

CHAPTER IV

ANALYSIS

A. ANALYSIS THE METHOD OF SITI MUSDAH MULIA IN INTERPRETING POLYGAMY VERSES

Like I said before that there are many different interpretations about the rule and the law of polygamy in Islam. Generally, there are three opinions; they are first, who allowing polygamy with the requirement as write in Qurân textually. It is that the wife is no more than four and the husband should be justice between them only in materially, because they assumed that being justice immaterially is out of human possibility.¹ And the second is who allowing polygamy with a strict requirement in being justice. It is that the husband has to be justice materially and immaterially, either in economy, love and sexual intercourse turn. And if the husband can't do that, he is forbid to do polygamy, because it will hurt the sense of wives and even arising some conflict between wives and childrens.² And the third is who absolutely forbid polygamy. Because this group assumed that no one can being justice between wives both of materially and immaterially except the Prophet Muhammad. Their argument is the verse of *an-Nisâ* [4]: (29) which stated that a husband is impossible to being justice between wives although he truly wants to do it. Besides that this group also assumes that polygamy will make some

¹ This group is the dominated by classic interpreter. Such as ath-Thabariy, Fakhruddin ar-Razi, etc. this interpretation is caused the historical life and culture around them, where the patriarchal is the dominant culture.

² This group is dominated by the first modern interpreter. Such as: Muhamamd Abduh and Rasyid Ridha. Even some feminists like M. Shahrour who allowing polygamy with a strict requirement (Quantitative and Qualitative requirements).

mafsadat for wife and children. And based on fiqh principle that something which have *mafsadat* is must be avoided and abolished.³

From those opinions, we can see that Musdah Mulia have a different opinion with other interpreter about polygamy, especially with the classic interpreter. For example is ath-Thabariy. From his interpretation above we can conclude that he is allowing polygamy except if the husband fears to not be able to justly between wives. From this conclusion we know that ath-Thabariy understand polygamy verse textually. The same opinion also comes from Ibrahim Hosen. He said that there is no different opinion about polygamy between Moslem scholars. They are agree that polygamy is absolutely allowed, because the absolutely of polygamy verse. About the justice requirement, both of ath-Thabariy and Ibrahim Hosen said that it's only on materially cases, such as residence, money and clothes. The husband is not strived for being justice in love and sexual intercourse.⁴ The other interpreter is Sayyid Quthb, in his *tafsîr fî dzilâl al-Qurân*. In this tafsir, Sayyid Quthb said that polygamy verse is not meant for legalizing polygamy, commanding polygamy neither for forbidding polygamy. But this verse comes to give limitation and requirements. Unfortunately, Sayyid Quthb said that the justice requirement is only in material, not in feeling and love.

Besides ath-Thabariy and Sayyid Quthb, Shahrour also has a different interpretation of polygamy verses. If ath-Thabariy not required a strict requirements in polygamy except being justice materially, Shahrour make two kinds of requirements in polygamy, they are qualitative and quantitative requirements. Qualitative means that the husband should be justice between wives immaterially, such as in love, sexual intercourse and attention. While quantitative

³ This group is consists of some radical feminists. And one of them is Musdah Mulia. This group thinks that polygamy is only bring a suffering for women, because no one can be justly and makes the wife happy in polygamy marriage. This opinion influenced by their modern opinion and their society which began understood the gender equality discourse and the rights of women.

⁴ Marwan Saridjo, *Cak Nur...* p. 92

is related to the number of wives. Shahrour required the “minimum limitation” (*hadd al-andâ*) and “maximum limitation (*had al-a'lâ*)”.⁵ So besides being justice immaterially, according to Shahrour the husband also can marry with four wives maximally, and the wives are should the widow, like Muhammad done.

And about the interpretation of Musdah Mulia herself, we can conclude that she prefer to make the law of polygamy is *harâm lighairihi*. In her terminology it means that polygamy become forbidden because the causes and the impact (*mudharat and mafsadat*). This conclusion is based on her understanding of some marriage verses in Quran. She collects those verses and then analyzes it, and from her analysis she gets a conclusion that actually the ideal form of marriage in Islam is monogamy. Besides that, Musdah Mulia also said that almost no one can be justly between wives materially and immaterially, except The Prophet Muhammad. So the result of interpretation on *surah an-Nisa* verse three is not for allowing polygamy, but for forbid it, because that verse is not talking about polygamy, but it's talking about treating the orphan children and being justice.

