THE CONCEPT OF POLYGAMY ACCORDING TO MUHAMMAD SHAHRUR AND ASGHAR ALI ENGINEER; A COMPARATIVE STUDY

THESIS

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iii

ABSTRACK

Ida Royani. *The Concept of Polygamy According to Muhammad Shahrur and Asghar Ali Engineer; A Comparative Study.*

Di dunia Islam, poligami merupakan salah satu isu gender yang hingga sekarang selalu menjadi polemik dan perdebatan aktual di antara para feminis dan kalangan skripturalis. Para feminis beranggapan bahwa ajaran Islam tentang pernikahan sesungguhnya mengajarkan perkawinan monogami, bukan poligami. Sementara kalangan skripturalis beranggapan bahwa poligami merupakan bagian dari ajaran Islam yang secara tekstual mendapatkan legitimasi dari al-Qur'an. Dengan kata lain, terdapat tiga pendapat tentang poligami; *pertama*, kelompok yang mutlak membolehkan poligami. *Kedua*, kelompok yang membolehkan poligami dengan syarat-syarat yang ketat dan dalam kondisi tertentu. *Ketiga*, kelompok yang mutlak melarang poligami.

Dalam kaitan ini, Shahrur dengan metode *tartil*-nya menerapkan teori *hudud* untuk menjelaskan ketentuan hukum. Terdapat dua pembatasan istilah dalam diskusi tentang poligami, yaitu pembatasan pada kuantitas (*al-Hadd al-Nau'iyyah*) empat istri dan pembatasan pada kualitas (*al-Hadd al-Kammiyyah*). Hal ini menunjukkan bahwa istri kedua, ketiga, dan keempat adalah janda dengan anak-anaknya, yang suaminya meninggalkannya.

Shahrur membolehkan poligami dalam dua kondisi, yaitu; *pertama*, istri kedua, ketiga, dan keempat adalah janda-janda beranak yang suaminya meninggalkannya. *Kedua*, suami harus memiliki perasaan gelisah bahwa dia tidak akan dapat berbuat adil kepada anak-anaknya. Jika kedua syarat di atas tidak terpenuhi, poligami akan gagal. Syahrur menerapkan dua kondisi ini berdasarkan struktur norma bahasa dalam al-Qur'an surat al-Nisa' [4]: 3.

Sementara Asghar, ia menggunakan metode hermeneutik-nya dengan cara membangun "hirarkisasi" atas ayat-ayat al-Qur'an. Hal ini untuk menghindarkan dari kesan pertentangan antara satu ayat dengan ayat yang lain. Ia memberikan syarat-syarat tertentu terkait poligami, yakni; *Pertama*, dengan jaminan penggunaan harta anak dan para janda secara benar. *Kedua*, dengan jaminan keadilan bagi semua istri pada tingkat materi. Dan *ketiga*, membagi kasih sayang secara adil di antara istri-istrinya. Jika tidak terpenuhi, maka poligami dianggap gugur.

Jenis penelitian ini adalah penelitian kepustakaan, bersifat deskriptif-analitik. Dalam mengumpulkan data yang diperlukan menggunakan sumber data primer dan sekunder. Data yang dikumpulkan kemudian dianalisis menggunakan penalaran induktif. Adapun pendekatan yang digunakan dalam penelitian ini adalah pendekatan komparatif dan Content Analysis.

Keywords: *Polygamy, al-Nisa' [4]: 3, Comparative Study*

TABLE OF CONTENT

TRANSLITERATION

Table of the system of transliteration of Arabic words and names used by
the State Institute of Islamic Studies, Sunan Ampel Surabaya.

b	=	ب	z	=	ز	f	=	ف
t	=	ت	s	=	س	q	=	ق
th	=	ث	sh	=	ش	k	=	ك
j	=	ج	ṣ	=	ص	l	=	ل
ḥ	=	ح	ḍ	=	ض	m	=	م
kh	=	خ	ṭ	=	ط	n	=	ن
d	=	د	ẓ	=	ظ	h	=	ه
dh	=	ذ	ʿ	=	ع	w	=	و
r	=	ر	gh	=	غ	y	=	ي

Short   : a = ´ ; i = ; ; u = ´

Long   : ā = ا ; ī = ي ; ū = و

Diphthong : ay = ي ا ; aw = و ا

xi

CHAPTER I

INTRODUCTION

A. The Background of the Study

Polygamy[1] is one of the important topics which have the special attention from God. It is not surprising if He puts it on the first chapter al-Nisa' in Holy Qur'an, in the third verse, exactly. But, the commentators (*mufassirun*) and jurists ignore the general wording of the verse and close interrelatedness between polygamous problems and the widows which have orphans.[2]

In the Islamic world, polygamy has become an actual subject of debate between feminists (Muslim) and conservative Muslims. Conservative Muslims and middle Ages thought that polygamy is permitted altogether, with the reason that polygamy get legitimating in Holy Qur'an. On other hand, with various argumentations, the modern thinkers of Islam allow polygamy with the strict requirements. According to them, monogamy is an ideal purpose of Islam in marriage.[3] There are also modern Muslims and the Islamic marriage laws which regard that polygamy is forbidden.

Fortunately, there are three opinions about polygamy. *The first* is the group who allows polygamy such as majority of conservative Muslims and

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[1]Polygamy is a marriage between a man with two women or more. But it tends to be defined a marriage between a husband with two wives or more. See Pius A Partanto, M. Dahlan Al-Barry, *Kamus Ilmiah Populer*, (Surabaya: Arkola, 1994), p. 606.

[2] Muhammad Shahrur, *Metodologi Fikih Islam Kontemporer*, translated by: Sahiron Samsudin, (Yogyakarta: Elsaq Press, 2007), p. 427.

[3] Inayah Rahmaniyah and Moh. Sidik, *Menyoal keadilan dalam Poligami*, Edition IV, (Yogyakarta: PSW UIN Sunan Kalijaga, 2009), p. 2.

1

middle ages with the requirements can give necessity of life to his family and capable of the justice to his wives. From the example, mazhab Hanafi (school of thought concerning muslim law) such as al-Sarakhsi, al-Kasani, Imam Malik and Imam Syafi'i.

The second is the group who allows polygamy with the strict requirements and in certain condition, among them Muhammad Abduh, Muhammad Shahrur, Asghar Ali Engineer, Amina Wadud, Quraisy Shihab etc. And *the third* is the group who prohibit polygamy absolutely, such as al-Thahir al-Haddad and Habib Bu Ruqoiba.[4]

At the same time, there are three Islamic laws that forbid polygamy. These are: Turkish Law (the Turkish Civil Code 1926), Druze society in Lebanon (Law of 24 Shabat 1948), and Tunis with the family law (Code of Personal Status/Majallat al-Shakhsiyah No. 66, 1956), they prohibit polygamy altogether and punish the people who break the polygamy rules.[5]

The point is there are many argumentations about polygamy in public society rules. As being known, there are verses which allow polygamy (textually), although there are many opinions about it.[6]

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[4] Khoiruddin Nasution, *Perdebatan sekitar Status Poligami*, (Jurnal Musawa, No. 1, Vol. 1, March 2002), p. 59-78.

[5] The reason is impossible a husband be able to justly to his wives (in chapter al-Nisa' [4]: 3). In Tunis family law, if a husband was married (polygamy) before divorced, he will be punished for one year in prison or a 240.000 malims fine or both of them. See Dawoud El Alami and Doreen Hinchliffe, *Islamic Marriage and Divorce Laws of The Arab Word* (London, The Hague, Boston: Kluwer Law International, 1996), p. 242.

[6] Abdul Mustaqim. *Konsep Poligami Menurut Muhammad Syahrur*, (Jurnal Studi Ilmu-ilmu al-Holy Qur'an dan Hadis, Vol. 8), p. 45.

2

As mentioned in Holy Qur'an chapter al-Nisa' [4]: 3:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُواْ فِى ٱلْيَتَٰمَىٰ فَٱنكِحُواْ مَا طَابَ لَكُم مِّنَ ٱلنِّسَآءِ

مَثْنَىٰ وَثُلَٰثَ وَرُبَٰعَ ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُواْ فَوَٰحِدَةً أَوْ مَا مَلَكَتْ أَيْمَٰنُكُمْ ۚ ذَٰلِكَ

أَدْنَىٰٓ أَلَّا تَعُولُواْ ۝

Meaning: *"if you fear that you shall not be able to Deal justly with the orphans, marry women of your choice, two or three or four; but if you fear that you shall not be able to Deal justly (with them), then only one, or (A captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice".*

Literally, this verse explains that a man is permitted to marry up to four wives. Therefore, this verse is used as a theological argumentation by them who allow polygamy marriage.

After reading the background above, the researcher will try to analyze deeper about the concept of polygamy (a comparative study) by the second group, especially Muhammad Shahrur and Asghar Ali Engineer's view.

Therefore, in brief, the concept of polygamy possible can be changed when the time change and the demanding of its benefit is also change. Especially the polygamy is part of mu'amalah problems, when the mind is given an authority to look for the best way and suitable with the time's demand.

Hopefully, the study about the concept of polygamy in Holy Qur'an chapter al-Nisa' [4]: 3, according to Muhammad Shahrur and Asghar Ali

3

Engineer, can help human to think more widely (deeper) and rational toward the problems that is faced today.

B. Identification and Limitation of the Problem

As being known, polygamy is one of the gender issues, it has become a polemic until now. So that, there are many problems were appeared in this study, they are:

1. How are the view and the opinion of conservative and modern Muslims about polygamy?

2. How are the view and the opinion of conservative and modern Muslims about the verses that explain polygamy?

3. How are the polygamy requirements?

Therefore, to make it more focus and suitable with the theme, this study is limited only in comparative study between Shahrur and Asghar's views about the concept of polygamy in Holy Qur'an chapter al-Nisa' [4]: 3, namely explaining each interpretation to understand that concept. Furthermore, the researcher will explain the similar and difference of their interpretation about that concept.

Shahrur and Asghar connect it to look after the orphans and widows in that verse. In proving it, Shahrur tried to prove it by his *tartil* method with *syntagmatic-paradigmatic* analysis. Meanwhile, in interpreting the verses of the Holy Qur'an (included al-Nisa [4]: 3), he (Asghar) used a hermeneutic approach, a way to build "hierarchy (*hirarkisasi*)" which this way has been

4

used to avoid from controversial impression between one verse with others, as being known that hierarchy already began to be developed by conservative muslims, there are devision of the Holy Qur'an into *Am-Khass, Mutlaq-Muqayyad, Nasikh-Mansukh*, etc. Then the problem is the methodology, as a part to effort to understand the verses of the Holy Qur'an, will always be debated.

C. The Problem of the Study

After analyzing the problems above, the researcher tries to formulate the problems of the study below:

1. How is the concept of polygamy according to Muhammad Shahrur in Holy Qur'an chapter al-Nisa' [4]: 3?

2. How is the concept of polygamy according to Asghar Ali Engineer in Holy Qur'an chapter al-Nisa' [4]: 3?

3. How are the similarity and difference of interpretation between Muhammad Shahrur and Asghar Ali Engineer about the concept of polygamy in Holy Qur'an chapter al-Nisa' [4]: 3?

D. The Objective of the Study

1. To analyze Muhammad Shahrur's views about the concept of polygamy in Holy Qur'an chapter al-Nisa' [4]: 3.

2. To analyze Asghar Ali Engineer's views about the concept of polygamy in Holy Qur'an chapter al-Nisa' [4]: 3.

5

3. To compare the similarity and difference views between Muhammad

Shahrur and Asghar Ali Engineer's about the concept of polygamy in

Holy Qur'an chapter al-Nisa' [4]: 3.

