

The Right Concept and Application of Polygamous Marriage in Malaysia: An Analysis to the Role of Court under the Provision of Islamic Family Law (Federal Territories) Act 1984

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ABSTRACT

Polygamy can be practised among Muslim in Malaysia according to certain requirements under Islamic Family Law of each States. Misconception of polygamous marriage leads to misapplication of polygamy by marriage abroad, syndicate polygamy, and anti-polygamy. This research aims to explain the right concept of polygamous marriage in socio-legal context of Malaysia. This research is a descriptive study based on the previous research on socio-legal context of polygamous marriage in Malaysia and the role of Shariah Court in deciding polygamy application under Section 23 of IFLA. This research analyses the provision under Section 23 of Islamic Family Law (Federal Territories) Act 1984 (referred as IFLA) on the power of Shariah Court in the application of polygamy with decided cases. This research found that according to Section 23 of IFLA, polygamous marriage in Malaysia is permissible but not an individual right of man. It is a public right given by the State through Shariah Court. Polygamy without Court permission is an offence and could affect the life after marriage. The Court has to decide the application of polygamous marriage based on public interest rather than individual interest to preserve the welfare of all parties involved. Therefore, this demonstrates that the procedure for polygamy in Malaysia is more bureaucratic compared to neighboring countries, such as Indonesia. This complexity is strongly guaranteed by penalty under Section 123.

[Poligami dapat dilakukan di kalangan Muslim di Malaysia sesuai dengan persyaratan tertentu di bawah Undang-Undang Keluarga Islam di setiap Negara Bagian. Kesalahpahaman tentang pernikahan poligami menyebabkan penyalahgunaan poligami melalui pernikahan di luar negeri, sindikat poligami, dan anti-poligami. Penelitian ini bertujuan untuk menjelaskan konsep yang benar tentang pernikahan poligami dalam konteks sosio-legal di Malaysia. Penelitian ini adalah studi deskriptif berdasarkan penelitian sebelumnya tentang konteks sosio-legal pernikahan poligami di Malaysia dan peran Mahkamah Syariah dalam memutuskan permohonan poligami di bawah Pasal 23 IFLA. Penelitian ini menganalisis ketentuan di bawah Pasal 23 Undang-Undang Keluarga Islam (Wilayah Persekutuan) Tahun 1984 (disebut sebagai IFLA) tentang kekuasaan Mahkamah Syariah dalam penerapan poligami dengan kasus-kasus yang telah diputuskan. Penelitian ini menemukan bahwa menurut Pasal 23 IFLA, pernikahan poligami di Malaysia diperbolehkan tetapi bukan merupakan hak individu pria. Ini adalah hak publik yang diberikan oleh Negara melalui Mahkamah Syariah. Poligami tanpa izin Mahkamah adalah pelanggaran dan dapat mempengaruhi kehidupan setelah pernikahan. Mahkamah harus memutuskan permohonan pernikahan poligami berdasarkan kepentingan umum daripada kepentingan individu untuk menjaga kesejahteraan semua pihak yang terlibat. Oleh karena itu, itu membuktikan bahwa prosedur untuk poligami di Malaysia lebih birokratis dibandingkan dengan negara-negara sekitarnya, seperti Indonesia. Kompleksitas ini dijamin pula dengan ancaman hukuman berdasarkan Pasal 123.]

KEYWORDS

Polygamy, role of Shariah Court, public right, marriage abroad, collective interest

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Introduction

Islam sees marriage as an institution and protection against social risk. Thus, Islam permits men to enter into marriage with more than one up to only four wives¹ to give justice to certain parties under certain circumstances. The practice of polygamy in Islam is not obligatory but the implementation of justice is obligatory. However, if polygamy is forbidden, it will cause more serious social impacts due to illegal marriage. On the other hand, polygamy is discriminatory against women if it is permissible for women. Polygamy is not suitable for women because it will cause a prolonged argument about the legal status and the inheritance matter of the children² and not suitable with the biological nature of women itself.