Besides the interpretation of polygamy verses, her conclusion also based on the fact in our society which shows that there are many negative impact and problems of polygamy, and also based on her research. As we know that she is a researcher in some institutions. From her research, she gets some fact that there are many falsification and roguishness in polygamy marriage, such as identity falsification and falsehood upon the wives, either the new or the old wives. Besides the causes, polygamy also has some bad impacts for both of husband, wives and children, such as oppression against wives, bad treating of children, injustice life between wives and children etc.

⁵ Minimum limitation means that the minimum number of wife in polygamy is one. And maximum limitation means that in polygamy is maximally having four wives.

From some interpretations above, we can see that there is an explicitly differences of Musdah Mulia's interpretation on polygamy verses. Where in interpreting some Qurânic verses, Musdah Mulia give a big attention and emphasize on the problem in this time when she is life. The way in interpreting polygamy verses, she used thematic method. Where she collects some marriage verses and interprets it comprehensively. She is also considering the causes revelation of a verse before deciding an interpretation.

Besides that we also can see that Musdah Mulia's interpretation is kind of gender perspective interpretation. It means that her interpretation is based on the women interest, experience and dedicated for women. So this interpretation is based on the women point of view. This conclusion is based on her books and articles which always emphasizing on women problems and using women interest in analyzing some contemporary problems. This is the main purpose of Musdah Mulia, in her interpretation she wants make an interpretation which based on women perspective and for women life change to make a justice relationship between husband and wife in a family. This is the might be an expression of her disappointment and dissatisfaction of some interpretation before. As we know that most of old interpretation is always understanding and interpreting the verses with male dominated perspective, because the culture at that time is a patriarchal domination.

There are many causes which influenced on Musdah Mulia's interpretation. Besides the dissatisfaction of some interpretations before, education and culture in her family and society, she also said that she was very disappointment with her teacher in As'adiyah Islamic Boarding School in Sengkang. She said that when in Islamic boarding school that teacher is always discussing about the despicable of sexuality and homosexuality. But in the next time the teacher was known as a homosexual. And this experience automatically influences in her thought and

interpretation and as we know Musdah Mulia is not blaming the natural homosexual, because in her opinion homosexual is given by God.⁶

While in polygamy, the most influence of her thought besides experience is also the interpretation of Muhammad Abduh. Musdah Mulia thinks that Muhammad Abduh interpretation is the most appropriate with the social problem in this time, for example in using fiqh principle. And there are some other resemblance between Muhammad Abduh and Musdah Mulia. As we know that there are some characteristic in Muhammad Abduh interpretation, such as the universal essence and spirit of Qurân, carefulness in using *shahâbah* opinion and rejecting *isrâ'iliyat*, and making relevance the interpretation toward social necessity.

In the case of polygamy, Musdah Mulia has a certain purpose in deciding forbidding of polygamy. Musdah Mulia wants make a lovely and peaceful relationship in a family and there is no violence and oppression each other, either in monogamy or polygamy marriage. Musdah Mulia know that always there is possibility of arising violence in a family, either monogamy or polygamy. But in her opinion the justice maintenance is more important to practice in polygamy marriage, because the wife is more than one, and this is has more big possibility of arising violence, oppression and injustice.

From all interpretation above, we can see that all of those interpreters are has a sameness, it is that polygamy verse is on the context of caring and treating the orphan children. But they are also has a differences in their interpretation, it is the way and the result of understanding the justice requirements.

B. THE STRENGTH AND THE WEAKNESS OF MUSDAH MULIA'S INTERPRETATION

⁶ In interviewing with Musdah Mulia at March, 22nd 2010

We can't deny that always there are some weakness and strength in a thought and interpretation. But this is a humane. So do in Musdah Mulia's interpretation, there are many strength and weakness there, because this is not an absolutely opinion. She is only makes an effort to make a change of law and culture by *ijtihad*. According to Musdah Mulia, *ijtihad* is very important in order to solve some contemporary problems. As she cites Abdul Wahab Khallâf opinion that although Qurân has consist of some detail laws, but the number of problems is more than the number of available laws.⁷