E. The Definition of Key Terms

- *Tafsir*

    Tafsir (Arabic: تفسير, *tafsir*, "interpretation") is the Arabic word for

    exegesis or commentary, usually of the Holy Qur'an. *Ta'wil* is a subset

    of tafsir and refers to esoteric or mystical interpretation. An author of

    tafsīr is a commentators (*mufassirun*) (Arabic: مفسّر, commentator

    (*mufassir*), plural: Arabic: مفسرون, commentators (*mufassirun*).[7]

- *Polygamy*

    Polygamy comes from the *Greek.* It consists of two words, namely *poly*

    or *Polus*, it is meant a lot. And *gamein* or *Gamos*, it is meant wedding or

    marriage.[8] Terminologically, polygamy is a marriage between a man

    with two women or more. But it tends to be defined a marriage between

    a husband with two wives or more.[9]

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[7] http://en.wikipedia.org/wiki/Tafsir. Accessed on April 24, 2011.
[8] Labib MZ., *Pembelaan Ummat muhammad* (Surabaya: Bintang Pelajar, 1986), p. 15.
[9] Pius A Partanto, M. Dahlan Al-Barry, *Kamus Ilmiah Populer*, (Surabaya : Arkola, 1994), p. 606.

6

- *Study*

  Lessons; investigation; place of study.[10] That is meant, Interpretation or Understanding.

- *Comparative*

  Perceptible or estimated by comparison: relative (in comparative comfort).[11]

F. The Use of the Study

This study has three significances below:

1. For the researcher, she hopes she can enrich the knowledge and experience in implementing each verse of the Holy Qur'an.

2. For the readers, especially students of Ushuluddin Faculty of IAIN Sunan Ampel Surabaya, in this study they can enlarge the available references.

3. For Muslims generally, he hopes this study can provide more information, and can be used as one of the alternatives in responding the issues of gender that we face today, especially about polygamy.

G. Review of Literatures

As long as the researcher has known, the study about the concept of polygamy in Indonesia has been done oftenly, especially, the concept of polygamy according to Muhammad Shahrur and Asghar Ali Engineer. This

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[10] Burhani MS-Hasbi Lawrens, *Kamus Ilmiah Populer; Edisi Millenium*, (Jombang: Lintas Media, t.th.), p. 633.

[11] Martin.H. Manser. *OxfordLlearner's Pocket Dictionary.* (Oxford University Press, 1995), p. 79

7

also was caused by many literatures or books about the concept of polygamy which can be found in this country.

However, the discussion of the concept of polygamy, the comparative study of Muhammad Shahrur and Asghar Ali Engineer thought, as long as the researcher has known it had never done. Therefore, the researcher will try to compare of their views about the concept of polygamy in Holy Qur'an chapter al-Nisa' [4]: 3.

There are some literatures that discuss about the concept of polygamy. Such as: books, journals, thesis etc. And the researcher will take three of the thesis as a review of literatures. First, *Konsep Poligami Menurut Muhammad Syahrur* (Ahmad Nur Kusufi the student of Shari'ah faculty). This thesis explains the concept of polygamy according to Shahrur. And what methods are used, as well as the weakness and the excess of compared with the others. Besides that, he offers that polygamy is permitted only limited up to four wives, and the instruction was intended for a husband who has married and had children. The women who will be polygamy should be a widow and had the orphans. Otherwise, if the requirements is not fulfilled, the polygamy will be eliminated (invalidated).[12]

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[12] Ahmad Nur Kusufi, 2007, Ahhwal al-Syakhsiyah, *Konsep Poligami Menurut Muhammad Syahrur.*

8

Second is *Studi Analisis terhadap Pemikiran Muhammad Syahrur tentang Poligami* (Yuni Maria Ulfah, from Shari'ah faculty). Her study more emphasized on analytical of Shahrur's view about his polygamy's concept.[13]

Third is *Poligami dalam Perspektif Muhammad Abduh dan Muhammad Shahrur* (Muhammad Zakaria Mochtar, from Shari'ah faculty). According to him, there are three important points about polygamy, those are: *first*, according to Muhammad Abduh, polygamy is permitted with the requirements in emergencies, not in normal conditions.

Second, polygamy is suggested if it can fulfill the requirements, and *third* is Muhammad Abduh and Muhammad Shahrur's views about the basic law of polygamy. In this thesis also explains about the difference of their views (Shahrur and Asghar) about polygamy. As Muhammad Abduh, who used historical sociological theory (*Asbab al-Nuzul*), especially in Holy Qur'an chapter al-Nisa' [4]: 129. But Shahrur ignors it. He tends to use a linguistic approach, especially in the Holy Qur'an chapter al-Nisa' [4]: 3. According to Shahrur, fair here means is fair attitude towards orphans, not his wives.[14]

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[13] Yuni Maria Ulfah, 2006, Ahwal al-Syakhsiyah, *Studi Analisis terhadap Pemikiran Muhammad Syahrur tentang Poligami.*

[14] Muhammad Zakaria Mochtar, 2006, Ahwal al-Syakhsiyah, *Poligami dalam Perspektif Muhammad Abduh dan Muhammad Syahrur.*

H. The Method of the Study

1. Data Resources

The data resources in this study are taken from review of literatures below:

a. The Primary Sources

The primer data resources are taken from some books about polygamy, such as *Metodologi Fikih Islam Kontemporer,* the native title is *Nahw Usul Jadidah Li al-Fiqih al-Islami* (Muhammad Shahrur, translated by Sahiron Syamsudin), *Tafsir Feminis; Kajian Perempuan dalam al-Qur'an dan Para Mufasir Kontemporer* (Ahmad Baidowi), *Studi Kitab Tafsir Kontemporer* (Muhammad Yusron, et al.) and *Konsep Poligami menurut Muhammad Shahrur* is in Jurnal Studi Ilmu-ilmu al-Qur'an dan Hadis (Abdul Mustaqim).

b. The Secondary Sources

The secondary data resources are used to support the study and collecting data, as well as a comparison resource of the primer data. It consists of some books about polygamy.

2. Research Approach

a. Descriptive-Analytic

The researcher uses descriptive-analytical method in this study, and the descriptive method used to describe the figure Shahrur and Asghar's views comprehensively, especially in field of tafsir (*exegesis*). While analytical methods are used to analyze

10

Shahrur and Asghar's views about the concept of polygamy in Holy Qur'an (al-Nisa' [4]: 3).

b. Comparative Method

The writer uses comparison as the method of study. The comparison is to compare the similarity and the difference of both opinion Muhammad Shahrur and Asghar Ali Engineer their exegetical works. The writer compares the similarity and difference of the opinion, the change of human opinion, ideas or events.

c. Content Analysis

In order to get the deeper analysis, objective, factual and systematic about the concept of polygamy, in this study is used the content analysis method. This method need to describe the outline Shahrur and Asghar's views about the concept of polygamy in Holy Qur'an chapter al-Nisa' [4]: 3.[15]

I. The Outline of the Thesis

Chapter I: Introduction. This chapter consists of the background of the study, identification and limitation of the problem, the problem of the study, the objective of the study, the definition of key terms, the use of the study, review of literatures, the method of the study, and the outline of the study.

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[15] Moh. Nazir, *Metodologi Penelitian*, (Jakarta: Ghalia Indonesia, 1988), p. 63.

Chapter II: The basic of the Theory. This chapter contains of basic theories about the meaning of polygamy, the history and the development, and the basic law of polygamy, and the influence for Muslims.

Chapter III: The Background of Muhammad Shahrur and Asghar Ali Engineer. This chapter contains biographical sketches of Muhammad Shahrur and Asghar Ali Engineer and their interpretation about the concept of polygamy in Holy Qur'an chapter al-Nisa [4]: 3. Related to the biography, and also consists of the family background, history of education, career as a teacher, the works and their roles in field of *tafsir* (*exegesis*) etc.

Chapter IV: The Analysis of the Data. This chapter contains the analysis of Muhammad Shahrur and Asghar Ali Engineer's views about the concept of polygamy in Qur'an chapter al-Nisa' [4]: 3. Besides that, this chapter also contains the similarity and difference views between Muhammad Shahrur and Asghar Ali Engineer about the concept of polygamy.

Chapter V: Conclusion and Suggestion. It's contains the conclusion which describes in a nutshell what we have spoken in the previous lines.

CHAPTER II
POLYGAMY: A GENERAL OVERVIEW

A. The Meaning of Polygamy

The word polygamy comes from the Greek. It consists of two words, namely *apolus*, which means many and *gamos*, which means wife or partner. It could be said that polygamy means to have several wives simultaneously.[16] Terminologically in the meantime, polygamy can be understood as a condition in which a husband has more than one wife.[17]

According to Fadlurrahman, polygamy is a marriage system from various systems that is known human as monogamy, polyandry, and polygyny, etc.[18] Meanwhile, according to Musdah Mulia, polygamy is marriage's bond who one of the sides (husband) marry several wives simultaneously. It is also known by the term "Polyandry". If in polygamy a husband has several wives. Whereas, polyandry is a wife has several husbands simultaneously. But, if it is compared with polygamy, polyandry is rarely practiced. Polyandry only discovers in certain tribes, such Indian tribal and several tribal in Tibet.[19]

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[16] Nashruddin Baidan, *Upaya Penggalian Konsep Perempuan dalam al-Qur'an (Mencermati Konsep Kesejajaran Perempuan dalam al-Qur'an)*, Ed. 1, (Yogyakarta: Pustaka Pelajar, 1999), p. 94.

[17] H.A. Rodli Makmun, et.al, *Poligami dalam Tafsir Muhammad Syahrur*, (Ponorogo: STAIN Ponorogo Press, 2009), p. 15.

[18] Fadlurrahman, *Islam Mengangkat Martabat Wanita*, (Gresik: Putra Pelajar, Ed. I, 1999), p. 33.

[19] Musdah Mulia, *Pandangan Islam tentang Poligami*, Ed. 1, (Jakarta: Lembaga Kajian Agama dan Gender, 1999), p.2.

13

The opposite of polygamy is monogamy, i.e. marriage's bond which permits a husband just has a wife in certain time span. Another term is monogyny, i.e. a principle that husband only has a wife. In reality, monogamy had often practiced, because it is appropriate with human's behavior.[20] Another term of polygamy is *permaduan*. In Javanese, it is known by *wayuh*. A man who does polygamy is called by *bermadu*, and the women are called as *istri madu* or *maru* (Javanese). This term (*maru*) is used as a predicate between each with who are second wife and ex-wife of a husband.[21]

B. Polygamy in Various Civilizations

Many people guess and express the polygamy is known in Islamic new period. They assume it is Islam which brought doctrine about polygamy. Even, unequivocally there is accusing that Islam as the cause of the appearance of polygamy in human's history life. Mahmud Syaltut (w. 1963), as quoted by Musdah Mulia, unequivocally, she refuses polygamy as a part of Islamic teachings and rejects that polygamy is determined by shari'ah.[22]

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[20] *Ibid*. p. 2-3.

[21] Sumiati, *Hukum Pernikahan Islam dan Undang-undang Pernikahan*, (Yogyakarta: Liberti, without year), p. 74.

[22] Musdah Mulia, *Islam Menggugat Poligami*, (Jakarta: PT Gramedia, 2004), p. 44.

14

As being known, the polygamy comes from the Greek. The term is same with polygyny.[23] Polygamy is the ordinary thing to be done by all of west and east nation long before Islam came. With supported by legitimacy the act of the lords who institutionalize the marriage more than one. Hence polygamy is become the ordinary thing in the life. The marriage is as a result of the low values and slavery is suffered by woman.

As the researcher describes before that the polygamy has been known long time ago before Islam came. Even it had known by nations who life in primeval, for example Greek, China, India, Babylonia, Syria, and Egypt. The number of wives in polygamy's practice at the time is unlimited. Even, until than 130 wives for a husband.[24] According to Hassan Hathout, besides Islam, the religion of *samawi* such as Jewish and Christians allow polygamy in unlimited way. All of the prophets who are mentioned in *Taurat* are doing polygamy. Like the Prophet Solomon, David, and Abraham, they were having many wives.[25]

In Hindu religion, polygamy was done since the primeval. As to be done by another several nations, polygamy which was applied in Hindu religion did not recognize the certain of strict about the number of women who permitted to be married. Even until now, a Brahman who has a high of

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[23] In several writes, there is person who called polygamy by the term of polygyny. Actually, both of the term has a close connection with marriage more than one. See Departemen Pendidikan dan Kebudayaan RI, *Kamus Besar Indonesia*, Ed. III, (Jakarta: Balai Pustaka, 1994), p. 779.

[24] Leli Nurohmah, *Poligami, Saatnya Melihat Realitas, dalam Menimbang Poligami*, (Jurnal Perempuan, Vol. 31, 2003), p. 33-34.