Malaysia practises a dual legal system which is Federal level and State level. Islamic family law of different states applied different enacted legislation even though it provides for the same principle jurisprudence which are from the primary sources of Al-Quran, As-Sunnah and juristic opinion mostly based on Shafie School of law. For the States legislation, it is known as Enactments but for the Federal legislation, it is known as Act which is Islamic Family Law (Federal Territories) Act 1984. This law was enacted in 1984 and has been amended several times since then, with the most recent amendment made on 5th October 2022. The application of law of each state on polygamy is not similar and sometimes, the process and procedure are also different between states. This contributes to the

¹ Scholars suggest the word 'polygyny' is more suitable with the concept of polygamy in Islam due to the marriage is only permissible for man up to four wives.

² Awang, Nurulbahiah. "Gender Equality Under Islamic Family Law (Federal Territories) Act 1984." *International Journal of Law, Government and Communication* 3 no. 11 (2018): 68-82.

effort of the Shariah technical committee to reform all state legislations on Islamic family law in Malaysia.³

The development on the provision of polygamy under IFLA focuses on the protection for and assurance of women's and children's rights from the abuses of law and practice in Muslim marriage. The Muslim community, especially men, recognise polygamy as an individual right of men. They are willing to break the law because they think polygamy is their right as an individual. However, polygamy became a nightmare for women until anti-polygamy groups emerged and banned polygamy. Meanwhile, the authority of the Shariah Court so far is up to appeal level only. In order to uphold justice on women including in polygamy application, the Shariah judges were appointed among women and are advised to make decisions based on evidence and provisions in the Act or Enactment to avoid bias. However, cases of polygamy abroad still become the choice of couples in Malaysia even though it is considered as a Shariah criminal offence.

The discussion of this research focuses on the provision under Section 23 of Islamic Family Law (Federal Territories) Act 1984 (IFLA) on polygamy and the analysis is made in the lens of protection on the rights of women and children in marriage. Another important discussion of this research is on the legal concept of polygamous marriage under the provision of Section 23 of IFLA which is in accordance with the sources and application by the Court. The provision under Section 23 will be highlighted to understand how the role of Court is given by the law to uphold justice to all persons related to the application of polygamous marriage under IFLA.

This research adopts qualitative research which is library research to understand the socio-legal context of polygamous marriage in Malaysia. The descriptive study used is by reading previous journals and articles, reports, news on the issues, concept and application of polygamous marriage in Malaysia. The research highlighted the decided cases on polygamy by Shariah Court. The descriptive analysis is used in this research based on the sources and provision of law and decided cases on polygamy.

The Issues of Polygamy in Socio-Legal Context of Malaysia

It has been reported that 60 percent of marriages among Malaysian couple at Selatan Thailand every month are polygamous marriages. In other news, the number of couples who marry outside Court in other countries increases among young people and men between 30 and 50 years old.⁴ This figure needs further analysis to find out the causes and the importance of overcoming it.

The last few years have witnessed the emergence of syndicates that facilitate polygamous marriages without the consent of the Shariah Court in Malaysia. This refers to groups or individuals who engage in polygamous marriages without

³ Ibid.

⁴ AstroAwani, 22 February 2024 Sinar Harian. "300 pasangan Malaysia nikah di Selatan Thailand setiap bulan." AstroAwani, February 25, 2024. <https://www.astroawani.com/berita-malaysia/300-pasangan-malaysia-nikah-di-selatan-thailand-setiap-bulan-459675>.

adhering to the legal and religious requirements set by the government and religious authorities. These syndicates often operate underground without proper documentation, leading to a lack of legal protection for the wives involved.⁵ This situation affects the wife and children as they will not be protected by law and cannot claim their rights as a legal wife as their marriage is not registered in the eyes of the law.

