 2019), a person is not recommended to commit polygamy without a clear need (especially if he has been protected from adultery with a wife), because the practice of polygamy has the potential to bring someone down to the other side *haram* (injustice). (Subekti, Sri, Liliana Tedjosaputro, 2020). Allah says, You will not be able to do justice

between your wives even if you want to (Bin Chen, 2021).<sup>1</sup> Rasulullah SAW said, 'A person who has two wives, but tends towards one of them, will on the Day of Resurrection walk crookedly because his stomach is one sided. As for the Hanafiyah, the practice of polygamy with up to four wives is permitted provided that it is safe from injustice against one of the wives. If he cannot ensure justice, he must limit himself to monogamy, based on the words of Allah SWT which says "If you are worried about injustice, it is better to be monogamous". (Islamiyyah, 2002)

In the view of the Maliki School, even if a person is afraid of not being fair, he can still practice polygamy. Ibnu Abdil Barr even legitimized free men for polygamy with 4 women even though he was worried that he would not be able to do justice. (Al-Barr, 2020)

Ibn Abdil Barr's statement was also quoted by Imam Al-Qurthubi in his exegesis, (Al-Qurthubi, 1964) The permissibility of polygamy was also conveyed by Sheikh Al-Nafrawi. (Al-Nafrawi, 1995)

Whereas in the Dzahiri Mazhab, men can have polygamy as long as they do not exceed 4 wives. (Al-Andalusi, 2020) It's just that when you worry that you won't be fair, it's better to be content with just one wife. Ibn Hazm when commenting on the hadith narrated by Abu Hurairah regarding the threat to husbands who are polygamous but who are not fair, he stated;

*"Allah SWT commands someone who is worried that he will not be able to do justice in polygamy, so that he only marries one wife or that he is sufficient for himself with the milkul yamīn (slaves) he owns."*. (Al-Andalusi, 2016).

Because polygamy opens up the potential for something that is forbidden, the Syafi'iyah Ulama are united in their Sunnah for monogamy, not polygamy. Such as; Imam Al-Mawardi, (Al-Mawardi, 2017) Al-Ruyani, (Al-Ruyani, 2018) and Al-Umrani, (Al-Umrani, 2020) Al-Shardafi, (Al-Shardafi, 1999) Al-Damiri, (K. Al-Damiri, 2019) and others. Among the Hanabilah also have such a view, among them are Al-Jahawi, (Al-Hajawi, 2015) and Al-Bahuti. (Al-Bahuti, 2015) Even Syekh Al-Mardawi stated;

*"It is sunnah not to commit polygamy when he feels that one wife is enough, this is what is guided by the sect. This information is also carried out in the books of Al-madzhah, masbūk al-dzahab, Al-khulāsah, Al-ri'āyatayn, al-hāwī al-shaghīr, and other literature. Even in other books it is explained that the main thing is to be monogamous, these books are Al-Hidāyah, Al-mustau'ib, Idrāk al-Ghāyah, and Al-Fāiq. According to Imam al-Nazim, monogamy is closer to justice, and according to the book Tajrīd Al-Ināyah, this is the famous opinion. In fact, according to Ibn Khathīb Al-Salamiyyah, the majority of Aṣḥāb made it sunnah to be monogamous. However, according to Ibnul Jauzi, it is permissible to have polygamy when one wife is not enough"*. (Al-Mardawi, 1995)

According to Ulama' Ahnaf, it is also sunnah for monogamy, among those who carry it is Ibnu Nujaim. (Nujaim, 2018) In the fatwa on literature

affiliated with the Hanafi School of thought, this is also stated, along with the editorial ;

*"When a man has one wife, but he wants to remarry, but he is afraid that he will not be able to do justice between his wives, then he is not allowed to practice polygamy, whereas when he is not worried, in the sense that he believes in being fair, then he may have polygamy, but it is more important not to do so". (Al-Bulkhi, 2020).*

So it can be seen that polygamous marriages are abnormal and very rare, in fact the spirit promoted by Islam is a monogamous marriage model. So that the pre-nuptial agreement in the form of non-polygamy advocated by Sayyidah Sukainah finds relevance, especially since it is not uncommon for people who are polygamous today to not know the concept of polygamy which is justified by religion.