[25] Mahmud Syaltut, *Aqidah dan Syari'at Islam*, translated by Fachruddin HS and Nashruddin Thaha, (tp.: Bumi Aksara, without year), p. 194.

15

caste is permitted to marry everyone whose he likes without the limitation.[26]

Also the situation is cultured and institutionalized in Israel societies before the prophet of Moses came. Then the custom of marriage was attempted by Talmud in Jerusalem to be removed. A husband might only marry one woman as possible as his capable in saving and taking care of her well. But, the work apparently failed, due the Kairat did not recognize the limitation.[27] While in other tradition, someone who had more than one of wives would be given a prize. The custom was occurred in Persian societies.[28]

In religion law that is followed by Athens and Roman, there is prohibition for man to have two wives or more at the same time. If man has second wife, his marriage shall be considered in legal law, but the second marriage is considered as divorced the first wife. Therefore, in that period (in Roman) principles prevails freedoms of divorced.[29]

In pre-Islamic period, i.e. in past Arabia period (Arab Jahiliyyah), the Arabs very disliked women. Women figure were considered as an ignominy, due since children, women was destroyed and buried alive. The Arabs tribes who often degrade the women are tribes of Quraisy and Kinda.[30] Also at the time, a husband was freed to have wife without restricting. There was a person who took of ten wives, even up to hundreds. It was done without the

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[26] Inayah Rahmaniyah and Moh. Sidik, *Menyoal keadilan dalam Poligami*, Vol. IV, (Yogyakarta: PSW UIN Sunan Kalijaga, 2009), p. 43.

[27] *Ibid*, p. 43-44.

[28] *Ibid.*

[29] Mahmud Syaltut, *Aqidah dan Syari'at Islam*, p. 288.

[30] Inayah Rahmaniyah and Moh. Sidik, *Menyoal keadilan dalam Poligami*, p. 45.

16

requirement and any bonds.[31] Polygamy could be done by all of husband, either which had ability and inability materially and without countable the number of wives whose he has.

Islam came for picking up the rights and women dignity by abolishing the different between man and women. These ways were done by the messenger Muhammad SAW in establishing and fostering the Muslims societies. Respectable the women were the fundamental of Islamic teaching. As the prove, at the time of prophet Muhammad SAW, many of women whose had the important roles in public life, such as in agriculture and animal husbandry.[32]

The history had recorded, that the traditional Arabs (Arab Jahiliyyah) had practiced some marriage form such below:

1. *Istibdha'* marriages, i.e. marriage between two persons (man and women) whose then his wife ordered to having sex with another man (have sexual intercourse) who respected and noble, in order that his baby has characteristics like biologic father (noble man).[33] After having pregnancy, he took his wife again and had sex with his wife like intimate relationship of spouse.

2. *Al-Maqthu'* marriages, i.e. marriage between man with his step mother after his father had died and she could not refuse. If the son still child,

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[31] Muhammad Yusuf Qardhawi, *Halal dan Haram dalam Islam*, translated by Muammal Hamidy, (Surabaya: PT Bina Ilmu, without year), p. 260.
[32] See Abdul Halim Abu Syuqqah, *Kebebasan Perempuan*, translated by Chairul Halim, (Jakarta: Gema Insani Press, 1990), I: 160-161.
[33] Shahih al-Bukhari, Juz V, 1970-1971.

thus the child's family held back her waiting for the son became an adult. After becoming an adult, he could choose between marrying his step mother or letting her go.[34]

3. *Al-Rahthu* marriages (Polyandry), i.e. marriage among several men with women. After having pregnancy and giving birth, she invited all of her husband who was having sex with her to determine whose father for her baby and he could not refuse.

4. *Khadan* marriages, i.e. marriage between men and women quietly without legal marriage contract.[35]

5. *Badal* marriages, i.e. two husbands who unanimously to barter their wife without divorced before.[36]

6. *Syighar* marriages, i.e. a man (father) married off his daughter or his sister without give *mahar* (bride price). But with in returning that's man (relationship between whose children were married) also gave his daughter or his sister to him. This marriage was often called by "barter marriages".

7. *Baghaya* marriages, i.e. several man whose had bad behavior alternately having sex with a whore frankly. If she was pregnant and gave birth, the man who having sex with her came together to meet her. Then, she determined whose father for her baby who most like with her baby.

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[34] Ibnu Katsir, *Tafsir al-Qu'an al-'Azhīm*, Juz II, p. 87.

[35] Inayah Rahmaniyah and Muhammad Sodik, *Menyoal Keadilan dalam Poligami*, Ed. IV, (Yogyakarta: PSW UIN Sunan Kalijaga, 2009), p. 9.

[36] H.A. Rodli Makmun, et.al, *Poligami dalam Tafsir Muhammad Syahrur*, (Ponorogo: STAIN Ponorogo Press, 2009), p. 34.

8. *Al-'irts* marriages, i.e. if her husband died, while he did not have son. His relative more right toward his wife and his family. If they wanted to marry her, they would marry with her. Otherwise, they would marry off her with another. Whereas her *mahar* (bride price) would be taken by them. This marriage is also called by "*adhal* marriages".[37]

All of marriage forms which were carried out by traditional Arabs had abolished by our prophet Muhammad Saw. Due Islamic shariah which was brought by him, it did not justify all of marriage forms which was inside it there were elements such tyranny, violence, injustice, harassment, coercion, and oppression.[38]

Therefore, in respect of polygamy which already entrenched in Arabs at that time, Prophet Muhammad Saw made arrangements with essential requirements, i.e.: *firstly*, he was restricting the number of wives in polygamy which originally unlimited only become one to four. *Secondly*, he had the ability to do justice in polygamy.

From the descriptions above, it can be concluded the historically, polygamy has a strong references for Arabs pre-Islam. In fact, in that time there is another marriage forms which has the same indications in its dedication toward women's right with marriage in polygamy form.

That condition gives an impression that women at that time have been treated unfairly and considered as creature that do not have right.

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[37] *Ibid*, p. 35-37.
[38] Musdah Mulia, *Pandangan Islam tentang Poligami*, Ed. 1, (Jakarta: Lembaga Kajian Agama dan Gender, 1999), p. 7.

19

Marriage for them only a game, because there is no strict rules which regulating how marriage can be a happy family in life. Such this situation has become foothold for Islam to apply the law construction which can repair state of society, especially in marriage problems and women's right.

C. The Development of the Concept of Polygamy in Islam

In human's history, the developments of polygamous still follow the society's views toward women. While they view the women's status is contemptible, hence polygamy rapidly growing. Otherwise, if they view the women's status is respectable, hence it was reduced. Thus, polygamous developments run into fluctuating follow the high and low of women's status in society's views.[39]

When Islam came, custom of polygamy was not directly abolished. But, after the verse whose offending polygamy was revealed, then our prophet made radical changes accordingly indication content of the verse. These changes were related to two things: *the first*, restricting the number of wives just up to four. Some narrations (riwayat) were explained the restriction of polygamy, one of them is narration by Naufal ibn Muawiyah, he said: "*When I profess Islam, I have five wives*". Then our prophet Muhammad said: "*You have to divorce one of them and hold on four of your wives*".[40]

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[39] Nasr Hamid Abu Zayd, *Dekonstruksi Gender (translation)*, Published by SAMHA and PSW corporations, (Yogyakarta, 2003).

[40] Murtadha Muthahhari, *Hak-Hak Wanita dalam Islam*, (Bandung: Lentera, 1997), p. 244.

20

The second, establishing the strict requirements for man who want to polygamy, i.e. he must be fair. It meant, Islam has strict role of polygamy in order that a man does not do arbitrarily toward his wife.[41]

D. Theological Theory of Polygamy

As being known, the only one of verse is always become basic theological as justification permission to polygamy is the Holy Qur'an chapter al-Nisa' [4]: 3, which are the one of chapter was revealed in Medina, it consist of 176 verses, is the second longest chapter after al-Baqarah. This chapter is called by al-Nisa' due its contents a lot of contains explanation about matters relating to woman. To understand well and right about verse who is said justify polygamy, should be impregnated first the meaning of two verses before.

The first of verse is below:

يَٰٓأَيُّهَا ٱلنَّاسُ ٱتَّقُوا۟ رَبَّكُمُ ٱلَّذِى خَلَقَكُم مِّن نَّفْسٍ وَٰحِدَةٍ وَخَلَقَ مِنْهَا

زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَآءً ۚ وَٱتَّقُوا۟ ٱللَّهَ ٱلَّذِى تَسَآءَلُونَ بِهِۦ

وَٱلْأَرْحَامَ ۚ إِنَّ ٱللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا ﴿١﴾

Meaning: *"O mankind! be dutiful to Your Lord, who created You from a single person (Adam), and from Him (Adam) He created his wife [Hawwa (Eve)], and from them both He created many men and women and fear Allâh through whom You demand Your mutual (rights), and (Do*

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[41] Musdah Mulia, *Islam Menggugat Poligami*, p. 46-47.

21

not cut the relations of) the wombs (kinship) . surely, Allâh is ever an All-Watcher over you".[42]

The verse above consists of the creation of human being: man and women, that both of them are the creature of God's creation that created from "one soul (*nafs wahidah*)". Because of that, the origin of creation man and woman is same. There is a person who understands one soul (*nafs wahidah*) is Adam as and majority of modern jurists understands in the kind of man and woman, so this verse is same to word of God in chapter al-Hujurat [49]: 13.[43]Furthermore, the first verse in that chapter also contain warning in order that human faithful to Allah and maintain fraternal relations among human being.[44]

Then, the second verse as follow:

وَءَاتُواْ ٱلْيَتَٰمَىٰٓ أَمْوَٰلَهُمْ ۖ وَلَا تَتَبَدَّلُواْ ٱلْخَبِيثَ بِٱلطَّيِّبِ ۖ وَلَا تَأْكُلُوٓاْ

أَمْوَٰلَهُمْ إِلَىٰٓ أَمْوَٰلِكُمْ ۚ إِنَّهُۥ كَانَ حُوبًا كَبِيرًا ﴿﴾

Meaning: *"And give unto orphans their property and do not exchange (your) bad things for (their) good ones; and devour not their substance (by adding it) to Your substance. surely, This is a great sin".[45]*

This verse is talking about keeping orphans problems in order to do justice to them and contain prohibition to use their property if it just for

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[42] QS. al-Nisa' [4]: 1
[43] Quraish Shihab, *Tafsir al-Mishbah,* (Bandung: Mizan, 2000), p. 313.
[44] Musdah Mulia, *Islam Menggugat Poligami,* p. 88.
[45] QS. Al-Nisa' [4]: 2

22

personal importance. Fazlur Rahman says, that in this contents of verse, the The Holy Qur'an complains that many guardians whose misuse the orphan's property and use it fraudulently.[46]

As the answer from two verses before are as follow:

$$وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُواْ فِى ٱلْيَتَـٰمَىٰ فَٱنكِحُواْ مَا طَابَ لَكُم مِّنَ ٱلنِّسَآءِ$$

$$مَثْنَىٰ وَثُلَـٰثَ وَرُبَـٰعَ ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُواْ فَوَٰحِدَةً أَوْ مَا مَلَكَتْ أَيْمَـٰنُكُمْ ۚ ذَٰلِكَ$$

$$أَدْنَىٰٓ أَلَّا تَعُولُواْ ﴿٣﴾$$

> Meaning: *"if you fear that you shall not be able to Deal justly with orphans, marry women of your choice, two or three or four; but if you fear that you shall not be able to Deal justly (with them), then only one, or (A captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice"*.[47]

This verse was revealed in Medina after Uhud war. As being known, due of carelessness and indiscipline of Muslims in that war caused them defeated in war. Many Muslim's soldiers passed away in battle field. Then the impact, the number of widows and orphans in that Muslim's community drastically increased. And maintenance responsibility of orphans is certainly devolved to their guardians. Not all of orphans poor. Among them there are inherit a lot of property, the late heritage their parent.[48]

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[46] Abdul Mustaqim. *Konsep Poligami Menurut Muhammad Syahrur*, (Jurnal Studi Ilmu-ilmu al-The Holy Qur'an dan Hadis, Vol. 8), p. 48-53.
[47] QS. al-Nisa' [4]: 3
[48] Musdah Mulia, *Islam Menggugat Poligami*, p. 32.