The research done by Mat Zain et al. (2023) found that polygamy scam in Malaysia involves numerous parties ⁶. There are a lot of reasons that lead to polygamy scam such as burdensome conditions of the procedure, the couples looking for an easy way of marriage due to not obtaining the blessings (bride's parents or first wife), or concealing the marriage from the first wife or family. Even though it is an offence to marry without Court permission⁷, the case is increasing every year and affect the wife and children as it leads to difficulty for the wife to remarry and not entitle to make claim for alimony, mut'ah, marital property, pension, inheritance rights, and any other rights.⁸ The marriage needs to be confirmed by the marriage registrar or the Court. If it is not confirmed and the child is born, the child cannot become a legal child to the father.⁹

There are cases where polygamous marriages cannot be confirmed by the Shariah High Court due to issues of *wali* or guardians as important requirements for valid marriage according to syarak. There are also cases where polygamy is performed by parties not authorised by the countries involved, causing the marriage cannot be registered and has invalid status. Among the effects of illegal polygamous marriages are difficulties in registering children at the National Registration Department and the risk of being convicted as illegitimate children, difficulty in submitting claims arising from marriage and difficulties in dividing property in the event of death ¹⁰.

⁵ Mokhtar, TF. "Unconventional polygamy syndicates in Malaysia: An unusual twist on love and marriage." *Sinar Daily*, July 28, 2023. <https://www.sinardaily.my/article/202569/opinions/letters/unconventional-polygamy-syndicates-in-malaysia-an-unusual-twist-on-love-and-marriage>

⁶ Mat Zain, Mat Noor, Mahsor, Ahmad Faris Zikri, and Abdul Manap Norhoneydayatie. "Measures to Curb Polygamy Scams in Malaysia: A Legal Perspective." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (2023): 1243–66. <https://doi.org/10.22373/sjhc.v7i2.16031>

⁷ Section 23 (1) of Islamic Family Law (Federal Territories) Act 1984.

⁸ Borhanuddin, Siti Aishah, Samah, Mahamatayuding, and Mat Hussin, Mohd Norhusairi. "Sorotan Literatur terhadap Polemik Perkahwinan Tanpa Kebenaran di Malaysia." *Journal of Shariah Law Research* 7, no. 2 (2022): 273–98.

⁹ Choong, Jerry. "Polygamy syndicate allegations to be probed immediately, says Islamic affairs minister." *Malay Mail*, January 3, 2021. <https://www.malaymail.com/news/malaysia/2021/01/03/polygamy-syndicate-allegations-to-be-probed-immediately-says-islamic-affair/1936826>

¹⁰ Bernama. "Nak berpoligami ikutlah undang-undang, jujur kepada pasangan." *BH Online*, January 10, 2023. <https://www.bharian.com.my/berita/nasional/2023/01/1050012/nak-berpoligami-ikutlah-undang-undang-jujur-kepada-pasangan>.

The abuse of law exists in some cases whenever some judges were given absolute discretion on the application for polygamous marriage in some States¹¹. This enables men to take advantage of the most convenient law for personal gain¹². Even though the law provides the procedure of trials but mostly the applications for polygamy do not go to trial because the current wife usually allows her husband to marry another¹³. However, the oral permission has been challenged from the existing wife since in some cases, it may have been given under duress because the husband had threatened a wife with physical violence or divorce.

Raudlotul Firdaus (2012) highlighted that the legal provision on polygamy in Malaysia is insufficient in curbing the abuse of polygamy and further details on the reason of the permissibility of the practice from Divine revelation are strongly recommended to provide a clear picture on its advantages for the ummah.¹⁴ Besides, the issue of penalty for the offence of polygamy without permission is discussed due to the low penalty and it can be paid by the spouse¹⁵. Even marriage abroad or marriage without Courts permission is considered as an offence under the provision,¹⁶ the case is increasing every year. The reasons why the couple choose to marry abroad are the burdensome conditions of the procedure for polygamy, looking for an easy way marriage as they do not have the blessings from bride's parents or first wife, or concealing the marriage from the first wife or family¹⁷. It is argued that the second limb of section 23 (1A) opens for public to enter into polygamous marriage outside court and they are ready to pay for penalty imposed, which does not exceed RM1000¹⁸. The couple cannot foresee the effect of marriage abroad and outside Court and this provision is less explained to the public.