#### **Legality of a Marriage Agreement in the Form of Monogamous Terms**

Having a pre-nuptial agreement will of course minimize post-marital disputes. So by socializing and implementing this we can reduce the phenomenon of divorce which is spreading everywhere (Satoris, 2020). A clause that is no less important to propose is the absence of polygamy in domestic life, of course this will protect the rights of women who are reluctant to be polygamous. The following are the views of scholars from 5 *Mazhab* (schools of thought) regarding its legality;

##### **1. Mazhab Hanafi**

According to the Mazhab Hanafi, the condition of monogamy proposed by the wife is permissible, but when the husband does not fulfill it, then he is obliged to give a *mitsil* dowry to his wife. Explained;

*"If a woman is married with a dowry of 1000 but is accompanied by conditions that she puts forward in the form of not being taken from her village or not being polygamous, then if this condition is fulfilled by her husband then she gets a *mušammā* dowry (determined dowry during marriage contract), because this is based on the willingness of the bride and groom. However, if in the future she is polygamous or taken from her home, then she will receive a *mišil* dowry (determined dowry after marriage contract). Because this is a benefit for him, because if there is no *musamma* dowry, of course a wife's willingness is not there, so it is perfected by having a *mišil* dowry." (Al-Marghinani, 2011)*

Similar information was also conveyed by Al-Kasani, (Al-Kasani, 2019) Al-Nisfi, (Al-Nisfi, 2011) Fakhruddin Al-Zayla'i, (Al-Zayla'i, 1990) Ibnu Al-Himmam, (Al-Himmam, 1970) Ibnu Abidin, (Abidin, 1992) and Fatawa Al-Hindiyyah. (Al-Bulkhi, 2020)

##### **2. Mazhab Maliki**

Mazhab Maliki is of the view that the conditions for monogamy put forward by the wife are not binding, but it is *sunnah* (advised to do) for the husband to fulfill them. Explained ;

*"The third condition is a condition that has no correlation with the contract which does not negate it and there is no iqtidā' (reference) from it. For example, the condition is not to be polygamous, not to be married to a concubine, not to be taken from one's home or village. It's just that this condition is imposed, but does not damage the contract, whether it appears before the contract or after the contract, then it is not mandatory to fulfill it". (Al-Nafrawi, 1995)*

It's just that, when this request for monogamy is made into a *nazar* (vow), it is obligatory to fulfill it. It said Hanya saja, ketika permintaan monogami ini dijadikan nazar, maka wajib untuk memenuhinya. Dikatakan;

*"Excluded from conditions that negate the purpose of marriage, namely conditions that have nothing to do with the contract. So conditions like this do not negate the contract. For example, such as submitting conditions not to be married to a concubine, not to be polygamous, not to be expelled from a place or area. So conditions like this cannot damage the contract, whether these conditions appear before the contract or after. So it is not mandatory to fulfill these requirements, it is just sunnah to fulfill them as long as it is not stipulated by an oath. Terms like this are makruh (advised to leave) documents, because they contain elements of tahjīr (restraint)". (Al-Shawi, n.d.)*

So, even though the wife's requirement of monogamy is considered makruh, it is sunnah to fulfill it. It's just that, when the concept of vows is presented, the husband is obliged to fulfill them. A similar statement was also made by Ibnu Al-Hajib, (Al-Hajib, 2000) Syekh Muhammad Al-Dasuqi, (Al-Dasuqi, n.d.) Syekh Al-Zurqani, (Al-Zurqani, 2012) Syekh Bahram Al-Damiri, (Al-Damiri, 2008) and Syekh Al-Lakhmi, (Al-Lakhmi, 2011) Syekh Muhammad Al-Gharnathi, (Al-Gharnathi, 2020) and Ibnu Syasyi. (Al-Judzami, 2003) Even Imam Malik bin Anas was once asked about a wife who proposed monogamous conditions to her husband, it turned out that the man violated the conditions, then the woman gave *talaq tiga* (three divorces). However, the husband did not accept this and thought it was just a divorce. So does *talaq tiga* apply? Imam Malik answered "This is the woman's right, and if the husband denies it, it is of no benefit". (Malik, 2020)