In that situation and condition as mentioned the last, come evil intentions at heart some guardians whose keeping orphans who in his charge. In various ways they act fraudulent toward orphans. Especially whose have beautiful of face, they (guardians) marry her. Otherwise, they would prevent her to marry, though there is another man who wants to propose her. Their purpose is to marry an orphan who in their charge is in order that orphan's property does not move to another man. Except become his own property, finally the purpose of marriage will not materialize.

Not a few of orphans who were married by their own guardians. They are having woes due to unfair treatment. In fact, they were married by their own guardians. But, their rights as wives, such as *mahar* (bride price) and necessity did not given to her. Even, their property was deprived by their own husband to give necessity for another's wives whose numbers more than limits of normality.[49] The jurists unanimously that the chronological (*sabab al-nuzūl*) of this verse is related to the unfair treatments by guardian toward orphans whose in his charge.

E. Polygamy in the Qur'anic Exegesis

There is the difference opinion among commentators in understanding polygamy which contained in chapter al-Nisa' [4]: 3. According to conservative Muslims, for example ath-Thabari and ar-Razi, they argue that the main purpose of verse discussed is to do justice, either to

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[49] Musdah Mulia, *Islam Menggugat Poligami*, Cet. II, (Jakarta: PT Gramedia Pustaka Utama, 2007), p. 33.

24

orphans or wives. According to ath-Thabari, from interpretation of this verse, that The Holy Qur'an restricting the number of wives up to four, in order that guardian does not try to misuse orphan's property whose in his charge to finance necessity another wives. If he may not act equitably, hence he has to marry one wife only.[50]

According to Ibn Katsir, polygamy is something allowed in religion and just applies in certain conditions. Because there are argumentations which shows it, i.e. chapter al-Nisa' verse 3 and an example from the messenger Muhammad saw. Though wording in The Holy Qur'an related to polygamy is *Fankihū*, in fi'il *amr* form, but, the meaning of this word is *ibāhah* (permitted) and it is not command who have to be done, such as command to praying, fasting and zakat.

According to the verses of polygamy in the Holy Qur'an. Fazlur Rahman, a noted Islamic scholar who taught at Chicago University, observes:

It cleared from the passage that the Holy Qur'an talking of polygamy in the context to treating orphaned girls who had come of age but to whom their guardians were unwilling to give back their properties. Instead, they would like to marry they ward, so that they could continue those their properties. Otherwise, they would resort to "eating up" their properties, either by exchanging their good ones for bad ones of their own by 'mixing up' properties. Many guardians properties concerning their wards properties

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[50] Asghar Ali Engineer, Pembebasan Perempuan (translation), Yogyakarta: ELKiS, 2003), p. 113-114.

(both boy and girls) were a theme the Holy Qur'an addresses recurrently both in Mecca and Medina. It was clear that the first passage provided definite answers: their guardians were allowed to marry them up to four as a lesser evil to their unlawfully consuming their properties, if they were willing to do justice to their properties. The polygamy by made it conditional upon their doing justice among these women and requiring that they marry only one, if you fear cannot to do justice.[51]

Command to polygamy, according to Wahbah al-Zuhaili, similarly command to eat and drink, as contained also in The Holy Qur'an *kulū wasyrabū*. Besides the meaning of *ibāhah*, another meaning which can be used from *amar* form is *fankihū* (compulsory). The meaning is obligation to do limitation. Because there is connection between a cut of verse with verse whose after that mention the number two, three or four.[52] However, the basic law of polygamy is permittion (*jawāz*) that can be changed become forbidden (*harām*) when someone cannot fulfill the requirements that established for it.

According to Muhammad Abduh, talking about orphans in polygamy problems is not without reason. This gives definition that polygamy problems are identical with orphan's problems.[53] Because both problems that there is injustice problems. Orphans had often become victim of injustice

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[51] "The status of Women in Islam: A Modernist Interpretation" in Hanna Papanek & Gail Minault, eds,- Separate worlds, *Studies of Purdah in South Asia*, (Delhi, tnp: 1982), p. 229-300.

[52] Laili Maziyah, *Pandangan Para Mufasir terhadap Poligami dalam Kesetaraan Gender*, (malang: Jurnal Penelitian Kependidikan, No. 1, October 2008), 110.

[53] Muhammad Rasyid Ridla, *Tafsir al-Manar*, Juz V, (Beirut: Dar al-Fikr), p. 346.

26

due they did not be protected. Meanwhile, in polygamy, whose become victim of injustice are women. In The Holy Qur'an, for example orphans, woman, and slaves are often mentioned as *al-mustadh'afin* (weakened person). Their rights are weak because did not be protected.[54]

Permission of polygamy is something very difficult. Because it weights requirement whose must be fulfilled. Thus, it gives an understanding that God prohibit polygamy. Of course polygamy forbidden for them whose fear that they may not act equitable if marry more than one. If still implemented the contract in that condition, hence the marriage contract *fasid* (invalid) or forbidden because the prohibition was became obstacle for legal marriage contract.[55]

Following his teacher's opinion, Rasyid Ridla adding the polygamy naturally contradicted with marriage purpose, because of in its principle the marriage is between a man and a woman. Polygamy is only for the emergencies condition and with the strict requirements. Hence, if polygamy causes madharat (harmful) than the benefits, and causes the complex problems in society, thus judges would prohibit polygamy.[56]

Unfortunately, according to Quraish Shihab, the third verse in chapter al-Nisa' is often misunderstood. This verse is revealed as spoken by Aisyah ra about guardians attitude whose want to marry orphans (beautiful face) and rich who in his charge. But, he does not want to give *mahar* (bride

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[54] Musdah Mulia, *Islam Menggugat Poligami*, p. 96.
[55] Muhammad Rasyid Ridla, *Tafsir al-Manar*, Juz V, (Beirut: Dar al-Fikr), p. 345.
[56] *Ibid*, p. 347.

price) who suitable for her and he does not want to give necessity fairly. Actually, this verse is criticizes unfair behavior with one sentence structure which is explicit. The mention of number one, two, three and four essentially is showed a demand to do justice to them.[57]

According to him again, the verse does not contain the rules about polygamy because polygamy has been recognized and practiced by shari'ah religious and tradition before Islam came. Also this verse is not to obligate polygamy or advise it, but just talking that polygamy is permitted, and it is just in emergencies condition whose may be done at most needed time and of course with the strict requirements.[58]

Understanding of the commentators on paragraph above is given to understand that polygamy with the requirements are able to do justice in initially is offered just as an alternative, in order that the guardian does not apply unfair to orphans. Thus, actually the topic in the verse is about the justice problems.

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[57] Qurais Shihab, *Wawasan al-Qur'an*, (Bandung: Mizan, 1996), p. 200.
[58] Musdah Mulia, *Islam Menggugat Poligami*, p. 97-98.

CHAPTER III
THE BIOGRAPHY OF MUHAMMAD SHAHRUR, ASGHAR ALI ENGINEER
AND THEIR THOUGHTS ABOUT THE CONCEPT OF POLYGAMY

A. Muhammad Shahrur

1. His Biography and Academic Career

Shahrur's full name is Muhammad Shahrur Ibn Da'ib Shahrur. He was a contemporary Muslim thinker who was born on April 11th, 1938 in Damascus (Syria). His father was Deyb bin Deyb Shahrur and his mother was Siddiqah binti Salih Filyun.[59] If it was traced the history of educational background, in the beginning Shahrur did not study Islamic sciences intensively. The evident is, for example, after completing his secondary school level, then he went to the Soviet Union to study engineering in Moscow in 1958. After completing the undergraduate degree, then he returned to Syria in 1964 and worked as a lecturer at the University of Damascus.[60]

In 1967, Shahrur got the opportunity to do research at Imperial College in London England. However there was "the June War" between Syria and Israel that caused diplomatic relations between Syria and England was cut off. Finally, Shahrur decided to go to Dublin, Ireland on behalf of the University of Damascus to take masters programs and

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[59] Ahmad Syarqawi Ismail, *Rekonstruksi Konsep Wahyu Muhammad Shahrur*, (Yogyakarta: eLSAQ Press, 2003), p. 43.

[60] Peter Clark, *The Shahrur Phenomenon, A Liberal Islamic Voice from Syiria*, in Islam and Christian Moslem Relation, Vol. 7, No. 3., p. 337.

29

Ph.D. at *al-Qummiya* by taking the field of Soil Mechanics and Foundation Engineering (*al-Handasah al-Madaniyyah*). During the last two years Shahrur got the honor to teach at Damascus University and to be a consultant in the field of engineering.[61] That's why it bears the title of "*al-Muhandis al-Duktūr*" (Doctor of Engineering).[62] Then in 1995, Shahrur also had been invited to become honorary participants and got involved in public debates about the Islamic thoughts in Lebanon and Morocco.[63] Although the basic of his education was technique, but it did not mean he was 'blind' about discourse on Islamic thoughts. As he was interested in reviewing *al-Qur'an* and *al-Hadith* more serious by language philosophy approaching and framed by the theory of exact science, even he also wrote books and articles on Islamic thought.

Shahrur's attention to the study of Islamic sciences actually was started since he was in Dublin (Ireland) in 1970-1980 while he was taking a master's and doctoral programs. In other hand, the role of his friend, i.e. doctor Ja'far Dikki al-Bab was also very large. By his meeting with Ja'far in 1958 and 1964, Shahrur could learn a lot about the sciences of language.[64]

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[61] *Ibid.*

[62] Muhami Munir Muhammad Tahir al-Syawwaf, *Tahafut al-Qirā'ah al-Mu'āshirah*, Ed. 1, (Limmasol Cyprus: al-Syawwaf li al-Nasyr, 1993), p. 11.

[63] Peter Clark, *The Shahrur...*, p. 341.

[64] Muhammad Shahrur, *al-Kitāb wa al-Qur'an: Qirā'ah Mu'āshirah*, (Damaskus al-Ahali li al-Thiba'ah wa al-Nashr wa al-Tauzi', 1991), p. 46-47.

2. The Development of His Thought

Of his thought strechtes from 1970-1980 where he began to do took Masters and Doctorate degree in civil engineering field at National University of Ireland, Dublin. This phase was the contemplation phase and the foundation of understanding about the basic terms in the Qur'an as *al-Dzikr*. This phase had not had result any of thinking about *al-Dzikr*. This was caused by the influence of *taqlid* thoughts[65] which was inherited, and it still exist in the realm of old and modern Islamic works, besides the tendency to Islam as an ideology (*Aqīdah*) either in the form of schools *kalām* and *fiqh*.[66]

The second phase (1980-1986 AD). In 1980, he met his old friend, Ja'far (who studied language studies in the USSR Between 1958-1964). On that occasion, he delivered a big attention to the study of language, and in understanding of the Qur'an. Through Ja'far, Shahrur learned a lot about linguistics, including philology[67], as well as getting to know *al-Farra*'s views, *Abu' Ali al-Farisi*, also his followers, *al-Jinni*, and *al-Jurjani*. Since that time, he started to analyze Qur'an verses with new model, in 1984; he began writing his thoughts with Ja'far which was extracted from *al-Kitāb*.

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[65] *Taqlid* is belief or trusty to a concept (opinion) the predecessor of jurists without know the basic or the reason; imitation. See KBBI offline v1.1 or http://ebsoft.web.id.

[66] *Fiqh* is (Islam) study of laws pertaining to ritual obligations. See kamus offline 2.03.

[67] Philology is the grammar, the culture, regulation and the history of a nation as in wrote object. See KBBI offline v1.1 or http://ebsoft.web.id.

31

The third phase (1986-1990 AD). This phase, he began to arrange his thoughts in certain topics intensively. At the end of 1986 and 1987, he completed the first chapter from *al-Kitāb wa al-Qur'an*, which was about the difficult problems. Subsequent chapters completed until 1990.[68]

3. His Methodology

Knowing the man's basic of thought before getting to know his thoughts is a must, because the basic of thought is the measurement which affect greatly to the entire construction and building thoughts. Shahrur in the pattern of thoughts proceed from the Methodological Foundation.