Besides that, the other argument of Musdah Mulia in doing *ijtihad* is the saying of the Prophet Muhammad which explains the important of *ijtihad*. They are:

انّ الله يبعث على كلّ رأس مائة سنة من يجدد دينها

And when the Prophet Muhammad said to Mu'sdz ibn Jabal..." if in a place you find some problems, you should solve it by Qurân and Sunnah, but if you are not found in both of them, you should use your mind".⁸

1. The Strength of Musdah Mulia's Interpretation on Polygamy verses

As we know that polygamy discourse and law by Musdah Mulia is not a new thing. There are some feminist has discussed before. But we also can't deny that her opinion is a new discourse in Indonesia. We can say that Musdah Mulia is the first Moslem women feminist in Indonesia which has some liberal opinion of women discourse. But this "new" interpretation is an offer for us in understanding polygamy verses. Musdah Mulia tries to interpreting the Qurân as Qurân wants

⁷ Musdah Mulia, *Poligami: Budaya...* p. 70.

⁸ Musdah Mulia, *Ibid*, p. 70-71. According to Musdah Mulia, those two hadith is clearly explain the important of *ijtihad*.

based on the “spirit of Qurân”. Or in Fazlur Rahman terminologically named by “*the Basic Elan*” (basic spirit) of Qurân which consist of moral, social and economy justice (Fazlur Rahman, 1979).⁹ Musdah Mulia also tries to make an interpretation which based on the will of God. Because from her understanding of verse *al-Baqarah* (2): [30], she concludes that human is the representation of God (*khalîfah fil ardh*), so that human given mind and logic to think by God which differs from animal. And because the human is the representation of God so that the most important in arranging the law and interpretation is for happiness and public benefits (*kemaslahatan*) of human being itself.¹⁰

One of power from her interpretation is that her interpretation of polygamy verses can give us a new discourse and view of polygamy. In her interpretation which has a gender perspective characteristic, we know that there are many problems should be solved in a marriage problem, especially in polygamy marriage. As we know that this is the first interpretation in Indonesia which bravely said that polygamy is forbidden. This opinion automatically influenced in our society, either there are many pro and contra groups. But some new discourse offered by Musdah Mulia which has written in some books and articles automatically has some impact in our society. There are some persons who read and analyze the book and articles by Musdah Mulia will have a different respons. Some of them agree and automatically it will influence in their life. But there are also some person who disagree with Musdah Mulia’s opinion, and they will reject it, and say that Musdah Mulia’s opinion is out of Islamic teaching.

The other strength of her interpretation is that she always pay attention on the all people. Not only for Moslem, her interpretation also suitable for non-Moslem, because Musdah Mulia is very recognizing and appreciating all tribes and religion

⁹ Ilyas Supena, *Dekonstruksi dan Rekonstruksi Hukum Islam*, Yogyakarta: Gama Media, 2002, p. 270.

¹⁰ Musdah Mulia, *Poligami...*, p. 69.

or pluralism. Besides that her interpretation also not only totally pays attention on women, even the main purpose of her interpretation is based on gender perspective. For example in forbidding polygamy, Musdah Mulia also said that it is also for men interest. Because from her research she found there are many husband which doing polygamy are often beguiling their wives and actually suffering and confusing in facing their wives.

2. The Weakness of Musdah Mulia's Interpretation on Polygamy Verses

Lately, there are many interpreters arising, either in Indonesia or in other countries. Each of them always brings and offer some new theories based on their analysis. In understanding Qurân, an interpreter can have a different opinion with other interpreter. This is because of the differences method and characteristic in interpretation, the differences of socio religion condition around them at that time. For example, Muhammad Shahrour come whit his "Limit Theory" in interpreting Qurân, Fazlur Rahman with his "Double Movement Theory" and including Musdah Mulia with her Feminist-social analysis method. All of them try to come as *mujtahid* who want to make a renewal and deconstruction of interpretation. As we know that there are some requirements for being *mujtahid*, and it's not easy requirements. And as a product of human being, the interpretation is not free from weakness. So do in Musdsah Mulia's interpretation.