### 3. Mazhab Syafi'i

In the discussion of Shafi'iyah scholars, this monogamous requirement has no legality. So even though it is required by the wife, this condition is not binding. In one of the most authoritative references

in this school of thought, for example *Minhaj al-Thalibin*, Imam Al-Nawawi stated;

*"When the marriage requires khiyar (protecting right) in the marriage, the marriage contract becomes invalid. However, when the khiyar is required in terms of dowry, then according to Qaul Azhar the marriage is valid, but not the dowry. As for other conditions, if they are in accordance with the purpose of the marriage (for example, requirements for providing for and taking turns) or have nothing to do with the purpose of the marriage (for example, you cannot eat anything), then these conditions are not binding, so the marriage contract and dowry are valid. It is different when these conditions conflict with the meaning of marriage, but do not eliminate the original intention, such as the condition of not being polygamous or the condition of not being supported, then the marriage contract is valid, but these conditions and the dowry contained in the marriage are damaged. However, if the conditions stated contradict the original intention of the marriage, for example, such as not having sexual intercourse or being divorced, then the marriage will be annulled."* (Al-Nawawi, 2021)

The reason why the monogamy requirement proposed by the wife has an impact on the dowry is because there is a mismatch. (Al-Syirbini, 2020) A similar reason was also given by a contemporary Shafi'iyah academic, Sheikh Muhammad Al-Zuhaili, who stated that the dowry was damaged as the conditions proposed were damaged. Because a wife's willingness refers to submitting conditions, whereas when these conditions are not fulfilled, she is obliged to give a *misil* (determined after marriage contract) dowry. (Al-Zuhaili, 2011)

Al-Nawawi also made similar statements regarding the legality of monogamy requirements in his other works, for example *Al-Majmu' syarh Al-Muhadzdzab*, (Al-Nawawi, 2012) *Raudhat Al-Thalibin*, (Al-Nawawi, 1991) (Al-Nawawi, 1991) and *Al-Minhaj Syarh Sahih Muslim*. (Al-Nawawi, 2015) In fact, all commentators (both *syarih* and *muhasyyi*) in their annotated literature on Minhaj, unanimously state that this condition is void, that is, it is not binding and requires a *misil* dowry. Ibn Hajar Al-Haitami, as one of Minhaj's most favored commentators, also supports this opinion. (Al-Haitami, 1983) This statement is affirmed by his *Muhasyyi*; Al-Syarwani, (Al-Syarwani, 1983) and Al-Ubbadi (Al-Ubbadi, 1983). Then also carried by Imam Al-Ramli, (Al-Ramli, 1984) which is also affirmed by his *Muhasyyi*; Ali Syibramalisi, (Al-Syibramalisi, 1984) Syekh Khatib Al-Syirbini, (Al-Syirbini, 2020) and Imam Jalaluddin Al-Mahalli, (Al-Mahalli, 1995) which is also affirmed by his *Muhasyyi*; Al-Qulyubi, (Al-Qulyubi, 1995) and 'Umairah. (Umairah, 1995)

Similar opinions are carried by pre-Imam Al-Nawawi elite Syafi'iyah, such as ; Imam Al-Mawardi, (Al-Mawardi, 2017) Imam Al-

Haramain, (Al-Juwaini, 2019) Al-Umrani, (Al-Umrani, 2020) Al-Ruyani, (Al-Ruyani, 2018) and Imam Al-Baghawi. (Al-Baghawi, 2015)

It's just that, conditions like this are legal in view of *Qaul Qadim*. (Al-Masyhur, 2021) Contemporary Shafi'i academic, Al-Habib Ahmad bin Umar Al-Syathiri also stated;

*"The conditions put forward by the wife so that she is not taken from her house can be binding when presented in the nazar model, so that the husband is obliged to fulfill these conditions when there is a qurbah, such as eliminating his or his mother's worries. Because this is a form of making a Muslim happy, and this is also a virtuous behavior that is favored by the Shari'a, because of the great benefits it contains. If he does it by hoping for Allah's blessing, then he will get a reward. This information is mentioned in the fatwa book of Imam Muhammad bin Abi Bakar Al-Asykar".* (Al-Syathiri, 2021)

So, referring to Al-Syathiri's views, the monogamous conditions proposed by the wife are legal and binding. Because this condition has benefits that return to the wife, and according to him this condition is permissible.