In reciting the Qur'an, Shahrur made linguistics as a basis of view for reading the Qur'an (*Manhāj Lughawi*), as well as his expert in civil engineering, he was also a philosopher of language.[69]

Basically, Shahrur did not understand and explore the Arabic academically, but his knowledge of Arabic cannot be underestimated, especially since his meeting with his friend, Ja'far Dikki al-Bab. In *al-Kitāb wa al-Qur'an: Qirā'ah Mu'ashirah*, Shahrur used a method inspired by the science of modern linguistics in conveying his thoughts. The method is called by *al-Manhāj at-Tārikh al-Ilmi* (scientific historical

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[68] http://almakmun83.wordpress.com/2009/05/16/biografi-muhammad-shahrur/, accessed on 24 Juni 2011.

[69] Abdul Mustaqim, *Mempertimbangkan Metodologi Muhammad Shahrur*, in Shohiron Syamsuddin, et.al, *(ed)*, *Hermeneutika al-Qur'an Mazhab Yogya*, (Yogyakarta: Islamika, 2003), p. 129.

method).[70] However Shahrur did not discuss in detail about *manhāj* which is used by him, and Ja'far Dikki al-Bab is the most instrumental person in the understanding of method that was brought by Shahrur.

Shahrur's method known as *al-Manhāj at-Tārikh al-Ilmi* is a method that was unearthed from the linguistic theories of Ibn Jinni and a-Jurjani. Crystallization of both scholars thought in one became the Farisian theory which was developed by Abu al-Farisi.[71] That syntheses, largely, given the terms that language is an institution, language is a form of social reality, and language structures are always associated with function of *Iblāgh* (transmitter functions), as well as the correlation between language and thought.

From Abu al-Farisi, Shahrur adhere to the principle as follows:

a. That language is a system (*Anna Nizām al-Lughah*).

b. Language is a sociological phenomenon and the construction of the language is associated much with the context in which the language was submitted.

c. There is a link (*at-Talāzum*) between language and thought.[72]

Shahrur linguistic methods thoroughly as reading material of the Qur'an as a whole gives the rules, i.e. language as a medium of communication between humans; it is caused an association between human and words and thoughts. That's means, since the beginning

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[70] Muhammad Shahrur, *Al-Kitab wa AlQur'an; Qira'ah Mu'asirah*, p. 741.

[71] Muhammad Shahrur, Dasar-dasar Hermeneutika al-Qur'an Kontemporer, translated by Sahiron Syamsuddin, et.al, (Yogyakarta: eLSAQ Press, 2004), p. 26

[72] Abdul Mustaqim, Op Cit, p. 126

33

human has been speaking using voice to communicate the goals (thoughts) to others. While the human thought process is not formed at once, but it is formed gradually from the science of the senses, and then it is increased to abstract knowledge.

Similarly, the order of language, he is not formed straight perfectly, but through the process of collision with a civilization that is consistent and in accordance with the development of human knowledge. By using linguistic methods, then Shahrur construct theoretical limit (*hudūd* theory), which is based on the understanding of duality, namely *al-Hanīfiyyah* and *al-Istiqāmah.*

In other words, Shahrur stated that Islam has two basic characteristics, those are always opposite (*mutanāqidl*), namely the character of *al-hanīfiyyah* (bent, curved, unchanged) and *al-istiqāmah* (upright, straight, fixed).[73]

The first character (*al-hanīfiyyah*) is the character and nature throughout the universe from the smallest particles (electrons, atoms) until the largest objects such as highway space, the heavens or the earth is constantly moving 'curved' and regular. In Islam as *al-Dīn al- Hanīf* it has been scripted to have harmony with the universe. So it will continue moving and changing according to its nature.

While the second character (*al-istiqāmah*) is the character of the principles things that do not change in the religion (*al-Tsawābit*), but

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[73] Muhammad Shahrur, *Al-Kitāb wa Al-Qur'an; Qirā'ah Mu'āsirah*, p. 447.

does not cancel the two basic characteristics that are always opposite (*mutanāqidi*), namely the character of *al-hanīfiyyah* but only as a controller and a divider (*hudūd*) for the creation of dialectical relationship between the two characters throughout the ages.[74]

From here, and by using mathematical theory analysis, then Shahrur created "Limit Theory", which consists of an upper limit (*al-hadd al-a'lā*) and lower limit (*al-hadd al-adnā*) as the two points where the Sharia laws can move/change between them according to the change of time or condition. This is very controversial theory which implies very critical and ultimately destroys large number of the Islamic law buildings.[75]

4. His Works

The Muhammad Shahrur's works can be seen from Shahrur's two terms of studies, namely the field of Building Engineering and Islamic areas. In the field of engineering essay are: *al-Handasah al-Asasiyah* (on foundation engineering) consists of Volume III and a*l-Handasah al-Turabiyah* (about geology and engineering). As for his work in Islamic studies are: *al-Qur'an wa al-Kitāb; Qirā'ah Mu'āsirah* (1992), *Dirāsah Mu'āsirah Islāmiyah fi al-Dawla wa al-Mujtama', al-Islām wa al-Imān; Mandhumat al-Qiyām*, and *Dirāsah Islāmiyah Mu'āsirah Nahw Usul Jadīdah li al-Fiqh al-Islāmi.*

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[74] *Ibid*, p. 453-467.
[75] See *Al-Kitāb wa al-Qur'an*, p. 453-467

35

Shahrur often donated his thoughts through articles in seminars or publications media, such as: *The Divine Text and Pluralism in Muslim Societies*, in Muslim Politics Report, 14 (1997), *Islam and the 1995 Beijing World Conference on Woman*, the Kuwaiti News paper, later published also in Charles Kurzman (ed.), and *Liberal Islam: A Sourcebook* (New York & Oxford: Oxford University Press, 1998).[76]

5. His Concept of Polygamy

Shahrur saw that the issue of polygamy is one important theme that got special attention from Allah. That is why, the verses on polygamy is placed at the beginning of the chapter al-Nisa', namely the third verse of the chapter al-Nisa'. But according to Shahrur, the commentators and jurists have been ignoring the general editor of the verse and ignore the close links between the issue of polygamy to look after the widows and orphans.[77] Though, the problem is related to the issue of polygamy to look after the orphans and widows. Shahrur then tried to prove it through his *tarfil* methods by *paradigmatic-syntagmatic* analysis, as follows:

In the first of verse in chapter al-Nisa', Allah invites people to have fear of God, connect the *silaturrahim* bond among men in general, without being limited by barriers of family or tribal ties narrowly. In this

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[76] http://almakmun83.wordpress.com/2009/05/16/biografi-muhammad-shahrur/, accessed on June 24, 2011.

[77] Muhammad Shahrur, *Nahwa Ushul Jadidah lil Fiqhi al-Islami: Fiqh al-Mar'ah, al-Washiyyah, al-Irts, al-Qiwamah, al-Ta'addudiyyah, al-Libas*, (Damaskus: al-Ahali li ath-Thiba'ah wa al-Nasyr wa al-Tauzi', 2000), p. 301.

36

occasion, Allah says which means: *"O mankind! be dutiful to Your Lord,*

who created You from a single person (Adam), and from Him (Adam) He

created his wife [Hawwa (Eve)], and from them both He created many

men and women and fear Allâh through whom You demand Your mutual

(rights), and (Do not cut the relations of) the wombs (kinship) . Surely,

Allâh is ever an All-Watcher over you".[78]

Then, it is followed by discussion about the issue of orphans and

the prohibition to eat their property. Allah says: *"And give unto orphans*

their property and do not exchange (your) bad things for (their) good

ones; and devour not their substance (by adding it) to Your substance.

Surely, This is a great sin".[79]

After that, God continues his conversation about the issue of

polygamy, *"if you fear that you shall not be able to Deal justly with*

orphans, marry women of your choice, two or three or four; but if you

fear that you shall not be able to Deal justly (with them), then only one,

or (A captive) that your right hands possess, that will be more suitable,

to prevent you from doing injustice".[80]

Elaboration of Shahrur about polygamy shown that he is

considering aspects of sentence structure, linear relationships

(syntagmatis) between words in paragraph and paradigmatic relations.

The influence of linguistic structuralism is very visible here. He was also

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[78] QS. al-Nisa' [4]: 1
[79] QS. al-Nisa' [4]: 2
[80] QS. al-Nisa' [4]: 3

37

consistent with the principles of its *takwīl* hermeneutics, where a commentator in the understanding of the verse must use *tarfīl* approach, namely collecting the same topic of verses to get a comprehensive view, so it does not get stuck on a partial understanding (*'adamul wuqū' fī al-ta'dliyyyah*).

With *Tarfīl* approach, Shahrur came to the conclusion that polygamy is allowed only in emergency situations, and basically Islam adheres to the principle of monogamy. Emphatically he stated: "*ta'addudud al-zaujāt zhurūfun idlthirāriyyah wa anna asāsa al-'adad fī al-zawāj huwa al-wahdah*".[81]

Then, with the theory of *hudūd*,[82] Shahrur made two requirements for who want to practice polygamy: *first*, the *kammiyyah* requirement (quantity) concerning restrictions on the number of women who want to be married, (i.e. minimum of two and maximum limit of four wives), because it is impossible for a husband to marry only half wife. *Second*, the *naw'iyyah* requirement (quality), which is related to the quality of person that wants to do polygamy, namely;

a. There is concerns cannot do justice to their orphans "*fa in khiftum allā tuqsithū fil yatāmā*".

b. Polygamist should try to be fair.

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[81] Shahrur, *al-Kitāb wa al-Qur'an...*, p. 597-599.

[82] The theory of *hudūd* approach, this is used due the verse of polygamy is related to the law problems. As listed in methodology of Shahrur, he uses *ijtihād* method, with the theory of *hudūd* approach for *Muhkamat* verses (verses of law).

38

c. Women who want to be polygamous must be widows and also have orphans, because the context of polygamy verses is related with widows who have orphans.[83]

If these requirements cannot be fulfilled, then man need not do polygamy, and married to one wife only.[84] For that matter, Allah says: *"if you fear that you shall not be able to Deal justly with orphans, marry women of your choice, two or three or four; but if you fear that you shall not be able to Deal justly (with them), then only one, or (A captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice".[85]*

Furthermore, what's interesting is that Shahrur looked that polygamy is not merely permissible, but recommended for those who can meet these two conditions (conditions *Kammiyyah* and *naw'iyyah*), as he declared: *"innallaha lā yasmaḥu faqad bi al-ta'addudiyyah samāḥan bal ya'muru bihā fil ayah amran* (Allah does not only allow polygamy [for qualifying], but even commanded).[86] It is considering how noble the purpose of polygamy that carried the Qur'an is *musa'adatil arāmil li wa aytam,* namely to help the widows and orphans.[87]

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[83] Muhammad Shahrur, *Nahwa Ushul Jadīdah,* p. 303.
[84] *Ibid.*
[85] QS. al-Nisa' [4]: 3
[86] *Ibid.*
[87] Shahrur, *al-Kit* al-Nisa' [4]: 3*b wa al-Qur'an...,* p. 597-599.

39

B. Asghar Ali Engineer

1. His Biography and Scientific Activities

Asghar Ali Engineer was born in Bohra, precisely in Salumbar Rajasthan, India, on March 10, 1939, from couples Sheikh Husain Qunan and Maryam. He obtained his formal education in India, since elementary school, junior and senior college entrance at Vikram University (1956). In 1962 he earned a Bachelor of Civil Engineering (BSc Eng.). In according with his expertise, after college, he had been a civil engineer for long time and doing research on various aspects of Islam.[88]

The success will become an Islamic thinker; it does not depart from formal education. Family background is devout followers of *Syi'ah Ismailiyyah* flow shaping it into a highly concentrated on religious teachings. His father who is a Shiite cleric, taught him Arabic and the various treasures of Islamic thought, classical and modern. In addition to mastering the Arabic language very well, he himself was able to master the language of Urdu, Persian and English as well. Mastery of language will vary is what pushed him to explore a variety of original works of religious, both derived from the Muslim and non-Muslims.[89]

Besides he was active writer, either in the form of articles in journals and book form, Asghar also an active figure in the social

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[88] Nasihun Amin, *Teologi Pembebasan Islam sebagai Alternatif: Telaah terhadap Pemikiran Asghar Ali Asghar*, the Thesis in Pascasarjana Program of IAIN Sunan Kalijaga Yogyakarta, p. 50-57.