From the survey done among final year female students in the University of Malaya in 2013, 33% of the respondents agree that divorce affects women more than men and 39% of the respondents agree that the laws pertaining to the practice of polygamy should be made stricter. Whereas, 52% agree that the laws

¹¹ Abdul Hak, Nora. "Just and Equal Treatment in Polygamous Marriage." *International Islamic University Malaysia (IIUM) Law Journal* 16, no. 1 (2008): 141-155.

¹² Nik Noraini, Nik Badli Shah. 2003. *Islamic Family Law and Justice for Muslim Women*. Kuala Lumpur: Sisters in Islam.

¹³ Raihanah, Abdullah, and Soraya, Khairuddin, "The Malaysian Shariah Courts: Polygamy, divorce and the administration of Justice." *Asian Women* 25, no. 1 (2009): 22-54.

¹⁴ Fatah Yasin, Raudlotul Firdaus, "Analysis of Polygamy Provision Under the Islamic Family Law", *IIUM Law Journal* 18, no. 2 (2012): 261-84. <https://dx.doi.org/10.31436/iiumlj.v18i2.25>

¹⁵ Sinar Harian, 7 Januari 2023. Rozlan, Nur Iftitah. "Punca ramai rakyat Malaysia nikah di Thailand." *Sinar Harian*, Januari 7, 2023. <https://www.sinarharian.com.my/article/239406/berita/semasa/punca-ramai-rakyat-malaysia-nikah-di-thailand>.

¹⁶ Section 23 (1) of Islamic Family Law (Federal Territories) Act 1984.

¹⁷ Mat Zain, Mat Noor, Mahsor, Ahmad Faris Zikri, and Abdul Manap Norhoneydayatie.

¹⁸ See provision of Section 123 of IFLA on fine and imprisonment. Under Section 123 of IFLA, polygamous marriage at border or outside Court will be imposed a fine not more than RM1000 or prison up to 6 months on the couples.

pertaining to the practice of polygamy should be implemented and followed properly.¹⁹

Raihanah Abdullah and Soraya Khairudin (2009) found that the Shariah Court in Malaysia has improved in terms of ability and efficiency in administration and provision. Among them, on the concept of practising polygamy, it was no longer the unilateral privilege of the man but a judicial decision of a Shariah judge. This means that the Court has the authority to decide based on the collective interest of the society as a whole.

The Concept of Polygamy under IFLA

Section 23 of IFLA provides on the concept, process, procedure and the terms and conditions for legal polygamous marriage in Federal Territories of Malaysia. Section 23 (1) provides that polygamy is permissible for men under the law with written permission from Shariah Court. It means that marriage without getting written permission from the Shariah Court is illegal. This provision also emphasises on the important role of Shariah Court in deciding the application of polygamous marriage as to protect the collective rights of the family institution.

Section 23 (1A) provides that if someone enters into a polygamous marriage without the permission of the Court, it cannot be registered under the Act. However, the Court, if satisfied that the marriage is entered in accordance with *hukum syarak*, can order the marriage to be registered under the Act in accordance with Section 123. According to Section 123, a man who married abroad or without Court's permission have to pay penalty for not more than one thousand or jailed for not more than 6 months or both.

Section 23 (3) provides that an application for permission must be submitted to the Court according to the prescribed manner and must be accompanied by an oath stating the reason why the proposed marriage is said to be appropriate or necessary, applicant's income at that time, details of his commitments and obligations and financial responsibility that should be determined, the number of dependents, including people who will be his dependents following the proposed marriage, and either the wife's consent or opinion or his existing wives have been acquired or not against the marriage. The Court has to decide based on these conditions. There is no doubt that this provision is necessary enough to show that the Court has to investigate the financial stability of the applicant in order to be responsible to all parties involved with the marriage collectively. Consent from the wife is not necessary but the Shariah Court will decide based on the investigation made whether the polygamy will cause harm to the parties in marriage.