#### 4. Mazhab Hambali

One of the Hanabilah reference scholars, Ibnu Qudamah Al-Maqdisi in his magnum opus stated;

*"When a woman is married, she requires that she not be taken from her home or village, so the husband must fulfill these conditions. Because Rasulullah SAW said that the most important conditions to be fulfilled are the conditions related to farji. So if someone marries her and she submits a condition not to be polygamous, she has the right to ask her husband to separate when he is polygamous. There are three types of conditions for marriage. The first is conditions that must be fulfilled, namely conditions that have benefits and advantages for the wife. Examples of these conditions are, for example, not being taken from his home or village or not being invited to travel, not being polygamous, not being married to a concubine, then all of these conditions must be fulfilled so that if the husband does not fulfill them, the wife can ask for marriage Fasakh. This opinion was narrated from Umar Bin Khattab, when bin Abi waqqash, Muawiyah, and Amr Bin Ash. And this opinion is guided by Syurayh, Umar bin Abdul Aziz, Jabir bin Zaid, Thowus, Auza'i, and Ishak".* (Al-Maqdisi, 1969)

So, according to the Hanabilah elite, the conditions for monogamy proposed by wives are binding. However, this condition can be legal when it is mentioned in the contract or before the contract there was an agreement between the two regarding this condition. So if it is mentioned after the contract has occurred, this condition is not binding. (Al-Karmi, 2007) However, according to Ibn Al-Qayyim, when in an area there is no custom for women to be polygamous, then this is a

requirement that the bride and groom must fulfill in marrying a local woman. (Al-Bahuti, 2015)

Mazhab Hambali takes the action of legalizing the condition of monogamy, many of its scholars have given this fatwa. Such as; Syekh Syamsuddin Zarkasyi, (Al-Zarkasyi, 1993) Syekh Sulaiman Al-Mardawi, (Al-Mardawi, 1995) Syekh Manshur bin Yunus Al-Bahuti, (Al-Bahuti, n.d.) Ibnu Abi Amir, (Umar, 1995) and Ibnu Al-Munajja. (Al-Munajja, 2003) even Ibnu Qudamah Al-Maqdisi, (Al-Maqdisi, 1969) and Syekh Al-Rahibani, (Al-Rahibani, 1994) in his book he counters all the objections of those who do not legalize this condition, both of them take position in this opinion. Below are some of his objections;

a. If they do not legalize this condition of monogamy because it tends to the hadith *"any condition that is not stated in the book of Allah, then that condition is void"*, then according to Sheikh Al-Rahibani that is actually *masyru'* (obligatory deed). Namely, there are hadiths, he has mentioned several hadiths as his tendencies, such as the hadith "the most important thing to fulfill is the conditions related to farji" and several other hadiths.

b. If they think this is a form of prohibition on something that is halal, then he replied that it is not so. This reason is only limited to providing formal legal for women to submit *fasakh* (marriage cancelation) when her husband violates this condition.

c. If they say that this condition does not benefit the contract, then he strongly opposes it. Because of course this is a problem for women, who are afraid they will be hurt when polygamous.