[89] Asghar Ali Asghar, *"What I Believe"*, in *Jurnal Islam and Modern Age*, 7/2 (1999), p. 2.

40

movement. He was a *da'i, Syi'ah Ismailiyyah* sect leader, Daudi Bohras, in India. As written by Djohan Effendi, to be recognized as a *da'i* in the Syi'ah India is not easy. A *da'i* must have 94 qualifications that are grouped into four sections. The four groups are:

a. Educational qualifications.

b. Administrative qualifications.

c. Moral and theoretical qualifications.

d. Qualifying families and personalities.

One very interesting thing is that a *da'i* in the *Syi'ah Ismailiyyah* tradition must appear as a defender of oppressed people and fight against injustice. And, Asghar was a *da'i*.[90]

As a *da'i* that had to fight for his people, Asghar had involvement in various social advocacy organizations. Among the organizations that had been placed to serve the People's Union for Civil Liberties in which he became vice president, became chairman of the Center for Development Studies, chairman of the Committee for Communal Harmony, chairman and founder of the Center for the Study of Society and Secularism, Secretary General of the Central Board of Dawoodi Bohra Community, members of the Executive of the Jawaharlal Nehru University. He also became editor of the Journal of the Islamic

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[90] Djohan Effendi, *"Memikirkan Kembali Asumsi Pemikiran Kita"*, the preamble to Asghar Ali Asghar, *Islam dan Pembebasan*, translated by Hairus Salim HS and Imam Baehaqi, (Yogyakarta: LKiS, 1993), p. vii.

Perspective and the other journals published by the Center for the Study of Society and Secularism.[91]

2. His Methodology

In the context of his Islamic thinking, Asghar focused more on issues of liberation theology that provided theoretical framework in spreading religious thought to the Muslims.[92]

For that, Asghar offered thoughts, philosophy and hermeneutics to understand the verses in the Qur'an that the color of "liberation theology" of him is very thick. However his effort was often protested from the older generation, Asghar always advocated not only the formulation of "transformative theology" as well as offered by Hassan Hanafi of Egypt who wrote *Revelation and Revolution in Islam.* Moreover, Asghar also "provoked" younger generation to reconstruct the "theology of radical transformative". When the idea of liberation theology emerged among churches in Latin America, Asghar "imported" it by writing about the "liberation theology in Islam".[93]

This liberation theology which is became the central issue of Asghar's writing. On this relation, he attempted to break the ice of conventional theological that only related metaphysics and ritualism issues while ignoring many contemporary problems. Instead, Asghar focused forward his ideas on the issue of egalitarianism, which was

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[91] Nasihun Amin, *Teologi Pembebasan...*, p. 53.
[92] Djohan Effendi, "Memikirkan Kembali Asumsi Pemikiran Kita", p. vii.
[93] *Ibid.*

42

associated with concepts or themes of justice, social justice, political, economic, and family and gender.

3. Beliefs on Women's Rights

An aspect of Asghar's belief of women's equality is that of his 21st century mindset, which can be seen throughout all of his opinions. The situation in the Muslim world reflects the status quo, according to Asghar. With respect to the suppressive, patriarchal nature of contemporary Islamic states, Asghar writes that "Women do not enjoy the status the Qur'an has given them in Muslim society today".[94]

Asghar believes that in this day and age women should be equal to men. "Women had internalized their subjugation of men as the latter were the breadwinners. Since then women have become quite conscious of their new status".[95] Women are sometimes the "breadwinners" of the household while the man stays home, now. In the past it would be inconceivable to think that a woman was allowed out of the house, but now they are an active earning member of the family even in places like Saudi Arabia.[96] Women have now been Prime Ministers, even against opposing views. However, women are not treated totally equally in all Muslim establishments, and that is what Engineer is fighting to change. He wants to see equality across the board, considering the present time.

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[94] http://en.wikipedia.org/wiki/Asghar_Ali_EngineerSome_works, (accessed June 25, 2011)

[95] Asghar Ali Engineer, *The rights of Women in Islam,* 2nd ed. Elgin, (IL: New Dawn Press Group, 2004), p. 190.

[96] *Ibid,* p. viii.

43

Today women are much more educated and much more aware and hence would consider it undignified to live with a co-wife and share her husband's attention and love with her. Women today are smarter than the past and know that they deserve better rights, according to Asghar. He believes that people who support an unjust order, or remain silent in view of gross injustices is not a religious person. He goes as far to say that people need to wage jihad against all forms of exploitation and injustices and to Asghar women's inequality is top on his priority list of injustices.

However, there are people that suggest that his interpretations of the Qur'an are not strong enough to get people to change their beliefs surrounding women's place in Islam. Sikand thinks that Asghar's opinion is based on his interpretation of the Qur'an and his outlook on the 21st century instead of the interpretations that the Qur'an has now. "His understanding of Islam is indelibly shaped by his concern for social justice and inter-communal harmony, of course".[97] Asghar's ideas are not as controversial as they used to be, because since the 21st century is big on attempting to make people equal; it has helped the equality of women, though not enough for Asghar's standards. Engineer believes that women should be treated equally to that of men, because of his understanding of the Qur'an and because of the 21st century.

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[97] http://en.wikipedia.org/wiki/Asghar_Ali_EngineerSome_works, (accessed june 25, 2011).

4. His Awards

He has been awarded several awards, including the Dalmia Award for communal harmony in 1990, honorary D.Litt. by the University of Calcutta in 1993, the 'Communal Harmony Award' in 1997 and the Right Livelihood Award in 2004 (with Swami Agnivesh) for his strong commitment to promote values of co-existence and tolerance.[98]

5. Asghar Ali Engineer's Works

- *Origin and Development of Islam: An Essay on Its Socio-Economic Growth.* , by Asghar Ali Engineer, Asghar Ali Engineer Staff. Published by South Asia Books, 1980. ISBN 0-8364-0590-0.

- *The Islamic State.* Published by Vikas, 1980. ISBN 0-7069-1086-9.

- Sufism and Communal Harmony

- *Islam and Its Relevance to Our Age.* Published by Institute of Islamic Studies, 1984.

- *On developing theory of communal riots.* Published by Institute of Islamic Studies, 1984.

- *Islam and Revolution.* Published by Ajanta Publications, 1984.

- *Islam and Muslims: a critical reassessment.* Published by Printwell Publishers, 1985.

- *Islam in South and South-east Asia.* Published by Ajanta Publications, 1985. ISBN 81-202-0152-3.

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[98] Nasihun Amin, *Teologi Pembebasan,* p. 53. And see http://www.csss-isla.com/csssteam.htm

- *Indian Muslims: A Study of Minority Problems in India.* Published by Ajanta Publications (India), 1985.

- *Communalism in India,* by Asgharali Asghar, Moin Shakir. Published by Ajanta Publications (India), 1985. ISBN 81-202-0153-1.

- *The Role of minorities in freedom struggle.* Institute of Islamic Studies (Bombay, India). Published by Ajanta Publications, 1986.

- *Ethnic conflict in South Asia.* Published by Ajanta Publications, 1987.

- *Status of women in Islam.* Published by Ajanta Publications (India), 1987. ISBN 81-202-0190-6.

- *The Shah Bano controversy,* Orient Longman, 1987. ISBN 0-86131-701-7.

- *The Muslim communities of Gujarat: an exploratory study of Bohras, Khojas, and Memons.* Published by Ajanta Publications, 1989. ISBN 81-202-0220-1.

- *Religion and Liberation.* Published by Ajanta Publications (India), 1989. ISBN 81-202-0264-3.

- *Communalism and communal violence in India: an analytical approach to Hindu-Muslim conflict.* Published by Ajanta Publications (India), 1989.

- *Communal Riots in Post-independence India.* Published by Orient Blackswan, 1991. ISBN 81-7370-102-4.

46

- *Secular crown on fire: the Kashmir problem.* Published by Ajanta Publications, 1991. ISBN 81-202-0311-9.

- *Mandal Commission controversy.* Published by Ajanta Publications, 1991. ISBN 81-202-0312-7.

- *Rights of Women in Islam.* Sterling Publishers, 1992.

- *Communalisation of politics and 10th Lok Sabha elections,* by Asghar Ali Engineer, Pradeep Nayak. Published by Ajanta Publications, 1993.

- *The Bohras.* South Asia Books, 1994. ISBN 0-7069-7345-3.

- *Kerala Muslims: a historical perspective.* Published by Ajanta Publications, 1995.

- *Lifting the veil: communal violence and communal harmony in contemporary India.* Sangam Books, 1995. ISBN 81-7370-040-0,.

- *Problems of Muslim Women in India.* Published by Institute of Islamic Studies, 1995.

- *Rethinking Issues in Islam.* Sangam Books Limited, 1998. ISBN 0863117686.

- *Competing nationalisms in South Asia: essays for Asghar Ali Engineer,* by Paul R. Brass, Achin Vanaik, Asghar Ali Engineer. Published by Orient Blackswan, 2002. ISBN 812502221X.

- *Islam in India: The Impact of Civilizations.* Shipra Publications, 2002. ISBN 8175411155.

47

- *The Qur'an, women, and modern society.* Published by New Dawn Press Group, 2005. ISBN 1932705422.

- *The State in Islam: Nature and scope.* Hope India Publications, 2006. ISBN 8178711028.

- *Islam in Contemporary World.* Sterling Publishers, 2007. ISBN 1932705694.

- *Islam in Post-Modern World.* Hope India Publications, 2009.

6. His concept of Polygamy

In our attempt to codify Islamic law in India which is today quite loosely applied causing lot of problems to Muslim women, we interviewed number of prominent 'ulama. One of our questions was should polygamy be regulated? With few exceptions most of them said 'no'. Polygamy is needed and some even said it is exclusive preserve of man and he can take second wife even without any reason or permission of first wife.

They also maintained that polygamy is needed to prevent prostitution in the society. To check sexual corruption polygamy is a must. This raises a fundamental question: Does Qur'an prescribe polygamy to check sexual corruption or prostitution. There are two verses in Qur'an on this subject 4:3 and 4:129. In both these verses there is no even indirect hint of any kind of sexual corruption.

The First verse 4:3 was revealed, we are told by earliest commentators on the Qur'an, after the battle of Uhud in which large

48

number of Muslim men, in fact 10 per cent of Muslim male population, was killed. This led to creation of many widows and orphans which were to be taken care of. Many of these widows had their own land and property left behind by their husbands.

Who would look after the widows and their properties.? Some relatives or guardians. So Qur'an advises these guardians to be honest and not to change their bad property (*khabis*) with the good (*tayyib*) properties of orphans. And if one goes by the words of Qur'an it advises these guardians to marry one or two or three or four of these widows (not any women) children of whom they are in charge of.

And this verse ends by saying "*If you fear you cannot do justice, then marry one (wāhidatan)*". Thus we see two things clearly: one, Qur'an has clearly stated the reason for permitting multiple marriages and two, it is conditional that justice be done and gives strict warning. This conditionality becomes clearer in verse 4:129 where it is said "*And you cannot do justice between wives, even though you wish (it), but be not disinclined (from one) with total disinclination, so that you leave her in suspense...*"

If both verses on polygamy 4:3 and 4: 129 are read together (and they should be read together) The Qur'an's intention becomes clear. Qur'an's emphasis is not on number but on justice. In our male dominated societies emphasis unfortunately is on number, not on justice. Both verses read together make it absolutely clear that Qur'an has

49

permitted polygamy most reluctantly in certain conditions like that of war and has made it conditional on justice.

Our 'ulama and jurists unfortunately have ignored both the conditions (that of war and of justice) and give reasons for polygamy, not stated in Qur'an at all. Sexual corruption is no where stated in Qur'an for justifying polygamy as our 'ulama are doing today. Many of them are not even aware of verse 4:129 which says it is so difficult to do justice between all the wives or if they are aware explain it away in some ways belittling its emphasis on justice.