Under Section 23 (4), it stated that the Court may grant permission for polygamy if the Court satisfies four grounds, which are, (a) the proposed marriage is just and necessary, on the part of the wife such as sterility, physical infirmity, physical unfitness for conjugal relations, willful avoidance of an order for

¹⁹ Alamgi, Aurangzaib "Islam and Polygamy: A Case Study in Malaysia. *Procedia - Social and Behavioral Sciences* 114 (2014): 889–93. <http://dx.doi.org/10.1016/j.sbspro.2013.12.803>.

restitution of conjugal rights, or insanity. On the other hand, clause (b) stated on the part of the husband that he enable to support as required by *hukm Shara'* all his wives and dependants, including persons who would be his dependents as a result of the proposed marriage; (c) that the applicant would be able to accord equal treatment to all his wives as required by *Hukm Shara'*; and (d) that the proposed marriage would not cause *darar sharie* to the existing wife or wives.

Section 23 (4) clearly gives the wife an opportunity to inform the Court if a polygamous marriage would be unjust for her, children, and family. Even parents for the future wife also have to be present before the Court. However, the permission for polygamous marriage is neither the right of a wife or husband but the right of the State which has transferred to the Sharie judge to uphold justice for all parties. The Court will decide whether such polygamous marriage is permissible or not permissible with wisdom and valid reason as provided by Shariah and provision of law. It is for the State or Court and not the individual to decide whether such social justice exists which could necessitate taking more than one wife at a time. Yet, the Court has to ensure the investigation session is just and the parties involved agree without duress or physical violence since in some cases, the husband had threatened her existing wife with physical violence or divorce in order to get permission²⁰.

Section 23 (5) mentions the requirement of oath to be delivered to all present wife or wives on the invitation to the Court. This provision has been highlighted in Section 23 (3) on the oath and reason for just and necessary for polygamy. Whereas Section 23 (6) provides that the parties who disagree with the decision of the Court shall appeal to the Court according to the Court procedure. Section 23 (7) states that the person who commits an offence under subsection (1) has to pay all the *mas kahwin* (mahr) and all *pemberian* (hibah/gift) to the wife or wives, and if not, it can be considered as debt. Meanwhile, Section 23 (9) (a) provides on the jurisdiction of the Court to order payment of maintenance to the wife or wives and Section 23 (9) (b) provides on the jurisdiction of the Court to order the division of *harta sepencarian*, for example by selling and dividing the assets together.

The Role of Shariah Court in Polygamous Marriage

There are some issues in administration and provision of law related to the role of Shariah Court in polygamous marriage in Malaysia such as the different provision of polygamy under different States, solemnisation of marriage overseas to bypass local restrictions, low criminal jurisdiction of Shariah Court²¹ and so on. These issues always become the main discussion in the reformation of law on polygamous marriage.

The good case to illustrate the role of the Court to decide on the permissibility of polygamous marriage based on the element under section 23 (4) is the case of *Aishah binti Abdul Rauf v Wan Mohd Yusof bin Wan Othman*²². The

²⁰ Raihanah Abdullah & Soraya Khairuddin.

²¹ Raihanah Abdullah & Soraya Kahiruddin.

²² [1990] 3 MLJ lx; (1990) 7 JH 152.

husband had applied to the Shariah Court for permission to contract another marriage and the learned judge gave the permission. The trial judge held that the respondent had the means to support more than one wife. He also stated he feared that the respondent and his proposed second wife would commit *zina* (adultery) if they were not allowed to marry. After that, the existing wife appealed against the decision of the Shariah Court to the Appeal Board Committee. The Board of Appeal allowed the appeal and stated that the burden of proof is on the husband to show that he has satisfied all the conditions stipulated in the law. The learned judge only gave serious consideration on the question of financial means under condition (b) and ignored conditions (a) (c) and (d) of section 23(4) of the Selangor Islamic Family Law Enactment 1984. The learned judge only satisfied condition (b) but not condition (a) "That the proposed marriage is just and necessary, having regard to such circumstances as among others, the following, that is to say, such as sterility, physical infirmity, physical unfitness for conjugal relations, willful avoidance of an order for restitution of conjugal rights, or insanity on the part of the existing wife or wives" and condition (c) mentions "That the applicant would be able to accord equal treatment to all his wives as required by Hukum Syara'" and (d) states "That the proposed marriage would not cause *darar sharie* to the existing wife or wives." by merely accepting the husband's bare statement without proof and authority under Hukum Syara'.