From analyzing Musdah Mulia's interpretation we can see that there are some weaknesses on her interpretation. One of them is that in interpreting Qurânic verses, Musdah Mulia seems that only interpreting randomly, because, as we know that she has no a special interpretation book (*kitâb tafsîr*). And as long my research I don't find the special interpretation book. I only find the data from some books

and articles which talk about polygamy directly and indirectly. Musdah Mulia named it by thematic interpretation (*maudhū'i*). Musdah Mulia has two books which totally talk about polygamy; they are *Islam Menggugat Poligami* and *Poligami: Budaya Bisu yang Merendahkan Martabat Perempuan*. But those are not kind of interpretation book. Those are only a book which discuss about the fact of polygamy, the history of polygamy and some true story of women's experience who is the victim of polygamy. Besides that Musdah Mulia also explains the renewal agenda and reformation which should be realized to abolishing polygamy tradition. She also suggests some renewal and solution for women's empowerment and liberation. Even in those books she also gives some critique against Indonesian marriage law which only makes oppression against women.

Besides those main books about polygamy, Musdah Mulia also always implicitly discuss about polygamy in some other books. Such as in *Muslimah Reformis*, even that is not a book about polygamy, but Musdah Mulia also discuss a little bit about polygamy. This is not only run in polygamy cases, Musdah Mulia also do the same thing in some other cases, such as about interfaith marriage. She is not writes her idea in an interpretation book (*kitab tafsir*). But she is only a thematic interpretation on some social discourses and she spread it on her books, seminars and articles.

Discussing in *maudhu'i* method, we know that there are some steps in interpreting Qurân thematically. Such as arranging the verses systematically and chronologically based on *asbabun nuzul*, knowing correlation (*munasabah*) of verses in each *surah*, and paying attention on the '*am, khos, muthlaq and muqayyad* verse.¹¹ But we can't find those steps in Musdah Mulia's interpretation. For example in the case of *asbab nuzul*, she is not discuss some *asbab nuzul* of polygamy verses deeply, she is only mention the story by Fatima and some other

¹¹Abdul Hayy al Farmawi, *Metode Tafsir Mawdu'iy Suatu Pengantar*, (PT Raja Grafindo Persada: Jakarta, 1996), p 46

hadith which only supporting her interpretation. And this is might be one of weaknesses on her interpretation.

Besides that most of her interpretation are seems liberally. Even her opinions always claimed out of Islamic teaching, such as her opinion about homosexuality, interfaith marriage, interreligious relationship and pornography. Basically, Musdah Mulia is a Nahdhiyyin follower, but her opinions are always seems contradictive with Nahdhiyyin teaching. Some social groups, conservative scholars and some people who are not agree with her opinion always claimed that she is only a “doll” or “antek-antek” of America. Because her liberal opinion is seems only the product of western teaching. Even they also said that Musdah Mulia has given much money of her thought from America. Their argument is when Musdah Mulia was chosen by Italian Foreign Affair as the winner of “Women of The Year” award in 2009. So according to the Writer, Musdah Mulia is too brave and distinct of showing her opinion, whereas most of her opinions are different from culture and thought of our society.

Besides that, the other weakness of Musdah Mulia’s interpretation is that there is no clear evidence in a table or percentage the fact of polygamy. It should there a statistic data of fact polygamy and then calculating how many violence, injustice and oppression against women in polygamy marriage. And how many women feel that she is a victim of polygamy marriage. Because with a real statistic data we can make a scientific conclusion that polygamy is not good and should abolished because have many negative impact. We can’t find that statistic data in Musdah Mulia’s book, she is only describes some fact and real story from the victim of polygamy either from husband or wife. And according to the writer those stories is can’t represent yet the fact of polygamy in Indonesia.

The last is that some of her opinions are not an original and new discourses, it is only like imitating and continuing some feminist opinion before. As we know

that there are some women feminist in some countries which try to struggle the women empowerment, such as Amina Wadud and Fatima Mernissi. They have some new feminism interpretation before Musdah Mulia, like about women leadership, inheritance and including polygamy. So Musdah Mulia's opinion about polygamy is not a new discourse.

Although there are some weakness of Musdah Mulia's interpretation, but we can deny that Musdah Mulia has do great thing in women discourse, especially for Indonesian women. Musdah Mulia will to get abusalls and indignities only for women empowerment changes. We should proud of her struggle.