Some of the 'ulama even denied that this verse was revealed after the battle of Uhud and also maintained that the verse 4:3 does not require that one should marry widows or orphans only citing a hadith from Muslim which says Hadrat 'Aisha understood by that 'any women', not widows and orphans. If the Qur'an had meant any women it would require insertion of certain words which are not there.

And even if this report of *Sahih Muslim* be correct, how can one ignore the conditionality of justice which is stated so clearly and with so much emphasis? One Muslim scientist wrote to me that Qur'an prescribes polygamy because man is polygamous by nature. He, in his letter, argued elaborately but without substantiating his argument with any scientific evidence.

The Qur'an, on the other hand, clearly says that We have created everything in pairs (*wa khalaqnākum azwājan*) and it includes human

50

beings too. Also, Qur'an lays emphasis on chastity ('*iffat*) and says, "*And let those who cannot find a match keep chaste, until Allah makes them free from want...*"(24:33). Thus Qur'an says if you have no means to marry one wife be chaste and our 'ulama want men to marry more than one to refrain from sexual corruption. We can draw our own conclusion.

As known in previously noted in the introduction, the majority of contemporary thinkers and modern legislation allow polygamy with requirements and under certain conditions. Among the scholars who are included this group is Asghar Ali Engineer.

Asghar argued that to understand the context of the verse in chapter Al-Nisa' [4]: 3, which are used commonly as the basis of polygamy, first, need to be connected with the verses that precede the context.[99] The verse al-Nisa' [4]: 1 is talk about the creation of men and women from the same source. Therefore, this verse gives an overview of equality of the sexes male and female. Al-Nisa' [4]: 2 urge Muslims to give an orphan's property which became his legacy and not interfere with the interests of careers. While al-Nisa' [4]: 3 related to polygamy, which begins with "*if you fear that you shall not be able to Deal justly with orphans...*" The third emphasis of this verse does not marry more than one woman, but to do justice to the orphans. So the context of this verse is describing the people in charge of maintaining the wealth of orphans

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[99] Asghar Ali Asghar, *Hak-hak Perempuan dalam Islam*, translated by Farid Wajidi, Assegaf and Cici Farkha, (Yogyakarta: LSPPA & CUSO, 1994), p. 30.

51

who often do improper, sometimes marry without a *mahar*. So the Qur'an fixes that wrong behavior. [100]

In this connection, Asghar said that polygamy was the type of marriage which is allowed for long time and in various religious traditions, including Islam. However, when women began to fight for women's equality with men, they began to reject this institution because it is regarded as one form of subordination of women by men.

As already mentioned in chapter al-Nisa' [4]: 3. Literally, this verse states permissibility of a man married to four people. And indeed this is the verse that is used as a theological argument by those who allow polygamous marriages. However, in contrast to the commentators and jurists who tend to make the paragraph above as the basis of marital permissibility of polygamy, Asghar actually considers the verse stressed the "prohibition" polygamous marriage.

According to him, basically the verse above arises within the framework of justice, in this case for justice to women, especially orphans. According to historical records, the pre-Islamic society, a man used to perform polygamous marriages with unlimited number of wives. The husband has the full right to decide whom he liked, and married the woman whatever he wants. While women, just accept fate without any opportunity to question about the justice process.[101]

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[100] *Ibid*, p. 142.
[101] Asghar Ali Asghar, *The Qur'an, Women and Modern Society*, (New Delhi: Sterling Publishers Private Limited, 1999), p. 87.

52

The Qur'an does not accept this state. Because the project is essentially to empower women, although there are certain limitations of the existing society, the Qur'an accept the fact that women are victims of injustice. However, the Qur'an itself is also realistic, that empower women in an absolute sense (given the status of women's equality with men in all things) is not an easy way in this society. Therefore, according to Asghar, al-Qur'an decided to take pragmatist ideological.[102] By limiting the permissibility of polygamy, with up to four wives, the Qur'an intended to "offer" an alternative solution for the empowerment of women is still acceptable to the community.

However, Asghar said, the Qur'an itself reluctant to accept the institution of polygamy. However because this is not acceptable in the view of situation, the Qur'an allows men to marry up to four wives. However, it is not unconditional. Polygamy is only acceptable if it meets certain conditions, including the requirements of justice for husband to his wives. The Qur'an says,"*but if you fear that you shall not be able to Deal justly (with them), then only one, or (A captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice".*[103] According to him, the association of polygamy with the terms of this suggests which is targeted by the real Islam is monogamy.[104]

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[102] *Ibid.*
[103] QS. al-Nisa' [4]: 3
[104] *Ibid.* p. 88.

As noted, Asghar distinguished between contextual verse of normative messages are clear, namely justice, in this case to the orphans and their wives. However, because there are fears it cannot be done, so Islam permits polygamy to become contextual means that in order to enforce justice.

In this connection, Asghar quoted various narrations (*riwāyah*) of *asbāb al-nuzūl* of verse, which essentially talked about the obligation to do justice to the orphans and women. If you cannot do justice, then it is justified only mate with one female only. In this case, Asghar also quoted al-Razi who provided interesting commentary on this verse. According to al-Razi, doing *nawāfil* (devotions *Sunnah*) is better than marrying more than one woman or have *milk al-Yamīn*, i.e. the slaves of women. Therefore, according to al-Razi, it is best to marry one woman and busied themselves with prayer or other worship noble.[105]

This verse was actually not being understood as atomistic as separated verse of another verse. There are two other verses that are still associated with the verse, namely in chapter al-Nisa' [4]: 20[106] which contains a prohibition against taking property that has been given to the wife for the cost of polygamy, and chapter al-Nisa '[4]: 129[107] which

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[105] *Ibid*, p. 89.

[106] But if ye decide to take one wife In place of another, Even if ye had given the latter a whole treasure for dower, take not the least bit of it back: would ye take it by slander and Manifest wrong?

[107] Ye are never able to be fair and just As between women, Even if it is your ardent desire: but turn not away (from a woman) altogether, so As to leave Her (as it were) hanging (in

54

asserts the impossibility of a man able to do justice to his wives in polygamous marriages.

In this regard, Asghar said that Qur'an does not give general permission for more than four wives. Marrying more than one woman only "justified" by the terms of three levels. Namely:

a. With the use of property insurance for orphans and widows.

b. With the guarantee of justice for all wives on the material level.

c. Equitably divide the affection among his wives.[108]

Moreover, Asghar agreed with interpretation of Maulana Umar Ahmad 'Usmani, which states that in addition to these terms, polygamy was only "justified" if it is done with widows with a goal as the Qur'an to protect their property, not only with the widow, but also with another woman. Asghar also quoted Parvez which states that polygamy is only justified as a rational solution to solve social problems –such as the swelling number of widows and orphans because of war– not is obtained. In other words, while there is still a rational way to solve the problem, then polygamy cannot be justified. Or follow the interpretation of Muhammad Asad, polygamy is only acceptable in cases of exceptional circumstances and the extraordinary.[109]

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the air). if ye come to a friendly understanding, and practise self- restraint, Allah is Oft-forgiving, Most Merciful.

[108] Asghar Ali Engineer, *The Qur'an...*, p. 96.
[109] *Ibid.*

CHAPTER IV

THE CONCEPT OF POLYGAMY IN MUHAMMAD SHAHRUR'S AND

ASGHAR ALI ENGINEER'S THOUGHT: COMPARATIVE ANALYSIS

A. Muhammad Shahrur's Thought of Polygamy in the Qur'an

In his attempt to understand the Qur'anic verse in chapter al-Nisa'
[4]: 3, which speaks about the permissibility of polygamy, Shahrur sets
himself out to analyse it from linguistic terms using in that regard the
semantic approach. This means that no matter how rational Sharur has
become, he will remain loyal to the *bayani* epistemology (explanatory),
which he always employs in his understanding of divine text. *Bayani*
epistemology is an episteme in which a reading of divine text begins from
the text (*nash*) itself. So, the role of the text here remains very strong and in
this case he still considers the text (the Qur'an) sacred. In applying the
methodology of his interpretation, he always sets out from the text analysis,
in which he parses the semantic aspects, language philosophy, including the
systematic-paradigmatic analysis and historical analysis.

If it is viewed from the methods which is used in the interpretation,
the researcher sees that the trend method which is used by Shahrur is
semantic (*maudhu'i*) i.e. by using *tartil* method that was defined by the
Quraish Shihab[110] as "the interpretation that sets a particular topic, by

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[110] He is a contemporary muslims thinker of Indonesia who took masters and doctor
programs from al-Azhar Universities of Kairo, with study the Qur'an and Hadith. He was wrote a
number of books and articles especially in field *tafsir* and religion social problems. He ever

56

collecting all or some of the verses of some chapters that speaks about related topic then it's linked to another, therefore, ultimately the conclusions of the matter is drawn entirely according to the views of the Qur'an.[111]

Tahlili method concluded that the text of the verse mentioned above allow polygamy; a man may marry more than one to four with the condition can be fair. However with the *maudhu'i* method, it may be concluded different with the other verses that seemed to exclude fair condition for humans. The verses are:

> *"Ye are never able to be fair and just As between women, Even if it is your ardent desire: but turn not away (from a woman) altogether, so As to leave Her (as it were) hanging (in the air). if ye come to a friendly understanding, and practise self- restraint, Allah is Oft-forgiving, Most Merciful".*[112]

This verse can be interpreted polygamy rejecting, or at least tighten the implementation of polygamy. The terms of polygamy are the ability to be fair, while this verse confirms a person's inability to do justice among his wives. The word *"but turn not away (from a woman) altogether"* in the verse as if addressed to those who cannot afford to be fair, while for those who are able to do justice on its own piece of this verse shall not be valid.

The first verse had been inspired earlier after Uhud war while Muslims was suffering defeat. In such an atmosphere of war, it is certain

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became a rector in IAIN Syarif Hidayatullah Jakarta, and ambassador in Saudi Arabia, since 1999.
[111]Quraish Shihab, *Membumikan Al-Qur'an*, (Bandung: Mizan, 1992), p. 14.
[112] QS. al-Nisa' [4]: 129

57

that the male population is relatively reduced; otherwise the population of widows and orphans is increased. Then it could be said reasonable if polygamy in the early days got social justification. There is a source mentioned that the women Muslim population in the early days of Islam were larger than the amount of men. Among 500 people, there are only one-fifth of men who can use weapons. The rest are women and children.[113] If small populations are lost again in battle, then polygamy can be an alternative solution in solving social problem.

As for the fairness required in polygamy by al-Nisa' [4]: 3 according to Quraish Shihab, is the material of justice, while al-Nisa' [4]: 129 is immaterial justice (love). So it is not right that this verse becomes the argument to close-shut the door of polygamy.[114]

Maudhu'i method will generally produce more moderate interpretation of gender verses than *tahlili* method, because this method does not introduce many Middle Eastern cultures which tend to position the male is more dominant than women. It is interesting here that Muhammad Shahrur used *tahlili* method by text language in understanding the verse, but with a different paradigm with other interpreter. Shahrur used its own unique method of interpreting. However if it should be grouped, in understanding the verses about polygamy, the researcher is more likely to use *maudhu'i* method.

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[113] W. Montgomery Watt, *Islamic Political Thought*, (Edinburgh: Edinburgh University Press, 1990), p. 3.
[114] Quraish Shihab, *Wawasan al-Qur'an*, p. 201.

58

One advantages of the interpretation method which is used by Shahrur is its ability to play in a text frame without getting stuck in textualism puddle, although on the other hand it lack accommodation of the traditions information which less support his view.