##### 5. Mazhab Al-Dzhahiri

Ibnu Hazm Al-Andalusi explained that the conditions for monogamy proposed by the wife were void and not binding, in fact she did not have the right to *khiyar* if her husband later violated these conditions. Ibn Hazm said;

*"A marriage is not valid if it is based on certain conditions, this can even have an impact on the dowry. Meanwhile, if the marriage is based on the conditions of a gift, buying and selling, not being married to a concubine, not being invited to travel or other conditions. If these conditions appear in the contract, then the marriage contract will be void. However, if it is required after the contract is concluded, the contract is valid, but the conditions proposed are void. Whether the contract is based on liberating, talak, being ordered, khiyar, all of these conditions cannot be binding, that is, they are void. Conditions put forward by the wife, such as not being polygamous, not being married to a concubine, not being left behind, and not being taken from the house, this is a*

*prohibition on something that is halal. This is the same as making pork and carcasses halal, so conditions like this certainly violate the law of Allah SWT. Even though it is known that Rasulullah SAW only allows conditions that are permissible as ordered by Allah SWT, namely conditions that make farji lawful, not other than that."* (Al-Andalusi, 2016)

<b>Mazhab</b>	<b>Conditions of Monogamy</b>
<b>1. Syafi'i - Maliki - Hanafi</b>	It is not binding, but if violated it can cause the dowry to be transferred to the mitsil (determined after marriage contract) type.
<b>2. Hambali</b>	Binding, even the wife can sue for divorce from the husband who violates it.
<b>3. Dzahiri</b>	Not binding, it can even cause the marriage contract to be cancelled when it is mentioned as a contract clause.

### ***Tarjih (Prioritizing) on the Khilaf (Mistakes) of Cross-Mazhab Scholars***

The various views of the schools above are motivated by the contradiction between general arguments and specific arguments. One of the elites of the comparative discipline of the school of thought, Ibnu Rushd Al-Hafid in his book discusses this by mentioning the views of the Companions, Tabi'in and imams of the school of thought, then he explains it by stating "the difference of opinion regarding the legality of the condition of monogamy is suspected by the existence of a contradiction between the general postulate and the postulate special. The general argument in question is a hadith narrated by Sayyidah Aisyah RA that the Prophet Muhammad in one of his sermons said *"Every condition that is not stated in Allah's Book is void, even if there are 100 conditions."* The special argument is the hadith narrated by Uqbah bin Amir that the Messenger of Allah said, *"The most important condition that must be fulfilled is the condition related to halal farji."* (Al-Hafid, 2020)

The famous hadith commentator, Ibnu Batthal, explained that the Ulama' were divided into two in responding to the two hadiths. Sayyidina Umar bin Khattab, Amr bin Ash, Thawus, Jabir bin Zaid, and guided by Imam Al-Auza'i, Ishaq bin Rahawayh, and Imam Ahmad, stated that this hadith narrated by Uqbah bin Amir has implications for the law of having

to fulfill the requirements proposed by wife. Meanwhile, in the other camp, Sayyidina Ali bin Abi Talib, Atha', Sya'bi, Sa'id bin Musayyib, Al-Hasan, Al-Nakha'i, Ibnu Sirin, Abu Al-Zanad, Qatadah, Al-Zuhri, and guided by Imam Malik, Imam Hanafi, Imam Syafi'i, Laits bin Sa'ad, Sufyan Al-Tsauri, are of the view that the conditions proposed by the wife are not mandatory fulfilled. They direct this hadith from the history of Uqbah to the legal implications of the Sunnah only, not the obligation to fulfill it. They hold this view because of the hadith of Rasulullah SAW regarding his sihr or son-in-law, that something that is not obligatory is only a sunnah to fulfill. (Batthal, 2003)

Regarding *Tarjih pendapat* (opinion priorotizing) in Ibnu Rushd's view, that is superior mazhab is the one that believes that the requirement for monogamy is legal. He said "*The two Hadiths above are equally valid, in fact this was confirmed by Imam Bukhari and Muslim in their books. However, what is familiar in the uşuliyyīn's methodological construct is using specific hadiths against general hadiths. Namely, the legality of the conditions proposed, even though what is generally known is the opposite, this information can also be found in the book al-'utbiyyah.*" (Al-Hafid, 2020)

This methodological pattern of *ushul fiqh* (Islamic legal) was also conveyed by Imam Al-Juwaini, (Al-Juwaini, 2020) Al-Syairazi, (Al-Syairazi, 2021) and Zakariyya Al-Anshari. (Al-Anshari, 2020) Thus, it is known that even though the opinion which does not legalize the condition of monogamy is the most familiar, what was put forward was to win a special argument, namely the legality of the condition of monogamy.