In the above case, the Board stressed that all the four conditions were equally important and should be considered separately. The Board after deliberation held that the husband had failed to satisfy condition (a) and this failure alone would be a sufficient ground to reject his application. It also held that the four conditions imposed are not in conflict with Al-Quran, as they are aimed at securing justice to wives and justice is mandatory in Al-Quran. The Board explained that the object of section 23 (4) is not to abolish polygamy, but merely provides constructive requirements in the hope that justice in the Muslim family may be better achieved.

In the case of *Mohd Izudin bin Mohd Ilias v Rozeta bt Hasan*, 2013, the court decided differently whenever the plaintiff's application to practise polygamy was allowed, but with the condition that the husband must be just to his wives in matters such as food, shelter, clothing, and overnight rotation with wives. If the husband fails to support his wives and fails to treat them equally and justly, the wives can go to court and make an application for maintenance or divorce and their acts in disobeying their husband are not considered as disobedient. These two cases are a good illustration of the Court's decision based on the situation of the case.

Thus, Section 23 (4) shows that the Court will decide whether the application is just or necessary based on the conditions of both sides; the wife and the applicant. The Court will gather the information on both sides through investigation in closed Court from the current wife or wives, future wife and her *wali*. The factors which are referred by the Court are on the physical and mental health of the wife, the financial stability of the applicant and the marriage will not cause *darar sharie* to the current wife or wives. All these conditions are based on collective rights which are under the responsibility of the State or the Court.

Polygamous Marriage: Public or Private Right?

Private law is part of civil law that deals with relationships between individuals, like contracts and torts. It differs from public law, which governs relationships between individuals or organizations and the state, including regulations and penal law. Essentially, private law handles interactions between private citizens, while public law addresses state and population relations.

In Islamic perspective, the discussion of private or public rights is discussed differently compared to Western view. In Arabic term, *ikhtisās* linguistically means specificity, exclusivity or the state of being private; it is the opposite of *‘amma*, which means public or publicity.²³ Legally, this term means having exclusive control over something to keep it hidden and protected. Judgments in the rights of Allah can't favor one person over another; they aim to protect everyone's interests. In another word, it aims to protect the public benefit, and the interests of all human beings. It is impossible for an individual to make this benefit specific to himself and to dispose of it freely. It refers to the division of rights whether it is the right of God (Allah) or the right of man. Whenever it is considered as the right of God, it cannot be overruled by man. If God permits it, so it is the right of God and the permission is for the benefit of human beings as a whole. If God prohibits it, it is also for the benefit of human beings as a whole. Thus, the right of God 'are judgements not related specifically to any person, but to the benefit of all human beings' (al-Laknawi , 1986)²⁴.

In this context, polygamy is not for individual interest but for the collective interest of all parties related to it. The law provided for the benefit of all human beings is considered as a public right and it is upon the State or government to decide the best. Thus, it is imperative to analyse the role of Shariah Court under the provision of law in order to educate the public on the concept of polygamous marriage. Shariah law and procedure is mandatory for Muslims to be followed in Malaysia even though it is regulated by the State not Federal. It is considered a public law whereby the State has the right to regulate based on social justice or collective interest of the society. The law plays a role in regulating the relationships between private individuals or private organisations and public bodies. Public bodies in this context is the Shariah Court, religious departments and local authorities of each State. In general terms, public law deals with issues that affect the general public or society as a whole but not between individuals.

Islam gives great importance to the fundamental human right to privacy. However, like other human rights, the protection of privacy is not absolute. The government may invade one's privacy to some extent if it serves the public interest (*Maslahah Ammah*).²⁵ Al-Ghazali states that; "*maslahah is the consideration which*

²³ al-Zabīdī, A. *Tāc al-Arūs min gawāhir al-qāmūs*, Kuwait, 1965, vol. 17, 555; al-Fīruzābādī, al-Qāmūs al-Muhīt, Beirut, 1987, p. 796

²⁴ Dr Hasan HACAŞ. The Basis and Effects of the Division Between Private and Public Law in Classical Islamic Law. *Marmara Üniversitesi İlahiyat Fakültesi Dergisi* • Cilt-Sayı 45 • Eylül 2013 • ISSN 1302-4973 • ss. 51-66 • DOI: 10.15371/MUIFD.2013455962. al-Laknawī, Kamar al-Akmār, Istanbul, 1986, vol. 2, p. 216.