In the interpretation, there are two main things that "ought" to be considered in the interpretation of the Qur'an that is the original meaning and the significance of the verse. In this case the original meaning which Shahrur left many with the principle "the text remains, but its meaning evolved". According to Shahrur, the meanings of texts were developed not the significance, in fact that should be grown is the meaning of justice in polygamy. For Shahrur, justice required in polygamy is between children themselves (her son with first wife) and children orphaned. Fairness between the wives is not required, because it is impossible.[115]

B. Asghar Ali Engineer's Thoughts of Polygamy in the Qur'an

In understanding the context of the verses related to polygamy in order to serve as the basis of polygamy, especially al-Nisa' [4]: 3, Asghar offers a very important methodological guideline by using the hermeneutical method. For him, morality is both normative as well as contextual. The normative may be transcendental, but he only practices in certain contexts. When the context changes, it may not be appropriate for the practice of

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[115]Lindra Darnela, *Menggali Teks, Meninggalkan Makna: Pemikiran Singkat Muhammad Syahrur Tentang Poligami*, (in Jurnal asy-Syir'ah, Vol. 42, no. 1, 2008), p. 14.

morality in the long form. However, he said, normative content cannot be sacrificed when developing a new form of morality.[116]

In this connection, Asghar applied hermeneutical bid by utilizing several approaches, such as historical, sociological, anthropological and philosophical. Associated with the historical approach, he asserted that religion is always associated with the origins of complex situations. Divine intervention, however it is recognized in various schools of Islamic theology, not be arbitrary. History is not a myth or arbitrary projects that have absolutely no social causality. The Qur'an has a theological approach, but causality is not ignored.[117] Similarly, in interpreting verses is related to polygamy. It was associating with the decline of the verse (*asbāb al-nuzūl*), which was inspired after the Uhud war, when the war was 70 of 700 men died. As the result, many Muslim women became widows and orphans which must be maintained. So according to the social context at that time, the best way to maintain and protect widows and orphans is to marry them, by fair requirements.

In the verse, Asghar also said that the verse is related to the culture at that time in which Arab societies have no limit to the number of women who may be married. Taking Tabari's opinion, he mentioned that members of the Quraysh tribe in general have 10 wives. Therefore, permission to marry a woman more than one to four was a restriction which reduces

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[116]Bassam Tibi, "*Moralitas Internasional sebagai Suatu Landasan Lintas Budaya*", in M. Nasir Tamara and Elza PeldiTaher (eds), *Agama dan Dialog Antar Peradaban*, (Jakarta: Yayasan Wakaf Paramadina, 1996), p. 7.

[117]Asghar Ali Engineer, *Islam dan Pembebasan*, p. 1-2.

60

drastically the number of women who may be married. The Verse 3 chapter al-Nisa' was the only verse that may be used to justify polygamy in Islam. Nevertheless it must be remembered that this justification is contextual, not a normative justification so its role have to be seen for that time, not forever.[118]

When it was dealing with the Qur'an, the reader must distinguish between normative verses and contextual verses. Normative verses are verses that reveal normative statements or contain universal values, that is what should be happen and what is best of all time, while the contextual verses are verses that reveal the contextual statement or strongly associated with the context of society at the time of descent, the verses explain what happened or what is best at that time. This method obviously required a bright historical analysis in the reading of the Qur'an verses. These methods and approaches are used by Asghar here in analyzing some crucial issues about women in Islam.

According to the researcher, the method was used by Asghar tend to use *maudhu'i* methods i.e. relating the verse that precedes the context and it did not forget to link it with *asbāb al-nuzūl* (as the researcher described earlier).

The verse is a verse of al-Nisa' [4]: 1-3, at the third verse which is related to polygamy, which begins with "*If you fear that you shall not be able to Deal justly with orphans...*" The emphasis of these three verses is not

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[118]Asghar Ali Asghar, *Hak-hak Perempuan dalam Islam*, p. 29-30.

61

marrying more than one woman, but to do justice to orphans. So the context of this verse is describing the people in charge of maintaining the wealth of orphans often do improper, sometimes marry without a *mahar* (dowry/brideprice). So the Qur'an fixes the wrong behavior. That marries the widows and children orphans in this context as a form of relief, not for sexual gratification.

A serious challenge to the methods and results of Asghar is the paradigm of Muslims majority thought who view the Qur'an as something that is normative in its entirety, so it does not recognize the difference between the sexes (the difference between men and women that is the nature of God) and gender (differences in roles between men and women are shaped by society).Though, this difference is a fundamental paradigm in the discourse of gender. However, the view that all verses of the Qur'an is really only limited to normative consciousness, because in practice the formulation of many Islam teachings departed from the concept of *nash*, which prioritizes some *Makiyyah* verses upon *Madaniyyah* verses. Its means, in certain conditions Qur'an verses as a whole shall not be applied simultaneously. Asghar Ali Engineer was also doing the same. The difference is he prioritizes normative verse rather than contextual verse.

Accordingly, its application must be viewed from the context not forever. This means, that this verse is contextual verse which its application is temporal, it is not universal principal verse that must be applied forever.

62

C. Shahrur and Asghar's Thoughts of Polygamy in the Qur'an: A Comparative Analysis

Based on the explanation above, it appears that in principle the two scholars; Muhammad Shahrur and Asghar Ali Engineer even the other commentators, both in favor of polygamy fully supported with strict conditions and under certain conditions, and prohibiting it, they use the same arguments to support their arguments, i.e. on chapter al-Nisa' [4]: 3. Some Islamic scholars write down the verse but others did not record it. Likewise, some thinkers connect it to the verse and *Sunnah*, while others did not connect it. In other words, despite using similar arguments, Islamic scholars have a different conclusion.

The reason is, besides the differences in using additional argument, also the differences in methods (*manhāj*) used, or a better term is called the difference using the *usul fiqh*. The second cause is continuation of the first cause which is due to a number of scholars who relate it to cause the decline, while others did not connect. The third cause, because there are scholars who, in addition, noted for the decline also connecting with texts (*nash*) relating to marriage. The fourth leading cause is related to the status of the Qur'an, which some believed to be the final answer, while there are scholars although admitted the Qur'an as the final word (*firman*), but it's understanding must go forward in accordance with the times and demands.

Asghar said that polygamy clause cannot be separated from the ongoing war at the time of the Prophet Muhammad that caused the number

of widows and orphans in the Muslim community. Taking the opinion of Maulana Muhammad Ali, Asghar said that the main emphasis in verse polygamy is to do justice to women, especially widows and orphans. The permissibility of polygamy should be viewed strictly in the context of the prevailing circumstances so that even if conditions allow polygamy, the man is still expected to be monogamy if unable to do justice. He further concluded that the Qur'an teaches monogamy as normative doctrine, while polygamy is the teachings of the Qur'an that are contextual. Unfortunately, still according to Asghar, the permission which is very limited was understood widely as the general permission and can be done in any circumstances.[119]

This analysis is in line with Muhammad Shahrur thought, a Syrian Muslim intellectuals, who said that the clause which allows man to marry (until) four wives has restrictions, rather than easing as commonly understood, so that in the category of *hadd al-A'la* or maximum limit. Instead, the verses talked about the inheritance of women have the opposite movement so half of the male heirs are al-*hadd al-adna* or minimums.

According to the researchers in understanding the verses of polygamy, both scholars have similarity besides using the Qur'an chapter al-Nisa' [4]: 3 as the argument to strengthen his opinion, also has strict requirements for men who want to practice polygamy and even then under certain conditions.

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[119] Asghar Ali Engineer, *Hak-hak Perempuan dalam Islam*, p. 221-223.

The researchers also looked at both scholars were more likely to use the semantic method (*maudhu'i*), but they depart from their respective methods of thinking. Sharurs with his *tartil* method applies his limits theory, and Asghar offers his hermeneutic methods by using several approaches, such as historical, sociological, anthropological and philosophical. He also does not forget because of the verse revelation (*asbāb al-nuzūl*) are intimately associated with polygamy permission. They also have the same conclusion which is basically the verse taught to perform a monogamous marriage if unable to do justice. Polygamy is not really a purpose (*ghōyah*), but only a means (*wasīlah*) to provide a solution to a social problem.

The difference here Asghar prioritize normative verse rather than contextual verse, however, he does not condone polygamy when a person is unable to meet the specified requirements. While Shahrur, although he argued that the Qur'an follow the principle of monogamy and create strict requirements for those who want to practice polygamy, but there is something quite fundamental in his view. He considers that polygamy is not merely permissible, even its suggestion (command), if the terms of polygamy can be properly fulfilled.

65

CHAPTER V

CLOSING

A. Conclusion

From the description in advance about the concept of polygamy according to Muhammad Shahrur and Asghar Ali Engineer: the comparative study can be concluded as follow:

1. Polygamy is still become a debatable actual problem among Islamic Scholars. Each person uses different method and *istimbath al-hukm* according to their perspective. In this case, Shahrur took a method to "*come back to the text*" completely, not partially, so the permission of polygamy becomes an impossible thing to be done.

2. Asghar said that the permission to marry more than one woman is limited and must be seen strictly in the conditions context that has been prevailed. If there is a condition that forces a man to marry more than one woman, hence the first important thing which must be emphasized is justice, the treatment balances who really fair toward the orphans. If the man cannot do justice, so the Qur'an demands the man to marry just one woman. In other word, polygamy is a contextual thing, while monogamy is a normative thing.

3. In principle, in the verse which is related to polygamy, both the scholars; Muhammad Shahrur and Asghar Ali Engineer used the same

66

argumentation to support each opinion, i.e. the Qur'an chapter al-Nisa' [4]: 3. The difference is just the method which is used as the researcher explained before. The point is both scholars concluded that the principle of Qur'an (especially in chapter al-Nisa' [4]: 3) taught to do justice, especially toward the weakness people which is in this case is widows and orphans. Related to polygamy, the Qur'an recommended Muslim to do monogamy because of the difficult to do justice, while polygamy is just the emergencies way, and polygamy needs strict requirements.

B. Suggestion

As the closing of the chapter, the researcher just wants to reflect toward polygamy problem, that the polygamy is not the purpose (*ghōyah*), but it just means (*wasīlah*) to give the solution toward one of the social problems. So if a person wants to do polygamy, it must be oriented to the solution or social problems, not just 'sexual tours'. Because the basic message of the Qur'an about polygamy is justice and how to give the solution toward the social problems. Even historically, actually the polygamy of Prophet SAW is more emphasized to look after the orphans and to protect the widows.

Thus, if the social problems can be finished without doing the institution of polygamy marriage—for example through the social organization or *LSM* who handle of this case seriously—so a person don't need to do polygamy. So if he insisted to do polygamy, it will cause the

new social problems which are result by injustice of husband, either to the wife or children. In this case, so it is needed special laws which organize and give the strict punishment to people who do polygamy but he cannot be justice.

If the *maqāsid al-syarīah* from the polygamy (i.e. the justice and social problems) cannot become real, so the researcher thought that someone is prohibited to do polygamy, but rather marry with one woman (monogamy). This is based on the Qur'an verse which is means: "*but if you fear that you shall not be able to Deal justly (with them), then only one*"[120] And "*You are never able to be fair a just as between women, even if it is your ardent desire: but turn not away (from a women) altogether...*"[121].

Thus, the researcher thought that the *muhkam* from the verse of polygamy is not only a permission to do polygamy, but also the basic of justice and social benefit. The concept of polygamy is just one of the alternatives and not the one to solve social problem.

As the recommendation, it seems necessary to do the empiric research in the field (or borrow a method which is used by Imam Syafi'i method namely *istiqrō'i* method) to see how is the condition of family or the society whose practice the polygamy. What are their motivations, how is the implication into their family, does the polygamy become a solution or even cause greater problem than before. According to the

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[120] QS. Al-Nisa' [4]: 3
[121] QS. Al-Nisa' [4]: 129

68

researcher, this is very important thing. Because, an exegesis products is

certainly need to be examined on the field, not only as an idealist-

metaphysical (on paper), but also an empiric.

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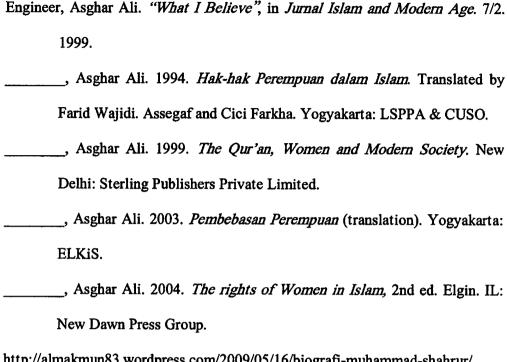Baidan, Nashruddin. 1999. *Upaya Penggalian Konsep Perempuan dalam al-Qur'an (Mencermati Konsep Kesejajaran Perempuan dalam al-Qur'an).* Ed. 1. Yogyakarta: Pustaka Pelajar.

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