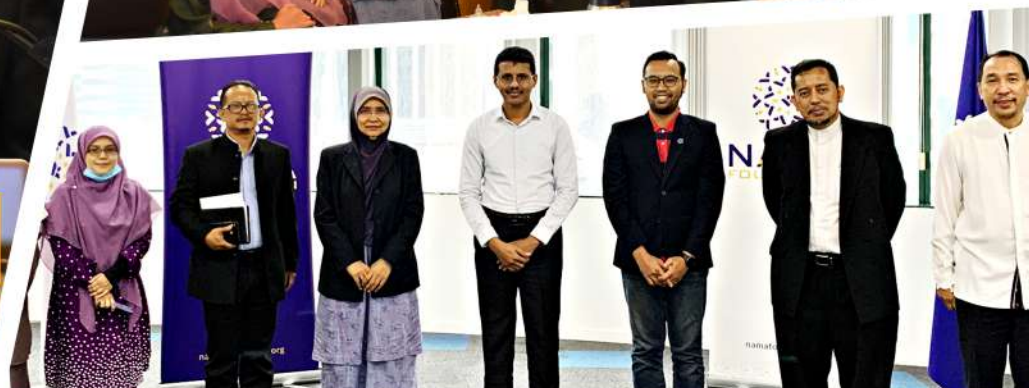


# e-Bulletin ACIS

Edisi  
1/2020

<https://acis.uitm.edu.my/>  
<https://www.facebook.com/acis.uitm>  
e-ISSN 2735-0991



# Preventing Abuse Of Polygamous Marriage

Prof. Madya Dr. Rafeah Saidon

Polygamous marriage was prevalent in the pre-Islamic era. A man was absolutely free to take more than one wife and the marriage was entirely unrestricted, as there were no rules or restrictions whatsoever regarding polygamy. However, in the advent of Islam, the Qur'an reformed the existing law by restricting the number of wives a man might have concurrently to four. The Qur'an also authorised a man to practise polygamy with the condition that he can deal equitably between them. As stated in the Qur'an, "...marry women of your choice, two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one," (al-Nisa': 3). Polygamy in Islam is neither mandatory nor encouraged, but merely permitted. Allah said in another verse, "you are never able to be fair and just as between women, even if it is your ardent desire..." (al-Nisa': 129). The combination of these two verses shows some discouragement of such plural marriages.

With regard to polygamous marriages, Malaysian laws have neither allowed nor prohibited it. It is left to the Court to decide based on the grounds they think fit. A Muslim man who wants to practise polygamy has to apply for and obtain prior written consent or permission from the Shariah Court judge. The application for permission must be submitted in the prescribed manner and must be accompanied by an iqrar (admission) stating the grounds on which the proposed marriage is alleged to be just or necessary, the present income of the applicant, particulars of his commitments and his ascertainable financial obligations and liabilities, the number of his dependants including would be dependants as a result of the proposed marriage, and whether the consent or views of the existing wives on the proposed marriage has been obtained.

To obtain the consent of the Shariah Court, the applicant of the polygamous marriage must satisfy four conditions. First, the applicant must prove that the proposed marriage is just or necessary having regards to, among others, sterility, physical unfitness for conjugal relations, wilful avoidance of an order for restitution for conjugal right, or insanity on the part of the existing wife or wives. Second, the applicant must prove that he has such means to enable him to support all his wives and dependants, including would be dependants. Third, the applicant must prove that he would be able to accord equal treatment to all his wives, as required by Hukum Syara'. Fourth, the applicant must prove that the proposed marriage would not cause legal harms to the existing wife or wives.

There are many court cases that illustrate this point. In the case of Mohd Izuddin Mohd Ilias v Rozeta Hasan ([2008] 4 ShLR 180), the judge stressed that Section 23 (4) was not intended to abolish polygamy, but to provide constructive conditions with the hope that justice could be achieved more effectively among Muslim families. In polygamy, justice is the main concern and it is a religious obligation. Other than fulfilling the conditions of polygamy, the applicant should obtain a written consent from the Shariah Court in which the failure will subject to penalty.

The existence of Section 23 is to control abuse of polygamous marriage as it stated that a marriage contracted without the court's permission shall not be registered under this Act/Enactment (Section 23 of IFLA 1984). However, the provision provides further that, if the court is satisfied that such marriage is valid according to Hukum Syara' the court could order it to be registered but is subjected to penalties as provided by Section 123.

The legal provisions on polygamy as discussed above are considered as guideline provisions to discourage abuse of polygamy, whereas the procedures are introduced to ensure equality in the treatment of co-wives. However, some states have different provisions, for example the state of Terengganu has no such condition, the only requirement is obtaining the permission in writing of a Shariah judge (Section 21 of the Terengganu Administration of Islamic Family Law Enactment 1985).



اَوَّلُ مَا رَزَقْنَاهُ رَحْمَةً مِنَّا  
UNIVERSITI  
TEKNOLOGI  
MARA

Akademi  
Pengajian Islam  
Kontemporari

Hak cipta terpelihara. Tiada bahagian daripada terbitan ini boleh diterbitkan semula, disimpan untuk pengeluaran atau ditukarkan ke dalam sebarang bentuk atau dengan sebarang alat juga pun, sama ada dengan cara elektronik, gambar, serta rakaman dan sebagainya tanpa kebenaran bertulis daripada Akademi Pengajian Islam Kontemporari (ACIS), Universiti Teknologi MARA terlebih dahulu.

Akademi Pengajian Islam Kontemporari (ACIS),  
Universiti Teknologi MARA,  
40450 Shah Alam,  
Selangor Darul Ehsan,  
MALAYSIA  
Emel: korporatacis@uitm.edu.my

**Terbitan**  
Jawatankuasa Perhubungan  
Korporat & Media ACIS



**UiTM** *di hatiku*