Contemporary Hadith expert, Sheikh Nuruddin 'itr, when commenting on the hadith of Uqbah bin Amir regarding the conditions proposed for this marriage, he also strengthened Ibn Rushd's opinion. He stated that "Lexically, this hadith shows that it is mandatory to fulfill every condition agreed upon in the marriage contract, because the editorial of "*Aḥaqq al-syurūt* or the most important thing related to the conditions" is in the form of *nakiroh* (general noun) which is *mudhofah* (noun head) so that it provides general benefits. Then the editorial "*Mā*" is a general sentence form, so that all the conditions are included in the pronunciation. The obligation to fulfil this requirement is strengthened by the choice of diction "*Inna Aḥaqq al-syurūt*", then added with the editorial "*Ma istaḥlaltum Bihi al-furūj*". "Because this condition gives access to something great, namely the permissibility of having relations with a woman, this is another reinforcement regarding the obligation to fulfill the conditions agreed upon in the marriage contract." (itr, 2016)

It is better not to polygamies your wife when there are indications that she doesn't like it and he himself cannot be materially fair, or even when he is able, and his wife is reluctant to commit polygamy, then it is better not to do it and he will get a reward. Ibn Nujaim stated;

إِذَا تَرَكَ التَّرْجُوحَ عَلَى امْرَأَتِهِ كَيْ لَا يَدْخُلَ الْغَمَّ عَلَى زَوْجَتِهِ الَّتِي عَنْدَهُ كَانَ مَأْجُورًا

"When a husband does not polygamies his wife so that she does not become upset, he will definitely be rewarded for it". (Al-Misri, n.d.)

So, when using the method of thinking "*Dar' al-mafāsīd muqaddam 'ala jalb al-maśālih*", So it is better to have monogamy which will definitely bring happiness, than polygamy which is likely to bring sadness. As a closing statement, there is an interesting statement from an Indian *muhaddis*. Sheikh Muhammad Al-Kasymiri when annotating the hadith relating to the conditions proposed in marriage, he said;

واعلم أَنَّ الشَّرْعَ قد بالغ في إيفاء ما وعد به في النِّكَاح، لكونه من باب المروءة وسلامة فِطْرة الإنسان. والشَّيْء إذا كان من معالي الأخلاق يُحَرِّضُ عَلَيْهِ الشَّرْعُ، لأنَّ الإسلام جاء مُتَمِّمًا لِمَكَارِمِ الأخلاق.

"Know that the Shari'a places great emphasis on fulfilling promises or conditions put forward in marriage because this is a form of mercy and also to maintain one's integrity. If everything is related to noble character, then the Shari'a will definitely recommend it because Islam came to perfect noble character". (Al-Kasymiri, 2020)

So you should not practice polygamy when the situation does not allow it, especially when you cannot be fair to your wives. Because the disaster there definitely falls on the women, while the men don't suffer anything.

## Conclusion

Based on the research above, it can be seen that 5 mazhab differ regarding the legality of the monogamy requirement proposed by wives. According to the mazhab of Syafi'i, Maliki and Hanafi, these conditions are not binding, but if they are violated, they can cause the dowry to be transferred to the *mitsil* type. According to the mazhab Hambali, these conditions are binding, and a wife can even sue for divorce from a husband who violates them. Meanwhile, according to the Dzahiri School, these conditions are also not binding, and can even cause the marriage contract to be invalidated when mentioned as a contract clause.

According to the interpretation of Ibnu Rushd and Sheikh Nuruddin 'Itr, the opinion that legalizes the condition of monogamy is the most superior. Because in the view of *ushul fiqh* experts, specific arguments are won from general arguments. So the hadith of Uqbah bin Amir was taken, not the hadith of Sayyidah Aisyah RA. The author chooses an opinion that legalizes these conditions, with various considerations, including; the strength of the arguments used as a basis, the existence of benefits between both parties and the most important thing is protecting women's hearts.

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