²⁵ Kamali, Mohammad Hashim. "Fundamental Rights of the Individual: An Analysis of Haqq

secures a benefit or prevents harm and is, at the same time, harmonious with the aims and objectives of Syariah (Al-Ghazali, 1997). The objectives or the principle of *Maqasid Syariah* consists of protecting the five essential values, namely religion, life, intellect, lineage and property. Al-Raysuni defines the *Maqasid Syari'ah* as the objectives which are determined by Islamic law and need to be achieved for the benefit of humankind (Al-Raysuni, 1995)²⁶.

Therefore, since the provision of polygamy for Muslims provided under Islamic law in Malaysia falls under the State legislation, it is considered as public law. Syariah laws made by states can regulate certain aspects of Muslims' lives. Article 74(2)²⁷ of the Malaysian Federal Constitution allows for this. Marriage, divorce, guardianship, adoption, trusts, Malay custom, and Syariah offences are some of these matters. They are dealt with and administered by the Syariah courts.

Individual right to practise polygamy is not abolished since polygamy still permissible with the permission of Shariah Court. However, until now there is no private law specify on polygamy which regulates individuals. However, it is provided under Section 23 (7) of IFLA that the person who commits an offence under subsection (1) has to pay all the *mas kahwin* (mahr) and all *pemberian* (hibah/gift) to the wife or wives, and if not, it can be considered as debt. Meanwhile, Section 23 (9) (a) provides on the jurisdiction of the Court to order payment of maintenance to the wife or wives. There is no proper law if there is breach of promise or contract happened during polygamous marriage.

In this discussion, polygamy is permissible by Allah with condition of justice. Whereas in Islam, marriage is an important social institution and aim to protect social problem. The basis of both kinds of rights is the concept of 'benefit, interest or *maslahah*. Under the concept of public law in Islam, the State or the Court will represent the right of God under Islamic law and regulation. *Ikhtisās* linguistically means specificity, exclusivity or the state of being private; it is the opposite of *'amma*, which means public or publicity. 5 Legally, this term refers to exclusive authority and control over a specific thing that one would rather keep concealed and protected from others or from the public. Judgements in the area of the Rights of God cannot produce results that give a priority to one person over the other. Here, in a way similar to public benefit, the aim is protecting the interests of all human beings. *Maslaha 'amma*, as a term here, literally means public interest.

Conclusion

It is for the State or government to make sure that justice is upheld for all parties involved. Polygamy is not an individual right of man and no need for the approval of wife or children or parents to practise. Based on the provision under Section 23

(Right) in Islamic Law." *American Journal of Islamic Social Sciences* 10, no. 3 (1993): 340–66.

²⁶ Che Hasan, Siti Selihah, Mohamed, Duryana, and Yusoff, Yusri "Mysejahtera App and the Privacy Rights in Times of Covid 19: The Legal and Syariah Perspectives." *INSLA E-Proceedings* 3, no. 1 (2022): 575–580.

²⁷ (2) Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List.

of IFLA, the Shariah Court has to investigate the application of polygamy based on the collective interest of the parties involved in the marriage. The information needed is not only on part of the husband but also the wife. Thus, Shariah Court plays a vital role in deciding the case based on collective interest rather than individual interest of the parties. The role of Shariah Court under Section 23 of IFLA is considered as special measures to restrict unjust treatment in polygamous marriage. The investigation and evaluation before deciding the application for polygamous marriage shows that justice is implemented by the Court or State. The Court has to evaluate all elements of justice to protect the collective interest including wives, children, the applicant and new wife as well as their children. The provision in Section 23 (4) of IFLA should be fulfilled strictly to ensure that the application and the implementation of polygamous marriage is just and necessary for social justice.

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