C. THE RELEVANCE OF MUSDAH MULIA'S INTERPRETATION IN INDONESIA

1. Deconstruction of Marital Law

In the late of 2004, as we know that Musdah Mulia and her team by CLD-KHI team have tried to realized her interpretation by making new law as comparison of the old of Islamic Law Complies (KHI). They have some reason in arranging that draft, as written in article by Musdah Mulia on the title "Amandemen Pembaruan Hukum Perkawinan Melalui Counter Legal Draft Terhadap Kompilasi Hukum Islam", at least there are for reason, they are first, for supporting and realizing the government will about abolishing violence in family (Zero Tolerance Policy) as the implementation of UU No. 7 1984, second is as following up of some thesis and dissertation which conclude that there are some inappropriate law of KHI with some international law, third is a response of Religion Judicature Department suggestion of renewal KHI, the fourth is the following up of the indictment of applying Islamic law of society, such as in South of Sulawesi, west Sumatra, and Madura, fifth is as a

response of some Islamic law renewal in some countries, such as Tunisia, Syria and Egypt, and sixth is a response of research in some region (West Sumatra, West Java, Nusa Tenggara Barat, and South of Sulawesi) in Indonesia which actually some judge in that region want a renewal of Islamic law (KHI).¹²

That team tries to make a comparison law to change the old KHI, but unfortunately the product of that team was saw as a liberal thought and out of Islamic teaching. So that why, finally that new draft was pulled by Religion Ministry Affairs and claimed as an illegal thought, although actually that team is legal, based on the Religion Ministry Department command.

After the failure of that time to make an Islamic law renewal (CLD-KHI), Musdah Mulia was never gives up to realize her purpose to straight up the justice in society, especially in a family. She is always make an effort for spreading and realizing her thought in many seminars, discussion and writes some books. And for realizing her thought is need a hard effort and long time.

As we know that lately there is a big issue about marriage law itself in Indonesia. It's usually called by RUU HMPA in Marriage issues (Rancangan Undang-Undang Hukum Materiil Peradilan Agama Bidang Perkawinan).¹³ This planned law is for completing the rules in UU No. 1, 1974 as the source of Islamic Law Complies (KHI). This planned law consists of 24 chapters, such as discussing about the requirements in marriage, divorce, custody in marriage, interfaith marriage, reconciliation of divorce, and right and obligation of wife and husband in a family. The most crucial issue in this draft is about the criminalization of some cases which seems break the rule in

¹² Musdah Mulia, *Amandemen Pembaruan Hukum Perkawinan Melalui Counter Legal Draft Terhadap Kompilasi Hukum Islam*, an Article, 2004.

¹³ About the completely of this draft can saw in the appendix of this thesis. This draft got from <http://lrc-kjham.blogspot.com/2010/02/undang-undang-republik-indonesia-nomor.html> at March, 4th 2010.

Indonesia which this criminalization was not found in the old marriage law or in KHI. There are three points which will criminalize; they are illegal marriage (nikah sirri), polygamy and periodically marriage (nikah mut'ah).

In the draft which has got national legalization program (Prolegnas) mentioned that a marriage must be registered in marriage institution (section 4), married with the second, third or fourth wife must be permitted by the court (section 52), and a marriage in a time until in a promised time (contract marriage) will be criminalized. All those criminal marriage has been ruled in the section 141 until 148. In the case polygamy was ruled clearly in the chapter IX, at least there are six rules to do polygamy. In the section 50, mentioned that for having more than one wife, a husband must be able to give materially and immaterially necessity against their wives and children justly.

In the section 51 mentioned that when a husband marries with the second, third or fourth wife, he must assure the residence, living necessity and sexual intercourse turn. And the next section mentioned that a husband who wants to polygamy must propose his will to the court (section 52). And about the permission from the court, the court only can give the permission in these following requirements: if the wife can't do their obligation and duty, or the wife has a physical defect, or illness which can't be healed, or the wife can't have a baby (section 53). And of course the permission from the old wife is a must; even the permission of wife must in written and spoken permission in the court (section 54). Unfortunately in the next section mentioned that a husband still can do polygamy although the old wife doesn't give the permission. In that section stated.

“Dalam hal isteri tidak mau memberikan persetujuan, dan permohonan izin untuk beristeri lebih dari satu orang telah memenuhi persyaratan sebagaimana dimaksud dalam Pasal 53 ayat (1), Pengadilan dapat menetapkan pemberian izin setelah memeriksa dan mendengar keterangan isteri yang bersangkutan di persidangan

Pengadilan, dan terhadap penetapan ini tidak dapat dimintakan banding atau kasasi”
(section 55).”

As we know that there three main controversial points will be criminalized if doesn't run as written in the rule. Those criminalization topics were stated clearly in the chapter XXI. One of those points is about polygamy. In that section mentioned that a husband who will marries with the second, third and fourth wife without permission of the court as stated in section 52 verses 1 will be criminalized with fine maximally six millions rupiah or prisoner punishment six months maximally.

We should proud of composing that draft. But there are some weaknesses from that rules, such as about the criminalization of illegal marriage. As we know that there are some cases which the husband makes a false marriage document. Unfortunately the wife doesn't know about that, because actually the husband was marries her illegally. From this case, both of husband and wife will be criminalized of that, although the wife was cheated and be a victim. The other case is a limitation of age in marriage, which in that draft mentioned that a marriage can be organized even the women is 16 years old. Of course this rule is inappropriate with the children protection law. Because in this age, the women is still have a susceptible reproduction phases.

In the case polygamy itself, we can't find the spirit of abolishing and forbidding polygamy. Even in that draft mentioned that a husband still can polygamy although the wife not give the permission, but the husband must get the permission from the court. Besides that in that draft also mentioned some causes which can be a reason for husband to polygamy, such as the wife have a chronicle illness, can't do the duty, or can't give the baby. Unfortunately, in that draft was not mentioned if the reason is in the husband. From those weaknesses, we can see that still there are some points which still supporting

patriarchal system and arranged based on the male domination. Because some points in that draft still can't covering the women necessity for realizing gender equality.

From those descriptions we can see that there is inconsistency in the case of polygamy in that draft. But from some rules of polygamy in that draft might be one progress step for marriage law in Indonesia. As we know that there is criminalization for who will do polygamy without obeying the law. We hope that this draft can reduce polygamy marriage and some negative impact from polygamy step by step.

We can say that the arising of this draft is from the follow up and the continuing of the draft of CLD-KHI at 2004. Because there are some points which seems same with some points in CLD-KHI. As the writer said before that need a hard effort and long time for realizing the gender equality and justice life, and a family without discrimination, oppression and exploration each other. So in my opinion, it's not impossible to realize Musdah Mulia's interpretation. Because with the effort of arousing awareness of our society about gender equality and justice life, time and time realizing that purpose is not an impossible thing. Realizing a justice and aware of justice society is not impossible in a society which have a high gender awareness, sensitivity and knowledge.

From those explanations, we can say that Musdah Mulia's opinion has relevance with this problem. Where Musdah Mulia said that the law of polygamy is *haram lighairihi*, and she wants to make a law deconstruction in Marriage Law in Indonesia. And as we know that the draft of RRU HMPA is one effort of that deconstruction.

2. Gender Equality in All Aspects

As Musdah Mulia said that there are two solutions for abolishing polygamy, they are with law deconstruction and enforcement, and cultural deconstruction. As we know from description above, that there is one progress step law in our marriage law in Indonesia. And the second solution is women empowerment and gender education in all aspect. There are some ways to realize this solution, such as gender education and awareness in all aspect, build the economical independency of woman so that the women will not dependent on her husband, and maintaining the women's morality and religiosity. From those solutions, we hope that the women will have a high awareness against their rights and their role in a society. So do for the husband, we hope that the husband will understand well their wife and the true meaning of marriage. So it will create an understood and lovely relationship between husband and wife. And hope they will respect each other. And finally there is no oppression, discrimination, and exploitation one another.

And as we know that Musdah Mulia never stops spreading her thought. And until now, she together with some organization which uphold gender equality and justice, and which concern on the enforcement of human rights and pluralism always try to spread and socialize their thought. In some seminars, by writing some books and articles, by making some programs and law proposal on government, Musdah Mulia and friends is never gives up to spreading her thought and realize an equal and justice life. It's not impossible to realize it, although it will need a long time and hard effort. And it's also not impossible to make Musdah Mulia's interpretation be relevance in this time to solve some social problems.